Ohio Legislative Service Commission

Final Analysis

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This final analysis is arranged by state agency, beginning with the Adjutant General and continuing in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item. The analysis includes a Local Government category and a Retirement category and ends with a Miscellaneous category.

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ADJUTANT GENERAL (ADJ)

- Modifies the Ohio National Guard Scholarship Program.

Ohio National Guard Scholarship Program

(R.C. 5919.34 and 5919.341)

Ohio National Guard Scholarships for all eligible applicants

The act establishes the principle that the Adjutant General is to approve Ohio National Guard Scholarships for all eligible applicants.

On or before the first day of each academic term, the Adjutant General is required to provide an eligibility roster to the Chancellor of the Ohio Board of Regents and to each institution of higher education at which one or more Ohio National Guard Scholarship recipients have applied for enrollment. The institution must use the roster to certify the actual enrollment of scholarship recipients at the institution to the Adjutant General and Chancellor. The Chancellor then is required to provide for payment of the appropriate number and amount of scholarships to each institution of higher education.

To ensure these payments are made, the act requires the Adjutant General, the Chancellor, and the Director of Budget and Management, or their designees, jointly to estimate the costs of the Ohio National Guard Scholarship Program for each upcoming fiscal biennium, and to report that estimate prior to the beginning of the fiscal biennium to the chairpersons of the finance committees of the Senate and House of Representatives. The Adjutant General must also report, on a semi-annual (rather than a quarterly) basis, to the Director, the Speaker of the House of Representatives, the President of the Senate, and the Chancellor the number of scholarship recipients, the size of the scholarship-eligible population, and a projection of the cost of the program for the remainder of the biennium.[1] And, during each fiscal year of the biennium, the Adjutant General, Chancellor, and Director, or their designees, are required to meet regularly to monitor the actual costs of the Ohio National Guard Scholarship Program and to update cost projections for the remainder of the biennium as necessary.

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[1] The act eliminates a requirement that the Adjutant General report to the Chancellor the number of students in the Ohio National Guard Scholarship Program at each institution of higher education.

If the amounts appropriated for the Ohio National Guard Scholarship Program and any amounts in the Ohio National Guard Scholarship Reserve Fund are inadequate to provide scholarships in the amounts specified for all applicants, the Chancellor is required to do both of the following to ensure that each scholarship recipient receives a scholarship or its equivalent:

(1) Notify each private institution of higher education at which an Ohio National Guard Scholarship recipient is enrolled, that, by accepting the Ohio National Guard Scholarship Program as payment for all or part of the institution's tuition, the institution has agreed that if the Chancellor reduces the amount of each such scholarship, the institution is required to provide each scholarship recipient a grant or a tuition waiver in an amount equal to the amount the recipient's scholarship was reduced by the Chancellor.

(2) Reduce the amount of each scholarship at state institutions of higher education proportionally, based on the amount of remaining available funds. Each state institution of higher education then is required to provide each scholarship recipient a grant or a tuition waiver in an amount equal to the amount the recipient's scholarship was reduced by the Chancellor.

Under prior law, if the Adjutant General estimated that appropriations and any funds in the National Guard Scholarship Reserve Fund would be insufficient to pay for all scholarships applied for and likely to be used during an academic term, the Adjutant General was required promptly to inform all applicants not receiving scholarships for the academic term of the next academic term for which appropriations would be adequate for the scholarships. Any applicant whose application was denied was then entitled to apply again for a scholarship beginning at that academic term, so long as the applicant was in compliance with all requirements of the Ohio National Guard Scholarship Program.

National Guard Scholarship Reserve Fund

The act requires the Chancellor, instead of the Board of Regents, to certify to the Director of Budget and Management, not later than July 1, the unencumbered balance of General Revenue Fund appropriations made in the immediately preceding fiscal year for purposes of the Ohio National Guard Scholarship Program. The Director is authorized to transfer an amount not exceeding the certified amount from the General Revenue Fund to the National Guard Scholarship Reserve Fund. Moneys in the National Guard Scholarship Reserve Fund are used to pay scholarship obligations in excess of General Revenue Fund appropriations for that purpose. The act authorizes the Chancellor, rather than the Adjutant General, to request the Director, rather than the

Board of Regents, to seek Controlling Board approval to establish appropriations as necessary.

Clarification of meaning of "tuition"

The act clarifies that "tuition," the cost of which is defrayed by an Ohio National Guard Scholarship, means the charges imposed to attend an institution of higher education, including both general and instructional fees. But "tuition" does not include laboratory fees, room and board, or other similar fees and charges.

Continuing eligibility for scholarships

The act specifies that an Ohio National Guard Scholarship recipient's part-time enrollment for at least three but less than six credit hours in an academic term equals three eligibility units (if a semester term) or two eligibility units (if a quarter term). A scholarship recipient can continue to apply for scholarships until the recipient has accumulated 96 eligibility units. The minimum enrollment contemplated by prior law was at least six credit hours.

Scholarship recipient liability for repayment

The act removes an exception, thus making a scholarship recipient who fails to complete the recipient's term of enlistment in the National Guard because the recipient enlists in the active component, or an active reserve component, of the United States armed forces liable to repay a percentage of the Ohio National Guard Scholarship paid on behalf of the recipient, plus interest at the rate of 10%. The scholarship percentage equals the percentage of the term of National Guard enlistment not completed. The act requires the Attorney General, on behalf of the Chancellor (rather than on behalf of the Adjutant General), to commence a civil action to recover repayment amounts for which scholarship recipients are liable. Under prior law, a scholarship recipient could enlist in the active or active reserve components of the United States armed forces without incurring any liability for repayment.

Scholarship reduction removed

The act repeals law that required an Ohio National Guard Scholarship to be reduced by the amount of an applicant's tuition benefits under a federal act, The Post 9/11 Veterans Education Assistance Act of 2008. This law conflicted with the federal act because the federal act requires a scholarship recipient to use state benefits *before* using the benefits provided by the federal act.

DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

- Abolishes the School Employees Health Care Board and generally transfers its duties and authority to the Department of Administrative Services.

- Requires the Department to design health care plans for employees of political subdivisions, public school districts (including educational service centers), and state institutions of higher education.

- Specifies, upon completion of a consultant's report, and once the health care plans the Department is to design are released in final form, that all health care benefits provided to persons employed by political subdivisions, public school districts, and state institutions of higher education may be provided by those plans.

- Specifies, however, in certain cases, that if the health care plans designed by the Department do not include or address any health care benefits provided under continuing law, the benefits provided under continuing law continue in effect for those benefits.

- Specifies also that the act does not prohibit a political subdivision from adopting a "delivery system of benefits" that is not in accord with the Department's adopted best practices if doing so is considered to be "most financially advantageous" to the political subdivision.

- Requires the Department to set employee and employer health care plan premiums for the Department's designed health care plans.

- Would have required the Department to submit a report to the General Assembly on the feasibility of certain health care initiatives regarding health care plans covering persons employed by political subdivisions, public school districts, and state institutions of higher education (VETOED).

- Recreates the Public Schools Health Care Advisory Committee as the Public Health Care Advisory Committee under the Department.

- Renames the School Employees Health Care Fund the Political Subdivisions and Public Employees Health Care Fund.

- Eliminates the requirement that the multiple-prime contracting method be used by public authorities undertaking a public improvement project, but permits its use.

- Authorizes public authorities, other than the Ohio Turnpike Commission, to enter into public improvement contracts with construction managers at risk (CMARs) and design-build (D/B) firms, and to enter into public improvement contracts with general contracting firms regardless of the size of the project.

- Permits the utilization of design-assist firms on CMAR and D/B projects.

- Increases, from $50,000 to $200,000, the minimum project cost threshold triggering competitive bidding on state public improvement projects, and exempts contracts with CMARs and D/B firms from the competitive bidding requirement.

- Requires the Director to adjust that minimum project cost threshold every five years based on the average rate of inflation.

- Prohibits the subdivision of state public improvement projects in order to avoid the competitive bidding threshold.

- Exempts contracts with CMARs and D/B firms from the competitive bidding requirement that applies to public improvement projects undertaken by port authorities.

- Increases, from $25,000 to $50,000, the professional design fee cost threshold under which public authorities contracting for professional design services are exempt from the bidding, evaluation, and ranking requirements that otherwise would apply under ongoing law, provided certain requirements are met.

- Modifies the life-cycle cost analysis and energy consumption analysis requirements for public improvement projects.

- Mandates that the release of capital appropriations by the Director of Budget and Management or the Controlling Board for facilities projects contain a contingency reserve for payment of unanticipated project expenses.

- Makes various other changes to the law governing public improvements.

- Requires the Director to adopt rules that establish guidelines for the provision of surety bonds by CMARs and D/B firms, and delays the application of the act's construction reform provisions until the date those rules become effective.

- Requires public entities generally to submit a report to the Director of Administrative Services upon completion of each capital facilities project that is funded wholly or in part using state funds.

- Requires the Attorney General to submit an annual report to the Director on any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered.

- Requires the Director to incorporate the information received from the reports submitted by public entities and the Attorney General into the Ohio Administrative Knowledge System.

- Temporarily authorizes the Director to implement certain provisions of the civil service law, regarding classification plans and appointment incentive programs, without adopting rules.

- Makes changes to the civil service law with respect to civil service examinations, special examinations, appointments, probationary employees, and promotions.

- Requires the Office of Information Technology to establish, operate, and maintain a state public notice web site on which state agencies and political subdivisions may publish notices required by statute or rule.

- Authorizes the Office of Information Technology to operate an information technology (IT) purchase program.

- Requires the State Chief Information Officer to compute revenue attributable to the amortization of certain IT purchases and deposit the revenue into the Information Technology Fund.

- Establishes the Information Technology Governance Fund and Major Information Technology Purchases Fund in the Revised Code.

- Creates the State Employee Child Support Fund for the purpose of collecting all money withheld or deducted from the wages and salaries of state officials and employees pursuant to child support orders.

- Removes purchases and leases for office space for the Joint Legislative Ethics Committee (JLEC) from the control and jurisdiction of the Department.

- Authorizes JLEC and the Department to contract for the Department to perform the same statutory services for JLEC that the Department performs for buildings of certain state agencies under its jurisdiction.

- Transfers the building and facility operations and management functions of the Ohio Building Authority (OBA) to the Department, effective January 1, 2012.

- Deems references to the OBA in statutes pertaining to OBA's building and facility operations and management functions be references to the Department.

- Authorizes OBA employees to be transferred to the Department if they are necessary for successful implementation of the transfer, and makes employees of OBA who are designated as building and facility operations and management staff, not later than August 1, 2011, eligible to participate in group health plans offered to state employees.

- Removes the State of Ohio Computer Center from the list of buildings, the non-General Revenue Fund supported state agency tenants of which must reimburse the General Revenue Fund for rent.

- Eliminates the requirement for the Department to annually make a report to the General Assembly regarding the acquisition and disposal of surplus federal property.

- Permits agencies to assign exempt employees, with their written consent, to duties of a higher classification for up to two years.

- Allows the Office of Risk Management to manage risk for the courts as it does for the state for purposes of the Judicial Liability Program.

- Allows the Risk Management Reserve Fund to be used for the payment of any liability claim that is filed against the state.

- Requires the Department to recommend to the leaders of the General Assembly a state government reorganization plan focused on increased efficiencies in state government operation and a reduced number of state agencies.

- Authorizes the Department, in conjunction with the Office of Budget and Management, to update or add functionality to the Ohio Administrative Knowledge System (OAKS) to support shared services, financial or human resources functions, and enterprise applications that will improve the state's operational efficiency.

- Authorizes the Department, in conjunction with the Department of Taxation, to acquire the State Taxation Accounting and Revenue System (STARS) to function as an integrated tax collection and audit system that will replace all of the state's existing separate tax software and administration systems for the various taxes collected by the state.

- Requires the Director of Administrative Services to notify the Controlling Board whenever the Director declares a public exigency.

Health care benefits for political subdivision, school district, and institution of higher education employees

Department of Administrative Services designed plans

(R.C. 9.901(A)(2) to (K); Section 515.60)

Effective July 1, 2011, the act abolishes the School Employees Health Care Board ("Board") and its duties and authority and generally grants its duties and authority to the Department of Administrative Services with regard to health care benefits for employees of public school districts, and expands these duties and authority to include plans for health care benefits for employees of state institutions of higher education and political subdivisions. The act transfers all equipment, assets, and records of the Board to the Department. The Department must designate the employee positions, if any, to be transferred to the Department.

The Department of Administrative Services and the Department of Education must enter into an interagency agreement to transfer to the Department of Administrative Services any designated employee positions and all equipment, assets, and records of the Board by July 1, 2011, or as soon as possible thereafter. The interagency agreement can include provisions to transfer property and any other provisions necessary for the continued administration of Board activities under continuing law.

The act transfers to the Department any employee positions of the Board that the Department designates for transfer, and any equipment assigned to those positions. Any Board employees in positions transferred retain rights regarding layoffs, and any employee transferred to the Department retains the employee's classification, but the Department can reassign and reclassify the employee's position and compensation as the Department determines to be in the interest of office administration.

All the rules, orders, and determinations associated with the Board continue in effect as rules, orders, and determinations associated with the Department until modified or rescinded by the Director of Administrative Services. If necessary to ensure the integrity of the Administrative Code rule numbering system, the Director of the Legislative Service Commission must renumber the rules relating to the Board to reflect their transfer to the Department. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer. On and after July 1, 2011, if the Board is referred to in any statute, rule, contract, grant, or other document, the reference is deemed to refer to the Department.

In conformity with these changes, the act renames the School Employees Health Care Fund the "Political Subdivisions and Public Employees Health Care Fund." The Department must use the fund solely to carry out its health care benefit plan duties for political subdivisions, school districts, and institutions of higher education and related administrative costs.

Definitions

The act includes the following definitions for the purposes of its health care benefit provisions:

A "public school district" is a city, local, exempted village, or joint vocational school district, a STEM school, and an educational service center. "Public school district" does not mean a community school or a charter school.

A "political subdivision" is a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.

"Political subdivision" includes, but is not limited to, a county hospital commission, board of hospital commissioners appointed for a municipal hospital, board of hospital trustees appointed for a municipal hospital, regional planning commission, county planning commission, joint planning council, interstate regional planning commission, port authority, regional council, emergency planning district and joint emergency planning district, joint emergency medical services district, fire and ambulance district, joint interstate emergency planning district, county solid waste management district and joint solid waste management district, community school, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

"Political subdivision" also means any county; municipal corporation; township; township police district; township fire district; joint fire district; joint ambulance district; joint emergency medical services district; fire and ambulance district; joint recreation district; township waste disposal district; township road district; community college district; technical college district; detention facility district; single-county and joint-county juvenile facilities; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district; a union cemetery district; a county school financing district; a city, local, exempted village, cooperative education, or joint

vocational school district; or a regional student education district, and any public division, district, commission, authority, department, board, officer, or institution of any one or more of those political subdivisions, that is entirely or substantially supported by public tax moneys. (For a discussion of the "home rule" authority of municipal corporations, see "**Home rule**," below.)

A "state institution of higher education" is a state university or college, community college, state community college, university branch, or technical college. The state universities are the University of Akron, Bowling Green State University, Central State University, the University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, the University of Toledo, Wright State University, Youngstown State University, and the Northeast Ohio Medical University.

A "health care plan" includes group policies, contracts, and agreements that provide hospital, surgical, or medical expense coverage, including self-insured plans. A "health care plan" does not include an individual plan offered to the employees of a political subdivision, public school district, or state institution of higher education, or a plan that provides coverage only for specific disease or accidents, or a hospital indemnity, Medicare supplement, or other plan that provides only supplemental benefits, which are paid for by the employees of a political subdivision, public school district, or state institution of higher education.

A "health plan sponsor" is a political subdivision, public school district, a state institution of higher education, a consortium of political subdivisions, public school districts, or state institutions of higher education, or a council of governments.

Health care benefit plans

Upon completion of the consultant's report described below, and once the plans are released in final form by the Department, all health care benefits provided to persons employed by political subdivisions, public school districts, and state institutions of higher education may be provided by health care plans designed by the Department. The Department, in consultation with the Superintendent of Insurance, can negotiate with and, in accordance with competitive selection procedures, contract with one or more insurance companies authorized to do business in Ohio for the issuance of the plans.

The act permits any or all of the health care plans designed by the Department to be self-insured. All self-insured plans must be administered by the Department in accordance with the act, and must incorporate the best practices adopted by the Department, as described below. A political subdivision, public school district, or state

institution of higher education cannot "be required to" offer the health care plans designed by the Department until action is taken regarding the consultant's report.

Independent consultant recommendations

Before the Department's release of the initial health care plans, the act requires the Department to contract with an independent consultant to analyze costs related to employee health care benefits provided by existing political subdivision, public school district, and state institution of higher education plans. All political subdivisions must provide information requested by the Department that the Department determines is needed to complete the study. (The information requested must be held confidentially by the Department and must not be considered a public record under the Public Records Law. But the Department can release the information after redacting all personally identifiable information.) The consultant must determine the benefits offered by existing plans, the employees' costs, and the cost-sharing arrangements used by political subdivisions, schools, and institutions of higher education participating in a consortium. The consultant must determine what strategies are used by the existing plans to manage health care costs and must study the potential benefits of state or regional consortiums of political subdivisions, public schools, and institutions of higher education offering multiple health care plans. Based on the findings of the analysis, the consultant must submit written recommendations to the Department for the development and implementation of a successful program for pooling purchasing power for the acquisition of employee health care plans. The consultant's recommendations must address, at a minimum, all of the following issues:

(1) The development of a plan for regional coordination of the health care plans;

(2) The establishment of regions for the provision of health care plans, based on the availability of providers and plans in Ohio at the time;

(3) The viability of voluntary and mandatory participation by political subdivisions, public schools, and institutions of higher education;

(4) The use of regional preferred provider and closed panel plans, health savings accounts, and alternative health care plans, to stabilize both costs and the premiums charged to political subdivisions, school districts, and state institutions of higher education and their employees;

(5) The use of the competitive bidding process for regional health care plans;

(6) The use of information on claims and costs and of information reported by political subdivisions, school districts, and state institutions of higher education under

the Consolidated Omnibus Budget Reconciliation Act (COBRA) in analyzing administrative and premium costs;

(7) The experience of states that have statewide health care plans for political subdivision, public school district, and state institution of higher education employees, including the implementation strategies used by those states;

(8) Recommended strategies for the use of first-year roll-in premiums in the transition from political subdivision, district, and state institution of higher education health care plans to department plans;

(9) The option of allowing political subdivisions, public school districts, and state institutions of higher education to join an existing regional consortium as an alternative to Department plans;

(10) Mandatory and optional coverages to be offered by the Department's plans;

(11) Potential risks to the state from the use of the Department's plans;

(12) Any legislation needed to ensure the long-term financial solvency and stability of a health care purchasing system;

(13) The potential impacts of any changes to the existing purchasing structure on all of the following: existing health care pooling and consortiums, political subdivision, school district, and state institution of higher education employees, and individual political subdivisions, school districts, and state institutions of higher education;

(14) Issues that could arise when political subdivisions, school districts, and state institutions of higher education transition from the existing purchasing structure to a new purchasing structure;

(15) Strategies available to the Department in the creation of fund reserves and the need for stop-loss insurance coverage for catastrophic losses;

(16) Impact on eliminating the premium tax or excise currently received on behalf of a public employer under continuing law;

(17) How development of the federal health exchange in Ohio may impact public employees;

(18) Impact of joint health insurance regional program on insurance carriers and agents; and

(19) The benefits, including any cost savings to the state of establishing a benchmark for public employers to meet in lieu of establishing new plans administered by the Department.

Geographic regions and consortiums

Before soliciting proposals from insurance companies for the issuance of health care plans, the Department, in consultation with the Superintendent of Insurance, must determine what geographic regions exist in Ohio based on the availability of providers, networks, costs, and other factors relating to providing health care benefits. The Department must then determine what health care plans offered by political subdivisions, public school districts, state institutions, and existing consortiums in the region offer the most cost-effective plan.

Thereafter, the Department, in consultation with the Superintendent of Insurance, must develop a request for proposals and solicit bids for the health care plans for political subdivisions, public school districts, and state institutions of higher education in a region similar to the existing plans. The Department must also determine the benefits offered by existing health care plans, the employees' costs, and the cost-sharing arrangements used by political subdivisions, schools, and institutions of higher education participating in a consortium. The Department must determine what strategies are used by the existing plans to manage health care costs, and must study the potential benefits of state or regional consortiums offering multiple health care plans. When options exist in a defined regional service area that meet the benchmarks or best practices prescribed by the Department, public employees must be given the option of selecting from two or more health plans.

In addition, political subdivisions, public school districts, or state institutions of higher education offering employee health care benefits through a plan offered by a consortium of two or more political subdivisions, public school districts, or state institutions of higher education, or a consortium of one or more political subdivisions, public school districts, or state institutions of higher education and one or more other political subdivisions can continue offering consortium plans to their employees if the plans contain best practices as required by the act.

Additional duties for the Department

The act requires the Department to do all of the following:

(1) Include disease management and consumer education programs, including wellness programs and other measures, designed to encourage the wise use of medical plan coverage;

(2) After action is taken regarding the consultant's report, design health care plans for political subdivisions, public school districts, and state institutions of higher education separate from the health care plans for state agencies;

(3) Adopt and release a set of standards that must be considered the best practices for health care plans offered to employees of political subdivisions, public school districts, and state institutions of higher education;

(4) Require that the plans the health plan sponsors administer make readily available to the public all cost and design elements of the plan;

(5) Set employee and employer health care plan premiums for the plans designed by the Department;

(6) Promote cooperation among all organizations affected by the act in identifying the elements for successful implementation of the act;

(7) Promote cost containment measures aligned with patient, plan, and provider management strategies in developing and managing health care plans;

(8) Prepare and disseminate to the public an annual report on the status of health plan sponsors' effectiveness in making progress to reduce the rate of increase in insurance premiums and employee out-of-pocket expenses, as well as progress in improving the health status of political subdivisions, public school districts, and state institution of higher education employees and their families.

The Department is authorized to adopt rules for the enforcement of health plan sponsors' compliance with the best practices standards adopted by the Department.

The Department can contract with other state agencies for services as the Department deems necessary for the implementation and operation of the act, based on demonstrated experience and expertise in administration, management, data handling, actuarial studies, quality assurance, or for other needed services.

The Department must hire staff as necessary to provide administrative support to the Department and the public employee health care program established by the act.

Nonidentifiable aggregate claim data

Any health care plan providing coverage for the employees of political subdivisions, school districts, or state institutions of higher education, or that have provided coverage within two years before June 30, 2011, must provide nonidentifiable aggregate claims data for the coverage provided as required by the Department, without charge, within 30 days after receiving a written request from the Department.

The claims data must include data relating to employee group benefit sets, demographics, and claims experience.

Provision of plan information

Not more than 90 days before coverage begins for political subdivisions, public school districts, and state institution of higher education employees under health care plans designed by the Department, the governing bodies of those entities must provide detailed information about the health care plans to their employees.

Professional insurance services not prohibited

The act states that it does not prohibit political subdivisions, public school districts, or state institutions of higher education from consulting with and compensating insurance agents and brokers for professional services, or from establishing a self-insurance program.

Audits

Under continuing law, the Auditor of State must conduct all necessary and required audits of the Department. The Auditor of State, upon request, also must furnish to the Department copies of audits of political subdivisions, public school districts, or consortia performed by the Auditor of State.

Public Health Care Advisory Commission

The act renames and reconstitutes the advisory committee, which under former law was the Public Schools Health Care Advisory Committee under the School Employees Health Care Board, and which is, under the act, the Public Health Care Advisory Committee, under the Department. Under the act, the Committee must make recommendations to the Director or the director's designee on the development and adoption of best practices. The Committee consists of 15 members appointed by the Speaker of the House of Representatives, the President of the Senate, and the Governor and must include representatives from state and local government employers, state and local government employees, insurance agents, health insurance companies, and joint purchasing arrangements currently in existence.

Feasibility report (VETOED)

(Section 701.20)

The Governor vetoed a provision that would have required, not later than July 1, 2012, the Department to submit a report to the General Assembly on the feasibility of all

of the following regarding health care plans to cover persons employed by political subdivisions, public school districts, and state institutions of higher education:

(1) Designing multiple health care plans that achieve an optimal combination of coverage, cost, choice, and stability, which plans include both state and regional preferred provider plans, set employee and employer premiums, and set employee plan copayments, deductibles, exclusions, limitations, formularies, and other responsibilities;

(2) Maintaining reserves, reinsurance, and other measures to insure the long-term stability and solvency of the health care plans;

(3) Providing appropriate health care information, wellness programs, and other preventive health care measures to health care plan beneficiaries;

(4) Coordinating contracts for services related to the health care plans;

(5) Voluntary and mandatory participation by political subdivisions, public school districts, and institutions of higher education;

(6) The potential impacts of any changes to the existing purchasing structure on existing health care pooling and consortiums;

(7) Removing barriers to competition and access to health care pooling.

The Governor also vetoed a provision that would have prohibited any action to be taken regarding health care coverage for employees of political subdivisions, public school districts, and state institutions of higher education without the enactment of law by the General Assembly.

Self-insurance

(R.C. 9.833)

Under continuing law, political subdivisions that provide health care benefits for their officers or employees may:

(1) Establish and maintain an individual self-insurance program with public moneys to provide authorized health care benefits, including, but not limited to, health care, prescription drugs, dental care, and vision care;

(2) Establish and maintain a health savings account program whereby employees or officers may establish and maintain health savings accounts under the Internal Revenue Code;

(3) After establishing an individual self-insurance program for health care benefits, agree with other political subdivisions that also have established individual self-insurance programs for health care benefits, that their programs are to be jointly administered in a manner specified in the agreement;

(4) Under a written agreement, join in any combination with other political subdivisions to establish and maintain a joint self-insurance program to provide health care benefits;

(5) Under a written agreement, join in any combination with other political subdivisions to procure or contract for policies, contracts, or plans of insurance to provide health care benefits for their officers and employees who are subject to the agreement;

(6) Use in any combination any of the policies, contracts, plans, or programs authorized as explained above; and

(7) Purchase health care plans approved by the Department.

Under the act, any agreement made as described in (3), (4), (5), or (6) above must be in writing, comply with continuing law, and contain best practices established in consultation with and approved by the Department. The best practices can be reviewed and amended at the discretion of the political subdivisions in consultation with the Department. Detailed information regarding the best practices must be made available to any employee upon that employee's request.

Additionally, any self-insurance program established as described above must prepare and maintain a certified audited financial statement and a report of amounts reserved for the program and disbursements made from such funds. The program administrator must provide the report to the Auditor of State under the Auditing Law. The self-insurance program must include a contract with a certified public accountant and a member of the American Academy of Actuaries for the preparation of the written evaluations described in this paragraph.

The act specifies that the provisions regarding the self-insurance programs do not apply to an individual self-insurance program created solely by municipal corporations. For this purpose, "municipal corporation" means all municipal corporations, including those that have adopted a charter under the Ohio Constitution.

Home rule

Although the act confers authority on municipal corporations regarding health care benefits, it is likely municipal corporations already have, and will continue to have,

authority to provide health care benefits, including by self-insurance, under their home rule power of local self-government.[2]

Health care plans for political subdivisions

(R.C. 9.901(A) and (F))

All health care benefits provided to persons employed by political subdivisions must be provided by health care plans that contain best practice established by the Department. But the act states that it does not prohibit a political subdivision from adopting a "delivery system of benefits" that is not in accordance with the Department's adopted best practices if the delivery system is considered to be most financially advantageous to the political subdivision.

Health care plans for educational entities

(R.C. 9.90 and 9.901(A))

The act states that the following applies until the Department implements its health care plans. However, if the Department plans do not include or address any benefits listed below, or if the board of trustees or other governing body of a state institution of higher education, board of education of a school district, or governing board of an educational service center do not elect to be covered under a plan offered by the Department, the following provisions continue in effect for those benefits. The board of trustees or other governing body of a state institution of higher education, board of education of a school district, or governing board of an educational service center can:

(1) Contract for, purchase, or otherwise procure from a licensed insurer or insurers for or on behalf of such of its employees as it may determine, life insurance, or sickness, accident, annuity, endowment, health, medical, hospital, dental, or surgical coverage and benefits, or any combination thereof, by means of insurance plans or other types of coverage, and may pay from available funds under its control all or any portion of the cost, premium, or charge for the insurance, coverage, or benefits. However, the governing board, in addition to or as an alternative to the above, may elect to procure health care coverage for such of its employees as it may determine by means of policies, contracts, certificates, or agreements issued by at least two certified health insuring corporations and can pay from available funds under its control all or any portion of the cost of the coverage.

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[2] Ohio Constitution, Art. XVIII, sec. 3; see *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma* (1980), 61 Ohio St.2d 375.

(2) Make payments to a custodial account for investment in regulated investment company stock for the purpose of providing retirement benefits.

Until the Department implements for public school districts the health care plans it is to design, all health care benefits provided to persons employed by the public schools must be through health care plans that contain best practices established by the School Employees Health Care Board or the Department.

But, once the Department releases in final form the health care plans it is to design, all health care benefits provided to persons employed by state institutions of higher education, public school districts, or educational service centers "may be through those plans."

Health care plans for counties

(R.C. 305.171)

The act specifies that continuing law regarding health care benefits for county employees applies until the Department implements for counties the health care plans it is to design. However, if the Department's plans do not include or address any benefits provided under continuing law, the benefits provided under continuing law continue in effect for those benefits.

Currently, and potentially in the future, the board of county commissioners of any county can contract for, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that provide health care benefits including, but not limited to, hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, and that may provide sickness and accident insurance, group legal services, or group life insurance, or a combination of any of the foregoing types of insurance or coverage, for county officers and employees and their immediate dependents from the funds or budgets from which the county officers or employees are compensated for services, issued by an insurance company.

Health care plans for townships

(R.C. 505.60, 505.601, and 505.603)

The act specifies that continuing law regarding health care benefits for township employees applies until the Department implements for townships the health care plans it is to design. However, if the Department's plans do not include or address any benefits provided under continuing law, the benefits provided under continuing law continue in effect for those benefits.

Currently, and potentially in the future, a board of township trustees can procure and pay all or any part of the cost of insurance policies that provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees.

If a board of township trustees does not procure an insurance policy or group health care services as described above, then until the Department implements the health care plans it is to design, the board of township trustees can reimburse any township officer or employee for each out-of-pocket premium attributable to the coverage provided for that officer or employee for insurance benefits that the officer or employee otherwise obtains, if certain conditions are met.

The act specifies that ongoing law regarding health care benefits provided to township officers and employees through a cafeteria plan applies until the Department implements for townships the health care plans it is to design. However, if the Department's plans do not include or address any cafeteria plan benefits provided under continuing law, the cafeteria plan benefits provided under continuing law continue in effect for those benefits.

Currently, and potentially in the future, a board of township trustees can offer benefits to officers and employees through a cafeteria plan after first adopting a policy authorizing an officer or employee to receive a cash payment in lieu of a benefit otherwise offered to township officers or employees, but only if the cash payment does not exceed 25% of the cost of premiums or payments that otherwise would be paid by the board for benefits for the officer or employee under an offered policy, contract, or plan.

Health care plans for park districts

(R.C. 1545.071)

The act specifies that the following applies until the Department implements for park districts the health care plans it is to design. However, if the Department's plans do not include or address any benefits provided under continuing law, the following provisions continue in effect for those benefits.

Currently, and potentially in the future, the board of park commissioners of any park district can procure and pay all or any part of the cost of group insurance policies that provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance or

coverage for park district officers and employees and their immediate dependents that is issued by an insurance company that is authorized to do business in Ohio.

Public construction reform

(R.C. 9.33, 9.331, 9.332, 9.333, 9.334, 9.335, 123.011, 126.141, 153.01, 153.03, 153.07, 153.08, 153.50, 153.501, 153.502, 153.503, 153.51, 153.52, 153.53, 153.54, 153.55, 153.56, 153.581, 153.65, 153.66, 153.67, 153.69, 153.692, 153.693, 153.694, 153.70, 153.71, 153.72, 153.73, 153.80, 3313.46, 3353.04, 3354.16, 3357.16, 4113.61, 4582.12, 4582.31, 5540.03, and 6115.20; Sections 701.10 and 701.13)

The act's public construction law changes apply to "public authorities," which is defined as the state; any state institution of higher education;[3] any county, township, municipal corporation, school district, or other political subdivision; or any public agency, authority, board, commission, instrumentality, or special purpose district of the state or of a political subdivision. "Public authorities" does *not* include the Ohio Turnpike Commission.

Permissible methods of construction delivery

The act eliminates the requirement that the multiple-prime contracting method be used by public authorities undertaking a public improvement project.[4] Under the act, a public authority may choose to use multiple-prime contracting on any project *or* may choose to use one of several alternative methods of construction delivery created by the act. Those alternative methods are construction manager at risk, design-build, and general contracting regardless of the size of the project.

Construction manager at risk

(R.C. 9.33 to 9.335, 153.50 to 153.52, and 153.54)

Construction manager at risk (CMAR) is defined by the act as a person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement. A CMAR must

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[3] "State institution of higher education" has the same meaning as in R.C. 3345.011.

[4] Generally, under the multiple-prime method, if the total cost of the project was $50,000 or more, a public authority had to solicit separate bids for, and award separate main contracts for, the following: (1) plumbing and gas fitting, (2) steam and hot-water heating, ventilating apparatus (HVAC), and steam-power plant, and (3) electrical equipment. These primary contractors could then enter into subcontracts with other contractors as needed to perform the work and provide the necessary materials. (R.C. 153.50, 153.51, and 153.52.)

provide the public authority with a **guaranteed maximum price** utilizing an "open book pricing method," whereby the CMAR makes available to the public authority all books, records, documents, and other data in its possession pertaining to the bidding, pricing, or performance of a construction management contract awarded to it. The guaranteed maximum price represents the total maximum amount to be paid by the public authority to the CMAR for the project. It includes the cost of all the work, the cost of its general conditions, the contingency, and the fee payable to the CMAR.

Selection

A public authority, after evaluating proposals submitted by CMARs for a particular project, must select not fewer than three CMARs the public authority considers to be the most qualified to provide the required services.[5] Each CMAR selected must be given (1) a description of the project, including a statement of available design detail, (2) a description of how the guaranteed maximum price is to be determined, (3) the form of the contract, and (4) a request for a pricing proposal. The pricing proposal of each CMAR is to include a list of key personnel for the project, a statement of the general conditions and contingency requirements, and a fee proposal divided into a preconstruction fee, a construction fee, and the portion of the construction fee to be at risk in a guaranteed maximum price. A bid guaranty, however, is not required to be filed.

The public authority is to rank the CMARs based on its evaluation of the value of each pricing proposal, and enter into negotiations with the CMAR whose pricing proposal the public authority determines to be the best value--considering the proposed cost and qualifications. These contract negotiations are to be directed toward:

--Ensuring that the CMAR and public authority mutually understand the essential requirements involved in providing the required construction management services, including the provisions for the use of contingency funds and the possible distribution of savings in the final costs of the project;

--Ensuring that the CMAR will be able to provide the necessary personnel, equipment, and facilities to perform the construction management services within the time required by the contract;

--Agreeing upon a procedure and schedule for determining a guaranteed maximum price.

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[5] The public authority may select and rank fewer than three if the public authority determines in writing that fewer than three qualified CMARs are available. For the definition of "qualified," see R.C. 9.33(E).

If negotiations fail, the public authority may enter into negotiations with the CMAR the public authority ranked next highest and continue negotiating with the selected CMARs in the order of their ranking until a contract is negotiated. If that does not occur, the public authority may select additional CMARs to provide pricing proposals or may select an alternative delivery method for the project. Additionally, if a public authority and CMAR fail to agree on a guaranteed maximum price, the public authority may allow the CMAR to provide management services that a construction manager is authorized to provide.

Before construction begins pursuant to a contract with a CMAR, the CMAR must provide a surety bond in accordance with guidelines established by the Director of Administrative Services by R.C. Chapter 119. rules.

Prequalification of subcontractors

Each CMAR is required to establish criteria by which it will prequalify prospective bidders on subcontracts awarded for work to be performed under the construction management contract. The criteria must be consistent with rules adopted by the Department of Administrative Services pursuant to the act and be approved by the public authority involved in the project.

For each subcontract to be awarded, the CMAR must identify at least three prospective bidders that are prequalified to bid on that subcontract. If the CMAR establishes to the satisfaction of the public authority that fewer than three prequalified bidders are available, the CMAR may identify fewer than three. The public authority must verify that each prospective bidder meets the prequalification criteria and may eliminate any bidder it determines is not qualified.

Once the prospective bidders are prequalified and found acceptable by the public authority, the CMAR is to solicit proposals from each of those bidders. The solicitation and selection of a subcontractor must be conducted under an "open book pricing method," as described above. A CMAR is not required to award a subcontract to a low bidder.

A public authority may accept a subcontract awarded by a CMAR, or may reject a subcontract if the public authority determines that the bidder is not responsible. If the CMAR intends and is permitted by the public authority to self-perform a portion of the work required under the contract, it must submit a sealed bid for that portion of the work *prior* to accepting and opening any bids for the same work.

Design-assist

Under the act, a public authority may authorize a CMAR to utilize a design-assist firm on any public improvement project without transferring any design liability to the design-assist firm. **Design-assist services** means monitoring and assisting in the completion of the plans and specifications, and **design-assist firm** is a person capable of performing design-assist services.

Design-build firm

(R.C. 153.50 to 153.52, 153.54, and 153.65 to 153.73)

For purposes of this construction delivery method, **design-build (D/B) services** means services that form an integrated delivery system for which a person is responsible to a public authority for both the design *and* the construction, demolition, alteration, repair, or reconstruction of a public improvement. When contracted by a public authority for D/B services, a D/B firm may also perform professional design services[6] even if the D/B firm is not a professional design firm.

Selection

A public authority planning to contract for D/B services must first obtain the services of a criteria architect or engineer[7] by either contracting with a professional design firm as provided in ongoing law or by obtaining the services through an architect or engineer who is an employee of the public authority and notifying the Department of Administrative Services before the services are rendered. If a professional design firm selected as the criteria architect or engineer creates the preliminary criteria and design criteria for a project, and the firm assists the public authority in evaluating the D/B requirements provided to the public authority by a D/B firm, the professional design firm cannot provide any D/B services pursuant to the D/B contract awarded for the project.

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[6] "Professional design services" means services within the scope of practice of an architect or landscape architect, or a professional engineer or surveyor, registered in accordance with Ohio law (R.C. 153.65(C)).

[7] The criteria architect or engineer is the architect or engineer retained by a public authority to prepare conceptual plans and specifications, to assist the public authority in establishing the design criteria for a D/B project, and, if requested by the public authority, to serve as its representative and provide other design and construction administrative services during the project, including confirming that the design prepared by the D/B firm reflects the original design intent established in the design criteria package (R.C. 153.65(I)).

A public authority, in consultation with the criteria architect or engineer, is to evaluate the statements of qualifications[8] submitted by D/B firms for a particular project, including the firm's proposed architect or engineer of record,[9] and select and rank not fewer than three D/B firms the public authority considers to be the most qualified to provide the required services.[10] Each D/B firm selected must be given (1) a description of the project and project delivery, (2) the design criteria produced by the criteria architect or engineer, (3) a preliminary project schedule, (4) a description of any preconstruction services and the proposed design services, (5) a description of a guaranteed maximum price, including the estimated level of design on which it is based,[11] (6) the form of the contract, and (7) a request for a pricing proposal that is divided into a design-services fee and a preconstruction and design-build services fee. The pricing proposal of each D/B firm must include a list of key personnel and consultants for the project, design concepts adhering to the design criteria produced by the criteria architect or engineer, the firm's statement of the general conditions and estimated contingency requirements, and a preliminary project schedule. A bid guaranty, however, is not required to be filed.

The public authority is to rank the D/B firms based on its evaluation of the value of each pricing proposal, and enter into negotiations with the firm whose pricing proposal the public authority determines to be the best value--considering the proposed cost and qualifications. These contract negotiations are to be directed toward:

--Ensuring that the D/B firm and the public authority mutually understand the essential requirements involved in providing the required design-build services, the provisions for the use of contingency funds, and the terms of the contract, including terms related to the possible distribution of savings in the final costs of the project;

--Ensuring that the firm will be able to provide the necessary personnel, equipment, and facilities to perform the design-build services within the time required by the contract;

--Agreeing upon a procedure and schedule for determining a guaranteed maximum price.

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[8] For the definition of "qualifications," see R.C. 153.65(D).

[9] The architect or engineer of record is the architect or engineer that serves as the final signatory on the plans and specifications for the D/B project (R.C. 153.65(H)).

[10] The public authority may select and rank fewer than three if the public authority determines in writing that fewer than three qualified D/B firms are available (R.C. 153.693(A)(1)).

[11] For a description of the guaranteed maximum price, see the relevant discussion under "**Construction manager at risk**," above.

If negotiations fail, the public authority may enter into negotiations with the D/B firm the public authority ranked next highest and continue negotiating with the selected D/B firms in the order of their ranking until a contract is negotiated. If that does not occur, the public authority may select additional D/B firms to provide pricing proposals or may select an alternative delivery method for the project. A public authority may provide a stipend for pricing proposals received from D/B firms.

Before construction begins pursuant to a contract for D/B services with a D/B firm, the firm must provide a surety bond in accordance with guidelines established by the Director of Administrative Services by R.C. Chapter 119. rules. Also, a public authority may require the D/B firm to carry contractor's professional liability insurance and any other insurance the public authority considers appropriate.

Prequalification of subcontractors

Like CMARs, D/B firms are required to establish criteria by which they will prequalify prospective bidders on subcontracts awarded for work to be performed under a design-build contract. The criteria that is established must meet the same requirements, and the selection of subcontractors must be done in the same manner, as is provided for CMARs (see above).

A public authority may accept a subcontract awarded by a D/B firm, or may reject a subcontract if the public authority determines that the bidder is not responsible. If the D/B firm intends and is permitted by the public authority to self-perform a portion of the work, the D/B firm must submit a sealed bid for the work *prior* to accepting and opening any bids for the same work.

Design-assist

A public authority may also authorize a D/B firm to utilize a design-assist firm on any public improvement project without transferring any design liability to the design-assist firm. **Design-assist services** means monitoring and assisting in the completion of the plans and specifications, and **design-assist firm** is a person capable of performing design-assist services.

General contracting

(R.C. 153.50 to 153.52)

General contracting means constructing and managing an entire public improvement project under the award of a single aggregate lump sum contract. Unlike

under prior law, public authorities may enter into a contract with a general contracting firm regardless of the size of the project.[12]

If the public authority is the state, any public institution of the state, or a school district, a contract for general contracting is to be awarded to the lowest responsive and responsible bidder. In the case of a county, township, or municipal corporation, the contract must be awarded to the lowest and best bidder. A public authority may accept a subcontract awarded by a general contracting firm, or may reject a subcontract if the public authority determines that the bidder is not responsible.

Related rule-making authority

(R.C. 153.503; Section 701.10)

The act requires the Department of Administrative Services, not later than June 30, 2012, to adopt R.C. Chapter 119. rules to do the following:

(1) Prescribe the procedures and criteria for determining the "best value" selection of a CMAR or D/B firm;

(2) In consultation with the State Architect's Office, set forth standards to be followed by CMARs and D/B firms when establishing prequalification criteria for subcontractors;

(3) Prescribe the form for the contract documents (a) to be used by a public authority when entering into a contract with a CMAR or D/B firm[13] and (b) to be used by a CMAR, D/B firm, or general contractor when entering into a subcontract.

Application of other construction-related laws

(R.C. 153.03, 153.56, 153.581, 153.80, and 4113.61)

Among other things, the act specifically includes CMARs and D/B firms in the definition of "contractor" for purposes of the ongoing "prompt pay" law. Generally, under that law, if a contractor does not pay a subcontractor within a specified period of time, interest is due and a civil action may be filed.

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[12] Formerly, the use solely of general contracting was permitted only for projects costing less than $50,000 (R.C. 153.52).

[13] The Department is to post on its Internet web site the contract form that a public authority must use on and after the date of the posting and until the rule is adopted (Section 701.10).

A CMAR or D/B firm may reduce any bond filed by a subcontractor, or reduce any funds retained by the CMAR or firm, for partial performance of the subcontract as is provided in ongoing law for contracting authorities.

The act subjects CMARs and D/B firms to the ongoing drug-free workplace laws by designating them "contractors" for purposes of that law. And it applies the law to subcontracts awarded by CMARs or D/B firms.

Professional design firms

(R.C. 153.71)

Ongoing law provides selection, negotiation, and contracting procedures that must be followed by public authorities when procuring "**professional design services**" - - that is, services within the scope of practice of an architect or landscape architect, or a professional engineer or surveyor, who is registered in accordance with Ohio law. Under certain circumstances, however, these procedures do *not* have to be followed. Prior law described those circumstances as follows:

(1) Any project with an estimated professional design fee of less than $25,000;

(2) Any project determined in writing by the public authority to be an emergency requiring immediate action;

(3) When the public authority is not empowered by law to contract for professional design services.

The act modifies (1), above, by increasing the design fee threshold to "less than $50,000" *and* by making the exemption contingent upon meeting both of the following requirements:

--The public authority selects a single design professional or firm from among those that have submitted a current statement of qualifications within the immediately preceding year, as provided under ongoing law, based on the public authority's determination that the selected design professional or firm is the most qualified to provide the required professional design services.

--The public authority and the selected design professional or firm comply with the procedures of ongoing law relative to the negotiation of the contract.

The act retains the circumstance described in (2) and eliminates (3).

Competitive bidding

State projects

(R.C. 153.01, 153.53, and 153.55)

The act increases, from $50,000 to $200,000, the minimum project cost threshold triggering the requirement that a state public improvement contract[14] be competitively bid. Construction management contracts entered into with a CMAR or design-build contracts entered into with a D/B firm are exempt from this competitive bidding requirement.

Under ongoing law, if competitive bidding for a state project is required, all of the following must be prepared by a public authority *prior* to putting the contract out to bid:

(1) Full and accurate plans, suitable for the use of mechanics and other builders in the construction, addition, or installment;

(2) Details to scale and full-sized;

(3) Definite and complete specifications of the work to be performed, together with directions that will enable a mechanic or other builder to carry them out and afford bidders all needed information;

(4) A full and accurate estimate of each item of expense and the aggregate cost of those items;

(5) A life-cycle cost analysis;

(6) Any other data required by the Department of Administrative Services.

The act repeals the additional requirement that accurate bills showing the exact quantity of different kinds of material necessary to the construction also be prepared.

In calculating the project cost amount for purposes of the competitive bidding threshold, the act requires that the following be included as costs of the project: (1) professional fees and expenses for services associated with the preparation of plans, (2) permit and testing costs and other fees associated with the work, (3) project

[14] These are public improvements for the use of the state or any institution supported in whole or in part by the state, or in or upon the public works of the state, that are administered by the Director of Administrative Services or by any other state officer or state agency authorized by law to administer a project (R.C. 153.01(A)).

construction costs, and (4) a contingency reserve fund. Public improvement projects cannot be subdivided into component parts or separate projects in order to avoid the threshold, unless the component parts or separate projects created are conceptually separate and unrelated to each other or encompass independent or unrelated needs.

The Director of Administrative Services, five years after the effective date of this provision and every five years thereafter, is required by the act to evaluate the project cost threshold and adjust the amount based on the average rate of inflation during each of the previous five years immediately preceding the adjustment.

Projects of community college districts or technical college districts

(R.C. 3354.16 and 3357.16)

With respect to the public improvement projects of community college districts and technical college districts, the act increases, from $50,000 to $200,000, the minimum project cost threshold triggering the requirement that contracts be put out to bid and awarded to the lowest responsive and responsible bidder. As is required under ongoing law, the Chancellor of the Board of Regents must adjust that monetary threshold every other year according to the average increase or decrease for each of the two immediately preceding years as set forth in the U.S. Department of Commerce, Bureau of Economic Analysis implicit price deflator for gross domestic product, nonresidential structures.

The act exempts contracts made with a CMAR, a D/B firm, or a general contracting firm from the ongoing requirement that separate proposals be made for furnishing materials or doing work on the improvement for each separate branch or class of work. Also, it removes the former provision stating that a board of trustees was not required to solicit separate proposals, or award separate contracts, for a branch or class of work if the cost of that branch or class of work was less than $5,000.

Port authority projects

(R.C. 4582.12 and 4582.31)

Ongoing law requires the competitive bidding of any contract for the construction of a building, structure, or other improvement undertaken by a port authority if the cost of the project exceeds the higher of $100,000 or the amount as adjusted by the Director of Commerce based on the average rate of inflation. The act exempts contracts entered into with a CMAR or a D/B firm from this competitive bidding requirement.

Methods of advertising for bids

(R.C. 9.331, 153.08, and 153.67)

The act permits public authorities to advertise their intent to contract with a construction manager or CMAR by electronic means, as prescribed by the Director of Administrative Services by rule, *in addition to* advertising in a newspaper of general circulation, as is required under ongoing law, and in appropriate trade journals, as is permitted under ongoing law.

Public authorities planning to contract for professional design services must publicly announce that fact under ongoing law. Formerly, the announcement was to be sent to either of the following that the public authority considered appropriate:

(1) Each professional design firm that has a current statement of qualifications on file with the public authority and is qualified to perform the required professional design services; or

(2) Architect, landscape architect, engineer, and surveyor associations, the news media, and any publications or other public media.

The act extends the public announcement requirement to public authorities intending to contract for design-build services. It replaces the entities described in (1) with "design-build firms, including contractors or other entities that seek to perform the work as a design-build firm." It retains (2) and additionally permits making the announcement via electronic media.

Lastly, the act permits the broadcasting of public bid openings for state contracts by electronic means, in accordance with rules of the Director, and recognizes the electronic filing of bids. If a bid and bid guaranty are filed electronically, they must be received electronically before the published deadline. For all bids filed electronically, the original, unaltered bid guaranty is to be made available to the public authority after the public bid opening.

Bid guaranties

(R.C. 153.07 and 153.54)

Generally, under ongoing law, each person bidding for a public improvement contract with the state or any political subdivision, district, institution, or other agency of the state, other than the Department of Transportation, must also file a bid guaranty. Among other things, the bid guaranty ensures that the bidder will enter into a proper contract in accordance with the bid, plans, details, specifications, and, under prior law, "bills of material."

The act removes the reference to "bills of material" in the law governing bid guaranties.

Contingency reserve

(R.C. 126.141)

The act mandates that any request made to the Director of Budget and Management or the Controlling Board for the release of capital appropriations for facilities projects contain a contingency reserve for payment of unanticipated project expenses. The amount of the contingency reserve is to be determined by the public authority. Contingency reserve funds are to be used to pay costs resulting from unanticipated job conditions; to comply with rulings regarding building and other codes; to pay costs related to errors, omissions, or other deficiencies in contract documents; to pay costs associated with changes in the scope of work; to pay interest due on late payments; and to pay the costs of settlements and judgments related to the project.

Any funds remaining upon completion of a project may--upon Controlling Board approval--be released for the use of the agency or instrumentality to which the appropriation was made for other capital facilities projects.

Life-cycle cost analysis; energy consumption analysis

(R.C. 123.011)

Ongoing law requires that a life-cycle cost analysis or, if applicable, an energy consumption analysis be prepared in conjunction with the lease or construction of a state-funded facility. The act, however, removes the condition that such analyses be secured from the Office of Energy Services within the Department of Administrative Services. It also eliminates the requirement that copies of all pertinent life-cycle cost analyses be submitted whenever any state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution requests release of capital improvement funds for any state-funded facility.

The act defines "life-cycle cost analysis" as a general approach to economic evaluation that takes into account all dollar costs related to owning, operating, maintaining, and ultimately disposing of a project over the appropriate study period. It also modifies the rule-making authority of the Office with respect to what is to be included in a life-cycle cost analysis or an energy consumption analysis, as follows:

--Prior law stated that a life-cycle cost analysis could demonstrate for each design how the design contributes to energy efficiency and conservation with respect to certain

physical characteristics, such as the amount and type of glass to be used. This provision is removed by the act.

--The act also removes the requirement that an energy consumption analysis include a comparison of two or more energy consuming system alternatives and a projection of the annual energy consumption of the major energy consuming systems, components, and equipment over the economic life of the facility.

Additionally, the act exempts state-funded facilities operated by a political subdivision[15] from having to comply with (1) the cost-effective, energy efficiency and conservation standards adopted by the Office by rule and (2) the requirement that the facility be managed by at least one certified building operator.

Application of the act's construction reforms

(Section 701.13)

As mentioned above, the Director of Administrative Services is required by the act to adopt R.C. Chapter 119. rules to establish guidelines for the provision of surety bonds by CMARs and D/B firms. The provisions of the act that modify the laws governing the permissible methods of construction delivery for the construction of public improvements (that is, all of the provisions described under "**Public construction reform**" in this analysis other than R.C. 4582.12 and 4582.31) apply only to public improvement projects commencing on or after the date the rules adopted by the Director become effective.

OAKS capital project reporting requirements

(R.C. 123.101)

Starting by July 1, 2012, and upon completion of a capital facilities project that is funded wholly or in part using state funds, each public entity must submit a report about the project to the Director of Administrative Services. A "capital facilities project" is the construction, reconstruction, improvement, enlargement, alteration, or repair of a building by a public entity. A "public entity" includes a state agency and a state institution of higher education.

The report must be submitted in Ohio Administrative Knowledge System (OAKS) capital improvement format or in a manner determined by the Director and not

[15] The act defines "political subdivision" for these purposes as a county, township, municipal corporation, board of education of any school district, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state (R.C. 123.011(A)(6)).

later than 30 days after the project is complete. The act requires the report to provide the total original contract bid, total cost of change orders, total actual cost of the project, total costs incurred for mediation and litigation services, and any other data the Director requests.

The first report submitted must include information about any capital facilities project completed on or after July 1, 2011.

The act exempts from the reporting requirement any capital facilities project that is funded wholly or in part through appropriations made to the Ohio School Facilities Commission, the Ohio Public Works Commission, or the Ohio Cultural Facilities Commission, or for which a joint use agreement has been entered into with any public entity.

Also, starting by July 1, 2012, and annually thereafter, the Attorney General must report to the Director on any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered. The report must be submitted in a manner prescribed by the Director, and must contain any information the Director requests related to capital facilities project mediation and litigation costs.

As soon as practicable after the information is made available, the Director must incorporate the information reported by public entities and the Attorney General into OAKS.

Job classification plans and appointment incentive programs temporarily not by rule

(Section 701.63)

The act authorizes the Director of Administrative Services, until January 1, 2014, to implement certain provisions of the civil service law that otherwise would require the adoption of rules, without adopting rules. These provisions regard the establishment of job classification plans, job classification plan changes, experimental classification plans, establishing, modifying, or rescinding classification plans for county agencies, and establishing an appointment incentive program.

Civil service law

(R.C. 124.09, 124.23, 124.231, 124.25, 124.26, 124.27, and 124.31)

Civil service examinations

The act requires the Director of Administrative Services to prescribe by rule the notification method that is to be used by an appointing authority to notify the Director

that a position in the state classified civil service is to be filled. The act states, as a general principle, that when a position in the state classified civil service is to be filled, an examination is to be administered. But, the act authorizes the Director, with sufficient justification from an appointing authority, to allow the appointing authority to fill a position by noncompetitive examination. The Director must establish, by rule adopted under the Administrative Procedure Act (which requires notice and a hearing), standards the Director is to use to determine what serves as sufficient justification from an appointing authority to fill a position by noncompetitive examination.

The act requires the Director to post notices via electronic media of every examination to be conducted for positions in the state classified civil service. The electronic notice must be posted on the Director's Internet site for a minimum of one week preceding any examination. Prior law required these notices to be posted for two weeks in conspicuous public places such as court houses and city halls, and in the office of the Director.

The act authorizes the Director to delegate the Director's civil service examining authority to a designee.

Special examinations

The act provides for special examinations to be administered to legally blind persons and legally deaf persons who are applying for any position in the classified civil service. Prior law provided that special examinations be administered only for original appointments. The act also removes the Director's express authority to administer equitable programs for the employment of legally blind persons and legally deaf persons in the classified civil service.

Appointments

The act requires an appointing authority that is making an appointment to a position in the classified civil service to make the appointment in the following manner: each time a selection is made, it must be from one of the names that ranks in the top 25% of the eligible list. But, in the event that ten or fewer names are on the eligible list, the appointing authority may select any of the listed candidates.

Continuing law, relocated by the act, provides that each person who qualifies for the veteran's preference, who is a resident of the state, and whose name is on the eligible list for a position is entitled to preference in the original appointment to any such competitive position in the civil service of the state and its civil divisions over all other persons who are eligible for those appointments and who are standing on the relevant eligible list with a rating equal to that of the person qualifying for the veteran's preference.

Prior law generally required the appointing authority to appoint a person from a list of ten names standing highest on the eligible list, but appointment from that list is not mandatory if less than ten names are on the list.

The act specifies that an eligible list expires upon the filling or closing of the position for which the eligible list was prepared. An expired eligible list can be used to fill a position in the same classification within the same appointing authority for which the expired eligible list was prepared. But in no event can an expired eligible list be used longer than one year after its expiration date. (Under prior law, the Director could fix the term of an eligible list at not less than one nor more than two years.) The act eliminates the Director's authority to consolidate two or more eligible lists.

Probationary employees

The act requires an appointing authority, upon dismissing a probationary employee, to communicate that fact to the Director. Under prior law, the appointing authority was required to communicate the reason for which the probationary employee was dismissed. All original and promotional appointments are for a probationary period. If a probationary employee's service is unsatisfactory, the employee may be dismissed at any time during the probationary period.

Promotions

Under the act, the Director's rule for making promotions in the state classified civil service must require that promotions be made on the basis of merit and by conduct and capacity in office. The act eliminates the requirement that merit for promotion be ascertained by promotional examinations and by seniority in service.

Office of Information Technology

State public notice web site

(R.C. 125.182)

The act requires the Office of Information Technology within the Department of Administrative Services, by itself or by contract with another entity, to establish, operate, and maintain a state public notice web site on which state agencies and political subdivisions may publish notices required by statute or rule. The act specifies criteria that the Office must satisfy in establishing, maintaining, and operating the state public notice web site. The Office must:

(1) Use a domain name for the web site that will be easily recognizable and remembered by and understandable to users of the web site;

(2) Maintain the web site so that it is fully accessible to and searchable by members of the public at all times;

(3) Not charge a fee to a person who accesses, searches, or otherwise uses the web site;

(4) Not charge a fee to a state agency or political subdivision for publishing a notice on the web site;

(5) Ensure that notices displayed on the web site conform to the requirements that would apply to the notices if they were being published in a newspaper, as directed in the publication procedure established by the act[16] or in the relevant provision of the statute or rule that requires the notice;

(6) Ensure that notices continue to be displayed on the web site for not less than the length of time required by the relevant provision of the statute or rule that requires the notice;

(7) Devise and display on the web site a form that may be downloaded and used to request publication of a notice on the web site;

(8) Enable responsible parties to submit notices and requests for publication through the web site;

(9) Maintain an archive of notices that no longer are displayed on the web site;

(10) Enable notices, both those currently displayed and those archived, to be accessed by key word, by party name, by case number, by county, and by other useful identifiers;

(11) Maintain adequate systemic security and backup features for the web site, and develop and maintain a contingency plan for coping with and recovering from power outages, systemic failures, and other unforeseeable difficulties that may affect the web site; and

(12) Maintain the web site in such a manner that it will not infringe legally protected interests, so that vulnerability of the web site to interruption because of litigation or the threat of litigation is reduced.

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[16] See R.C. 7.16.

The act requires the Office to submit a status report to the Secretary of State twice annually that demonstrates compliance with statutory requirements governing publication of notices.

The Office is required to bear the expense of maintaining the state public notice web site domain name.

Information technology purchase program

(R.C. 125.18(G))

The act permits the Office of Information Technology to operate a program to make IT purchases for government entities. This provision was included in temporary law in Am. Sub. H.B. 1, the main operating budget enacted by the 128th General Assembly. The Director may recover the cost of operating the program from all participating government entities by issuing intrastate transfer voucher billings for the purchases or through any pass-through billing method agreed to by the Director, the Director of Budget and Management, and the participating government entity. If the Director of Administrative Services issues intrastate transfer voucher billings, the participating government entities must process the vouchers to pay for the cost of the IT purchases. Amounts received under this program must be deposited to the credit of the new Information Technology Governance Fund.

Revenue deposits to the Information Technology Fund

(R.C. 125.18(B)(10) and 125.18(H))

The act requires the State Chief Information Officer to compute the amount of revenue attributable to the amortization of certain IT equipment purchases and capitalized systems that are recovered as part of the information technology services rates the Department charges and deposits into the Information Technology Fund. The Director may request the Director of Budget and Management to transfer an amount not to exceed the amount computed under this provision from the Information Technology Fund into the new Major Information Technology Purchases Fund.

Fund creation

(R.C. 125.15 and 125.18(H))

The act creates two funds in permanent law. These funds previously existed in temporary law enacted in Am. Sub. H.B. 1 of the 128th General Assembly (the main operating budget). The first fund, the Information Technology Governance Fund, is to consist of money paid by agencies to reimburse the Department for the acquisition services provided to those agencies and amounts received under the Office of

Information Technology's IT purchase program. The second fund, the Major Information Technology Purchases Fund, is to consist of transfers from the existing Information Technology Fund.

State Employee Child Support Fund

(R.C. 125.213, 3121.03 (not in the act), and 3121.19 (not in the act))

The act creates the State Employee Child Support Fund, which is to be in the custody of the Treasurer of State but not a part of the state treasury. The Fund is to consist of all money withheld or deducted from the wages and salaries of state officials and employees pursuant to a child support withholding or deduction notice. Money in the Fund may be used only for the purposes of forwarding it to the Office of Child Support in the Department of Job and Family Services, and paying any direct or indirect costs associated with maintaining the Fund.

Joint Legislative Ethics Committee authority to contract with the Department for statutory services related to state agency buildings

(R.C. 123.01)

The act provides that purchases or leases for, and the custody and repair of, office space used for the purposes of the Joint Legislative Ethics Committee (JLEC) are not subject to the control and jurisdiction of the Department of Administrative Services. However, if JLEC so requests, it may enter into a contract with the Department under which the Department agrees to perform any of the services requested by JLEC that the Department has authority to perform under continuing law related to buildings of state agencies under its jurisdiction. For example, the Department makes contracts for and supervises construction of any projects and improvements, or construction and repair, of buildings under the control of specified state agencies.

Transfer of Ohio Building Authority functions to the Department

(Section 515.40)

Effective January 1, 2012, the act transfers the building and facility operations and management functions of the Ohio Building Authority (OBA),[17] and the related functions, assets, and liabilities, to the Department of Administrative Services.[18] The assets and liabilities transferred include, but are not limited to, funds, accounts, records,

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[17] Chapter 152. of the Revised Code.

[18] For a discussion of the transfer of OBA's bond issuance authority to the Treasurer of State, see "**TREASURER OF STATE**," below.

leases, agreements, and contracts. The Department succeeds to, assumes the powers and obligations of, and otherwise constitutes the continuation of the building and facilities operations and management functions of the OBA as provided in the relevant statutes or in any agreements relating to building and facility operation and management functions to which OBA is a party, including the invoicing and collection of rent from local government tenants in state office buildings. All statutory references to OBA with regard to its building and facility operations and management functions are deemed to be references to the Department.

Any business relating to OBA's building and facilities operations and management functions that was commenced but not completed by OBA before the transfer is to be completed by the Department, in the same manner, and with the same effect, as if completed by OBA. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer, and is to be administered by the Department. All of the rules, orders, and determinations related to OBA's building and facilities operations and management functions continue in effect as rules, orders, and determinations of the Department, until modified or rescinded by the Department. If necessary to ensure the integrity of the Administrative Code rule numbering system, the Director of the Legislative Service Commission is to renumber the OBA's rules relating to its building and facility operations and management functions to reflect their transfer to the Department. No judicial or administrative proceeding to which OBA is party and that relates to its building and facilities operations and management functions that is pending on January 1, 2012, or on a later date established by an authorized officer of OBA and the Director of Administrative Services, is affected by the transfer and is to be prosecuted or defended in the name of the Director. On application to the court or agency, the Director is to be substituted for OBA or an authorized officer of OBA as a party to the action or proceeding.

Employees of OBA may be transferred to the Department as the Department determines to be necessary for successful implementation of the transfer, to the extent possible, with no loss of service credit. Not later than August 1, 2011, employees of OBA who are designated as building and facility operations management staff are eligible to participate in group health plans offered to state employees. (The provision authorizing this eligibility to participate in group health plans takes effect on July 1, 2011, and is exempt from the referendum.)

If requested by the Director, the act requires the Director of Budget and Management to make the budget changes made necessary by the transfer. The budget changes may include administrative reorganization, program transfers, the creation of new funds, and the consolidation of funds. Not later than 30 days after the transfer, an authorized officer of OBA must certify to the Director of Administrative Services the

unexpended balance and location of any funds and accounts designated for building and facility operations and management functions and the custody of those funds and accounts must be transferred to the Department. The Director of Budget and Management may, if necessary, establish encumbrances or parts of encumbrances as needed in fiscal year 2012 in the appropriate fund and appropriation item pertaining to the Department, for the same purpose and payment to the same vendor as formerly pertained to OBA. These encumbrances plus any additional amounts determined to be necessary for the Department to perform the building and facility operations and management functions of OBA are appropriated by the act.

The act authorizes OBA, after January 1, 2012, to meet for the purpose of better accomplishing the transfer of OBA's building and facility operations and management functions to the Department. At any such meeting, OBA may take necessary or appropriate actions to effect an orderly transition of its building and facility operations and management functions to the Department.

State of Ohio Computer Center rent

(R.C. 125.28)

The act removes the State of Ohio Computer Center from the list of state office buildings, the non-General Revenue Fund supported state agency tenants of which must reimburse the GRF for rent. Under continuing law, any state agency that is supported in whole or in part by non-GRF money, and that occupies space in certain state office buildings, must reimburse the GRF for the cost of occupying the space in a ratio that the occupied space attributable to non-GRF money bears to the total space occupied. The act relieves tenants of the State of Ohio Computer Center from this obligation.

Report on acquisition and disposal of federal property

(R.C. 125.89)

The act eliminates the requirement for the Department of Administrative Services to annually make a report to the General Assembly regarding the acquisition and disposal of surplus federal property. Under continuing law, in conformance with the Federal Property and Administrative Services Act of 1949, the Department may enter into contracts, compacts, and cooperative agreements for and on behalf of the state, with the several states or the federal government, in order to provide for the utilization by and exchange between them of property, facilities, personnel, and services of each by the other.

Temporary assignment of an exempt employee to duties of higher classification

(Section 701.30)

The act authorizes an appointing authority, in cases where no vacancy exists, and with the written consent of an exempt employee, to assign duties of a higher classification to that exempt employee for a period of up to two years. Exempt employees that are temporarily so assigned are entitled to compensation at a rate commensurate with the duties of the higher classification. An "appointing authority" is any officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution. An "exempt employee" is a permanent employee who is paid by warrant of the Director of Budget and Management, whose position is included in the state job classification plan, and who is exempt from public employee collective bargaining.

Office of Risk Management

(R.C. 9.82 and 9.823)

The act allows the Office of Risk Management to manage risk for the Supreme Court, the courts of appeals, the courts of common pleas and any division of courts of common pleas, municipal courts, and county courts as it does for the state for purposes of the Judicial Liability Program.

The act also allows the Risk Management Reserve Fund to be used for the payment of any liability claim that is filed against the state, rather than only liability claims that are filed in the Court of Claims as under prior law.

State government reorganization plan

(Section 701.60)

By October 29, 2011, the act requires the Department of Administrative Services to begin developing recommendations for a state government reorganization plan focused on increased efficiencies in the operation of state government and a reduced number of state agencies. The Department must present its recommendations to the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, and the Minority Leader of the Senate not later than June 30, 2013.

Ohio Administrative Knowledge System enhancements

(Section 207.10.20)

The act authorizes the Department of Administrative Services, in conjunction with the Office of Budget and Management, to update or add functionality to the Ohio Administrative Knowledge System (OAKS) that will support shared services, financial or human resources functions, and enterprise applications that will improve the state's operational efficiency. These enhancements may include, but are not limited to, the installation and implementation of hardware and software. OAKS is an enterprise resource planning system that replaced the state's central services infrastructure systems, including, but not limited to, the Central Accounting System, the Human Resources/Payroll System, the Capital Improvements Project Tracking System, the Fixed Assets Management System, and the Procurement System. Any lease-purchase arrangement entered into to finance OAKS and the enhancements, including any factionalized interest therein, must provide that at the end of the lease period, the financed asset becomes the property of the state.

State Taxation Accounting and Revenue System

(Section 207.10.40)

The act authorizes the Department of Administrative Services, in conjunction with the Department of Taxation, to acquire the State Taxation Accounting and Revenue System (STARS), including, but not limited to, the application hardware and software and the installation and implementation of the hardware and software, for the use of the Department of Taxation. STARS is an integrated tax collection and audit system that will replace all of the state's existing separate tax software and administration systems for the various taxes collected by the state. Any lease-purchase arrangement entered into to acquire STARS, including any factionalized interest therein, must provide that at the end of the lease period, STARS becomes the property of the state.

Declarations of public exigency

(Section 207.30.30)

The act requires the Director of Administrative Services to notify the members of the Controlling Board whenever the Director declares a public exigency.

Under continuing law, a "public exigency" is (1) an injury or obstruction that occurs in any public works and that materially impairs the immediate use of the public works or places property adjacent to the public works in jeopardy, (2) an immediate

danger of such an injury or obstruction, or (3) an injury or obstruction, or an immediate danger of an injury or obstruction, that occurs during the process of constructing any public works and that materially impairs immediate use of the public works or places property adjacent to the public works in jeopardy. The Director is authorized to issue a declaration of a public exigency on the Director's own initiative or upon the request of the director of any state agency. The declaration must identify the specific injury, obstruction, or danger that is the subject of the declaration, and must set forth a dollar limitation for the repair, removal, or prevention of the public exigency. The Director is not required to comply with Public Improvements Law in advertising, awarding, and administering contracts to deal with the public exigency. But, before beginning any project to repair, remove, or prevent the exigency, the Director must send notice of the project, in writing, to the Director of Budget and Management. The notice must detail the project to be undertaken, and must include a copy of the declaration of exigency establishing the monetary limitation on the project.[19]

[19] R.C. 123.15 (not in the act).

DEPARTMENT OF AGING (AGE)

- Specifies that long-term acute care hospitals are subject to the authority of the Office of the State Long-Term Care Ombudsman and that they are required to pay an annual fee of $6 per bed to fund the regional long-term care ombudsperson programs.

- Authorizes the Ohio Department of Aging (ODA) to adopt rules establishing a fee to be charged for certification of community-based long-term care agencies.

- Authorizes ODA to suspend a community-based long-term care agency's certification or require the agency to submit evidence of compliance with requirements identified by ODA after a hearing when required to do so by rules.

- Specifies the conditions under which ODA is not required to hold a hearing when it imposes a disciplinary sanction against a community-based long-term care agency.

- Requires ODA to promote the development of a statewide aging and disabilities resource network to provide older adults, adults with disabilities, and their caregivers with information on available long-term care service options and streamlined access to public and private long-term care services.

- Requires area agencies on aging to establish the network and to collaborate with centers for independent living and other locally funded organizations to establish a cost-effective and consumer-friendly network.

- Specifies that the annual fees that ODA charges long-term care facilities relative to its Ohio Long-Term Care Consumer Guide are charged for purposes of publishing the Guide, rather than only for purposes of the customer satisfaction surveys that are included in the Guide.

- Increases to $650 (from $400) the annual fee that may be charged to a nursing home for purposes of the Guide.

- Permits ODA to include in the Guide information on adult care facilities and providers of home and community-based services.

- Creates the Unified Long-Term Care System Advisory Workgroup for fiscal years 2012 and 2013 and requires the Workgroup to prepare two reports regarding a unified system of long-term care services.

- Requires the Workgroup to serve in an advisory capacity in the implementation of a unified system of long-term care services that facilitates (1) providing consumers choices of long-term care services that meet their health-care needs and improve their quality of life, (2) providing a continuum of long-term care services that meets consumers' needs throughout life and promotes independence and autonomy, and (3) assuring that Ohio has a system of long-term care services that is cost effective and connects disparate services across agencies and jurisdictions.

- Requires the Workgroup to convene four subcommittees to study, respectively, the following issues pertaining to nursing facilities and their services: (1) capacity, (2) Medicaid quality incentive payments to be paid in fiscal year 2013, (3) Medicaid eligibility determinations for individuals seeking services, and (4) Medicaid reimbursement.

Long-term acute care hospitals

(R.C. 173.14 and 173.26)

The act specifies that long-term acute care hospitals are long-term care facilities subject to the authority of the Office of the State Long-Term Care Ombudsman. For purposes of the act, a long-term acute care hospital has the following characteristics: (1) it provides medical and rehabilitative care to patients who require an average length of stay greater than 25 days, and (2) it is classified by the U.S. Centers for Medicare and Medicaid Services as a long-term care hospital.[20]

The act specifies that long-term acute care hospitals are required to pay the annual fee of $6 per bed that other long-term care facilities must pay under continuing law. These fees fund the regional long-term care ombudsperson programs.

Certification of community-based long-term care agencies

Fee

(R.C. 173.391(A)(1) and (G))

The act authorizes the Director of the Ohio Department of Aging (ODA) to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing a fee to be charged for certification of community-based long-term care agencies. Prior law referred to such agencies as "service providers."

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[20] 42 C.F.R. 412.23(e).

The act requires that all fees for certification collected by ODA or its designee be deposited in the state treasury to the credit of the Provider Certification Fund created by the act. Money credited to the fund must be used to pay for community-based long-term care services, administrative costs associated with community-based long-term care agency certification, and administrative costs related to the publication of the Ohio Long-Term Care Consumer Guide.

Suspensions; evidence of compliance

(R.C. 173.391(A)(2)(f))

The act authorizes ODA to impose two additional disciplinary sanctions after an administrative hearing when required to do so by rules: suspend a community-based long-term care agency's certification or require the agency to submit evidence of compliance with requirements identified by ODA.

Continuing law authorizes ODA to impose the following disciplinary sanctions: issue a written warning, requiring the submission of a plan of correction, suspend referrals, remove clients, impose a fiscal sanction (such as a civil monetary penalty or an order that unearned funds be repaid), revoke the certification, or impose another sanction. With respect to this last item, the act authorizes ODA through rules adopted in accordance with the Administrative Procedure Act to determine what constitutes "another sanction."

Actions that do not require a hearing

(R.C. 173.391(E) and (F))

The act specifies that ODA is not required to hold administrative hearings if any of the following conditions apply:

(1) Rules adopted by the ODA Director require the community-based long-term care agency to be a party to a provider agreement; hold a license, certificate, or permit; or maintain a certification, any of which is required or issued by a state or federal government entity other than ODA, and either of the following is the case: (a) the provider agreement has not been entered into or the license, certificate, permit, or certification has not been obtained or maintained, or (b) the provider agreement, license, certificate, permit, or certification has been denied, revoked, not renewed, suspended, or has otherwise been restricted.

(2) The agency's certification has been denied, suspended, or revoked for any of the following reasons:

(a) A government entity in Ohio, other than ODA, has terminated or refused to renew any of the following held by, or has denied any of the following sought by, a community-based long-term care agency: a provider agreement, license, certificate, permit, or certification. This provision applies regardless of whether the agency has entered into a provider agreement in, or holds a license, certificate, permit, or certification issued by, another state.

(b) The agency or a principal owner or manager of the agency who provides direct care has entered a guilty plea for, or has been convicted of, an offense materially related to the Medicaid program.

(c) The agency or a principal owner or manager of the agency who provides direct care has entered a guilty plea to, or been convicted for, an offense that disqualifies an applicant for employment with a public or private entity that provides home and community-based services to individuals through the Medicaid waiver program known as PASSPORT,[21] but only if none of the personal character standards established by ODA in rules apply.

(d) The U.S. Department of Health and Human Services has taken adverse action against the agency and that action impacts the agency's participation in the Medicaid program.

(e) The agency has failed to enter into or renew a provider agreement with the PASSPORT administrative agency that administers programs on behalf of ODA in the region of Ohio in which the agency is certified to provide services.

(f) The agency has not billed or otherwise submitted a claim to ODA for payment under the Medicaid program in at least two years.

(g) The agency denied or failed to provide ODA or its designee access to the agency's facilities during the agency's normal business hours for purposes of conducting an audit or structural compliance review.

(h) The agency has ceased doing business.

(i) The agency has voluntarily relinquished its certification for any reason.

(3) The agency's Medicaid provider agreement has been suspended.

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[21] The offenses are listed in R.C. 173.394(C)(1)(a) (not in the act).

(4) The agency's Medicaid provider agreement is denied or revoked because the agency or its owner, officer, authorized agent, associate, manager, or employee has been convicted of an offense that caused the provider agreement to be suspended.

If ODA does not hold a hearing when any condition, described above, applies, the act permits ODA to send a notice to the agency describing a decision not to certify the agency or the disciplinary action ODA proposes to take. The notice must be sent to the agency's address that is on record with ODA and may be sent by regular mail.

Aging and disabilities resource network

(R.C. 173.41)

The act requires ODA to promote the development of a statewide aging and disabilities resource network to provide older adults, adults with disabilities, and their caregivers with information on available long-term care service options and streamlined access to public and private long-term care services. Area agencies on aging are required to establish the network throughout Ohio. In doing so, the agencies are to collaborate with centers for independent living and other locally funded organizations to establish a cost-effective and consumer-friendly network that builds on existing, local infrastructures of services that support consumers in their communities.

Ohio Long-Term Care Consumer Guide

(R.C. 173.45 to 173.48; Section 209.30)

Fees

The act specifies that the annual fees ODA is authorized to charge certain long-term care facilities regarding its Ohio Long-Term Care Consumer Guide are charged for purposes of publishing the Guide, rather than only for ODA's conduct of the customer satisfaction surveys that are included in the Guide. In addition to the customer satisfaction survey, continuing law provides for this Guide to include, for each long-term care facility, information on the facility's compliance with state and federal requirements, information from the quality measures developed by the U.S. Centers for Medicare and Medicaid Services, and any other information ODA specifies in rules.

For nursing homes, the annual fee that is to be charged by ODA is increased to $650 (from $400). The fees charged to the other types of long-term care facilities included in the Guide are unchanged by the act.

Information on adult care facilities and home and community-based services

The act permits ODA to include in the Long-Term Care Consumer Guide information regarding adult care facilities, which serve 3 to 16 residents, and providers of home and community-based services. During fiscal years 2012 and 2013, ODA must identify methods and tools for assessing consumer satisfaction with these facilities and providers. ODA must consider developing a fee structure to support inclusion of information about the facilities and providers in the Guide.

Unified Long-Term Care System Advisory Workgroup

(Sections 209.40 and 209.50)

Creation

The act creates the Unified Long-Term Care System Advisory Workgroup for fiscal years 2012 and 2013. The Workgroup is to serve in an advisory capacity in the implementation of a unified system of long-term care services. The act defines long-term care services as (1) services of long-term care facilities and (2) community-based long-term care services. The following are long-term care facilities: nursing homes, residential care facilities, facilities authorized to provide extended care services under Medicare, county homes, district homes, adult care facilities, facilities approved by the U.S. Veterans Administration and used exclusively for the placement and care of veterans, and adult foster homes. Community-based long-term care services are health and social services provided to persons in their own homes or in community care settings.

The Workgroup is to consist of the following members:

(1) The ODA Director, or the Director's designee;

(2) The following persons appointed by the Governor: advocates for individuals who use long-term care services, representatives of providers of long-term care services, representatives of Medicaid managed care organizations, and state policy makers.

(3) The following persons appointed by the Speaker of the House of Representatives: one member of the House of Representatives from the majority party and one member from the minority party.

(4) The following persons appointed by the Senate President: one member of the Senate from the majority party and one member from the minority party.

Members of the Workgroup must be appointed not later than July 15, 2011 (which is the date that is 15 days after the act's immediate effective date of June 30,

2011). Except to the extent that serving on the Workgroup is part of a member's regular employment duties, a member is not to be paid for serving on the Workgroup. Members are not to be reimbursed for their expenses incurred in serving on the Workgroup.

The ODA Director, or Director's designee, is to serve as the Workgroup's chairperson. ODA and the Ohio Department of Job and Family Services (ODJFS) are to provide staff and other support services for the Workgroup.

Duties

In serving in an advisory capacity in the implementation of a unified system of long-term care services, the Workgroup is to facilitate all of the following:

(1) Providing consumers choices of long-term care services that meet their healthcare needs and improve their quality of life;

(2) Providing a continuum of long-term care services that meets consumers' needs throughout life and promotes consumers' independence and autonomy;

(3) Assuring that Ohio has a system of long-term care services that is cost effective and connects disparate services across agencies and jurisdictions.

Reports

The act requires the Workgroup, with the assistance of the ODJFS Director and Director of Budget and Management, to submit two reports to the General Assembly regarding a unified system of long-term care services. The first report is due not later than July 1, 2012. The second report is due not later than one year later. A report due before the unified system of long-term care services is established must discuss the progress being made in establishing the system. A report due after the system is established must discuss the system's effectiveness.

Subcommittees

The act requires the Workgroup to convene four subcommittees. The first subcommittee is charged with studying the current (i.e., as of the act's enactment) and future capacity of nursing facilities in Ohio, the configuration of that capacity, and strategies for addressing nursing facility capacity, including the ability of nursing facility operators to determine the number of beds to certify for participation in the Medicaid program. A report regarding the ability of nursing facilities to determine the number of beds for which to obtain Medicaid certification is due not later than September 1, 2011.

The second subcommittee is to study the quality incentive payments to be paid nursing facilities under the Medicaid program for fiscal year 2013. As part of the study, the subcommittee is to examine accountability measures to be used in awarding points for the quality incentive payments and the methodology for calculating the quality incentive payments. The subcommittee must complete a report of its study not later than September 1, 2011.

The third subcommittee is required to study the process of making Medicaid eligibility determinations for individuals seeking nursing facility services. A report is due not later than December 1, 2011.

The fourth subcommittee is charged with studying Medicaid reimbursement for nursing facility services, including issues related to the composition of peer groups, methodologies used to calculate reimbursement for capital costs, and the proportion of the total nursing facility reimbursement rate that should be based on the quality of care nursing facilities provide. The subcommittee must issue a report not later than December 31, 2012.

All of the subcommittee reports are to be submitted to the General Assembly, ODA Director, ODJFS Director, and Director of Health. A subcommittee is to cease to exist on the submission of its report.

DEPARTMENT OF AGRICULTURE (AGR)

- Expands continuing provisions stating that the Director of Agriculture has sole and exclusive authority to regulate the provision of food nutrition information to include in that information allergens and the designation of food as healthy or unhealthy.

- States that the Director has sole and exclusive authority in Ohio to regulate the provision of consumer incentive items at food service operations, and defines "consumer incentive item."

- States that the regulation of the provision of consumer incentive items at food service operations and how those operations are characterized are matters of general statewide interest that require statewide regulation.

- Modifies and expands prohibitions against political subdivisions' taking specified actions with regard to food nutrition information and consumer incentive items, including enacting, adopting, or continuing in effect local legislation relating to the provision of consumer incentive items at food service operations.

- Revises specified fees for phytosanitary certificates issued by the Director of Agriculture, including eliminating a $25 fee for collectors or dealers that are licensed under the Nursery Stock and Plant Pests Law and adding a $25 fee for shipments comprised exclusively of nursery stock.

- Allows the Director to contract with individuals or entities to perform gypsy moth trapping in lieu of employing seasonal gypsy moth tenders as authorized in continuing law.

- Extends through June 30, 2013, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.

- Eliminates the requirement that no less than 30% of the money in the Ohio Grape Industries Fund be expended by the Ohio Grape Industries Committee for specified purposes, including the marketing of grapes and grape products, but retains a 70% cap on those expenditures.

- Extends statutory rights, privileges, and protections associated with the ownership or use of assistance dogs by mobility impaired persons to persons diagnosed with autism or assistance dogs used by those persons.

- Requires a person proposing to operate a commercially used weighing and measuring device that provides the final quantity and final cost of a transaction and that is a livestock scale, vehicle scale, railway scale, vehicle tank meter, bulk rack meter, or LPG meter to obtain a permit for its operation from the Director of Agriculture.

- Specifies that a commercially used weighing and measuring device operation permit may be renewed annually.

- Establishes a permit application fee of $75 for a commercially used weighing and measuring device operation permit and an annual permit renewal fee of the same amount.

- Requires the proceeds of fees associated with the issuance of permits for commercially used weighing and measuring devices to be credited to the renamed Metrology and Scale Certification and Device Permitting Fund, which provides funding for the administration of the weights and measures program.

- Alters the specified provisions of the weights and measures program a violation of which triggers a civil or criminal penalty.

Regulation of food service operations

(R.C. 3717.53)

Regulation of food nutrition information and consumer incentive items

The act expands continuing provisions stating that the Director of Agriculture has sole and exclusive authority to regulate the provision of food nutrition information at food service operations to include in that information allergens and the designation of food as healthy or unhealthy. A food service operation is a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation. It includes a catering food service operation and vending machine location.

The act adds that the Director has sole and exclusive authority in Ohio to regulate the provision of consumer incentive items at food service operations. Under the act, a consumer incentive item is any licensed media character, toy, game, trading card, contest, point accumulation, club membership, admission ticket, token, code or password for digital access, coupon, voucher, incentive, crayons, coloring placemat, or

other premium, prize, or consumer product that is associated with a meal served by or acquired from a food service operation.

The act states that the regulation of the provision of consumer incentive items at food service operations and how food service operations are characterized, in addition to the provision of food nutrition information under continuing law, are matters of general statewide interest that require statewide regulation.

The act prohibits a political subdivision from doing any of the following:

(1) Enacting, adopting, or continuing in effect local legislation relating to the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(2) Conditioning a license, a permit, or regulatory approval on the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(3) Banning, prohibiting, or otherwise restricting food at food service operations based on the food nutrition information or on the provision or nonprovision of consumer incentive items;

(4) Conditioning a license, a permit, or regulatory approval for a food service operation on the existence or nonexistence of food-based health disparities; or

(5) Where food service operations are permitted to operate, banning, prohibiting, or otherwise restricting food service operations based on the existence or nonexistence of food-based health disparities as recognized by the Department of Health, the National Institute of Health, or the Centers for Disease Control.

Under law changed in part by the act, a political subdivision is prohibited only from adopting or continuing in effect local legislation relating to the provision of food nutrition information at food service operations. Local legislation includes, but is not limited to, an ordinance, resolution, regulation, rule, motion, or amendment that is enacted or adopted by a political subdivision.

Phytosanitary certificates fees

(R.C. 927.69)

The act revises the fees for phytosanitary certificates issued by the Director of Agriculture as follows:

(1) Eliminates a $25 fee for collectors or dealers that are licensed under the Nursery Stock and Plant Pests Law;

(2) Adds a $25 fee for shipments comprised exclusively of nursery stock; and

(3) Adds a $25 fee for replacement of an issued certificate because of a mistake on the certificate or a change made by the shipper if no additional inspection is required.

Seasonal gypsy moth traptenders

(R.C. 901.09)

The act allows the Director of Agriculture to contract with individuals or entities to perform gypsy moth trapping in lieu of employing seasonal gypsy moth tenders as authorized in continuing law.

Grape industries

(R.C. 924.52 and 4301.43)

Wine tax diversion to Ohio Grape Industries Fund

The act extends through June 30, 2013, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund. Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to $1.48 per gallon. From the taxes paid, a portion is credited to the Fund for the encouragement of the state's grape industry, and the remainder is credited to the General Revenue Fund. The amount credited to the Ohio Grape Industries Fund was scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2011.

Expenditures by Ohio Grape Industries Committee

The act eliminates the requirement that no less than 30% of the money in the Ohio Grape Industries Fund, but retains the requirement that no more than 70% of the money, be expended by the Ohio Grape Industries Committee on each of the following:

(1) Conducting research on grapes and grape products, including production, processing, and transportation of grapes and grape products; and

(2) Performing specified activities regarding the marketing of grapes and grape products.

Assistance dogs

(R.C. 955.011)

The act extends statutory rights, privileges, and protections associated with the ownership or use of assistance dogs by mobility impaired persons to persons diagnosed with autism or assistance dogs used by those persons. It does so by revising the definition of "mobility impaired person," for purposes of the statutes governing assistance dogs, to include a person who is diagnosed with autism. Those rights, privileges, and protections include all of the following:

(1) Exemption from dog registration fees;

(2) Entitlement to full use and enjoyment of all places of public accommodation;

(3) Protection from physical harm through the application of criminal penalties for assaulting an assistance dog;

(4) Protection from harassment through the application of criminal penalties for harassing an assistance dog; and

(5) Protection from theft of an assistance dog through the application of criminal penalties for such theft.

Division of Weights and Measures

Commercially used weighing and measuring device permit program

(R.C. 1327.46, 1327.501, and 1327.511)

The act establishes a new permit requirement as part of the Department of Agriculture's weights and measures program. Under the act, a person operating certain commercially used weighing and measuring devices that provide the final quantity and final cost of a transaction must obtain a permit issued by the Director of Agriculture or the Director's designee.

The act defines "commercially used weighing and measuring device" to mean a device described in the National Institute of Standards and Technology Handbook 44 or its supplements and revisions and any other weighing and measuring device designated by rules adopted under the Weights and Measures Law. "Commercially used weighing and measuring device" includes, but is not limited to, a livestock scale, vehicle scale, railway scale, vehicle tank meter, bulk rack meter, and LPG meter (see below).

The act limits the devices for which a permit is required to livestock scales, vehicle scales, railway scales, vehicle tank meters, bulk rack meters, and LPG meters. An application for a permit must be submitted to the Director on a form that the Director prescribes and provides. The applicant must include with the application any information that is specified on the application form as well as the application fee established by the act. Upon receipt of a completed application and the required fee, the Director or the Director's designee must issue or deny the permit.

A permit applicant must pay a $75 application fee. A person who seeks to renew a permit must pay an annual $75 permit renewal fee. If a permit renewal fee is more than 60 days past due, the Director may assess a late penalty.

For purposes of the permit program, the Director must: (1) establish procedures and requirements governing the issuance or denial of permits, and (2) establish late penalties to be assessed for the late payment of a permit renewal fee and fees for the replacement of lost or destroyed permits.

All money collected through the payment of fees and the imposition of penalties must be credited to the renamed Metrology and Scale Certification and Device Permitting Fund, formerly the Metrology and Scale Certification Fund. In addition to renaming the Fund, the act adds to the purposes for which money in the Fund may be used. Under the act, money may be used for services rendered by the Department of Agriculture in operating the metrology laboratory program, the device permitting program, and the type evaluation program. Under law revised by the act, money in the Fund only may be used for the type evaluation program.

The act includes the following definitions for purposes of the permitting program:

(1) "Livestock scale" means a scale equipped with stock racks and gates that is adapted to weighing livestock standing on the scale platform.

(2) "Vehicle scale" means a scale that is adapted to weighing highway, farm, or other large industrial vehicles other than railroad cars.

(3) "Railway scale" means a rail scale that is designed to weigh railroad cars.

(4) "Vehicle tank meter" means a vehicle mounted device that is designed for the measurement and delivery of liquid products from a tank.

(5) "Bulk rack meter" means a wholesale device, usually mounted on a rack that is designed for the measurement and delivery of liquid products.

(6) "LPG meter" means a system, including a mechanism or machine of the meter type, that is designed to measure and deliver liquefied petroleum gas in the liquid state by a definite quantity whether installed in a permanent location or mounted on a vehicle.

Other changes to the weights and measures program

(R.C. 1327.46, 1327.50, 1327.51, 1327.54, 1327.57, 1327.62, and 1327.99)

The act alters provisions of the Weights and Measures Law governing civil and criminal penalties. The alterations involve amending the provisions of that Law that trigger a civil or criminal penalty.

The act allows civil penalties to be levied for a violation of any provision of the Weights and Measures Law and any rule adopted under that Law. Under former law, civil penalties could be levied only regarding violations of provisions related to misrepresentation of prices of items sold by weight or some other measure or related to using incorrect weights and measures and other offenses. Law unchanged by the act provides that civil penalties must not exceed $500 for a first violation, $2,500 for a second violation, and $10,000 for each subsequent violation that occurs within five years of the second violation.

Additionally, the act authorizes criminal penalties for violations of the commercially used weighing and measuring device permitting program and for a violation of any rule adopted under the Weights and Measures Law. Law largely unchanged by the act allows for criminal penalties regarding violations of provisions related to misrepresentation of prices of items sold by weight or some other measure or related to using incorrect weights and measures and other offenses. Law retained by the act provides that a criminal violation under the Weights and Measures Law is a second degree misdemeanor on the first offense and a first degree misdemeanor on each subsequent offense that occurs within seven years of the first offense.

AIR QUALITY DEVELOPMENT AUTHORITY (AIR)

- Transfers the Ohio Coal Development Office from within the Ohio Air Quality Development Authority to within the Department of Development.
- As a result of the transfer, removes provisions that required the Office or the Office Director to obtain the affirmative vote of a majority of the members of the Authority to perform certain actions.
- Removes the Director of Development as an ex officio member from the technical advisory committee that assists the Office Director.

Ohio Coal Development Office

(R.C. 1551.311, 1551.32, 1551.33, 1551.35, 1555.02, 1555.03, 1555.04, 1555.05, 1555.06, 1555.08, and 1555.17; Section 515.30)

The act transfers the Ohio Coal Development Office from within the Ohio Air Quality Development Authority (OAQDA) to within the Department of Development. The Office's purpose is to support research and development in the use of Ohio coal in an environmentally sound and economical manner, including by financing technology and facilities with the proceeds of state general obligation bonds. The act does not change the Office or its functions and authority, but confers on the Department of Development all of the prior authority of the OAQDA related to the Office, including the duty to appoint the Office Director. As a result of the transfer, the act eliminates the requirement that the Office or the Office Director obtain the affirmative vote of a majority of the seven OAQDA members to perform certain actions, including making loans and grants, requesting the issuance of general obligations, entering into contracts, and spending money credited to the continuing Coal Research and Development Fund.

The act also removes the Director of Development as an ex officio member from the technical advisory committee that assists the Office. The technical advisory committee consists of 13 members that are appointed by the Director of the Office, the Speaker and the Minority Leader of the House of Representatives, and the President and the Minority Leader of the Senate. The Director of Environmental Protection serves on the committee as an ex officio member.

Finally, the act establishes transition procedures for the transfer of the Ohio Coal Development Office from the OAQDA to the Department of Development.

DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES (ADA)

- Excludes funds for community alcohol and drug addiction services that the General Assembly appropriates to the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) and are transferred to the Ohio Department of Job and Family Services (ODJFS) for the Medicaid program from the funds that ODADAS allocates and distributes to the alcohol, drug addiction, and mental health services (ADAMHS) boards for such services.

- Eliminates the responsibility of ODADAS and ADAMHS boards to pay the nonfederal share for services provided under a component of the Medicaid program that ODADAS administers and makes ODJFS responsible for paying for such services effective July 1, 2012.

- Requires ODADAS, notwithstanding ODJFS's new responsibility, to allocate to ADAMHS boards alcohol and drug addiction Medicaid match funds and a portion of statewide treatment and prevention funds appropriated to ODADAS for fiscal year 2012 and requires the boards to use the funds to pay claims for community alcohol and drug addiction services provided during that fiscal year under the ODADAS-administered Medicaid component and requires the boards also to use all federal financial participation that ODADAS receives for claims for such services as the first payment source to pay such claims.

- Requires ODADAS to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community alcohol and drug addiction services provided before July 1, 2011, and submitted for payment on or after that date and requires that such claims be paid in accordance with the agreements.

- Provides for an ADAMHS board to receive the federal financial participation received for claims for community alcohol and drug addiction services that were provided before July 1, 2011, and paid by the board.

- Requires ODADAS to accept from an alcohol and drug addiction program its accreditation from specified national accrediting organizations as evidence that the program satisfies Ohio's standards for state certification of the program, if ODADAS determines that the program's accreditation is current and appropriate for the services for which the program is seeking certification, and specifies that the program is generally not subject to further evaluation.

- Requires the ODADAS Director and Director of Mental Health, with respect to residential facilities and community behavioral health services, to coordinate documentation requirements, streamline standards, and promote the integration of behavioral and physical health services.

- Requires that the portion of the fee persons pay to have a driver's or commercial driver's license or permit reinstated that is credited to the Statewide Treatment and Prevention Fund be used for purposes identified in ODADAS's comprehensive statewide alcohol and drug addiction services plan rather than to pay the costs of driver treatment and intervention programs.

Medicaid elevation for alcohol and drug addiction services

(R.C. 3793.04, 3793.21, 5111.911, and 5111.913; Section 215.20)

The act revises the law governing allocation and distribution of Ohio Department of Alcohol and Drug Addiction Services (ODADAS) money to alcohol, drug addiction, and mental health services (ADAMHS) boards. ODADAS is required by continuing law to develop a comprehensive statewide alcohol and drug addiction services plan. Prior law required that the plan provide for the allocation of state and federal funds for services furnished by alcohol and drug addiction programs under contract with ADAMHS boards and for distribution of the funds to ADAMHS boards. The act requires ODADAS to provide for the allocation and distribution of funds appropriated to ODADAS by the General Assembly for such services. ODADAS must exclude from the allocation and distribution any funds that are transferred to the Ohio Department of Job and Family Services (ODJFS) to pay the nonfederal share of alcohol and drug addiction services covered by the Medicaid program.

Under prior law, ODADAS and ADAMHS boards were responsible for paying the nonfederal share of any Medicaid payment for services provided under a component of the Medicaid program that ODADAS administers on ODJFS's behalf. The act makes ODJFS responsible for the payments. If necessary, the ODJFS Director must submit a Medicaid state plan amendment to the U.S. Secretary of Health and Human Services regarding ODJFS's responsibility.

Notwithstanding ODJFS's new responsibility, the act requires ODADAS to allocate to ADAMHS boards alcohol and drug addiction Medicaid match funds and a portion of statewide treatment and prevention funds appropriated to ODADAS for fiscal year 2012 and requires the boards to use the funds to pay claims for community alcohol and drug addiction services provided during that fiscal year under the

Medicaid component that ODADAS administers. The boards are also required to use all federal financial participation that ODADAS receives for claims for such services as the first payment source to pay such claims. The act provides that the boards are not required to use any other funds to pay for such claims.

The act requires ODADAS to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community alcohol and drug addiction services provided before July 1, 2011, and submitted for payment on or after that date. The claims must be paid in accordance with the agreements. A board is to receive the federal financial participation received for claims for community alcohol and drug addiction services that were provided before July 1, 2011, and paid by the board.

Certification of alcohol and drug addiction programs

(R.C. 3793.061 (primary) and 3793.06)

Each alcohol and drug addiction program is required under continuing law to apply to ODADAS for certification. To receive certification under law retained in part by the act, a program must meet the minimum standards established by ODADAS.

In lieu of a determination by ODADAS of whether an alcohol and drug addiction program satisfies the minimum standards for certification, the act requires ODADAS to accept appropriate accreditation of an applicant's services as evidence that the applicant satisfies the standards for certification. Acceptance of accreditation applies to an applicant's alcohol and other drug addiction services, integrated mental health and alcohol and other drug addiction services, or integrated alcohol and other drug addiction services and physical health services.

Requirements for acceptance of accreditation

For an applicant's accreditation to be accepted under the act, the following requirements apply:

(1) The applicant must hold accreditation from one of the following national accrediting organizations: the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation;

(2) The accreditation must be for services being provided in Ohio;

(3) ODADAS must determine that the accreditation is current and is appropriate for the program for which the applicant is seeking certification;

(4) The applicant must meet any other requirements established in rules to be adopted under the act.

If ODADAS determines that the applicant meets these requirements, the act requires ODADAS to certify the program. The act specifies that the certification is to be issued without further evaluation of the program, except for any visit or evaluation otherwise authorized by the act. The same process of accepting accreditation of a program applies to ODADAS when the program seeks recertification.

Review of accrediting organizations

The act authorizes ODADAS to review the national accrediting organizations listed above to evaluate whether the accreditation standards and processes used by the organizations are consistent with service delivery models ODADAS considers appropriate for alcohol and other drug addiction services, physical health services, or both. ODADAS may communicate to an accrediting organization any identified concerns, trends, needs, and recommendations.

Visiting or evaluating programs for cause

ODADAS is authorized by the act to visit or otherwise evaluate an alcohol and drug addiction program at any time based on cause. Reasons include complaints made by or on behalf of consumers and confirmed or alleged deficiencies brought to the attention of ODADAS.

Notifications and reports from programs

Under the act, ODADAS must require an alcohol and drug addiction program to provide notice not later than ten days after any change in the program's accreditation status. The program is permitted to notify ODADAS by providing a copy of the relevant document the program received from the accrediting organization.

Under the act, ODADAS must require an alcohol and drug addiction program to submit reports of major unusual incidents. The act authorizes ODADAS to require a program to submit cost reports pertaining to the program.

Rules

The act requires ODADAS to adopt rules to implement the act's provisions regarding the acceptance of an alcohol and drug addiction program's accreditation for purposes of state certification. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). In adopting the rules, ODADAS must do all of the following:

(1) Specify the documentation that must be submitted as evidence of holding appropriate accreditation;

(2) Establish a process by which ODADAS may review the accreditation standards and processes used by the national accrediting organizations;

(3) Specify the circumstances under which reports of major unusual incidents and program cost reports must be submitted to ODADAS;

(4) Specify the circumstances under which ODADAS may visit or otherwise evaluate an alcohol and drug addiction program for cause;

(5) Establish a process by which ODADAS, based on deficiencies identified as a result of visiting or evaluating a program, may take a range of corrective actions, with the most stringent being revocation of the program's certification.

Behavioral health documentation, standards, and integration

(Section 337.30.90)

With respect to residential facilities and community behavioral health services and programs, the act requires the ODADAS Director and Director of Mental Health to coordinate documentation requirements, streamline standards, and promote the integration of behavioral and physical health services.[22]

Statewide Treatment and Prevention Fund

(R.C. 4511.191)

The act requires that the portion of the fee persons pay to have a driver's or commercial driver's license or permit reinstated that is credited to the Statewide Treatment and Prevention Fund be used for purposes identified in ODADAS's comprehensive statewide alcohol and drug addiction services plan rather than to pay the costs of driver treatment and intervention programs.

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[22] See also **DEPARTMENT OF MENTAL HEALTH (DMH), "Behavioral health documentation, standards, and integration**," below.

ATTORNEY GENERAL (AGO)

- Authorizes a political subdivision to certify past due receivables to the Attorney General for collection.
- Authorizes the Attorney General to file a claim to recover unclaimed funds held by the state for an obligor in default of child support.
- Extends the period of time applicable to providing a reasonable number of repair attempts before a consumer has the option of a replacement vehicle or a refund under Ohio's Lemon Law under specified circumstances.
- Requires the manufacturer to arrange for the use of a vehicle for the consumer if an extension of time is necessary.

Attorney General Collection of Political Subdivision Debts

(R.C. 131.02)

The act authorizes a political subdivision to certify a receivable to the Attorney General for collection when the receivable becomes 45 days past due if the Attorney General authorizes such certification. Formerly, only receivables of the state could be certified to the Attorney General for collection.

Application of unclaimed funds to claims certified to the Attorney General for collection

(R.C. 131.024)

The act authorizes the Attorney General to request information from the Director of Commerce, not later than February 1 of each year, about persons who have been certified as owing an unpaid claim to the state. If the information results in identifying unclaimed funds held by the state for an obligor in default of child support, the attorney general may file a claim to recover the unclaimed funds. If the Director allows the claim, the Director must pay the claim directly to the Attorney General, even though the Attorney General is not the owner of the unclaimed funds.

The Director must provide the requested information by not later than March 1 of each year. The information provided includes the person's name, address, social security number, if the social security number is available, and any other identifying

information for any individual included in a request sent by the Attorney General who has unclaimed funds delivered or reported under the Unclaimed Funds Law.

The act authorizes the Attorney General, in consultation with the Director, to adopt rules under the Administrative Procedure Act to aid in implementing the provision.

The Attorney General has authority under continuing law to collect amounts owed to the state that have been certified to the Attorney General as being unpaid and overdue.

Lemon Law

(R.C. 1345.73)

The act extends the period of time applicable to providing a reasonable number of repair attempts before a consumer has the option of a replacement vehicle or a refund under Ohio's Lemon Law to include any period of time during which the vehicle could not be reasonably repaired due to war, invasion, civil unrest, strike, fire, flood, or natural disaster. Additionally, if an extension of time is necessary, the act requires the manufacturer to arrange for the use of a vehicle for the consumer whose vehicle is out of service at no cost to the consumer. If the manufacturer utilizes or contracts with a motor vehicle dealer or other third party to provide the vehicle, the manufacturer must reimburse the motor vehicle dealer or other third party at a reasonable rate for the use of the vehicle.

AUDITOR OF STATE (AUD)

- Removes the requirement that the Director of Budget and Management approve assessments from the Uniform Accounting Network Fund for the Auditor of State's administrative costs for the Uniform Accounting Network.
- Repeals, for audits of local public offices, authority to recover costs from the GRF for State Auditor employees' annual vacation and sick leave and, from the state treasury, necessary travel and hotel costs of local deputy inspectors and supervisors.
- Requires the State Auditor to establish cost-recovery rates for local public office audits.

OBM approval of costs assessed to Uniform Accounting Network Fund

(R.C. 117.101)

The act removes the requirement that the Director of Budget and Management approve assessments from the Uniform Accounting Network Fund for the Auditor of State's administrative costs for the Uniform Accounting Network. The Fund consists of user fees charged to participating public offices for goods, materials, supplies, and services received from the Uniform Accounting Network provided by the Auditor of State, and is used by the Auditor of State to pay the costs of establishing and maintaining the network. The network provides certain public offices with efficient and economical access to data processing and management information facilities and expertise. The Fund is assessed a proportionate share of the Auditor of State's administrative costs in accordance with procedures prescribed by the Auditor of State.

Cost recovery for audits of local public offices

(R.C. 117.13)

The act repeals the authority of the State Auditor to finance from the GRF the annual vacation and sick leave costs of assistant auditors performing the audits, employees, and typists. The act also eliminates the authority to pay travel and hotel expenses of deputy inspectors and supervisors of public offices from the state treasury. Under the act, the Auditor instead must establish rates by rule to be charged for recovering the costs of audits of local public offices.

Continuing law authorizes the State Auditor to recover certain audit costs from the local public offices being audited. Recoverable costs include the compensation and expenses of assistant auditors of state assigned to perform the audits, the cost of employees assisting them, the cost of experts employed for the audit, and the costs associated with preparing the audit reports.

BARBER BOARD (BRB)

- Prohibits the Barber Board from disqualifying a person from being issued an initial license on the grounds that the person was previously convicted of or pleaded guilty to a felony.

Barber license for felons

(R.C. 4709.13)

Under the act, a conviction of or plea of guilty to a felony committed prior to being issued a license does not disqualify a person from being issued an initial license.

However, the act allows the Barber Board to refuse to renew or to suspend or revoke or impose conditions upon any license for conviction of or plea of guilty to a felony committed after the person has been issued a license. The plea or conviction must be shown by a certified copy of the record of the court in which the person was convicted or pleaded guilty.

OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Requires a state agency or official to obtain additional approval from the General Assembly or Controlling Board to enter into or commit to enter into a public obligation offering fractionalized interests in payments drawn from appropriations.

- Requires a state agency or official to obtain additional approval from the General Assembly or Controlling Board to agree or commit to provide from future appropriations financial assistance or other payments of charges and costs regarding capital facilities.

- Permits transfers of statewide indirect costs of debt service paid for the enterprise resource planning system (OAKS) to the OAKS Support Organization Fund to support costs of system development and upgrades.

- Changes the funding sources of the OAKS Support Organization Fund to: (1) transfers from statewide indirect costs attributable to debt service paid for the system and (2) agency payroll charge revenues.

- Modifies the definition of "statewide indirect costs" to include disbursements from other funds (not just the GRF) and thus permits these disbursements to be recovered according to the statewide indirect cost allocation plan.

- Authorizes the Director of Budget and Management to transfer cash between funds other than the GRF in order to correct an erroneous payment or deposit.

- Authorizes the Director to transfer up to $60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted to ensure that GRF receipts and balances are sufficient to support GRF appropriations.

- Provides that the Director must not make transfers from a non-GRF fund if more than 30% of the total fund value consists of cash from donations.

- Eliminates requirements that state agencies submit biennial spending plans to the General Assembly and the Director of Budget and Management, and that the Director of Administrative Services oversees implementation.

- Eliminates an outdated requirement for the submission of state agency spending reduction plans.

- Requires state agency employees to use the state-contracted, preferred rental vehicle provider for all vehicle rentals over 100 miles.

- Allows the Director of Budget and Management and the Director of Transportation, in accordance with the provisions of the act, to enter into contracts outsourcing to private sector entities or local or regional public entities the provision of highway services.

- Requires the Director of Budget and Management, before releasing any invitation for qualifications or for proposals, to submit to the General Assembly the material terms of any invitation for qualifications or proposals, which must include a draft of the invitation document, and authorizes the Director to proceed with the release of that invitation if within 90 days of the receipt of the Director's submission the General Assembly acts by concurrent resolution to approve the invitation.

- Allows the Director of Budget and Management to provide compensation to unsuccessful bidders for a proposal to lease the turnpike, up to the value of the proposal.

- Makes any transfer of money or appropriations necessary to support highway services subject to the approval of the Controlling Board.

- Establishes a proposal selection process that requires the Director of Budget and Management to evaluate proposals and proposer qualifications, rank the proposers, and conduct negotiations to procure an outsourcing contract for the provision of highway services.

- Exempts from Ohio's Collective Bargaining laws any employees on a project involving real or personal property, or both, and related construction and other improvements to them, used to provide highway services.

- Allows the Director of Transportation to exercise the powers of the Ohio Turnpike Commission to work with the Director of Budget and Management regarding Turnpike-related outsourcing contracts.

- Requires that all money received by the Director of Budget and Management, under a contract for the provision of highway services, be deposited into the state treasury and credited to the Highway Services Fund, which is created by the act.

- Exempts from state and local taxation all (1) projects involving real or personal property, or both, and related construction and other improvements to them, used to provide highway services, (2) outsourcing contracts, and (3) gross receipts and income generated by them.

- Exempts from the sales and use tax any transfer or lease of a project involving real or personal property, or both, and related construction and other improvements to them, used to provide highway services, if the state retains any part of ownership.

- Permits the Director to issue guidelines to agencies applying for federal money made available to the state for fiscal stabilization and recovery purposes.

- Requires the Office of Internal Auditing to monitor, measure, and report on the effectiveness of federal stimulus funds allocated to Ohio under the federal American Recovery and Reinvestment Act of 2009 (ARRA) to certain members of the General Assembly.

- Requires the Office of Budget and Management, with respect to the quarterly reports required to be made to the federal government under the ARRA regarding the effectiveness of allocated funds, to send those same reports to certain members of the General Assembly.

- Makes the Ohio Board of Regents subject to internal audit under internal audit programs conducted by the Office of Internal Auditing.

- Requires that all members of the State Audit Committee be external to the management structure of state government.

- Requires all Committee member terms, in the year that they expire, do so on June 30 and alters the terms of currently serving members.

- Permits a Committee member to continue to serve past the end of the member's term until a successor is appointed or until a period of 90 days elapses, whichever occurs first.

- Repeals the requirement that the Governor's appointee to the Committee be a person who is external to the management structure associated with preparing financial statements of state government.

Approval of state agency obligations

(R.C. 126.11)

The act requires, in addition to approval of the Director of Budget and Management as continuing law requires, a state agency or official must obtain approval from the General Assembly or the State Controlling Board to (1) enter into or commit to enter into a public obligation offering fractionalized interests in payments drawn from

appropriations, or (2) agree or commit to provide from future appropriations financial assistance or other payments of charges and costs regarding capital facilities.

Transfers to and funding sources of the OAKS Support Organization Fund

(R.C. 126.12 and 126.24)

The act permits the Director of Budget and Management to make transfers of statewide indirect costs for debt service for the state's enterprise resource planning system (Ohio Administrative Knowledge System or OAKS) to the OAKS Support Organization Fund to support costs of system development and upgrades. Under the act, such transfers may be made either directly from the appropriate fund of the state or, if the statewide indirect costs already have been deposited in the GRF, from the GRF. The act establishes these transfers and designated agency payroll charge revenues as the funding sources of the Fund. The act eliminates as funding sources cash transfers from the Accounting and Budgeting Fund, the Human Resources Services Fund, and other revenues.

The act expands the definition of "statewide indirect costs" to include operating costs incurred by an agency providing unbilled services to another agency and for which disbursements have been made from funds other than the GRF. Former law only included disbursements from the GRF as part of the definition. The change enacted by the act permits disbursements made from other funds (and not just from the GRF) to be recovered from any fund of the state according to the statewide indirect cost allocation plan. Under continuing law, statewide indirect costs are recovered from any fund of the state and then transferred to the GRF by OBM according to this plan.

Transfers of cash between non-GRF funds

(R.C. 126.21)

The act permits the Director of Budget and Management to transfer cash between funds other than the GRF in order to correct an erroneous payment or deposit – regardless of the fiscal year during which the erroneous payment or deposit occurred.

Transfers to the General Revenue Fund

(Section 512.30)

The act authorizes the Director of Budget and Management, notwithstanding any law to the contrary, to transfer up to $60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted during fiscal years 2012 and 2013. These transfers are to be made to ensure that GRF receipts and balances are sufficient to support GRF

appropriations in each fiscal year. The act prohibits the Director from making transfers from a non-GRF fund if more than 30% of the total fund value consists of cash from donations.

State agency spending plans and spending reduction plans

(R.C. 126.501, 126.502, and 126.507 (repealed); conforming changes in R.C. 126.50)

The act repeals a requirement that state agencies submit biennial spending plans to the General Assembly and the Director of Budget and Management. Specifically, under prior law, each such plan was required to address, for the two upcoming fiscal years, savings, lack of savings, or costs that could have resulted from a number of enumerated strategies for purchasing supplies and services. Examples of the strategies include requiring an agency director's approval for purchases of $1,000 or more, cooperative purchasing with other state agencies, and cancelling certain noncapital-funds contracts. Prior law required the Director of Budget and Management to issue guidance to each agency on which strategies to implement. The Director of Administrative Services was required to oversee implementation, in consultation with the Director of Budget and Management.

The act also repeals an expired requirement that state agencies submit, by November 1, 2009, to the General Assembly and the Director of Budget and Management, spending plans outlining 30% reductions in spending for supplies and services for FYs 2010 and 2011.

Highway services provided by private, local, or regional entities

(R.C. 126.60 to 126.605, 718.01(A)(1), 5739.02(B)(51), 5747.01(A)(30), and 5751.01(F)(2)(ff))

Notwithstanding any Revised Code provision to the contrary, the act permits the Director of Budget and Management and the Director of Transportation, in accordance with the terms of the act, to execute a contract with a private sector entity (such as any type of profit or nonprofit corporation, partnership, joint venture or other similar entity), local or regional public entity or agency, or any combination thereof for the purpose of outsourcing highway services in order to more efficiently and effectively provide highway services, including by generating additional resources in support of those highway services and related projects. "Highway services" under the act means the operation or maintenance of any highway in Ohio, the construction of which was funded by proceeds from state revenue bonds that are to be repaid primarily from revenues derived from the operation of the highway and any related facilities, and not primarily from the gas tax. The Ohio Turnpike is the primary highway meeting this definition. The provisions of the act on outsourcing the turnpike are to be liberally construed to effect those purposes.

Contract details

The contract may be a purchase and sale agreement, lease, service agreement, franchise agreement, concession agreement, or other written agreement for the provision of highway services or a related project. It may contain the terms and conditions established by the Director of Budget and Management and the Director of Transportation and is to be sufficient to effect its purpose, notwithstanding any provision of the Revised Code to the contrary. The Director of Budget and Management is authorized to receive and deposit any money received under the contract.

Proposal selection process

General Assembly approval

"Before releasing any invitation for qualifications or for proposals,"[23] the act requires the Director of Budget and Management to submit the material terms and conditions of that invitation to the General Assembly; the submission must include a draft of the invitation document. If within 90 days of receiving the Director's submission the General Assembly approves the invitation by adopting a concurrent resolution, the Director is authorized to proceed to release the invitation.

Public notice

The act requires the Director of Budget and Management to publish notice of its intent to enter into a contract for the highway services and any related project. The notice is to provide interested parties the opportunity to submit their qualifications or proposals, or both, for consideration and must be published at least 30 days prior to the deadline for submitting those qualifications or proposals. The Director also may advertise the information contained in the notice in appropriate trade journals and otherwise notify parties believed to be interested in providing the highway services and any related projects. The notice must include a general description of the highway services to be provided and any related project, and of the qualifications or proposals being sought, and instructions for obtaining the invitation.

Qualification evaluation

The act specifies that after inviting qualifications, the Director of Budget and Management, in consultation with the Department of Transportation, is to evaluate the qualifications submitted and may hold discussions with proposers to further explore

[23] It is not clear from this language whether the Director may be required to make two submissions to the General Assembly and seek two concurrent resolutions if the process of outsourcing the turnpike separately involves both an invitation for qualifications and also an invitation for proposals.

their qualifications. Following the evaluation, the Director, in consultation with the Department of Transportation, may determine a list of qualified proposers based on criteria in the invitation and invite only those proposers to submit a proposal for the provision of the highway services and any related projects.

Proposal evaluation and selection

After inviting proposals, the Director of Budget and Management, in consultation with the Department of Transportation, must evaluate the proposals submitted and may hold discussions with the proposers to further explore their proposals, the scope and nature of the highway services they would provide, and the various technical approaches they may take regarding the highway services and related projects. After the evaluation, the Director, in consultation with the Department of Transportation must do the following:

(1) Select and rank at least the three most qualified proposers, unless fewer are qualified;

(2) Negotiate a contract with the most qualified proposer to provide the highway services at a fair and reasonable compensation, and to purchase, lease, or otherwise take a legal interest in the project;

(3) Upon failure to negotiate a contract with the most qualified proposer, the Director must inform the proposer of the termination of negotiations and may enter into negotiations with the proposer ranked next most qualified. If negotiations again fail, the same procedure may be followed with each next most qualified proposer selected and ranked, in order of ranking, until a contract is negotiated.

(4) If the Director fails to negotiate a contract with any of the ranked proposers, the Director, in consultation with the Department of Transportation, may terminate the process or select and rank additional proposers, based on their qualifications or proposals, and negotiations are to continue as with the proposers selected and ranked initially until a contract is negotiated.

The Director may, after consultation with the Department of Transportation, include in any contract any terms the Director deems appropriate, including the following:

- The contract duration (not to exceed 75 years);
- Rates or fees for the highway services to be provided or the methods or procedures for determining them;

- Standards for the highway services to be provided;
- Responsibilities and standards for operation and maintenance of any related project;
- Required financial assurances;
- Financial and other data reporting requirements;
- Terms regarding contract termination and retaking possession or title of the project;
- Events of default and remedies upon default, including mandamus, actions at law or equity, or any combination of such remedial actions.[24]

Rejection of qualification or proposal

The act specifies that the Director of Budget and Management may reject any and all submissions of qualifications or proposals.

Compensation to unsuccessful bidders

The act authorizes the Director of Budget and Management to provide compensation for the preparation of a responsive proposal from unsuccessful bidders for a proposal to lease the turnpike. The Director is further authorized to establish policies or procedures to determine the amount of compensation to be provided for each project and the method of evaluating the value of the preliminary proposal submitted. The act specifies that the compensation may not exceed the value of the proposal.

Exemption from the Public Employee Collective Bargaining Law

The act specifies that the Public Employee Collective Bargaining Law does not apply to any employees working at or on a project to provide highway services.

Director of Transportation to exercise powers of Ohio Turnpike Commission

Notwithstanding any contrary provisions in the law governing the Ohio Turnpike, the act allows the Director of Transportation to exercise all powers of the Ohio Turnpike Commission for purposes of the act. The Director with the Director of Budget and Management is authorized to execute any contract for the provision of highway services.

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[24] The Director appears to be given discretionary authority to include these terms in any contract, but the 75-year limitation on the contract duration may imply that at least some of these terms are mandatory.

Highway Services Fund

The act requires that all money received by the Director of Budget and Management under a contract for the provision of highway services be deposited into the Highway Services Fund, which the act creates. The act requires the Fund to retain any interest it earns. Any transfer of money or appropriations necessary to support highway services is subject to Controlling Board approval.

Contract for consulting services

The act permits the Director of Budget and Management, in consultation with the Department of Transportation, to retain or contract for the services of commercial appraisers, engineers, investment bankers, financial advisers, accounting experts, and other consultants to carry out the Director's powers and duties under the act, including the identification of highway services and related projects to be subject to invitations for qualifications or proposals, the development of those invitations and related evaluation criteria, and the evaluation of those invitations, and negotiation of any contract.

Tax exemption

The act states that any project or part thereof owned by the state and used for performing highway services pursuant to a contract that would be exempt from taxation or assessments in the absence of the contract is to remain exempt from taxation and assessments levied by the state and its subdivisions. The gross receipts and income of a proposer derived from providing highway services under a contract are to be exempt from taxation levied by the state and its subdivisions. Accordingly, deductions are made available for such receipts or income under the commercial activity tax and the state and municipal income taxes. In addition, any transfer or lease between a proposer and the state of a project or part thereof is to be exempt from the sales and use tax if the state is retaining ownership of the project or part thereof that is being transferred or leased.

Federal money made available to the state for fiscal stabilization and recovery purposes

(Section 521.60)

To ensure the level of accountability and transparency required by federal law, the act permits the Director of Budget and Management to issue guidelines to any agency applying for federal money made available to the state for fiscal stabilization and recovery purposes and to prescribe the process by which agencies are to comply with any reporting requirements established by the federal government.

Reports monitoring the effectiveness of federal stimulus funds

(Sections 521.70 and 801.20)

Under continuing law, the Office of Internal Auditing in the Office of Budget and Management is required to conduct internal audits of certain state agencies generally with the intent of improving their operations regarding risk management, internal controls, and governance. The law also requires the Office to issue preliminary and final reports of individual audit findings and recommendations. The Office also must annually submit a report to the Governor, President of the Senate, Speaker of the House, and the Auditor of State. State agencies subject to internal audit are OBM, the Departments of Commerce, Administrative Services, Transportation, Agriculture, Natural Resources, Health, Job and Family Services, Public Safety, Mental Health, Developmental Disabilities, Insurance, Development, Youth Services, Rehabilitation and Correction, Aging, Alcohol and Drug Addiction, Veteran Services, Taxation, the Environmental Protection Agency, and the Bureau of Workers' Compensation.

Semi-annual reports

The act requires the Office, in addition to its duties under ongoing law, to (1) monitor and measure the effectiveness of federal stimulus funds allocated to Ohio under the American Recovery and Reinvestment Act of 2009 (ARRA) and (2) review how funds allocated to each state agency subject to internal audit under continuing law are spent. In addition to all the reports it must issue under continuing law, the Office must submit a report of its findings regarding the effectiveness and expenditure of the federal stimulus funds to the President, Senate Minority Leader, Speaker, House Minority Leader, and the Chairs of the House and Senate committees that handle finance and appropriations. The reports are to be issued according to the following schedule and time frames:

Report Date	Report Coverage Period
February 1, 2012	July 1, 2011 – December 31, 2011
August 1, 2012	January 1, 2012 – June 30, 2012
February 1, 2013	July 1, 2012 – December 31, 2012
August 1, 2013	January 1, 2013 – June 30, 2013

Quarterly reports

The act also requires that, if the Office of Budget and Management is required to submit quarterly reports to the federal government regarding the effectiveness of federal stimulus funds allocated under the ARRA for which Ohio is the prime recipient and the reporting requirement has not been delegated to a sub-recipient, then it must submit those reports to the same General Assembly members described above, as well as the ranking members of the House and Senate committees that handle finance and appropriations. The act requires OBM to continue to submit the quarterly reports to the legislature for as long as the reports are required by the federal government.

Board of Regents subject to internal audit

(R.C. 126.45)

The act makes the Ohio Board of Regents a state agency subject to internal audit under internal audit programs conducted by the Office of Internal Auditing.

Changes to State Audit Committee

(R.C. 126.46)

The act requires that all members of the State Audit Committee be external to the management structure of state government. The act also repeals the requirement that the Governor's appointee to the Committee be a person who is external to the management structure associated with preparing financial statements of state government.

The act requires all Committee members serve three-year terms to begin on July 1, and end on June 30. Members are permitted to continue to serve past the end of the member's term until a successor is appointed or until a period of 90 days elapses, whichever occurs first. The act also alters the terms of currently serving members as follows:

- The terms of the members appointed by the President of the Senate expire on June 30, 2012.
- The term of the member appointed by the Speaker of the House scheduled to expire on November 17, 2012, expires on June 30, 2013.
- The term of the other member appointed by the Speaker of the House expires on June 30, 2014.

- The term of the member appointed by the Governor expires on June 30, 2014.

Under continuing law, the State Audit Committee is a five-member committee with responsibilities that include, for example, ensuring that internal audits conducted by the OIA conform to the Institute of Internal Auditors' Code of Ethics and International Professional Practices Standards, and reviewing and commenting on the process used by OBM to prepare the state's comprehensive annual financial report. Two of the members are appointed by the President of the Senate, two members are appointed by the Speaker of the House, and one is appointed by the Governor.[25]

[25] R.C. 126.46(A) and (B).

CAPITOL SQUARE REVIEW AND ADVISORY BOARD (CSR)

- Designates the Capitol Square Review and Advisory Board as being in the legislative branch of government.
- Generally designates all employees of the Capitol Square Review and Advisory Board (CSRAB) as being in the unclassified service and serving at the pleasure of the board; treats such employees who are not subject to a collective bargaining agreement as employees of the General Assembly for purposes of the Collective Bargaining Law.
- Upon the expiration of any existing collective bargaining agreement, designates those employees of CSRAB who were formerly covered by the agreement to be employees of the General Assembly for purposes of the Collective Bargaining Law.
- Exempts the Capitol Square Review and Advisory Board from the state agencies for which the Department of Administrative Services may contract for telecommunication and computer services.
- Exempts the Capitol Square Review and Advisory Board from the policies and oversight of the Office of Information Technology in the Department of Administrative Services.

Capitol Square Review and Advisory Board in legislative branch

(R.C. 105.41)

The act designates, in the continuing statute creating the Capitol Square Review and Advisory Board (CSRAB), that it is created in the legislative branch of government. The 13-member Board has general authority over capitol square.

The act generally provides that all employees of the board are in the unclassified service and serve at the pleasure of the board. For purposes of the definitional section of the Collective Bargaining Law, the employees of CSRAB are considered to be employees of the General Assembly. Employees of the General Assembly are exempt from collective bargaining because they are excluded from the definition of "public employee" under continuing law for purposes of the Collective Bargaining Law.

Employees of CSRAB who are covered by a collective bargaining agreement on September 29, 2011, remain subject to the agreement until it expires; the agreement

cannot be extended or renewed. Upon expiration of the agreement, those employees will be considered employees of the General Assembly for purposes of the definitional section of the Collective Bargaining Law, will be in the unclassified service of the state, and serve at the pleasure of CSRAB.

Capitol Square Review and Advisory Board

(R.C. 125.021 and 125.18)

The act includes the Capitol Square Review and Advisory Board (CSRAB) among the entities (like the General Assembly) that are exempted from the state agencies for which the Department of Administrative Services is otherwise authorized to contract for telephone, other telecommunication, and computer services. Similarly, the act includes CSRAB among the agencies that are exempted from the definition of "state agency" for purposes of the law establishing the Office of Information Technology (OIT) in the Department of Administrative Services. As a result, CSRAB will not be subject to the policies and oversight of OIT regarding information technology development and use.

CASINO CONTROL COMMISSION (CAC)

- Requires that the chairperson of the Joint Committee on Gaming and Wagering (who is a legislator) be from the opposite house of the chairperson of the Joint Committee on Agency Rule Review (who also is a legislator), rather than from the opposite party.
- Requires the establishment of an in-state hotline Ohio residents may call at any time to obtain problem gambling information.

Chairperson of the Joint Committee on Gaming and Wagering

(R.C. 3772.032)

The act requires that the chairperson of the Joint Committee on Gaming and Wagering (who is a legislator) be from the opposite *house* of the chairperson of the Joint Committee on Agency Rule Review (who also is a legislator). Prior law required the chairperson of the Joint Committee on Gaming and Wagering to be from the opposite *party* as the chairperson of the Joint Committee on Agency Rule Review.

Problem gambling hotline

(R.C. 3772.062)

The act requires the executive director of the Ohio Casino Control Commission, in conjunction with the Department of Alcohol and Drug Addiction Services and the State Lottery Commission, to establish, operate, and publicize an in-state, toll-free telephone hotline Ohio residents may call to obtain basic information about problem gambling, the gambling addiction services available to problem gamblers, and how a problem gambler may obtain help. The telephone number must be staffed 24 hours per day, seven days a week, to respond to inquiries and provide that information. Moneys in the Problem Casino Gambling and Addictions Fund must be used to pay the costs of establishing, operating, and publicizing the hotline.

DEPARTMENT OF COMMERCE (COM)

- Removes the requirement that a person not organized under Ohio law, not licensed as a foreign corporation, or that does not have a principal place of business in Ohio submit a consent to service of process when filing for an exemption for a security offered or sold in reliance on Regulation D of the Securities Act of 1933.

- Permits the Division of Securities to waive, in part or in whole, certain license, renewal, and notice filing fees for certain professionals involved in securities investment if, in the same calendar year, they are required to pay an additional fee as a result of federal law changes bringing them under state regulation.

- Requires that assessments for video service providers be deposited into the Video Service Authorization Fund rather than the Division of Administration Fund.

- Increases the maximum annual fee placed on credit union share guaranty corporations from $5,000 to $25,000.

- Removes certain public improvements from the Prevailing Wage Law.

- Prohibits a public authority from applying prevailing wage requirements to a public improvement that is undertaken by, or under contract for, a school district or an educational service center.

- Permits contractors, subcontractors, and public authorities to temporarily exceed continuing law's permissible apprentice-to-skilled-worker ratio.

- Requires labor organizations to file with the Director of Commerce any portion of a collective bargaining agreement, contract, or understanding that governs wages paid to persons and the apprentice to skilled worker ratio under the agreement, contract, or understanding.

- Specifies that any change in the prevailing wage rate on an ongoing project takes effect two weeks after the Director becomes aware of the change.

- Makes changes regarding interested party complaints and the procedure for investigating those complaints.

- Exempts contractors and subcontractors from liability for prevailing wage violations in certain circumstances.

- Abolishes the Penalty Enforcement Fund and directs the Director of Budget and Management to transfer the Fund's cash balance to the Labor Operating Fund.

- Requires the Director to deposit moneys received from prevailing wage penalties into the Labor Operating Fund.

- Requires the Director and the Treasurer of State to transfer from the Prevailing Wage Custodial Fund to the Labor Operating Fund funds that the Director determines are not returnable to employees.

- Modifies the Real Estate Brokers Law as follows:

  --Prohibits a member of the Ohio Real Estate Commission from holding office for more than two consecutive full terms.

  --Limits or changes the exclusion of persons from the definitions of "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson."

  --Allows the Commission to adopt rules for the clarification of the activities that require a license, for specifying standards for the approval of the post-licensure courses required for new licensees, and for the termination of an agency relationship for a licensee to become a principal in the transaction.

  --Requires the Superintendent of Real Estate and Professional Licensing to mail a notice of license renewal for licensed business entities to the business address.

  --Requires the Superintendent to make notice of successful license renewal electronically.

  --Permits the Superintendent to issue advisory letters in lieu of initiating disciplinary action or issuing a citation.

  --Revises the disciplinary procedures.

  --Provides for an initial licensing time period.

  --Makes various licensing fees nonrefundable.

  --Makes changes to the provisions regarding returned checks and draft instruments.

--Requires any civil penalties collected for operating as a real estate broker or salesperson without a license to be deposited into the Real Estate Operating Fund instead of the Real Estate Recovery Fund.

--Permits, instead of requires as provided in former law, the transfer of excess funds from the Division of Real Estate Operating Fund to the Real Estate Education and Research Fund.

--Increases the limit for Real Estate Education and Research Fund moneys that may be used to advance loans.

--Makes changes to the education requirements for licensees.

--Makes changes to the provisions regarding brokers and salespersons who place their licenses on deposit to participate in the armed forces.

--Permits a licensee to disclose confidential information if the disclosure is to a registered appraiser for specified reasons.

--Makes changes to the regulation of advertisements of salespersons and brokers.

--Changes the procedure that the Ohio Real Estate Commission uses regarding the reversal, vacation, or modification of its own orders.

--Prohibits a salesperson from selling, assigning, or otherwise transferring the salesperson's interest in a commission.

--Prohibits a salesperson or broker from participating in a dual agency relationship in which the licensee is a party to the transaction or an officer in an entity that has an interest in the property that is the subject of the transaction.

--Makes changes to the provisions regarding complaints against licensees and complaints against unlicensed individuals.

--Permits the Commission to take disciplinary action that relates to unlicensed persons and entities.

--Requires a licensee to notify the Superintendent of Real Estate in writing, within 15 days, if the licensee is the subject of certain types of administrative orders.

--Prohibits a cause of action against a licensee on imputed knowledge and for releasing information requested by a registered appraiser assistant or by a licensed or certified appraiser.

--Changes all occurrences in the Real Estate Brokers Law of "physically handicapped" to "disabled."

--Makes various other changes to the Real Estate Brokers Law.

- Authorizes revenue resulting from any contracts with the Department pertaining to the responsibilities and operations described in the Liquor Control Law to be credited to the Liquor Control Fund.

- Allows the Director of Budget and Management to transfer money from the General Revenue Fund to the Liquor Control Fund if the Director determines that the amount in the Liquor Control Fund is insufficient.

- Authorizes the state to transfer to JobsOhio all or a portion of the enterprise acquisition project, that is, the spirituous liquor distribution system, for a transfer price payable by JobsOhio to the state, and requires any such transfer to be treated as an absolute conveyance and true sale of the interest in the enterprise acquisition project.

- Defines "enterprise acquisition project" as all or any portion of the capital or other assets of the spirituous liquor distribution and merchandising operations of the Division of Liquor Control, including inventory, warehouses, the exclusive right to manage and control spirituous liquor distribution and merchandising in the state and to sell spirituous liquor in the state, and the assets and liabilities of the continuing Facilities Establishment Fund.

- Requires any transfer of the enterprise acquisition project that is a lease or grant of a franchise to be for a term not to exceed 25 years or that is an assignment and sale, conveyance, or other transfer to contain a provision that the state has the option to have conveyed or transferred back to it, at no cost, the enterprise acquisition project no later than 25 years after the original transfer was authorized.

- Exempts from specified taxes the gross receipts and income of JobsOhio derived from the enterprise acquisition project.

- States that the proceeds of any transfer may be expended as provided in the transfer agreement for specified purposes.

- Requires the transfer agreement to include a requirement that JobsOhio pay for the operations of the Division of Liquor Control with regard to the Division's spirituous liquor merchandising operations.

- Establishes other provisions governing the transfer, including allowing JobsOhio, in the ordinary course of doing business, to dispose of any regular inventory or tangible personal property.

- Staggers the terms of the nine members of the Residential Construction Advisory Committee so that only three of the members' terms expire in any given year.

- Requires the Director of Commerce to decide which members of the Residential Construction Advisory Committee will serve shortened terms for terms beginning July 1, 2011, for the purpose of commencing the staggered-term format, after which all members will serve full three-year terms.

Consent to service of process in connection with Regulation D exemption notice filings

(R.C. 1707.11)

The act removes the requirement that certain parties submit a consent to service of process when filing for an exemption for a security offered or sold in reliance on Regulation D of the Securities Act of 1933.[26] Regulation D provides exemptions that allow companies to offer and sell their securities without registering them with the SEC.[27] Under former law, the following parties were required to consent to service of process when filing for that exemption:

- Each person not organized under the laws of Ohio;

- Those not licensed as a foreign corporation;

- A person that does not have a principle place of business in Ohio.

Waiver of certain license, renewal, and notice filing fees regarding securities investment

(R.C. 1707.17)

The act permits the Division of Securities to waive, in part or in whole, license, renewal, and notice filing fees for professionals involved in securities investment if, in the same calendar year, those subject to the fee would be required to pay an additional

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[26] R.C. 1707.03(X), not in the act.

[27] Regulation D Offerings. *Available at* http://www.sec.gov/answers/regd.htm (last visited July 7, 2011).

fee as a result of changes in federal law and regulations requiring them to be subject to state rather than federal regulation. Under the act, the Division may waive fees by rule or order. This provision applies to investment advisers who are subject to U.S. Securities and Exchange Commission regulation but whose status will change when, under changes made the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Act"), effective July 1, 2011, they become subject to state regulation by the Division of Securities. The federal Act raises the assets-under-management threshold used to define which investment advisers are subject to the federal law.[28] Consequently, jurisdiction over investment advisers managing securities portfolios under the new threshold could change mid-year, and those investment advisers would be subject to an additional fee. Salespersons and dealers of securities and investment adviser representatives, state retirement system investment officers, and the Bureau of Workers' Compensation Chief Investment Officer remain subject to the license, renewal, and notice filing fees in continuing law and may not be affected by the federal Act.

Assessments for video service providers

(R.C. 1332.24)

The act requires that assessments for video service providers be deposited into the Video Service Authorization Fund rather than the Division of Administration Fund. Under continuing law, the Director of Commerce may impose annual assessments on video service providers. The total amount of annual assessments is not to exceed the lesser of $450,000 or the Department of Commerce's annual, actual administrative costs in carrying out the Department's duties relating to video service. The Video Service Authorization Fund is required to be used by the Department in carrying out these duties.[29]

Increase in annual fee for credit union share guaranty corporations

(R.C. 1761.04)

The act increases the maximum annual fee placed on credit union share guaranty corporations to $25,000. Under former law, the annual fee was $5,000.

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[28] 124 Stat. 1576 (2010), 15 U.S.C. 80b-3a (a).

[29] R.C. 1332.25, not in the act.

The Prevailing Wage Law

Works subject to the Prevailing Wage Law

(R.C. 4115.03, 4115.033, 4115.034, 4115.04, 4115.10, and 4582.12; repealed R.C. 4115.032 and 4582.37; R.C. 4582.01 and 4582.21, not in the act)

The act removes some projects from the Prevailing Wage Law, so that contractors and subcontractors on those public improvement projects do not have to pay workers the prevailing wage rate paid under collective bargaining agreements in the same area for similar work.

First, the act removes from the Prevailing Wage Law's requirements some new construction and reconstruction projects that cost $250,000 or less and $75,000 or less, respectively. Previously, any new construction on public improvements that cost $78,258 or less was exempt from the Prevailing Wage Law (the statutory threshold of $50,000 as adjusted biennially by the Director of Commerce pursuant to that Law). Reconstruction costing $23,447 or less was similarly exempt (the statutory threshold of $15,000 as biennially adjusted). New construction and reconstruction on public improvements that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction continue to be subject to those thresholds, adjusted biennially by the Director. All other new construction and reconstruction on public improvements is subject to the new thresholds, which are not subject to biennial adjustment by the Director. The new threshold for new construction is phased in under the act so that for the first year after September 29, 2011, the threshold is $125,000, for the second year the threshold is $200,000, and for the third and subsequent years the threshold is $250,000. For reconstruction, the act similarly phases in the new threshold so that the threshold is $38,000 for the first year after September 29, 2011, $60,000 for the second year, and $75,000 for the third and subsequent years.

Second, the act removes from the Prevailing Wage Law's requirements certain economic development projects that formerly were subject to the Prevailing Wage Law (see "**Department of Development – Payment of prevailing wage on economic development projects**," below).

Third, the act exempts from the Prevailing Wage Law any public improvement undertaken by, or under contract for, a port authority created by a municipal corporation, township, or county that was not included in a port authority in existence on December 16, 1964. Accordingly, the act repeals requirements under the law governing those port authorities that laborers and mechanics employed on the construction or repair of a port authority facility be paid pursuant to the Prevailing Wage Law.

Fourth, the act exempts from the Prevailing Wage Law any portion of a public improvement that is undertaken and completely solely with donated labor. The donated labor that is exempt can be donated by (1) the individuals performing the labor, (2) a labor organization and its members, or (3) a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project.

Prohibited prevailing wage work

(R.C. 4115.04)

The act prohibits a public authority from applying the prevailing wage requirements to a public improvement undertaken by or for the board of education of any school district or the governing board of any educational service center. Such public improvements are exempt from the Prevailing Wage Law under continuing law.

Apprentice-to-skilled-worker ratios under the Prevailing Wage Law

(R.C. 4115.05)

The act allows contractors, subcontractors, and public authorities on a public improvement to deviate from the apprentice-to-skilled-worker ratio that is permitted under continuing law. Contractors, subcontractors, and public authorities are limited still to an apprentice-to-skilled-worker ratio that is no greater than the ratio allowed in the collective bargaining agreement or understanding on which the prevailing wage rate for the public improvement is based (i.e., the collective bargaining agreements or understandings governing the same trade or occupation in the locality where the public work is being performed). The act provides, however, that a contractor, subcontractor, or public authority that exceeds the permissible ratio by two or fewer apprentices for not more than two days in any 30-day period is not in violation of the Law with respect to that excess.

Prevailing wage rate

(R.C. 4115.05)

For purposes of establishing prevailing wage rates, which are based on collective bargaining agreements and understandings governing the same trade or occupation in the locality where a particular public work is being performed, the act requires labor organizations to file with the Director of Commerce all relevant portions of any collective bargaining agreement, contract, or understanding to which the labor organization is a party. This requirement applies only to a labor organization that is a party to a collective bargaining agreement, contract, or understanding, including a successor agreement, contract, or understanding, that establishes wages for a trade or

occupation typically employed on public improvements. The filing must occur within 90 days after the agreement, contract, or understanding is executed. If the agreement, contract, or understanding is in effect on September 29, 2011, the labor organization must file the relevant portions within 90 days of that date. Any labor organization that files the relevant portions of a collective bargaining agreement, contract, or understanding as required under the act must certify under penalty of law that the filing contains, in full, all provisions of the agreement, contract, or understanding concerning wages and the apprentice-to-skilled-worker ratio.

If, upon receipt of the relevant portions of a collective bargaining agreement, contract, or understanding, the Director determines that the prevailing wage rate has changed in the locality in which an ongoing project is being constructed, the act requires that any change in that rate take effect two weeks after the Director receives those documents.

Interested party complaints alleging a violation of the Prevailing Wage Law

(R.C. 4115.03, 4115.13, and 4115.16)

The act makes certain changes regarding the complaints that an interested party can make alleging a violation of the Prevailing Wage Law and the process for investigating those complaints.

First, the act narrows the scope of persons who can file a complaint as an "interested party." Contractors who submit a bid to secure the award of a contract for construction of a public improvement, their subcontractors, and any labor organization or trade association that has as members such contractors or subcontractors or employees thereof, still can file a complaint with the Director of Commerce, as interested parties, alleging a violation of the Prevailing Wage Law. However, those persons no longer can file such a complaint with respect to any part of the public improvement other than that part involving the contract on which they, their primary contractor, or their members or members' employer have bid. The act accomplishes this change by amending the definition of "interested party" to mean the above-mentioned parties with respect only to the particular contract on which they, their primary contractor, or their members or members' employer have bid. Previously, those parties were "interested parties" with respect to the entire public improvement.

Second, the act requires an interested party who files a complaint alleging a violation of the Prevailing Wage Law to allege a specific violation by a specific contractor or subcontractor. The complaint must be in writing on a form furnished by the Director and must include sufficient evidence to justify the complaint. If the

complaint fails to allege a specific violation or if it lacks sufficient evidence to justify the complaint, the Director is prohibited from investigating the complaint under the act.

Third, the act increases the time in which the Director has to make a determination concerning an interested party's complaint before the interested party can file a complaint in court. Formerly, an interested party could file a complaint in court alleging a violation of the Prevailing Wage Law if the Director failed to rule on the merits of the complaint within 60 days after the complaint was filed. The act requires instead that the Director or the designated representative investigating the complaint conclude the investigation and make a determination not later than 120 days after the complaint is filed. The Director or the designated representative can take up to an additional 90 days to conclude the investigation and make a determination if the parties to the complaint are given notice of the extension before the initial 120-day period expires. The Director or the designated representative can take more time than that if the Director, or the designated representative, and all parties to the complaint agree to a different time frame. After the permissible time expires, the interested party can file a complaint in court as permitted under continuing law.

Liability for failure to comply with the Prevailing Wage Law

(R.C. 4115.10 and 4115.13)

The act limits contractors' and subcontractors' liability for violations of the Prevailing Wage Law in two particular instances. First, the act provides that no contractor or subcontractor is responsible for paying the penalties resulting from an underpayment of wages by its subcontractor, if the contractor or subcontractor has made a good faith effort to ensure that its subcontractor complied with the prevailing wage requirements. Second, the act exempts from any further proceedings under the Prevailing Wage Law a contractor or subcontractor whose underpayment to an employee is less than $1,000, if the contractor or subcontractor makes full restitution to the affected employee.

Prevailing wage funds

(R.C. 4115.10 and 4115.101; Section 512.70)

The act abolishes the Penalty Enforcement Fund and requires the Director of Budget and Management to transfer any funds remaining in the Penalty Enforcement Fund on July 1, 2011, to the Labor Operating Fund. The Director of Commerce is required, under the act, to deposit all moneys received from prevailing wage penalties into the Labor Operating Fund, instead of the Penalty Enforcement Fund as was required previously.

The act requires the Director of Commerce, if the Director determines that any funds in the Prevailing Wage Custodial Fund are not returnable to employees, to certify to the Treasurer of State the amount of the funds that are not returnable. The Treasurer of State is required, upon the receipt of such a certification, to transfer the certified amount of the funds from the Prevailing Wage Custodial Fund to the Labor Operating Fund.

The Real Estate Brokers Law

Ohio Real Estate Commission

Limit on number of terms

(R.C. 4735.03)

The act prohibits a member of the Ohio Real Estate Commission from holding office for more than two consecutive full terms, while former law allowed a member of the Commission to hold office indefinitely.

Adoption of rules

(R.C. 4735.10 and 4735.59)

The act allows the Commission to adopt rules for the clarification of the activities that require a license under the Real Estate Brokers Law in addition to the other provisions of continuing law.

The act requires the Commission to adopt rules specifying standards for the approval of the ten hour post-licensure courses required for newly licensed real estate brokers and real estate salespersons as discussed below in "**Education requirements**." Former law required the Commission to adopt rules specifying standards for the approval of courses of study required for licenses, or offered in preparation for license examinations, or required as continuing education for licenses.

The act permits the Real Estate Commission to adopt rules in accordance with the Administrative Procedure Act to require disclosures when a licensee terminates an agency relationship and becomes a principal in the transaction.

Commission orders

(R.C. 4735.19)

The act changes the procedure that the Real Estate Commission uses regarding the reversal, vacation, or modification of its own orders. Upon application of an interested party, or upon its own motion and notice to the interested parties, the act

permits the Commission to hold a hearing to consider reversing, vacating, or modifying an order. Former law permitted the Commission to reverse, vacate, or modify its own orders but did not authorize holding a hearing. The act requires an application to be filed with the Division within 15 days after the mailing of the notice of the commission to the interested parties, just as required under continuing law. The act allows any applicant or respondent dissatisfied with an order of the Commission to appeal in accordance with the Administrative Procedure Act. Former law allowed any applicant, licensee, or complainant, who was dissatisfied with an order to appeal.

The act also authorizes the Commission to adopt rules regulating when an interested party may request reconsideration.

Superintendent of Real Estate and Professional Licensing

(R.C. 4735.05 and 4735.14)

The act allows the Superintendent of Real Estate and Professional Licensing to issue advisory letters in conjunction with the enforcement of the Real Estate Brokers Law in lieu of initiating disciplinary action or issuing a citation under former law.

The act requires the Superintendent to appoint a hearing examiner for any proceeding involving disciplinary action that may lead to a civil penalty. This requirement is in addition to the provision in continuing law that requires the Superintendent to appoint an examiner for other disciplinary action proceedings.

With regard to licensing, the act requires that the notice be mailed to the personal residence address of each broker or salesperson, or if the licensee is a partnership, association, limited liability company, limited liability partnership, or corporation, to the brokerage's business address that is on file with the Division. Former law required the Superintendent to send the notice to the most current address as filed with the Superintendent by the licensee two months prior to the filing deadline. Under the act, a licensee cannot renew the license any earlier than two months prior to the filing deadline.

The act requires the Superintendent to make notice of successful renewal available electronically to licensees as soon as practicable, but not later than 30 days after receipt by the Division of Real Estate and Professional Licensing of a complete application and renewal fee.

Licensing

Licensing periods

(R.C. 4735.06 and 4735.09)

Under the act, the initial licensing period for a real estate broker's license or real estate salesperson's license begins at the time the license is issued and ends on the applicant's first birthday thereafter, unless the applicant for a real estate broker's license was an inactive or active salesperson immediately preceding application for a broker's license. In that case, the initial licensing period begins at the time the license is issued and ends on the date the licensee's continuing education is due, as set when the applicant was a salesperson. Former law was silent on the initial licensing period.

Placing of broker's licenses on deposit

(R.C. 4735.10)

The act changes the terminology of former law regarding brokers who place their licenses on deposit to become salespersons. The act refers to this as placing a license "in an inactive status" instead of "on deposit." Continuing law allows the Commission to adopt reasonable rules in accordance with the Administrative Procedure Act, necessary for implementing the provisions of the Real Estate Brokers Law relating, but not limited to, this approval.

Education requirements

(R.C. 4735.07 and 4735.09)

The act requires real estate brokers and salespersons to complete, within 12 months of licensure, ten hours of classroom instruction in schools, seminars, or educational institutions that are approved by the Real Estate Commission, instead of requiring licensees to complete the hours at an institution of higher education or other institution. The act removes the requirement that a broker's instruction include issues in managing a real estate company or office and that a salesperson's instruction cover current issues regarding consumers, real estate practice, ethics, and real estate law, and instead requires the Commission to approve the curriculum and providers of the courses.

The act explicitly states that a broker or salesperson licensee may not begin taking instruction to fulfill the ten-hour requirement mentioned above until the date the license is issued to the licensee. Former law was silent on when a licensee could begin instruction.

The act extends to all salesperson license applicants the requirement that a person who has not been licensed as a broker or salesperson within a four-year period preceding a current application must have successfully completed a pre-licensure classroom instruction within a ten-year period preceding the application. Former law required this only for salesperson license applicants who began instruction prior to August 1, 2001.

The act removes the specific education requirements for applicants for a salesperson's license who began instruction prior to August 1, 2001, and makes the requirements the same for all salesperson's license applicants.

Failure to comply with education requirements

(R.C. 4735.14 and 4735.141)

If the continuing education requirements are not met by an existing licensee within the periods specified, continuing law requires the licensee's license to be suspended automatically. The act specifies that the Superintendent's manner of notification of the license suspension be sent by regular mail to the personal residence address of the licensee that is on file with the Division of Real Estate and Professional Licensing.

Continuing law requires that if the license of a real estate broker is suspended for failure to comply with the continuing education requirements, the license of a real estate salesperson associated with that broker correspondingly is suspended. The act requires a sole broker to notify an affiliated salesperson of a suspension for failure to meet the continuing education requirements in writing within three days of receiving the notice described above.

Under the act, a salesperson whose license is suspended due to association with a broker who failed to comply with the continuing education requirements may have the license reactivated if either of the following occurs:

(1) The associated broker subsequently submits proof to the Superintendent that the broker has complied with the continuing education requirements and requests that the broker's license be reactivated, and the Superintendent reactivates the license.

(2) The salesperson submits an application to leave the association of a suspended broker to associate with a different broker.

In the case of (2) above, the suspended license of the salesperson must be reactivated for no fee. The Superintendent may process the application for reactivation regardless of whether the licensee's license is returned to the Superintendent.

The act requires any licensee whose license is reactivated, including a salesperson who continues to be associated with a previously suspended broker or who leaves the association of the suspended broker, to comply with the continuing education requirements and to otherwise be in compliance with the Real Estate Brokers Law. Former law required a licensee who continued to be associated with a previously suspended broker to comply with the continuing education requirements and be in compliance with the Law.

If a licensee fails to comply with the continuing education requirements for existing licensees, the act prohibits the Superintendent from renewing the licensee's license, and requires the licensee to pay the penalty fee provided for under continuing law, which is 50% of the renewal fee.

The act removes the requirement that a salesperson who has a license reactivated submit proof of completing 30 hours of continuing education, and instead requires a licensee to submit proof of completion of the required continuing education with the licensee's notice of renewal, submitted in the manner provided by the Superintendent. Former law required proof satisfactory to be submitted to the Superintendent as prescribed by the Ohio Real Estate Commission or on or before the third year following the licensee's birthday occurring immediately after reactivation for any person whose license was reactivated after failing to meet the continuing education requirements.

Members of the armed forces

(R.C. 4735.13)

Continuing law allows a licensee who enters the armed forces to place a license on deposit with the Commission. The act allows such a licensee, who fails to meet the continuing education requirements because the licensee is in the armed forces, an extension to complete the requirements within 12 months after the licensee's first birthday after discharge. Former law required that the requirements be completed within 12 months of the licensee's discharge.

The act changes who must notify the licensee of the licensee's obligations under the continuing education requirements at the time the licensee applies for reactivation of the licensee's license after discharge. The act requires the Superintendent of Real Estate and Professional Licensing to notify the licensee, as opposed to the Commission, as under former law.

Disabled licensees

(R.C. 4735.141)

The act permits an extension to satisfactorily complete the required 30 hours of continuing education for any licensee who is a disabled licensee at any time during the last three months of the third year of the continuing education reporting period, instead of for "physically handicapped" licensees as under former law. The act specifies that the length of the extension will be determined by the Superintendent.

Fees

Nonrefundable fees

(R.C. 4735.06, 4735.09, and 4735.15)

The act makes the application, reactivation, or transfer fee for a real estate broker's license and a real estate salesperson's license nonrefundable. Former law provided that if an applicant for a broker's or salesperson's license was not admitted and a waiver was not involved, one-half of the application fee would be retained by the Superintendent to cover the expenses of processing the application and the other half would be returned to the applicant.

Unpaid checks or draft instruments

(R.C. 4735.182)

If a check or other draft instrument used to pay any fee required by the Real Estate Brokers Law is returned to the Superintendent unpaid by the financial institution upon which it is drawn for any reason, the act requires the Superintendent to notify the entity or person that the check or other draft instrument was returned for insufficient funds. Former law applies these provisions to checks or draft instruments returned due to insufficient funds, as opposed to checks or drafts unpaid by the financial institutions upon which they are drawn for any reason.

Additionally, if the check or draft instrument was submitted by a licensee, continuing law requires the Superintendent to notify the licensee that the licensee's license will be suspended unless the licensee, within 15 days after the mailing of the notice, resubmits the fee and an additional $100 fee to the Superintendent. If the licensee does not submit both fees within that time period, or if any check or other draft instrument used to pay either of those fees is returned to the Superintendent unpaid by the financial institution upon which it is drawn for any reason, the license must be suspended immediately without a hearing and the licensee must cease activity as a licensee under the Real Estate Brokers Law. The act extends the requirement for the

resubmission fee and the additional $100 fee to a person or entity applying to qualify foreign real estate or renew a property registration, to an applicant for licensure, and to an education course provider or course provider applicant. Former law was silent in these cases.

If a person or entity fails to submit both fees within 15 days after the mailing of the notice or if any check or other draft instrument used to pay either of those fees is returned to the Superintendent unpaid by the financial institution upon which it is drawn for any reason, then the following apply:

(1) If the check or draft instrument is remitted by a person or entity applying to qualify foreign real estate or renew a property registration, the property registration will be suspended immediately without a hearing and the applicant must cease activity as a licensee.

(2) If the check or draft instrument is remitted by an applicant for licensure, the application will automatically be denied or approval withdrawn.

(3) If the check or draft instrument is remitted by an education course provider or course provider applicant, the application will be denied or approval withdrawn.

Operating and education and research funds

(R.C. 4735.06 and 4735.211)

If the Director of Commerce determines that funds in the Division of Real Estate Operating Fund are in excess of those necessary to fund all the expenses of the Division in any biennium, the act permits the Director to pay the excess funds to the Real Estate Education and Research Fund. Former law required the Director to pay the excess funds to the Real Estate Education and Research Fund.

The act increases the limit for Real Estate Education and Research Fund moneys that may be used to advance loans from $800, as in former law, to $2,000. These loans are to applicants for salesperson licenses to defray the costs of satisfying the educational requirements of obtaining a license.

Licensee duties

Notification of misconduct

(R.C. 4735.13)

The act adds to the types of misconduct of which a broker or salesperson licensee must notify the Superintendent within 15 days and requires the notification to be in

writing. If a licensee is the subject of an order by the Department of Commerce, Department of Insurance, or the Department of Agriculture revoking or permanently surrendering any professional license, certificate, or registration or if the licensee is the subject of an order by any government agency concerning real estate, financial matters, or the performance of fiduciary duties with respect to any license, certificate, or registration, in addition to the misconduct described in continuing law, the act requires the licensee to notify the Superintendent.

If a licensee fails to notify the Superintendent of misconduct within the required time, the act allows the Superintendent to suspend the license of the licensee instead of revoking the license, as allowed under former law.

Business location

(R.C. 4735.13, 4735.16, and 4735.17)

The act stipulates that a post office box is not a definite place of business for purposes of the continuing requirement that every licensed real estate broker has and maintain a definite place of business in Ohio.

In the case of a change of business location, the act requires a broker to give notice to the Superintendent on a form prescribed by the Superintendent within 30 days after the change of location. Former law only required that the broker give notice in writing to the Superintendent and was silent on the time frame.

The act moves the requirement that every real estate broker licensed under the Real Estate Brokers Law must have and maintain a definite place of business in Ohio. Continuing law requires a real estate broker to prominently display the broker's license in the office or place of business of the broker.

Licensees as members and officers of entities

(R.C. 4735.13)

The act requires a licensed real estate broker who is a member or officer of a partnership, association, limited liability company, limited liability corporation, or corporation to only act as a broker for the entity. Former law prohibited a licensed real estate broker from performing any acts other than as the agent of the entity. The act removes former law's prohibition against the broker having any real estate salespersons associated with the broker.

Agency disclosure statements

(R.C. 4735.58)

The act requires a licensee who is a purchaser's agent or a seller's subagent working with a purchaser to indicate the accurate agency relationship on the agency disclosure statement required by continuing law.

Termination of duties

(R.C. 4735.74)

The act creates an exemption to continuing law's provision requiring a licensee to maintain confidentiality after the termination of duties. The act permits the licensee to disclose confidential information received during the course of the transaction if the disclosure is regarding sales information requested by a registered appraiser assistant or a licensed or certified appraiser for the purposes of performing an appraisal. The act bars any cause of action against a licensee for releasing information for this reason.

Advertising

(R.C. 4735.16)

The act changes former law's advertising requirements by removing the requirement that a broker or salesperson indicate in an advertisement that the licensee is a broker or salesperson and by requiring different information in advertisements based on whether a real estate broker or salesperson owns or does not own the property being advertised. The act requires any licensed real estate broker or salesperson who advertises to buy, sell, exchange, or lease real estate, or to engage in any act regulated by the Real Estate Brokers Law, with respect to property the licensee does not own, to be identified in an advertisement by name and to indicate the name of the brokerage with which the licensee is affiliated. With respect to property that the licensee owns, the act requires the licensed real estate broker or salesperson to be identified in the advertisement by name and indicate that the property is agent-owned. If the property is listed with a real estate brokerage, the advertisement must also indicate the name of the brokerage with which the property is listed. In both situations, the brokerage name must be displayed in equal prominence with the name of the salesperson in the advertisement.

The act defines "brokerage" for purposes of the advertising requirements to mean the name under which the real estate company or sole broker is doing business, or if the real estate company or sole broker does not use such a name, the name of the real estate company or sole broker as licensed.

Former law required licensed brokers and salespersons, whether or not they owned the property being sold, exchanged, or leased, to be identified by name in the advertisement and to indicate that the licensee was a broker or salesperson. Additionally, except for a salesperson who advertised the sale, exchange, or lease of real estate that the salesperson owned and that was not listed for sale, exchange, or lease with a broker, a salesperson who advertised was required to also indicate the name of the broker under whom the salesperson was licensed and the fact that the salesperson's broker was a broker.

Agency agreements

(R.C. 4735.55)

The act specifies that each written agency agreement must contain a statement that it is illegal pursuant to the Federal Housing Law, *as amended*, to refuse to make certain housing actions based on protected classes. Former law required the statement to express that it is illegal pursuant to the Federal Fair Housing Law to make certain housing actions based on protected classes.

Similarly, the act specifies that each written agency agreement must contain a copy of the U.S. Department of Housing and Urban Development (HUD) equal housing opportunity logotype, *as amended*. Former law required an agreement to contain a copy of the HUD equal opportunity logotype.

Compliance with federal law

(R.C. 4735.62)

The act requires a licensee, in the licensee's fiduciary capacity, to use best efforts to further the interest of a client by complying with the Federal Fair Housing Law, *as amended*, in addition to the other requirements contained in continuing law. Former law required the licensee to comply with the Federal Fair Housing Law.

Prohibitions

(R.C. 4735.21 and 4735.71)

Continuing law prohibits a real estate salesperson or foreign real estate salesperson from collecting any money in connection with any real estate or foreign real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the licensed real estate broker or licensed foreign real estate dealer under whom the salesperson is licensed. The act adds the specification that the broker or dealer under whom the salesperson was

licensed at the time the salesperson earned the commission must be the broker or dealer who consents.

The act also prohibits a salesperson licensed under the Real Estate Brokers Law from selling, assigning, or otherwise transferring the salesperson's interest in a commission or any portion thereof to an unlicensed person or entity. If the salesperson does make such a prohibited assignment or transfer, the broker is prohibited from paying the transferee or assignee any portion of the commission. The act prohibits a cause of action against a broker for not paying an assignee or transferee any portion of the assignment or transfer.

The act prohibits a salesperson or broker licensed under the Real Estate Brokers Law from participating in a dual agency relationship in which the licensee is a party to the transaction, either personally or as an officer or member of a partnership, association, limited liability company, limited liability partnership, or corporation that has an interest in the real property that is the subject of the transaction or an entity that has an intention of purchasing, leasing, or exchanging the real property. This is in addition to the provisions in continuing law that generally prohibit a licensee or brokerage from participating in a dual agency relationship unless the seller and the purchaser have full knowledge of the representation and that prohibit a brokerage from participating in such a relationship unless the brokerage establishes a procedure regarding confidential information and each licensee to fulfill the licensee's duties exclusively to the licensee's client.

Complaints and investigation procedure

(R.C. 4735.05 and 4735.052)

The act prohibits the Superintendent from initiating an investigation of a violation for a person who held a license on voluntary hold or a suspended or inactive license under the Real Estate Brokers Law on the date of the alleged violation. Former law prohibited the Superintendent from investigating any person who held a valid license under the Real Estate Brokers Law any time during the 12 months preceding the date of the alleged violation.

The act lengthens the time, to 14 business days, within which the Superintendent must send a written notice, by regular mail, to a party who is the subject of an investigation if the Superintendent determines there exists reasonable evidence of a violation after an investigation. Former law required the Superintendent to mail the notice within seven business days.

The act removes former law's requirement that the notice required above inform the party that a hearing concerning the alleged violation be held at the next regularly

scheduled meeting of the Real Estate Commission, that the notice contain a statement giving the date and place of that meeting, and that the notice contain a statement informing the party that the party or party's attorney may appear in person, present evidence, examine witnesses, or submit written testimony. Instead, the act requires the hearing to be held upon the party's request, before a hearing examiner pursuant to the Administrative Procedure Act.

The act requires the hearing examiner to file a report of findings of fact and conclusions of law with the Superintendent, the Commission, the complainant, and the parties after the conclusion of formal hearings. The act allows the parties and the Division to file written objections to the report within 20 days of receipt of the copy of the written report of findings of fact and conclusions of law. The act requires the Commission to consider the objections before approving, modifying, or disapproving the report.

The act requires the Commission to review the hearing examiner's report at the next regularly scheduled Commission meeting, which must be held at least 20 business days after receipt of the hearing examiner's report. At that meeting, the Commission must hear the testimony of the complainant or the parties. If the violation relates to acting as a real estate salesperson or broker without a license, the Commission must decide whether to impose disciplinary sanctions upon a party for that violation.

The act requires the Commission to keep a record, rather than a transcript, of the hearing.

The act requires civil penalties collected as disciplinary sanctions from a party for a violation to be deposited in the Real Estate Operating Fund instead of the Real Estate Recovery Fund, as former law required.

The act allows the Superintendent to reserve the right to bring a civil action against a party that fails to pay a civil penalty for breach of contract in any court of competent jurisdiction.

Disciplinary action

Licensees

(R.C. 4735.18 and 4735.181)

The act makes permissive the imposition of disciplinary sanctions on any licensee who, in the licensee's capacity as a broker or salesperson, or in the handling of the licensee's own property, is found guilty of engaging in misconduct as specified in continuing and new law (disciplinary sanctions remain mandatory for felonies or

crimes of moral turpitude). Former law required disciplinary sanctions to be mandatory for the misconduct.

In addition to the types of misconduct listed in continuing law, the act allows the imposition of disciplinary sanctions for a licensee who is found guilty of any of the following:

(1) Advertising any property offering it for sale or for rent without the consent of the owner or an authorized agent (in addition to having placed a sign on the property as under ongoing law);

(2) Having an unsatisfied lien in any court of record against the licensee arising out of the licensee's conduct as a broker or salesperson;

(3) Failing to comply with the provisions relating to earnest money in the Real Estate Brokers Law.

The act removes the requirement in former law that the Commission immediately notify the Real Estate Appraiser Board of any disciplinary action taken against a licensee who also is a state certified real estate appraiser under the Real Estate Appraiser Law.

The act removes the reference to the complaint investigation section of the Real Estate Brokers Law that requires the Ohio Real Estate Commission, when imposing disciplinary sanctions on a licensee, to act pursuant to that section.

The act prohibits any broker or salesperson from failing to comply with requirements regarding change of address notification and maintenance of salesperson licenses by brokers. This prohibition is in addition to those in continuing law, which prohibit any broker or salesperson from failing to comply with requirements regarding agency agreements, brokerage policies on agency, and agency disclosure statements. Continuing law permits the Superintendent to initiate disciplinary action against a licensee or to serve a citation and impose sanctions upon a licensee who violates the prohibitions.

Unlicensed persons or entities

(R.C. 4735.32)

The act permits the Commission to commence an investigation and take disciplinary action that relates to unlicensed persons and entities in addition to licensees.

Compensation for brokers and foreign real estate dealers

(R.C. 4735.20)

The act expands the exemption that allows licensed real estate brokers or licensed foreign real estate dealers to pay or receive a commission to a broker or dealer of another state, to also include a broker or dealer of another country. This payment must be done in accordance with rules adopted by the Commission.

Liability limitation based on imputed knowledge

(R.C. 4735.68)

The act prohibits a cause of action against a broker or affiliated or past licensee based on imputed knowledge of any defect, adverse condition, or repair in real property or failure to disclose such information. This is in addition to continuing law's limitations on liability for a licensee whose client provided false information or a client who made a misrepresentation unless the licensee or client had actual knowledge of such false information or misrepresentation, or the licensee acted with reckless disregard for the truth.

Definitions

(R.C. 4735.01)

The act changes all occurrences in the Real Estate Brokers Law of "physically handicapped" to "disabled" and changes the definition of "disabled licensee" (formerly "physically handicapped licensee") to include a person who is under a severe disability, instead of a severe physical disability, that prevents the person from being able to attend any instruction lasting at least three hours in duration.

The act limits or changes the exclusion of persons from the definitions of "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson." Under former law, the terms "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson" did not include a person, partnership, association, limited liability company, limited liability partnership, or corporation, or the regular employees thereof, who perform any of the acts or transactions specified in the Real Estate Brokers Law, whether or not for, or with the intention, in expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

(1) With reference to real estate situated in this state or any interest in it owned by such person, partnership, association, limited liability company, limited liability

partnership, or corporation, or acquired on its own account in the regular course of, or as an incident to the management of the property and the investment in it;

(2) As receiver or trustee in bankruptcy, as guardian, executor, administrator, trustee, assignee, commissioner, or any person doing the things mentioned in the Real Estate Brokers Law, under authority or appointment of, or incident to a proceeding in, any court, or as a public officer, or as executor, trustee, or other bona fide fiduciary under any trust agreement, deed of trust, will, or other instrument creating a like bona fide fiduciary obligation;

(3) As a person who engages in the brokering of the sale of business assets, not including the negotiation of the sale, lease exchange, or assignment of any interest in real estate;

(4) Various other specifications unchanged by the act.

The act changes (1) above and applies with reference to real estate situated in this state and removes the provision relating to any interest in real estate situated in this state.

The act changes (2) above and requires that the public officer be a "bona fide" public officer and that the trust agreement, deed of trust, will, or other instrument creating a like bona fide fiduciary obligation be executed in good faith. The act defines bona fide as made in good faith or without purpose of circumventing license law.

The act changes (3) above and instead of not including the negotiation of the sale, lease, exchange, or assignment of any interest in real estate, does not include the actual sale, lease, exchange, or assignment of any interest in real estate.

The act limits the exemption of persons, partnerships, associations, limited liability companies, limited liability partnerships, or corporations as provided in (1) above by the legal interest in the real estate held by that person or entity to performing any of the acts or transactions specified in or comprehended by the Real Estate Brokers Law.

Other changes

(R.C. 4735.02, 4735.09, 4735.10, 4735.142, and 4735.32)

The act makes other non-substantive changes to the Real Estate Broker's Law.

Liquor Control Fund

(R.C. 4301.12)

The act authorizes revenue resulting from any contracts with the Department of Commerce pertaining to the responsibilities and operations described in the Liquor Control Law to be credited to the continuing Liquor Control Fund.[30] In addition, if the Director of Budget and Management determines that the amount in the Fund is insufficient, the Director may transfer money from the General Revenue Fund to the Liquor Control Fund. Under continuing law, the Liquor Control Fund generally consists of money from the sales of spirituous liquor, application fees for liquor licenses, and fines levied under the liquor control laws.[31] Money in the Fund may be used for specified purposes related to those laws.

Transfer of spirituous liquor distribution system to JobsOhio

(R.C. 4301.12, 4313.01, and 4313.02)

Overview

The act authorizes the state to transfer to JobsOhio all or a portion of the spirituous liquor distribution system for a transfer price payable by JobsOhio to the state. It requires any such transfer to be treated as an absolute conveyance and true sale of the interest in the spirituous liquor distribution system. Any such transfer that is a lease or grant of a franchise must be for a term not to exceed 25 years or that is an assignment and sale, conveyance, or other transfer must contain a provision that the state has the option to have conveyed or transferred back to it, at no cost, the system no later than 25 years after the original transfer was authorized. Finally, the act authorizes the proceeds of any transfer to be expended as provided in the transfer agreement for specified purposes.

Transfer of system

Under the act, the state may enter into an agreement with JobsOhio to transfer all or a portion of the enterprise acquisition project for a transfer price payable by JobsOhio to the state. "Enterprise acquisition project" means, as applicable, all or any portion of the capital or other assets of the spirituous liquor distribution and merchandising

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[30] It is unclear to what contracts the act refers in the provision concerning revenue resulting from any contracts with the Department of Commerce pertaining to the responsibilities and operations described in the Liquor Control Law that is to be credited to the Liquor Control Fund.

[31] It is unclear whether the Liquor Control Fund will receive money from sales of spirituous liquor due to the transfer of the profits from spirituous liquor sales to JobsOhio under the act (see below).

operations of the Division of Liquor Control, including inventory, real property rights, equipment, furnishings, the spirituous liquor distribution system including transportation, the monetary management system, warehouses, contract rights, rights to take assignment of contracts and related receipts and revenues, accounts receivable, the exclusive right to manage and control spirituous liquor distribution and merchandising and to sell spirituous liquor in the state subject to the control of the Division of Liquor Control pursuant to the terms of the transfer agreement, and all necessary appurtenances thereto, or leasehold interests therein, and the assets and liabilities of the continuing Facilities Establishment Fund. "Transfer" means an assignment and sale, conveyance, granting of a franchise, lease, or transfer of all or an interest.[32]

Any transfer of the enterprise acquisition project must be treated as an absolute conveyance and true sale of the interest in the enterprise acquisition project purported to be conveyed for all purposes and not as a pledge or other security interest. The characterization of any such transfer as a true sale and absolute conveyance cannot be negated or adversely affected by any of the following:

(1) The acquisition or retention by the state of a residual or reversionary interest in the enterprise acquisition project;

(2) The participation of any state officer or employee as a member or officer of, or contracting for staff support to, JobsOhio or any subsidiary of JobsOhio;

(3) Any regulatory responsibility of an officer or employee of the state, including the authority to collect amounts to be received in connection therewith; or

(4) The retention of the state of any legal title to or interest in any portion of the enterprise acquisition project for the purpose of regulatory activities, or any characterization of JobsOhio or obligations of JobsOhio under accounting, taxation, or securities regulations, or any other reason whatsoever.

The act states that an absolute conveyance and true sale or lease exist regardless of whether JobsOhio has any recourse against the state or the treatment or characterization of the transfer as a financing for any purpose. Upon and following the transfer, the state cannot have any right, title, or interest in the enterprise acquisition project other than any residual interest that may be described in the transfer agreement regarding the term of the transfer and the rental or lease of the project (see below). The fair market value of the enterprise acquisition project in the transfer agreement must be conclusive and binding on the state and JobsOhio.

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[32] It is unclear what is intended by "all or an interest."

Any transfer of the enterprise acquisition project that is a lease or grant of a franchise must be for a term not to exceed 25 years. Any transfer of the enterprise acquisition project that is an assignment and sale, conveyance, or other transfer must contain a provision that the state must have the option to have conveyed or transferred back to it, at no cost, the enterprise acquisition project, as it then exists, no later than 25 years after the original transfer authorized in the transfer agreement on such other terms as must be provided in the transfer agreement.

Exemption from taxes

The act states that the exercise of the powers granted by the act's provisions governing the transfer will be for the benefit of the people of Ohio. All or any portion of the enterprise acquisition project transferred pursuant to the transfer agreement that would be exempt from real property taxes or assessments or real property taxes or assessments in the absence of the transfer must, as it may from time to time exist thereafter, remain exempt from real property taxes or assessments levied by the state and its subdivisions to the same extent as if not transferred. The gross receipts and income of JobsOhio derived from the enterprise acquisition project must be exempt from taxation levied by the state and its subdivisions, including, but not limited to, the municipal and state income, sales, use and storage, and commercial activity taxes levied pursuant to continuing law. Any transfer from the state to JobsOhio of the enterprise acquisition project, or item included or to be included in the project, must be exempt from the sales and use and storage taxes levied pursuant to ongoing law.

Proceeds of transfer

Under the act, the proceeds of any transfer may be expended as provided in the transfer agreement for one or more of the following purposes:

(1) Funding, payment, or defeasance of outstanding bonds issued pursuant to the laws governing various state and local capital improvements and economic development and secured by pledged liquor profits. "Pledged liquor profits," by reference to the Public Facilities Commission Law, means all receipts of the state representing the gross profit on the sale of spirituous liquor after paying all costs and expenses of the Division of Liquor Control and providing an adequate working capital reserve for the Division as provided in continuing law, but excluding the sum required by the law that was in effect on May 2, 1980, that required $2.25 for each gallon of spirituous liquor sold by the state to be credited to the General Revenue Fund.

(2) Deposit into the General Revenue Fund;

(3) Deposit into all of the following continuing funds: Clean Ohio Revitalization Fund, Innovation Ohio Loan Fund, Research and Development Loan Fund, Logistics

and Distribution Infrastructure Fund, Advanced Energy Research and Development Fund, and Advanced Energy Research and Development Taxable Fund;

(4) Conveyance to JobsOhio for the purposes for which it was created.

Spirituous liquor revenue

The act specifies that a sum equal to $3.38 for each gallon of spirituous liquor sold by the Division of Liquor Control, JobsOhio, or a designee of JobsOhio, rather than only the Division under law revised by the act, during the period covered by specified payments to the Treasurer of State under ongoing law must be paid into the state treasury to the credit of the General Revenue Fund.

Other provisions

The act allows the state to covenant, pledge, and agree in the transfer agreement, with and for the benefit of JobsOhio, that it must maintain statutory authority for the enterprise acquisition project and the revenues of the project and not otherwise materially impair any obligations supported by a pledge of revenues of the project. The transfer agreement may provide or authorize the manner for determining material impairment of the security for any such outstanding obligations, including by assessing and evaluating the revenues of the enterprise acquisition project.

The Director of Budget and Management, in consultation with the Director of Commerce, may, without need for any other approval, negotiate terms of any documents, including the transfer agreement, necessary to effect the transfer and the acceptance of the transfer of the enterprise acquisition project. The Director of Budget and Management and the Director of Commerce must execute the transfer agreement on behalf of the state. The Director of Budget and Management also, without need for any other approval, may retain or contract for the services of specified persons such as financial advisers to effect the transfer agreement. Any transfer agreement may contain terms and conditions established by the state to carry out and effectuate the transfer, including covenants binding the state in favor of JobsOhio. The transfer agreement must be sufficient to effectuate the transfer without regard to any other laws governing other property sales or financial transactions by the state. The Director of Budget and Management may create any funds or accounts, within or without the state treasury, as are needed for the transactions and activities authorized by the act's provisions governing the transfer.

Under the act, the transfer agreement may authorize JobsOhio, in the ordinary course of doing business, to convey, lease, release, or otherwise dispose of any regular inventory or tangible personal property. Ownership of the interest in the enterprise acquisition project that is transferred to JobsOhio and the transfer agreement must be

maintained in JobsOhio or a nonprofit entity the sole member of which is JobsOhio until the enterprise acquisition project is transferred back to the state pursuant to the act (see above for a discussion of the project's conveyance back to the state; see below for a discussion of the rental or lease of the enterprise acquisition project).

The transfer agreement may authorize JobsOhio to fix, alter, and collect rentals and other charges for the use and occupancy of all or any portion of the enterprise acquisition project. The agreement also may authorize JobsOhio to lease any portion of the enterprise acquisition project to the state and must include a contract with, or the granting of an option to, the state to have the project, as it then exists, transferred back to it without charge in accordance with the terms of the transfer agreement after retirement or redemption, or provision for that retirement or redemption, of all obligations supported by a pledge of spirituous liquor profits. "Spirituous liquor profits" means all receipts representing the gross profit on the sale of spirituous liquor less the costs, expenses, and working capital provided for therein, but excluding the sum required by the law that was in effect on May 2, 1980, that required $2.25 for each gallon of spirituous liquor sold by the state to be paid into the General Revenue Fund, provided that from and after the initial transfer of the enterprise acquisition project to JobsOhio and until the transfer back to the state under the act, the reference in provisions governing the gross profit on the sale of spirituous liquor to all costs and expenses of the Division and also an adequate working capital reserve for the Division must be to all costs and expenses of JobsOhio and providing an adequate working capital reserve for JobsOhio.

JobsOhio, the Director of Budget and Management, and the Director of Commerce must, subject to the approval of the Controlling Board, enter into a contract, which may be part of the transfer agreement, for the continuing operation by the Division of Liquor Control of spirituous liquor distribution and merchandising subject to standards for performance provided in that contract that may relate to the act's provisions governing the transfer agreement and the impairment of obligations supported by pledged revenues. The contract must establish other terms and conditions for the assignment of duties to, and the provision of advice, services, and other assistance by, the Division of Liquor Control to JobsOhio. The terms and conditions may include providing for the necessary staffing and payment by JobsOhio of appropriate compensation to the Division for the performance of those duties and the provision of such advice, services, and other assistance.

The act states that the Division of Liquor Control must manage and actively supervise the activities required or authorized under ongoing law establishing the powers and duties of the Division, including, but not limited to, controlling the traffic in beer and intoxicating liquor in the state and fixing the wholesale and retail prices at

which the various classes, varieties, and brands of spirituous liquor are sold by the Division.

The act requires the transfer agreement to require JobsOhio to pay for the operations of the Division of Liquor Control with regard to the Division's spirituous liquor merchandising operations. The payments from JobsOhio must be deposited into the state treasury to the credit of the continuing Liquor Control Fund.

Finally, the act requires the transaction regarding and transfer of the enterprise acquisition project to comply with all applicable provisions of the Ohio Constitution.

Residential Construction Advisory Committee membership

(R.C. 4740.14; Section 747.40)

Under prior law, all nine members of the Residential Construction Advisory Committee served parallel three-year terms. As a result, all members' terms concluded at the same time, requiring the Director of Commerce to either reappoint or appoint members to fill the entire committee every three years.

The act creates a staggered scheme by which only three members' terms expire in any given year. Beginning with terms to commence July 1, 2011, three members' terms will end on June 30, 2012, three members' terms will end on June 30, 2013, and three members' terms will end on June 30, 2014. The Director of Commerce will decide which members serve shortened terms, within the parameters specified in the act. After the staggered scheme is begun, all successive members will serve full three-year terms.

OFFICE OF THE CONSUMERS' COUNSEL (OCC)

- Prohibits the OCC from operating a call center for consumer complaints.
- Requires the OCC to follow the policies of the state in continuing law that involve supporting retail natural gas competition.

Call center prohibition

(R.C. 4911.021)

The act prohibits the Office of the Consumers' Counsel (OCC) from operating a call center for consumer complaints, and requires that consumer-complaint calls received by OCC be forwarded to the Public Utilities Commission (PUCO). The PUCO is required, under continuing law, to operate a call center for consumer complaints.[33]

Requirement to follow state natural gas policy

(R.C. 4911.02)

The act requires the OCC to follow Ohio's policies in continuing law that involve supporting retail natural gas competition. These policies include the promotion of diversity in the natural gas marketplace, flexible and reduced or eliminated regulation of natural gas services and goods, and the promotion of Ohio's competitiveness in the global economy. Continuing law also requires both the PUCO and the OCC to follow these policies in exercising their respective authorities.[34]

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[33] R.C. 4905.261, not in the act.

[34] R.C. 4929.02, not in the act.

CONTROLLING BOARD (CEB)

- Creates the Controlling Board Emergency Purposes Fund in the state treasury to provide disaster and emergency aid to state agencies and political subdivisions and for other purposes approved by the Controlling Board.
- Permits the Controlling Board to approve a state agency's purchase if the agency (1) substantially complied with one of four specified purchasing requirements and (2) gives the Board a detailed explanation of the agency's competitive selection or evaluation and selection process.
- Prohibits a state agency or state institution of higher education from entering into a contract for a legislative agent with a cost exceeding $50,000 per year unless the contract is approved by the Controlling Board.
- Requires a state agency director to request that the Controlling Board increase the agency's capital appropriations if the director and the Controlling Board determine such an increase is needed for the agency to receive and use funds under the federal American Recovery and Reinvestment Act of 2009.

Controlling Board Emergency Purposes Fund

(R.C. 127.19; Sections 247.10 and 512.40)

The act creates the Controlling Board Emergency Purposes Fund in the state treasury. The Fund is to consist of transfers from the General Revenue Fund (GRF) and any other money appropriated by the General Assembly. Moneys in the Fund may be used, at the request of a state agency or the Director of Budget and Management, to provide disaster and emergency aid to state agencies and political subdivisions or for other purposes approved by the Controlling Board.

The act discontinues the Controlling Board's Emergency Purposes/Contingencies appropriation item and instead appropriates $10 million to the Controlling Board Emergency Purposes Fund in each fiscal year. The act also transfers up to $20 million to the Fund from any surplus in the GRF ending balance from fiscal year 2011 to the Emergency Purposes Fund.

Approval of state-agency purchases

(R.C. 127.162)

The act permits the Controlling Board to approve a purchase, on the request of a state agency or the Director of Budget and Management, if the agency used one of the following:

- Competitive sealed bidding (under continuing law);
- Competitive sealed proposals (under continuing law);
- Reverse auctions (under continuing law);
- Evaluation and selection for professional design services (under continuing law); or
- Agency released competitive opportunity that demonstrates a competitive process involving a request for proposals, qualifications, or information.

The agency must also submit with its request a detailed explanation of the competitive selection or evaluation and selection process it used.

The act permits the Controlling Board, by majority vote, to disapprove or defer a purchase request or request that the agency resubmit the request if the agency fails to demonstrate use of one of the processes.

The act specifies that these provisions do not modify cumulative purchasing thresholds under continuing law.

Public office lobbying contracts

(R.C. 101.711)

The act prohibits a state agency or state institution of higher education from entering into a contract with a legislative agent, with a cost exceeding $50,000 in a calendar year, without the approval of the Controlling Board. The prohibition does not apply to an employment contract pursuant to which an individual is employed directly by a state agency or state institution of higher education as a legislative agent.

For purposes of the prohibition: "state agency" means every organized body, office, agency, institution, or other entity established by state law for the exercise of any function of state government. "State institution of higher education" means any state university or college, community college, state community college, university branch,

or technical college. And "legislative agent" means any individual (except a member or staff of the General Assembly or a statewide elected official) who is engaged, during at least a portion of the individual's time, to actively advocate with regard to legislative matters as one of the individual's main purposes. Certain Ohio Casino Control Commission members and employees are "legislative agents" even if they do not, during at least a portion of their time, actively advocate with regard to legislative matters as one of their main purposes.

Controlling Board authority to increase capital appropriations

(Sections 247.10 and 801.20)

The act requires a state agency director to request that the Controlling Board increase the amount of the agency's capital appropriations if the director determines such an increase is necessary for the agency to receive and use funds under the federal American Recovery and Reinvestment Act of 2009. The act authorizes the Board to make such increase up to the exact amount necessary under the federal act if the Board concurs that the increase is necessary.

COUNSELOR, SOCIAL WORKER, AND MARRIAGE AND FAMILY THERAPIST BOARD (CSW)

- Requires the Counselor, Social Worker, and Marriage and Family Therapist Board to establish fees for approving continuing education programs, approving providers of continuing education programs, and replacement copies of wall certificates.

Fees charged by the Board

(R.C. 4757.31)

The act requires the Counselor, Social Worker, and Marriage and Family Therapist Board to establish fees for (1) approval of continuing education programs, (2) approval of continuing education providers to be authorized to offer continuing education programs without prior approval from the Board for each program offered, and (3) issuance of a replacement copy of any wall certificate issued by the Board. A rule adopted by the Board defines a provider granted approval for the purposes described in (2), above, as "provider status."[35]

Like most of the fees the Board establishes under continuing law, the fees described above are nonrefundable, must be in amounts sufficient to cover the Board's necessary expenses in administering the statutes and rules governing the persons regulated by the Board, and may be adjusted from time to time.

[35] O.A.C. 4757-9-05(A)(1).

DEPARTMENT OF DEVELOPMENT (DEV)

- Eliminates the prevailing wage requirements that apply to certain economic development projects.

- Removes the requirement that an applicant have at least 30% funding from one or more financial institutions or other governmental entities as a requisite criterion for receipt of a loan from the Director of Development to minority business enterprises and others.

- Clarifies that JobsOhio must comply with Ohio's Nonprofit Corporation Law unless the corporation is specifically exempted from a particular provision of that law.

- Removes a requirement that the Governor serves as a member and chairperson of the nine-member JobsOhio board of directors, and instead requires the Governor to appoint all nine directors and designate one of those directors to serve as chairperson.

- Removes a provision that allows the Governor to specify other types of experience that would qualify an individual for appointment to the JobsOhio board of directors as an alternative to the types of experience specifically enumerated in law.

- Requires that any claim alleging the unconstitutionality of the JobsOhio authorizing legislation or of any section governing the proposed sale of the liquor distribution system must be brought in the Franklin County Common Pleas Court within 90 days after September 29, 2011, unless the claim is within the original jurisdiction of the Supreme Court or Court of Appeals.

- Requires that any claim alleging the unconstitutionality of an action taken by JobsOhio must be brought in the Franklin County Common Pleas Court within 60 days after the action taken unless the claim is within the original jurisdiction of the Supreme Court or Court of Appeals.

- Prohibits any business from using "JobsOhio" or "Jobs Ohio" as part of the business's name without the written consent of JobsOhio.

- Removes law that allowed the Governor to remove a director for misconduct, and instead provides that only a majority of disinterested directors may remove a director.

- Provides that the JobsOhio chief investment officer may be removed from office only by the board of directors, instead of by the Governor as provided in prior law.

- Establishes the Local Government Innovation Program, to be administered by the Department of Development and the Local Government Innovation Council, to make loans and grants to political subdivisions for qualified innovation projects.

- Establishes the 15-member Local Government Innovation Council to determine criteria for evaluating proposals and to make awards to political subdivisions.

- Establishes the Local Government Innovation Fund to fund awards made by the Council, consisting of moneys appropriated to it and any grants or donations received from nonpublic entities.

- Provides that award funding under the Local Government Innovation Program is to be divided between smaller and larger political subdivisions.

- Requires the Council to submit an annual report to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives regarding the Council's activities.

- Provides that the Council ceases to exist on December 31, 2015.

- Repeals the limit on payments of the Third Frontier Commission's administrative expenses from the Biomedical Research and Technology Transfer Trust Fund, but allows payments for award administration expenses through June 30, 2013, for awards made before September 29, 2011.

- Expresses the intent of the General Assembly, the Governor, and the Directors of Development and Budget and Management to provide comprehensive state support for the biomedical industry.

- Delays implementation of the Department of Development's Sports Incentive Grant Program from July 1, 2011 to July 1, 2013.

- Temporarily authorizes the Director of Development to seek and use available federal economic stimulus funds to secure and guarantee loans made for historic rehabilitation projects that are approved for Ohio historic rehabilitation tax credits.

- Establishes the Ohio Housing Study Committee (OHSC) to review the policies, programs, and working relationships of the Ohio Housing Finance Agency (OHFA).

- Requires the OHSC to produce a quantitative report measuring the economic benefits of the OHFA and to evaluate the possible efficiencies of combining existing Ohio Department of Development housing-related programming with those of the OHFA.

- Requires the OHSC to provide a report expressing its findings about the OHFA on or before March 31, 2012.
- Specifies the duties and objectives of the Ohio Film Office.
- Authorizes interagency agreements between the Departments of Development and Job and Family Services to further integrate workforce development into a larger economic development strategy and to implement the recommendations of the Workforce Policy Board.

Payment of prevailing wage on economic development projects

(R.C. 122.0818, 122.452, 165.031, 1551.13, 3706.042, 4115.032, and 4981.23 (all repealed); R.C. 166.02, 1551.33, 1728.07, and 4116.01)

The act removes the prevailing wage requirements that apply to the following:

(1) Projects receiving grants under the Job Ready Site Program administered by the Department of Development (R.C. 122.085 to 122.0820);

(2) Industrial, distribution, commercial, and research projects receiving financial assistance from the Department pursuant to R.C. Chapter 122.;[36]

(3) Projects involving the acquisition, construction, improvement, or equipping of property for industry, commerce, distribution, or research under R.C. Chapter 165.;

(4) Eligible projects receiving economic development assistance from the Department under R.C. Chapter 166.;[37]

(5) Energy resource development projects or facilities supported by the Department pursuant to R.C. Chapter 1551.;

(6) Projects undertaken by community urban redevelopment corporations in conjunction with municipal corporations under R.C. Chapter 1728.;

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[36] The financial assistance for these projects includes loans to minority business enterprises and loan guarantees to small businesses (R.C. 122.80, not in the act).

[37] Projects eligible for such assistance include innovation projects, research and development projects, advanced energy projects, and logistics and distribution projects.

(7) Air quality projects financed by the Ohio Air Quality Development Authority under R.C. Chapter 3706.; and

(8) Rail service projects receiving financial assistance from the Ohio Rail Development Commission pursuant to R.C. 4981.11 to 4981.26.

Department of Development funding to minority business enterprises and others

(R.C. 122.76)

The Director of Development, with Controlling Board approval, may lend funds to minority business enterprises and other specified entities that meet specified criteria. One criterion changed by the act is that the value of the project is or, upon completion, will be at least equal to the total amount of the money expended in procurement or improvement of the project, and one or more financial institutions or other governmental entities have loaned not less than 30% of that amount. The act removes the requirement that an applicant for a loan have at least 30% funding from financial institutions or other governmental entities.

Changes to the law governing JobsOhio

The act makes several changes to the law governing the formation and operation of JobsOhio, the nonprofit organization authorized by H.B. 1 to perform state economic development, job creation and retention, job training, and business recruitment functions.

Applicability of Ohio Nonprofit Corporation Law

(R.C. 187.01; Section 812.30)

The act states that, unless specifically exempted from a particular provision, JobsOhio must comply with Ohio's Nonprofit Corporation Law. Continuing law unchanged by the act exempts the corporation from 34 of the 61 sections of that law that might otherwise apply to nonprofit corporations. The provision was exempted from the referendum and took effect on June 30, 2011.

Disposition of liabilities upon dissolution

(R.C. 187.01(I); Section 812.30)

The act eliminates a provision that requires JobsOhio's articles of incorporation to set forth procedures for how JobsOhio's liabilities would be distributed to the state or to

a successor corporation should JobsOhio be dissolved. The act retains the requirement that the articles provide for how JobsOhio's assets and rights would be so distributed.

Governor membership on board of directors

(R.C. 187.01(A) and (D) and 187.03; Section 812.30)

Under prior law, the JobsOhio board of directors was to consist of the Governor and eight directors appointed by the Governor. The Governor also was to serve as chairperson of the board. The act removes the Governor as a member of the board, and instead requires that all nine directors be individuals appointed by the Governor. The Governor must appoint one of the nine directors to serve as board chairperson.

Accordingly, the act adjusts the terms of office for initial board appointees. Prior law provided that, of the eight Governor-appointed directors, two directors were to serve one year from the date the articles of incorporation were filed, while two directors were to serve two years and four directors were to serve four years. The act requires that the ninth Governor-appointed director also serve an initial four-year term, so that a total of five directors will serve initial terms of four years.

The changes were exempted from the referendum and took effect on June 30, 2011.

Director qualifications

(R.C. 187.02; Section 812.20)

Under prior law, to qualify for appointment to the JobsOhio board of directors, an individual had to satisfy all of the following: (1) understand generally accepted accounting principles and financial statements, (2) possess the ability to assess the general application of those principles in connection with the accounting for estimates, accruals, and reserves, (3) have experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be presented by JobsOhio's financial statements, or experience actively supervising one or more persons engaged in those activities, (4) understand internal controls and procedures for financial reporting, and (5) understand audit committee functions.

Specific experience demonstrating the qualifications required above could have been evidenced by any of the following:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor, or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or

(4) Other experience considered relevant by the Governor consistent with the above paragraph.

The act removes this last provision that allows the Governor, in making an appointment, to consider other types of experience not otherwise listed if the Governor considers the experience relevant. Removal of the provision was exempted from the referendum and took effect on June 30, 2011.

Removal of directors for misconduct

(R.C. 187.01(K); Section 812.30)

Under prior law, the corporation's articles of incorporation had to provide that the Governor could remove a member of the board of directors for misconduct. The act instead requires the articles to authorize the removal of a director for misconduct only through the decision of a majority of disinterested directors. The change was exempted from the referendum and took effect on June 30, 2011.

Chief investment officer appointment and removal

(R.C. 187.01(E); Section 812.30)

Under prior law, the corporation's articles of incorporation had to provide that the corporation's chief investment officer will serve at the pleasure of the Governor. The act instead requires the articles to state that the CIO will serve at the pleasure of the board of directors.

Continuing law also requires the articles to provide for the appointment of the CIO by recommendation of the board of directors and approval of the Governor. The act additionally requires the articles to specify that, if the CIO position becomes vacant for any reason, the vacancy must be filled as provided in law for the initial

appointment. The changes were exempted from the referendum and took effect on June 30, 2011.

Use of the name "JobsOhio"

(R.C. 187.13)

The act prohibits any person (other than JobsOhio) from using the name "JobsOhio" or "Jobs Ohio," or words with a similar meaning in another language, as any part of the designation or name of a business the person conducts in the state, unless the person receives the written consent of JobsOhio.

The act also requires that the name of any subsidiary of JobsOhio must include both the name "JobsOhio" and an additional designation in order to differentiate the subsidiary from other JobsOhio corporations.

Legal actions challenging the constitutionality of JobsOhio or its actions

(R.C. 187.09)

The legislation that authorized the creation of JobsOhio, Am. Sub. H.B. 1 of the 129th General Assembly, vested exclusive, original jurisdiction in the Ohio Supreme Court over any legal action claiming the unconstitutionality of that act, any part of that act, or any actions taken by the Governor or the corporation under the authority conferred by that act. H.B. 1 also required that any such action be filed within 60 days after the act's effective date, which was February 18, 2011.

The act proposes a new statute of limitations applicable to such constitutional challenges. Under the act, any claim alleging the unconstitutionality of any section of Am. Sub. H.B. 1, any section of R.C. Chapter 4313. enacted by the act (which authorizes the sale of the state's liquor distribution system to JobsOhio), or any part of those sections must be brought in the Franklin County Court of Common Pleas within 90 days after September 29, 2011, unless the claim is within the original jurisdiction of the Ohio Supreme Court or Court of Appeals.

The act similarly provides that any claim, except a claim within the original jurisdiction of the Supreme Court or Court of Appeals, that alleges the unconstitutionality of any action taken by JobsOhio must be brought in the Franklin County Common Pleas Court within 60 days after the action is taken.

Under the act, the Franklin County Common Pleas Court or a Court of Appeals must give priority to a claim alleging the unconstitutionality of JobsOhio legislation or actions over other civil cases before the court.

JobsOhio appropriation

(Sections 605.10 and 605.11)

Am. Sub. H.B. 1 appropriated an amount not to exceed $1 million for the "transition and start-up costs" of JobsOhio. The act specifies that those start-up costs may include the costs of the incorporation and formation of the corporation.

The act also appropriates any unexpended and unencumbered balance from that $1 million appropriation remaining at the end of FY 2011 to JobsOhio for FY 2012.

Local Government Innovation Program

(R.C. 189.01 through 189.10; Sections 261.20.93, 379.10, and 757.10)

The act establishes the Local Government Innovation Program. The Program is to be administered by the Department of Development and the Local Government Innovation Council created by the act. The Program must provide funding for local government innovation projects by political subdivisions. The act defines "political subdivision" to include a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state, and also expressly includes many smaller divisions of local government.[38]

Local Government Innovation Council duties and membership

(R.C. 189.03, 189.09, and 189.10)

Details regarding the Local Government Innovation Council's duties, procedures, and membership may be found below.

Council duties and procedures

Duties of Council	To establish criteria for and make loans and grants to political subdivisions for local government innovation projects. The Council may also take other actions, in consultation with the Department of Development, as are necessary to implement the Local Government Innovation Program.
Reporting duties	Yes; to Speaker of the House of Representatives, House Minority Leader, Senate President, Senate Minority Leader, and Governor by January 31, 2013. The report must include a listing of recipients of grants and loans made to political subdivisions, the amount of such grants and loans, and any

[38] For the list of all included subdivisions, see R.C. 189.01.

	other information about the Program that the Council determines necessary to include in the report.
Compensation	No compensation.
Reimbursement for expenses	Yes – actual and necessary expenses.
Appointment deadline	September 30, 2011.
Term of appointment	Governor's initial appointments serve staggered terms, thereafter, the Governor's appointments serve four-year terms; other Council members serve four-year terms. Terms are not to extend beyond the Council's termination date.
Reappointment of members	Members may be reappointed.
Filling of vacancies	In the same manner as original appointment.
Frequency of meetings	At the call of the chairperson or on request of a majority of the Council.
Council leadership	Chairperson to be selected at first meeting from among Council members.
Administrative assistance	Department of Development is to provide administrative assistance.
Termination of Council	December 31, 2015.

Council membership

Task Force Member	Appointment Authority
Director of Development, or Director's designee	Not applicable
Director of Budget and Management, or Director's designee	Not applicable
Auditor of State, or the Auditor's designee	Not applicable
Two members of the Senate	One appointed by the Senate President and one appointed by the Senate Minority Leader
Two members of the House of Representatives	One appointed by the Speaker of the House of Representatives and one appointed by the House Minority Leader
One member recommended by the Ohio Municipal League	Governor
One member recommended by the County Commissioners Association of Ohio	Governor
One member recommended by the Ohio Township Association	Governor

Task Force Member	Appointment Authority
One member recommended by the Ohio Chamber of Commerce	Governor
One member recommended by the Ohio School Boards Association	Governor
One member recommended by an Ohio-based advocacy group selected by the Governor	Governor
One member recommended by an Ohio-based foundation selected by the Governor	Governor
One member with expertise in local government issues	Chancellor of the Board of Regents

Loans and grants for local government innovation projects

(R.C. 189.04)

The act authorizes the Local Government Innovation Council to award loans to political subdivisions or groups of political subdivisions to be used for the purchase of equipment, facilities, or systems or for implementation costs. Loans are to be repaid using savings achieved from the innovation project.

The act provides that up to 20% of the available funds may be awarded by the Council as grants to political subdivisions for use in process improvement or implementation of innovation project awards.

The act restricts loan and grant amounts to $100,000 per political subdivision and $500,000 per innovation project.

Method for applying for a loan or grant

(R.C. 189.07)

A political subdivision seeking a loan or grant under the Local Government Innovation Program must submit a proposal to the subdivision's district public works integrating committee. The committee must make advisory comments and submit the proposal to the Department of Development. The Department must then submit the proposal to the Local Government Innovation Council for evaluation and selection.

Criteria for awarding loans and grants

(R.C. 189.06)

Any political subdivision of the state is eligible to apply for a loan or grant under the Local Government Innovation Program. The act requires the Local Government Innovation Council to make awards in accordance with a competitive process developed by the Council.

The act also requires the Council, not later than December 31, 2011, to establish criteria for evaluating proposals and making awards to political subdivisions. The criteria must be developed in consultation with nonpublic entities involved in local government issues, state institutions of higher education, and the Department of Development, as determined by the Council.

The act mandates that the criteria include a requirement that at least one of the political subdivisions that is a party to the proposal provide matching funds. The matching funds may be provided by a nonpublic entity. The act provides that other criteria for awarding loans and grants may include the following provisions:

(1) The expected return on investment, based on the ratio of expected savings;

(2) The number of participating entities in the proposal;

(3) The probability of the proposal's success;

(4) The percentage of local matching funds available;

(5) The ability to replicate the proposal in other political subdivisions;

(6) Whether the proposal is part of a larger consolidation effort by the applicant or applicants;

(7) Whether the proposal is to implement recommendations from a performance audit conducted by the Auditor of State;

(8) Whether the applicant has successfully completed an innovation project in the past.

Awarding of loans and grants

(R.C. 189.08)

The act requires the Local Government Innovation Council to begin evaluating award proposals received from the Department of Development not later than March 1,

2012. Not later than July 1, 2012, the Council must make its first round of loans and grants to political subdivisions. After that, the Council must make awards on a quarterly basis, or on another schedule determined by the Council.

When making awards from the Local Government Innovation Fund, the Council must divide the fund amounts for each round of awards between smaller and larger political subdivisions (based on results of the 2010 decennial census) in the following tiers:

(1) At least 30% to political subdivisions that are not counties and have a population of less than 50,000 residents or counties with a population of less than 130,000 residents;

(2) At least 30% to political subdivisions that are not counties and have a population of 50,000 residents or more or counties with a population of 130,000 residents or more.

The act provides that if a proposal is submitted on behalf of both large and small political subdivisions, the award may be drawn from either or both tiers in the Fund.

Local Government Innovation Fund

(R.C. 189.05)

The act establishes the Local Government Innovation Fund in the state treasury. The Fund is to consist of moneys appropriated to it and any grants or donations received from nonpublic entities. Interest earned on the money in the Fund must be credited to the Fund.

Biomedical Research and Technology Transfer award administration

(R.C. 183.30)

The act repeals the 5% limit on payments related to the Third Frontier Commission's administration of awards from the Biomedical Research and Technology Transfer Trust Fund. The act also repeals a provision stating that the 5% limitation on administrative expenses does not apply to any fiscal year for which the Controlling Board approved a spending plan that the Commission submitted to the Board. For awards made from the Fund before September 29, 2011, however, the act permits payments for award administration expenses to continue through June 30, 2013. The Commission last made an award from the Fund in 2009, and award periods ranged from three to five years.

Biomedical research support

(Section 261.30.80)

The act provides that, in recognition of the role that the biomedical industry has in job creation, innovation, and economic development, it is the intent of the General Assembly, the Governor, the Director of Development, and the Director of Budget and Management to work together in continuing to provide comprehensive state support for the biomedical industry.

Loan guarantees for historic rehabilitation projects

(Section 521.80 and 801.20)

The act authorizes the Director of Development to try to obtain up to $75 million in federal economic stimulus funds and to make the funds available to secure and guarantee loans made for historic building rehabilitation projects that have been approved for an Ohio historic rehabilitation tax credit (see R.C. 149.311). The federal funds would be any funds available under the federal American Recovery and Reinvestment Act of 2009 or any other federal source of money that may lawfully be applied to that purpose. Any such funds obtained by the Director must be credited to the Ohio Historic Preservation Tax Credit Fund created by the act.

If the Director is successful in obtaining federal funds, the Director then must enter into loan guarantee contracts under the same general provisions governing Chapter 166 loan guarantees (R.C. 166.06, as authorized by Section 13, Article VIII, Ohio Constitution), except that the guarantee is secured solely by money in the Ohio Historic Preservation Tax Credit Fund instead of the Chapter 166 Loan Guarantee Fund. The loan guarantee amount for any project may not exceed the tax credit amount. Rehabilitation projects approved in the first round of rehabilitation tax credit awards would have first priority for loan guarantees.

Delay implementation of sports incentive grants

(R.C. 122.121)

The act delays the Department of Development's implementation of the Sports Incentive Grant Program from July 1, 2011, to July 1, 2013. Continuing law authorizes the Director of Development, after that date, to make grants of General Revenue Fund money to counties or municipal corporations hosting specified sporting events. The grant amount is based on the increased state sales tax revenue directly attributable to the preparation for and presentation of the event, as determined by the Director. Grants are available only if the increased state sales tax revenue is estimated to be greater than

$250,000. No individual grant may exceed $500,000, and the total of all grants in any fiscal year may not exceed $1 million.

Ohio Housing Study Committee

(Section 701.40)

The act creates the Ohio Housing Study Committee (OHSC) to formulate a comprehensive review of the policies and results of the Ohio Housing Finance Agency (OHFA), its programs, and its working relationships. The purpose of the OHSC is to evaluate all OHFA programs through an objective process to ensure Ohioans receive optimal and measurable benefits afforded to them through the authority of the OHFA. Under continuing law, the OHFA assists with the financing, refinancing, production, development, and preservation of safe, decent, and affordable housing for occupancy by low- and moderate-income persons; rental assistance and housing services for low- and moderate-income persons; allocation of all state and federal funds in accordance with applicable state and federal laws, including the federal Housing Credit Program; and the promotion of community development, economic stability, and growth within Ohio.

The act requires that the OHSC be comprised of the State Auditor, or the Auditor's designee, the Director of Commerce, or the Director's designee, the Director of Development, or the Director's designee, and four members of the General Assembly, two selected from each chamber, to be appointed by the Speaker of the House of Representatives and the President of the Senate, respectively. The act provides that the chairperson of the OHSC will be a member of the Committee selected by the Governor, Speaker of the House of Representatives, and President of the Senate. The OHSC will meet on a reasonable basis at the chairperson's discretion.

The OHSC must do all of the following:

(1) Perform a comprehensive review of the OHFA Law (R.C. Chapter 175.) to determine the relevance of the law and whether it should be formally reviewed or amended by the General Assembly, up to and including appropriate legislative oversight and accountability;

(2) Review the OHFA's relationships to ensure an equitable and level playing field regarding its single- and multi-family housing programs;

(3) Review the OHFA's policy leadership and the measurable economic impact and other effects of its programs;

(4) Review the OHFA's Qualified Allocation Plan development process and underlying policies to understand whether objective and measurable results are achieved to fulfill clearly articulated public policy goals;

(5) Create a quantitative report measuring the economic benefits of the OHFA's single- and multi-family programming over the last ten years;

(6) Evaluate the possible efficiencies of combining existing Ohio Department of Development housing-related programming with those of the OHFA.

The chairperson may include other relevant areas of study as necessary.

The OHSC will commence on the act's effective date and is required to provide a report expressing its findings and financial, policy, or legislative recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before March 31, 2012.

The act requires that all reasonable expenses incurred by the OHSC in relation to its purpose be paid by OHFA funds, and allows the OHSC to contract with the State Auditor and other independent entities for up to $200,000 to carry out its responsibilities, including financial- and performance-based audits and other services. The act allows the Auditor of State to contract with an independent auditor. The act prohibits an entity that has a financial or vested interest in the OHFA, its affiliates, or its nonprofit partners from contracting with the OHSC for services.

Ohio Film Office

(Section 261.20.20)

The act requires the Ohio Film Office to do the following:

--Promote media productions in Ohio and help the industry optimize its production experience by enhancing local economies through increased employment and tax revenues and ensuring an accurate portrayal of Ohio;

--Serve as an informational clearinghouse and provide technical assistance to the media production industry;

--Promote Ohio as the ideal site for media production.

The act also states that the primary objective of the Office is to encourage development of a strong capital base for electronic media production in order to achieve an independent, self-supporting industry in Ohio. Other objectives include (1) attracting private investment for the industry, (2) developing a tax infrastructure that

encourages private investment, and (3) encouraging increased employment opportunities within this sector and increased competition with other states.

Workforce development

(Section 261.40.10)

The Director of Development and the Director of Job and Family Services are authorized by the act to enter into interagency agreements between the two departments and take other actions to further integrate workforce development into a larger economic development strategy, to implement the recommendations of the Workforce Policy Board, and to complete activities related to the transition of the administration of employment programs identified by the Board.

DEPARTMENT OF DEVELOPMENTAL DISABILITIES (DDD)

- Increases to 22 (from 21) the age at which an individual ceases to qualify for programs established by the Director of the Ohio Department of Developmental Disabilities (ODODD) for individuals with intensive behavioral needs.

- Specifies additional purposes for which the ODODD Director may use ODODD's funds and requires money in the Community Developmental Disabilities Trust Fund to be used for those purposes.

- Permits the Director to establish priorities for using funds appropriated to ODODD.

- Repeals a provision that required funds appropriated for purposes of fulfilling the state's obligations under the consent order filed in *Martin v. Strickland*, which required the state to make a good faith effort to expand home and community-based services for persons with disabilities, to be in an appropriation item that authorizes expenditures only for purposes of fulfilling those obligations.

- Authorizes the ODODD Director to establish an Interagency Workgroup on Autism.

- Eliminates obsolete laws governing ODODD's former Purchase of Service Program for residential services.

- Permits ODODD to enter into a contract with a person or government agency to provide residential services to individuals with mental retardation or developmental disabilities in need of residential services.

- Permits the ODODD Director to authorize, in fiscal years 2012 and 2013, innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and county boards of developmental disabilities (county DD boards).

- Repeals an obsolete law that permitted, under certain circumstances, a residential facility for persons with mental retardation and developmental disabilities to obtain a license without providing ODODD a copy of a development plan for the proposed residential facility that had been approved by a county DD board.

- Repeals a provision that required ODODD to provide or arrange for the provision of residential services for (1) former residents of institutions under ODODD's jurisdiction who ceased to be residents because of an institution's closure or significant reduction in occupancy, and (2) an equal number of individuals, from

each county represented by the former residents, who need residential services but are not receiving them.

- Permits a developmental center to provide services to persons with mental retardation and developmental disabilities living in the community or to providers of services to these persons.

- Revises the conditions under which personnel of a residential facility with 17 or more resident beds may perform certain medical tasks for residents with mental retardation and developmental disabilities when the residents are on a field trip.

- Reduces to eight (from ten) the number of times a county DD board that shares a superintendent or other administrative staff with one or more other county DD boards is to meet each year following its annual organizational meeting.

- Revises the law governing waiting lists for county DD board services by establishing requirements that apply separately to waiting lists for (1) non-Medicaid services and (2) home and community-based services provided under ODODD-administered Medicaid waiver programs.

- Reduces the annual fee that a county DD board pays regarding home and community-based services provided under an ODODD-administered Medicaid waiver program from 1.5% to 1.25% of the total value of all Medicaid-paid claims for the services provided during the year to an individual eligible for services from the board.

- Requires a county DD board to ensure that at least a certain number of individuals are enrolled in *any* of ODODD's Medicaid waiver programs, rather than *each* of the waiver programs.

- Eliminates a requirement that the ODODD Director's rules regarding programs and services that county DD boards offer include standards for providing (1) environmental modifications and (2) specialized medical, adaptive, and assistive equipment, supplies, and supports.

- Eliminates a requirement that county DD boards annually certify to the ODODD Director the average daily membership in various programs and the number of children enrolled in approved preschool units.

- Eliminates a requirement that the ODODD Director adopt rules establishing a formula for the distribution of Family Support Services funds to county DD boards of developmental disabilities and instead provides, for fiscal years 2012 and 2013, that the Director is to consult with county DD boards to establish the formula.

- Provides that, in fiscal years 2012 and 2013, the ODODD Director may provide funds to county DD boards for the purpose of addressing economic hardships and to promote efficiency of operations.

- Prescribes new formulas for allocating among county DD boards tax equity payments, which under the new formulas are to be used to pay the nonfederal share of Medicaid expenditures for home and community-based services and care management.

- Requires the ODODD Director to establish a methodology to be used in fiscal years 2012 and 2013 to estimate the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

- Authorizes the ODODD Director to withhold amounts from a county DD board that fails to pay fully any amount owed to ODODD by the time it is due.

- Authorizes the Ohio Developmental Disabilities Council to establish a two-year pilot program to allow Council members to remotely attend meetings by teleconference or video conference.

Age limit for intensive behavioral needs programs

(R.C. 5123.0417)

The act expands eligibility for programs established by the Director of the Ohio Department of Developmental Disabilities (ODODD) for individuals with intensive behavioral needs by increasing to 22 (from 21) the age at which an individual ceases to qualify for such programs. The ODODD Director must establish one or more programs for such individuals. Continuing law permits the programs to do any of the following:

(1) Establish models that incorporate elements common to effective intervention programs and evidence-based practices in services for children with intensive behavioral needs;

(2) Design a template for individualized education plans and individual service plans that provide consistent intervention programs and evidence-based practices for the care and treatment of children with intensive behavioral needs;

(3) Disseminate best practice guidelines for use by families of children with intensive behavioral needs and professionals working with such families;

(4) Develop a transition planning model for effectively mainstreaming school-age children with intensive behavioral needs to their public school district;

(5) Contribute to the field of early and effective identification and intervention programs for children with intensive behavioral needs by providing financial support for scholarly research and publication of clinical findings.

Additional purposes for using ODODD funds

(R.C. 5123.0418, 5123.352, and 5126.19 (repealed))

The act repeals a provision that specified the reasons for which the ODODD Director was permitted to grant temporary funding from the Community Developmental Disabilities Trust Fund. Instead, the act generally permits the Director to use funds appropriated to ODODD for certain purposes, some of which applied to the Community Developmental Disabilities Trust Fund. The purposes expressly specified in the act are in addition to other purposes for which funds are appropriated to ODODD. The act specifies the following purposes:

(1) The following to assist persons with mental retardation and developmental disabilities remain in the community and avoid institutionalization: (a) behavioral and short-term interventions, (b) residential services, and (c) supported living;

(2) Respite care services;

(3) Staff training to help the following personnel serve persons with mental retardation and developmental disabilities in the community: (a) employees of, and personnel under contract with, county boards of developmental disabilities (county DD boards), (b) employees of providers of supported living, (c) employees of providers of residential services, and (d) other personnel the Director identifies.

The act permits the Director to establish priorities for using funds for these purposes, but requires that the funds be used in a manner consistent with the appropriations that authorize the Director to use the funds and all other state and federal laws governing the use of the funds.

Separate appropriation item regarding *Martin v. Strickland*

(R.C. 126.04 (repealed))

The act repeals a provision, enacted by the main appropriations act of the 127th General Assembly (Am. Sub. H.B. 119), that required funds appropriated for purposes of fulfilling the state's obligations under the consent order filed in *Martin v. Strickland* to be in an appropriation item that authorizes expenditures only for purposes of fulfilling

those obligations. The *Martin v. Strickland* case was brought by persons seeking to give individuals with mental retardation or developmental disabilities the ability to choose community-based, integrated residential services over placement in institutional care, such as a nursing facility.[39]

Interagency workgroup on autism

(R.C. 5123.0419 (primary) and 3323.31)

The act permits the ODODD Director to establish an interagency workgroup on autism for the purpose of improving the coordination of Ohio's efforts to address the service needs of individuals with autism spectrum disorders and the families of those individuals. The Director is permitted to enter into interagency agreements that specify any of the following:

(1) The roles and responsibilities of government entities that enter into the agreements;

(2) Procedures regarding the receipt, transfer, and expenditure of funds necessary to achieve the goals of the workgroup;

(3) The projects to be undertaken and activities to be performed by the government entities that enter into the agreements.

Money received from the participating government entities must be deposited in the Interagency Workgroup on Autism Fund, which the act creates. Money in the fund must be used by ODODD solely to support the workgroup's activities.

Purchase of Service Program

(R.C. 5123.18 (primary), 3721.01, 5123.01, 5123.051, 5123.171, 5123.172, 5123.191, 5123.194, and 5126.04; R.C. 5123.181 (repealed))

The act eliminates the laws governing the Purchase of Service Program that is no longer administered by ODODD. Those laws specified the procedures that were to be used in entering into contracts with various types of providers who offered residential services to individuals with mental retardation and developmental disabilities.

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[39] The settlement in *Martin v. Strickland* included a requirement that ODODD and the Ohio Department of Job and Family Services request funding for an additional 1,500 slots for the Individual Options Medicaid waiver program in the state budget for fiscal years 2008 and 2009. Another requirement was for ODODD to conduct surveys of residents of state-run developmental centers and private and county-owned intermediate care facilities for the mentally retarded to determine which residents preferred home and community-based services, if available.

ODODD's residential services contracts

(R.C. 5123.18)

The act permits ODODD to enter into a contract with a person or government agency to provide residential services to individuals with mental retardation or developmental disabilities in need of residential services. The act specifies that to be eligible to enter into a contract with ODODD, a person or government entity and the home in which the residential services are provided must meet all applicable standards for licensing or certification by the appropriate government entity.

ODODD innovative pilot projects

(Section 263.20.80)

The act permits the ODODD Director to authorize innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and county DD boards. This authority exists only for fiscal years 2012 and 2013.

The act permits a pilot project to be implemented in a manner inconsistent with the laws or rules governing ODODD and county DD boards; however, the act prohibits the Director from authorizing a pilot project to be implemented in a manner that would cause Ohio to be out of compliance with any requirements for a program funded in whole or in part with federal funds. Before authorizing a pilot project, the ODODD Director must consult with entities interested in the issue of developmental disabilities, including the Ohio Provider Resource Association, Ohio Association of County Boards of Developmental Disabilities, and ARC of Ohio.

Obsolete residential facility licensure law

(R.C. 5123.193 (repealed), 5111.21, 5111.211, 5123.19, and 5123.45)

The act repeals an obsolete law enacted by Am. Sub. H.B. 1 of the 128th General Assembly that permitted certain residential facilities for persons with mental retardation and developmental disabilities to obtain a license without providing ODODD a copy of a development plan for the proposed residential facility that had been approved by a county board of developmental disabilities. The law became obsolete because the deadline for submitting the license application occurred in February 2010.

Residential services for former institution residents and unserved individuals

(R.C. 5123.211 (repealed))

The act repeals a provision that required ODODD to provide or arrange for the provision of residential services[40] for both of the following:

(1) Former residents of institutions under ODODD's jurisdiction who ceased to be residents because of (a) the institution's closure, or (b) the institution's population being reduced 40% or more in a period of one year.

(2) An equal number of individuals, from each county represented by the former residents, who need residential services but are not receiving them.

Developmental center services

(Section 263.20.30)

The act permits an ODODD-operated residential center for persons with mental retardation and developmental disabilities (i.e., a developmental center) to provide services to persons with mental retardation and developmental disabilities living in the community or to providers of services to these persons. ODODD is permitted to develop a method for recovery of all costs associated with the provision of the services.

Rate increase for serving former developmental center residents

(Section 263.20.70)

Subject to approval by the U.S. Centers for Medicare and Medicaid Services, the Ohio Department of Job and Family Services is required by the act to increase the rate paid to a provider under the Individual Options Waiver by 52¢ for each 15 minutes of routine homemaker/personal care provided to an individual for up to a year if all of the following apply:

--The individual was a resident of a developmental center immediately prior to enrollment in the waiver;

--The provider begins serving the individual on or after July 1, 2011;

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[40] "Residential services" are services necessary for an individual with mental retardation or a developmental disability to live in the community, including room and board, clothing, transportation, personal care, habilitation, supervision, and any other services ODODD considers necessary for the individual to live in the community (R.C. 5123.18(A)(3)).

--The ODODD Director determines that the increased rate is warranted by the individual's special circumstances, including the individual's diagnosis, service needs, or length of stay at the developmental center, and that serving the individual through the Individual Options Waiver is fiscally prudent for the Medicaid program.

Medical tasks during field trips from residential facilities

(R.C. 5123.42)

The act revises the law governing when employees and contract workers who provide specialized services to individuals with mental retardation and developmental disabilities (MR/DD personnel) may perform certain medical tasks for residents of a residential facility with 17 or more residents who are on a field trip. The MR/DD personnel may do the following with nursing delegation: perform health-related activities, administer oral and topical prescribed medications, administer prescribed medications through gastrostomy and jejunostomy tubes that are stable and labeled, and perform routine tube feedings using gastrostomy and jejunostomy tubes that are stable and labeled.

The MR/DD personnel may perform the medical tasks while on the field trip when certain conditions are met, including both of the following:

(1) Not more than a certain number of field trip participants are residents who have health needs requiring the administration of prescribed medications (excluding participants who self-administer prescribed medications or receive assistance with self-administration of prescribed medications).

(2) The residential facility staffs the field trip with MR/DD personnel in such a manner that one person will administer prescribed medications, perform health-related activities, or perform tube feedings for not more than a certain number of participants if at least one of those participants has health needs requiring the person to administer prescribed medications through a gastrostomy or jejunostomy tube.

The act revises the first of these conditions by increasing to ten (from five) the number of field trip participants who may have health needs requiring the administration of prescribed medications. The act revises the second of these conditions by increasing to four (from two) the number of participants for whom one person may perform the medical tasks.

County DD board meetings

(R.C. 5126.029)

The act reduces to eight (from ten) the number of times a county DD board that shares a superintendent or other administrative staff with one or more other county DD boards is to meet each year following its annual organizational meeting.

County DD boards' waiting lists

(R.C. 5126.042 (primary), 5111.872, 5126.054, 5126.08, and 5126.41)

The act revises the law governing waiting lists that county DD boards establish for their services. The requirements that applied under prior law are generally eliminated. In place of those requirements, the act establishes requirements for waiting lists that apply separately to (1) non-Medicaid services and (2) home and community-based services provided under ODODD-administered Medicaid waiver programs.

Non-Medicaid services

Under the act, a waiting list for non-Medicaid services is to be established in accordance with the plan each county DD board must develop regarding the facilities, programs, and other services the board makes available with its available resources. A board may establish priorities for placing individuals on the waiting list. The priorities must be consistent with the board's plan and applicable law. One or more waiting lists for non-Medicaid services may be established.

Home and community-based services under Medicaid waivers

The act establishes more requirements regarding waiting lists for home and community-based services provided under ODODD-administered Medicaid waiver programs than it does for waiting lists for non-Medicaid services. The act requires ODODD to adopt rules governing waiting lists for such home and community-based services, but it does not require rules to be adopted for waiting lists for non-Medicaid services.

The act includes provisions regarding the order in which individuals on a waiting list for home and community-based services are to receive the services. An individual's date of placement on the waiting list is to be the date a request is made to the county DD board for the services. A board must provide for an individual who has an emergency status to receive priority status on the waiting list. The act's definition of "emergency status" is generally the same as prior law's definition of "emergency." An individual with mental retardation or developmental disabilities has an emergency status when the individual is at risk of substantial self-harm or substantial harm to

others if action is not taken within 30 days. A board also must provide for an individual to receive, in accordance with ODODD's rules, priority status if (1) the individual is receiving supported living, family support services, or adult services for which no federal financial participation is received under the Medicaid program, (2) the individual's primary caregiver is at least 60 years of age, or (3) the individual has intensive needs as determined in accordance with ODODD's rules. If two or more individuals on the waiting list have priority for these reasons, a board must use criteria specified in ODODD's rules in determining the order in which the individuals will be offered the services. However, an individual who has priority because the individual has an emergency status is to have priority over all other individuals on the waiting list who do not have emergency status.

The act maintains law that provides that requirements applicable to the Medicaid program override provisions regarding waiting lists.

County DD board fees for home and community-based services

(R.C. 5123.0412)

The act reduces the amount of the fee that county DD boards must pay regarding home and community-based services provided under a Medicaid waiver that ODODD administers. Under prior law, a county DD board had to pay an annual fee equal to 1.5% of the total value of all Medicaid paid claims for such home and community-based services provided during the year to an individual eligible for services from the board. Under the act, the annual fee is 1.25% of the total value of such claims.

County DD boards' enrollment responsibilities for Medicaid waivers

(R.C. 5126.0512 (primary), 5123.0413, and 5126.0510)

The act modifies county DD boards' responsibilities regarding enrollment of individuals in Medicaid waiver programs that ODODD administers. Under prior law and except as provided in ODODD's rules, each county DD board was required to ensure, for each Medicaid waiver program ODODD administers, that the number of individuals eligible for services from the board who were enrolled in an ODODD Medicaid waiver program was no less than the sum of (1) the number of individuals eligible for services from the board who were enrolled in the program on June 30, 2007, and (2) the number of slots for ODODD Medicaid waiver programs the board requested before July 1, 2007, that were assigned to the board before that date but in which no individual was enrolled before that date. Under the act, a county DD board must ensure that at least that number of individuals are enrolled in *any* of ODODD's Medicaid waiver programs, rather than *each* of the programs.

Elimination of rule-making requirements

(R.C. 5126.08)

The act eliminates a requirement that the ODODD Director's rules regarding programs and services that county DD boards offer include standards for providing (1) environmental modifications and (2) specialized medical, adaptive, and assistive equipment, supplies, and supports.

County DD boards' average daily membership reports

(R.C. 5126.12 (primary), 3323.09, and 5126.05)

The act eliminates a requirement that county DD boards annually certify to the ODODD Director (1) the average daily membership in various programs and (2) the number of children enrolled in approved preschool units. The act retains a requirement that the boards certify to the Director all of the boards' income and operating expenditures for the immediately preceding calendar year and provide the expenditures in an itemized report prepared and submitted in the format specified by ODODD.

Formula for distributing Family Support Services funds

(R.C. 5126.11 (primary) and 5126.0511; Section 263.10.30)

Under continuing law's Family Support Services Program, payments are made to an individual with mental retardation or other developmental disability, or the family of the individual, for the purpose of supporting the individual in the family home rather than in an institutionalized setting.

The act eliminates prior law's requirement that the ODODD Director adopt rules establishing a formula for the distribution of Family Support Services funds to county DD boards. In place of the rulemaking procedures for establishing a distribution formula, the act provides that, for fiscal years 2012 and 2013, the ODODD Director is to develop the formula in consultation with the county DD boards.

Funds for economic hardship and operation efficiency

(Sections 263.10.30, 263.10.40, and 263.60)

The act permits the ODODD Director to distribute the funds to county DD boards for the purpose of addressing economic hardships and to promote efficiency of operations. The Director is to consult with the boards to determine the amount of funds used for these purposes and criteria for distribution. The funds may be distributed

from amounts available for the following: (1) the Family Support Services Program, (2) state subsidies to county DD boards,[41] and (3) tax equity payments to the boards.

Tax equity payments

(R.C. 5126.18)

Overview

The act prescribes new formulas for allocating among county DD boards tax equity payments. The formula specified in prior law had not been used for at least the last two biennia.[42]

The first new formula is one that is to apply under most circumstances. The other two formulas are ones that are to apply only when certain conditions exist. Therefore, they are the exceptions to the general formula.

Use of payments

Generally, the act restricts county DD board to using tax equity payments solely to pay the nonfederal share of Medicaid expenditures it was required to pay under prior law for (1) home and community-based services and (2) case management services. The act prohibits tax equity payments from being used to pay any salary or other compensation to county board personnel. On the written request of a county DD board, the ODODD Director may authorize the board to use tax equity payments for infrastructure improvements necessary to support Medicaid waiver administration.

Eligibility for payments

The act requires that beginning on or before May 31, 2011,[43] and on or before May 31 of every second year thereafter, the ODODD Director must determine whether a county is eligible to receive tax equity payments for the ensuing two fiscal years. In determining eligibility, the Director must do both of the following:

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[41] Addressing economic hardship and promoting efficiency is one of three purposes for which the appropriation for county DD board subsidies must be used. The other uses are to provide (1) subsidies to the boards for early childhood and adult services, service and support administration, and supported living and (2) funding, as determined necessary by the ODODD Director, for residential services and support service programs that enable persons to live in the community. (Section 263.10.40.)

[42] *See* Section 337.30.70 of Am. Sub. H.B. 1 of the 128th General Assembly and Section 337.30.43 of Am. Sub. H.B. 119 of the 127th General Assembly.

[43] The act took effect after this deadline had passed.

(1) Determine the six-month moving average,[44] population,[45] and yield per person[46] of each county in Ohio, based on the most recent information available;

(2) Calculate a tax equity funding threshold by adding the population of the county with the lowest yield per person and the populations of the individual counties in order from lowest yield per person to highest yield per person until the addition of the population of another county would increase the aggregate sum to over 30% of the total state population.

A county is eligible to receive tax equity payments for the two-year period if its population is included in the calculation of the threshold and the addition of its population does not increase such sum to over 30% of the total state population.

Certification of the taxable value of property

At the request of the ODODD Director, the act requires the Tax Commissioner or to certify to the Director the taxable value of property on each county's most recent tax list of real and public utility property. The Director may request any other tax information necessary for the purposes of implementing the law governing the allocation of tax equity payments.

General formula for allocating payments

Except when certain conditions exist, beginning in fiscal year 2012 and each fiscal year thereafter, the ODODD Director must make tax equity payments to each eligible county according to a general formula for determining the allocation of such payments. Under the general formula, the Director must make payments to an eligible county in an amount equal to the population of the county multiplied by the difference between the yield per person of the threshold county and the yield per person of the eligible county. For purposes of this formula, the population and yield per person of a county are equal to the population and yield per person most recently determined for that county.

The payments must be made in quarterly installments of equal amounts not later than September 30, December 31, March 31, and June 30 of each fiscal year.

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[44] "Six-year moving average" means the average of the per-mill yields of a county for the most recent six years (R.C. 5126.18(A)(4)).

[45] "Population" of a county means that shown by the federal census for a census year or, for a noncensus year, the population as estimated by the Department of Development (R.C. 5126.18(A)(3)).

[46] "Yield per person" means the quotient obtained by dividing the six-year moving average of a county by the population of that county (R.C. 5126.18(A)(5)).

Exceptions to the general formula

First alternative formula – $20,000 range

The general formula for determining tax equity payments does not apply for fiscal years 2012 through 2014 if, in fiscal year 2012, the amount determined pursuant to the general formula is at least $20,000 greater, or $20,000 less, than the amount of tax equity payments the county received in fiscal year 2011. Instead, the county's tax equity payments for fiscal year 2012 through 2014 equal the following:

- For fiscal year 2012, one-fourth of the amount calculated for the eligible county under the general formula plus three-fourths of the amount of tax equity payments the county received in fiscal year 2011.
- For fiscal year 2013, one-half of the amount calculated for the eligible county under the general formula plus one-half of the amount of tax equity payments the county received in fiscal year 2011.
- For fiscal year 2014, three-fourths of the amount calculated for the eligible county under the general formula plus one-fourth of the amount of tax equity payments the county received in fiscal year 2011.

Second alternative formula – tax equity payments are greater than amount appropriated to ODODD

The general formula or the first alternative formula for determining tax equity payments does not fully apply in any fiscal year if the total amount of tax equity payments for all eligible counties is greater than the amount appropriated to ODODD for the purpose of making such payments in that fiscal year. Instead, the act requires the ODODD Director to reduce the payments to each eligible county DD board in equal proportion. If the total amount of tax equity payments as determined under the general formula or first alternative formula is less than the amount appropriated to ODODD for that purpose, the Director must determine how to allocate the excess money after consultation with the Ohio Association of County Boards Serving People with Developmental Disabilities.

No payments to regional councils

The act restricts the payment of tax equity payments to eligible county DD boards. No regional council or other entity is to receive such payments.

Audits

The act authorizes the ODODD Director to audit any county DD board receiving tax equity payments to ensure appropriate use of the payments. If the Director determines that a board is using payments inappropriately, the Director must notify the board in writing of the determination. Within 30 days after receiving the Director's notification, the board must submit a written plan of correction to the Director. The Director may accept or reject the plan.

If the Director rejects the plan, the Director is authorized to require the board to repay all or a portion of the amount of tax equity payments used inappropriately. The Director is required to distribute any tax equity payments returned to other eligible county DD boards in accordance with a plan developed by the Director after consultation with the Ohio Association of County Boards Serving People with Development Disabilities.

County DD board share of nonfederal Medicaid expenditures

(Section 263.10.50)

The act requires the ODODD Director to establish a methodology to be used in fiscal years 2012 and 2013 to estimate the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, continuing law requires the board to pay this share for home and community-based services provided to an individual who the board determines is eligible for board services.[47]

Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

Withholding amounts owed by county DD boards

(Section 263.20.10)

Under the act, if a county DD board does not fully pay any amount owed to ODODD by the time it is due, the ODODD Director is authorized to withhold the unpaid amount from any amounts due to the board. The act permits the Director to use any appropriation item or fund used by ODODD to transfer cash to any other fund used by ODODD in an amount equal to the amount owed by the board. The transfers are to be made using an intrastate transfer voucher.

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[47] R.C. 5126.0510.

Ohio Developmental Disabilities Council remote attendance pilot program

(Section 263.20.90)

The act authorizes the Ohio Developmental Disabilities Council to establish a two-year pilot program to allow Council members to remotely attend a public Council meeting by teleconference or video conference in lieu of physically attending the meeting. At each Council meeting that includes members in attendance by teleconference or video conference, at least three Council members must be physically present. The act permits any Council meeting to be held with members in attendance by teleconference or video conference; however, the Council must hold at least one meeting each year without permitting attendance by teleconference or video conference.

The act specifies that a member attending a Council meeting by teleconference or video conference must be counted for purposes of determining whether a quorum is present for the transaction of business. The member must be permitted to vote at the meeting.

Report to the General Assembly

If the Council establishes the pilot program, the act requires the Council to submit a report to the General Assembly not later than June 30, 2012 (which is one year after the act's immediate effective date) to assist the recipients in determining whether legislation establishing remote attendance by teleconference or video conference for the meetings of other public bodies would be beneficial. The report must include all of the following:

(1) A description of the effect of teleconferencing or video conferencing on the operation of the Council meetings;

(2) An accounting of any costs incurred or savings realized by the Council;

(3) Regarding the meetings held during the pilot program, all of the following: (a) each meeting notice, (b) Council member attendance records, (c) a description of public and media attendance, (d) a summary or copy of any comments made by the public or media regarding the use of teleconferencing or video conferencing, (e) the minutes for each meeting, (f) an accounting of the costs incurred for each meeting, and (g) a description of any local media coverage of a teleconference or video conference meeting.

Rule-making authority

The act permits the Council to adopt any rules it considers necessary to implement the pilot program. The rules must be adopted in accordance with the Administrative Procedure Act and, at a minimum, do the following:

(1) Allow Council members to attend a public Council meeting by teleconference or video conference in lieu of physically attending the meeting;

(2) Establish a method for verifying the identity of a member who attends a meeting by teleconference or video conference;

(3) Establish a policy for distributing and circulating necessary documents to Council members, the public, and the media in advance of a meeting at which members are permitted to attend by teleconference or video conference.

COMMISSION ON DISPUTE RESOLUTION & CONFLICT MANAGEMENT (CDR)

- Repeals the Dispute Resolution and Conflict Management Law.
- Abolishes the 12-member Ohio Commission on Dispute Resolution and Conflict Management and terminates the positions of Executive Director and personnel of the Commission.
- Abolishes the Dispute Resolution and Conflict Management Commission Gifts, Grants, and Reimbursements Fund in the state treasury.

Repeal of Dispute Resolution and Conflict Management Law

(R.C. 179.01, 179.02, 179.03, and 179.04)

Abolition of Commission on Dispute Resolution and Conflict Management

The act repeals the Dispute Resolution and Conflict Management Law. It abolishes the Ohio Commission on Dispute Resolution and Conflict Management, consisting of 12 members. The purpose of the Commission under prior law was to provide, coordinate, fund, and evaluate dispute resolution and conflict management education, training, and research programs in Ohio, and to consult with, educate, train, provide resources for, and otherwise assist and facilitate other persons and public or private agencies, organizations, or entities that are engaged in activities related to dispute resolution and conflict management. The members of the Commission served without compensation, but each member was reimbursed for actual and necessary expenses incurred in the performance of official duties and actual mileage for each mile necessarily traveled in the performance of official duties.

Among the duties of the Commission under prior law were to adopt rules to govern the application for, and the awarding of, grants made available by the Commission out of the Dispute Resolution and Conflict Management Commission Gifts, Grants, and Reimbursements Fund (see below); to apply for grants to provide for the operation of dispute resolution and conflict management programs (see definition below; hereafter "DRCM programs") and adopt standards for the evaluation of funded DRCM programs; and to provide technical aid and assistance to DRCM programs and to public and private agencies and organizations that provided these programs or engaged in dispute resolution and conflict management services.

Abolition of Dispute Resolution and Conflict Management Commission Gifts, Grants, and Reimbursements Fund

The act abolishes the Dispute Resolution and Conflict Management Commission Gifts, Grants, and Reimbursements Fund formerly established in the state treasury. All donations, grants, awards, bequests, gifts, reimbursements, and similar funds received by the Commission were deposited in the Fund under prior law.

Termination of Commission's Executive Director and other personnel positions

The act terminates the positions of Executive Director appointed by the Commission and all personnel appointed by the Executive Director. Prior law required the Executive Director to appoint and set the compensation of personnel necessary for the efficient operation of the Commission office, to maintain financial records pertaining to the awarding of grants and contracts, and to report to the Commission on all relevant data pertaining to the operations, costs, and projected needs of the Commission office and on recommendations for legislation or amendments to court rules that may be appropriate to improve DRCM programs.

Definitions under prior law

Prior law defined the following:

"Dispute resolution and conflict management" included any process that assists persons with a dispute or a conflict to resolve their differences without further litigation, prosecution, civil unrest, economic disruption, or violence.

"Dispute resolution and conflict management program" meant any or both of the following:

(1) A program that provided or encouraged dispute resolution and conflict management, including, but not limited to, a program that provided or encouraged mediation or conciliation, a mini-trial program, a summary jury trial, or nonbinding arbitration. The program could serve the legal community, business community, public sector, private sector, or private individuals, or any combination of them, and its scope could include disputes and conflicts in the domestic context, international context, or both.

(2) A program that provided education or training, in the primary and secondary schools and colleges and universities of Ohio and in other appropriate educational forums, about the elimination, prevention, resolution, and management of disputes and conflicts in the domestic and international context.

DEPARTMENT OF EDUCATION (EDU)

I. School Financing

State school funding

- Repeals the school funding model known as the "Evidence Based Model" or "EBM."
- To fund school districts for fiscal years 2012 and 2013, requires the Department of Education to compute and pay each city, exempted village, and local school district an amount based on the district's per pupil funding paid for fiscal year 2011, adjusted and indexed by the district's relative tax valuation per pupil.
- Requires the Department to pay a supplement to guarantee all districts, for each of fiscal years 2012 and 2013, at least as much state operating funding as they received for fiscal year 2011 less the federal stimulus amount for fiscal year 2011.
- Requires the Department to pay an additional subsidy of $17 per student to school districts and community schools that are rated "excellent with distinction" or "excellent."
- Sets the formula amount at $5,653 for transfer payments for students attending community schools, STEM schools, other districts through open enrollment, and colleges and universities through the Post-Secondary Enrollment Options Program.
- Discontinues the practice of using the prior year's October student count unless the current year's October count is 2% greater and, instead, requires use of the current-year October count to derive a district's formula ADM.
- Retains the EBM's feature of counting each kindergarten student as one full-time equivalent student.
- Retains and recodifies the special education funding weights and categories from the EBM.
- For fiscal years 2012 and 2013, requires use of the former weights and categories for computing special education transfer payments to community schools, STEM schools, and other school districts for excess special education cost and for state payments for catastrophic costs.
- Repeals the changes to the gifted education maintenance of effort requirements enacted by H.B. 30 of the 129th General Assembly, but establishes a similar

maintenance of effort requirement, based on fiscal year 2009 gifted education funding, in appropriations language for each year of the fiscal biennium.

- Retains and recodifies the transportation funding formula enacted at the same time as the EBM, but suspends its operation for fiscal years 2012 and 2013.

- Retains the fiscal year 2009 per pupil level of payments for community schools and STEM schools for special education, vocational education, poverty-based assistance, and parity aid.

- Eliminates the School Funding Advisory Council.

- Makes other miscellaneous school funding changes.

School expenditure and performance data

- Requires the Department of Education to develop, by January 1, 2012, and the State Board of Education to adopt, by July 1, 2012, standards for determining the amount of operating expenditures for classroom instruction and for nonclassroom purposes spent by a school district, community school, e-school, or STEM school.

- Requires the Department to use the expenditure reporting standards and existing data to rank each district, community school, e-school, and STEM school according to percentage of operating expenditures for classroom instruction.

- Requires the Department to denote, within the classroom expenditure rankings, districts and schools that are (1) among the lowest 20% statewide in total operating expenditures per pupil or (2) among the highest 20% statewide in academic performance index or career-technical performance measures.

- Requires the Department, annually, to report each district's, community school's, e-school's, and STEM school's rank according to (1) performance index score, (2) student performance growth, (3) career-technical performance measures, (4) expenditures per pupil, (5) percentage of expenditures for classroom instruction, and (6) performance of, and opportunities for, identified gifted students.

- Requires the Department, annually, to report each separate school building's rank according to performance index score among all public school buildings.

- Requires the Department to report annually to each school district the ratio of its operating spending for instructional purposes to its spending for administrative purposes, its per pupil amount for each purpose, its percentage of district funds spent for operating purposes, and the statewide average of each of those items.

- Requires each district to post the expenditure information reported to it by the Department on the district's web site and to make it available to parents and taxpayers in some other fashion.

Other school financing provisions

- Permits a fiscal emergency school district, with the approval of the Director of Budget and Management and the state Superintendent, up to ten years to reimburse the state for a payment from the School District Solvency Assistance Fund, in lieu of the standard two-year repayment period.

- Authorizes a school district to enter into a contract without attaching the certificate of adequate resources otherwise required by law, if an alternative certificate is attached certifying that the contract is a multi-year contract for essential non-payroll items and the contract is more cost effective than single-year contracts.

- Specifically permits a school district board to transfer any unencumbered money remaining in the district's textbook and instructional materials fund on July 1, 2011 (when the requirement to have that set-aside fund was repealed) to the district's general fund to be used for any general fund purpose.

- Updates statutory language regarding the kinds of education technology hardware and software and digital content that may be purchased with Auxiliary Services funds for loan to students enrolled in chartered nonpublic schools.

- Allows Auxiliary Services funds to be used to purchase or maintain life-saving medical or other emergency equipment for chartered nonpublic schools.

- Specifically exempts from taxation real property used by a school district, STEM school, community school, educational service center, or chartered nonpublic school for primary or secondary educational purposes.

- Eliminates the Harmon Commission.

II. Community Schools

Moratoriums on opening new community schools

- Eliminates the requirement that a new start-up "brick and mortar" community school, as a condition of opening, must contract with an operator that either manages schools in other states that perform at a level higher than academic watch or, if the operator already manages Ohio schools, manages at least one Ohio school rated higher than academic watch.

- Terminates the moratorium on the establishment of new Internet- or computer-based community schools (e-schools) on January 1, 2013, but limits the number of new e-schools that may open to five per year.

- Specifies that if more than five new e-schools have sponsorship contracts to open in a particular year, the Department of Education must hold a lottery to select the schools that may open.

E-school standards

- Directs the Superintendent of Public Instruction and the Director of the Governor's Office of 21st Century Education, by July 1, 2012, to develop operational standards for e-schools for possible enactment by the General Assembly.

- Requires e-schools to comply with the legislative standards, if they are enacted by January 1, 2013, or the operational standards of the International Association for K-12 Online Learning, if legislative standards are not enacted by that date.

- Requires e-schools established after January 1, 2013, to comply with the applicable standards when they open, and requires existing e-schools to comply by July 1, 2013.

Direct authorization of community schools

- Creates the Ohio School Sponsorship Program, under which the Department of Education may directly authorize the operation of a limited number of both new and existing community schools, rather than those schools being subject to the oversight of other public or private sponsors.

- Requires the Department to establish the Office of School Sponsorship to perform the Department's duties under the Ohio School Sponsorship Program.

- Permits the contract between the Department and a directly authorized community school to provide for an oversight and monitoring fee of up to 3% of the school's state operating funds.

- Permits the Department to take any of the same actions other sponsoring entities may take to enforce a directly authorized community school's compliance with the law and its contract with the Department.

- Requires the Department to issue annual reports about the community schools participating in the Ohio School Sponsorship Program, and requires the fifth report to include a complete evaluation of the program and recommendations about its continuation.

Collective bargaining at Cleveland conversion schools

- Exempts the employees of a conversion community school sponsored by a "municipal school district" (Cleveland) from collective bargaining, after expiration of their current agreement, if the mayor who appoints the district's board submits a statement to the board and the State Employment Relations Board requesting that the employees be removed from collective bargaining.

Conversion community schools opening in 2011-2012

- Waives the adoption (March 15) and signing (May 15) contract deadlines for new conversion community schools that open in the 2011-2012 school year, but requires that a copy of the adopted and signed contract be filed with the Superintendent of Public Instruction prior to the school's opening.

Location of start-up community schools

- Expands school districts where start-up community schools may be located to include school districts that are ranked by performance index score in the lowest 5% of all districts.

Restrictions on sponsoring additional community schools

- Prohibits community school sponsors from sponsoring additional schools if they (1) are not in compliance with sponsor reporting requirements or (2) are ranked in the lowest 20% on an annual ranking of sponsors by their composite performance index scores.

- Increases to 100 schools (from 50 to 75 schools under prior law, depending on the sponsor) the number of community schools that an entity may sponsor.

- Repeals the requirement that the cap on the number of schools an entity may sponsor must be reduced by one for each school sponsored by the entity that permanently closes.

Other provisions regarding community school sponsors

- Revises procedural deadlines for notification, hearing, and appeal associated with a sponsor's decision to terminate or not renew its contract with a community school.

- Requires a community school whose contract is terminated to close at the end of the current school year.

- Grants civil immunity to community school sponsors and their officers, directors, and employees for any action authorized by the Community School Law or the sponsorship contract that is taken to fulfill the sponsor's responsibility to oversee a community school.

- Repeals the requirement that a community school sponsor have a representative located within 50 miles of each school it sponsors.

- Revises the requirement for the sponsor's representative to meet regularly with the community school's governing authority, by (1) requiring the meetings to occur monthly, rather than every two years, (2) allowing the meeting to be with the school's fiscal officer instead of the governing authority, and (3) requiring the representative to review the school's enrollment records in addition to its financial records.

Governing authority membership

- Prohibits a community school governing authority member, or immediate relative, from being an owner, employee, or consultant of a community school sponsor until one year after the conclusion of the member's term.

- Increases the maximum compensation for governing authority members of start-up community schools from $125 per meeting per month to $425 per meeting or a total of $5,000 per year.

Closure of poorly performing community schools

- Beginning July 1, 2011, replaces the performance criteria that trigger automatic closure of a community school with new criteria for schools that do not offer a grade higher than 3 and for schools that offer any of grades 10 to 12, by requiring those schools to close if they have been in academic emergency for two of the three most recent school years.

Community school employees

- Allows layoffs with respect to teachers returning after a leave of absence due to being employed at a conversion community school to occur only in accordance with procedures in the administrative personnel suspension policy.

Taxes

- Repeals the law stating the intent of the General Assembly that no state funds paid to a community school be used to pay taxes owed by the school.

E-school funding and expenditures

- Specifies that, for state funding purposes, an Internet- or computer-based community school (e-school) student is considered automatically re-enrolled the following school year until the student's enrollment in the school is formally terminated or the student fails to participate in the first 105 hours of learning opportunities offered that year.

- Repeals the requirement that e-schools spend a specified minimum amount per pupil on instruction.

Community school facilities

- Allows a community school to be located in multiple facilities under the same sponsorship contract and to assign students of the same grade to different facilities, if (1) the facilities are all located in the same county and (2) the school is managed by an operator.

- Requires the Department of Education, in the case of a community school with multiple facilities, to assign a unique identification number to the school and to each facility, beginning July 1, 2012.

- Permits two or more community schools to be located in the same facility.

Access to school district property

- Applies the law granting community schools a right of first refusal to purchase school district property to *all* real property owned by the district (instead of just real property suitable for use as classroom space).

- Requires school district boards with real property that has been used for classroom operations since July 1, 1998, but has not been in use for two years, to offer to community schools located within the district the opportunity to purchase or lease the property.

Community school participation in joint educational programs

- Permits a community school to enter into an agreement with one or more school districts or other community schools for the joint operation of an educational program, in the same manner as school districts may do under continuing law.

- Prohibits community schools from charging tuition or fees for their students participating in the joint program (unlike school districts under continuing law).

Standards for dropout recovery programs

- Requires the State Board of Education, by July 1, 2012, to review its previous legislative recommendations for performance standards for community schools serving dropouts and to issue new recommendations.

III. Public College-Preparatory Boarding Schools

Creation

- Permits the establishment of public college-preparatory boarding schools operated by private non-profit entities for the benefit of qualifying at-risk middle or high school students, beginning no earlier than the 2013-2014 school year.

- Requires the State Board of Education to issue a request for proposals from nonprofit organizations interested in operating a college-preparatory boarding school and to enter into a contract with each approved operator.

- Declares each college-preparatory boarding school issued a charter by the State Board a public school and a part of the state's program of education.

- Provides for the governance of a college-preparatory boarding school by a board of trustees consisting of up to 25 members, with five members appointed by the Governor, with the advice and consent of the Senate, and the remaining members appointed pursuant to the school's bylaws.

Student enrollment

- Qualifies a student to attend a college-preparatory boarding school if the student is at risk of academic failure, is from a family with income below 200% of the federal poverty guidelines, and meets at least two other criteria involving academic performance, behavior history, disability status, or family status.

- Further limits enrollment to residents of the school district in which the school is located, and residents of any other school district that agrees to be a participating school district.

- Limits a college-preparatory boarding school to admitting up to 80 students in grade 6 in its first year of operation.

- Allows a college-preparatory boarding school to offer additional grades in subsequent years, provided its total enrollment never exceeds 400.

- Requires each participating school district to provide weekly transportation to and from the college-preparatory boarding school for its resident students enrolled in the school.

Operating funding

- Requires that a boarding school receive for each student enrolled in the school both (1) a per-pupil amount deducted from the state aid account of the student's resident school district, as set forth in an agreement between the district and the boarding school, and (2) a "per-pupil boarding amount" paid directly to the school by the Department of Education.

- Requires that the per-pupil amount deducted from a district's account for payment to a boarding school equal 85% of the operating expenditure per pupil of the district for the previous fiscal year (including both state and district revenues).

- Sets the per-pupil boarding amount at $25,000 per pupil during a college-preparatory boarding school's first fiscal year of operation, with adjustments for inflation in following fiscal years.

- Allows for reductions to the per-pupil boarding amount in any fiscal year the college-preparatory boarding school receives funds from the federal government or other outside funding sources.

College-Preparatory Boarding School Facilities Program

- Establishes the College-Preparatory Boarding School Facilities Program, under which the Ohio School Facilities Commission must provide assistance for the acquisition of classroom facilities to the boards of trustees of college-preparatory boarding schools.

- Specifies that, to be eligible for the assistance, a board of trustees must secure at least $20 million of private money to satisfy its share of facilities acquisition, and that the acquisition of residential boarding facilities and any other non-classroom facilities must be funded through private means.

IV. Scholarship programs

Ed Choice

- Increases the number of Educational Choice scholarships from 14,000 to 30,000 for the 2011-2012 school year and 60,000 thereafter.

- Qualifies students who attend, or would otherwise be assigned to, a district-operated school that, for at least two of the three preceding years, ranked in the lowest 10% of all public school buildings by performance index score, and was not rated excellent or effective in the third year.

- Assigns a lower priority to students who qualify for the Educational Choice scholarship because their district school is ranked in the lowest 10% of all school buildings by performance index score.

- Reduces the amount deducted from school districts' state aid accounts for an Educational Choice Scholarship, from $5,200 to the actual amount of the scholarship.

Cleveland Scholarship Program

- Increases the base amounts of the Cleveland scholarship to equal the maximum amounts allowed for Educational Choice Scholarships ($4,250 for grades K-8 and $5,000 for grades 9-12).

- Allows new students to enter the Cleveland Scholarship Program during high school.

Jon Peterson Special Needs Scholarship Program

- Creates the Jon Peterson Special Needs Scholarship Program to provide scholarships for children with disabilities in grades K through 12 to attend alternative public or private special education programs.

- Requires the Department of Education to develop a document that compares rights under state and federal special education law and rights under the Jon Peterson Special Needs Scholarship Program, and requires school districts to distribute that document to the parents of all special education students.

- Requires the Department to conduct a "formative evaluation" of the Jon Peterson Special Needs Scholarship Program by December 31, 2014.

Autism Scholarship Program

- Specifies that the services provided under the Autism Scholarship Program must include an educational component.

V. Educational Service Centers (ESCs)

- Requires every city, exempted village, and local school district with a student count of 16,000 or less to enter into an agreement with an ESC for services.

- Permits, but does not require, every school district with a student count greater than 16,000 to enter into an agreement with an ESC for services.

- Permits a school district to terminate its agreement with its current ESC, effective June 30, by notifying the ESC governing board by January 1, 2012, or by January 1 of an odd-numbered year thereafter.

- Repeals prior law specifying steps a "local" school district had to follow to leave the territory of its current ESC and annex to an adjacent ESC, including approval of the State Board of Education and referendum by petition of the district's voters.

- Provides procedures for dissolving an ESC if all of its "local" school districts have "severed" from the ESC's territory.

- Permits an ESC governing board to delay reorganizing its subdistricts, if its territory is divided into subdistricts, until July 1, 2012.

- Permits an ESC governing board to appoint an executive committee to initially organize the territory into subdistricts, rather than the board doing it, when an ESC is formed by the merger of two or more smaller ESCs.

- Permits an ESC governing board to appoint additional members to the board who are representative of the "city" and "exempted village" school districts having service agreements with the ESC, rather than only those who are voters of "local" school districts of the ESC's territory.

- Generally limits an ESC's payments, in fiscal year 2012, to 90% of the amount it received for fiscal year 2011 and, in fiscal year 2013, to 85% of the amount it received for fiscal year 2012.

- Authorizes ESCs to enter into service contracts with other political subdivisions, besides school districts.

- Eliminates ESCs' roles regarding "local" school districts' textbook selection, age and schooling certificates, and filing and receipt of student membership records.

- Requires the Governor's Director of 21st Century Education to develop plans for (1) the integration and consolidation of the publicly supported regional shared services organizations, and (2) encouraging communities and school districts to create regional P-16 councils, and to submit legislative recommendations to the Governor and the General Assembly by January 1, 2012.

VI. Teachers and School Employees

Teacher and principal evaluations

- Repeals the requirement for the State Board of Education to establish guidelines for the evaluation of teachers and principals for optional use by school districts and educational service centers (ESCs).

- Requires the State Board, by December 31, 2011, to develop a "standards-based" framework for the evaluation of teachers that includes criteria that distinguish between performance levels of "accomplished," "proficient," "developing," and "ineffective."

- Directs each school district and ESC, by July 1, 2013, to adopt a teacher evaluation policy that conforms with the framework, and applies this requirement to each community school and STEM school receiving federal Race to the Top funds.

- Specifies that an employer's evaluation policy must be implemented at the expiration of the teachers' collective bargaining agreement in effect on September 29, 2011 (the provision's effective date).

- Requires employers to evaluate each teacher annually, except that an employer may evaluate teachers who were rated as "accomplished" on their most recent evaluations every two years.

- Requires 50% of each teacher evaluation to be based on student academic growth, as measured by value-added data derived from the state achievement assessments when applicable and by other assessments identified by the State Board when not applicable.

- Requires employers to use teacher evaluations to inform decisions about retention, promotion, and removal of poorly performing teachers.

- Prohibits an employer from considering seniority when deciding whether to retain a teacher, except when deciding between teachers with comparable evaluations.

- Requires each school district's evaluation procedures for principals (required under continuing law) to be based on principles comparable to the teacher evaluation policy, but tailored to the duties and responsibilities of principals.

Teacher salaries

- Requires school districts, community schools, and STEM schools that receive federal Race to the Top funds annually to adopt a performance-based salary schedule for teachers.

- Requires a teacher's performance for salary purposes to be measured by (1) the level of the teacher's license, (2) whether the teacher is "highly qualified" under federal law, and (3) evaluation ratings.

- Requires the salary schedule to provide for annual adjustments based on teacher evaluations.

- Permits payment of additional compensation to teachers who agree to perform duties that the employer determines warrant extra pay, such as teaching in a school that is hard-to-staff, is underperforming, or has a large proportion of low-income or at-risk students.

- Requires school districts not receiving Race to the Top funds and educational service centers (ESCs) to comply either with (1) the act's requirements for a performance-based salary schedule or (2) continuing law requiring teachers to be paid a minimum salary based on years of service and educational training.

- Repeals the requirement that each school district and ESC file a copy of its teacher salary schedule with the Superintendent of Public Instruction.

Teacher layoffs

- Prohibits a school district from giving preference based on seniority in determining the order of layoffs or in rehiring teachers when positions become available again, except when choosing between teachers with comparable evaluations.

- Specifies that the provisions regarding teacher layoffs prevail over collective bargaining agreements entered into on or after September 29, 2011 (the provisions' effective date).

- Repeals the requirement for an educational service center to give preference in retention during layoffs first to tenured teachers and then to teachers with greater seniority.

Retesting teachers

- Requires each teacher of a core subject area in a building that is ranked in the lowest 10% of all public school buildings according to performance index score to retake all exams needed for licensure in the teacher's subject area and grade level.

- Permits a school district, community school, or STEM school to use the exam results in decisions regarding employment and professional development, but prohibits using the results as the sole factor in employment decisions unless the teacher has failed the same exam three consecutive times.

- Specifies that the teacher is not responsible for the cost of retaking an exam.

- Specifies that a teacher who retakes an exam and provides proof of passage to the teacher's employer is not required to retake the exam again for three years.

Alternative and out-of-state licensure

- Expands the alternative resident educator license to cover teaching in grades K to 12 (instead of grades 4 to 12).

- Changes the qualifications for obtaining and holding the alternative resident educator license by (1) prohibiting any requirement that applicants have a college major in the teaching area, (2) permitting applicants to complete a summer training institute provided by a nonprofit teacher preparation program that has been approved by the Chancellor of the Board of Regents (instead of the pedagogical training institute otherwise required), and (3) allowing license holders to satisfy continuing education requirements with professional development provided through the Chancellor-approved program.

- Prohibits the State Board of Education from establishing qualifications for a resident educator license for Teach for America participants beyond those enacted in H.B. 21 of the 129th General Assembly.

- Requires the State Board of Education, by July 1, 2013, to approve a list of states with licensure standards that are inadequate to ensure that a person with five years of licensure and teaching experience in that state is qualified for a professional educator license in Ohio.

- Directs the State Board to automatically issue a five-year professional educator license to a teacher with at least five years of licensure and teaching experience in a state that is not on the list.

- Requires generally that, until the list is approved, the State Board must issue a one-year provisional educator license to a teacher with at least five years of licensure and teaching experience in another state.

- Prohibits the State Board or Department of Education from having a reciprocity agreement with a state on the list requiring the issuance of a professional educator license to a teacher based on licensure and teaching experience in that state.

Other school employee provisions

- Requires the State Board of Education's rules on the issuance and renewal of a professional career-technical teaching license to include requirements relating to life experience, professional certification, and practical ability, and prohibits the State Board from requiring a person who meets those requirements to complete a degree as a condition for the license.

- Requires the Chancellor of the Board of Regents annually to report value-added data for graduates of Ohio teacher preparation programs who teach English language arts or math in grades 4 to 8 in a public school in Ohio.

- Eliminates the requirement for an adult education instructor to undergo a criminal records check prior to hiring by a school district, community school, STEM school, educational service center, or chartered nonpublic school, if the person had a records check within the previous two years as a condition of being hired for short-term employment with that district, school, or service center.

- Requires the State Board of Education to issue a person a certificate to teach foreign language, music, religion, computer technology, or fine arts in a chartered nonpublic school upon receipt of an affidavit from the person's potential employer, stating that the person has previous instructional training or experience or has specialized expertise that qualifies the person to teach.

- Re-enacts a former law that permits local and exempted village school districts (non-Civil Service school districts) to terminate the positions of transportation employees for reasons of economy and efficiency and to contract with an agent to provide student transportation services, if certain conditions are satisfied.

- Exempts substitutes, adult education instructors who are scheduled to work less than the full-time equivalent of 120 days per school year, or persons employed on an as-needed, seasonal, or intermittent basis from the 15 days sick leave with pay provided to each person who is employed by a school district or ESC.

VII. School Restructuring

Restructuring low-performing schools

- Specifies that if a school is ranked in the lowest 5% of all public school buildings according to performance index score for three consecutive years and is in academic watch or academic emergency, the school district must close the school or take one of several other specified actions to restructure the school.

Parent petitions for school reforms

- Establishes a pilot project in the Columbus City School District under which, upon petition from the parents of at least 50% of the students enrolled in a school that is ranked in the lowest 5% of all public school buildings according to performance index score for three or more years, the district must implement the reform requested by the petitioners, except in certain circumstances.

Innovation schools and innovation school zones

- Allows a school district to designate a single school as an "innovation school," or a group of schools as an "innovation school zone," for the purpose of implementing an innovation plan designed to improve student performance.

- Requires the State Board of Education to waive, with certain exceptions, any education laws or administrative rules necessary to implement the innovation plan.

- Allows any provisions of a collective bargaining agreement to be waived to implement an innovation plan, if at least 60% of the members of the bargaining unit working in each participating school approve the waiver.

- Requires a school district to review the performance of each innovation school and innovation school zone every three years, and permits the district to revoke the designation if the participating schools are not making sufficient improvements in student achievement.

- Directs the Department of Education to issue an annual report on school districts implementing innovation plans.

School district operating standards

- Makes permissive, rather than mandatory as in prior law, the State Board of Education's adoption of certain operating standards for school districts.

Governor's recognition program

- Creates the Governor's Effective and Efficient Schools program to annually recognize the top 10% of all public schools (school districts, community schools, and STEM schools) based on student performance and cost effectiveness.

VIII. Other Education Provisions

Statewide academic standards

- Requires the State Board of Education to revise its academic standards in English language arts, math, science, and social studies "periodically" (instead of every five years).

- Repeals the requirement that the State Board's academic standards specify development of skill sets that (1) relate to creativity, innovation, critical thinking and problem solving, and communication and collaboration and (2) promote personal management, productivity and accountability, and leadership and responsibility.

- Removes the senior project from the high school graduation requirements under the college and work-ready assessment system.

- Requires the Superintendent of Public Instruction and the Chancellor of the Board of Regents, when selecting end-of-course exams as part of the new high school graduation assessment system, to choose multiple assessments for each subject area, and that those assessments must include nationally recognized subject area tests.

- Changes the terminology for the nationally standardized test portion of the new high school graduation assessment system from a national test that measures competencies in science, math, and English to a national test that measures "college and career readiness."

- Eliminates development of a composite score system for the college and work-ready assessment system.

Competency-based high school credit

- Exempts chartered nonpublic schools from having to comply with a State Board of Education plan for competency-based high school credit.

Approval to take GED

- Requires a person 16 to 18 years old to obtain approval to take the General Educational Development (GED) tests from the superintendent of the school district

in which the person was last enrolled or, if the person was last enrolled in a community school or STEM school, from the school principal.

- Permits the Department of Education to require a person younger than 18 also to obtain approval to take the GED from the person's parent or a court official.

- Specifies that, for the purpose of calculating graduation rates for the school district and building report cards, a person who obtains approval to take the GED must be counted as a dropout from the district or school in which the person was last enrolled.

Public records status of elementary achievement assessments

- Specifies that the achievement assessments administered in grades 3 to 8 in the 2011-2012 school year and later are not public records.

Testing of students with disabilities

- Requires the individualized education program (IEP) developed for a disabled student to specify the manner in which the student will participate in the state achievement assessments.

Fees for career-technical education materials

- Permits school districts to charge low-income students for tools, equipment, and materials that are necessary for workforce-readiness training and that may be retained by the students after course completion.

Calamity day make-up

- Allows school districts, chartered nonpublic schools, community schools, and STEM schools to make up a maximum of three calamity days either via lessons posted online or "blizzard bags" (paper lesson plans distributed to students that correspond to online lessons).

- Requires a school district to obtain the written consent of its teacher's union to implement the plan.

Miscellaneous

- Requires the Department of Education, by December 31, 2011, to submit to the Governor and General Assembly a plan and legislative recommendations for providing two years of tuition-free education for individuals age 22 or older through dropout prevention and recovery programs.

- Repeals restrictions on the maximum serving size, fat content, and calorie content of milk sold in school districts, community schools, STEM schools, and chartered nonpublic schools.

- Would have repealed the requirement that school districts, community schools, STEM schools, and chartered nonpublic schools conduct body mass index (BMI) and weight status category screenings for students in certain grades (VETOED).

- Specifically permits a school district, under its intra-district open enrollment policy, to grant a student permanent permission to attend a district school outside of the student's attendance area, so that the student does not need to re-apply annually for permission to attend the school.

- Prohibits disqualification of a student from interscholastic athletics solely because the student's parents do not reside in Ohio, if the student attends school in Ohio and lives in Ohio with a grandparent, uncle, aunt, or sibling who has temporary or legal custody or guardianship of the student.

- Allows a school principal or any other school employee to also serve as the school district's gifted education coordinator if qualified to do so.

- Requires the Superintendent of Public Instruction to establish a pilot project in Columbiana County under which one or more school districts must offer a multiple-track high school curriculum for students with differing career plans, but authorizes postponement of the pilot project if sufficient funds are not available.

- Specifically states that school districts may rent or lease facilities to public or nonpublic institutions of higher education for the use in providing evening and summer classes.

- Repeals laws requiring the Department of Education to establish the State Office of Community Schools, the State Office of School Options, and the State Office of Educator Standards, and permitting the Department to establish the Center for Creativity and Innovation.

- Removes an obsolete reference to the Ohio Sailors' and Soldiers' Home in the school district tuition law.

I. School Financing

Repeal of the Evidence-Based Model and related funding provisions

(Repealed R.C. 3306.01 to 3306.11, 3306.13, 3306.19, 3306.191, 3306.192, 3306.21, 3306.22, 3317.011, 3317.016, 3317.017, 3317.0216, 3317.04, 3317.17, 3329.16, and 3349.242; R.C. 319.301, 3301.07, 3301.16, 3301.162, 3302.031, 3302.05, 3302.07, 3307.31, 3307.64, 3309.41, 3309.48, 3309.51, 3310.08, 3310.41, 3311.06, 3311.19, 3311.21, 3311.29, 3311.52, 3311.76, 3313.29, 3313.482, 3313.55, 3313.64, 3313.6410, 3313.981, 3314.08, 3314.087, 3314.088, 3314.091, 3314.10, 3314.13, 3315.01, 3316.041, 3316.06, 3316.20, 3317.01, 3317.013, 3317.014, 3317.018, 3317.02, 3317.021, 3317.022, 3317.023, 3317.024, 3317.025, 3317.0210, 3317.0211, 3317.0212, 3317.03, 3317.031, 3317.05, 3317.051, 3317.053, 3317.06, 3317.061, 3317.07, 3317.08, 3317.081, 3317.082, 3317.09, 3317.11, 3317.12, 3317.16, 3317.18, 3317.19, 3317.20, 3317.201, 3318.051, 3319.17, 3319.57, 3323.091, 3323.14, 3323.142, 3324.05, 3326.33, 3326.39, 3327.02, 3327.04, 3327.05, 3365.01, 3365.08, 5126.05, 5126.24, 5705.211, 5715.26, 5727.84, and 5751.20)

The act repeals the funding system for city, exempted village, and local school districts that was enacted in 2009 in H.B. 1 of the 128th General Assembly, unofficially known as the "Evidence Based Model" or "EBM." In its place, the act creates a temporary provision to provide funding to school districts based on a wealth-adjusted portion of their state operating funds for fiscal year 2011 under the EBM.

Temporary formula

(Sections 267.30.50 and 267.30.53)

The act establishes a temporary formula to fund schools for the biennium in anticipation of a permanent system to replace the EBM. Under that formula, the Department of Education must compute and pay each city, exempted village, and local school district, for fiscal years 2012 and 2013, an amount based on the district's per pupil amount of funding paid for fiscal year 2011, adjusted by its share of a statewide per pupil adjustment amount that is indexed by the district's relative tax valuation per pupil. The statewide per pupil adjustment amount must be determined by the Department so that the state's total formula aid obligation to school districts does not exceed the aggregate appropriated amount.

The act also provides supplemental funding for each of fiscal years 2012 and 2013 to guarantee each district operating funding that is equal to at least the amount of state operating funding, less federal stimulus funding, the district received for fiscal year 2011 under the EBM.

For a more detailed description of the temporary formula, see the LSC Greenbook for the Department of Education, published on the LSC web site at **www.lsc.state.oh.us/fiscal/greenbooks129/default.htm** and the LSC Comparison Document of the bill as enacted, published at **www.lsc.state.oh.us/fiscal/comparedoc129/default.htm**.

Additional subsidy for high performing districts and community schools

(Section 267.30.56)

The act requires the Department to pay an additional subsidy of $17 per student to each school district or community school that is currently rated as "excellent with distinction" or "excellent" on the annual district and school academic performance report cards.

A district is rated "excellent" if it meets at least 94% of the state performance indicators or has a performance index score of 100 to 120. However, a district that is otherwise excellent must be downgraded to "effective" if it does not make "adequate yearly progress," as used under federal law, for two or more of the same student subgroups for three or more consecutive years. A district is rated "excellent with distinction" if it otherwise has an "excellent" rating and demonstrates more than a standard year of academic growth for two consecutive years on the value-added progress dimension (which measures student academic growth from one year to the next). The state academic performance indicators are 75% student proficiency on all applicable state achievement assessments, 93% attendance rate, and 90% graduation rate.[48]

Formula amount

(R.C. 3317.02)

The act establishes a per pupil "formula amount" to compute transfer payments for students attending community schools, STEM schools, other districts through open enrollment, and colleges and universities through the Post-Secondary Enrollment Options Program. The act sets the formula amount at $5,653 for both fiscal years 2012 and 2013. The formula amount for fiscal year 2009, under the Building Blocks Model, and for fiscal years 2010 and 2011, under the EBM, was $5,732. The act continues to use the latter amount for computing additional weighted funding for special education and vocational education transfers to community schools, STEM schools, and other districts.

[48] R.C. 3302.01, 3302.021, and 3302.03 (none in the act) and R.C. 3302.02.

Student count

(R.C. 3317.02 and 3317.03)

The act discontinues the practice of using the prior year's October student count to derive most districts' formula ADM. Instead, it requires use of the current-year October count to derive the formula ADM for all districts. Each district's formula ADM is used to compute its funding under the act's temporary formula. It also is used in computing a district's share and priority for funding under the state classroom assistance programs administered by the School Facilities Commission.

Continuing law requires each school district, in October of each fiscal year, to report the "average daily membership" of students residing in the district and receiving services either from the district or from other specified providers (including community schools, STEM schools, other districts under open enrollment, and colleges and universities under PSEO). Using this data, the Department of Education derives each district's "formula ADM." Under the EBM, a district's formula ADM generally was based on its October report for the *prior* fiscal year, unless its current average daily membership was more than 2% greater than that of the prior year. In the latter case, under the EBM, the Department had to use the district's report for the current fiscal year to derive its formula ADM.

Counting of kindergarten students

The act retains the EBM's feature of counting each kindergarten student as one full-time equivalent (FTE) student regardless of whether the student is in all-day or half-day kindergarten. Prior school funding models had required that kindergarten students be counted as one-half of one FTE student.

Special education categories and weights

(R.C. 3314.088, 3317.013, 3317.018, and 3326.39)

The act retains and recodifies the EBM's categories and weights for counting of students with disabilities and for future use in funding special education. However, for fiscal year 2012 and 2013, the act requires use of the former (fiscal year 2009) Building Blocks weights and disability categories for computing special education transfer payments to community schools, STEM schools, and to other school districts for excess special education cost,[49] and for state payments for catastrophic costs.[50]

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[49] School districts sometimes contract with other districts to provide special education and related services for students they are unable to serve. Or a student might receive special education and related

Background

To fund special education, both the EBM and the former Building Blocks Model rely on a set of six disability categories and accompanying weights (or multiples) to applied in funding students based on their respective disabilities. The categories and weights of the Building Blocks Model were based on 2001 recommendations from the special education community. The EBM categories and weights were slightly different and were based on more recent recommendations from the special education community.

The table below indicates the six disability categories and corresponding weights for both the EBM (retained and recodified by the act) and Building Blocks Model (used for transfers and catastrophic cost payments under the act for fiscal year 2012 and 2013).

Category	EBM weight	EBM disabilities	BB weight	BB disabilities
1	0.2906	Speech and language disabled	0.2892	Same as EBM
2	0.7374	Specific learning disabled; developmentally disabled; other health impaired-minor	0.3691	Same as EBM
3	1.7716	Hearing disabled; severe behavior disabled	1.7695	Hearing disabled; severe behavior disabled; vision impaired
4	2.3643	Vision impaired; other health impaired-major	2.3646	Other health impaired – major; orthopedically disabled
5	3.2022	Orthopedically disabled; multiple disabilities	3.1129	Multiple disabilities
6	4.7205	Autistic; traumatic brain	4.7342	Same as EBM

services from the joint vocational district to which the resident district belongs. In either case, the resident district owes the cost of services in excess of what the other district received in state payments.

[50] R.C. 3314.088, 3317.018, and 3326.39. Federal special education law requires that states provide a mechanism to fund "high need children." Accordingly, the state distributes additional funds to school districts, community schools, and STEM schools to pay their costs for children whose special education and related services costs exceed a prescribed "catastrophic" threshold amount. Under continuing law, the threshold amount is $27,375 for a child with a disability in categories two through five, and $32,850 for a child with a category six disability. See R.C. 3314.08(E), 3317.022(C)(3), 3317.16(G), and 3326.34.

Category	EBM weight	EBM disabilities	BB weight	BB disabilities
		injured; both visually and hearing impaired		

Both models also prescribe that each of the weights (indicated above) be multiplied by 90% (that is, reduced by 10%).

Gifted education maintenance of effort

(Repealed R.C. 3306.09; R.C. 3302.05, 3302.07, 3317.018, and 3317.024; Sections 267.30.40 and 267.30.50)

As part of its repeal of the EBM, the act repeals changes enacted earlier in 2011, by H.B. 30 of the 129th General Assembly, that modified school districts' gifted education "maintenance of effort" under the EBM and provided for the reinstatement in fiscal year 2012 of state gifted unit funding. The maintenance of effort changes enacted by H.B. 30: (1) specified that school districts must sustain their fiscal year 2009 level of expenditures on staff providing gifted education services, (2) required districts to account for their maintenance of effort spending to the Department of Education, and (3) directed the Department to monitor and enforce districts' compliance with the maintenance of effort requirements.

However, in the appropriations language for the fiscal biennium, this act (H.B. 153) directs the Department to note on each school district's annual funding statement how much of the district's state funding is allocated for gifted education services. That allocation is to equal the amount the district received, either directly or through funds allocated to educational service centers, in fiscal year 2009 through state gifted education unit funding and supplemental gifted identification funds. The Department must require each district to report data annually so that "the Department may monitor and enforce the district's compliance with the manner in which allocations for . . . gifted education funding may be spent."

Transportation formula

(R.C. 3317.0212; conforming change in R.C. 3317.022(D))

The act retains and recodifies the formula for transportation funding enacted at the same time as the EBM, but suspends its use for fiscal years 2012 and 2013. Instead, a

district's transportation payment is part of the aggregate payment made under the act's temporary funding formula.[51]

That formula bases a district's payments on its transportation costs reported for the prior fiscal year and current year ridership counts. Funding consists of a base payment (adjusted by the district's state share percentage), and additional amounts for districts that transport nontraditional riders (students attending private schools, community schools, or STEM schools), high school students, and students who live between one and two miles from school, and for districts that meet an efficiency target established by the Department of Education. In fiscal years 2010 and 2011, under the EBM, districts were paid only a pro rata portion of the full calculated amount, based on the appropriation. For those years, certain low-wealth, low-rider density districts also could receive an additional payment on top of the pro rata payment. The pro rata payment provision and the additional subsidy are not retained in the formula as it is recodified by the act.

Community school and STEM school payments

(R.C. 3314.08, 3314.13, 3314.088, 3326.33, and 3326.39)

The act continues the practice of counting students who enroll in community schools and STEM schools in the average daily memberships of their resident school districts, crediting those districts with state funds for those students, and deducting from those districts and paying to the respective community school or STEM school a per pupil amount attributable to each individual student. For this purpose, as noted above, for both fiscal years 2012 and 2013, the act sets the per-pupil formula amount for base-cost payments at $5,653, except for deductions and payments for special education and vocational education. Community schools and STEM schools also continue to receive the $50.90 per-pupil base funding supplement as computed for fiscal year 2009 under the Building Blocks Model.

For special education and vocational education payments, the act specifies that deductions and payments be computed by multiplying the respective fiscal year 2009 weight times $5,732.

Additional payments attributable to parity aid and poverty-based assistance, as they would have been determined under the former Building Blocks Model, continue to be paid for students attending community and STEM schools at the fiscal year 2009 per

[51] When the EBM was enacted in H.B. 1 of the 128th General Assembly, the statutory language of the former transportation formula was not eliminated. The act strikes through that language (R.C. 3317.022(D)), which has not been used since fiscal year 2006.

pupil levels for the students' resident school districts. This includes a poverty-based assistance payment for all-day kindergarten students in community schools if their resident districts would have been eligible for that payment in fiscal year 2009.

Abolishment of the School Funding Advisory Council

(Repealed R.C. 3306.29, 3306.291, and 3306.292)

The act repeals the sections of law creating the School Funding Advisory Council and its subcommittees, thereby abolishing them. H.B. 1 of the 128th General Assembly created the 28-member School Funding Advisory Council to recommend biennial updates of the EBM's components. The Council's first report was submitted, as required by law, by December 1, 2010. Thereafter, the Council was required to submit reports by July 1 of each even-numbered year.

Miscellaneous funding provisions

The act makes changes to several other funding provisions, as described below:

(1) Reduces from three to one the number of school funding reports the Department of Education annually must submit to the Controlling Board. The report required under the act is due sometime in each June and must indicate the Department's year-end distributions to each school district. (However, the act retains the prohibition on the distribution of state operating funds to school districts without Controlling Board approval.) (R.C. 3317.01.)

(2) Eliminates a requirement that the Department submit an annual report to the Office of Budget and Management on the amount of local, state, and federal pass-through special education funds allocated for each school district (R.C. 3317.013).

(3) Eliminates a requirement that the Department submit an annual report to the Governor and the General Assembly on the amount of weighted vocational education funding spent by each school district (R.C. 3317.014).

(4) Limits operating payments to an island district to the lesser of its actual cost or 93% of its fiscal year 2011 state payment amount. Specifies that if an island district did not receive any funding in fiscal year 2011, it may not receive funding in either of fiscal years 2012 or 2013. (R.C. 3317.024(A).)

(5) Eliminates a requirement that the Department publish on its web site a spread sheet showing each district's funding for specified "constituent components of the district's 'building blocks' funds" under the former Building Blocks Model (repealed R.C. 3317.016).

(6) Eliminates authority for the state Superintendent to order certain spending requirements under the Building Blocks Model for academic watch or emergency districts (repealed R.C. 3317.017).

(7) Eliminates a provision guaranteeing districts created out of the transfer of territory from one or more other districts, for three successive years, an amount equal to the aggregate paid to the districts prior to the transfer (repealed R.C. 3317.04).

(8) Eliminates the authority of the Department to pay special subsidies for the following:

(a) Operation of special classes for children of migrant workers who are unable to be in attendance in an Ohio school during the entire regular school year (R.C. 3317.024(B));

(b) Guidance, testing, and counseling programs (R.C. 3317.024(C));

(c) Purchase of school buses (R.C. 3317.024(D) and 3317.07);

(d) Purchase of school lunch equipment (R.C. 3317.024(H) and 3317.19); and

(e) Establishment of district mentor teacher programs (R.C. 3317.024(K)).

(9) Eliminates a requirement that the state Superintendent withhold operating funds from a school district that has misspent funds specifically appropriated for textbook purchases (repealed R.C. 3329.16). No such subsidy has been authorized since fiscal year 1999.

(10) Eliminates a prohibition on a school district using state operating funds to pay its share of the operation of a municipal university under agreement with the university (repealed R.C. 3349.242). Currently, there are no municipal universities.

(11) Repeals the statute of the former Building Blocks Model that authorized the payment of "gap aid." Gap aid was a supplement to districts whose effective tax rate was less that the presumed 23-mill charge-off, or less than its share of combined special education, vocational education, and transportation funding. (Repealed R.C. 3317.0216.)

Classroom expenditure data

(R.C. 3302.20)

Expenditure standards

The act requires the Department of Education to develop standards for determining, from the existing data reported under the Education Management Information System (EMIS),[52] the amount of annual operating expenditures for classroom instructional purposes and for nonclassroom purposes for each city, exempted village, local, and joint vocational school district, each community school, and each STEM school. The Department must present the standards to the State Board of Education by January 1, 2012. In developing the standards, the Department must adapt existing standards used by "professional organizations, research organizations, and other state governments."

The State Board must consider the recommended standards and adopt a final set of standards by July 1, 2012.

Ranking of districts and schools based on classroom expenditure

The Department must use the expenditure standards adopted by the State Board and its existing data to rank order districts and schools by classroom and nonclassroom expenditures. However, prior to ranking each district and school, it first must group them into respective categories based primarily on the size of their student populations. There must be not less than three nor more than five groups each of (1) city, exempted village, and local school districts, (2) joint vocational school districts, and (3) brick and mortar community schools. There must be one group each for all Internet- or computer-based community schools (e-schools) and all STEM schools.

Then using the standards, existing data, and these categories of districts and schools, the Department must compute, for fiscal years 2008 through 2012 and annually for each fiscal year thereafter, all of the following:

(1) The percentage of each district's, community school's, e-school's, or STEM school's total operating budget spent for classroom instructional purposes;

(2) The statewide average percentage for all districts, community schools, e-schools, and STEM schools combined spent for classroom instructional purposes;

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[52] EMIS is an electronic database of district and school operational, financial, and student data maintained by the Department of Education.

(3) The average percentage for each category of district or school spent for classroom instructional purposes; and

(4) The ranking of each district, community school, e-school, or STEM school within its respective category according to both of the following:

(a) From highest to lowest percentage spent for classroom instructional purposes;

(b) From lowest to highest percentage spent for noninstructional purposes.

Moreover, the act requires the Department, in its display of rankings within each category (4)(a) and (b) above, to note whether a city, exempted village, or local school district, community school, e-school, or STEM school is (1) among the lowest 20% statewide in operating expenditures per pupil or (2) among the highest 20% statewide in performance index score, as determined for district and school report cards. Similarly, in its display of rankings within each category of joint vocational school districts, the Department must note whether a district is (1) among the lowest 20% statewide in operating expenditures per pupil or (2) among the highest 20% statewide in the career-technical education performance measures required under federal law. See also "**Data on student performance tied to expenditures**" below.

The Department must post the pertinent percentages and rankings in a prominent location on its web site and on each district's or school's annual report card.

Data on student performance tied to expenditures

(R.C. 3302.21)

The act requires the Department of Education to develop a system to rank order, for a separate annual report, all city, exempted village, local, and joint vocational school districts, community schools, and STEM schools according to each of the following measures:

(1) **Performance index score** for each school district, community school, and STEM school and for each separate building of a district, community school, or STEM school. The performance index score is a weighted measure of up to 120 points designed to show improvement over time on the state achievement assessments by students scoring at all levels. It applies to all city, exempted village, and local school districts. But it does not apply to some individual schools, because the school does not offer any grades for which an achievement assessment is given (a K-to-2 school, for example), or to joint vocational school districts. For that reason, the act also requires the state Superintendent to develop another measure of student academic performance and

use that measure to include such schools and districts in the ranking so that all districts, schools, and buildings may be reliably compared to each other.

(2) **Student performance growth from year to year**. In measuring student academic growth, the Department must use the "value-added progress dimension," where it is available, and other measures of student performance growth designated by the state Superintendent for subjects and grades not covered by the value-added progress dimension. The value-added progress dimension is available in subjects and grade levels for which there are state assessments for consecutive years. Thus, the value-added progress dimension is available for grades 4 through 8 in reading and math.[53]

(3) **Performance measures required for career-technical education under federal law**. As part of its state plan for career-technical education, the Department must report to the U.S. Secretary of Education how it will measure career-technical student performance.[54] The act also provides that if a school district is a vocational education planning district ("VEPD") or a "lead district," as designated by the Department, the district's ranking must be based on the performance of career-technical students from that district and all other districts served by that district.[55]

(4) **Current operating expenditures per pupil**;

(5) **Percentage of total current operating expenditures spent for classroom instruction**; and

(6) **Performance of, and opportunities provided to, identified gifted students**, using value-added progress dimensions, if applicable, and other relevant measures designated by the state Superintendent.

The Department, by September 1 of each year, must issue a report for each school district, community school, and STEM school, and each separate building showing its rank on each measure. In addition, the report for each separate building must indicate its rank according to performance index score among *all* public school buildings.

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[53] The value-added progress dimension is a statistical measure of academic gain for a student or group of students over a specific period of time. It is also one of the four performance measures used in ranking districts and schools for the annual report cards. See R.C. 3302.01 and 3302.021, neither in the act.

[54] 20 United States Code 2323.

[55] The Department has designated VEPDs and lead districts among city, exempted village, local, and joint vocational school districts in the state career-technical plan to assure that all students that desire career-technical education have that opportunity in accordance with federal law.

Under the act, the performance index score ranking among all public school buildings is used in other provisions affecting districts, schools, and their employees. (See "**Location of start-up community schools**," "**Educational Choice scholarship – New eligibility**," "**Retesting teachers**," and "**VII. School Restructuring**" below.)

Additional reports of district spending

(R.C. 3302.25)

The act requires additional annual reporting to each school district a comparison of its instructional expenditures to its administrative expenditures. The Department must report to each school district all of the following for the previous fiscal year:

(1) The ratio of its instructional expenditures to its administrative expenditures and the per pupil amounts of each;

(2) The percentage of the district's operating expenditures attributable to school district funds; and

(3) The statewide average among all districts for all of the above.

Each school district, upon receipt of the report, must publish the information in a prominent location on the district's web site and in another fashion "so that it is available to all parents of students enrolled in the district and to taxpayers of the district."

School District Solvency Assistance Fund

(R.C. 3316.20)

To assist a school district in fiscal emergency, the state offers interest-free advances on its state operating funding through the School District Solvency Assistance Fund. A district in fiscal emergency may receive payments from the fund to help it "remain solvent." Prior law required every fiscal emergency district to pay back its advances within two years.

The act retains the two-year standard period for a district to repay its advances from the fund, but it also allows a district up to ten years for repayment, if the Director of Budget and Management and the state Superintendent approve the extra time.

School district certificate of adequate resources

(R.C. 5705.412)

The act authorizes a school district to enter into certain multi-year contracts without attaching the certificate of adequate resources otherwise required by law, if an alternative certificate authorized by the act is attached. Under continuing law, school districts are generally required to attach a certificate to every contract the cost of which exceeds the lesser of $500,000 or 1% of the district's total general fund revenue for the current fiscal year. The certificate must indicate that the district has or will have adequate revenue in approved tax levies, state funding, and other resources to cover the cost of the contract for the entire term of the contract. Except as permitted by the act, a contract that lacks the required certificate of available resources is void, and the law provides for a civil action to recover the funds illegally spent and to levy a fine against any district officer who in absence of good faith violated the requirement.

The act authorizes a school district to enter into a contract without attaching the certificate otherwise required by law, if an alternative certificate is attached certifying the following:

(1) The contract is a multi-year contract for materials, equipment, or non-payroll services "essential to the education program of the district"; and

(2) The multi-year contract demonstrates savings over the duration of the contract as compared to costs that otherwise would have been demonstrated in a single year contract and the terms will allow the district to reduce the deficit it is currently facing in future years as demonstrated in its five-year forecast.

Like the certificate otherwise required under continuing law, the alternative certificate must be signed by the treasurer and president of the board of education and the school district's superintendent; or, if the district is in a state of fiscal emergency, the alternative certificate instead must be signed by a member of the district's Financial Planning and Supervision Commission designated by the Commission.

Left-over textbook set-aside money

(Section 267.60.10)

H.B. 30 of the 129th General Assembly, effective July 1, 2011, repealed the requirement that each school district annually set aside a specific amount into a separate fund for textbooks and instructional materials.[56] Money in that fund that was

[56] Former R.C. 3315.17 and 3315.171.

not spent each year carried over to the next year. Thus, districts could have money left over in those funds when the repeal of the set-aside requirement became effective. The act permits a school district board to transfer any unencumbered money remaining in the district's textbook and instructional materials fund on that date, to the district's general fund to be used for any general fund purpose.

Auxiliary Services funds

(R.C. 3317.06)

The act adds the purchase or maintenance of life-saving medical or other emergency equipment for chartered nonpublic schools as an authorized use of Auxiliary Services funds. It also makes several updates to the kinds of education technology hardware and software and digital content that may be purchased with the funds, as follows:

First, it redefines electronic textbook as "any book or book substitute that a student accesses through the use of a computer or other electronic medium or that is available through an Internet-based provider of course content, or any other material that contributes to the learning process through electronic means." Previously, the Auxiliary Services funds statute defined electronic textbook as "computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, local and remote computer assisted instruction, on-line service, electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means."

Second, it adds to the list of authorized items computer application software designed to assist students in performing single or multiple related tasks, device management software, and learning management software.

Third, it specifies that computer hardware and related equipment includes desktop computers and workstations; laptops, tablets, and other mobile devices; and related operating systems and accessories.

Finally, it removes references to several outdated forms of technology, such as compact disks and video cassette cartridges.

Background

School districts receive state Auxiliary Services funds to purchase goods and services for students who attend chartered nonpublic schools located within their territories. Those moneys may be used to purchase, for loan to students of chartered nonpublic schools, such things as textbooks, electronic textbooks, workbooks,

instructional equipment including computers, and library materials, or to provide health or special education services.

Schoolhouse tax exemption

(R.C. 5709.07(A)(1); Section 757.80)

The act specifically exempts from taxation real property used by a school district, STEM school, community school, educational service center, or a nonpublic school for primary or secondary educational purposes. The exemption includes all land as is necessary for the proper occupancy, use, and enjoyment of the real property by the school for primary and secondary school purposes. The exemption does not apply to any portion of the real property not used for primary or secondary educational purposes.

For purposes of the exemption, the act defines a "nonpublic school" as a nonpublic school that has received a charter from the State Board of Education *and* one for which the State Board prescribes minimum education standards. The plain meaning of this language seems to limit the exemption to schools that meet both criteria; that is; it seems to be limited to *chartered* nonpublic schools. On the other hand, that may not be what is intended. It may be that the exemption is intended to apply to both chartered and nonchartered nonpublic schools.[57]

Prior law exempted "public schoolhouses," which, under Ohio Supreme Court rulings, means any publicly or privately owned facility used for educational purposes for the benefit of the public. *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904, 937 N.E.2d 547, at paragraph 22. To qualify for the exemption, prior law required that the property not be "leased or otherwise used with a view to profit." Under that language, a facility used for public educational purposes leased pursuant to a for-profit lease did not qualify for the exemption. *Id.*, at paragraph 23. The act removes this limiting language, effective for tax year 2011 and thereafter.

[57] A chartered nonpublic school agrees to comply with specified operating standards in return for (1) goods and services for its students purchased with state Auxiliary Services funds and (2) state reimbursement of some of its clerical expenses (see Ohio Administrative Code (O.A.C.) 3301-35-12). A nonchartered nonpublic school does not seek a charter but still must comply with the minimum education standards, which are not as prescriptive as the operating standards applied to chartered nonpublic schools (O.A.C. 3301-35-08).

Abolishment of the Harmon Commission

(Repealed R.C. 3306.50 to 3306.58)

The act abolishes the Harmon Commission, which was established by H.B. 1 of the 128th General Assembly to approve applications for designation of classrooms as "creative learning environments" and to award grants to school districts and community schools that operate such classrooms, if sufficient funds are available for those grants. The Commission was never funded.

II. Community Schools

Moratoriums on opening new community schools

"Brick and mortar" schools

(Repealed R.C. 3314.014, 3314.016, and 3314.017; conforming changes in R.C. 3314.02, 3314.021, 3314.03, and 3314.05)

The act repeals the requirement that a new start-up "brick and mortar" community school may be established only if the school contracts with an operator whose other schools meet certain performance standards. Repealing the operator requirement allows a new "brick and mortar" community school to open without hiring an operator at all or, if the school chooses to have an operator, to hire an operator that does not meet the performance standards specified by prior law. (But see "**Restriction on sponsoring additional community schools**" below.)

Under prior law, to qualify for the exception to the moratorium, the community school had to contract with an operator that manages other schools in the United States that perform at a level higher than academic watch, as determined by the Department of Education. If the operator already manages other schools in Ohio, at least one of the Ohio schools had to be rated higher than academic watch.

E-schools

(R.C. 3314.013; conforming change in R.C. 3314.03)

Effective January 1, 2013, the act ends the outright moratorium on establishing new Internet- or computer-based community schools (e-schools), but it also limits, to five per year, the number of new e-schools that may open once the moratorium is lifted. Under prior law, the moratorium, which has been in place since May 1, 2005, was in effect until the General Assembly enacted standards governing the operation of e-schools.

Under the act, when the moratorium ends, if more than five new e-schools notify the Department of Education that they have signed a contract with a sponsor to open in a particular school year, the Department must conduct a lottery to select the five schools that will be allowed to open that year. This lottery must be held within 30 days after a deadline set by the Department for new e-schools to provide notification of the signing of their sponsorship contract. Under continuing law, each new community school has until May 15 prior to the school year in which it intends to open to sign the sponsorship contract, so presumably the notification deadline will be set shortly after that date.[58] The sponsorship contract of each e-school that is not chosen in the lottery is void, but the school may enter into another sponsorship contract to qualify it for selection to open in a future school year.

Standards for e-schools

(R.C. 3314.013(D) and 3314.23)

Under the act, all e-schools must comply with the operational standards developed by the International Association for K-12 Online Learning.[59] However, if the General Assembly enacts alternative standards for the operation of e-schools by January 1, 2013, e-schools must comply with those standards instead. For this purpose, the act directs the Superintendent of Public Instruction and the Director of the Governor's Office of 21st Century Education, by July 1, 2012, to develop operational standards for e-schools and to submit them to the General Assembly for possible enactment.

Regardless of which standards apply, existing e-schools must comply with them by July 1, 2013. E-schools established after the moratorium on new e-schools ends (see "**E-schools**" above) must comply with the standards when they open.

Direct authorization of community schools

(R.C. 3314.029)

Under continuing law, a community school ordinarily is sponsored by a public or private, tax exempt entity that exercises oversight of the school's operations. The act permits the Department of Education to directly authorize the establishment and operation of a limited number of community schools, rather than those schools being

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[58] R.C. 3314.02(D).

[59] The standards may be accessed at www.inacol.org/research/nationalstandards/index.php, visited July 6, 2011.

under the oversight of other public or private sponsors.[60] The act names this initiative the "Ohio School Sponsorship Program," and it requires the Department to establish the Office of School Sponsorship to perform the Department's duties under the program. Presumably, that new office will function like a sponsor of the schools authorized under the program.[61] Under the program, each school still must comply with all applicable provisions of the Community School Law. The Department also is authorized to take any action that any other sponsoring entity may take to enforce the school's compliance with the law and its contract, including termination, suspension, or nonrenewal of the contract.

Any individual, group, or entity may apply directly to the Department for authorization to establish a new community school. In addition, the governing authority of an existing community school may apply to the Department, upon the expiration or termination of the current contract with its sponsor, for direct authorization to continue operating the school. For the first five years of the program, the act limits the number of direct authorization applications that the Department may approve each year to no more than 20 total applications. Of those 20, only up to five each year may be for new schools.

If the Department approves an application, the Department and school's governing authority must enter into a contract like the one required between a school and any of the other sponsoring entities. In the case of an existing school, the direct contract with the Department may take effect any time during the year. It appears that the direct contract of a new school must begin as otherwise provided by the Community School Law (that is, contract signing by May 15 and opening of the school by September 30). Like other sponsor contracts, however, all direct contracts, for both new and existing schools, are limited to an initial term of just five years. Thereafter, they may be renewed for any term agreeable to the school's governing authority and the Department. Also like other sponsorship contracts, a direct authorization contract may provide for the school's governing authority to pay a fee to the Department for oversight and monitoring of the school that does not exceed 3% of the school's state operating funds.

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[60] Prior to 2003, the State Board of Education was a statutory sponsor of start-up community schools and, in fact, sponsored most of the start-up schools then in operation. Amendments effective in 2003 removed the State Board's authority to sponsor community schools. H.B. 364 of the 124th General Assembly.

[61] The act specifies that the program is subject to R.C. 3314.20. That section, as it was proposed for re-enactment in the Senate-passed version of H.B. 153, prescribed academic performance prerequisites for new Internet- or computer-based community schools (e-schools). But the enacted version of H.B. 153 does not contain that section or its items of law. Thus, the act's reference to that section in authorizing the Ohio School Sponsorship Program appears to be an error.

Application procedures

Subject to the limit on the number of schools that may be directly authorized each year, the Department must approve each application unless it determines, within 30 days after receipt of the application, that the application does not contain the information required under the act. If the Department denies an application, it must provide the applicant with a written explanation of the reasons for the denial and give the applicant 30 days to correct the problems with the application. If the applicant fails to correct the problems, the Department again must deny the application and provide a written explanation of its reasons. An applicant may appeal the denial of its application to the appropriate common pleas court under the Administrative Procedure Act.

Application content

Each new or existing school's application for direct authorization must include all of the following:

(1) A statement attesting that no unresolved finding of recovery has been issued by the Auditor of State against any party to the application, and that no person who is party to the application has been a member of the governing authority of any community school that has closed and against which an unresolved finding of recovery has been issued;

(2) A description of the school's mission, educational program, governing authority, admission and dismissal policies, business plan, academic goals, facilities and their locations, learning opportunities that will be offered to students, and, in the case of a new school, the applicant's resources and capacity to run the school;

(3) Specific statements that the school will be nonsectarian as required by law, comply with provisions of the Community School Law regarding teacher licensure and qualifications and curriculum and graduation requirements, and comply with other enumerated provisions of the Revised Code;

(4) A statement of whether the school is a conversion or start-up school; and

(5) Evidence that the school will be able to comply with the bond or guarantee provision, if required by the Department (see below).

Bond or guarantee may be required

Under the act, the Department may require that a directly authorized community school either post and file with the state Superintendent a bond or file with the state Superintendent a guarantee. The stated purpose of the bond or guarantee, if required,

is to pay the state any moneys owed by the community school in the event the school closes.

Program report

The Department, by December 31, 2012, and annually thereafter, must issue a report to the Governor and the General Assembly on the program. Each report must include information about the number of community schools participating in the program and their compliance with the Community School Law. The fifth report must include a complete evaluation of the program and recommendations regarding its continuation.

Collective bargaining at Cleveland conversion schools

(R.C. 3314.102)

The act gives the mayor who appoints a municipal school district board the authority to exempt employees of conversion community schools sponsored by the district from future collective bargaining. Under the act, the mayor may submit to the district board and the State Employment Relations Board a statement requesting that the employees be removed from their collective bargaining units. If the mayor submits such a request, the employees remain subject to their current collective bargaining agreements until the agreements expire on their own terms. But once the agreements expire, the employees are no longer covered by the state collective bargaining law.

A municipal school district is one that is or has ever been under a federal court order requiring supervision and operational, fiscal, and personnel management of the district by the state Superintendent of Public Instruction. The mayor of the municipal corporation containing the greatest portion of a municipal school district's territory appoints the members to the district's board of education, rather than those members being elected.[62] Currently, Cleveland is the state's only municipal school district.

Conversion community schools opening in 2011-2012

(Section 267.60.20)

The act exempts new conversion community schools that open in the 2011-2012 school year from statutory deadlines for the adoption and signing of the school's contract with its sponsor, but requires the contract to be signed and filed with the Superintendent of Public Instruction prior to the school's opening. Under continuing

[62] R.C. 3311.71 and 3311.72, neither in the act.

law, the sponsor and the school's governing authority must adopt the contract by March 15, and sign it by May 15, prior to the school year in which the school will open.

Location of start-up community schools

(R.C. 3314.02(A)(3) and (C)(3))

The act expands the definition of "challenged school district," where start-up community schools may be located, to include school districts ranked in the lowest 5% of districts based on their performance index scores. For this purpose, the act relies on the annual permanent performance ranking of districts, schools, and buildings (see "**Data on student performance tied to expenditures**" above).

The act's change could enable the establishment of start-up schools in some districts where they were prohibited from locating under prior law. Under that prior law, a challenged school district was limited to the following: (1) a "Big-Eight" school district (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown), (2) a school district in academic watch or academic emergency, or (3) a school district in the original community school pilot project area (Lucas County). The act retains these classes of districts as "challenged school districts" and adds the new class.

Under the act, once a start-up community school is established in a school district with a low performance index score ranking, the school may continue to operate there even if the district later raises its ranking and is no longer considered "challenged."

Restrictions on sponsoring additional community schools

(New R.C. 3314.016)

The act prohibits a community school sponsor from sponsoring any additional schools, if it (1) is not in compliance with statutory requirements to report data or other information to the Department of Education or (2) is ranked in the lowest 20% of all sponsors on an annual ranking of sponsors by their composite performance index scores. The composite performance index score, which must be developed by the Department, is a measure of the academic performance of students enrolled in community schools sponsored by the same entity. Presumably, if a sponsor is subject to the prohibition due only to its ranking, it may sponsor additional schools if it later raises its ranking above the lowest 20%.

The act's prohibition applies to all sponsors, including those that are exempt from the requirement to be approved for sponsorship by the Department of Education. Under continuing law, sponsors that are not subject to approval are (1) "grandfathered"

entities that were already sponsoring community schools as of April 8, 2003, when the approval requirement became law,[63] and (2) the successor of the University of Toledo board of trustees (or its designee) as a sponsor of community schools.[64]

If a community school enters into a sponsorship contract with a sponsor and, before the school opens, the sponsor becomes subject to the act's prohibition on sponsoring additional schools, the contract is void. The school may still open, but only after contracting with another sponsor.

Compiling the sponsor ranking

When compiling the sponsor ranking, the Department of Education must exclude a sponsor's schools that are exempt from closure for poor academic performance. Under continuing law, a community school is covered by the exemption if a majority of its students either (1) are enrolled in a dropout prevention and recovery program that has a waiver from the Department or (2) are disabled students receiving special education.[65] However, the exclusion of these two types of schools from the ranking ends January 1, 2013, unless the General Assembly enacts separate performance standards for each type of school by that date. In other words, if the General Assembly does not enact performance standards for these schools by January 1, 2013, they will be included in the sponsor ranking in the same manner as a sponsor's other community schools. (Under a separate provision of the act, the State Board of Education must make legislative recommendations for performance standards for community schools serving dropouts – see "**Recommendations on community schools serving dropouts**" below).

Caps on community school sponsors

(R.C. 3314.015)

The act permits a community school sponsor to sponsor up to 100 schools, unless it is subject to the act's prohibition on sponsoring additional schools (see "**Restrictions on sponsoring additional community schools**" above). This maximum is an increase from prior law, which limited sponsors to 50 to 75 schools, depending on how many schools the sponsor had that were open as of May 1, 2005. The act also repeals the requirement that a sponsor's cap must be decreased by one for each school sponsored

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[63] See R.C. 3314.027, not in the act.

[64] See R.C. 3314.021.

[65] See R.C. 3314.35.

by the entity that permanently closes. The previous caps on sponsors are shown in the table below.

Previous Caps on Community School Sponsors	
Number of schools sponsored by entity as of May 1, 2005	**Maximum number of schools entity may sponsor**
50 or fewer schools	50 schools
51 – 75 schools	Number of schools sponsored by the entity that were open as of May 1, 2005
More than 75 schools	75 schools

Termination or nonrenewal of school's contract with its sponsor

(R.C. 3314.07(B))

Under continuing law, if the sponsor of a community school intends to terminate the school's contract prior to its expiration or to not renew the contract upon expiration, the sponsor must provide the school with notice of its intent and offer the school an opportunity for a hearing on the matter. The school may appeal the sponsor's decision to terminate the contract to the State Board of Education, whose decision is final.

The act retains these procedures, but it revises the deadlines for various actions, as follows:

(1) It requires the sponsor to provide notice of the intent to terminate or not renew the contract by February 1 of the year in which it intends to take the proposed action, rather than 90 days prior to the termination or nonrenewal as formerly required.

(2) It shortens from 70 days to 14 days the period for the sponsor to hold a hearing at the school's request.

(3) It requires the sponsor to issue its decision whether or not to affirm the termination or nonrenewal within 14 days after the hearing, instead of "promptly following" the hearing as in prior law.

(4) If the school appeals the sponsor's decision to terminate the contract, the act requires the appeal to be filed with the State Board within 14 days of that decision. The State Board must conduct a hearing and issue a written decision, including reasons for upholding or annulling the termination, within 60 days after the filing of the appeal.

Prior law did not prescribe a deadline for filing the appeal or for the State Board to hold its hearing.

(5) The act specifies that the contract termination is effective on the date the sponsor originally notifies the school of its intent to terminate or, upon appeal, the date designated by the State Board. Under former law, the termination took effect 90 days after the sponsor's notification or the date set by the State Board, whichever was later.

(6) If the contract is terminated, the act requires the school to close at the end of the current school year or on another date specified in the sponsor's notification of its intent to terminate.

Background

Under continuing law, a sponsor may terminate or not renew its contract with a community school for (1) failure to meet student performance requirements specified in the contract, (2) fiscal mismanagement, (3) a violation of the contract or state or federal law, or (4) other good cause. If the contract is terminated, the school may not contract with another sponsor and must permanently close.

Sponsor liability

(R.C. 3314.07(E))

The act grants civil immunity to a community school sponsor and its officers, directors, and employees for any action taken to fulfill the sponsor's responsibility to oversee and monitor a community school, if the action is authorized by the Community School Law or the school's sponsorship contract.

Location of sponsor representative

(R.C. 3314.023)

The act repeals a provision requiring the sponsor of a community school to have a representative located near the school to provide monitoring and technical assistance. Under former law, the representative had to be located within 50 miles of the school or, in the case of an Internet- or computer-based community school (e-school), within 50 miles of the school's central base of operation.

Sponsor meetings with school

(R.C. 3314.023)

The act makes several changes to the requirement that a representative of a community school's sponsor meet with the school's governing authority and review the school's financial records. First, the act mandates more frequent reviews by requiring the meetings to occur monthly, rather than at least once every two months. Second, it provides the sponsor's representative the option of meeting either with the school's governing authority or its fiscal officer. Third, it requires the representative to review the school's enrollment records, in addition to financial records.

Governing authority membership

(R.C. 3314.02(E)(3))

The act prohibits a community school governing authority member, or immediate relative, from being an owner, employee, or consultant of a community school sponsor until one year after the end of the member's term. This change expands continuing law, which similarly imposes a one-year waiting period for governing authority members and their immediate relatives with respect to community school operators.

Compensation of governing authority members

(R.C. 3314.02(E)(4); repealed R.C. 3314.025)

The act repeals former law that (1) limited the amount of compensation for governing authority members of start-up community schools to $125 per meeting per month, (2) required the compensation to be paid from state funds paid to the operator, if the school had an operator, and (3) provided for allocation of the compensation among community schools if a member served on the governing authority of more than one community school and the different governing authorities met at the same location on the same day. Instead, the act authorizes start-up school governing authorities to provide by resolution for compensation of their members, provided that an individual is compensated no more than $425 per meeting or a total of $5,000 per year for all of the governing authorities on which the individual serves.

Closure of poorly performing community schools

(R.C. 3314.35)

Beginning July 1, 2011, the act replaces the academic performance criteria that trigger permanent closure of community schools with new, more stringent criteria for

those schools that serve the early elementary grades and for high schools. It does not change the criteria for schools that offer any of grades 4 to 8. Community schools that meet the existing criteria before July 1, 2011, still must close at the end of the 2010-2011 school year, in accordance with continuing law. The first schools subject to the new performance criteria will close following the 2011-2012 school year. The table below compares the prior closure criteria with the act's new criteria.

Community School Closure Criteria		
Type of school	**Prior law**	**The act**
A school that does not offer a grade higher than 3	Has been in academic emergency for three of the four most recent school years	Has been in academic emergency for *two of the three most recent school years*
A school that offers any of grades 4 to 8 but no grade higher than 9	(1) Has been in academic emergency for two of the three most recent school years and (2) showed less than one standard year of academic growth in reading or math for at least two of the three most recent school years	Same
A school that offers any of grades 10 to 12	Has been in academic emergency for three of the four most recent school years	Has been in academic emergency for *two of the three most recent school years*

The act retains the law exempting a community school from the closure requirement if a majority of the school's students (1) are enrolled in a dropout prevention and recovery program that has a waiver from the Department of Education[66] or (2) are disabled students receiving special education. The act also retains the stipulation that the performance ratings assigned to a community school for its first two years of operation do not count toward whether the school meets the closure criteria.[67]

Layoffs involving teachers returning from conversion community schools

(R.C. 3314.10(B) and 3319.17(B)(1))

The act permits reductions in force with respect to teachers returning after a leave of absence due to being employed at a conversion community school to occur only in accordance with procedures in the administrative personnel suspension policy

[66] See R.C. 3314.36.

[67] R.C. 3314.012.

adopted by the employing board of education. Previously, those reductions in force could occur either in accordance with that policy or in accordance with the statutory teacher restoration policy.

Use of state funding to pay taxes

(Repealed R.C. 3314.082)

The act repeals the law stating the General Assembly's intent that no state funds paid to a community school be used by the school to pay any taxes the school might owe on its own behalf, including local, state, and federal income taxes, sales taxes, and property taxes. (This intent language did not apply to money withheld from a community school employee that was payable by the school to a government entity as taxes on behalf of the employee.)

Counting e-school students for funding purposes

(R.C. 3314.08(L)(2))

Under the act, beginning in the 2011-2012 school year, a student who finishes the prior school year in an Internet- or computer-based community school (e-school) is considered automatically re-enrolled in the same school for the following school year until the student's enrollment is formally terminated. The Department of Education must continue to pay the school so that there is no interruption in state funding for the student from one school year to the next. But if the student fails to participate in the first 105 consecutive hours of learning opportunities offered by the school in that next school year and has no legitimate excuse, the student is presumed not to have re-enrolled in the school for that year and the Department must recalculate the school's payments to reflect the student's failure to enroll.

Otherwise, under continuing law, the student's enrollment is considered terminated, and state funding for the student will end, on the date (1) the community school receives documentation from the student's parent terminating the student's enrollment, (2) the school receives documentation of the student's enrollment in another public or private school, or (3) the school ceases to offer learning opportunities to the student in accordance with the school's contract with its sponsor or the Community School Law.

E-school expenditures for instruction

(Repealed R.C. 3314.085; conforming changes in R.C. 3314.08 and 3314.088)

The act repeals the statute that (1) established a minimum amount that Internet- or computer-based community schools (e-schools) must spend on instruction and (2) prescribed fines for failure to comply.

The repealed law required each e-school to spend for instructional purposes at least the per pupil amount designated for base classroom teachers under the former Building Blocks Model. That amount for fiscal year 2009 was $2,931. That was the last year for which an amount for that factor was specified. Qualifying e-school expenditures included (1) teachers, (2) curriculum, (3) academic materials, (4) computers, (5) software (including filtering software), and (6) other purposes designated by the state Superintendent. E-schools annually had to report their expenditures for instruction to the Department of Education. If the Department determined that an e-school had failed to comply with the expenditure or reporting requirements, the e-school had to pay a fine equal to 5% of the total state payments to the school in the fiscal year of noncompliance or the amount the school underspent on instruction, whichever was greater.

Community school facilities

Exception allowing school to have multiple facilities

(R.C. 3314.05(A) and (B)(1) and (4))

The act allows a community school, under certain conditions, to be located in multiple facilities under the same sponsorship contract and to assign students in the same grade to different facilities, both of which are generally prohibited. A community school qualifies for the act's exception to the prohibitions, if (1) all of the school's facilities are located in the same county and (2) the school has entered into, and maintains, a contract with an operator to manage the school. Under continuing law, a community school otherwise may be located in multiple facilities only if space limitations make it impossible to serve all students in the same building.

Since the act permits a qualifying school to have multiple facilities within the same county, it also creates an exception from the general prohibition against establishing a community school in more than one school district under the same sponsorship contract. If a qualifying school maintains facilities in more than one school district under the act, at least one of those districts be a "challenged" school district.[68]

[68] R.C. 3314.02(A)(3) and (C)(1).

Also, the school's governing authority must designate one of those districts as the school's primary location and notify the Department of Education of that decision.

The school's primary location will affect which students may enroll in the school. Under continuing law, each community school must adopt a policy regarding admission of students who live outside the district where the school is located, which would be the school's primary location under the act. This policy must either (1) prohibit the enrollment of students who live outside the district, (2) permit the enrollment of students who live in adjacent districts, or (3) permit the enrollment of students who live anywhere in the state.[69] If applicants for admission exceed the number of openings, students must be admitted by lottery from among all applicants, except that preference must be given to those students who reside in the district where the school is located.[70]

Assignment of identification numbers

(R.C. 3314.05(E))

For each community school that has multiple facilities, the act requires the Department of Education to assign a unique identification number to the school and to each facility maintained by the school, beginning July 1, 2012. This number is to be used for identification purposes only. The act specifies that the Department must calculate state funding and data for the annual report cards for the school as a whole, and not for each separate facility.

Sharing facilities

(R.C. 3314.05(D))

The act expressly permits two or more community schools to be located in the same facility.

Access to school district property

Real property a district seeks to dispose of

(R.C. 3313.41(G))

The act amends the law requiring a school district to offer community schools located within the district a right of first refusal to purchase real property that the

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[69] R.C. 3314.03(A)(19).

[70] R.C. 3314.06(H).

district seeks to dispose of, by eliminating the stipulation that the property must be "suitable for use as classroom space." This change has the effect of extending the law to any real property that a district seeks to dispose of.

Right to purchase or lease unused district property

(R.C. 3313.41(G) and 3313.411; conforming change to R.C. 3314.051)

The act requires school districts with real property that has been used for classroom operations since July 1, 1998, but has not been in use for two years, to offer to community schools located within the district an opportunity to buy or lease the property. If one community school notifies the district treasurer, in writing within 60 days after the district board makes the offer, of its intention to purchase the property, the district board must sell that property to the community school for the appraised fair market value of the property. However, if more than one community school notifies the district treasurer, in writing within the 60-day period, of their intention to purchase, the district board must conduct a public auction to sell the property. All community schools within the school district, regardless of whether they accepted the offer, may bid on the property at auction. The district board is not required to accept any bid for the property that is lower than the appraised fair market value of the property.

If two or more community schools located within the district notify the district treasurer, in writing, of their intention to lease the property, the district board must conduct a lottery to select the community school to which the district board must lease the property. The lease price offered by a district board cannot be higher than the fair market value of the leasehold. If no community school governing authority accepts the offer to purchase or lease the property within 60 days after the offer is made, the district board may offer the property to any other entity.

Because it would have conflicted with the new provisions of the act, the act also repeals the provision of law that required a district to offer to sell to community schools real property that is suitable for use as classroom space, if (1) the district had not used the property for academic instruction, administration, storage, or any other education purpose for one full school year, and (2) the district board had not adopted a resolution outlining a plan for using the property for any of those purposes within the next three years.

The act specifies that a district board may renew any agreement already in existence with a non-community school entity, and that nothing in the act is meant to affect leasehold arrangements already entered into between the district board and the other entity.

Community school participation in joint educational programs

(R.C. 3313.842)

The act permits a community school to enter into an agreement with one or more school districts or other community schools to operate a joint educational program, including any class in the graded course of study or a professional development program, in the same manner as districts may do with each other under continuing law. But, whereas continuing law allows a school district participating in the joint educational program to charge fees or tuition to its students who enroll in the program, the act explicitly prohibits community schools from charging their students for the program. The only exception is for an all-day kindergarten program, for which certain community schools may charge fees under separate law.[71]

Recommendations on community schools serving dropouts

(Section 267.60.23)

The act requires the State Board of Education, by July 1, 2012, to review its legislative recommendations for performance standards for community schools that operate dropout prevention and recovery programs, which were previously issued in March 2008, and to issue new recommendations regarding performance standards for those schools.

III. Public College-Preparatory Boarding Schools

The act permits the establishment of at least one college-preparatory boarding school serving at-risk middle and high school students beginning with the 2013-2014 school year. The boarding school may be operated only by a nonprofit organization approved by the State Board of Education. Once a boarding school receives a charter from the State Board, the school is considered a public school and a part of the state's program of education. In its initial year of operation, the school may offer only grade 6, but it may add higher grades, through grade 12, in subsequent years. The act limits enrollment in the boarding school to students who belong to a family with an income at or below 200% of the federal poverty guidelines and who are at risk of academic failure.

[71] R.C. 3314.03(A)(11)(d) and 3321.01(H) (the latter section not in the act).

Creation of college-preparatory boarding schools

School operator selection

(R.C. 3328.11)

A boarding school established under the act must be operated by a private nonprofit entity selected by the State Board. For this purpose, within 60 days after September 29, 2011 (the act's 90-day effective date), the State Board must issue a request for proposals from nonprofit corporations interested in operating the school. Each proposal must include (1) the proposed location of the school, which may differ from any location recommended by the State Board, (2) a plan for offering grade 6 in the school's first year of operation and a plan for increasing the grade levels over time, and (3) any other information about the proposed educational program, facilities, or operations of the school considered necessary by the State Board.

The State Board must choose the school's operator from among the qualified responders. To be considered qualified, a private nonprofit corporation must (1) have experience operating a similar school or program, (2) demonstrate to the State Board's satisfaction that the existing school or program has been successful in improving students' academic performance, and (3) demonstrate to the State Board's satisfaction that the corporation has the capacity to secure private funds for the school's development.

If there are no responders with the required qualifications, the State Board may issue another request for proposals. Selection of a qualified operator must occur within 180 days after the issuance of the most recent request.

Contract with operator

(R.C. 3328.12)

After selecting an operator for the boarding school, the State Board must enter into a contract with that entity prescribing the terms of the school's operation. The contract must stipulate the following:

(1) That the school may operate only if and to the extent it holds a valid charter issued by the State Board.

(2) That the operator will oversee the acquisition of a facility for the school (see also "**College-Preparatory Boarding School Facilities Program**" below).

(3) That the operator will manage the school in accordance with the terms of the proposal accepted by the State Board during the selection process, including the plan for increasing the grade levels offered by the school.

(4) That the school will comply with the act's provisions, any other provisions of law specified in the contract, State Board rules pertaining to the school,[72] the school's charter, and the school's bylaws (see "**Adoption of bylaws**" below).

(5) That the school will meet the academic goals and other performance standards outlined in the contract.

(6) That the State Board or the operator may terminate the contract in accordance with procedures described in the contract. Those procedures must include a requirement that the party seeking termination give prior notice of the intent to terminate the contract. The other party must also be given an opportunity to redress any grievances cited in the notice prior to the termination.

(7) That, if the school closes for any reason, the school's board of trustees will execute the closing in the manner specified in the contract.

Termination of contract

(R.C. 3328.45)

The act authorizes the State Board to terminate a contract with a boarding school's operator for failure of the school to comply with the act's provisions or the terms of the contract, or for failure to meet the academic goals or performance standards specified in the contract. Upon termination of the contract, the school must close at the end of the school year.

Option for additional boarding schools

(R.C. 3328.11(B)(1))

The act permits the State Board to authorize one or more additional public boarding schools after the establishment of the first boarding school. If the State Board determines that additional schools are advisable, it must select and contract with qualified operators for those schools by following the same process used for selecting the first school's operator (see "**School operator selection**" above). Presumably, the operator of the first school could submit a proposal to run any additional school

[72] The act requires the State Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the act provisions (R.C. 3328.50).

authorized in the future, but the act does not grant that operator preference in the selection process.

Public boarding school governance

Adoption of bylaws

(R.C. 3328.13)

The operator of a boarding school must adopt bylaws for the oversight and operation of the school. The bylaws, which are subject to the approval of the State Board, must include standards for the admission and dismissal of students and procedures for the appointment of members of the school's board of trustees. The bylaws must conform to all applicable statutes and administrative rules, contract terms, and the school's charter.

Board of trustees

(R.C. 3328.15)

A board of trustees consisting of up to 25 members must govern each boarding school established under the act. The Governor must appoint five of the trustees, with the advice and consent of the Senate. The Superintendent of Public Instruction may recommend appointees to the Governor, but those recommendations are not binding. All other trustees must be appointed in accordance with the school's bylaws.

The trustees serve staggered three-year terms of office. They may be reappointed, but no trustee may serve for more than three consecutive three-year terms. If the school's bylaws provide for compensation, trustees may be paid for their service on the board.

Student enrollment

Eligibility requirements

(R.C. 3328.01(B) and (E), 3328.04, and 3328.14)

A student is eligible to attend a boarding school if the student (1) is entitled to attend school in a "participating school district," which is the district where the school is located or any other district that has agreed to allow its resident students to enroll in the school, (2) is at risk of academic failure, (3) is from a family with an income below 200% of the federal poverty guidelines, and (4) meets at least two of the following other risk indicators:

(a) The student has a record of in-school disciplinary actions, suspensions, expulsions, or truancy;

(b) The student failed to attain a proficient score on a state achievement assessment in English language arts, reading, or math at least once, or failed to attain a minimum score designated by the boarding school's board of trustees on an end-of-course exam in English language arts or math administered under the new high school assessment system that will eventually replace the Ohio Graduation Tests (OGT);

(c) The student has a disability;

(d) The student has been referred for academic intervention services;

(e) The student's head of household is a single parent;

(f) The student's head of household is not the student's custodial parent; or

(g) The student has a family member who has been imprisoned.

A student also must meet any additional criteria specified in the agreement between the State Board and the boarding school's operator.

The act requires the State Board to adopt procedures for school districts to follow in becoming participating school districts. In addition, the boarding school's operator must create an outreach program to inform school districts about the school, its admission procedures, and the process for becoming a participating district.

Maximum enrollment

(R.C. 3328.21)

In its first year of operation, a boarding school established under the act may offer only grade 6 and may enroll up to 80 students. In subsequent years, the school may offer additional grade levels as specified in its contract with the State Board, but at no time may the school enroll more than 400 students. If the number of applicants exceeds the school's capacity, admission must be by lottery.

School operations

Compliance with certain education laws

(R.C. 3328.18, 3328.19, 3328.191, 3328.192, 3328.193, 3328.20, 3328.24, 3328.25, 3328.26(C), and 3328.99; conforming changes in R.C. 109.57 and 3313.61)

A boarding school established under the act, its operator, and its board of trustees are subject to the following education laws in the same manner as a school district:

- Administration of the state achievement assessments and the new high school assessment system that will replace the OGTs; provision of intervention services to students who do not attain a proficient score on an achievement assessment (R.C. 3301.0710, 3301.0711, and 3301.0712);

- High school diploma requirements (R.C. 3313.61 and 3328.25);

- Sanctions for failure to meet the federal standard of "adequate yearly progress" (AYP) for two or more consecutive school years (R.C. 3302.04 and 3302.041);

- Reporting requirements for the Education Management Information System (EMIS), which is a database of fiscal, personnel, enrollment, and academic performance information about school districts and buildings (R.C. 3301.0714);

- Requirement to conduct criminal records checks of applicants for employment and to periodically update those checks for nonlicensed employees; prohibition on employing a person with a disqualifying criminal offense (R.C. 3319.39 and 3319.391);

- Suspension of employees from duties involving the care, custody, or control of a child upon arrest or indictment for a disqualifying offense (R.C. 3328.18(B));

- Reporting of misconduct by licensed educators to the Department of Education; immunity from civil liability for good-faith reports; and penalties for failure to make required reports or for making false reports (R.C. 3319.31, 3319.311, 3328.18(C), 3328.19, 3328.191, 3328.192, 3328.193, and 3328.99); and

- Requirement that private contractor employees that provide "essential school services" and work in a school in a position that requires routine

interaction with a child must be supervised by a school employee or provide a recent criminal records check with no disqualifying offenses (R.C. 109.57 and 3328.20).

Special education

(R.C. 3328.23)

Similarly, each boarding school and its operator must comply with state and federal law regarding the provision of special education and related services to students with disabilities.[73] The act specifies that a disabled student's resident school district is not obligated to provide the student with a "free appropriate public education" for as long as the student attends the boarding school. Therefore, the boarding school must assume the responsibility of providing the student with all necessary special education and related services. For each disabled student enrolled in the school, the school and its operator must verify to the Department of Education that the school is providing the services required by the individualized education program (IEP) developed for the student.

Curriculum requirements

(R.C. 3328.22)

The school's educational program must include a remedial curriculum for all grades it offers below grade 9, and a college-preparatory curriculum for grades 9 to 12 that complies with the Ohio Core curriculum, which is the 20-unit state minimum high school curriculum.[74] The school's educational program also must provide (1) extracurricular activities, including athletic and cultural activities, (2) college admission counseling, (3) physical and mental health services, (4) tutoring, (5) community service opportunities, and (6) a residential student life program.

Employee collective bargaining rights

(R.C. 3328.17 and 4117.01)

The act explicitly grants teaching and nonteaching employees of a boarding school the right to collectively bargain under the Public Employees Collective Bargaining Law.[75] Although that law prohibits the State Employment Relations Board

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[73] See R.C. Chapter 3323. and 20 United States Code 1400 *et seq*.

[74] See R.C. 3313.603(C).

[75] See R.C. Chapter 4117.

from placing professional and nonprofessional employees in the same bargaining unit without approval by a majority vote of both groups,[76] the act specifies that a bargaining unit containing both teaching and nonteaching boarding school employees may be considered an appropriate unit, presumably without a vote.

Student transportation

(R.C. 3328.41)

The act provides that a boarding school student's resident school district is responsible for the student's weekly transportation to and from the boarding school.

Annual report card

(R.C. 3328.26(A) and (B))

Under the act, the Department of Education must issue an annual report card and performance rating for each boarding school in the same manner as required in continuing law for other public schools and school districts.[77] The act also requires that the academic performance data of each boarding school student be used in calculating both the performance of the boarding school *and* the performance of the student's resident school district. For this purpose, the Department must include the student's achievement assessment scores in the resident district's data when determining the district's report card rating.

Time limit on state funding obligation

(R.C. 3328.03)

Under the Ohio Constitution, the maximum length of time for which a General Assembly may make an appropriation is two years.[78] In accordance with this constitutional provision, the act prohibits any agreement or contract entered into under the act's provisions, such as a contract between the State Board and the operator of a boarding school, from creating a state funding obligation for more than two years. However, a financial obligation may be reauthorized every two years by a new General Assembly.

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[76] R.C. 4117.06(D)(1), not in the act.

[77] R.C. 3302.03, not in the act.

[78] Article II, Section 22.

Operating funding

(R.C. 3328.31 to 3328.34)

The act provides that a boarding school receive for each student enrolled in the school both (1) a per-pupil amount deducted from the state aid account of the student's resident participating school district and (2) a per-pupil boarding amount paid directly to the school by the Department of Education.

Student count

(R.C. 3328.31 and 3328.32)

To facilitate these payments, the act requires each boarding school to report to the Department of Education (1) the total number of students enrolled, (2) the number of students enrolled in the school who are receiving special education and related services under an IEP, (3) the school district that students enrolled in the boarding school are entitled to attend, and (4) any additional information the Department determines necessary to make payments to the school. Moreover, to be credited with state funding for the student prior to deductions from its account, a student's resident district must include the student in its average daily membership and special education ADM.

Deducted per-pupil amount

(R.C. 3328.33)

Each participating school district and the boarding school must (1) determine the per-pupil amount to be deducted from the district's account according to a formula prescribed in the act, (2) set forth that amount in a written agreement, and (3) file the agreement with the Department. The Department, then, must deduct that amount for each of the district's students enrolled in the boarding school and pay it to the school. The act stipulates that the per-pupil amount must be equal to 85% of the "operating expenditure per pupil" of the student's resident school district, which the act defines as total amount of state payments and other nonfederal revenue spent by the district for operating expenses during the previous fiscal year, divided by the district's average daily membership for that fiscal year. In other words, it is the per-pupil amount of state and district funds (and, probably, private funds, if any) spent for district operations in the prior fiscal year.

State per-pupil boarding amount

(R.C. 3328.34)

The act prescribes a separate "per-pupil boarding amount," which is set at $25,000 for the school's first year (fiscal year 2014 is the first year a boarding school may be established under the act) and must be adjusted for inflation each subsequent fiscal year. This amount is not deducted from the resident district's state aid account but, instead, is to be paid directly from the Department's appropriations.

Use of federal funds to offset boarding amount

(R.C. 3328.34(D))

In any fiscal year in which the boarding school's operator receives federal funds to support the school's operations, the amount of those federal funds must be deducted from the total per-pupil boarding amount paid to the school by the Department of Education. Similarly, if the Department receives federal funds to support the school's operations, the Department must use those funds first to cover the total per-pupil boarding amount owed to the school in the applicable fiscal year. In both cases, any remaining boarding amount owed to the school after accounting for the federal funds must be paid from the Department's state appropriations. These provisions essentially lower the state's funding obligation in fiscal years when the Department or the school's operator acquires federal funds for support of the school.

If federal funds received by the operator or the Department are used to offset the state funds paid to cover the total per-pupil boarding amount, the act directs the Department to comply with all requirements upon which acceptance of the federal funds is conditioned, including any requirements set forth in the funding application and, to the extent sufficient state funds are appropriated to the Department, any requirements related to "maintenance of effort" in expenditures. If the Department applies for the federal funds, it would already be subject to any requirements tied to the funds' acceptance under the federal law authorizing the grant. If the operator applies for the federal funds on its own behalf, it is likely that the related requirements would apply to the operator, as the recipient, rather than to the Department. Therefore, it is not clear whether the act's language would impose any additional requirements on the Department.[79]

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[79] Some federal grant programs require that the federal funds be used to supplement, rather than supplant, state funding. Since the state's obligation to pay the boarding amount must be met wholly from state funds in any fiscal year that federal funds are not available, the use of federal funds to offset that

Statements associated with boarding payment

(R.C. 3328.34(C))

Within its provisions prescribing the state per-pupil boarding payment, the act contains a series of statements:

(a) Authorizing the State Board to "accept funds from federal and state noneducation support services programs for the purpose of funding" the payment;

(b) Directing the State Board, "notwithstanding any other provision of the Revised Code . . . [to] coordinate and streamline any noneducation program requirements in order to eliminate redundant or conflicting requirements, licensing provisions, and oversight by government programs or agencies"; and

(c) Directing "applicable regulatory entities . . . to the maximum extent possible, [to] use independent reports and financial audits provided by the operator and coordinated by the Department of Education to eliminate or reduce contract and administrative reviews."

The meaning and effect of these statements are not clear. A possible interpretation might be that the act is directing state agencies to streamline noneducation programs and regulations in order to generate state savings that could be used to finance the state per-pupil boarding payment. A narrower interpretation might be that the act is empowering the State Board to coordinate the activities of other regulatory agencies that would have authority over the boarding school in order to facilitate the school's efficiency. But neither interpretation may be certain.

Title I funds

(R.C. 3328.35)

To the extent permitted by federal law, the Department of Education must include a boarding school established under the act in its annual allocation of federal Title I funds. Title I, which is the central program of the Elementary and Secondary Education Act of 1965, provides funds for the educational needs of low-income and other at-risk students.

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amount in other fiscal years might violate a prohibition on supplanting state funds, if such a prohibition were part of the terms of the federal grant.

Other funds

(R.C. 3328.36)

The act specifies that a boarding school established under the act is considered a school district for the purpose of applying for state or federal grants available to districts or public schools. The school or its operator also may apply to private entities for funding.

College-Preparatory Boarding School Facilities Program

(R.C. 3318.60)

The act creates the College-Preparatory Boarding School Facilities Program, under which the Ohio School Facilities Commission must provide assistance for the acquisition of classroom facilities to boarding schools authorized under the act. To be eligible for the assistance, a school's board of trustees must secure at least $20 million of private money to satisfy its share of facilities acquisition. Acquisition of residential facilities and any other facilities *other than* classroom facilities must be funded by the board of trustees through private means.

The Commission must adopt rules necessary for the implementation and administration of the program not later than 90 days after September 29, 2011 (the act's 90-day effective date).

IV. Scholarship Programs

Educational Choice scholarship

(R.C. 3310.02 and 3310.03; Section 733.10)

The act increases the number of Educational Choice ("Ed Choice") scholarships that may be awarded annually from 14,000 to 30,000 for the 2011-2012 school year and 60,000 thereafter. Since the application period for Ed Choice scholarships for the 2011-2012 school year ended April 15, 2011, the act directs the Department of Education to hold a second, 45-day application period for 2011-2012 to award the 16,000 new scholarships authorized for that year. The second application period begins June 30, 2011 (the act's immediate effective date) and ends August 15, 2011.

The act requires the Department to mail a notice to each person who applied for a scholarship during the first application period but did not receive a scholarship, announcing the second application period, the opportunity to reapply, and the application deadline. The Department must also post prominently on its web site a list

of school district-operated buildings whose students newly qualify for Ed Choice scholarships under the act (see "**New eligibility**" below).

Students who are already admitted to a chartered nonpublic school for the 2011-2012 school year may receive an Ed Choice scholarship for that year if (1) a timely application was submitted on the student's behalf during the first application period for 2011-2012, (2) the student was denied a scholarship solely because the number of applications exceeded the number of available scholarships, and (3) the student was either enrolled through the last day of classes for the 2010-2011 school year in the district school or community school indicated on the student's first application or is eligible to enroll in kindergarten for the 2011-2012 school year and was not enrolled in kindergarten in a nonpublic school in 2010-2011.

New eligibility

The act newly qualifies students whose resident district school buildings were ranked in the lowest 10% of all public school buildings according to performance index score, in two of the three most recent rankings published prior to the school year for which they first seek a scholarship. The school building cannot have been declared excellent or effective in the most recent published ratings. To be eligible to apply, a student must be either (1) enrolled in a qualifying school building, (2) enrolled in a community school but would otherwise be assigned to a qualifying school building, (3) enrolled in a school building operated by the student's resident district or in a community school and otherwise would be assigned to a qualifying school building in the school year for which the scholarship is sought ("look ahead" eligibility), or (4) eligible to enroll in kindergarten in the school year for which the scholarship is sought in a qualifying school building.

For determining building eligibility, the act relies on the annual permanent performance ranking of districts, schools, and buildings (see "**Data on student performance tied to expenditures**" above). But since that ranking system is yet to be developed and implemented by the Department of Education, the act also requires the Department to create a separate three-year ranking according to the performance index scores of all public school buildings for each of the 2012-2013, 2013-2014, and 2014-2015 school years to use to determine building eligibility for Ed Choice scholarships. And for the second round of applications for the 2011-2012 school year, the Department must create a three-year ranking of just district-operated buildings, notwithstanding the act's other provisions basing eligibility on a comparison of performance index scores of all public school buildings (school districts, community schools, and STEM schools).

Priority

Students who meet the original eligibility standards under pre-existing law (see "**Background**" below), which the act retains, have priority for available scholarships over students newly qualified under the act. Thus, in years when applications exceed the number of available scholarships, priority for awarding scholarships is as follows:

First, to eligible students who received them in the previous school year;

Second, to students eligible because their district school building has been in academic watch or emergency for at least two out of three years and whose family incomes are at or below 200% of the federal poverty guidelines;

Third, to all other students eligible because their district school building has been in academic watch or emergency for at least two out of three years;

Fourth, to students made eligible under the act whose district school has been ranked in the lowest 10% of school buildings based on performance index score for at least two out of three years and whose family incomes are at or below 200% of the federal poverty guidelines; and

Finally, to all other students made eligible under the act whose district school has been ranked in the lowest 10% of school buildings based on performance index score for at least two out of three years.

If the number of applicants in any of the categories listed above exceeds the amount of available scholarships, scholarships must be awarded on the basis of a lottery.

Deductions

(R.C. 3310.08)

Under continuing law, the amount of an Ed Choice scholarship is the lesser of the tuition charged by the chartered nonpublic school the student attends or $4,250, for a student in grades K to 8, or $5,000, for a student in grades 9 to 12. Formerly, for each scholarship awarded, the Department of Education deducted $5,200 from the state aid account of the student's resident school district. The remainder over the scholarship amount went to defray some of the state's cost for scholarships under the Cleveland Scholarship Program. The act reduces the amount of each Ed Choice deduction to just the amount of the scholarship.

Background

Under continuing law, the Educational Choice Scholarship Pilot Program provides scholarships each year to students in lower performing public schools to pay tuition at chartered nonpublic schools. The Ed Choice program is separate from the scholarship program that serves students in the Cleveland Municipal School District. To finance Ed Choice scholarships, Ed Choice recipients are counted in the enrollments of their resident school districts, and state funds are then deducted from the districts' state funding accounts.

To be eligible for an Ed Choice scholarship, a student must meet one of the following conditions when the student applies for a scholarship:

(1) The student is enrolled in the student's resident school district in a school that (a) has been declared in at least two of the three most recent ratings to be in academic watch or academic emergency and (b) has not been declared excellent or effective in the most recent published ratings;

(2) The student is eligible to enroll in kindergarten in the school year for which a scholarship is sought and otherwise would be assigned to a school described in (1) above;

(3) The student is enrolled in a community school but otherwise would be assigned to a school described in (1) above;

(4) The student is enrolled in a school operated by the student's resident district or in a community school and otherwise would be assigned to an eligible school building in the year for which the scholarship is sought. This "look-ahead" provision addresses a situation in which the school a student currently attends does not qualify for scholarships, but the student will be assigned to a different school in the next school year.

(5) The student is eligible to enroll in kindergarten in the school year for which a scholarship is sought, or is enrolled in a community school, and the student's resident school district (a) has an intradistrict open enrollment policy that does not assign students in kindergarten or the community school student's grade level to a particular school, (b) has been declared in at least two of the three most recent ratings to be in academic emergency, and (c) was not declared excellent or effective in the most recent published ratings. The act does not affect these qualifications and gives students who qualify under them priority over those who qualify under the new category of students created by the act.

Cleveland Scholarship Program

(R.C. 3313.975 and 3313.978; conforming change in R.C. 3310.05)

The act allows students to receive the Cleveland scholarship for the first time as a high school student. Under prior law, *initial* scholarships could be awarded only to students in grades K through 8; that is, students must have received a scholarship in elementary school to receive one in high school.

The act also increases the base amounts of the Cleveland scholarship to equal the maximum amounts allowed for Educational Choice scholarships. For grades K through 8, the base amount is $4,250, up from $3,450. For grades 9 through 12, the base amount is $5,000, up from $3,450. However, the act retains the stipulation that the maximum Cleveland scholarship cannot exceed 90% (for low-income families) or 75% (for other families) of the base amount. The following table compares the act's new base amounts with the actual maximum scholarship amounts after applying the 90% and 75% standards:

Grades	Base Amount	90% Amount	75% Amount
K to 8	$4,250	$3,825	$3,188
9 to 12	$5,000	$4,500	$3,750

The new base amounts apply beginning in fiscal year 2012.

Background

The Cleveland Scholarship Pilot Program provides scholarships to attend alternative schools, including private schools, and tutorial assistance grants to certain students who reside in any school district that is or has been under a federal court order requiring supervision and operational management of the district by the Superintendent of Public Instruction. Currently, only the Cleveland Municipal School District meets this criterion. The program has been authorized since 1995. It is financed partially with state funds and partially with an earmark of Cleveland's state payments.

Jon Peterson Special Needs Scholarship Program

(R.C. 3310.51 to 3310.64 and 3323.052; Sections 269.60.30 and 269.60.31)

Background on the Individuals with Disabilities Act (IDEA)

Under the federal Individuals with Disabilities Education Act (IDEA), children identified as disabled are entitled to a "free appropriate public education" that provides special education and related services to enable them to benefit from educational

instruction.[80] Related services include transportation and support services such as speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling services, and diagnostic medical services. Under both the IDEA and state law, an "individualized education program" (IEP) must be developed for each child identified as disabled. The IEP specifies the services to which the child is entitled and are therefore guaranteed by law. It is developed by a team including representatives of the child's resident school district (or community school or STEM school) and the child's parent or the parent's counsel.[81] A child's school district or school may provide the services specified in the IEP, or it may enter into an agreement with another public or private entity to provide those services.

The act

The act establishes the Jon Peterson Special Needs Scholarship Program to provide scholarships for children with disabilities to attend special education programs other than those offered by their school districts. The program applies to any identified disabled child in grades K through 12. It is to begin operating in the 2012-2013 school year. A scholarship may be used to pay the expenses of a public or private provider of special education programs for implementation of the child's IEP and other services that are not in the IEP but are associated with educating the child. The act also permits the "eligible applicant" (generally the child's parent, see below) and the provider to agree to alter the services provided to the child.[82]

While a child is using a scholarship, the school district in which the child would otherwise be enrolled has no obligation to provide the child with a free appropriate public education. But the act also specifies that if that district has agreed to provide some services for the child, or if the district is required by separate law to provide some services, including transportation services, the district may not discontinue them pending completion of any administrative proceedings regarding those services. (See "**Continuation of some school district services**" below.) The district also has a continuing obligation to develop the child's IEP.[83]

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[80] See 20 United States Code (U.S.C.) 1400 *et seq*.

[81] See 20 U.S.C. 1414 and R.C. 3323.011, not in the act.

[82] R.C. 3310.52.

[83] R.C. 3310.53 and 3310.62(C).

Eligibility

(R.C. 3310.51(C), (F), and (I), 3310.61, and 3310.62)

"Qualified special education child"

Under the act, a child is eligible, or "qualified," for a scholarship if the child is from 5 to 21 years old and the child's resident school district has identified the child as disabled and developed an IEP for the child. In addition, the child must either (1) have been enrolled in the district in which the child is entitled to attend school in any grade from K through 12 in the school year prior to the year in which the scholarship would first be used or (2) be eligible to enroll for services from that district in the school year in which the scholarship would first be used. The act explicitly specifies that a child attending a public special education program under an agreement between the child's school district and the program provider, or a child attending a community school, may apply for a scholarship.

But, under the act, a community school is not considered a child's school district of residence. Therefore, any IEP developed by the community school would not qualify the child to receive a scholarship. It is not clear under the act whether a community school student would need to enroll in a district school to receive a new district-developed IEP prior to receiving a scholarship.

Moreover, a child is not eligible for a scholarship in any school year in which the child has been awarded a scholarship under the Autism Scholarship Program, the Ed Choice Scholarship program, or the Cleveland Scholarship Program. (See "**Comparison with Autism Scholarship Program**" below.)

The act also specifies that a child must remain in compliance with the state's Compulsory Attendance Law. Under that law, the parent of a child who resides in the state who is between 6 and 18 years of age must attend a public or private school that meets the minimum education standards of the State Board of Education unless the student is excused from attendance for home instruction. A child can face juvenile sanctions and a child's parent can face criminal sanctions violations of that law.[84]

A child is not eligible for a scholarship for the first time while the child's IEP is being developed or while any administrative or judicial proceedings regarding the content of that IEP are pending. On the other hand, the act also specifies that, in the case of a child for whom a scholarship already has been awarded, development of subsequent IEPs and the prosecuting of administrative or judicial mediation or

[84] See R.C. Chapter 3321.

proceedings with respect to any of those subsequent IEPs do not affect continued eligibility for scholarship payments. In other words, a scholarship will not be awarded and paid until the child's IEP is in place and it is clear that there are no challenges to that IEP. But *future* challenges to *subsequent* IEPs will not disqualify the child for a scholarship.

"Eligible applicant"

The act permits the following individuals to apply for and accept a scholarship for a qualified special education child:

(1) The child's custodial natural or adoptive parent or parents. The act specifically excludes a parent whose custodial rights have been terminated.

(2) The child's guardian;

(3) The child's custodian other than the parent;

(4) The child's grandparent if the grandparent is an attorney-in-fact under a power of attorney or if the grandparent has executed a caregiver affidavit (both under continuing law);

(5) The child's "surrogate parent" appointed under state and federal special education law; or

(6) The child, if the child does not have a custodian or guardian and is at least 18 years old.

Annual limit on the number of scholarships

(R.C. 3310.52(B))

The act limits the number of scholarships that may be awarded each year under the Jon Peterson Special Needs Scholarship Program to not more than 5% of the number of identified disabled students residing in the state during the previous fiscal year.

Alternative providers of special education programs

(R.C. 3310.51(A), 3310.58, and 3310.59)

Scholarships may be used to pay for special education programs provided by alternative public providers or by private entities registered with the Superintendent of Public Instruction.

Alternative public providers

An alternative public provider must be either (1) a school district other than the district obligated to educate the disabled child (or the child's resident school district, if different) or (2) another public entity that agrees to enroll the child and implement the child's IEP. In addition, the alternative public provider must be an entity to which the eligible applicant, rather than a school district or other public entity, owes fees for the services provided to the child. In other words, an eligible applicant cannot use a scholarship to enroll a child in a school district or other public entity to which the child's school district would send the child for special education services because, in that case, the child's district would be required to pay the receiving district or entity for the services provided to the child. Nor may an eligible applicant use a scholarship to enroll the child in a community school because the community school, as a public school, would receive state funds to educate the child even without the scholarship. The eligible applicant must use the scholarship to pay for special education and related services provided by a school district or public entity from which the eligible applicant otherwise would not receive those services for the child free of charge.

Registered private providers

Nonpublic schools and other private entities may accept scholarship children under the act, but first they must register with the Superintendent of Public Instruction. To be registered by the Superintendent, the private school or entity must meet the following requirements:

(1) It must comply with the antidiscrimination provisions of the federal Civil Rights Act of 1964,[85] which prohibits discrimination on the basis of *race, color, or national origin* in the administration of benefits assisted with federal funds. The act specifies that this antidiscrimination statement applies to a registered private provider regardless of whether the provider receives federal financial assistance. A student's scholarship under the program is not funded with federal money.

(2) It agrees to conduct criminal records checks of applicants for employment and contractors, if it is not already required to do so pursuant to law;[86]

(3) Its educational program is approved by the Department of Education;

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[85] 42 United States Code 2000d.

[86] R.C. 109.57, 109.572, 3319.39, 3319.391, and 3319.392 (last two not in the act).

(4) Its teaching and nonteaching staff, including those employed by a subcontractor, must hold credentials determined by the State Board of Education to be appropriate for the qualified special education children enrolled in its program;

(5) It meets applicable health and safety standards;

(6) It agrees to retain any documentation required by the Department;

(7) It agrees to provide to each child's resident school district a record of the implementation of the child's IEP, including evaluation of the child's progress; and

(8) It agrees that if it declines to enroll a particular child under the program, it will notify the eligible applicant in writing of its reasons for declining to enroll that child.

If the Superintendent of Public Instruction determines that a private school or entity no longer meets these criteria, the Superintendent must revoke its registration. The school or entity must be allowed a hearing prior to revocation.

Scholarship amount

(R.C. 3310.51(E) and 3310.56)

Each Special Needs scholarship is worth the *smallest* of:

(1) $20,000;

(2) The total fees charged by the provider; or

(3) A maximum amount based on the per pupil amount that would have been computed for payment to a school district for the student under the former Building Blocks Model school funding system. That amount is the sum of:

(a) The "formula amount," which for FY 2012 and 2013 under the act is $5,653; plus

(b) The per pupil base funding supplements as they were calculated for FY 2009 ($50.90); plus

(c) A weighted special education amount, equal to $5,732[87] multiplied by one of the following weights:

[87] $5,732 is the amount that was designated as the "formula amount" for fiscal years 2009, 2010, and 2011.

- 0.2892, for a student with a category one disability (speech and language disabled only);
- 0.3691, for a student with a category two disability (specific learning disabled, developmentally disabled, or other health impaired-minor);
- 1.7695, for a student with a category three disability (vision impaired, hearing disabled, or severe behavior disabled);
- 2.3646, for a student with a category four disability (orthopedically disabled or other health impaired-major);
- 3.1129, for a student with a category five disability (multiple disabilities); or
- 4.7342, for a student with a category six disability (autism, traumatic brain injuries, or both visually and hearing impaired).

Before applying these multiples, the act specifies that they must be adjusted by multiplying them by 0.90 (in other words, 90% of the prescribed weight).

The prescribed weights and categories are the same ones used under the former Building Blocks Model. Elsewhere, the act specifies that special education payments for community school and STEM school students for fiscal years 2012 and 2013 also be based on the former categories and weights. (See "**Special education categories and weights**" and "**Community school and STEM school payments**" above.)

Payment of scholarships

(R.C. 3310.54, 3310.55, 3310.57, and 3317.03(A), (B), and (F)(5))

Like other current scholarship programs, the Department of Education must make periodic payments throughout the school year to the eligible applicant for services provided to a qualified special education child, until the full amount of the scholarship has been paid. The amount of the scholarship is deducted from the state aid account of the school district in which the child is entitled to attend school. That district is authorized to count the child in its formula ADM and special education ADM. If the child is not included in the formula ADM of that district, the Department must adjust the district's ADM to include the child and recalculate the district's state aid payments for the entire fiscal year accordingly.

The scholarship may be used only to pay fees charged by the alternative special education program for implementation of the child's IEP and other services agreed to by the provider and the eligible applicant that are not in the IEP but are associated with

educating the child. The Department must prorate a child's scholarship amount if the child withdraws from the alternative program before the end of the school year.

Application deadlines

(R.C. 3310.52(C))

In order to qualify for a scholarship, either for the first time or to renew a scholarship, an eligible applicant must submit an application in the manner prescribed by the Department of Education and notify the child's school district. The act prescribes April 15 as the application deadline for academic terms that begin between July 1 and December 31 (the first half of a school year), and November 15 for academic terms that begin between January 1 and June 30 (the second half of a school year).

Administration of state achievement assessments

(R.C. 3310.522 and 3310.59)

In order to maintain eligibility under the program, each scholarship student must take the state achievement assessment prescribed for the student's grade level, unless the student is excused from that assessment under the student's IEP or federal law. Accordingly, as under the Ed Choice and Cleveland scholarship programs, registered private providers must administer the appropriate assessments to their scholarship students and report the results to the Department of Education. Also as under the other scholarship programs, a chartered nonpublic school that participates in the Jon Peterson Special Needs Scholarship Program may not be required to administer state assessments to its other, nonscholarship students, except for the Ohio Graduation Test, which is required for a diploma from both public and chartered nonpublic high schools. The Department must revoke the registration of a private provider that fails to administer the assessments.

Background

A student whose disability affects the student's capacity to take a state assessment may be excused from that assessment, as long as an alternative assessment, approved by the Department as conforming to requirements of federal law for receipt of federal funds under IDEA, is specified instead. A student also may receive special accommodations in the administration of a state assessment in order to compensate for the student's disability. Thus, continuing state law also provides that, "to the extent

possible," a student's IEP may not excuse the student from taking a state assessment unless reasonable accommodations cannot be made for the student.[88]

Continuation of some school district services

(R.C. 3310.60 and 3310.62(C))

The act provides that, if the resident school district of a child awarded a scholarship has agreed to provide some services for the child or, if the district is required by law to provide some services for the child, including transportation services, the district may not discontinue the services pending completion of any administrative proceedings regarding those services. It also specifies that the prosecuting, by the eligible applicant on behalf of the child, of administrative proceedings regarding those services does not affect the applicant's and the child's continued eligibility for scholarship payments.

Written notice of rights and informed consent

(R.C. 3310.53(C) and 3323.052)

The act requires the Department of Education to develop, within 60 days after September 29, 2011 (the act's 90-day effective date), and subsequently to revise as necessary, a document that compares a parent's and child's rights under state and federal special education law with their rights under the Jon Peterson Special Needs Scholarship Program, including the scholarship program's statutory application deadlines (see above). It also requires the Department and each school district to distribute the document to parents of disabled children as a part of, appended to, or in conjunction with the procedural safeguards notice required under federal law. It then specifies that an eligible applicant's receipt of the comparison document, as acknowledged in a format prescribed by the Department, constitutes notice that the eligible applicant has been informed of those rights. It further provides that acceptance of a scholarship constitutes the eligible applicant's informed consent to the provisions of the scholarship program.

Background

Federal special education law requires that the parents of disabled children be given notice of the procedural safeguards available to them regarding their children's special education and related services. Specifically, both the state and each school district are obligated to provide a "full explanation" of those safeguards written in the native language of the parents (unless it clearly is not feasible to do so) and written in

[88] See R.C. 3301.0711(C)(1).

an understandable manner.[89] That document must be provided once each year and upon referral or request for the child's evaluation, upon the first filing of an administrative complaint, or upon parental request. The federal statute and rules provide an extensive list of items that must be included in the document.

Provider profile

(R.C. 3310.521)

Each alternative public provider and each registered private provider that enrolls a child under the program must submit a written "profile" of the provider's services to the eligible applicant. The profile must be in a form prescribed by the Department of Education and must contain a description of the methods of instruction that will be used in providing services to the child and the qualifications of teachers, instructors, and other persons who will provide those services. As a condition of receiving scholarship payments under the program, an eligible applicant must attest, in a form and manner prescribed by the Department, to having received the profile.

Transportation for scholarship students

(R.C. 3310.60)

Under the act, scholarship students are entitled to transportation to and from the alternative special education programs as otherwise provided by law.

Continuing law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and who live more than two miles from the school they attend. Districts may, but are not required to, transport high school students to and from their nonpublic schools. A district, however, is not required to transport students of any age to and from a nonpublic school if the direct travel time by school bus, from the district school the student would otherwise attend to the nonpublic school, is more than 30 minutes. When transportation by the district is impractical, the district may offer payment to a student's parent instead of providing the transportation. On the other hand, in the case of some special education students, transportation might be mandated by their IEPs.[90]

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[89] 20 United States Code 1415(d) and 34 Code of Federal Regulations 300.503 and 300.504.

[90] See R.C. 3327.01, not in the act.

Access to data verification codes; privacy of records

(R.C. 3301.0714(D) and 3310.63)

As is the case with the Ed Choice, Cleveland, and Autism scholarship programs, the act permits the Department of Education to request the data verification codes of students applying for Jon Peterson Special Needs scholarships from (1) those students' resident school districts, (2) a community school in which a student is enrolled, or (3) the independent contractor hired by the Department to create and maintain the codes. This authority, which is an exception to the general prohibition against the Department's having access to data verification codes when they could be matched with personally identifiable student data, is limited solely to administering the scholarship programs. School districts and community schools must provide a student's data verification code to the Department or the student's parent, upon request, in a manner specified by the Department. If a student will be entering kindergarten and has not yet been assigned a data verification code, the resident school district must assign a code to the student prior to submission. If the district does not assign the code by a date specified by the Department, the Department must assign the code. Each year, the Department must provide school districts with the name and data verification code of each scholarship student living in the district who has been assigned a code by the Department.

Neither the Department nor a provider may release a student's data verification code to any person, unless such release is otherwise authorized by law. The act specifies that materials containing both a student's name or other personally identifiable data and the student's data verification code are not public records. Other documents relative to the scholarship program that are held by the Department are public records, but may be released only in accordance with state and federal privacy laws.

State Board rules

(R.C. 3310.64; Section 267.60.30)

The State Board of Education must adopt rules for the Jon Peterson Special Needs Scholarship Program in accordance with the Administrative Procedure Act so that they are in effect not later than 120 days after June 30, 2011 (the act's immediate effective date). Those rules must include application procedures and standards and procedures for the registration of private providers of special education programs.

Formative evaluation

(Section 267.60.31)

The act requires the Department of Education to conduct a "formative evaluation" of the Jon Peterson Special Needs Scholarship Program and to report its findings to the General Assembly by December 31, 2014. In doing so, the Department to the extent possible must gather comments from parents who have been awarded scholarships, school district officials, representatives of registered private providers, educators, and representatives of educational organizations. The Department must use quantitative and qualitative analyses in conducting its evaluation. The study must include an assessment of the level of the participating student's and parent's satisfaction with the program and the fiscal impact to the state and resident school districts. The act also authorizes the Department to contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct the study and to accept grants to assist in funding the study.

Comparison with Autism Scholarship Program

The Autism Scholarship Program, under continuing law, pays scholarships to the parents of certain autistic children in grades *pre-kindergarten* to 12. The act's new Jon Peterson Special Needs Scholarship Program contains many of the same concepts of the smaller Autism Scholarship Program and applies those concepts to children of all categories of disability. The act's larger program does not apply to pre-kindergarten students.

The act does not affect the Autism Scholarship Program. In fact, neither program changes or conflicts with the provisions of the other, and it appears that the two programs will coexist. However, the act excludes a student from simultaneously participating in both programs. Nevertheless, children with autism who are in grades K through 12 may be eligible for and their parents may choose either of the two programs. For example, if a parent of a child with autism cannot participate in the new program because its 5% cap has been reached, the parent likely could turn to the Autism Scholarship Program, which has no cap. On the other hand, the due process provisions between the two programs are somewhat different. Under the Autism Scholarship Program, a parent may not be awarded a scholarship if there is any pending dispute over the child's IEP. Under the Jon Peterson Special Needs Scholarship Program, the prohibition on award and payment of a scholarship applies only until the child's first IEP is developed.

Autism Scholarship Program

(R.C. 3310.41)

The Autism Scholarship Program pays scholarships of up to $20,000 to the parents of children with autism in grades pre-kindergarten to 12 to use to pay tuition at alternative public or private providers. The scholarship must be used to implement a child's individualized education program in lieu of receiving those services from the child's resident school district. Those services for a child with autism may frequently include "related services," such as motor skill therapy or other developmental services. The act requires that the services provided under the Autism Scholarship Program "include an educational component."

V. Educational Service Centers (ESCs)

ESC agreements

(R.C. 3311.05, 3313.843, 3313.845, and 3319.19; repealed R.C. 3311.059)

Background

Educational service centers (ESCs) are regional public entities that offer a broad spectrum of services, including curriculum development, professional development, purchasing, publishing, human resources, special education services, and counseling services, to school districts and community schools in their regions. Formerly known as "county school districts," ESCs are statutorily required to provide some administrative oversight and other services to all "local" school districts within their service areas. In addition, ESCs provide services to "city" and "exempted village" school districts that enter into agreements for those services. Under prior law, that authorization was generally limited to city and exempted village districts with total student populations of less than 13,000 students. For these services, ESCs are eligible to receive per pupil state and school district payments. ESCs also may provide other services to all school districts and community schools on a fee-for-service basis. (See also "**ESC payments**" below.)

Each ESC is under the oversight of its own elected governing board. The territory from which the members of an ESC's governing board are elected is the combined territory of the "local" school districts in the county or counties of the ESC's service area. It does not include the territory of other districts the ESC might serve.

Currently, there are 56 ESCs each serving districts in one or more counties.

Required agreements

The act requires every school district with a student count of 16,000 or less to enter into an agreement for services with an ESC for which it may receive the statutory per pupil payments. This requirement applies to all city, exempted village, and local school districts. Under continuing law, not affected by the act, local school districts, regardless of size, are already entitled to ESC services, and as noted above, prior law permitted, but did not require, city and exempted village districts with less than 13,000 students to arrange for those services. Thus, the act likely will significantly increase the number of students served by an ESC and for whom it may receive state and district payments.

For purposes of determining whether a district must enter into an agreement, the act specifies that a district's student count is the average daily student enrollment reported on the district's academic performance report card for the previous school year.

Permissive agreements

The act also permits all school districts with student counts greater than 16,000 to enter into agreements for services. Generally, these are large urban "city" school districts, but there are a few "local" school districts in fast-growing, unincorporated areas that have student counts approaching or exceeding 16,000. Since the act permits, rather than requires, districts with such student counts to arrange for ESC services, it is not clear whether a qualifying "local" school district is free to not receive and not pay for ESC services. Nor does the act specify whether the supervision of such a "local" school district by an ESC is still required. That is, it is not clear whether the act is intended to have the effect of allowing larger "local" school districts to "opt out" of ESC services altogether, or to transfer their territory to another ESC.

Termination of agreements

The act permits any district to terminate its agreement with its current ESC by notifying the ESC governing board by January 1, 2012, or by January 1 of any odd-numbered year thereafter. The termination is effective on the following June 30. If a district board fails to notify an ESC of its intent to terminate an agreement by January 1 of an odd-numbered year, the district's agreement is renewed for the next two school years.

Repeal of law on "local" district severance from one ESC and annexation to another

Law enacted in 2003 permitted a "local" school district to sever its territory from its current ESC and annex its territory to an *adjacent* ESC. The act repeals that provision apparently in favor of biennial ESC agreements.

This repealed law specified that a severance and annexation action was subject to both approval of the State Board of Education and referendum by petition of the district's voters. That action could not be effective sooner than one year after the first day of July after the later of (1) the date the State Board approved the action or (2) the date voters approved the action at a referendum election, if one was held. If a district severed from its ESC and annexed to another, it could not do so again for at least five years after the effective date of the prior action.[91]

Impact of "local" school district changes on an ESC's electoral territory

As noted above, the electoral territory of an ESC is the combined territory of the "local" school districts in the county or counties of the ESC's service area.[92] The act does not alter that law. Moreover, election of ESC board members, just like that of school district board members, is held only in odd-numbered years.[93] If the act is intended to allow "local" districts greater leeway to switch ESCs, their biennial decisions to terminate their agreements could frequently impact the electoral territory of ESCs. That is, as an ESC loses or gains local districts, its territory will change. Thus, one or more of its governing board members, who live in a local district that no longer is served by the ESC, will no longer be qualified to hold that office. Also, the act places no geographical limitation on the selection of an ESC by a local district. It may be possible, therefore, that an ESC's territory could become noncontiguous, with its segments separated by some distance. It is also possible that the limits on an ESC's territory prescribed in continuing law and the act's repeal of a local district's specific authority to change its ESC creates an ambiguity as to whether a district has the authority to actually leave its current ESC even if it exercises the act's authority to enter into an agreement with another one.

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[91] Former R.C. 3311.059.

[92] R.C. 3311.05.

[93] R.C. 3501.02(D), not in the act.

Dissolution procedures for ESCs

(R.C. 3311.0510)

Even though the act eliminates the formal severance and annexation procedures of prior law, as discussed above, it appears to assume that "local" districts may leave their current ESCs through the act's biennial agreement provisions. As under prior law, this would make it possible for an ESC to lose all of its local districts and be left without any electoral territory. In that situation, it appears that an ESC is forced to dissolve.

The act provides some procedures for dissolving an ESC. First, the act expressly states that if all of its "local" school districts sever from an ESC, the ESC's governing board is abolished and the ESC is dissolved. Next, the act requires the Superintendent of Public Instruction to order an equitable distribution of the assets and liabilities of the ESC among the "local" school districts that made up the ESC and the "city" and "exempted village" school districts with which the ESC had service agreements during the ESC's last fiscal year of operation. The Superintendent's order "is final and not appealable."[94] Third, the act specifies that the costs incurred by the Department of Education in dissolving the ESC may be charged against the assets of the ESC. Any amount of those costs in excess of the ESC's assets may be charged equitably against each of the local school districts that made up the ESC and the city and exempted village school districts that it last served. Fourth, a final audit of the ESC must be performed in accordance with procedures established by the Auditor of State. Finally, the ESC's public records must be transferred to the school districts that received services from the ESC and, in the case of records that do not relate to services to a particular school district, to the Ohio Historical Society.

ESC governing board subdistricts

(R.C. 3311.054; Section 733.30)

When an ESC is formed by the merger of two or more smaller ESCs, the governing board of the new ESC may divide its electoral territory into subdistricts with each member elected from one of those subdistricts, instead of being elected at large from the ESC's entire territory. However, in order to comply with the constitutional one-person, one-vote principle for popular elections, continuing law requires each ESC that has subdistricts to reconfigure them every ten years so that each member fairly represents about the same number of people. Generally, this redistricting must be completed within 90 days after the official announcement of the results of each federal

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[94] The state Superintendent must appoint "a qualified individual" to implement the Superintendent's order.

decennial census. If a governing board fails to redistrict its territory by that date, the state Superintendent must redistrict it within 30 days thereafter.

The act temporarily permits an ESC board to delay its next redistricting until July 1, 2012. The state Superintendent, then, has until August 1, 2012, to redistrict an ESC, if a board fails to do so. This provision also delays the first election for board members under the new organization until November 2013.

The act also permanently permits the governing board of an ESC newly formed by a merger of two or more smaller ESCs to appoint an "executive committee" to initially organize the ESC's territory into subdistricts, rather than the board itself organizing the subdistricts.

Appointed ESC board members

(R.C. 3311.056)

Continuing law permits the governing board of an ESC formed by a merger of two or more smaller ESCs, after at least one election for the board of the new ESC has been held, to adopt a plan under which it may "appoint" additional members to the board. The plan may permit the board to appoint a number of members up to one less than the number of elected members on the board, so long as the total number of elected and appointed members is an odd number. Prior to the act, the appointed members, like the elected members, had to be voters (electors) of the electoral territory of the ESC. In other words, an appointed member had to be a voter of one of the "local" school districts that make up the ESC's territory.

The act, on the other hand, permits the ESC board to appoint additional members who are representative of the "city" and "exempted village" school districts having service agreements with the ESC.

ESC payments

(Section 267.40.70)

ESCs receive payments from the state and from each school district they serve to pay the cost of providing those services. Payments owed by a school district are deducted from the district's state aid account and paid to the ESC by the Department of Education. Permanent law provides a framework for these payments. While that statutory framework sets specific amounts for state and district payments, biennial budget acts usually limit the state payments to the amount specifically appropriated for those payments and instruct the Department of Education to adjust the state per pupil amounts in some manner.

The act limits an ESC's state payments, for fiscal year 2012, to 90% of the aggregate amount it received in fiscal year 2011. For fiscal year 2013, it limits an ESC's payment to 85% of the amount received in fiscal year 2012. However, the act also provides that, if an ESC ceases operation, the Department must redistribute that ESC's funding to the remaining ESCs in proportion to each ESC's student count. And, if two or more ESCs merge, the Department must distribute the sum of the original ESCs' funding to the new ESC.

ESC contracts with local entities

(R.C. 307.86, 505.101, and 3313.846)

The act specifically authorizes ESCs to enter into service contracts with any other political subdivision of the state. It specifies that ESCs may enter into contracts with a board of county commissioners and a board of township trustees without competitively bidding. Because municipal corporations are governed by home rule, the act is silent on competitive bidding for service contracts with municipal corporations, leaving it, instead, up to each individual municipal corporation's charter or ordinance.

Services provided by the ESC and the amount to be paid for such services must be mutually agreed to by the parties and specified in the contract. Local entities must pay ESCs directly for services, and the board of an ESC must file a copy of each contract entered into with a local entity with the Department of Education by the first day the contract is in effect.

ESC oversight of local school districts

Textbook selection

(R.C. 3329.08)

The act eliminates a requirement that boards of "local" school districts choose textbooks and electronic textbooks to be used in their schools from a list furnished by their ESCs. Therefore, under the act, boards of local school districts, like city and exempted village districts, may decide on their own which textbooks and electronic textbooks its schools will use.

Age and schooling certificates

(R.C. 3331.01)

The act eliminates a provision of law that allowed the superintendent of an ESC to issue age and schooling certificates on behalf of the superintendent of a local school district.

Under the state minor labor law, an employer generally must require that a person who is under 18 and has not received a high school diploma or its equivalent present an age and schooling certificate before hiring that person.[95] These certificates are issued by the superintendent of the school district in which the student resides or the chief administrative officer of the nonpublic school or community school the student attends. Prior law permitted the superintendent of a local school district to designate the superintendent of the ESC to which the school district belongs as the person authorized to issue the certificates for that local district.

Filing of membership records

(R.C. 3317.031)

Under continuing law, not changed by the act, school districts and ESCs are required to keep a membership record for each pupil served. The record must include personal information, attendance records, and information on the pupil's use of school transportation. Prior law also required each local school district to file its membership records with its ESC at the end of each school year. The act eliminates this requirement to file membership records with ESCs.

Educational shared services model/P-16 councils

(Section 267.50.90)

The act requires the Governor's Director of 21st Century Education to develop plans for (1) the integration and consolidation of the publicly supported regional shared services organizations, and (2) encouraging communities and school districts to create regional P-16 councils. The Director is required to submit legislative recommendations to the Governor and the General Assembly by January 1, 2012. The act's stated goal is to have the plans ready for implementation beginning on July 1, 2012.

In preparing the shared services plan, the Director must recommend organizations to be integrated into a regional shared service center system. Those organizations include ESCs, education technology centers, information technology centers, area media centers, the education regional service system, regional advisory boards, and regional staff of the Department of Education providing direct support to school districts. Further, the Director must include "an examination of services offered to public and chartered nonpublic schools and recommendations for integration of services into a shared services model." The services to consider for integration include general instruction, special education, gifted education, academic leadership,

[95] R.C. Chapter 4109.

technology, fiscal management, transportation, food services, human resources, employee benefits, pooled purchasing, professional development, and noninstructional support.

In support of the shared services study, by October 15, 2011, the Director must survey school districts, community schools, STEM schools, chartered nonpublic schools, and other educational service providers and local political subdivisions "to gather baseline data on the current status of shared services and to determine where opportunities for additional shared services exist."

In preparing the P-16 plan, the Director must develop a set of model criteria that encourages and permits communities and school districts to create local P-16 councils. Each council must include, but are not limited to, local community leaders in primary and secondary education, higher education, and early childhood education, and representatives of business, nonprofit, and social service agencies. In developing these recommendations, the Director must examine existing P-16 councils in Ohio and identify their successes "in setting short and long-term student achievement and growth targets in their communities, leading cross-sector strategies to improve student-level outcomes, effectively using data to inform decisions around funding, providing intervention strategies for students, and achieving greater systems alignment."

VI. Teachers and School Employees

Teacher and principal evaluations

(R.C. 3314.03(A)(11)(i), 3319.02, 3319.111, and 3326.111; new R.C. 3319.112; and repealed R.C. 3319.112; conforming changes in R.C. 3302.04 and 3319.11)

Under the act, all school districts and educational service centers (ESCs) must evaluate each teacher they employ at least annually, in accordance with an evaluation framework developed by the State Board of Education. Employers must use the evaluations to inform decisions about retention, promotion, and removal of poorly performing teachers. Under prior law, a school district or ESC had to evaluate a teacher only if it was considering not rehiring the teacher for the next school year.

The act repeals the requirement for the State Board, in consultation with the Chancellor of the Board of Regents, to establish guidelines for the evaluation of teachers and principals for optional use by school districts and ESCs.

Teacher evaluation framework

(New R.C. 3319.112)

By December 31, 2011, the State Board of Education must develop a "standards-based" framework for the evaluation of teachers. The framework must require 50% of each evaluation to be based on student academic growth. It also must establish an evaluation system that:

(1) Provides for multiple evaluation factors;

(2) Is aligned with the Educator Standards Board's standards for teachers, as adopted by the State Board;

(3) Requires observation of the teacher being evaluated, including at least two formal observations by the evaluator for a minimum of 30 minutes each time and classroom walkthroughs;

(4) Requires each teacher to be given a written report of the evaluation results;

(5) Implements a classroom-level, value-added data program developed by a nonprofit organization led by the Ohio business community;

(6) Provides for professional development to accelerate and continue teacher growth and to support poorly performing teachers; and

(7) Allocates financial resources to support the professional development.

The evaluation framework must enable teachers to be rated as "accomplished," "proficient," "developing," or "ineffective." For this purpose, the State Board must develop standards and criteria that distinguish between the four levels of performance. In developing the performance standards and criteria, the State Board must consult with experts, public school teachers and principals, and stakeholder groups.

Value-added data, which measures the amount of a student's learning that is attributable to a particular teacher or school, is currently only available for reading and math in grades 4 to 8, when achievement assessments in those subjects are administered each year. Since half of each evaluation must be based on student academic growth, the act requires the State Board to establish a list of assessments to measure student mastery of course content for grades and subjects for which value-added data or other achievement assessment data is not available. These assessments may include nationally normed standardized assessments, industry certification exams, or end-of-course exams.

Finally, similar to prior law, the act directs the Department of Education to serve as a clearinghouse of promising evaluation procedures and models and to provide technical assistance to districts and schools in developing evaluation policies.

District and ESC evaluation policies

(R.C. 3319.111)

By July 1, 2013, every school district and ESC must adopt a "standards-based" policy for annual teacher evaluations that conforms with the framework developed by the State Board of Education, including the requirement for 50% of each evaluation to be based on student academic growth. This policy must be adopted in consultation with the employer's teachers.

The act specifies that the employer's evaluation policy becomes operative at the expiration of the teachers' collective bargaining agreement in effect on September 29, 2011 (the provision's 90-day effective date), and that the policy must be included in any renewal or extension of that agreement. Under continuing law, a collective bargaining agreement has a maximum term of three years.[96]

Measuring student growth

For the 50% of each teacher evaluation that must be based on student academic growth, the act requires employers to use value-added data from the state achievement assessments. For teachers of grades and subjects that do not have value-added data, the employer must measure student growth using tests selected from the list compiled by the State Board of Education.

Timing and conduct of evaluations

Teachers must be evaluated annually under the act. The employer must complete the evaluation by April 1 and provide the teacher with the results by April 10. However, there are two exceptions to the requirement for once-a-year evaluations. First, the act allows an employer, by adoption of a resolution, to elect to evaluate teachers who received a rating of "accomplished" on their most recent evaluations every two years, instead of annually. The biennial evaluation must be completed by the same April 1 deadline applicable for teachers who are evaluated each year.

Second, under continuing law, the employer must evaluate a teacher at least twice during the school year, if the teacher does not have a continuing contract (tenure) and the employer is considering not rehiring the teacher for the next school year. In

[96] R.C. 4117.09(E), not in the act.

that case, the employer must conduct the first evaluation by January 15, with results provided to the teacher by January 25, and the second evaluation between February 10 and April 1, with results provided to the teacher by April 10.

Under continuing law, each evaluation must be conducted by (1) a school district superintendent or assistant superintendent, (2) a school principal, (3) a person licensed by the State Board of Education to be a supervisor or a vocational director, or (4) a person designated to conduct evaluations under a peer review agreement entered into by the employer and the teachers' union.

Use of evaluations

Each employer's evaluation policy must include procedures for using evaluation results for retention and promotion decisions and for removal of poorly performing teachers. The act prohibits an employer from considering seniority when deciding whether to retain a teacher, except when deciding between teachers with comparable evaluations.

Applicability to community schools and STEM schools

(R.C. 3314.03(A)(11)(i) and 3326.111)

Under the act, community schools and STEM schools that receive federal Race to the Top grant funds must conduct teacher evaluations in the same manner as school districts. Other community schools and STEM schools are not required to evaluate their teachers.

Principal evaluations

(R.C. 3319.02 and 3319.112(B)(1))

Although pre-existing law requires each school district to evaluate principals annually in accordance with evaluation procedures adopted by the district, the act further requires those evaluation procedures to be based on principles comparable to the district's teacher evaluation policy. While the evaluation procedures for principals must be similar to those for teachers, they must be tailored to the duties and responsibilities of principals and the environment in which principals work. As with teachers, the State Board of Education must establish standards and criteria for rating principals on evaluations. Under continuing law, evaluations must be a factor in deciding whether to renew a principal's contract.

Teacher salaries

(R.C. 3314.03(A)(11)(i), 3317.01(C), 3317.14, 3317.141, and 3326.111; conforming changes in R.C. 3302.061 and 3319.08)

The act requires each school district that receives federal Race to the Top grant funds to adopt an annual performance-based salary schedule for teachers. The timeline for the district to adopt the schedule and begin using it are outlined in its scope of work, which was previously approved by the Superintendent of Public Instruction as a condition for receipt of the grant money. Each school district that is *not* a recipient of Race to the Top funding and each educational service center (ESC) must either (1) adopt a performance-based salary schedule in accordance with the act's provisions or (2) comply with continuing law, which requires teachers to be paid a minimum salary based on years of service and educational training (see "**Background – minimum salary schedule**" below).

Employers who are required, or elect, to implement a performance-based salary schedule must measure a teacher's performance by:

(1) The level of educator license that the teacher holds. Under continuing law, the four levels of standard teacher licensure are (a) the resident educator license, which is for entry-level teachers, (b) the professional educator license, which a teacher may teach under throughout the teacher's career, (c) the senior professional educator license, and (d) the lead professional educator license.

(2) Whether the teacher is "highly qualified" under the federal No Child Left Behind Act (NCLB). To be highly qualified within the meaning of NCLB, a teacher generally must have a bachelor's degree, be fully certified by the state, and demonstrate competency in the teaching subject.[97]

(3) The ratings received by the teacher on evaluations conducted under the act (see "**Teacher and principal evaluations**" above).

Additionally, the salary schedule must provide for annual adjustments based on evaluation ratings. While the act does not designate the amount of these adjustments, it specifies that the annual performance-based adjustment for an "accomplished" teacher must be more than the adjustment for a "proficient" teacher.

Finally, the employer may provide in the salary schedule for additional compensation for teachers who assume duties that the employer determines warrant

[97] 34 Code of Federal Regulations 200.56.

extra pay, but for which the teacher does not have a supplemental contract. These duties may include, among others determined by the employer, (1) assignment to a school that is eligible for federal funding for low-income or other at-risk students or that has failed to meet the NCLB standard of "adequate yearly progress" for two or more consecutive years, (2) teaching in a grade or subject area for which the employer has a shortage of teachers, or (3) assignment to a hard-to-staff school. Under continuing law, a teacher may receive extra compensation for duties in addition to regular teaching duties, such as coaching or directing an extracurricular activity, under a supplemental contract. However, the pay for the duties covered by a supplemental contract is not provided for in the main salary schedule.

Applicability to community schools and STEM schools

(R.C. 3314.03(A)(11)(i) and 3326.111)

The act requires community schools and STEM schools that receive Race to the Top funds to adopt an annual performance-based salary schedule that complies with the act's requirements for the teachers they employ. Unlike school districts, those schools are not subject to the requirements of continuing law to pay teachers based on years of service and training or to pay a minimum salary. Consequently, community schools and STEM schools that do *not* receive Race to the Top funds may set teacher salaries in accordance with their own procedures.

Filing of salary schedule

(R.C. 3317.01(C) and 3317.14)

The act repeals a requirement for school districts and ESCs annually to file a copy of their teacher salary schedule with the Superintendent of Public Instruction. It also eliminates a provision making payment of state funding to the district or ESC contingent upon the filing of the schedule.

Background – minimum salary schedule

(R.C. 3317.14)

The act retains law regarding the adoption of a teacher salary schedule that contains provisions for increments based on training and years of service, but it only permits school districts and ESCs that are not receiving Race to the Top funds to use this type of schedule. While a district or ESC may establish its own service requirements and system for granting credit for service in schools not under its control, the law also prescribes a minimum schedule with which the district or ESC must

comply. In other words, there is a statutory minimum that must be paid to teachers based on years of service and education.

Under the statutory schedule, the base salary is $20,000 for a teacher with zero years of service and a bachelor's degree. All other salaries on the schedule are increments upward (or downward in some cases, if a teacher does not have a bachelor's degree) as a teacher gains experience and education.

Also, under this schedule, a district or ESC must grant credit for a teacher's years of service not only to the district or ESC itself, but also to another public school, to a chartered nonpublic school in Ohio (if the teacher was licensed in the same manner as a school district teacher), and to a chartered school operated by the state or a subdivision or other local government of the state. In addition, a district or ESC must give credit for all of a teacher's years of active military service in the U.S. armed forces up to five years. However, the total service credit a district or ESC grants for service to a school other than one under its control and for military service may not exceed ten years.

Teacher reductions in force

(R.C. 3319.17(C); conforming change in R.C. 3319.18)

The act retains the requirement that a school district, when reducing the number of teachers it employs, give preference in retention first to teachers with continuing contracts (tenure). However, it eliminates the requirement that second preference be given to teachers with greater seniority, and instead explicitly prohibits a district from giving preference in layoffs based on seniority at all, except when deciding between teachers with comparable evaluations. Under the act, a district also may not use seniority as the basis for rehiring teachers when positions become available again, unless the teachers under consideration have similar evaluations. These provisions regarding the use of seniority prevail over collective bargaining agreements entered into on or after September 29, 2011 (the provisions' 90-day effective date). Also, unless a school district has a separate layoff policy for administrators, the prohibition on considering seniority will apply to reductions in force affecting those employees.[98]

With respect to teacher layoffs by educational service centers (ESCs), the act repeals the requirement that an ESC give preference in retention first to tenured teachers and then to teachers with greater seniority. It does not specify an alternative method for an ESC to determine the order of layoffs.

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[98] See R.C. 3319.171, not in the act.

Retesting teachers

(R.C. 3319.58)

Under the act, in any year in which a building of a school district, community school, or STEM school is ranked in the lowest 10% of all public school buildings based on its performance index score, the building's classroom teachers must retake all exams required by the State Board of Education for licensure to teach the subject area and grade level taught by the teacher. This requirement applies to all teachers of reading and English language arts, math, science, foreign language, government, economics, fine arts, history, or geography. While the act states that the teacher is not responsible for the cost of retaking an exam, it does not specify who is. Presumably, that cost must be paid by the employer.

The school district, community school, or STEM school may use the exam results in deciding whether to continue to employ a teacher and in creating professional development plans for the teacher. However, the act prohibits an employer from using the results as the sole factor in employment decisions, unless the teacher has failed to pass the same licensure exam three consecutive times. Once a teacher provides proof of passing an exam to the teacher's employer, the teacher is exempt from having to take the test again for three years, regardless of the ranking of the building to which the teacher is assigned.

Alternative resident educator license

(R.C. 3319.26)

The act makes several changes regarding the alternative resident educator license, as shown in the table below. This four-year license is intended to give individuals who have not graduated from a traditional teacher preparation program the opportunity to work toward standard licensure while employed full-time as a teacher.

	Prior law	The act
Grade levels	Valid for teaching in grades 4 to 12 in a designated subject area, except that the license in the area of intervention specialist is valid for teaching in grades K to 12. (An intervention specialist works with disabled, gifted, and other students with individualized instructional needs that require use of particularized teaching practices.)	Valid for teaching in grades K to 12 in a designated subject area or in the area of intervention specialist.

	Prior law	The act
Qualifications for obtaining license	Under former statute and State Board of Education licensure rules,[99] the qualifications for an alternative resident license were: (1) A bachelor's degree; (2) A major with a grade point average (GPA) of at least 2.5 in the subject area to be taught, extensive work experience related to that subject area, or a master's degree with a GPA of at least 2.5 in that subject area; (3) Completion of the intensive pedagogical training institute developed by the Superintendent of Public Instruction and the Chancellor of the Board of Regents under continuing law. The instruction covers such topics as student development and learning, assessment procedures, curriculum development, classroom management, and teaching methodology. (4) Passage of the Praxis II subject area assessment.	Under the act, the minimum qualifications for the alternative resident license are: (1) A bachelor's degree; (2) Completion of either (a) the intensive pedagogical training institute or (b) a summer training institute provided to participants of a teacher preparation program that is operated by a nonprofit organization and has been approved by the Chancellor. The act directs the Chancellor to approve any program that requires participants to (i) have a bachelor's degree, (ii) have an undergraduate GPA of 2.5 or better, and (iii) complete a summer training institute. (3) Passage of the Praxis II subject area assessment. The State Board may adopt additional qualifications for the license, but the act prohibits requiring applicants to have completed a college major in the subject area to be taught.
Conditions of holding license	(1) Participate in the Ohio Teacher Residency Program, which is a four-year, entry-level mentoring program for classroom teachers;[100] (2) Show satisfactory progress in taking and completing at least 12 additional semester hours of college coursework in the principles and practices of teaching; and (3) Take the Praxis II assessment of professional knowledge in the	(1) Participate in the Ohio Teacher Residency Program; (2) Show satisfactory progress in taking and completing one of the following: (a) At least 12 additional semester hours of college coursework in the principles and practices of teaching; or (b) Professional development provided by a nonprofit teacher

[99] See Ohio Administrative Code 3301-24-19 and 3301-24-21.

[100] See R.C. 3319.223, not in the act.

	Prior law	The act
	second year of teaching under the license.	preparation program that has been approved by the Chancellor above. (3) Take the Praxis II assessment of professional knowledge in the second year of teaching under the license.

Licensure of Teach for America participants

(R.C. 3319.227 and 3319.26(G))

The act prohibits the State Board of Education from adopting rules establishing any additional licensure qualifications for participants in the Teach for America program beyond those enacted in H.B. 21 of the 129th General Assembly (effective July 29, 2011). Under H.B. 21, the State Board must issue a resident educator license to a person who is assigned to teach in Ohio as a participant in the Teach for America program, or who has completed two years of teaching in another state through that program, and (1) has a bachelor's degree, (2) has an undergraduate grade point average of at least 2.5 out of 4.0, (3) has passed the Praxis II subject area assessment in the teaching area, and (4) has successfully completed Teach for America's summer training institute. Since H.B. 21 qualifies Teach for America participants for a standard teaching license, this act makes them ineligible for an alternative resident educator license.

Licensure of out-of-state teachers

(R.C. 3319.228)

The act creates a process for the State Board of Education to establish a list of states with inadequate teacher licensure standards, for the purpose of enabling certain veteran teachers from states *not* on the list (and, therefore, have satisfactory licensure standards) to obtain automatic licensure in Ohio. To qualify for the automatic licensure, an out-of-state teacher, in addition to being from a state with acceptable licensure standards, must:

(1) Have a bachelor's degree;

(2) Have been licensed and employed as a teacher in the other state for each of the preceding five years;

(3) Have been initially licensed as a teacher within the prior 15 years; and

(4) Have not had a teacher's license suspended or revoked in any state.

The act does not prohibit a teacher from a state on the State Board's list from ever obtaining a teaching license in Ohio, but presumably the teacher would need to meet additional qualifications.

Establishing the list

(R.C. 3319.228(B))

By July 1, 2012, the Superintendent of Public Instruction must develop a list of states that the Superintendent considers to have teacher licensure standards that are inadequate to ensure that a person who meets the criteria in (1) to (4) above and who was most recently licensed to teach in that state is qualified for a professional educator license, which is the standard teaching license in Ohio. The Superintendent then must convene a panel of experts, each of whom must be approved by the State Board of Education, to evaluate the adequacy of the teacher licensure standards of the states on the list. In evaluating the list, the panel must provide an opportunity for representatives of the Education department of each state on the list to refute the state's inclusion.

By April 1, 2013, the panel must recommend to the State Board either that the list be approved without changes or that specified states be removed from the list prior to approval. The State Board must approve a final list by July 1, 2013.

Licensure of teachers until list is approved

(R.C. 3319.228(C) to (E))

Until the final list is approved, the State Board must issue a one-year provisional educator license to any out-of-state teacher who meets the criteria described in (1) to (4) above. However, between July 1, 2012, when the Superintendent of Public Instruction's preliminary list is completed, and the date of the final list's approval, the State Board must issue the teacher a five-year professional educator license, if the teacher is from a state *not* on the preliminary list. Upon approval of the final list, the State Board must issue a professional educator license to any teacher who meets the specified criteria and is from a state not on the list.

In the case of a teacher who is issued a provisional license prior to the final list's approval, under certain conditions, the teacher may obtain a professional license when the provisional license expires. To qualify for the professional license, the teacher must have been issued the provisional license before the completion of the preliminary list by the state Superintendent and, prior to teaching in Ohio, have been most recently

licensed to teach by a state not on the preliminary list or, if the final list has been approved, not on that list. However, if the teacher was most recently licensed by a state that is on the list, the teacher can still obtain a professional license if (1) the teacher was employed under the provisional license by a public school in Ohio or an entity contracted by the school to provide online instruction and (2) the school certifies to the State Board that the teaching was satisfactory.

Reciprocity agreements

(R.C. 3319.228(C))

Once the State Board has approved a final list of states with inadequate licensure standards, neither the State Board nor the Department of Education may be party to any reciprocity agreement with a state on the list that requires the issuance of any type of professional educator license to a teacher based on licensure and teaching experience in that state.

Career-technical educator licenses

(R.C. 3319.229)

The act requires the State Board of Education's rules for the issuance and renewal of professional educator licenses for teaching career-technical education to include requirements relating to life experience, professional certification, and practical ability. Moreover, it prohibits the State Board from requiring an applicant for a professional career-technical license who meets those requirements to complete a degree as a condition of obtaining or renewing the license. This provision restricts a State Board rule requiring a career-technical teacher who did not have an associate's or bachelor's degree at the time of initial licensure to complete a degree applicable to the career field, classroom teaching, or an area of licensure before the second renewal of the professional license.[101] This rule applied to all career-technical teachers initially licensed after 2004.

Data on graduates of teacher preparation programs

(R.C. 3333.0411)

Under the act, the Chancellor of the Board of Regents annually must report aggregate value-added data for graduates of Ohio teacher preparation programs. Value-added data shows the amount of student academic growth attributable to a particular teacher or school. Since value-added data is only available for public school teachers who teach English language arts or math in grades 4 to 8, when annual state

[101] Ohio Administrative Code 3301-24-08(B).

achievement assessments are given in those subjects, the reports will be limited to those teachers. The Chancellor must report the data for each program by graduating class. If a class has ten or fewer graduates included in the report, however, the Chancellor must report the data for a three-year group of classes to protect the identity of individual graduates. The Chancellor must issue the first report by December 31, 2012. The act directs the Department of Education to share any data necessary for the report with the Chancellor.

Criminal records checks of adult education instructors

(R.C. 3319.39)

The act eliminates the requirement for an adult education instructor to undergo a criminal records check prior to hiring by a school district, community school, STEM school, educational service center, or chartered nonpublic school, if the person had a records check within the previous two years as a condition of being hired for short-term employment with that same district, school, or service center.[102] The exemption from the records check applies only if the duties of the position for which the person is applying do not involve routine interaction with a child or, during any period of time in which the position does involve routine interaction, another employee will be present in the same room with the child or, if outdoors, will be within a 30-yard radius of the child or have visual contact with the child.

Certification of chartered nonpublic school teachers

(R.C. 3301.071)

The act creates an alternative pathway to certification for individuals to teach foreign language, music, religion, computer technology, or fine arts in a chartered nonpublic school. It requires the State Board of Education to certify a person to teach one of these subjects upon receipt of a signed affidavit from the chief administrative officer of the chartered nonpublic school that wishes to employ the person, stating that the person (1) has specialized knowledge, skills, or expertise that qualifies the person to provide instruction or (2) has provided the chief administrative officer with evidence of either (a) at least three years of teaching experience in another school or (b) completion of a teacher training program named in the affidavit.

Under prior law, to be certified to teach any subject in a chartered nonpublic school, the only option was for a person to have a bachelor's degree from an accredited institution of higher education or, at the State Board's discretion, an equivalent degree

[102] See also R.C. 3314.03(A)(11)(d) and 3326.11.

from a foreign college or university of comparable standing. The act's change enables individuals who do not have a bachelor's degree, but who have subject area proficiency or instructional training or experience, to receive teaching certification.

Termination of school district transportation staff

(R.C. 3319.0810; conforming change in R.C. 3319.081)

In provisions that are identical to prior law repealed in 2009 by H.B. 1 of the 128th General Assembly, the act authorizes the termination of transportation staff positions for "reasons of economy and efficiency" by the boards of non-Civil Service school districts (local and exempted village school districts and some city school districts). In that case, rather than employ its own staff to transport students, the board must contract with an independent agent to provide transportation services. This provision does not appear to permit the lay off of any board-employed transportation personnel for economic reasons unless the district intends to contract for at least some nonpublic personnel.

Conditions

The act prescribes conditions for laying off transportation employees and contracting with an independent agent for transportation services. First, any collective bargaining agreement between the district board and the labor organization representing the terminated employees must have expired or be scheduled to expire within 60 days after the termination notice, or must contain provisions permitting the termination of positions while the agreement is in force.

Second, the board must permit any employee whose position is terminated to fill any vacancy within the district's organization for which the employee is qualified. In doing so, the board must follow procedures for filling the vacancies established in the collective bargaining agreement with the labor organization representing the terminated employees, if it is still in force and contains such provisions. If the agreement is not in force or does not contain provisions for reemployment of the terminated employees in new positions, the board must offer reemployment on the basis of seniority.

Third, the board must permit any terminated employee to fill the employee's former position in the event the board reinstates that position within one year after the position is terminated. The act specifically states that the board need not reinstate an employee under this condition if the collective bargaining agreement with the labor organization representing the terminated employees, if one is in force at the time of the terminations, provides otherwise.

Fourth, the board must permit a terminated employee to appeal, pursuant to the Administrative Procedure Act (R.C. Chapter 119.), the board's decision to terminate the employee, not to reemploy the employee, or not to reinstate the employee.

Fifth, the contract between the board and an independent agent for the provision of transportation services must contain a stipulation requiring the agent to consider hiring the terminated district employees for similar positions.

Sixth, the contract between the board and the independent agent also must require the agent to recognize for purposes of collective bargaining between the former district employees and the agent any labor organization that represented those employees at the time of the terminations, as long as the following additional conditions are satisfied:

(1) A majority of the employees in the former school district bargaining unit agree to representation by that labor organization;

(2) Federal law does not prohibit the representation; and

(3) The labor organization is not prohibited from representing nonpublic employees either by law or its own governing instruments.

No employee may be compelled to be included in the bargaining unit represented by that labor organization if there is another one within the agent's organization that is applicable to the employee.

Recourse if district board does not comply with conditions

If the school district board fails to comply with any of the prescribed lay-off conditions, including enforcement of the required contractual obligations, the terminations of transportation staff positions are void. In such instances, the board must reinstate the positions and fill them with the employees who filled those positions just prior to the terminations. The employees must be compensated at their rate of compensation in those positions just prior to the terminations, plus any increases paid to other nonteaching employees since the terminations. In addition, the employees must receive back pay from the date of the terminations to the date of reinstatement, minus any pay the employees received while the board was in compliance with the act's provisions.

The act grants any employee aggrieved by the board's failure to comply with any of the act's provisions the specific right to sue the board for reinstatement of the employee's former position or for damages in lieu of reinstatement. Suit may be brought in the common pleas court for the county in which the school district is located

or, if the district is located in more than one county, in the common pleas court for the county in which the majority of the district's territory is located.

School district employees sick leave

(R.C. 3319.141)

The act exempts substitutes, adult education instructors who are scheduled to work the full-time equivalent of less than 120 days per school year, and persons who are employed on an as-needed, seasonal, or intermittent basis from the law that provides 15 days sick leave with pay for each year under contract to each person who is employed by a school district or ESC, which is credited at the rate of 1.25 days per month.

Continuing law requires that part-time, seasonal, intermittent, per diem, or hourly service employees be entitled to sick leave for the time actually worked at the same rate as that granted like full-time employees. The act requires this time to be calculated at a rate of 4.6 hours of sick leave for each completed 80 hours of service, and removes seasonal and intermittent employees from those employees who are eligible for this sick leave.

VII. School Restructuring

Restructuring low-performing schools

(R.C. 3302.12)

If a school district school is ranked for three consecutive years in the lowest 5% of all public school buildings according to performance index score, and the school also has a performance rating of academic watch or academic emergency, the act requires the school district to restructure the school. The district must choose one of the following restructuring actions:

(1) Close the school and reassign the school's students to other schools with higher academic achievement;

(2) Contract with another school district or a nonprofit or for-profit entity with a record of effectiveness to operate the school;

(3) Replace the school's principal and teaching staff, exempt the school from any specified district regulations regarding curriculum and instruction at the request of the new principal, and allocate at least the per-pupil amount of state and local (that is, nonfederal) revenues to the school for each of its students; or

(4) Reopen the school as a conversion community school.

Since the performance index scores and performance ratings are issued each August for the previous school year, a school may have already opened for the next school year before finding out it is subject to the act's provisions. Rather than requiring restructuring of the school immediately, the act grants the school an additional year of operation before it must be restructured. It is not clear under the act whether there must be a "look back" at a school's performance index scores prior to the 2011-2012 school year to determine if the school must be restructured. If there is a "look back" period, underperforming schools could face restructuring at the end of the 2011-2012 school year.

Continuing law requires all school districts to maintain grades K to 12.[103] A district's restructuring action, such as closing a school or reopening a school as a community school, may cause the district to be out of compliance with this requirement. In that case, the district must enter into a contract with another school district to enroll resident students of the missing grades in the other district. The terms of the contract must be agreed to by the respective boards of education and the resident district must pay tuition to the district of attendance for the students' enrollment.[104] If the resident district fails to enter into or maintain the contract, the State Board of Education must proceed to dissolve the entire district.

Pilot project for parent petitions for school reforms

(R.C. 3302.042)

The act establishes a pilot project in the Columbus City School District, under which parents may petition the district to make reforms in certain poorly performing schools. Parents may petition for reforms in a school building that, for three or more consecutive years, has been ranked in the lowest 5% of all public school buildings statewide based on its performance index score. The pilot project must commence after the Department of Education, in consultation with the District, establishes implementation guidelines.

Under the pilot project, parents may file a petition requesting the district to do one of the following: (1) reopen the failing school as a community school, (2) replace at least 70% of the school's personnel who are related to the school's poor academic performance, or retain no more than 30% of the staff members, (3) contract with another school district or a nonprofit or for-profit entity with a record of effectiveness to operate

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[103] R.C. 3311.29.

[104] R.C. 3317.08, 3327.04, and 3327.06 (last section not in the act).

the school, (4) turn operation of the school over to the Department of Education, or (5) any other major restructuring that makes fundamental reforms in the school's staffing or governance.

To compel the district to make the requested reform, the parents of at least 50% of the school's students must sign the petition. Alternatively, a petition may be submitted by the parents of at least 50% of the total number of students enrolled in the underperforming school and the feeder schools whose students typically matriculate into that school.

The district must implement the requested reform in the next school year, except in certain circumstances (see below). However, if parents submit a petition to reform a school that is also subject to restructuring by the school district (see "**Restructuring low-performing schools**" above), and the district chooses a different restructuring reform than requested in the petition, it is not clear which reform would prevail.

When implementation of reform is prohibited

(R.C. 3302.042(D))

The act explicitly prohibits the district from implementing the reform requested by the petitioners if:

(1) The Columbus Board of Education determines that the petitioners' request is for reasons other than improving student achievement or safety;

(2) The Superintendent of Public Instruction determines that the reform would not comply with the Department of Education's Model of Differentiated Accountability, which establishes sanctions for chronically underperforming districts and schools as required by the federal No Child Left Behind Act;

(3) The requested reform is to have the Department take over the school's operation and the Department has not agreed to do so; or

(4) The school board has (a) held a public hearing on the matter and issued a statement explaining why it cannot implement the reform and agreeing to implement another of the reforms described above, (b) submitted evidence to the state showing how the alternative reform will improve the school's performance, and (c) had the alternative reform approved by the Superintendent of Public Instruction and the State Board of Education.

Petition validation

(R.C. 3302.042(C))

Parent petitions must be filed with the school district treasurer. Within 30 days after receipt of a petition, the treasurer must verify that the signatures are valid and sufficient in number to require implementation of the requested reform. If the treasurer finds that there are not enough valid signatures, any person who signed the petition, within ten days, may appeal the treasurer's finding to the county auditor. The county auditor then has 30 days to conduct an independent verification of the signatures.

Evaluation of pilot project

(R.C. 3302.042(E))

The Department of Education must annually evaluate the pilot project and submit a report to the General Assembly, beginning no later than six months after the first petition has been resolved. Each report must contain recommendations regarding the continuation of the pilot project, its expansion to other school districts, or enactment of further legislation establishing the program statewide.

Innovation schools and innovation school zones

(R.C. 3302.06 to 3302.068)

Under the act, a school district may designate a single school as an "innovation school," or a group of similar schools as an "innovation school zone," for the purpose of implementing an innovation plan designed to improve student academic performance. Schools must apply to the district board of education for the designation. A majority of the teachers and a majority of the administrators in each applicant school must consent to seeking the designation. If the district approves the application, the district then must apply to the State Board of Education for designation as a "school district of innovation." Upon receipt of the designation from the State Board, the participating schools may proceed to implement their innovation plans.

The State Board, with certain exceptions, must waive education laws and administrative rules that prevent implementation of an innovation plan. Furthermore, a participating school may be exempt from specific provisions of a collective bargaining agreement, upon approval of the members of the bargaining unit working in the school.

Applying for designation as an innovation school or innovation school zone

(R.C. 3302.06)

When a school applies to the school board to be designated as an innovation school, the application must include an innovation plan that contains the following:

(1) A statement of the school's mission and an explanation of how the designation would enhance the school's ability to fulfill that mission;

(2) A description of the innovations the school would implement;

(3) An explanation of how those innovations would affect the school's programs and policies, including (a) the school's educational program, (b) the length of the school day and school year, (c) the student promotion policy, (d) the assessment of students, (e) the school's budget, and (f) the school's staffing levels;

(4) A description of the improvements in student academic performance that the school expects to achieve with the innovations;

(5) An estimate of the cost savings and increased efficiencies, if any, that the school expects to achieve with the innovations;

(6) A description of any education laws, State Board of Education rules, district requirements, or provisions of a collective bargaining agreement that would need to be waived to implement the innovations; and

(7) Evidence that a majority of the teachers and a majority of the administrators assigned to the school consent to seeking the designation and a statement of the level of support for seeking the designation from other school personnel, students, parents, and members of the community in which the school is located.

Two or more schools in the same district may apply for designation as an innovation school zone, if the schools share common interests, such as geographical proximity or similar educational programs, or if the schools serve the same students as they progress to higher grades (an elementary school and the middle school into which it feeds, for example, could jointly apply). The application must contain the same information as above for each participating school, plus (1) a description of how innovations in the participating schools would be integrated to achieve results that would be less likely to be achieved by each school alone and (2) an estimate of economies of scale that would be realized by joint implementation of the innovations.

Review of applications by district

(R.C. 3302.061)

The school board must approve or disapprove an application for designation as an innovation school or an innovation school zone within 60 days. If the board disapproves an application, it must provide a written explanation for its decision. The applicants may reapply for the designation at any time.

In evaluating applications, the school board must give preference to those that propose innovations in one or more of the following areas:

(1) Curriculum;

(2) Student assessments, other than the state achievement assessments;

(3) Class scheduling;

(4) Accountability measures, including innovations that expand the measures used in order to collect more complete data about student performance. For this purpose, schools may consider use of such measures as end-of-course exams, portfolios of student work, nationally or internationally normed assessments, the percentage of students enrolling in higher education, or the percentage of students simultaneously obtaining a diploma and an associate's degree or industry certification.

(5) Provision of student services, including services for students who are disabled, gifted, limited English proficient, at risk of academic failure or dropping out, or at risk of suspension or expulsion;

(6) Provision of health, counseling, or other social services to students;

(7) Preparation of students for higher education or the workforce;

(8) Teacher recruitment, employment, and evaluation;

(9) Compensation for school personnel;

(10) Professional development;

(11) School governance and the roles and responsibilities of principals; or

(12) Use of financial or other resources.

The act explicitly authorizes a school board to approve an application that allows a participating school to determine the compensation of school employees. In that case,

the school is not required to comply with the salary schedule for teachers adopted by the board. However, the school must set salaries so that the total compensation for all school employees does not exceed the funds allocated to the school by the district. Similarly, the school board may approve an application that permits a participating school to remove employees from the school, but the board retains the ultimate responsibility for terminating an employee's contract.

Finally, the school board, of its own accord and in the absence of an application from a school, may designate an innovation school or an innovation school zone. If it exercises this authority, the board must create an innovation plan and offer the schools it has designated an opportunity to participate in the plan's development.

Designation as district of innovation

(R.C. 3302.062, 3302.066, and 3302.067)

Once a school board has designated an innovation school or innovation school zone within the district, it must submit the innovation plan of the participating schools to the State Board of Education. Within 60 days after receipt of the plan, the State Board must designate the district as a school district of innovation. However, the State Board must deny the designation if it determines the plan is not financially feasible or will likely result in decreased academic achievement.

A school board may request the State Board to make a preliminary assessment of an innovation plan prior to formally applying for designation as a school district of innovation. The State Board must review the plan and, within 60 days, recommend changes that would improve the plan.

Designation as a school district of innovation grants the participating schools permission to implement the innovation plan. The school board or a participating school may accept donations to support the plan's implementation. At any time, the school board, in collaboration with the participating schools, may revise the innovation plan to further improve student performance. A majority of the teachers and a majority of the administrators in each participating school must consent to the revisions.

Waiver of education laws and rules

(R.C. 3302.063)

The act requires the State Board of Education, in most cases, to waive education laws or administrative rules necessary to implement an innovation plan. A waiver applies only to the schools participating in the innovation plan. But the act prohibits the State Board from waiving any law or rule regarding:

(1) School district funding;

(2) Provision of services to students with disabilities and gifted students;

(3) Requirements related to career-technical education that are necessary to comply with federal law;

(4) Administration of the state achievement assessments and diagnostic assessments (and end-of-course exams and a nationally standardized test required as part of the new high school assessment system to be developed by the State Board and the Chancellor of the Board of Regents[105]);

(5) Issuance of the annual school district and building report cards;

(6) Implementation of the Department of Education's Model of Differentiated Accountability, which specifies sanctions for underperforming schools as required by the federal No Child Left Behind Act;

(7) Reporting of education data to the Department;

(8) Criminal records checks of school employees; and

(9) State retirement systems for teachers and other school employees.

Waiver of collective bargaining agreement

(R.C. 3302.064)

The act also permits the waiver of specific provisions of a collective bargaining agreement to implement an innovation plan. To obtain a waiver, at least 60% of the members of the bargaining unit covered by the agreement who work in a participating school must vote, by secret ballot, to approve the waiver. In the case of an innovation school zone, this 60% threshold applies to each participating school individually. If a participating school does not meet this threshold, the school board may remove the school from the innovation school zone.

A member of the bargaining unit who works at a participating school (and presumably did not vote for the waiver) may request a transfer to another district school. The school board must make every reasonable effort to accommodate the request.

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[105] See R.C. 3301.0712.

Once a waiver is approved, it remains in effect relative to any substantially similar provision in future collective bargaining agreements. Each collective bargaining agreement entered into by a school district on or after September 29, 2011 (the act's 90-day effective date) must allow for the waiver of its provisions in order to implement an innovation plan.

Regular performance reviews

(R.C. 3302.065; conforming provisions in R.C. 3302.063 and 3302.064(D))

Every three years, the school district board must review the performance of each innovation school and innovation school zone to determine if it is achieving, or making sufficient progress toward achieving, the improvements in student performance described in its innovation plan. If the board finds that a school has not demonstrated sufficient progress, it may revoke the school's designation as an innovation school or remove the school from the innovation school zone. The board also may revoke the designation of all participating schools as an innovation school zone. If a school's designation is revoked or the school is removed from an innovation school zone, the school again becomes subject to all laws, rules, and provisions of a collective bargaining agreement that had been waived to implement the innovation plan.

Annual report

(R.C. 3302.068)

By July 1 each year, the Department of Education must issue a report on school districts of innovation. This report must include data on the number of innovation schools and innovation school zones and how many students are served by them. In addition, it must contain (1) an overview of the innovations implemented in districts of innovation, (2) data on student performance, including a comparison of performance before and after a district's designation, and (3) legislative recommendations.

School district operating standards

(R.C. 3301.07(D)(3) and 3301.16)

H.B. 1 of the 128th General Assembly required the State Board of Education to adopt additional operating standards for school districts in relation to that act's establishment of the "Evidence Based Model" (EBM) and other reforms. This act makes adoption of those new standards optional and conforms some of the statutory language to the act's repeal of the EBM. The new standards, if adopted, would cover the following:

(1) Effective and efficient organization, administration, and supervision of each district and building;

(2) Establishment of business advisory councils;

(3) "Job-embedded professional development and professional mentoring and coaching," release time for planning and professional development, and reasonable access to classrooms by administrators for observation and professional development experiences; and

(4) Creation of a school leadership team for each building.

Governor's Effective and Efficient Schools Recognition Program

(R.C. 3302.22)

The act creates the Governor's Effective and Efficient Schools Recognition Program, under which the Governor must annually recognize the top 10% of public schools in the state. The manner by which such schools are to be recognized is at the discretion of the Governor. Schools to be recognized include schools of school districts, community schools, and STEM schools.

The act directs the Department of Education to establish standards by which to determine the top 10% of schools. These standards must include at least (1) student performance, measured by factors including performance indicators required under continuing law, report cards issued by the Department, performance index score rankings, and any other statewide or national assessment or student performance recognition program the Department selects to use and (2) fiscal performance, including cost-effective measures taken by the school.

VIII. Other Education Provisions

Statewide academic standards

(R.C. 3301.079 and 3301.0710)

Continuing law requires the State Board of Education to adopt statewide academic standards that specify core academic content and skills. The act repeals the requirement that the standards for English language arts, math, science, and social studies be revised every five years, and instead requires the State Board to update the standards "periodically." These standards were last updated in 2010.

The act also repeals the requirement that the State Board's standards specify skill sets that relate to the following: (1) creativity and innovation, critical thinking and

problem solving, and communication and collaboration, and (2) personal management, productivity and accountability, and leadership and responsibility. Under prior law, these skills had to be included in the standards for the core subject areas, financial literacy and entrepreneurship, fine arts, foreign language, and computer literacy (which the act renames "technology").

Finally, the act removes language that the statewide achievement assessments be designed to ensure that students demonstrate "skills necessary in the twenty-first century," but retains the requirement that the assessments ensure that students demonstrate high school levels of achievement in English language arts, math, science, and social studies.

College and work-ready assessments (new diploma requirements)

(R.C. 3301.0712; conforming changes in R.C. 3301.0711, 3302.02, 3313.603, 3313.61, 3316.611, 3313.612, 3313.614, 3314.36, and 3325.08)

The act revises the standards for the development of the new "college and work-ready assessments," which the State Board of Education, the Superintendent of Public Instruction, and the Chancellor of the Board of Regents are charged, by pre-existing law, with designing. Once developed, the new regimen is to replace the Ohio Graduation Test as a requirement for a high school diploma from a public or chartered nonpublic high school. The following table compares the standards of prior law with the act's changes:

Components of the College and Work-Ready Assessments		
	Prior Law	**The Act**
1.	A nationally standardized assessment, selected jointly by the state Superintendent and the Chancellor, that measures "competencies in science, mathematics, and English language arts."	A nationally standardized assessment, selected jointly by the state Superintendent and the Chancellor, that measures "college and career readiness."
2.	A series of end-of-course examinations in science, math, English language arts, and social studies, selected jointly by the state Superintendent and the Chancellor in consultation with faculty in the appropriate subject areas at state institutions of higher education.	Same, but further specifies that, for each subject area, the Superintendent and Chancellor must choose multiple assessments that schools may use, and these must include nationally recognized subject area assessments, such as Advanced Placement exams, SAT subject tests, International Baccalaureate exams, and other assessments of college and work readiness.

Components of the College and Work-Ready Assessments		
	Prior Law	**The Act**
3.	A senior project, completed by the student individually or as a member of the group, to be scored by the student's high school according to rubrics designed by the state Superintendent and Chancellor.	No provision. The act eliminates the senior project as a state requirement for a diploma.

The act also eliminates the requirement that the Superintendent and Chancellor create a composite scoring system to assess a student's college and work-readiness, instead relying on requirements as set by the State Board for receiving a high school diploma based on a student's performance on the nationally standardized assessment and end-of-course exams.

Competency-based high school credit

(R.C. 3313.603(J))

The act exempts chartered nonpublic schools from having to comply with, and award high school credit under, the State Board of Education's plan for awarding high school credit based on a student's demonstration of subject area competency, rather than classroom instruction.

Background

Pre-existing law requires the State Board to have adopted, by March 31, 2009, and phase in a statewide plan for students to earn units of high school credit based on a demonstration of subject area competency, instead of or in combination with completing hours of classroom instruction. The plan must include a standard method for recording demonstrated proficiency on high school transcripts. Under continuing law, all public schools (school district, community or "charter," and STEM schools) must comply with the plan and award high school credit in accordance with the plan.

Approval to take GED

(R.C. 3313.617)

The act requires a person who is 16 to 18 years old to obtain written approval from school officials to take the General Educational Development (GED) tests, passage of which qualifies a person for a high school equivalence diploma. In the case of a person who was last enrolled in a school district, the district superintendent (or a designee) must give the approval. If the person was last enrolled in a community

school or STEM school, the approval must be provided by the school principal (or a designee). The act supersedes an administrative rule of the State Board of Education, which requires the person to obtain the approval of the superintendent of the school district in which the person was last enrolled or in which the person currently resides.[106] As under the State Board rule, the act permits the Department of Education to require a person younger than 18 also to obtain the written approval of the person's parent or a court official in order to take the GED.

When calculating graduation rates for the school district and building report cards, the act requires the Department to count a person who receives approval to take the GED as a dropout from the school district, community school, or STEM school in which the person was last enrolled. This counting method applies regardless of how long the person was enrolled there before electing to take the GED.

Public records status of elementary achievement assessments

(R.C. 3301.0711(N))

Under the act, the state achievement assessments for grades 3 to 8 that are administered in the 2011-2012 school year and later are not public records. Previously, at least 40% of the questions on each assessment that were used to compute a student's score were public records, but questions needed for reuse on a future assessment were not public records and had to be redacted from the tests prior to their release. The act does not affect the Ohio Graduation Tests, which are already prohibited from public release.

Testing of students with disabilities

(R.C. 3301.0711(C))

The act requires the individualized education program (IEP) developed for a disabled student by a school district, community school, or STEM school to specify the manner in which the student will participate in the state achievement assessments. The act retains the stipulation of law that the IEP may excuse the student from taking a particular assessment, if no reasonable accommodation can be made to enable the student to take the test and the IEP specifies an alternate assessment method.

[106] Ohio Administrative Code 3301-41-01.

Fees for career-technical education materials

(R.C. 3313.642)

The act authorizes school districts to charge low-income students eligible for free lunches for certain career-technical education materials. This authority is an exemption from the general prohibition in law against charging those students for any materials needed to participate fully in a course of instruction. The course materials for which districts may charge under the act are tools, equipment, and materials that are necessary for workforce-readiness training *and* that may be retained by the students after completion of the course.

Calamity day make-up

(R.C. 3313.88 and 3326.11)

Online make-up lessons

The act permits school districts, STEM schools, community schools, and chartered nonpublic schools to use online lessons to make up some calamity days their schools are closed. To make up days in this fashion, a district or school must submit a plan to the Department of Education by August 1 each year. The plan may specify up to three days (or in the case of a community school a number of hours up to the equivalent of three days) that may be made up using lessons posted to the district's or school's web portal or web site. In the case of a school district or STEM school, the plan must include the written consent of the union that represents the district's or STEM school's teachers.

A plan must require that each classroom teacher, by November 1, develop a sufficient number of lessons for each course taught by the teacher that school year to cover the number of make-up days or hours specified in the plan. The teacher must designate the order in which the lessons are to be posted in the event of a school closure. Teachers may receive up to one professional development day to create lesson plans for the lessons. "To the extent possible and necessary," teachers must update or replace one or more developed lesson plans based on current instructional progress.

As soon as practicable after a school closure, the designated lessons for each course that was scheduled to meet on the day of the closure must be available to students on the district's or school's web portal or web site. If a student does not have access to a computer at home, the student must be permitted to work on the posted lessons at school after school reopens.

Each student must have two weeks to complete an online lesson. The two-week period generally runs from the time the particular lesson is posted. But in the case of a student who does not have computer access at home and who, therefore, is using the school's computers after the school reopens, the two-week period runs from the time the school reopens, if the lessons were actually posted prior to the school's reopening. Lessons must be graded in the same manner as other lessons. The act specifies that a student "may" receive an incomplete or failing grade if the lesson is not completed on time.

Blizzard bags

The act also gives school districts, STEM schools, community schools, and chartered nonpublic schools the option of distributing "blizzard bags," paper copies of the lessons posted online, to students in addition to posting lessons online. If a school opts to use blizzard bags, teachers must prepare paper copies in conjunction with the lessons to be posted online and update the paper copies whenever the teacher updates online lesson plans.

The district or school must specify in its plan submitted to the Department the method of distributing lessons. The method may require distribution of blizzard bags by a specific deadline or prior to any anticipated school closure as directed by the superintendent of a school district, or the principal, director, chief administrative officer, or equivalent, of a school. Blizzard bag assignments must be turned in within the same two-week period granted for online lessons. Students may receive an incomplete or failing grade for lessons not completed on time.

Schools may offer the online lesson make-up day plan in conjunction with or independent of blizzard bags. Regardless of the combination of methods used, a school may only use them to make up a total of three calamity days.

Plan for tuition-free services to adults

(Section 267.60.33)

The act requires the Department of Education, by December 31, 2011, to develop and submit to the Governor and General Assembly a plan and legislative recommendations for providing, free of tuition, two additional years of education for individuals age 22 or older toward their high school diplomas. The plan must recommend that the services be provided through dropout prevention and recovery programs operated by school districts and community schools. In developing the plan and recommendations, the Department must consult with the U.S. Department of Education to ensure that creation of the program will not expand the requirement of the

state or local education agencies to provide a free appropriate public education under the federal Individuals with Disabilities Education Act to all individuals beyond age 21.

Sale of milk in schools

(R.C. 3313.816)

Federal regulations promulgated under the National School Lunch Act prohibit a school participating in the federal school lunch program from "directly or indirectly" restricting the sale of milk "at any time or in any place on school premises or at any school-sponsored event."[107] The act repeals provisions of Ohio law, which were scheduled to take effect July 1, 2011, and that might have been construed to violate this prohibition. The repealed provisions would have placed limits on the serving size, fat content, and calorie content of milk available for sale to public and chartered nonpublic school students during the school day. The repealed limits are shown in the table below.

Grades	Time period	A la carte milk restrictions
Schools composed primarily of grades K-4 or grades 5-8	Before January 1, 2014	May sell only 8 ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per 8 ounces
	Starting January 1, 2014	Same as above, except the milk may contain no more than 150 calories per 8 ounces
Schools composed primarily of grades 9-12	Before January 1, 2014	May sell only 16 ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per 8 ounces
	Starting January 1, 2014	Same as above, except the milk may contain no more than 150 calories per 8 ounces

However, the act retains the Ohio law that requires at least 50% of the beverage items available for sale through the school food service program, a vending machine (except for one that sells only milk or federally subsidized complete meals), or a school store to be water or other beverages that contain no more than 10 calories per 8 ounces.

[107] 7 Code of Federal Regulations 210.10(m)(4).

Repeal of BMI screening requirement (VETOED)

(Repealed R.C. 3313.674 and 3301.922; R.C. 3301.921, 3302.032, 3314.03(A)(11)(h), and 3326.11)

The Governor vetoed an item that would have repealed the law requiring school districts, community schools, STEM schools, and chartered nonpublic schools to conduct body mass index (BMI) and weight status category screenings for students in grades K, 3, 5, and 9. The Governor also vetoed related provisions that would have eliminated the requirement for an annual report on public and chartered nonpublic school compliance with the BMI screening law.

Background

Continuing law, as a result of the Governor's veto, generally requires each school district, community school (other than an e-school), STEM school, and chartered nonpublic school annually to administer a screening for BMI and weight status category for each student enrolled in grades K, 3, 5, and 9. The parent of a student may opt out of the requirement by submitting a signed statement indicating that the parent does not wish to have the student undergo the screening. A district or school also may obtain a waiver of the screening requirements from the Superintendent of Public Instruction. To obtain the waiver, the district or school must submit an affidavit stating that it is unable to comply with the requirements. The state Superintendent must grant the waiver upon receipt of the affidavit.

Intra-district open enrollment

(R.C. 3313.97)

Each city, exempted village, and local school district is required to have in place an intra-district open enrollment policy permitting resident students to enroll in district schools other than the ones of their attendance areas. Each district's policy must provide for application procedures, capacity limits, and preference for students living in an attendance area, and procedures to ensure maintenance of racial balancing in the district schools.

The act specifically permits a school district to grant a student permanent permission to attend a school outside of the student's attendance area, so that the student does not need to re-apply annually for permission to attend the school. Prior law neither permitted nor prohibited a district to grant a permanent intra-district transfer.

Interscholastic athletics participation

(R.C. 3313.538)

Under Ohio High School Athletic Association (OHSAA) bylaw 4-6-3, "a student whose parents reside outside the state of Ohio but within the United States will be ineligible for interscholastic athletics in a member school." The bylaw emphasizes that the student's biological or adoptive parent must reside in Ohio. There are several exceptions to this rule, however, including one that allows the OHSAA Commissioner's office to declare a student eligible if custody is conferred by "a court of proper jurisdiction" upon a grandparent, aunt, uncle, or sibling who resides in Ohio. In order to declare such a student eligible, the Commissioner must determine that the change in custody "was not for athletic reasons, but purely for the best interest of the student in terms of the student's mental, physical, and educational well being."[108]

The act places a similar, and possibly broader, provision into law. It prohibits disqualification of a student from interscholastic athletics, solely because the parents do not reside in Ohio, if the student attends school in Ohio and lives in Ohio with a grandparent, uncle, aunt, or sibling who has legal or temporary custody of the student, or is the student's guardian. The student would remain subject to other eligibility requirements of the school and OHSAA.

Unlike the OHSAA bylaw exception, the act is silent on reasons behind the transfer of custody and relocation of the student. It might be unclear whether this silence permits OHSAA to continue to enforce its stipulation that the change in custody cannot have been for athletic reasons. The act specifically prohibits any school district, school, interscholastic conference, or organization that regulates interscholastic conferences or events, which would include OHSAA, from having a rule that conflicts with the act's provision.

The act applies definitions from R.C. 2151.011 for the terms "legal custody," "temporary custody," and "guardian." A "guardian" is a person with authority granted by a probate court to exercise parental rights over a child subject to the court's order and the residual parental rights of the child's parents. "Legal custody" is "a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities." "Temporary custody" is legal custody that can be terminated at any time by the court or the person who executed the custody agreement.

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[108] OHSAA bylaw 4-6-3, Exception 1.

Gifted education coordinator

(R.C. 3324.08)

The act specifically permits any person employed by a school district and assigned to a school as a principal or any other position also to serve as the district's gifted education coordinator, if the principal or person is qualified to do so under rules adopted by the State Board of Education. Under those rules, coordinators of gifted education must have at least three years of "successful" teaching experience, a master's degree, an Ohio administrative specialist license, if the coordinator is to supervise teachers, and an intervention specialist license for gifted education.[109]

Pilot project for multiple-track curriculum

(R.C. 3302.30)

The act requires the Superintendent of Public Instruction to establish a pilot project in Columbiana County under which one or more school districts offer a multiple-track high school curriculum for students with differing career plans. The Superintendent must solicit and select districts to participate in the pilot project, but no district can be required to participate. The selected districts must begin offering their career track curricula no later than the 2012-2013 school year. However, if nonstate funds cannot be obtained, or the state Superintendent determines that sufficient funds cannot be obtained to support the pilot project, the Superintendent may postpone implementation until the Superintendent determines that sufficient funds are available.

The curricula at each participating district must offer at least three distinct career tracks, including a college preparatory track and a career-technical track. Each track must comply with statutory curriculum requirements. The different tracks may be offered at different campuses. Two or more participating districts may offer some or all of their curriculum tracks through a cooperative agreement.

The Department of Education must provide technical assistance to participating districts in developing curriculum tracks. The act also authorizes part or all of selected curriculum materials or services to be purchased from other public or private sources. Additionally, the act requires the state Superintendent to apply for private and other nonstate funds, and authorizes the state Superintendent to use other available state funds to support the pilot project.

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[109] Ohio Administrative Code 3301-51-15(E)(6).

Each participating school district must report data about the operation and results of the pilot project to the state Superintendent. No later than December 31 of the third school year in which the pilot project is operating, the state Superintendent must submit a report to the General Assembly containing the Superintendent's evaluation of the results of the pilot project and legislative recommendations whether to continue, expand, or make changes to the pilot project.

School district lease to higher education institutions

(R.C. 3313.75)

The act adds a statement to law that districts may rent or lease facilities to public or nonpublic institutions of higher education for their use in providing evening and summer classes.

Pre-existing law authorizes a school district board to allow the use of the district's facilities by others, as long as that use does not interfere with the districts' operation of its schools. The law also states that a district board must have a policy on that use and may charge a reasonable fee. It specifies that this authority applies to the use of school facilities for such purposes as educational programs; religious, civic, social, or recreational meetings; library reading rooms; and polling places.[110]

Department of Education organization

(Repealed R.C. 3301.82, 3314.11, 3314.111, and 3319.62; conforming changes in R.C. 3314.012, 3314.19, and 3314.22)

The act repeals permanent law that requires the Department of Education to establish (1) the State Office of Community Schools, (2) the State Office of School Options, and (3) the State Office of Educator Standards. The repeal of these sections removes the requirement that the Department have these offices; however, it does not necessarily require the Department to eliminate them.

The act also repeals the permanent law, enacted by H.B. 1 of the 128th General Assembly, that allows the Department to establish the Center for Creativity and Innovation. Again, the repeal does not necessarily mean that the Department may not have such a unit.

[110] See also R.C. 3313.77, not in the act.

Obsolete reference in school district tuition law

(R.C. 3313.65)

The act removes an obsolete reference to the Ohio Sailors' and Soldiers' Home, in the school district tuition law, and replaces it with a reference to residential facilities operated by the Ohio Veterans' Home. Under continuing law, a child who does not reside in the school district in which the child's parent resides must be admitted to the schools of the district in which the child resides if at least one of the child's parents is in a residential facility and the other parent, if living and not in such a facility or placement, is not known to reside in Ohio. The definition of "residential facility" applying to this law includes the Ohio Sailors' and Soldiers' Home.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS (ENG)

- Requires that the State Board of Registration for Professional Engineers and Surveyors renew registrations biennially rather than annually, and accordingly changes the renewal fee from $20 to $40, to be paid biennially.
- Allows professional engineers and surveyors to complete continuing professional development hours during a two-year period, rather than annually, but doubles the 15 annual hours required to 30 hours for the two-year period.
- Increases from three to four the number of years records that demonstrate completion of the continuing professional development requirements must be retained.

Biennial registration for professional engineers and surveyors

(R.C. 4733.15 and 4733.151)

The act requires that professional engineers and professional surveyors renew their registrations with the State Board of Registration for Professional Engineers and Surveyors biennially, rather than annually, beginning for renewals after December 31, 2011. Accordingly, the act changes the renewal fee from $20 to $40, to be paid biennially. Under prior law, registrations expired annually on the last day of December and become invalid on that date unless they were renewed by paying an annual renewal fee of $20.

The act allows professional engineers and surveyors to complete their continuing professional development hours during a two-year period, rather than annually, but doubles the 15 annual hours required to 30 hours for the two-year period. Under prior law, to renew an annual registration, professional engineers and surveyors had to prove they had completed 15 hours of continuing professional development. Under the act, each registrant must complete at least 30 hours of continuing professional development during the two-year period immediately preceding the biennial renewal expiration date. (Out of the 30 hours of continuing education required by the act, a person who is registered as both a professional engineer and professional surveyor must complete ten (rather than five) hours in engineering-related coursework or activities *and* at least ten (rather than five) hours in surveying-related coursework or activities.) A registrant who completes more than 30 hours of approved coursework in a biennial renewal period

(compared to 15 hours in a calendar year under prior law) may carry forward to the next biennial renewal period a maximum of 15 hours of the excess hours, which is the same carryover for the annual renewal period.

The act increases from three to four years the number of years a registrant must retain records that demonstrate completion of the continuing professional development requirements.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

- Increases from $750,000 to $1.5 million the cap on the amount of money credited to the Air Pollution Control Administration Fund that the Director of Environmental Protection may spend in any fiscal year for the administration and enforcement of the Air Pollution Control Law.

- Authorizes the extension of the motor vehicle inspection and maintenance program through June 30, 2017, and provides authority for the implementation of a decentralized program rather than a centralized program as in law revised by the act.

- Authorizes the Director to exempt a person generating, collecting, storing, treating, disposing of, or transporting infectious wastes from requirements of the Solid, Hazardous, and Infectious Wastes Law under specified circumstances.

- Extends the time period for conducting a public meeting regarding an application for a permit for a new or modified solid waste facility from 35 to 45 days after the submission of the application.

- Revises the license fee schedule for solid waste compost facilities by establishing additional fee categories based on authorized maximum annual daily waste receipts.

- Eliminates the requirement that hazardous waste disposal and treatment fees be deposited into minority banks as defined in state law.

- Authorizes the use of money in the Hazardous Waste Facility Management Fund specifically for the investigation and cleanup of contaminated properties by the Director of Environmental Protection and for grants for the cleanup of such properties.

- Requires natural resource damage assessment costs recovered by the state under federal law to be credited to the continuing Hazardous Waste Clean-Up Fund, thus distinguishing the assessment costs from other money collected for natural resources damages that must be credited to the continuing Natural Resource Damages Fund.

- Extends from June 30, 2012, to June 30, 2014, the expiration date of the following fees on the transfer or disposal of solid wastes:

  --$1 per ton the proceeds of which must be divided equally between the Hazardous Waste Facility Management Fund and the Hazardous Waste Clean-

Up Fund, which are used for purposes of Ohio's hazardous waste management program;

--$1 per ton the proceeds of which must be credited to the Solid Waste Fund, which is used for the solid and infectious waste and construction and demolition debris management programs; and

--$2.50 per ton the proceeds of which must be credited to the Environmental Protection Fund, which is used for administering and enforcing environmental protection programs.

- Extends from June 30, 2012, to June 30, 2013, the expiration date of the 25¢ per-ton fee on the transfer or disposal of solid wastes the proceeds of which must be credited to the Soil and Water Conservation District Assistance Fund.

- Exempts from state and local solid waste disposal fees coal combustion wastes regardless of whether the disposal facility is located on the premises where the wastes were generated rather than specifying as in prior law that the wastes had to be disposed of at facilities that exclusively dispose of coal combustion wastes and that were owned by the generator.

- Prohibits a solid waste management district from exempting a public sector commercial licensed hauler from a fee that is charged to private sector commercial licensed haulers by the district.

- Eliminates the requirement that the Director contract only with owners or operators of scrap tire storage, monocell, monofill, or recovery facilities for the storage, disposal, or processing of scrap tires removed through removal operations.

- Eliminates the requirement that the Director give preference to owners or operators of scrap tire recovery facilities when entering into such contracts.

- Extends for two years the sunset of the 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program.

- Extends for two years the sunset of an additional 50¢ per-tire fee on the sale of tires, and requires all money from the fee to continue to be credited to the Soil and Water Conservation District Assistance Fund.

- Extends all of the following for two years:

  --The sunset of the annual emissions fees for synthetic minor facilities;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;

--The sunset of the annual discharge fees for holders of national pollutant discharge elimination system (NPDES) permits issued under the Water Pollution Control Law;

--The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;

--A higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable; and

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.

- Revises the definition of "population served" for purposes of license fees for public water systems that are not community water systems and that serve nontransient populations to mean the total number of individuals having access to, rather than receiving water from, the water supply during a 24-hour period for at least 60 days during a calendar year.

- Provides that license fees for public water systems that are not community water systems and that serve transient populations are based on the number of wells or sources, other than surface water, supplying such a system rather than just wells.

- Establishes a $200 application fee for coverage under an NPDES general permit for a household sewage treatment system that discharges off the site where the system is located and a $100 fee for a renewal of permit coverage.

- Authorizes voluntary actions with respect to class C releases from underground storage tank systems to be conducted under the Voluntary Action Program Law.

- Defines "class C release" to mean a release of petroleum from an underground storage tank system for which the responsible person for the release is specifically determined by the Fire Marshal not to be a viable person capable of undertaking or completing corrective actions for the release and to include any release so designated in rules by the Fire Marshal.

- Creates the Federally Supported Cleanup and Response Fund to support the investigation and remediation of contaminated property, and requires the EPA to use money in the Fund for those purposes.

- Allows money in the Surface Water Protection Fund to be used to meet state matching requirements that are necessary to obtain federal grants by removing a statutory prohibition against that use.

- Transfers the authority to administer diesel emissions reduction grant and loan programs to the Director of Environmental Protection from the Department of Development.

Air Pollution Control Administration Fund

(R.C. 3704.06)

The act increases from $750,000 to $1.5 million the cap on the amount of money credited to the Air Pollution Control Administration Fund that the Director of Environmental Protection may spend in any fiscal year for the administration and enforcement of the Air Pollution Control Law. Continuing law requires 50% of the money collected as civil penalties for violations of certain provisions of that Law to be credited to the Fund. The Director must use the money in the Fund for the administration and enforcement of that Law.

Extension of E-Check

(R.C. 3704.14)

The act authorizes the extension of the motor vehicle inspection and maintenance program (E-Check) through June 30, 2017, in Ohio counties in which a program is federally mandated. Under the act, the Director of Environmental Protection may request the Director of Administrative Services to extend the contract in existence on June 30, 2011, to conduct a centralized E-Check program with the contractor that

operates the program under that contract. That program is operated in seven counties in the Cleveland-Akron area. Upon receiving the request, the Director of Administrative Services must extend the contract for the centralized program for a period not to exceed 12 months beginning on July 1, 2011. A centralized program generally refers to a program in which the contractor operates inspection stations that are used exclusively for motor vehicle emissions inspections.

Under the act, the Director of Environmental Protection, prior to the expiration of the contract extension, must request the Director of Administrative Services to enter into a contract with a vendor to operate a decentralized E-Check program in each county where it is federally mandated through June 30, 2015, with an option for the state to renew the contract through June 30, 2017. A decentralized program generally refers to a program in which motor vehicle inspections are conducted at auto repair facilities, other multi-use facilities, contractor-operated facilities, or a combination of those facilities. The act retains a requirement under which the Director of Administrative Services must use a competitive selection process when entering into a new contract with a vendor.

The act also alters the required elements of the E-Check program. The act provides that for purposes of expanding the number of testing locations for consumer convenience, the program must include a requirement that the vendor utilize established local businesses, auto repair facilities, or leased properties to operate state-approved inspection and maintenance testing facilities. Further, the act provides that the program must include a requirement that the vendor comply with testing methodology and supply the required equipment approved by the Director of Environmental Protection as specified in the competitive selection process in compliance with state contracting requirements. The act also requires the program operating under the new contract to achieve at least the same emission reductions as achieved by the program operated under the extended contract rather than the same ozone precursor reductions as in prior law. The act eliminates provisions specifying that a motor vehicle inspection and maintenance program could not be implemented in any county in which it was not otherwise authorized or in any county beyond June 30, 2012, without the approval of the General Assembly.

Prior law provided authority for the E-Check contract under which the program was operating until June 30, 2011, with an option for Ohio to extend the contract through June 30, 2012.

Exemptions from infectious waste requirements

(R.C. 3734.02)

The act authorizes the Director of Environmental Protection to exempt any person generating, collecting, storing, treating, disposing of, or transporting infectious waste from any requirement to obtain a registration certificate, permit, or license or comply with other requirements of the Solid, Hazardous, and Infectious Wastes Law. The Director must determine that the exemption is unlikely to adversely affect the public health or safety or the environment. Under continuing law, the Director has the authority to provide such an exemption to persons generating, collecting, storing, treating, disposing of, or transporting solid or hazardous waste.

Time period for solid waste facility permit application meeting

(R.C. 3734.05)

The act extends the time period for conducting a public meeting regarding an application for a permit for a new or modified solid waste facility. Under the act, an applicant must conduct the public meeting not later than 45 days after submitting the application. Prior law required the public meeting to take place not later than 35 days after submission of the application.

Solid waste compost facility license fee

(R.C. 3734.06; R.C. 3734.05 for cross-reference purposes)

The act revises the fee schedule for solid waste compost facility licenses as follows:

Authorized maximum annual daily waste receipt in tons (prior law)	Annual license fee (prior law)	Authorized maximum annual daily waste receipt in tons (the act)	Annual license fee (the act)
12 or less	$300	12 or less	$300
13 to 25	$600	13 to 25	$600
26 to 50	$1,200	26 to 50	$1,200
51 to 75	$1,800	51 to 75	$1,800
76 to 100	$2,500	76 to 100	$2,500
101 to 200	$6,250	101 to 150	$3,750
201 to 500	$15,000	151 to 200	$5,000
501 or more	$30,000	201 to 250	$6,250

Authorized maximum annual daily waste receipt in tons (prior law)	Annual license fee (prior law)	Authorized maximum annual daily waste receipt in tons (the act)	Annual license fee (the act)
		251 to 300	$7,500
		301 to 400	$10,000
		401 to 500	$12,500
		501 or more	$30,000

Hazardous Waste Facility Management Fund

(R.C. 3734.18, 3734.19, 3734.20, 3734.21, 3734.22, 3734.23, 3734.24, 3734.25, 3734.26, and 3734.27)

Deposit of fees into minority banks

Continuing law generally requires the Director of Environmental Protection to deposit hazardous waste disposal and treatment fees to the credit of the Hazardous Waste Facility Management Fund. The act eliminates the requirement that the fees be deposited into one or more minority banks to the credit of the Fund. A minority bank is a bank that is owned or controlled by one or more socially or economically disadvantaged persons, which include, but are not limited to, Afro-Americans, Puerto Ricans, Spanish-speaking Americans, and American Indians.

Uses of money

The act authorizes the Environmental Protection Agency (EPA) to use money in the Fund specifically for all of the following:

(1) Conducting investigations at locations or facilities that are potentially contaminated with hazardous waste;

(2) Abating or preventing air or water pollution or soil contamination at facilities or locations where hazardous waste was treated, stored, or disposed of;

(3) Closure of hazardous waste facilities or solid waste facilities containing significant quantities of hazardous waste, construction of suitable hazardous waste facilities that are needed as a result of closure, and related abatement of air or water pollution or soil contamination, and protection of public health or safety;

(4) Acquiring facilities that threaten public health or safety or result in air or water pollution or soil contamination because of the presence of significant quantities of hazardous waste; and

(5) Making grants to political subdivisions, and to owners of facilities who are not responsible for the contamination at the facilities, for closure of facilities or abatement of pollution. Before making grants, the Director must consider each project application submitted and establish priorities for awarding the grants. The priorities must be based on the feasibility, cost, and public benefits of restoring the particular land and the availability of federal or other financial assistance for restoration.

Continuing law authorizes the EPA to use money in the Hazardous Waste Facility Management Fund for the administration of the hazardous waste program. In addition, under continuing law, expenditures from the Fund are subject to Controlling Board approval. Under the act, the EPA may request that approval on an annual basis.

Reimbursements, payments, and sales

The act requires the following to be credited to the Fund: (1) money from the reimbursement of the costs of cleanup of contaminated land to the state, (2) recovery of costs of investigations and measures performed, and (3) money recovered from liens enforced.

Natural resource damage assessment costs

(R.C. 3734.28 and 3734.282)

The act distinguishes natural resource damage assessment costs recovered by the state under federal law from other money collected by the state under federal law for natural resources damages. The act accomplishes that by requiring recovered natural resource damage assessment costs to be credited to the continuing Hazardous Waste Clean-Up Fund. In addition, the act specifies that natural resource damage assessment costs may be recovered under any of the following: (1) the Comprehensive Environmental Response, Compensation, and Liability Act, (2) the Oil Pollution Act, (3) the Federal Water Pollution Control Act, and (4) any other applicable federal or state law. All other money collected by the state for natural resources damages under those federal acts or any other applicable federal or state law must be credited to the continuing Natural Resource Damages Fund.

Prior law did not make a distinction regarding the money collected for natural resources damages by the state under federal law. Instead, prior law required all money that was collected by the state for natural resources damages under the above specified federal acts or any other applicable federal or state law to be credited to the Natural Resource Damages Fund.

Extension of solid waste transfer and disposal fees

(R.C. 3734.57; cross reference changes to R.C. 1515.14 and 3745.015)

The act extends, from June 30, 2012, to June 30, 2014, the expiration date of three fees levied on the transfer or disposal of solid wastes that are used to fund programs administered by the EPA. The first fee is a $1 per-ton fee, of which one-half of the proceeds must be credited to the Hazardous Waste Facility Management Fund and one-half to the Hazardous Waste Clean-up Fund. Those funds are used for purposes of the hazardous waste management program. The second fee is another $1 per-ton fee that is credited to the Solid Waste Fund and used to fund the EPA's solid and infectious waste and construction and demolition debris management programs. The third fee is an additional $2.50 per-ton fee the proceeds of which must be credited to the Environmental Protection Fund, which is used to pay the EPA's costs associated with administering and enforcing environmental protection programs. The solid waste transfer and disposal fees are collected by the owners and operators of solid waste disposal and transfer facilities as trustees for the state.

The act also extends from June 30, 2012, to June 30, 2013, the expiration date of a fourth 25¢ per-ton fee on the transfer or disposal of solid wastes the proceeds of which must be credited to the Soil and Water Conservation District Assistance Fund.

Exemption from solid waste fees for coal wastes

(R.C. 3734.57)

The act alters an exemption from state and local solid waste disposal fees that is applicable to certain wastes derived from coal combustion. The primary change made by the act allows the wastes to be disposed of at any solid waste disposal facility rather than only at premises owned by the generator of the wastes.

The specific language of the act provides that solid wastes that are generated from the combustion of coal, or from the combustion of primarily coal in combination with scrap tires, are exempt from all state and local solid waste disposal fees. The exemption applies regardless of whether the disposal facility is located on the premises where the wastes are generated.

Under prior law, the exemption applied to solid wastes that were disposed of at facilities that exclusively disposed of wastes that were generated from the combustion of coal, or from the combustion of primarily coal in combination with scrap tires, that was not combined in any way with garbage at one or more premises owned by the generator.

Solid waste management districts and waste haulers

(R.C. 3734.577)

The act prohibits a solid waste management district from exempting a public sector commercial licensed hauler from a fee that is charged to a private sector commercial licensed hauler by the district notwithstanding any section of the Revised Code to the contrary. Under continuing law, a solid waste management district may levy fees on the disposal and generation of solid wastes in the district. Money from the fees must be used for specified purposes.

Contracts for storage, disposal, or processing of certain scrap tires

(R.C. 3734.85)

The act removes restrictions governing with whom the Director of Environmental Protection may enter into contracts for the storage, disposal, or processing of scrap tires removed through removal operations. It does so by eliminating the former requirement that the contracts be entered into with owners or operators of scrap tire storage, monocell, monofill, or recovery facilities. It also removes the former requirement that the Director give preference to owners or operators of scrap tire recovery facilities when entering into such contracts.

Fees on sale of tires

(R.C. 3734.901)

The act extends until June 30, 2013, the sunset of the 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program. Prior law provided authority for the fee through June 30, 2011.

The act extends until June 30, 2013, the sunset of an additional 50¢ per-tire fee on the sale of tires. The money from the additional fee must continue to be credited to the Soil and Water Conservation District Assistance Fund, which is used to provide money to soil and water conservation districts. Prior law required the additional fee to be collected and so credited until June 30, 2011.

Extension of various air and water fees and related provisions

Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under continuing law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under continuing law. Prior law required the fee to be paid through June 30, 2012. The act extends the fee through June 30, 2014.

Water pollution control fees and safe drinking water fees

(R.C. 3745.11(L), (M), and (N) and 6109.21)

Under law revised in part by the act, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of $100 plus 0.65 of 1% of the estimated project cost, up to a maximum of $15,000, when submitting an application through June 30, 2012, and a fee of $100 plus 0.2 of 1% of the estimated project cost, up to a maximum of $5,000, on and after July 1, 2012. Under the act, the first tier fee is extended through June 30, 2014, and the second tier applies to applications submitted on or after July 1, 2014.

Continuing law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under prior law, the fees were due by January 30, 2010, and January 30, 2011. The act extends payment of the fees and the fee schedules to January 30, 2012, and January 30, 2013.

In addition to the fee schedules described above, continuing law imposes a $7,500 surcharge to the annual discharge fee applicable to major industrial dischargers. Under prior law, the surcharge was required to be paid by January 30, 2010, and January 30, 2011. The act continues the surcharge and requires it to be paid annually by January 30, 2012, and January 30, 2013.

Under continuing law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of $180. Under prior law, the fee was due annually not later than January 30, 2010, and January 30, 2011. The act continues the fee and requires it to be paid annually by January 30, 2012, and January 30, 2013.

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in continuing law. Under prior law, the fee for initial licenses and license renewals was required in statute through June 30, 2012, and had to be paid annually prior to January 31, 2012. The act extends the initial license and license renewal fee through June 30, 2014, and requires the fee to be paid annually prior to January 31, 2014.

Under continuing law, the fee schedule for licenses of public water systems that are not community water systems and that serve nontransient populations is based on population served. The act revises the definition of "population served" to mean the total number of individuals having access to, rather than receiving water from, the water supply during a 24-hour period for at least 60 days during any calendar year.

Similarly, the fee schedule for licenses of public water systems that are not community water systems and that serve transient populations was based on the number of wells supplying the system. The act revises the basis of the fee schedule so that it is instead based on the number of wells or sources, other than surface water, supplying the system. In addition, the act makes necessary conforming changes.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water supply system to obtain approval of the plans from the Director. Ongoing law establishes a fee for such plan approval of $150 plus 0.35 of 1% of the estimated project cost. Under law retained in part by the act, the fee cannot exceed $20,000 through June 30, 2012, and $15,000 on and after July 1, 2012. The act specifies that the $20,000 limit applies to persons applying for plan approval through June 30, 2014, and the $15,000 limit applies to persons applying for plan approval on and after July 1, 2014.

Continuing law establishes two schedules of fees that the EPA charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. Under law retained in part by the act, a schedule with higher fees is applicable through

June 30, 2012, and a schedule with lower fees is applicable on and after July 1, 2012. The act continues the higher fee schedule through June 30, 2014, and applies the lower fee schedule to evaluations conducted on or after July 1, 2014. The act also continues through June 30, 2014, a provision stating that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay $1,800 for each additional survey requested.

Certification of operators of water supply systems or wastewater systems

(R.C. 3745.11(O))

Law retained in part by the act establishes a $45 application fee to take the examination for certification as an operator of a water supply system or a wastewater system through November 30, 2012, and a $25 application fee on and after December 1, 2012. The act continues the higher application fee through November 30, 2014, and applies the lower fee on and after December 1, 2014. Under continuing law, upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a statutory schedule. Under law retained in part by the act, a higher schedule is established through November 30, 2012, and a lower schedule applies on and after December 1, 2012. The act extends the higher fee schedule through November 30, 2014, and applies the lower fee schedule beginning December 1, 2014.

Application fees under Water Pollution Control Law and Safe Drinking Water Law

(R.C. 3745.11(S))

Law retained in part by the act requires any person applying for a permit, other than an NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of $100 at the time the application is submitted through June 30, 2012, and a nonrefundable fee of $15 if the application is submitted on or after July 1, 2012. The act extends the $100 fee through June 30, 2014, and applies the $15 fee on and after July 1, 2014.

Similarly, under law retained in part by the act, a person applying for an NPDES permit through June 30, 2012, must pay a nonrefundable fee of $200 at the time of application. On and after July 1, 2012, the nonrefundable application fee is $15. The act extends the $200 fee through June 30, 2014, and applies the $15 fee on and after July 1, 2014.

Fee for household sewage treatment system general NPDES permit

(R.C. 3745.11(S))

The act establishes the following fees applicable to a person applying for coverage under an NPDES general permit for a household sewage treatment system that discharges off the site where the system is located:

(1) A nonrefundable fee of $200 at the time of application for initial permit coverage; and

(2) A nonrefundable fee of $100 at the time of application for a renewal of permit coverage.

The EPA issues general NPDES permits and administers the NPDES program. Most household sewage treatment systems do not discharge pollutants into a river or stream and, thus, do not require an individual NPDES permit or coverage under a general NPDES permit. However, certain household sewage treatment systems, known as off-lot systems, do discharge. Off-lot systems are often required when a household sewage treatment system is not capable of effectively dispersing and treating wastewater at the site where the system is located. Off-lot systems are not only required to be covered by a general NPDES permit issued by EPA, but also must be in compliance with all applicable requirements of the Household and Small Flow On-Site Sewage Treatment Systems Law. That Law is administered by the Department of Health and local health departments.

Class C underground storage tank releases and voluntary actions

(R.C. 3737.87, 3737.88, and 3746.02)

The act generally authorizes a voluntary action to be conducted with respect to class C releases from underground storage tanks. Law revised in part by the act precludes voluntary actions regarding releases of petroleum from underground storage tanks, which are regulated by the state Fire Marshal. The act creates an exception to that preclusion by authorizing a person who is not responsible for a class C release to conduct a voluntary action under the Voluntary Action Program Law. The Director of Environmental Protection may issue a covenant not to sue to any person who properly completes a voluntary action with respect to a class C release under that Law and rules adopted under it. In order to allow for the voluntary actions, the act excepts class C releases from the Fire Marshal's exclusive jurisdiction to regulate corrective actions undertaken in response to releases of petroleum from underground storage tank systems.

Under the act, a class C release is a release of petroleum from an underground storage tank system for which the responsible person for the release is specifically determined by the Fire Marshal not to be a viable person capable of undertaking or completing corrective actions for the release, including any release so designated in rules by the Fire Marshal.

The voluntary action program, which is administered by the Environmental Protection Agency, provides a mechanism by which a person may investigate possible environmental contamination, clean it up if necessary, and receive a promise from the state that no more cleanup is needed. The promise is referred to in law as a covenant not to sue. That covenant generally protects the person from possible legal action by Ohio after a voluntary action is completed.

Additional language changes

The act makes additional changes to the law governing underground storage tanks. The act refers to releases of petroleum from underground storage tanks. Prior law referred to releases from underground petroleum storage tanks. The act refers to releases of petroleum from underground storage tank systems. Prior law referred only to releases of petroleum.

Federally Supported Cleanup and Response Fund

(R.C. 3745.016)

The act creates the Federally Supported Cleanup and Response Fund consisting of money credited to the Fund from federal grants, gifts, and contributions to support the investigation and remediation of contaminated property. The EPA must use money in the Fund for those purposes.

Surface Water Protection Fund

(R.C. 6111.038)

The act allows money in the Surface Water Protection Fund to be used to meet state matching requirements that are necessary to obtain federal grants by removing a statutory prohibition against that use. Law unchanged by the act requires the Director to use money in the Fund solely for the administration and implementation of surface water protection programs.

Diesel emissions reduction grant and loan programs

(R.C. 122.861)

The act transfers the authority to administer diesel emissions reduction grant and loan programs to the Director of Environmental Protection from the Department of Development. Continuing law requires those programs to be operated for purposes of reducing diesel engine emissions in Ohio.

eTECH OHIO COMMISSION (ETC)

- Creates the Information Technology Service Fund, consisting of money paid to the eTech Ohio Commission for the provision of information technology services to support initiatives to align education from preschool through college.

Information Technology Service Fund

(R.C. 3353.15)

The act creates the Information Technology Service Fund, consisting of money paid by educational entities to the eTech Ohio Commission for the provision of information technology services to support initiatives to align education from preschool through college. The fund's proceeds must be used to provide these services, including (1) implementation of an electronic clearinghouse for transferring student transcripts and (2) development of a longitudinal student data system, which is authorized by continuing law.[111]

[111] See R.C. 3301.94, not in the act.

- Requires the Ohio Ethics Commission to deposit funds received as a result of court orders into the Ohio Ethics Commission Fund.

Court-ordered costs

(R.C. 102.02(G)(2))

The act requires the Ohio Ethics Commission to deposit investigative or other fees, costs, or other funds it receives as a result of court orders into the Ohio Ethics Commission Fund, which is used to pay for Commission operations. In 2007, an Ohio Court of Appeals found the Ethics Commission was not authorized by Ohio statutory law in effect at that time to receive court-ordered reimbursement for the cost of its investigations.[112]

[112] *State v. Perz* (2007) 173 Ohio App.3d 99, 105 (Ct. App. Lucas Cty.).

DEPARTMENT OF HEALTH (DOH)

- Authorizes the Ohio Department of Health (ODH) to establish a drug and nutritional formula discount program for its Bureau for Children with Medical Handicaps under which manufacturers of drugs or nutritional formulas may enter into discount agreements with ODH.

- In lieu of establishing a discount program, authorizes ODH and a drug or nutritional formula manufacturer to discuss donations of drugs, nutritional formulas, or money by the manufacturer to ODH.

- Requires the ODH Director to annually apply for federal funds that are made available for abstinence education.

- Specifies, in addition to the Help Me Grow Program's continuing purpose of encouraging prenatal and well-baby care, that the Program's purposes are to (1) provide parenting education to promote the comprehensive health and development of children and (2) provide early intervention services in accordance with federal law.

- Provides that home visiting services under the Help Me Grow Program are provided to eligible families with a pregnant woman or a child under age three (rather than newborn infants and their families).

- Eliminates a requirement that a request for home visiting services be made by a parent before the services may be provided.

- Requires providers of home visiting services, as a condition of receiving payment, to report data on Program performance indicators and requires the ODH Director to prepare an annual report on the data received.

- Provides that federally funded "Part C" early intervention services are included in the Help Me Grow Program for infants and toddlers under age three.

- Specifies that a family enrolled in the former At Risk Program remains eligible for at-risk services until December 31, 2013, or until the eligible child reaches three years of age, whichever occurs first.

- Permits the ODH Director to (1) enter into interagency agreements with state agencies to implement the Help Me Grow Program and (2) distribute Program funds through contracts, grants, or subsidies to entities providing Program services.

- Eliminates a requirement that the Help Me Grow Program include distribution of subsidies to counties to provide services.

- Requires, to the extent funds are available, that ODH establish a system of payment to providers of Help Me Grow Program services.

- Specifies certain rules that must be adopted to implement the Help Me Grow Program, including rules regarding eligibility for services, providers of services, complaint procedures, and criteria for payment.

- Requires ODH to convene an early intervention workgroup to develop recommendations for eligibility criteria for federally funded "Part C" early intervention services to be provided to infants and toddlers who have developmental delays.

- Permits an applicant for a certificate of need (CON) to revise a pending application by changing the site of the proposed project unless the ODH Director has mailed a written notice that the application is complete or the application is subject to a comparative review.

- Provides, in the case of a nursing home that under the terms of its CON could admit as residents only members of certain religious orders, that (1) the nursing home may also provide care to specified relatives of the members and (2) the nursing home's beds cannot be relocated to another long-term care facility.

- Requires the ODH Director to accept a CON application for a new nursing home if (1) the application is submitted not later than December 27, 2011, (2) the nursing home will be located in a county that had a population in 2000 between 30,000 and 41,000, (3) the nursing home will be located on a campus that has been in operation for at least 12 years and the campus has other specified types of facilities, and (4) the nursing home will have not more than 30 beds.

- Permits a county home to obtain Medicaid or Medicare certification for existing beds without obtaining a CON if (1) the county home is located in a county that has a bed need shortage, (2) no county that borders that county has a bed need excess or bed need shortage, (3) the number of existing beds for which Medicaid or Medicare certification is sought does not exceed the bed need shortage of the county, and (4) the county home obtains the certification not later than December 31, 2013.

- Authorizes a residential care facility to admit or retain any individual who requires skilled nursing care for more than 120 days in a 12-month period if the facility enters into a written agreement with (1) the individual or individual's sponsor, (2) the individual's personal physician, (3) unless the individual's personal physician

oversees the skilled nursing care, the provider of the skilled nursing care, and (4) if the individual is a hospice patient, a hospice care program.

- Provides for the agreement to include the same provisions that prior law required an agreement between a residential care facility and hospice care program to include, except that an agreement regarding an individual who is not a hospice patient must also include a provision that the individual's personal physician has determined that the skilled nursing care the individual needs is routine.

- Prohibits Public Health Council rules governing nursing homes and residential care facilities from requiring that each resident sleeping room, or a percentage of the sleeping rooms, have a bathtub or shower directly accessible from or exclusively for the room, but requires that the rules ensure that the privacy and dignity of residents be protected when they are transported to and from bathing facilities, prepare for bathing, and bathe.

- Requires that the Council's rules ensure that each nursing home has sufficient direct care staff on each shift to meet the needs of the residents in an appropriate and timely manner and that registered nurses, licensed practical nurses, and nurse aides provide a minimum daily average of 2.5 hours of direct care per resident.

- Revises the requirements regarding the notice of a proposed transfer or discharge that a long-term care facility is to provide a resident and resident's sponsor by (1) providing that the notice is to include *a* proposed location, rather than *the* location, to which the resident may relocate and a notice that the resident and resident's sponsor may choose another location, (2) requiring that the proposed relocation site be capable of meeting the resident's healthcare and safety needs, and (3) providing that the proposed relocation site need not have accepted the resident at the time the notice is issued.

- Permits a nursing facility and skilled nursing facility to obtain up to two informal reviews (with a fee charged for a second review) of any deficiencies that are cited under federal regulations governing surveys and cause the facility to be out of compliance with federal Medicare or Medicaid requirements.

- Requires that the first informal review be conducted by an ODH employee who was not involved with the survey under which the deficiencies were discovered and that the second review be conducted by either a hearing officer employed by ODH or a hearing officer included on a list ODH is to provide the facility.

- Permits the ODH Director to define a "health home" for purposes of any entity authorized to provide care coordination services.

- Adds a representative of the Ohio Council for Home Care and Hospice to the Patient Centered Medical Home Education Advisory Group.

- Requires $1 of each $4 of the minimum base fee ($12) for a certified copy of a vital record or a certification of birth that is transferred by a local board of health to the State Office of Vital Statistics to be distributed to the boards of health in accordance with the same formula used to distribute state subsidy funds to boards of health and local health departments.

- Requires a local registrar of vital statistics (who is not a salaried employee of a city or general health district) to transfer all $4 of each minimum base fee ($12) for a certified copy of a vital record or a certification of birth to the State Office of Vital Statistics and requires it to be used to support public health systems.

- Requires a local registrar of vital statistics (who is not a salaried employee of a city or general health district) to charge the same additional $5 fee charged by the State Office of Vital Statistics and local boards of health for certified copies of vital records and certifications of birth and requires the money to be similarly used for operating, modernizing, and automating the state's vital records program.

BCMH discount agreements for drugs and nutritional formulas

(R.C. 3701.021 and 3701.023)

The act authorizes the Ohio Department of Health (ODH) to establish a drug and nutritional formula discount program for its Bureau for Children with Medical Handicaps (BCMH). Under the program, a manufacturer of a drug or nutritional formula is permitted to enter into an agreement with ODH to provide a discount on the price of the drug or nutritional formula distributed to medically handicapped children participating in a BCMH-administered program. If a manufacturer enters into a discount agreement with ODH, the manufacturer and ODH may negotiate the amount and terms of the discount.

If established, the program must be administered in accordance with rules the act requires ODH to adopt. The rules must address procedures for administering the program, including criteria and other requirements for participation.

In lieu of establishing a discount program, the act authorizes ODH and a manufacturer to discuss a donation of drugs, nutritional formulas, or money by the manufacturer to ODH.

Abstinence education

(R.C. 3701.0211)

The act requires the ODH Director to annually apply to the U.S. Secretary of Health and Human Services for federal funds each year that funds are made available for abstinence education. The funds available through the Maternal and Child Health Services Block Grant (also known as "Title V").[113] The act requires the ODH Director to use the funds in accordance with any conditions under which the application was approved.

Help Me Grow Program

(R.C. 3701.61)

The Help Me Grow Program provides early childhood services to children under age three. The Program is directed by ODH and coordinated at the county level by family and children first councils.

Purposes

In addition to the Program's purpose under continuing law to encourage prenatal and well-baby care, the act specifies that the Program's purposes are to provide parenting education to promote the comprehensive health and development of children and provide early intervention services in accordance with federal law.

Home visiting services

The Help Me Grow Program includes home visiting services. Under prior law, home visiting services were provided to eligible newborn infants and their families. The act provides instead that home visiting services are provided to eligible families with a pregnant woman or a child under age three who meet the eligibility requirements established in rules to be adopted by the ODH Director. The act eliminates a requirement that a request for home visiting services be made by a parent before the services may be provided.

The act requires providers of home visiting services, as a condition of receiving payment, to report data on performance indicators used to assess progress toward achieving the goals of the Program. The report, which is to be made to the ODH Director, is to include data on birth outcomes, including risk indicators of low birth weight and pre-term births, and data on all other performance indicators specified in

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[113] 42 U.S.C. 710.

rules adopted by the Director. The providers must report the data in the format and within the time frames specified in the rules. The Director must prepare an annual report on the data received.

Part C early intervention services

The act provides for the Help Me Grow Program to include "Part C" early intervention services for infants and toddlers under age three. Part C refers to a portion of the federal "Individuals with Disabilities Education Act."[114] Under this federal law, the U.S. Department of Education makes grants available to assist each state in maintaining and implementing a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.[115]

The inclusion of Part C services replaces prior law under which the Program included services for infants and toddlers under age three who were at risk for, or who had, a developmental delay or disability and their families. The act specifies that to receive Part C services, infants and toddlers must meet the eligibility requirements established in rules to be adopted by the ODH Director.

At Risk Program

The At Risk Program, which ODH previously administered as a component of the Help Me Grow Program, provided services to children under age three who were at risk for a developmental delay or disability. The act specifies that a family enrolled in the At Risk Program on September 29, 2011 (the act's 90-day effective date) is to remain eligible for at-risk services until December 31, 2013, or until the eligible child reaches three years of age, whichever occurs first.

Interagency agreements and distribution of funds

The act authorizes the ODH Director to enter into interagency agreements with state agencies to implement the Help Me Grow Program and distribute funds through contracts, grants, or subsidies to entities providing Program services. To the extent funds are available, ODH must establish a system of payment to providers of services. The act eliminates a requirement that the Program include distribution of subsidies to counties to provide services.

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[114] 20 U.S.C. 1431 *et seq*.

[115] U.S. Department of Education, Ed.Gov, *Part C—Infants and Toddlers with Disabilities* (last visited August 21, 2011), available at <http://idea.ed.gov/explore/view/p/,root,statute,I,C,>.

Rules

The act requires the ODH Director (rather than ODH) to adopt rules to implement the Program. The rules must specify all of the following:

(1) Eligibility requirements for home visiting services and Part C early intervention services;

(2) Eligibility requirements for providers of services;

(3) Standards and procedures for the provision of services, including data collection, monitoring, and evaluation;

(4) Procedures for appealing the denial of an application for or termination of services;

(5) Procedures for appealing the denial of an application to become a provider or the termination of ODH's approval of a provider;

(6) Procedures for addressing complaints;

(7) Criteria for payment of approved providers;

(8) The performance indicators on which data must be reported by providers of home visiting services, which, to the extent possible, must be consistent with federal reporting requirements for federally funded home visiting services;

(9) The format and time frames for submitting performance indicator data;

(10) Any other rules necessary to implement the Program.

Early intervention workgroup

(Section 291.30)

The act requires ODH to convene a workgroup to develop recommendations for eligibility criteria for early intervention services to be provided pursuant to Part C of the federal "Individuals with Disabilities Education Act." The workgroup must base the recommendations on available funds and national data related to the identification of infants and toddlers who have developmental delays or are most at risk for developmental delays and, in either case, would benefit from early intervention services.

Recommendation schedule

The act requires the workgroup to convene by July 15, 2011, and present recommendations for eligibility criteria to the ODH Director by October 1, 2011. The act permits the ODH Director to accept the recommendations in whole or in part and implement eligibility criteria accordingly.

Membership

The workgroup is to be facilitated by ODH and composed of the following:

--A representative from each of the following departments: Developmental Disabilities, Education, Mental Health, and Job and Family Services;

--A representative from the Help Me Grow Advisory Council and a parent member of the Council;

--A representative from the Ohio Family and Children First Cabinet Council;

--A representative from the Ohio Family and Children First Association;

--A county Help Me Grow project director;

--A representative from the Ohio Council of Behavioral Health and Family Services Providers;

--A representative from the Ohio Association for Infant Mental Health;

--A representative from the Ohio Association of County Boards of Developmental Disabilities;

--A representative from the Ohio Superintendents of County Boards of Developmental Disabilities;

--A representative from the Ohio chapter of the American Academy of Pediatrics;

--A public health nurse from a local board of health;

--A representative of the Ohio Developmental Disabilities Council;

--A representative of the County Commissioner's Association of Ohio.

Certificate of Need Program

Location of a certificate of need's proposed project

(R.C. 3702.523 (primary), 3702.52, and 3702.57)

The act permits a person who has an application for a certificate of need (CON) pending with the ODH Director to revise the application to change the site of the proposed project unless the Director has mailed the applicant a written notice that the application is complete or the application is subject to a comparative review. No other revisions may be made. The revised site of the proposed project must be in the same county specified in the original application.

A revised application must be accompanied by an additional, non-refundable fee equal to 25% of the fee charged for the original application. The additional fee must be deposited into the CON Fund.

On acceptance of a revised CON application, the ODH Director is required to continue to review the application as revised to determine whether it is complete. Ordinarily, the ODH Director may not make more than two requests for additional information while reviewing a CON application. The act provides, however, that the ODH Director, when reviewing a revised application, may make a final written request to the applicant for additional information even if the Director previously made two such requests. If such a request is made, it must be made not later than 30 days after the date the ODH Director accepts the revised application.

Authorized residents of nursing homes operated by religious orders

(R.C. 3702.59)

With regard to a nursing home that under prior law could admit individuals as residents only if they were members of certain religious orders because of the conditions on which the ODH Director granted the nursing home's CON, the act authorizes the nursing home to provide care not only to the religious order members, but also to specified family members. The following relatives are specified: mothers, fathers, brothers, sisters, brothers-in-law, sisters-in-law, and children.

The act specifies that the long-term care beds in such a nursing home may not be relocated to a new or existing long-term care facility.

Application for a new nursing home

(Section 291.40)

The act requires the ODH Director to accept a CON application for the establishment, development, and construction of a new nursing home if all of the following conditions are met:

(1) The application is submitted not later than December 27, 2011;

(2) The nursing home is to be located in a county that had, according to the 2000 regular federal census, a population of at least 30,000 and not more than 41,000 persons;

(3) The nursing home is to be located on a campus that has been in operation for at least 12 years and at least one existing residential care facility with at least 25 residents and at least one existing independent living dwelling for seniors with at least 75 residents are located on the same campus on June 30, 2011;

(4) The nursing home is to have not more than 30 beds, all of which are to be transferred from an existing nursing home in Ohio and are proposed to be licensed as nursing home beds.

The Director is prohibited from denying an application on the grounds that the new nursing home is to have fewer than 50 beds, which is the minimum number of beds otherwise required by an ODH rule.[116] The Director is also prohibited from requiring an applicant to obtain a waiver of the minimum 50-bed requirement.

County home exemption from requirement to obtain a CON

(Section 291.50)

The act permits a county home to obtain Medicare or Medicaid certification for one or more of its existing beds (beds that on June 30, 2011, are used, or available for use, for skilled nursing care) without having to obtain a CON. This authority ends January 1, 2014.

For a county home to be exempt under the act from the requirement to obtain a CON, all of the following must apply: (1) the county home must be located in a county that has a bed need shortage, (2) no county that borders the county in which the county home is located may have a bed need excess or shortage, (3) the number of the county home's existing beds for which Medicare or Medicaid certification is sought cannot

[116] O.A.C. 3701-12-23.

exceed the number of long-term care beds that could be relocated into the county according to a determination the ODH Director made in calendar year 2010 under CON law, and (4) the county home must obtain the Medicare or Medicaid certification not later than December 31, 2013. A county is considered to have a bed need shortage or excess if, according to a determination the ODH Director made under CON law in calendar year 2010, one or more long-term care beds could be relocated into (in the case of a shortage) or from (in the case of an excess) the county.

Skilled nursing care in residential care facilities

(R.C. 3721.011 and 3721.04)

The act revises the law governing the limited skilled nursing care that may be provided by a residential care facility, which is popularly known as an assisted living facility. Prior to the act, a residential care facility was authorized to admit or retain an individual who needs skilled nursing care for more than 120 days in a 12-month period only if the individual was a hospice patient and the facility had entered into a written agreement with a hospice care program. The agreement had to provide for (1) a determination to have been made that the hospice patient's needs could be met at the facility, (2) periodic redeterminations being made according to a schedule specified in the agreement, and (3) the hospice patient being given the opportunity to choose the hospice care program that best met the patient's needs.

The act authorizes a residential care facility to admit or retain any individual, rather than only a hospice patient, who needs skilled nursing care for more than 120 days in a 12-month period if the facility enters into a written agreement with (1) the individual or individual's sponsor, (2) the individual's personal physician, (3) unless the individual's personal physician oversees the skilled nursing care, the provider of the skilled nursing care, and (4) if the individual is a hospice patient, a hospice care program. The agreement must include the same provisions that prior law required an agreement between a residential care facility and hospice care program to include, except that an agreement regarding an individual who is not a hospice patient must also include a provision that the individual's personal physician has determined that the skilled nursing care the individual needs is routine.

Restrictions on long-term care facility licensing rules

(R.C. 3721.04)

Continuing law requires the Public Health Council to adopt rules governing the operation of nursing homes and residential care facilities, including rules that prescribe standards for equipping the buildings and the number and qualifications of personnel.

The act prohibits the rules governing how the buildings are equipped from requiring that each resident sleeping room, or a percentage of the sleeping rooms, have a bathtub or shower that is directly accessible from or exclusively for the room. However, the rules must require that privacy and dignity of residents be protected when they are transported to and from bathing facilities, prepare for bathing, and bathe.

Regarding rules governing the number and qualifications of nursing home personnel, the Council is required by the act to require each nursing home to have sufficient direct care staff on each shift to meet the needs of the residents in an appropriate and timely manner and to have the following individuals provide a minimum daily average of 2.5 hours of direct care per resident:

(1) Registered nurses, including registered nurses who perform administrative and supervisory duties;

(2) Licensed practical nurses, including licensed practical nurses who perform administrative and supervisory duties;

(3) Nurse aides.

Transfers and discharges of long-term care facility residents

(R.C. 3721.16)

The act revises the law governing the notice regarding a proposed transfer or discharge that a long-term care facility is to provide a resident and resident's sponsor. The notice requirement applies to nursing homes, residential care facilities, skilled nursing facilities, nursing facilities, county homes, and district homes.

Under prior law, a notice regarding a proposed transfer or discharge had to include *the* proposed location to which the resident was to be transferred or discharged. The act requires that the notice include *a* proposed location to which the resident may relocate and a notice that the resident and resident's sponsor may choose another location to which the resident will relocate. The proposed relocation site specified in the notice must be capable of meeting the resident's healthcare and safety needs; it need not have accepted the resident at the time the notice is issued. The act maintains a requirement that the relocation site to which the resident is actually transferred or discharged actually have accepted the resident.

Reviews of nursing facilities' Medicare and Medicaid deficiencies

(R.C. 3721.022 (primary) and 3701.83)

The act permits a nursing facility and skilled nursing facility to obtain up to two informal reviews of any deficiencies that (1) are cited under federal regulations governing surveys and (2) cause the facility to be out of compliance with federal requirements for participating in Medicare or Medicaid. This differs from prior law which permitted a facility to obtain an informal review of deficiencies discovered under state law governing surveys. Facilities undergo surveys to obtain and maintain the certification needed to participate in Medicare and Medicaid.

The act requires that a first review be conducted by an ODH employee who did not participate in and was not otherwise involved in any way with the survey under which the deficiencies were discovered. This is the same person who conducted the one review available under prior law.

The act requires that a second review be conducted by either of the following as selected by the nursing facility or skilled nursing facility: a hearing officer employed by ODH or a hearing officer included on a list ODH is to provide the facility. To receive a second review, a nursing facility or skilled nursing facility must pay a fee to ODH. The amount of the fee is to be set in rules adopted by the ODH Director and the fee is to be deposited into ODH's General Operations Fund.

Health homes and medical homes

Health home definition

(R.C. 3701.032)

The act permits the ODH Director to adopt rules that define what constitutes a health home for the purpose of any entity authorized to provide care coordination services. The rules must be adopted in accordance with the Administrative Procedure Act.[117]

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[117] See also "**Health homes for Medicaid recipients**" under "**DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)**."

Patient Centered Medical Home Education Advisory Group

(R.C. 185.03)

The act adds a representative of the Ohio Council for Home Care and Hospice to the Patient Centered Medical Home Education Advisory Group.[118] The individual is to be appointed by the Council's governing board.

Vital statistics fees – portion transferred to State Office of Vital Statistics

(R.C. 3705.24)

Subsidies to boards of health

The act requires $1 of each $4 portion of the minimum base fee ($12)[119] for a certified copy of a vital record or a certification of birth that is collected by a board of health of a city or general health district, and transferred to the State Office of Vital Statistics, to be used by the ODH Director to pay subsidies to the boards of health. The subsidies must be distributed in accordance with the same formula the Director uses under continuing law to distribute other state subsidy funds to the boards of health and local health departments. The formula takes into account health district population and performance.

Local registrars of vital statistics not affiliated with health districts

The act requires the entire portion ($4) of the minimum base fee ($12) for a certified copy of a vital record or a certification of birth that is collected by a local registrar of vital statistics (who is not a salaried employee of a city or general health district) to be transferred to the State Office of Vital Statistics. The portions must be transferred not later than 30 days after the end of each calendar quarter and must be used to support public health systems.

The act also requires such a local registrar of vital statistics to charge an additional $5 fee to be used by ODH to support the operations, modernization, and

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[118] Sub. H.B. 198 of the 128th General Assembly established the Advisory Group to implement and administer the Patient Centered Medical Home Education Pilot Project. The Project's purpose is to advance medical education in the patient centered medical home model of care.

[119] In addition to the base fee (required by R.C. 3705.24(A)(2) and 3709.09(A)), continuing law permits the following additional fees to be charged for copies of vital records and certifications of birth: fees charged by a local registrar of vital statistics or a clerk of court (under R.C. 3705.24(D) and (G)), some of which vary based on the population of the primary registration district; fees to modernize and automate the vital records system (under R.C. 3705.24(B)); fees charged to benefit the Children's Trust Fund (under R.C. 3109.14); and fees charged to benefit the Family Violence Prevention Fund (under R.C. 3705.242).

automation of the vital records program. This same additional fee is charged by the Office of Vital Statistics and local boards of health under continuing law.

DEPARTMENT OF INSURANCE (INS)

- Abolishes the Health Care Coverage and Quality Council.
- Allows life insurers and health insurers to offer wellness or health improvement programs that include rewards and incentives to encourage or reward participation.
- Prohibits any contracting entity from offering, entering into, amending, or renewing any contract with a health care provider, including a hospital, that contains a most favored nation clause.
- Permits contracts existing on June 25, 2008, to retain a most favored nation clause for the duration of the contract unless the contract is amended, extended, or renewed after September 29, 2011.
- Protects rights related to netting agreements and qualified financial contracts under Ohio's Insurer Rehabilitation and Liquidation Law.
- Establishes guidelines for termination, liquidation, acceleration, close out, transfer, and disaffirmance or repudiation of netting agreements or qualified financial contracts.

Health Care Coverage and Quality Council

(R.C. 3923.90 and 3923.91 (repealed); R.C. 185.01, 185.03, 185.06, 185.10, 3319.71, 3924.10, and 4113.11)

The act abolishes the Health Care Coverage and Quality Council. Under prior law, the Council had the following duties:

- Advising the Governor and General Assembly on strategies to improve health care programs and health insurance policies and benefit plans;
- Monitoring and evaluating implementation of strategies for improving access to health insurance coverage and improving the quality of Ohio's health care system;
- Cataloging health care data reporting efforts and making recommendations to improve data reporting in a manner that increases

transparency and consistency in the health care and insurance coverage systems;

- Studying health care financing alternatives that will increase access to health insurance coverage, promote disease prevention and injury prevention, contain costs, and improve quality;

- Evaluating the systems that individuals use to obtain or otherwise become connected with health insurance and recommending improvements to those systems or the use of alternative systems;

- Recommending minimum coverage standards for basic and standard health insurance plans offered by insurance carriers in the small group market;

- Recommending strategies to assist individuals in being able to afford health insurance coverage;

- Recommending strategies to implement health information technology to support improved access and quality and reduced costs in Ohio's health care system;

- Studying alternative care management options for Medicaid recipients who are not required to participate in the care management system;

- Reviewing the medical home model of care concept, proposing the characteristics of a patient centered medical home model of care, pursuing appropriate funding opportunities for the development of a patient centered medical home model of care, and proposing payment reforms that encourage implementation of a patient centered medical home model of care;

- Collaborating with the Chancellor of the Ohio Board of Regents or any other entity the Council considers appropriate to review issues that may cause limitations on the use of a patient centered medical home model of care;

- Recommending reporting requirements for any physician practice or advanced practice nurse primary care practice using a patient centered medical home model of care;

- Making recommendations to the Superintendent of Insurance concerning cafeteria plans that continuing law requires employers to provide.

Under prior law, the Council also had to perform any other duties the Superintendent specified in rules.

The act allows the Superintendent to appoint an individual to the Patient Centered Medical Home Education Advisory Group in lieu of the Council member who was a voting member under prior law. The act also makes other conforming changes including removing a requirement that a physician practice or advanced practice nurse primary care practice comply with reporting requirements recommended by the Council in order to be eligible for inclusion in the Patient Centered Medical Home Education Pilot Project.

Wellness programs

(R.C. 3901.56)

The act allows life and health insurers to offer a wellness or health improvement program that provides rewards or incentives, including merchandise; gift cards; debit cards; premium discounts or rebates; contributions to a health savings account; modifications to copayment, deductible, or coinsurance amounts; or any combination of these incentives, to encourage participation or to reward participation in the program. However, under the act, the insured may be required to provide verification, such as a statement from their physician, that a medical condition makes it unreasonably difficult or medically inadvisable for the individual to participate in the wellness or health improvement program.

Under the act, a wellness or health improvement program offered by an insurer cannot be construed to violate Ohio's prohibitions against using gifts or other incentives to induce a person to purchase insurance if the program is disclosed in the policy or plan. Additionally, under the act, neither of the following may be construed as prohibiting an insurer from offering a wellness or health improvement program or restricting the amount an employee is charged for coverage under a group policy after the application of any premium discounts or rebates, or modifying otherwise applicable copayments or deductibles for adherence to wellness or health improvement programs:

- Ohio's law that prohibits insurers from charging similarly situated individuals different premiums or other contributions under an employment-related group sickness and accident insurance policy;
- Ohio's law that prohibits employers from excluding an individual from coverage under a plan based on the health status of the individual.

The act's wellness program provisions apply to life insurers, sickness and accident insurers, health insuring corporations, multiple employer welfare arrangements, and public employee benefit plans.

Most favored nation clauses in health care contracts

(R.C. 3963.11; Sections 630.10 and 630.11)

The act prohibits any contracting entity from offering, entering into, amending, or renewing any contract with a health care provider that contains a most favored nation clause. Under prior law, the prohibition on most favored nation clauses did not include contracts offered, entered into, amended, or renewed with a hospital. The act extends the prohibition to contracts with hospitals.

A "most favored nation clause" in the context of a health care contract is a provision that does any of the following:

(1) Prohibits, or grants a contracting entity an option to prohibit, the participating provider from contracting with another contracting entity to provide health care services at a lower price than the payment specified in the contract;

(2) Requires, or grants a contracting entity an option to require, the participating provider to accept a lower payment in the event the participating provider agrees to provide health care services to any other contracting entity at a lower price;

(3) Requires, or grants a contracting entity an option to require, termination or renegotiation of the health care contract in the event the participating provider agrees to provide health care services to any other contracting entity at a lower price;

(4) Requires the participating provider to disclose the participating provider's contractual reimbursement rates with other contracting entities.

The prohibition on most favored nation clauses does not apply to contracts in effect June 25, 2008, unless those contracts are amended, extended, or renewed after September 29, 2011.

Netting agreements and qualified financial contracts under the Insurer Rehabilitation and Liquidation Law

The act protects rights related to netting agreements and qualified financial contracts under Ohio's Insurer Rehabilitation and Liquidation Law. The act also establishes guidelines for termination, liquidation, acceleration, close out, transfer, and disaffirmance or repudiation of netting agreements or qualified financial contracts.

Protection of rights related to qualified financial contracts and netting agreements

(R.C. 3903.301(A))

The act prohibits any person from being stayed or prohibited from exercising any of the following rights:

- A contractual right to cause the termination, liquidation, acceleration, or close out of obligations under, or in connection with, a netting agreement or qualified financial contract with an insurer because of the insolvency, financial condition, or default of the insurer at any time or because of the commencement of a rehabilitation or liquidation proceeding under Ohio law;

- Any right under a pledge, security, collateral, reimbursement, or guarantee agreement or arrangement or any similar security arrangement or credit enhancement relating to a netting agreement or qualified financial contract;

- Any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a qualified financial contract in which the counterparty or its guarantor is organized under the laws of the United States, a state, or a foreign jurisdiction that the securities valuation office of the National Association of Insurance Commissioners (NAIC) approves as eligible for netting. The act maintains, however, continuing law's requirements for set offs.

Termination of a netting agreement or qualified financial contract

(R.C. 3903.301(B) and (C))

If a counterparty to a netting agreement or qualified financial contract with an insurer that is subject to a proceeding under Ohio's Insurer Rehabilitation and Liquidation Law terminates, liquidates, accelerates, or closes out the agreement or contract, the act requires damages to be measured as of the date or dates of the termination, liquidation, acceleration, or close out. The amount of a claim for damages must be actual direct compensatory damages.

Upon termination of a netting agreement or qualified financial contract, the act requires any net or settlement amount that a nondefaulting party owes to an insurer against which an application or petition has been filed under Ohio's Insurer Rehabilitation and Liquidation Law to be transferred to, or on the order of, the receiver

for the insurer. This requirement applies regardless of whether the insurer is the defaulting party and applies notwithstanding any walkaway clause in the netting agreement or qualified financial contract. Additionally, a limited two-way payment or first method provision in a netting agreement or qualified financial contract with a defaulting insurer is a full two-way payment or second method provision as against the defaulting insurer under the act. Any property or amount transferred must be a general asset of the insurer except to the extent it is subject to a secondary lien or encumbrance, or to rights of netting or setoff.

Transferring a netting agreement or qualified financial contract

(R.C. 3903.301(D) and (E))

In transferring a netting agreement or qualified financial contract of an insurer that is subject to a proceeding under Ohio's Insurer Rehabilitation and Liquidation Law, the act requires the receiver to transfer to one party, other than an insurer subject to a proceeding under that Law, all netting agreements and qualified financial contracts between a counterparty, or any affiliate of the counterparty, and the insurer that is the subject of the proceeding. The transfer must include all rights and obligations of each party under each netting agreement and qualified financial contract, and all property, including any guarantees or other credit enhancement, securing any claims of the parties under each agreement or contract.

As an alternative, the act allows the receiver who is transferring a netting agreement or qualified financial contract of an insurer that is subject to a proceeding under Ohio's Insurer Rehabilitation and Liquidation Law, to transfer none of the netting agreements or qualified financial contracts, including the rights, obligations, and property associated with those agreements and contracts, with respect to the counterparty and any affiliate of the counterparty.

If a receiver transfers a netting agreement or qualified financial contract, the act requires the receiver to use its best efforts to notify any person who is a party to the transferred agreement or contract of the transfer by noon, of the receiver's local time, on the business day following the transfer.

Transfer of money or property before a proceeding

(R.C. 3903.301(F))

The act prohibits a receiver from avoiding a transfer of money or other property that is made before the beginning of a rehabilitation or liquidation proceeding under Ohio law and that arises under or in connection with a netting agreement or qualified financial contract, or any pledge, security, collateral, or guarantee agreement or other

similar security arrangement or credit support document relating to a netting agreement or qualified financial contract.

However, the act allows a receiver to avoid a transfer of property under Ohio's Insurer Rehabilitation and Liquidation Law if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

Disaffirmance or repudiation of a netting agreement or qualified financial contract

(R.C. 3903.301(G))

In exercising any right of disaffirmance or repudiation with respect to a netting agreement or qualified financial contract to which an insurer is a party, the act requires the receiver for the insurer to do either of the following:

- Disaffirm or repudiate all netting agreements and qualified financial contracts between the insurer and a counterparty or any affiliate of the counterparty;
- Disaffirm or repudiate none of those netting agreements or qualified financial contracts with respect to the counterparty or any affiliate of the counterparty.

If a counterparty's claim against the estate of the insurer arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract has not been previously affirmed in the liquidation or immediately preceding conservation or rehabilitation case, the act requires that claim to be considered as if it had arisen before the filing date of the petition for liquidation. If a conservation or rehabilitation proceeding is converted to a liquidation proceeding, that claim must be considered as if it had arisen before the filing date of the petition for conservation or rehabilitation. The amount of the claim must be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation.

Rights of a counterparty

(R.C. 3903.301(H))

Under the act, a counterparty in an action brought under Ohio's Insurer Rehabilitation and Liquidation Law has the rights granted under continuing law, and those rights apply to netting agreements and qualified financial contracts entered into on behalf of the general account. Those rights also apply to netting agreements and qualified financial contracts entered into on behalf of separate accounts if the assets of

each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

Affiliates of the insurer

(R.C. 3903.301(I))

The act's changes to Ohio's Insurer Rehabilitation and Liquidation Law do not apply to the affiliates of an insurer that is the subject of any rehabilitation or liquidation proceeding under that law.

Effective date

(Section 803.60)

The act's requirements regarding netting agreements and qualified financial contracts apply only to formal delinquency proceedings that commence under Ohio's Insurer Rehabilitation and Liquidation Law on or after the effective date of this act.

Definitions

(R.C. 3903.01)

Qualified financial contract

A "qualified financial contract" is any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the Superintendent of Insurance determines by rule to be a qualified financial contract. "Forward contract," "repurchase agreement," "securities contract," and "swap agreement" are defined under the federal Deposit Insurance Act (12 U.S.C. 1821(e)).

A "commodity contract" is a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the federal "Commodity Exchange Act," or a board of trade outside the United States. A commodity contract also is an agreement that is commonly known to the commodities trade as a margin account, margin contract, leverage account, leverage contract, or commodity option and that is subject to regulation under the federal "Commodity Exchange Act." Any combination of agreements or transactions described above as commodity contracts and any option to enter into an agreement or transaction described above are commodity contracts under the act.

Netting agreement

A netting agreement is any of the following agreements:

- A contract or agreement, including a master agreement, and any terms and conditions incorporated by reference in that contract or agreement, that provides for the netting, liquidation, setoff, termination, acceleration, or close out under or in connection with a qualified financial contract, or any present or future payment or delivery obligations or entitlements under a qualified financial contract, including liquidation or close-out values relating to those obligations or entitlements;

- A master agreement, together with all schedules, confirmations, definitions, and addenda to the agreement and transactions under the agreement, which must be treated as one netting agreement, and any bridge agreement for one or more master agreements;

- Any security agreement or arrangement, credit support document, or guarantee or reimbursement obligation related to any contract or agreement that is a netting agreement.

Any contract or agreement that is described above as a netting agreement and that relates to agreements or transactions that are not qualified financial contracts are netting agreements only with respect to those agreements or transactions that are qualified financial contracts.

DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

I. General

- Authorizes the Ohio Department of Job and Family Services (ODJFS), a county department of job and family services (CDJFS), and a child support enforcement agency (CSEA) to conduct audits (in addition to investigations) as necessary in furtherance of their duties.

- Specifies that until an audit report is formally released by ODJFS, the audit report and any related documents or records are not public records.

- Specifies that an audit conference conducted by the audit staff of ODJFS with the officials of the public office that is the subject of the audit is not a public meeting for the purpose of the Open Meetings Law.

- Authorizes a board of county commissioners to transfer money from the Public Assistance Fund to the Children Services Fund or Child Support Enforcement Administrative Fund, as long as the money may be spent for the purposes of the receiving fund.

- Reduces to 105% (from 110%) the maximum amount that a county may be required to pay, in comparison to the amount paid in the preceding fiscal year, for its share of public assistance expenditures.

- Expands to CSEAs the authority to recover costs of services provided to persons who secured them through fraud or misrepresentation or who intentionally diverted services to ineligible persons.

- Permits county family services agencies to recover (1) costs of benefits (rather than only services) secured through fraud or misrepresentation or that were intentionally diverted to ineligible persons and (2) any other costs of benefits and services provided by the agencies if recovery is required or permitted by federal law.

- Permits ODJFS to take either or both of the following actions to collect excess amounts from a county entity performing family services duties: (1) enter into an agreement with the county entity for repayment of the excess amount plus, at ODJFS's discretion, interest and (2) certify a claim to the Attorney General for collection.

- Replaces the 14% limit on the amount of a local agency's Title XX (the federal Social Services Block Grant) appropriation that may be used for administrative costs with a

requirement that the maximum percentage be established by state agency rules that comply with federal law.

- Requires the Governor to appoint an executive director for the Ohio Commission on Fatherhood.

- Requires the Commission to include with its annual report a description, prepared in collaboration with the ODJFS Director, of (1) its expectations for the outcomes of fatherhood-related programs and initiatives and (2) its methods for annually measuring those outcomes.

- Authorizes the ODJFS Director to refer to the Supplemental Nutrition Assistance Program as the Food Stamp Program or Food Assistance Program in ODJFS rules and documents.

II. Child Care

- Eliminates provisions under which CDJFSs could contract with and reimburse providers of publicly funded child care, and provides instead that purchases of such care are made pursuant to contracts between providers and ODJFS.

- Permits the ODJFS Director to adopt rules specifying exceptions to the eligibility requirements for a family that previously received publicly funded child care but whose eligibility was terminated and is seeking reinstatement.

- Permits ODJFS, when it determines that expenditures for publicly funded child care will exceed available federal and state funds, to change the schedule of fees to be paid by eligible caretaker parents and the rate of payment to child care providers.

- Requires the ODJFS Director to establish enhanced reimbursement ceilings for child care centers that participate in the Step Up to Quality Program and maintain quality ratings and to weigh any reduction in reimbursement ceilings more heavily against centers that do not participate or do not maintain quality ratings.

- Prohibits an eligible caretaker parent from receiving full-time publicly funded child care from more than one provider per child.

- Provides, if ODJFS implements a swipe card program for tracking attendance and submitting invoices for publicly funded child care, that misuse of the program by child care providers or parents may result in license or certification revocation or loss of eligibility for publicly funded child care.

- Eliminates the requirement to renew every two years a license for a child day-care center or type A family day-care home.

- Requires a child care center or type A home for which a license was revoked to wait five years (rather than two) before applying for another license.

- Increases to one year (from six months) the period during which a provisional license is valid.

- Eliminates the requirement that ODJFS notify a child day-care center or type A family day-care home that it is out of compliance with the laws governing centers and homes.

- Eliminates, except for purposes of issuing a provisional license, the requirement that the ODJFS Director consider the number of available child-care staff members when determining the license capacity of a child day-care center or type A family day-care home.

- Increases to 2 (from 1.5) the number of hours during a 24-hour day that the number of napping toddlers or preschool children per child-care staff member may be twice the number of children per staff member otherwise allowed.

- Permits a person seeking to be a child day-care center administrator to meet educational requirements by showing the ODJFS Director evidence that the administrator holds a designation as an "early childhood professional level three" under the Step Up to Quality Program.

- Exempts students who are being home schooled during their last year of instruction or who have graduated from a charter school from the educational requirements for employment at a child day-care center.

- Eliminates the requirements that the ODJFS Director adopt rules to be used for checking the references of child day-care center and type A family day-care home license applicants and potential employees.

- Permits a child day-care center to have on the center premises and readily available a separate staff member who has completed a course in prevention, recognition, and management of communicable diseases approved by the Department of Health.

- Specifies that, when adopting rules establishing procedures for screening children and employees of child day-care centers, the ODJFS Director is permitted, rather than required, to include requirements for physical examinations and immunizations.

- Permits the ODJFS Director, when providing copies of child care licensing requirements and rules to license applicants, to provide the copies in either paper or electronic form.

- Permits ODJFS to publish a guide on certification of type B family day-care homes either electronically or otherwise, and eliminates the requirement to distribute the guide to CDJFSs.

- Eliminates the requirement that each child day-care center administrator prepare and distribute an annual roster and telephone contact list of the parents, guardians, or custodians of the children attending the center.

- Replaces a provision that requires the ODJFS Director to recommend standards to the Governor and General Assembly regarding sanctions to be imposed on persons violating the law governing child care with a provision that permits the Director to adopt rules regarding the sanctions and specifies when the Director is to impose the sanctions.

- Requires the ODJFS Director to make a dispute resolution process available for implementing sanctions.

III. Child Support

- Requires ODJFS's Office of Child Support to administer a fund for the deposit of support payments it receives.

- Prohibits a CSEA from sending a notice to an occupational or professional licensing board, the Bureau of Motor Vehicles (BMV), or the Division of Wildlife regarding a child support default unless: (1) at least 90 days have elapsed since the final and enforceable determination of default, and (2) the obligor has not paid at least 50% of the monthly obligation due for that period by means other than state or federal tax intercept.

- Alters the requirements concerning when a CSEA is required to reinstate a license that has been suspended due to child support default.

- Requires a CSEA to remove license restrictions if the obligor demonstrates an inability to work due to circumstances beyond the obligor's control.

- Permits a CSEA to direct the Registrar of Motor Vehicles to eliminate from the abstract maintained by the BMV any reference to the suspension of an individual's license due to child support default.

IV. Child Welfare and Adoption

- Requires each public children services agency (PCSA) to prepare and maintain a case plan or family service plan for any child receiving in-home services from the agency pursuant to an alternative response.

- Requires ODJFS to include in its rules requiring PCSAs to maintain case plans or family service case plans for children and their families who are receiving services in their homes requirements for case plans or family service plans for such children and families receiving services from PCSAs pursuant to an alternative response.

- Requires that the differential response approach pursued by a PCSA include the traditional response pathway and the alternative response pathway.

- Details when PCSAs must use the traditional response.

- Requires ODJFS, in accordance with the evaluation of the Ohio Alternative Response Pilot Program, to plan the statewide expansion of the pilot program on a county-by-county basis, through a schedule ODJFS is to determine.

- Provides that the act's provisions regarding differential response, traditional response, and alternative response are to become effective for a county in accordance with ODJFS's schedule.

- Authorizes the Children's Trust Fund Board to solicit gifts, money, and other donations from any public or private source and to develop public-private partnerships.

- Permits the Children's Trust Fund Board to request that ODJFS adopt rules the Board considers necessary to carry out its responsibilities, and permits ODJFS to adopt the requested rules or any other rules.

V. Health Programs (Including Medicaid)

- Creates the Health Care Special Activities Fund, requires ODJFS to deposit all funds it receives pursuant to the administration of the Medicaid program into the Fund, and requires ODJFS to use the money in the Fund to pay for Medicaid-related expenses.

- Permits ODJFS to enter into agreements with other state agencies, local government entities, or political subdivisions to accept applications and make eligibility determinations on ODJFS's behalf for Medicaid and the Children's Health Insurance Program.

- Provides that an institutionalized individual may be granted a waiver of the Medicaid penalty imposed when assets are transferred for less than fair market value if the ineligibility would cause an undue hardship for the individual.

- Requires that a waiver of the penalty be granted if a nursing facility has notified an institutionalized individual of a proposed transfer or discharge from the facility due to failure to pay, the individual or the individual's sponsor requests a hearing, and the proposed transfer or discharge is upheld on final appeal.

- Requires the ODJFS Director to adopt rules establishing additional reasons for which waivers of the penalty may be granted.

- Requires the ODJFS Director to retain in the Medicaid state plan a federal option under which medical assistance is made available to children during presumptive eligibility periods.

- Requires the ODJFS Director to amend the Medicaid state plan to implement a federal option under which ambulatory prenatal care is made available to pregnant women during presumptive eligibility periods.

- Requires the ODJFS Director to provide for children's hospitals, federally qualified health centers, and federally qualified health center look-alikes, if they are eligible under federal law and request to serve as qualified providers or entities that make presumptive eligibility determinations, to serve as such for purposes of the presumptive eligibility for children and pregnant women options.

- Permits the ODJFS Director to provide for other types of providers and entities, if they are eligible under federal law and request to serve as qualified providers and entities that make presumptive eligibility determinations, to serve as such for purposes of the presumptive eligibility for children and pregnant women options.

- Specifies that a provision of law governing how a trust must be treated for purposes of determining Medicaid eligibility may be used only for an initial Medicaid eligibility determination or an appeal of an initial Medicaid eligibility determination, and prohibits a court from using the provision to determine a trust's effect on an individual's initial Medicaid eligibility determination.

- Replaces the terms "countable resource" and "countable income" for purposes of the law governing how a trust must be treated in making Medicaid eligibility determinations.

- Except as otherwise authorized by the U.S. Secretary of Health and Human Services, requires ODJFS to comply with the federal maintenance of effort requirement

regarding Medicaid eligibility standards, methodologies, and procedures while the requirement is in effect.

- Requires ODJFS, on receipt of any necessary federal approval, to reduce the complexity of the Medicaid eligibility determination processes caused by the different income and resource standards for the numerous Medicaid eligibility categories.

- Repeals provisions that required the State Auditor to determine whether overpayments were made on behalf of every medical assistance recipient and, in place of those provisions, authorizes the State Auditor to conduct an audit of an individual medical assistance recipient on the request of the ODJFS Director.

- Requires the State Auditor to enter into an interagency agreement with ODJFS governing the confidentiality of information the Auditor receives from ODJFS pursuant to an audit of a medical assistance recipient.

- Revises the laws governing disclosure of information about medical assistance recipients.

- Eliminates the authority of ODJFS or a CDJFS to request from a law enforcement agency information that can be used to determine whether a medical assistance recipient or a member of the recipient's assistance group is a fugitive felon or is violating a condition of probation, a community control sanction, parole, or a post-release control sanction.

- Extends from three to six years after the date of service the period during which a third party (1) must respond to an inquiry by ODJFS regarding a Medicaid claim, and (2) cannot deny a Medicaid claim solely on the basis of the date of submission of the claim, type or format of the claim form, or failure by the Medicaid recipient to present proper documentation at the time of service.

- Prohibits a third party from charging ODJFS a fee for determining whether a Medicaid claim should be paid or for processing a Medicaid claim if the claim was submitted not later than six years after the date of service.

- Requires ODJFS and the Ohio Department of Health (ODH) to work together on the issue of achieving efficiencies in the delivery of medical assistance provided under Medicaid to families and children.

- Requires ODJFS and ODH to develop a proposal for coordinating medical assistance provided to families and children under Medicaid while they wait to be enrolled in Medicaid managed care.

- Permits ODJFS to seek federal approval to authorize payment for Medicaid-reimbursable targeted case management services provided in connection with ODH's Help Me Grow Program and for services provided under the Program.

- Provides, for fiscal years 2012 and 2013, that a Medicaid recipient under 21 years of age automatically satisfies all requirements for any prior authorization process for community mental health services provided under a Medicaid component administered by the Ohio Department of Mental Health if the child meets certain requirements related to being an abused, neglected, dependent, unruly, or delinquent child.

- Authorizes implementation of the federal Medicaid option of providing coordinated care through "health homes" to Medicaid recipients with chronic conditions.

- Authorizes the Health Care Compliance Fund to be used for expenses incurred in implementing or operating health home programs and for the creation, modification, or replacement of federally funded Medicaid health-care systems in fiscal years 2012 and 2013.

- Permits, rather than requires, implementation of a program under which Medicaid recipients are enrolled in group health plans when doing so is cost-effective.

- Authorizes ODJFS to include in the Medicaid managed care system aged, blind, or disabled Medicaid recipients who are under age 21, nursing facility residents, recipients of Medicaid waiver home and community-based services, or dually eligible for Medicaid and Medicare.

- Prohibits ODJFS from including in the Medicaid managed care system, in fiscal years 2012 and 2013, any additional individuals who have cystic fibrosis, hemophilia, or cancer and are receiving services through the program for medically handicapped children operated by the Ohio Department of Health.

- Requires ODJFS to establish a pediatric accountable care organization recognition system not later than July 1, 2012, and requires standards of recognition to be the same as or not conflict with those adopted under the federal health care reform law.

- Requires, rather than permits, that Medicaid managed care coverage of prescription drugs be provided by the health insuring corporations participating in ODJFS's care management system.

- Prohibits the participating health insuring corporations from imposing prior authorization requirements for antidepressants and antipsychotics, if these mental health drugs meet specified criteria.

- Establishes, for persons who are being treated with prescription drugs when coverage by the Medicaid managed care system begins, a period of 30, 90, or 120 days (depending on the type of drug involved) during which a participating health insuring corporation may not impose certain utilization or management techniques.

- Specifies that ODJFS or its actuary is to base the hospital inpatient capital payment portion of the payment made to Medicaid managed care organizations on data for services provided to all Medicaid recipients enrolled in the organization as reported by hospitals.

- Requires ODJFS to establish a Medicaid Managed Care Performance Payment Program to make payments to managed care organizations that meet performance standards established by ODJFS and, for purposes of making the payments, requires ODJFS to withhold a percentage amount from each premium payment made to a managed care organization.

- Exempts actions taken by ODJFS regarding the Medicaid managed care system, including entering into or refusing to enter into a provider agreement, or suspending, terminating, renewing, or refusing to renew an existing provider agreement, from the requirement that the action be taken pursuant to an administrative hearing.

- Requires the ODJFS Director to implement, for fiscal years 2012 and 2013, purchasing strategies and rate reductions that result in payment rates for hospital and other Medicaid-covered services, as selected by the Director, being at least 2% less than the payment rates for fiscal year 2011.

- Excludes nursing facility and intermediate care facility for the mentally retarded (ICF/MR) services from the requirement regarding purchasing strategies and rate reductions.

- Permits ODJFS, the Ohio Department of Health, and the Ohio Department of Mental Health, in conjunction with the Governor's Office of Health Transformation, to seek assistance from and work with the Best Evidence for Advancing Child Health in Ohio! (BEACON) Council and hospital and other provider groups to identify specific targets and initiatives to reduce the cost and improve the quality of medical assistance provided under Medicaid to children.

- Prohibits ODJFS from knowingly making a Medicaid payment for a provider-preventable condition for which federal financial participation is prohibited.

- Authorizes ODJFS to establish an incentive payment program, as authorized by federal law, to encourage the use of electronic health record technology by certain Medicaid providers.

- Requires certain Medicaid providers, no later than January 13, 2013, to submit Medicaid reimbursement claims through an electronic claims submission process and to arrange for receipt of Medicaid reimbursement by electronic funds transfer, but excludes the following from these requirements: nursing facilities, ICFs/MR, Medicaid managed care organizations, and other providers designated by the ODJFS Director.

- Permits ODJFS, if it chooses to outsource the performance of pediatric Medicaid claims review and analysis, quality assurance functions associated with pediatric Medicaid claims, or both, to enter into a contract with any qualified person, including the Ohio Children's Hospital Solutions for Patient Safety, to perform the service or services.

- Requires the ODJFS Director to apply for approval to claim federal Medicaid funds for administrative costs that the Ohio Department of Health and the Arthur G. James and Richard J. Solove Research Institute of The Ohio State University incur in analyzing and evaluating certain data under the Ohio Cancer Incidence Surveillance System.

- Authorizes the ODJFS Director to implement a system under which payments for services provided under the Medicaid program are made to an organization on behalf of the providers.

- Permits ODJFS to recover a Medicaid overpayment to a hospital within one year after receiving from the U.S. Centers for Medicare and Medicaid Services a completed, audited, Medicare cost report.

- Requires ODJFS to charge an application fee to a provider seeking to enter into or renew a Medicaid provider agreement unless the provider is exempt from the fee under federal regulations.

- Provides for the application fee to be set by ODJFS rules, but prohibits the fee from exceeding the amount necessary to pay for implementing provider screening requirements established by federal regulations.

- Requires generally, that ODJFS suspend a Medicaid provider agreement and terminate the provider's Medicaid reimbursement, without a hearing but subject to a notice containing certain information, on determining that a creditable allegation of fraud against the provider exists, as those allegations are specified in federal law.

- Authorizes a Medicaid provider affected by a suspension to request reconsideration of the suspension and associated termination of reimbursement.

- Authorizes ODJFS to take any of several disciplinary actions, without a hearing, against a Medicaid provider agreement or an application for a provider agreement when the action is based on a disciplinary action taken by another state's Medicaid agency or for other reasons specified under federal law.

- Requires ODJFS, by July 1, 2012, to establish a process by which a physician assistant may enter into a Medicaid provider agreement and engage in direct billing.

- Authorizes a Medicaid claim for a physician assistant's services to be submitted either by (1) the physician assistant with a provider agreement, or (2) the physician, group practice, clinic, or other health care facility that employs or contracts with the physician assistant.

- Provides that Medicaid reimbursement rates for physician assistant services provided during fiscal year 2013 cannot be greater than the rates on June 30, 2012.

- Requires the ODJFS Director, as necessary to comply with federal law, to give public notice in the Register of Ohio of any change to a method or standard used to determine the Medicaid reimbursement rate for a service.

- Prohibits, except as required by federal law, Medicaid reimbursement rates from exceeding (1) limits established in federal Medicaid regulations in the case of hospital, nursing facility, and ICF/MR services and (2) the authorized Medicare reimbursement limits for services in the case of all other providers.

- Requires ODJFS, for fiscal year 2012, to pay Medicaid providers the Medicare copayment amounts that apply to dialysis services for persons eligible for both Medicaid and Medicare, as those copayments were made by ODJFS prior to the act.

- Permits ODJFS, in fiscal year 2013, to adjust Medicaid payments for dialysis services by an amount sufficient to achieve $9 million in savings.

- Requires ODJFS, effective October 1, 2011, to (1) reduce the first-hour-unit price Medicaid pays for aid services to 97% of the price paid on June 30, 2011, and for nursing services to 95% of the price paid on June 30, 2011, and (2) pay independent providers of aide and nursing services 80% of the price paid providers that are not independent providers.

- Requires that ODJFS, not sooner than July 1, 2012, adjust the Medicaid reimbursement rates for aide services and nursing services in a manner that reflects,

at a minimum, labor market data, education and licensure status, home health agency and independent provider status, and length of service visit.

- Prohibits the Medicaid payment for a drug that is subject to a federal upper reimbursement limit from exceeding, in the aggregate, the federal limit for the drug.

- Sets the Medicaid dispensing fee for noncompounded drugs at $1.80 for the period beginning July 1, 2011, and ending on the effective date of a rule changing the amount of the fee.

- Requires the ODJFS Director to maintain, for fiscal years 2012 and 2013, the Medicaid reimbursement rates in effect on June 30, 2011, for Medicaid-covered hospital inpatient and outpatient services that are paid under a prospective payment system.

- Requires the ODJFS Director to make, for fiscal years 2012 and 2013, additional Medicaid payments to children's hospitals for inpatient services under a program modeled on the program that was created for fiscal years 2006 and 2007 and subsequently continued.

- Continues the Hospital Care Assurance Program (HCAP) for two additional years.

- Provides for the assessments imposed on hospitals for the purpose of the Medicaid program to be imposed for two additional years.

- Requires ODJFS to establish the hospital assessment rate in rules.

- Permits the assessment rate to vary for different hospitals if ODJFS obtains any necessary federal waiver.

- Provides for ODJFS to impose a 10% penalty on overdue hospital assessments.

- Permits ODJFS to offset the amount of a hospital's unpaid penalty imposed under HCAP or the law governing hospital assessments from one or more payments due the hospital under the Medicaid program.

- Permits ODJFS to continue and modify the existing Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program to provide supplemental Medicaid payments to hospitals for providing Medicaid-covered inpatient and outpatient services to Medicaid recipients.

- Requires ODJFS to apply for federal approval of a Medicaid Managed Care Hospital Incentive Payment Program under which Medicaid managed care organizations are

provided funds to increase payments to hospitals under contract with the organizations.

- Prohibits ODJFS from implementing the Medicaid Managed Care Hospital Incentive Payment Program in a manner that reduces either (1) the amounts Medicaid managed care organizations would have otherwise received or (2) the amounts hospitals would have otherwise received from the Hospital Assessment Fund.

- Requires Medicaid managed care organizations and hospitals, if the Medicaid Managed Care Hospital Incentive Payment Program does not result in $22 million in state savings, to pay the state the difference between the amount saved and $22 million.

- Sets the base rate for the franchise permit fee to be paid by nursing homes and hospital long-term care units at $11.47 for fiscal year 2012 and $11.67 for fiscal year 2013 and thereafter.

- Provides for the percentage that is used in determining whether the franchise permit fee must be reduced in order for the fee to comply with federal restrictions to change in accordance with the federal restrictions.

- Requires ODJFS annually to redetermine each nursing home's and hospital long-term care unit's franchise permit fee for the second half of a fiscal year if, during a certain period of time, any nursing home or hospital surrendered one or more beds.

- Provides that the exiting and entering operator of a nursing home or hospital long-term care unit undergoing a change of operator have proportional responsibility for the nursing home's or hospital long-term care unit's franchise permit fee.

- Abolishes the Home- and Community-Based Services for the Aged Fund.

- Renames the Nursing Facility Stabilization Fund the Nursing Home Franchise Permit Fee Fund.

- Provides for all money raised by the franchise permit fee and associated penalties to be deposited into the Nursing Home Franchise Permit Fee Fund, provides for the money to be used to make Medicaid payments to providers of home and community-based services as well as providers of nursing facility services, and permits the money to also be used for the Residential State Supplement program.

- Abolishes the PASSPORT Fund.

- Provides for the money raised by horse-racing-related taxes that previously was deposited into the PASSPORT Fund to be deposited into the Nursing Home Franchise Permit Fee Fund and continues to require that the money be used for the PASSPORT Program.

- For purposes of calculating nursing facilities' Medicaid reimbursement rates for direct care costs, (1) includes the costs of behavioral and mental health services among the costs included in nursing facilities' direct care costs, (2) alters the methodology for determining a peer group's cost per case-mix unit, and (3) changes, beginning in fiscal year 2013, the residents for whom data from a resident assessment instrument is used in determining semiannual case-mix scores.

- For purposes of calculating nursing facilities' Medicaid reimbursement rates for ancillary and support costs, eliminates the 3% adjustment applied to such costs of the nursing facility in each peer group that is at the 25th percentile of the rate for such costs.

- For purposes of calculating nursing facilities' Medicaid reimbursement rates for capital costs, (1) provides that a peer group's rate for capital costs is to be the capital costs for the nursing facility in the peer group that is at the 25th percentile of the rate for capital costs rather than the peer group's median rate, (2) eliminates a requirement that ODJFS use information about construction costs obtained from the Dodge Building Cost Indexes when calculating adjustments used in determining the rate for capital costs, and (3) prohibits ODJFS from redetermining a peer group's rate for capital costs based on additional information that it receives after the rate is determined and provides for ODJFS to make a redetermination only if it made an error in determining the rate based on information available at the time of the original determination.

- Eliminates the franchise permit fee price center, effective July 1, 2012.

- For purposes of calculating nursing facilities' quality incentive payments under the Medicaid program, (1) modifies how points are to be awarded in fiscal year 2012 under pre-existing accountability measures, (2) requires ODJFS to cease using the pre-existing accountability measures beginning in fiscal year 2013, and (3) provides for ODJFS, beginning in fiscal year 2013, to award each nursing facility points for meeting accountability measures in accordance with amendments to be made, not later than December 31, 2011, to state law governing quality incentive payments.

- For the purpose of determining a nursing facility's fiscal year 2012 Medicaid rate for direct care costs, provides for the nursing facility's semiannual case-mix score for the period beginning July 1, 2011, and ending January 1, 2012, to be the same as the

semiannual case-mix score used in calculating the nursing facility's June 30, 2011, rate for direct care costs.

- In determining nursing facilities' Medicaid reimbursement rates for fiscal year 2012, requires ODJFS to increase the cost per case-mix unit, rate for ancillary and support costs, rate for tax costs, and rate for capital costs by 5.08%.

- Provides for the per resident per day Medicaid rate paid for the franchise permit fee in fiscal year 2012 to be $11.47.

- In determining nursing facilities' quality incentive payments for fiscal year 2012, requires ODJFS to provide for the mean payment to be $3.03 per Medicaid day.

- For a nursing facility whose preliminary fiscal year 2012 rate is less than 90% of its fiscal year 2011 rate, establishes a stop loss mechanism that provides for the amount of the reduction to be less than what it otherwise would be.

- In determining nursing facilities' Medicaid reimbursement rates for fiscal year 2013, requires ODJFS to increase the cost per case-mix unit, rate for ancillary and support costs, rate for tax costs, and rate for capital costs by 5.08%.

- In determining nursing facilities' quality incentive payments for fiscal year 2013, provides for the maximum quality incentive payment to be $16.44 per Medicaid day.

- Sets the fiscal year 2013 Medicaid rate for nursing facility services provided to low resource utilization residents at $130 per Medicaid day.

- Specifies that a nursing facility is not to be paid more than 100%, rather than 109%, of the nursing facility's Medicaid per diem rate for services provided on or after January 1, 2012, to a dual eligible individual (i.e., an individual eligible for Medicaid and Medicare) who is eligible for nursing facility services under the Medicaid program and post-hospital extended care services under Medicare Part A.

- Permits the ODJFS Director to seek federal approval to create the Centers of Excellence program, the purpose of which is to increase the efficiency and quality of nursing facility services provided to Medicaid recipients with complex nursing facility service needs.

- Provides that the Medicaid reimbursement rate to reserve a bed in a nursing facility, for a day in calendar 2011, is not to exceed 50% of the nursing facility's regular per diem rate for that day and, for a day in calendar year 2012 and thereafter, is not to exceed (a) 50% of the nursing facility's regular per diem rate for that day if nursing facility had an occupancy rate of more than 90% in the preceding calendar year or

(b) 18% of the nursing facility's regular per diem rate for that day if nursing facility had an occupancy rate of 90% or less in the preceding calendar year.

- Repeals a provision that required ODJFS to prepare an annual report containing recommendations on the methodology that should be used to transition paying nursing facilities the Medicaid reimbursement rate for one fiscal year to the next.

- Permits ODJFS, if it determines that a nursing facility is experiencing or is likely to experience a serious financial loss or failure that jeopardizes or is likely to jeopardize the health, safety, and welfare of its residents, to appoint, subject to the provider's consent, a temporary resident safety assurance manager.

- Sets the rate for the franchise permit fee charged ICFs/MR at $17.99 for fiscal year 2012 and $18.32 for fiscal year 2013 and thereafter.

- Provides for the percentage that is used in determining whether the ICF/MR franchise permit fee must be reduced in order for the fee to comply with federal restrictions to change in accordance with the federal restrictions.

- Specifies that 81.77% of the money raised by the ICF/MR franchise permit fee and associated penalties for fiscal year 2012, and 82.2% of such money raised for fiscal year 2013 and thereafter, is to be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund.

- Continues to provide for the money raised by the ICF/MR franchise permit fee and associated penalties that is not deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund to be deposited into the Department of Developmental Disabilities Operating and Services Fund.

- Provides for ODJFS, when determining inflation rates used in calculating Medicaid reimbursement rates for the direct care, indirect care, and other protected costs of ICFs/MR, to use a successor index if the index specified in statute ceases to be published.

- Eliminates a requirement that an ICF/MR refund to ODJFS the amount of excess depreciation paid to the ICF/MR under Medicaid if the ICF/MR is sold.

- For fiscal year 2012, requires ODJFS to determine modified rates and capped rates for existing ICFs/MR and provides for an existing ICF/MR to be paid a rate that is the average of its modified and capped rates unless the mean of such rates for all existing ICFs/MR is other than $282.59, in which case the ICF/MR's rate is to be

adjusted by a percentage that equals the percentage by which the mean rate is greater or less than $282.59.

- For fiscal year 2013, requires ODJFS to determine modified and capped rates for existing ICFs/MR and provides for an existing ICF/MR to be paid a rate that is the average of its modified and capped rates unless the mean of such rates for all existing ICFs/MR is other than $282.92, in which case the ICF/MR's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than $282.92.

- Requires ODJFS and the Ohio Department of Developmental Disabilities (ODODD) to conduct a study regarding Medicaid reimbursement rates for ICF/MR services and, at the same time they conduct the study, work with the Governor's Office of Health Transformation and persons interested in the issue of ICF/MR services to develop recommendations regarding various ICF/MR issues.

- Requires ODJFS to contract with ODODD for ODODD to assume ODJFS's powers and duties regarding the Medicaid program's coverage of ICF/MR services.

- Prohibits a nursing facility or ICF/MR from amending a Medicaid cost report if ODJFS has notified the facility or ICF/MR that an audit of the cost report or a cost report for a subsequent cost reporting period is to be conducted, but permits the facility or ICF/MR to provide ODJFS information that affects the costs included in the cost report.

- Provides that ODJFS is permitted, rather than required, to base a determination of whether to conduct an audit of the Medicaid cost report of a nursing facility or ICF/MR on the facility's or ICF/MR's prior performance.

- Requires ODJFS to revise certain requirements included in its manual for field audits.

- Requires ODJFS to fine a nursing facility if an audit report regarding a Medicaid cost report includes (1) adverse findings that exceed 3% of the total amount of Medicaid-reimbursable costs reported in the cost report or (2) adverse findings that exceed 20% of Medicaid-reimbursable costs for a particular cost center reported in the cost report.

- Specifies, for purposes of the law governing the collection of the Medicaid debts of nursing facilities and ICFs/MR, that a facility closure occurs when the building, or part of the building, that houses a nursing facility or ICF/MR converts to a different use, if any necessary license or other approval needed for that use is obtained and

one or more of the facility's residents remain in the facility to receive services under the new use.

- Requires nursing facilities and ICFs/MR that undergo a change of operator, close, or voluntarily cease to participate in Medicaid to use a method ODJFS specifies in rules when submitting certain notices, forms, and documents.

- Revises the list of information that a written notice of a change of operator must include.

- Revises the criteria used to determine when a Medicaid provider agreement with an entering operator following a change of operator goes into effect.

- Applies the Medicaid debt-collection process to nursing facilities and ICFs/MR that undergo an involuntary termination from Medicaid.

- Permits Medicaid payments to be made for nursing facility and ICF/MR services for up to 30 days after the effective date of an involuntary termination of the facility that provides the services if they are provided to a Medicaid recipient who is eligible for the services and resided in the facility before the effective date of the involuntary termination.

- Requires ODJFS, the Ohio Department of Aging (ODA), and ODODD to strive to have, by June 30, 2013, non-institutionally based long-term service used by (1) at least 50% of Medicaid recipients who are age 60 or older and need long-term services and (2) at least 60% of Medicaid recipients who are under age 60 and have cognitive or physical disabilities for which long-term services are needed.

- Permits ODJFS to apply to participate in the federal Balancing Incentive Payments Program and requires that any funds Ohio receives be deposited into the Balancing Incentive Payments Program Fund.

- Eliminates the Ohio Access Success Project eligibility requirement under which an applicant for Project benefits must need a nursing facility level of care.

- Specifies that an applicant must be able to remain in the community as a result of receiving the Project's benefits when it is being administered as a non-Medicaid program.

- Requires the ODJFS Director to assess an applicant's eligibility for participation in the Project regardless of how long the applicant has been a recipient of Medicaid-funded nursing facility services.

- Creates state-funded, non-Medicaid components of the PASSPORT and Assisted Living programs.

- Provides for individuals who have applications pending for the Medicaid-funded components of the PASSPORT and Assisted Living programs and meet other requirements to qualify for the state-funded components for up to three months.

- Provides that certain other individuals qualify for the state-funded component of the PASSPORT program for an unlimited number of months.

- Provides that the Home First processes for the PASSPORT and Assisted Living programs apply only to the Medicaid components of those programs.

- Eliminates the eligibility requirement for the Medicaid-funded component of the Assisted Living program under which an applicant had to be a nursing facility resident, residential care facility resident, or participant of the PASSPORT program, the Choices program, or an ODJFS-administered Medicaid waiver program.

- Provides for ODA to administer the Assisted Living program without the condition that the Director of the Office of Budget and Management (OBM) approve the contract between ODA and ODJFS regarding ODA's administration of the program.

- Provides that a requirement for ODA to establish a unified waiting list for the PASSPORT, Choices, Assisted Living, and PACE programs applies if ODA determines that there are insufficient funds to enroll all individuals who have applied and been determined eligible for the programs.

- Requires the ODA Director to contract with Miami University's Scripps Gerontology Center for an evaluation of the PACE program.

- Permits the ODA Director, in consultation with the ODJFS Director, to expand the PACE program to new regions of Ohio under certain circumstances.

- Codifies the Ohio Home Care and Ohio Transitions II Aging Carve-Out programs.

- Modifies the ODJFS Director's rulemaking authority regarding prioritizing and approving enrollment in Medicaid waivers for home and community-based services.

- Eliminates a requirement that ODJFS seek federal approval to obtain a federal Medicaid waiver to consolidate the PASSPORT, Choices, and Assisted Living programs into one Medicaid waiver program.

- Requires ODJFS, working with ODA, to seek federal approval for a unified long-term services and support Medicaid waiver program to provide home and

community-based services to eligible individuals of any age who require the level of care provided by nursing facilities.

- Requires ODJFS and ODA to work together to determine, on an individual program basis, whether the PASSPORT, Choices, Assisted Living, Ohio Home Care, and Ohio Transitions II Aging Carve-Out programs should continue to operate as separate Medicaid waiver programs or be terminated if the unified long-term services and support Medicaid waiver program is created.

- Eliminates a requirement that an individual be on ODA's unified waiting list to qualify for the PASSPORT, Assisted Living, or PACE program through the Home First process.

- Eliminates a requirement for ODA to make quarterly certifications to the OBM Director regarding the estimated increase in the costs of the PASSPORT, Assisted Living, and PACE programs resulting from enrollment of individuals through the Home First process.

- Establishes Home First processes for the Ohio Home Care Program and unified long-term services and support Medicaid waiver program.

- Repeals the requirement for ODJFS to create a pilot program under which up to 200 Medicaid recipients were to be given spending authority to pay for the cost of home and community-based services.

- Requires ODJFS to adopt rules establishing the amount of reimbursement or methods by which reimbursement is to be determined, in place of the previous statewide fee schedules, for home and community-based services provided to individuals with mental retardation and developmental disabilities through ODODD-administered Medicaid waiver programs.

- Permits an operator of an ICF/MR to convert some of the beds in the facility from providing ICF/MR services to providing home and community-based services under an ODODD-administered Medicaid waiver program, rather than requiring that all of the beds be converted.

- Permits ODJFS to seek federal approval for up to 200 (rather than 100) slots for home and community-based services provided and ODODD-administered Medicaid waiver programs for the purpose of the beds that convert from providing ICF/MR services to home and community-based services.

- Requires ODJFS to contract with ODODD for ODODD to administer the Transitions Developmental Disabilities Medicaid Waiver.

- Maintains the Money Follows the Person Enhanced Reimbursement Fund into which the OBM Director is to deposit the federal grant Ohio receives under the Money Follows the Person Demonstration Program.

- Permits the ODJFS Director to seek federal approval to implement a demonstration project to test and evaluate the integration of the care that dual eligible individuals receive under the Medicare and Medicaid programs.

- Creates the Integrated Care Delivery Systems Fund in the state treasury to receive amounts that the demonstration project saves the Medicare program if the terms of the project provide for Ohio to receive such amounts.

- Requires ODJFS to use the money in the Integrated Care Delivery Systems Fund to further develop integrated delivery systems and improved care coordination for dual eligible individuals.

- Creates the Joint Legislative Committee for Unified Long-Term Services and Supports.

- Permits the Committee to examine (1) implementing the dual eligible integrated care demonstration project, (2) implementing a unified long-term services and support Medicaid waiver component, (3) providing consumers choices regarding a continuum of services that meet their health-care needs, promote autonomy and independence, and improve quality of life, (4) ensuring that long-term care services and supports are delivered in a cost effective and quality manner, (5) subjecting county homes, county nursing homes, and district homes to the nursing home franchise permit fee, and (6) other issues of interest to the Committee.

- Abolishes the Children's Buy-In Program and establishes the following timeframes for concluding its affairs: (1) suspends new enrollments immediately, (2) repeals the applicable statutes on October 1, 2011, and (3) permits persons enrolled in the program when it is repealed to continue receiving services through December 31, 2011.

- Makes an individual injured while in active service as a member of the armed forces of the United States while serving in Operation New Dawn eligible for Military Injury Relief Fund grants.

VI. Unemployment Compensation

- Prohibits, effective October 30, 2011, an individual who performs services that significantly consist of seasonal employment from being paid unemployment compensation benefits for services performed in seasonal employment during the

period between two successive seasonal periods if there is reasonable assurance that the individual will be employed in the later of the seasonal periods.

- Eliminates the authority of the Unemployment Compensation Council with respect to the Unemployment Compensation Special Administrative Fund.

I. General

Audit authority and confidentiality of audit reports

(R.C. 5101.37)

The act authorizes the Ohio Department of Job and Family Services (ODJFS), a county department of job and family services (CDJFS), and a child support enforcement agency (CSEA) to conduct audits as necessary in furtherance of their duties. Associated with this authority, the act requires ODJFS and each CDJFS to keep a record of their audits. Under continuing law, ODJFS, a CDJFS, and a CSEA may make necessary investigations.

The act specifies that until an audit report is formally released by ODJFS, the report or any working paper or other document or record prepared by ODJFS and related to the audit that is the subject of the report is not a public record. This means that ODJFS must not make the audit report available for inspection or copying until it is formally released.

The act authorizes the ODJFS Director to adopt rules as necessary to implement the act's provisions discussed above. The rules must be adopted in accordance with R.C. 111.15 as if they were internal management rules. Internal management rules are not filed with the Joint Committee on Agency Rule Review (JCARR); therefore, they are not subject to a public hearing.[120]

Audit conferences

(R.C. 121.22)

The act adds to the list of exceptions from the Open Meetings (Sunshine) Law. An audit conference conducted by the audit staff of ODJFS with officials of the public office that is the subject of the audit is not required to be conducted in an open meeting.

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[120] Joint Committee on Agency Rule Review, *Procedures Manual* (revised Feb. 2011), available at <https://www.jcarr.state.oh.us/images/stories/manual.pdf>.

The Open Meetings Law generally requires public officials to take official action and to conduct deliberations upon official business only in open meetings. However, continuing law establishes various exceptions to the Open Meetings Law, which permit certain meetings, such as meetings of a grand jury or audit conferences conducted by the Auditor of State, to be closed to the public.

Transfer of money from Public Assistance Fund

(R.C. 5101.144 (not in the act), 5101.161 (not in the act), and 5705.14)

Continuing law prohibits the transfer of money from one county fund to another county fund except in specified circumstances. The Public Assistance Fund consists of funds appropriated by a board of county commissioners and money received from ODJFS for the state and federal share of the county's public assistance expenditures. The Children Services Fund consists of appropriations made by the board of county commissioners or any other source for the purpose of providing children services. Rules adopted by ODJFS authorize each county to establish a Child Support Enforcement Administrative Fund in the county treasury.

The act permits the transfer of money from the Public Assistance Fund to the Children Services Fund or the Child Support Enforcement Administrative Fund, as long as the money to be transferred may be spent for the purposes of the receiving fund.

County share of public assistance expenditures

(R.C. 5101.16)

Continuing law requires that each board of county commissioners pay each fiscal year a percentage of the costs of certain public assistance programs, including Ohio Works First and Medicaid. The act reduces to 105% (from 110%) the maximum amount that a county is required to pay, in comparison to the amount paid in the preceding fiscal year, for its share of public assistance expenditures.

Recovery of costs by county family service agencies

(R.C. 5101.183)

Under continuing law, the ODJFS Director may adopt rules requiring CDJFSs and public children services agencies (PCSAs) to take action to recover the costs of services provided to (1) persons who were not eligible to receive the services but who secured them through fraud or misrepresentation and (2) persons who were eligible for the services but intentionally diverted them to other persons ineligible to receive them.

The act extends to all county family services agencies ODJFS's authority adopt rules requiring that agencies take action to recover the cost of services provided to persons who secured them through fraud or misrepresentation or intentionally diverted services to ineligible persons. This means that CSEAs, in addition to CDJFSs and PCSAs, are subject to those rules.

The act expands ODJFS's rulemaking authority to recovering the cost of benefits, in addition to services, that are secured through fraud or misrepresentation or that were intentionally diverted. ODJFS also may adopt rules requiring a county family services agency to take action to recover the cost of any benefits or services provided by the agency if recovery is required or permitted by federal law. Any money recovered must be used to meet a family services duty (rather than the provision of social services), unless federal law requires ODJFS to return a portion of the money to the federal government.

Continuing law authorizes a CDJFS or PCSA to bring a civil action against a recipient to recover costs. The act extends to a CSEA the authority to bring such an action.

Recovering excess payments to counties

(R.C. 5101.244)

The act expands the actions ODJFS may take if it determines that a grant awarded to a county grantee in a grant agreement, an allocation, advance, or reimbursement ODJFS makes to a county family services agency, or a cash draw a county family services agency makes exceeds the allowable amount. Under continuing law, ODJFS may adjust, offset, withhold, or reduce an allocation, cash draw, advance, reimbursement, or other financial assistance to the county grantee or county family services agency as necessary to recover the excess amount.

In addition to or instead of the actions permitted under continuing law, the act permits ODJFS to take either or both of the following actions to collect the excess amount: (1) enter into an agreement with the county entity for the entity to repay the amount of the excess plus, at ODJFS's discretion, interest and (2) certify a claim to the Attorney General for collection.

Use of Title XX funds for local administrative costs

(R.C. 5101.46)

Under continuing law, ODJFS, the Ohio Department of Mental Health, and the Ohio Department of Developmental Disabilities, with their respective local agencies,

provide social services funded by Title XX of the Social Security Act, also known as the Social Services Block Grant. The act replaces the 14% limit on the amount of a local agency's Title XX funds that may be used for administrative costs with a requirement that each state department adopt rules establishing the maximum percentage. The percentage established by rule must comply with federal law. The rules are to be adopted in the manner provided for internal management rules (R.C. 111.15).

Ohio Commission on Fatherhood executive director and annual report

(R.C. 5101.341 and 5101.342)

Continuing law establishes the Ohio Commission on Fatherhood in ODJFS. The act requires the Governor to appoint the Commission's executive director. The executive director is to serve at the pleasure of the Governor and report to the ODJFS Director or the Director's designee. The act requires the Governor to set the executive director's salary, and the executive director is to be in the unclassified civil service.

The act requires the Commission to collaborate with the ODJFS Director in describing (1) its expectations for the outcomes of fatherhood-related programs and initiatives and (2) its methods for conducting annual measures of those outcomes. The Commission is to include this information its annual report.

Name of Food Stamp Program

(Section 309.40.20)

Under federal law, the name of the Food Stamp Program was changed to the Supplemental Nutrition Assistance Program (SNAP).[121] Am. Sub. H.B. 1 of the 128th General Assembly, the general appropriations act, made corresponding changes in state law.

Similar to H.B. 1's provisions regarding the SNAP name change, the act authorizes the ODJFS Director to refer to the program as the Food Stamp Program or the Food Assistance Program in ODJFS rules and documents. The act specifies that the Director is not required to amend rules regarding the Food Stamp Program to change the name of the program.

[121] The Food, Conservation, and Energy Act of 2008 (Pub. Law 110-246).

II. Child Care

Payment for publicly funded child care

State contracts in place of county contracts

(R.C. 5104.32 (primary), 5104.34, 5104.341, 5104.35, 5104.37, 5104.38, 5104.39, 5104.42, and 5104.43)

Under prior law, all purchases of publicly funded child care were to be made under contracts between the child care provider and the CDJFS. A contract had to specify that the provider agreed to be paid at the lowest of the rate customarily charged for children enrolled for child care, the reimbursement ceiling established by ODJFS by rule, or a rate the CDJFS negotiated with the provider.

The act eliminates provisions under which CDJFSs could contract with and reimburse providers of publicly funded child care and all provisions related to CDJFSs performing that function. In place of these provisions, the act provides that purchases of publicly funded child care are made pursuant to contracts between the provider and ODJFS. A contract must specify that the provider agrees to be paid at the lower of the rate customarily charged for children enrolled for child care or the reimbursement ceiling ODJFS establishes by rule.

Reinstatement of publicly funded child care

(R.C. 5104.38(A))

The act permits the ODJFS Director to adopt rules specifying exceptions to ongoing rules that detail procedures and criteria to be used when making certain eligibility determinations for publicly funded child care. The new rules may specify exceptions to the eligibility requirements in the case of a family that previously received publicly funded child care and is seeking to have the child care reinstated after the family's eligibility was terminated.

Child care during pre-work activities

(R.C. 5104.35 and 5104.38(M))

To the extent permitted by federal law, the act requires that ODJFS adopt a rule under which ODJFS, rather than a CDJFS, may pay for child care for up to 30 days for a child whose parent is seeking employment, participating in orientation activities, or taking part in other activities in anticipation of enrollment or attendance in an education or training program.

Rates for special needs children

(R.C. 5104.35 and 5104.38(L))

Under the act, if the ODJFS Director establishes a different reimbursement ceiling for child care provided to special needs children, ODJFS must adopt rules establishing standards and procedures for determining the amount of the higher payment. This is in place of a CDJFS's authority under prior law to request a waiver of the reimbursement ceiling in the case of a special needs child.

Monitoring child care expenditures

(R.C. 5104.39)

Under continuing law, the ODJFS Director is required to establish a procedure for monitoring expenditures to ensure that they do not exceed the available federal and state funds for publicly funded child care. When ODJFS determines that anticipated future expenditures will exceed available funds, it must issue an administrative order that specifies priorities for spending the remaining funds and instructions and procedures to be used by the CDJFS. The order may also suspend enrollment, limit enrollment, or disenroll existing participants.

The act retains these procedures in the context of ODJFS's administration of the program. In addition, it provides that the administrative order may change (1) the schedule of fees paid by eligible caretaker parents and (2) the rate of payment to providers.

Prohibition on obtaining child care from multiple providers

(R.C. 5104.34 and 5104.38)

Prior law contained no restrictions regarding the number of child care providers from whom an eligible caretaker parent may receive publicly funded child care. The act prohibits a caretaker parent from receiving full-time publicly funded child care from more than one provider per child.

Step Up to Quality incentives

(R.C. 5104.30)

ODJFS is required by continuing law to establish a voluntary child day-care center quality-rating program. ODJFS has implemented this requirement by establishing the Step Up to Quality Program. The act requires that, in establishing reimbursement ceilings for publicly funded child care, ODJFS must establish enhanced

reimbursement ceilings for child day-care centers that participate in the Program and maintain quality ratings under the Program. The act requires ODJFS to weigh any reduction in reimbursement ceilings more heavily against child day-care providers that do not participate in Step Up to Quality or do not maintain quality ratings.

Swipe card pilot program

(Section 309.40.70)

ODJFS has entered into a contract for the development and implementation of Ohio Electronic Child Care (ECC). According to ODJFS, ECC will allow child care providers to track the attendance of publicly funded children in their care by requiring caretakers to record attendance using a swipe card to check children in and out of care.

The act provides that, if ODJFS implements a program that uses a swipe card system and point-of-service device to track attendance and submit invoices for payment for publicly funded child care, (1) misuse of the system by a provider participating in the program is a reason for which the provider's license or certification may be subject to revocation and (2) misuse of the system by a caretaker parent participating in the program is a reason for which the parent may lose eligibility for publicly funded child care.

Child care licensing

Continuous licensure of child day-care centers and type A homes

(R.C. 5104.04 (primary), 5104.011, 5104.012, 5104.013, 5104.03, 5104.05, and 5104.99)

Prior law required that a child care center or type A family day-care home license be renewed every two years. The act eliminates this requirement. It also eliminates corresponding provisions related to the renewal process.

If a license is revoked, prior law required the center or type A home to wait two years before applying for another license. The act extends the waiting period to five years. It also prohibits the ODJFS Director from issuing a license if the owner's application for a license has been denied within five years.

Under continuing law, a center or type A home is initially issued a provisional license. The act increases to one year (from six months) the period during which a provisional license is valid.

Licensure enforcement

(R.C. 5104.04)

The act eliminates the requirements that ODJFS (1) notify a child day-care center or type A family day-care home that it has determined, pursuant to an inspection or investigation, is out of compliance with the laws governing centers and homes, and (2) provide the notice in writing and describe the nature of the violation, what must be done to correct the violation, and by what date the correction must be made. The act eliminates a related provision that expressly authorized ODJFS to commence a license revocation action if the correction has not been made.

License capacity in relation to staff

(R.C. 5104.01(AA) and 5104.03)

The act eliminates the requirement that the ODJFS Director consider the number of available child-care staff members when determining "license capacity" for the licensure of child day-care centers or type A family day-care homes. However, the act retains this requirement for when the Director issues the initial provisional day-care license to a center or home.

Staff ratios while toddlers or preschool children are napping

(R.C. 5104.011(E)(2))

The act increases to 2 (from 1.5) the number of hours during a 24-hour day that the number of napping toddlers or preschool children per child-care center staff member may be twice the number of children per staff member otherwise allowed. The center must still meet the following requirements: (1) have at least one staff member present in the room, (2) have sufficient staff on the center's premises, and (3) have naptime preparations complete and all napping children resting or sleeping on cots.

Child day-care center administrator qualifications

(R.C. 5104.011(B)(4))

The act establishes a method by which a person seeking to be a child day-care center administrator may meet educational requirements by showing the ODJFS Director evidence that the person holds a high school diploma and a designation as an "early childhood professional level three" under the Step Up to Quality Program's career pathways model.[122] The career pathways model is defined by the act as an

[122] The Step Up to Quality Program is established by rule (O.A.C. Chapter 5101:2-17).

alternative pathway to meeting the requirements for a child care staff member or administrator that uses one framework to integrate the pathways of formal education, training, experience, and specialized credentials, and certifications, and that allows the member or administrator to achieve a designation as an early childhood professional level one, two, three, four, five, or six.

Under the act's method of meeting educational requirements, any administrator employed or designated as such on or after September 29, 2011 (the act's 90-day effective date) must show evidence of at least one of the following not later than one year after the date of employment or designation:

(1) Two years of experience working as a child-care staff member in a center and at least four courses in child development or early childhood education from an accredited college, university, or technical college, except that a person who has two years of experience working as a child-care staff member in a particular center and who has been promoted to or designated as administrator of that center may have one year from the time the person was promoted to or designated as administrator to complete the required four courses;

(2) Two years of training, including at least four courses in child development or early childhood education from an accredited college, university, or technical college;

(3) A child development associate credential issued by the National Child Development Associate Credentialing Commission;

(4) An associate or higher degree in child development or early childhood education from an accredited college, technical college, or university, or a license designated for teaching in an associate teaching position in a preschool setting issued by the State Board of Education;

(5) An administrator's credential as approved by ODJFS.

The act permits any administrator employed or designated as such *prior* to September 29, 2011, to show evidence of an administrator's credential as approved by ODJFS in lieu of, or in addition to, the educational requirements that otherwise apply under continuing law. The evidence of an administrator's credential must be shown to the ODJFS Director no later than one year after the date of employment or designation.

Educational requirements for child day-care staff

(R.C. 5104.011(B)(5)(b))

With limited exceptions, all child-care staff members of a child day-care center are required to have (1) graduated from high school, (2) a certification of high school equivalency, or (3) completed a training program approved by ODJFS or the State Board of Education. The act exempts from those educational requirements staff members who are receiving or have completed the final year of instruction at home or who have graduated from a charter school.

Reference checks of license applicants and employees

(R.C. 5104.011(A)(16) and (F)(16))

The act eliminates the requirements that the ODJFS Director adopt rules to be used for checking the references of child day-care center and type A family day-care home license applicants and potential employees.

Course requirements for child day-care center staff members

(R.C. 5104.011(C)(1))

The act permits a child day-care center to have on the center premises and readily available a separate staff member who has completed a course in prevention, recognition, and management of communicable diseases approved by the Department of Health, rather than a staff member who has completed both this course *and* a course in first aid. (The center must still have a staff member who has completed a course in first aid).

Physical examinations and immunizations

(R.C. 5104.011(A)(5))

With regard to the ongoing requirement that the ODJFS Director adopt rules establishing procedures for screening children and employees of child day-care centers, the act specifies that the rules may, rather than must, include requirements for physical examinations and immunizations.

Copy of child care licensure requirements

(R.C. 5104.03)

Continuing law requires the ODJFS Director to provide each applicant for a child day-care center or type A family day-care home license a copy of the licensure

requirements and rules governing child care. The act permits the Director to provide the copy in paper or electronic form.

Publication of type B family day-care homes guide

(R.C. 5104.13)

The act permits, rather than requires, that ODJFS publish a guide describing the laws governing the certification of type B family day-care homes. ODJFS may publish the guide electronically or otherwise. ODJFS must do so in such a manner that the guide is accessible to the public, including type B home providers. The act eliminates the requirement that ODJFS distribute the guide to CDJFSs in sufficient number that a copy is available to each type B home provider.

Child day-care center rosters and contact lists

(R.C. 5104.011(B)(7))

The act eliminates the requirement that each child day-care center administrator prepare and distribute at least annually a roster of the names and telephone numbers of parents, custodians, or guardians of each group of children attending the center. On request, the administrator was required to furnish the roster for each group to the parents, custodians, or guardians of the children in that group. Similarly, the act eliminates the authority of an administrator to prepare a roster of names and telephone numbers of *all* the parents, custodians, or guardians. The act eliminates the related prohibitions against (1) including in any roster the name or telephone number of any parent, custodian, or guardian who requested not to be included and (2) furnishing any roster to any person other than a parent, custodian, or guardian of a child attending the center.

Sanctions for violating laws governing child care

(R.C. 5104.011(J)(5) (primary) and 5104.01(OO))

The act permits the ODJFS Director to adopt rules in accordance with the Administrative Procedure Act regarding sanctions to be imposed on persons or entities violating the laws governing child care. This replaces a requirement that the Director recommend standards for imposing sanctions and provide copies of the recommendations to the Governor and General Assembly regarding sanctions.

The sanctions adopted pursuant to rule may be imposed only for a serious risk noncompliance violation of licensure or certification standards. A serious risk noncompliance violation means a licensure or certification standard violation that leads

to the greatest risk of permanent harm to, or death of, a child and is observable, not inferable.

The act requires the ODJFS Director to make a dispute resolution process available for the implementation of sanctions. The process may include an opportunity for appeal under the Administrative Procedure Act.

Incentives for substantial compliance with licensure or certification standards

(R.C. 5104.011(J)(6))

The act requires the ODJFS Director to adopt rules establishing incentives for persons and entities that are licensed or certified to provide child care and have a history of substantial compliance with licensure or certification standards. The incentives must at least include less frequent or focused licensure or certification visits, participation in the Step Up to Quality rating program, and scholarships for training.

III. Child Support

Child Support Custodial Fund

(R.C. 3121.48, 3121.03 (not in the act), and 3121.19 (not in the act))

Payors and financial institutions that withhold or deduct money pursuant to a child support order are required to forward that money to the Office of Child Support in ODJFS within seven business days. Prior law required the Office of Child Support to maintain a separate account for the deposit of support payments it received as trustee for persons entitled to receive the support payments. The act requires instead that the Office of Child Support administer a fund for the deposit of those payments. The Treasurer of State is the custodian of the fund, but the fund is not to be part of the state treasury.

License suspension procedures for defaulting child support obligors

(R.C. 3123.44, 3123.45, 3123.55, 3123.56, 3123.58, 3123.59, 3123.591, 3123.63, 4506.071, 4507.111, 4705.021, 3123.52 (repealed), 3123.61 (repealed), 3123.612 (repealed), 3123.613 (repealed), and 3123.614 (repealed))

Ohio and federal law require the occupational, professional, motor vehicle, or recreational license or permit of an obligor found in default under a child support order to be denied or suspended, or not be issued or renewed, at the request of a child support enforcement agency (CSEA). "Default" means any failure to pay an amount equal to or greater than the amount payable for one month under a child support order. When a CSEA identifies a default, it investigates and then sends a default notice

containing information on the arrearage and the administrative and court action that will take place if the obligor contests the information in the default notice. When the obligor exhausts the ability to contest the information in the default notice, the default becomes final and enforceable. These licenses also may not be issued or renewed and may be suspended or revoked if the obligor fails to comply with a subpoena or warrant issued by the court or a CSEA with respect to a proceeding to enforce a child support order. The license may not be issued or renewed and must remain suspended or revoked until the obligor complies with the child support order, subpoena, or warrant.

The act prohibits a CSEA from notifying an occupational or professional licensing board, the Bureau of Motor Vehicles (BMV), or the Division of Wildlife that an obligor is in default unless at least 90 days have elapsed since the final and enforceable determination of default, and, in the preceding 90 days, the obligor has failed to pay at least 50% of the total monthly obligation due for that period by means other than federal or state tax refund intercept. It requires ODJFS to adopt rules establishing a uniform pre-suspension notice form to be used by CSEAs that send notice to occupational or professional licensing boards, the BMV, or the Division of Wildlife. The rules must require the contents of the notice to include information about the effect of a license suspension and appropriate steps that an obligor can take to avoid license suspension.

Under continuing law, a CSEA that notifies an occupational or professional licensing board, the BMV, or the Division of Wildlife that an obligor is in default must send another notice that the obligor is not in default within seven days of certain specified events. Under prior law, the notice was required to be sent if (a) the obligor made full payment of the arrearage, (b) an appropriate withholding or deduction notice or other order was issued to collect current support and the arrearage and the obligor was complying with the notice or order, or (c) a new child support order was issued or the order that was in default was modified to collect current support and the arrearage.

The act alters the circumstances under which the notice must be sent. Under the act, the CSEA must send the notice if one of the following occurs:

(1) The obligor makes full payment of the arrearage as of the date the payment is made;

(2) If (1) is not possible, the obligor has presented the CSEA sufficient evidence of current employment or of an account in a financial institution, confirmed by the CSEA, and a withholding or deduction notice has been issued to collect current support and any arrearage (the ODJFS Director must adopt rules establishing standards for confirming the obligor's employment or the existence of the account);

(3) If (1) and (2) are not possible, the obligor presents evidence to the CSEA sufficient to establish that the obligor is unable to work due to circumstances beyond the obligor's control;

(4) If (1), (2), and (3) are not possible, the obligor enters into and complies with a written agreement with the CSEA requiring the obligor to comply with a family support program administered or approved by the CSEA or a program to establish compliance with a seek work order issued; or

(5) If (1), (2), (3), and (4) are not possible, the obligor pays the balance of the total monthly obligation due for the 90-day period preceding the date the agency sent notice to the occupational or professional licensing board, BMV, or Division of Wildlife that the obligor is in default.

The act also permits a CSEA, pursuant to rules adopted by the ODJFS Director, to direct the Registrar of Motor Vehicles to eliminate from the abstract maintained by the BMV any reference to the suspension of an obligor's license due to default.

IV. Child Welfare and Adoption

Case plan or family service plan for child receiving in-home services from a PCSA

(R.C. 2151.011(B)(4) and 2151.412(B) and (C)(2))

The act requires each public children services agency (PCSA) to prepare and maintain a case plan or a family service plan for any child receiving in-home services from the agency pursuant to an alternative response. An "alternative response" is a PCSA's response to a report of child abuse or neglect that engages the family in a comprehensive evaluation of child safety, risk of subsequent harm, and family strengths and needs. It does not include a determination as to whether child abuse or neglect has occurred. The act also requires that the rules adopted pursuant to R.C. Chapter 119. requiring PCSAs to maintain case plans for children and their families who are receiving services in their homes from the agencies and for whom case plans are not otherwise required (continuing law) must include the requirements for case plans or family service plans maintained for children and their families who are receiving services in their homes from PCSAs pursuant to an alternative response. PCSAs must maintain case plans and family service plans as required by those rules; however, the case plans and family service plans are not subject to any other provision of the law regarding case plans except as specifically required by the rules.

Use of the investigative assessment response and the family assessment response

(R.C. 2151.011(B)(16) and (56) and 2151.429)

Under the act, the differential response approach pursued by a PCSA must include two pathways, the traditional response pathway and the alternative assessment response pathway. The ODJFS Director must adopt rules pursuant to R.C. Ch. 119. setting forth the procedures and criteria for PCSAs to assign and reassign response pathways.

The PCSA must use the traditional response for the following types of accepted reports: (1) physical abuse resulting in serious injury or that creates a serious and immediate risk to a child's health and safety, (2) sexual abuse, (3) child fatality, (4) reports requiring a specialized assessment as identified by rule adopted by ODJFS, and (5) reports requiring a third party investigative procedure as identified by rule adopted by ODJFS.

For all other child abuse and neglect reports, an alternative response is the preferred response, whenever appropriate and in accordance with rules adopted by ODJFS.

"Differential response approach" means an approach that a PCSA may use to respond to accepted reports of child abuse or neglect with either an alternative response or a traditional response. "Traditional response" means a PCSA response to a report of child abuse or neglect that encourages engagement of the family in a comprehensive evaluation of the child's current and future safety needs and a fact-finding process to determine whether child abuse or neglect occurred and the circumstances surrounding the alleged harm or risk of harm.

Investigations by a PCSA

(R.C. 2151.421(O); cross-reference changes in 2151.424 and 2152.72)

Continuing law generally requires a PCSA to investigate, within 24 hours, each report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to in R.C. 2151.421 to determine the circumstances surrounding the injuries, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation is made in cooperation with the law enforcement agency and in accordance with the prepared memorandum of understanding. The act defines

"investigation" as the PCSA's response to an accepted report of child abuse or neglect through either an alternative response or a traditional response.

Statewide expansion of the Ohio Alternative Response Pilot Program

(Section 309.50.10)

The biennial budget act of the 128th General Assembly, Am. Sub. H.B. 1, required ODJFS to implement a pilot program in not more than ten counties based on an "alternative response" approach to reports of child abuse, neglect, and dependency. ODJFS was required to assure that the pilot program be independently evaluated and was permitted, if the evaluation recommended statewide implementation of an alternative response approach to child protection, to expand the approach statewide.

The act requires that ODJFS, in accordance with the evaluation of the Ohio Alternative Response Pilot Program, plan the statewide expansion of the pilot program on a county by county basis, through a schedule ODJFS is to determine. The program is to be known as the differential response approach. The act's provisions regarding differential response, traditional response, and alternative response are to become effective for a county in accordance with ODJFS's schedule. ODJFS is permitted to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) before the statewide implementation as necessary to carry out its duties regarding the expansion.

Children's Trust Fund Board

(R.C. 3109.16)

Continuing law generally requires certain additional fees collected (1) for copies of birth records, birth certificates, and death certificates, and (2) upon filing a divorce decree to be forwarded to the Children's Trust Fund, a fund in the state treasury. This money is used by the Children's Trust Fund Board to develop and carry out a biennial state plan for comprehensive child abuse and child neglect prevention. The Board is authorized to obtain other funds, which also are deposited into the Children's Trust Fund. For example, the Board may accept gifts and donations from any source and may apply for and accept federal and other funds for the purpose of funding child abuse and child neglect prevention programs.

The act authorizes the Board to not only accept gifts and donations, but also solicit them. In addition, the act permits the Board to solicit and accept money. The act specifies that the Board may solicit and accept the gifts, money, and other donations from any public or private source.

The act authorizes the Board to develop private-public partnerships. The partnerships are to be developed to support the mission of the Children's Trust Fund.

Consistent with continuing law pertaining to the acceptance and use of federal funds, the act specifies that the Board's acceptance or use of any other funds does not entail any commitment or pledge of state funds, nor obligate the General Assembly to continue the programs or activities for which the funds are made available.

Continuing law authorizes ODJFS to adopt administrative rules for the purpose of providing budgetary, procurement, accounting, and other related management functions for the Board. The act permits the Board to request that ODJFS adopt rules the Board considers necessary for the purpose of carrying out the Board's responsibilities. It also authorizes ODJFS to adopt any other rules to assist the Board in carrying out its responsibilities.

V. Health Programs (Including Medicaid)

Health Care Special Activities Fund

(R.C. 5111.945)

The act creates in the state treasury the Health Care Special Activities Fund. ODJFS is required to deposit all funds it receives pursuant to the administration of the Medicaid program into the Fund, other than any funds that are required by law to be deposited into another fund. ODJFS must use the money in the Fund to pay for expenses related to services provided under, and the administration of, the Medicaid program.

Eligibility determinations for Medicaid and CHIP

(R.C. 5101.47 and 5111.012)

Continuing law generally authorizes ODJFS to accept applications and determine eligibility for Medicaid and the Children's Health Insurance Program (CHIP).[123] The act permits ODJFS, to the extent permitted by federal law, to enter into agreements with one or more other state agencies, local government entities, or political subdivisions to

[123] CHIP is a health-care program for uninsured, low-income children under age 19. It is funded with federal, state, and county funds and was established by Congress in 1997 as Title XXI of the Social Security Act. ODJFS has chosen to implement CHIP as part of the Medicaid program. State law provides for CHIP to have three parts. Part I covers children with family incomes not exceeding 150% of the federal poverty guidelines. Part II covers children with family incomes above 150% but not exceeding 200% of the federal poverty guidelines. Part III, which has not been implemented, is to cover children with family incomes above 200% but not exceeding 300% of the federal poverty guidelines.

accept applications, determine and redetermine eligibility, and perform related administrative functions regarding Medicaid and CHIP.

If ODJFS enters into such an agreement with a county department of job and family services (CDJFS), the CDJFS is permitted to establish Medicaid eligibility only if authorized under the agreement. Prior law required each CDJFS to establish Medicaid for persons living in the county.

Waiver for transferring assets for less than fair market value

(R.C. 5111.0116 (primary) and 5111.011)

The act revises the law governing exceptions to the requirement that an institutionalized individual temporarily be denied Medicaid eligibility for nursing facility services, nursing facility equivalent services, and home and community-based services if the individual or individual's spouse disposes of assets for less than fair market value on or after a date known as the "look-back date." Under continuing law, the look-back date is the date that is a number of months (as specified in ODJFS rules) immediately before (1) the date an individual becomes an institutionalized individual if the individual is eligible for Medicaid on that date or (2) the date an individual applies for Medicaid while an institutionalized individual. An institutionalized individual is a resident of a nursing facility, an inpatient in a medical institution for whom a payment is made based on a level of care provided in a nursing facility, or an individual receiving home and community-based services under a federal Medicaid waiver.

Prior to the act, exceptions to the temporary ineligibility that otherwise occurs when assets are transferred for less than fair market value on or after the look-back date were not included in statute. Instead, prior law required ODJFS to adopt rules establishing exceptions. The act specifies the following two exceptions in statute:

--**Undue hardship**: An institutionalized individual may be granted a waiver of all or part of the temporary ineligibility if the ineligibility would cause an undue hardship for the individual. "Undue hardship" is defined as being deprived of (1) medical care such that an individual's health or life is endangered or (2) food, clothing, shelter, or other necessities of life.

--**Transfer or discharge for failure to pay**: An individual must be granted a waiver of all or a part of the temporary ineligibility if the administrator of the nursing facility in which the individual resides has notified the individual of a proposed transfer or discharge from the facility due to failure to pay for the care the facility has provided to the individual, the individual or the individual's sponsor requests a hearing on the proposed transfer or discharge, and the transfer or discharge is upheld by a final determination that is not subject to further appeal.

The ODJFS Director is to adopt rules establishing procedures for granting the waivers described above. The act also requires the Director to adopt rules establishing additional reasons for which waivers of the temporary ineligibility may be granted.

Presumptive eligibility for children and pregnant women

(R.C. 5111.0124 (primary), 5111.013, and 5111.0125)

Federal law permits states to implement options regarding presumptive Medicaid eligibility for children and pregnant women. Under the options, a state may make certain Medicaid services available to a child or pregnant woman during a presumptive eligibility period. This period begins on the date a qualified entity or provider determines, based on preliminary information, that the family income of the child or pregnant woman does not exceed the state's applicable eligibility limit and ends on the earlier of (1) the day a Medicaid eligibility determination is made or (2) the last day of the month following the month the eligibility determination is made if a Medicaid application is not filed by that day.

Prior to the act, the ODJFS Director adopted a rule to implement the presumptive eligibility for children option but not the presumptive eligibility for pregnant women option. The rule as in effect July 1, 2011, provides that only CDJFS may serve as qualified entities.[124]

The act requires the ODJFS Director to retain the presumptive eligibility for children option that was included in the Medicaid state plan prior to the act and to submit a Medicaid state plan amendment to the U.S. Secretary of Health and Human Services to implement the presumptive eligibility for pregnant women option.

The act eliminates a requirement that the ODJFS Director do either of the following:

(1) To the extent that federal funds are provided, adopt a plan for granting presumptive eligibility for pregnant women applying for the Healthy Start component of Medicaid;

(2) To the extent permitted by federal Medicaid regulations, adopt a plan for making same day eligibility determinations for pregnant women applying for Healthy Start.

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[124] O.A.C. 5101:1-38-40.

Eligibility determinations by qualified providers and entities

The act requires the ODJFS Director to provide for children's hospitals, federally qualified health centers, and federally qualified health center look-alikes, if they are eligible to be qualified providers or entities under federal law and request to serve in that capacity, to serve as qualified providers and entities for purposes of the presumptive eligibility for children and pregnant women options. The act permits the ODJFS Director to provide for other types of providers and entities to be qualified providers and entities if they are eligible and request to serve. Under federal law, qualified providers and entities may make presumptive eligibility determinations.

Implementation date

The ODJFS Director is to begin implementing the presumptive eligibility for pregnant women option and the provisions regarding qualified providers and entities on the later of April 1, 2012, or a date that is not later than 90 days after the effective date of the federal approval needed to implement the option and provisions.

Treatment of trusts for Medicaid eligibility determinations

When the statute may be applied

(R.C. 5111.151(A))

Regarding a provision of law governing how a trust must be treated for purposes of determining Medicaid eligibility, the act specifies that the provision may be used only for either of the following: (1) an initial eligibility determination for Medicaid made by ODJFS or a CDJFS, or (2) an appeal from an initial eligibility determination made by ODJFS or a CDJFS. The act expressly prohibits a court from using the provision to determine the effect of a trust on an individual's initial eligibility for Medicaid, but specifies that this prohibition does not apply when the court considers an appeal from an initial eligibility determination.

Resources and income available under a trust

(R.C. 5111.151(C); conforming changes in R.C. 5111.151(D), (F), and (G))

When a Medicaid applicant or recipient is a recipient of a trust, continuing law requires a CDJFS to determine what type of trust it is and to treat the trust in accordance with the provision, described above, governing how trusts must be treated for purposes of determining Medicaid eligibility. Relative to this responsibility, the act requires the CDJFS to determine that the trust or a portion of it (1) is a resource available to the applicant or recipient, (2) contains income available to the applicant or recipient, (3) constitutes both a resource available to the applicant or recipient or

contains income available to the applicant or recipient, or (4) neither is a resource available to the applicant or recipient nor contains income available to the applicant or recipient. Prior law referred to a resource available to the applicant or recipient as a "countable resource" and a trust that contained income available to the applicant or recipient as "countable income."

The act expressly requires that a trust or a portion of a trust that is a resource available to the applicant or recipient or that contains income available to the applicant or recipient must be counted for purposes of determining Medicaid eligibility. This requirement does not, however, apply to principal or income from a special needs trust, qualifying income trust, pooled trust, or supplemental services trust.[125]

Compliance with federal maintenance of effort requirement

(R.C. 5111.0122)

Except to the extent, if any, otherwise authorized by the U.S. Secretary of Health and Human Services, ODJFS is required by the act to comply with the federal maintenance of effort (MOE) requirement regarding Medicaid eligibility standards, methodologies, and procedures while the requirement is in effect. The MOE requirement is part of the Patient Protection and Affordable Care Act (federal health care reform).[126] Generally, a state violates the MOE requirement if it has eligibility standards, methodologies, or procedures under its Medicaid state plan or a Medicaid waiver that are more restrictive than those in effect on March 23, 2010. The MOE requirement for adults continues until the U.S. Secretary determines that the state's American Health Benefit Exchange is fully operational.[127] January 1, 2014, is the deadline for states to establish such exchanges. The MOE requirement for children continues until October 1, 2019. A state that violates the MOE requirement is to lose all

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[125] A special needs trust is a trust to benefit an individual with a mental or physical disability who has not reached the age of 65. A qualifying income trust is a trust that is composed only of pension, social security, and other income to the beneficiary. A pooled trust is a special arrangement with a nonprofit organization that serves as the trustee to manage assets belonging to many disabled individuals (with investments being pooled), but with separate trust "accounts" being maintained for each disabled individual. A supplemental services trust is a trust to benefit individuals with a mental or physical disability who are eligible to receive services through the Ohio Department of Developmental Disabilities, a county board of developmental disabilities, the Ohio Department of Mental Health, or a board of alcohol, drug addiction, and mental health services.

[126] Section 2001(b) of the Patient Protection and Affordable Care Act (Public Law 111-148).

[127] An American Health Benefit Exchange is to be a governmental agency or nonprofit entity established by a state to make qualified health plans available to individuals and employers (Section 1311 of the Patient Protection and Affordable Care Act).

federal funds for the state's Medicaid program for the duration of the MOE requirement.

Reduction of complexity in Medicaid eligibility determination processes

(R.C. 5111.0123)

The act requires the ODJFS Director to adopt rules to reduce the complexity of the eligibility determination processes for the Medicaid program caused by the different income and resource standards for the numerous Medicaid eligibility categories. Before implementing a revision to an eligibility determination process, the ODJFS Director must obtain, to the extent necessary, the approval of the U.S. Secretary of Health and Human Services in the form of a federal Medicaid waiver, Medicaid state plan amendment, or demonstration grant. In implementing any revisions, ODJFS must comply with the act's requirement regarding the federal maintenance of effort requirement.

Audits of medical assistance recipients

(R.C. 5101.181 and 5101.28; conforming changes in R.C. 145.27, 742.41, 3307.20, 3309.22, 4123.27, and 5505.04)

The act repeals provisions that required the State Auditor to determine whether overpayments were made on behalf of every medical assistance recipient. In place of those provisions, the act authorizes the Auditor, on the request of the ODJFS Director, to conduct an audit of an individual who receives medical assistance.[128] If the Auditor decides to conduct an audit, the act requires the Auditor to enter into an interagency agreement with ODJFS that specifies that the Auditor agrees to comply with the act's provisions governing the confidentiality of medical assistance recipient information (see "**Disclosure of information regarding medical assistance recipients**," below).

Determining other public assistance overpayments

The act does not similarly authorize the Auditor to conduct an audit of an individual public assistance recipient[129] on the ODJFS Director's request. Rather, law largely retained by the act requires the Auditor to determine overpayments to public

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[128] The act defines "medical assistance" as medical assistance provided pursuant to, or under programs established by, the Refugee Act of 1980, the Children's Health Insurance Program, the Medicaid program, or any other provision of Ohio law (R.C. 5101.181(A)(2)).

[129] The act defines "public assistance" as Ohio Works First; Prevention, Retention, and Contingency; disability financial assistance; and general assistance provided before the program was abolished July 17, 1995.

assistance recipients. The only change relative to investigating overpayments to public assistance recipients is that the act authorizes (rather than requires) the ODJFS Director to (1) furnish quarterly the name and social security number of each public assistance recipient to the Director of Administrative Services, the Administrator of the Bureau of Workers' Compensation, and each of the state's retirement boards, and (2) furnish semiannually the name and social security number of each public assistant recipient to the Tax Commissioner.

Disclosure of information regarding medical assistance recipients

When disclosure is prohibited or permitted

(R.C. 5101.26, new 5101.271, and 5101.273)

The act repeals provisions governing ODJFS's or a CDJFS's use or disclosure of information about a medical assistance recipient and replaces them with new provisions. Under the act, ODJFS or a CDJFS is generally prohibited from using or disclosing information regarding a medical assistance recipient for any purpose not directly connected with the administration of the medical assistance program (this provision is substantially similar to one in former law). The act specifies that both of the following *are* considered to be purposes directly connected with the administration of the medical assistance program: (1) treatment, payment, or other operations or activities authorized by federal regulations, and (2) any administrative function or duty ODJFS performs alone or jointly with a federal government entity, another state government entity, or a local government entity implementing a provision of federal law.

The act provides for exceptions to the general prohibition on the use and disclosure of medical assistance recipient information. First, ODJFS may disclose information regarding a medical assistance recipient to any of the following persons:

(1) The recipient or the recipient's authorized representative;

(2) The recipient's legal guardian;

(3) The recipient's attorney, if ODJFS or a CDJFS has obtained authorization from the recipient, the recipient's authorized representative, or the recipient's legal guardian that meets all requirements of the Health Insurance Portability and Accountability Act (HIPAA), regulations promulgated to implement HIPAA, the act's requirements governing authorization, and rules the act requires the ODJFS Director to adopt;

(4) A health information or health records management entity, if the entity has executed with ODJFS a business associate agreement required by a provision of the HIPAA Privacy Rule[130] and has been authorized by the recipient, the recipient's authorized representative, or the recipient's legal guardian to receive the recipient's electronic health records in accordance with rules the act requires the ODJFS Director to adopt;

(5) A court, if pursuant to a written order of the court.

Second, ODJFS may disclose information regarding a medical assistance recipient for any of the following purposes:

(1) To the extent necessary to participate as an active member in the Public Assistance Reporting Information System (PARIS), a computer system operated under the auspices of the Administration for Children and Families in the U.S. Department of Health and Human Services that matches public recipients' social security numbers against various federal databases and participating states' databases;

(2) When permitted by rules the act requires the ODJFS Director to adopt;

(3) When required by federal law.

Authorization form

(new R.C. 5101.272)

The written authorization that a medical assistance recipient, the recipient's authorized representative, or the recipient's legal guardian must make to give the recipient's attorney access to the recipient's information is to be on a form that contains the same components required under former law governing authorization for the release of public assistance recipient information. The form may also include a provision specifically authorizing the release of the recipient's electronic health records, if any, to the recipient's attorney in accordance with rules the ODJFS Director must adopt under the act.

Requesting information from law enforcement agencies; reports regarding children

(R.C. 5101.28)

The act eliminates the authority of ODJFS or a CDJFS to request from a law enforcement agency information regarding a medical assistance recipient that ODJFS or

[130] The provision is codified in 45 C.F.R. 164.502(e)(2).

the CDJFS can use to determine whether a recipient or a member of the recipient's assistance group is (1) a fugitive felon, or (2) violating a condition of probation, a community control sanction, parole, or a post-release control sanction imposed under state or federal law.

The act also eliminates a provision that expressly authorized ODJFS, CDJFSs, and employees of those departments to report to a public children services agency (PCSA) or other appropriate agency information, to the extent permitted by federal law, on known or suspected physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving medical assistance.[131]

Rules

(R.C. 5101.30)

The act authorizes the ODJFS Director to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) implementing provisions governing the disclosure (in addition to custody, use, and preservation) of information generated or received by ODJFS, CDJFSs, other state and county entities, contractors, grantees, private entities, or officials participating in the administration of public assistance and medical assistance programs.

The rules the ODJFS Director is authorized to adopt, for the purposes described above, may define the "authorized representatives" who (1) must be given access to information regarding a public assistance recipient and (2) may be given access to information regarding a medical assistance recipient in accordance with the act's provisions.

Medicaid right of recovery against liable third parties

(R.C. 5101.573)

Federal regulations require states to have plans to identify Medicaid recipients' other sources of health coverage, determine the extent of the liability of third parties, and avoid payment of third party claims.[132] To enhance states' ability to identify and obtain payments from liable third parties, the Deficit Reduction Act of 2005 made

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[131] Although this provision is eliminated, under continuing law governing who has a duty to report child abuse or neglect (R.C. 2151.421), an ODJFS or CDJFS employee who is a person specified in that law (*e.g.*, an attorney, health care professional, etc.) remains obligated to report to a PCSA a known or suspected case of child abuse or neglect regarding a child receiving medical assistance.

[132] 42 C.F.R. Part 433, subpart D.

several changes to these federal provisions.[133] One change was a requirement that third parties provide states with the coverage, eligibility, and claims data they need to identify potentially liable third parties.[134] Consistent with this requirement, Am. Sub. H.B. 119 (the main appropriations act of the 127th General Assembly) included provisions that did both of the following: (1) required a third party to respond to an inquiry by ODJFS regarding a Medicaid claim not later than three years after the date of service, and (2) prohibited a third party from denying a claim solely on the basis of the date of submission, type or format of the claim form, or failure by the Medicaid recipient to present proper documentation at the time of service if the claim was submitted to ODJFS not later than three years after the date of service.[135]

The act extends the time periods described above from three to six years. The act does not modify a provision specifying that the time periods apply only to submissions of claims to, and payments of claims by, a health insurer that the Deficit Reduction Act requires be subjected to the requirements. These include self-insured plans, group health plans, service benefit plans, managed care organizations, and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

With respect to a Medicaid claim submitted within the six-year time period, the act prohibits a third party from charging ODJFS a fee for determining whether the claim should be paid or for processing the claim.

Medicaid care coordination for families and children

(Section 309.30.50)

The act requires ODJFS and the Ohio Department of Health (ODH) to work together on the issue of achieving efficiencies in the delivery of medical assistance provided under Medicaid to families and children.

Proposal for care coordination prior to managed care

As part of their work, ODJFS and ODH must develop a proposal for coordinating medical assistance provided to families and children under Medicaid

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[133] Letter from Dennis G. Smith, Director, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, U.S. Department of Health & Human Services, to State Medicaid Directors (SMD #06-026) (dated Dec. 15, 2006), available at <http://www.cms.hhs.gov/smdl/downloads/SMD121506.pdf>.

[134] 42 U.S.C. 1396a(a)(25).

[135] R.C. 5101.573(A)(2) and (4)(a).

while they wait to be enrolled in Medicaid managed care. The Departments may do the following:

(1) Conduct research on the status of families and children waiting to be enrolled, including research on the reasons for the wait and the utilization of medical assistance during the waiting period;

(2) Conduct a review of ways to help families and children receive medical assistance in the most appropriate setting while they wait to be enrolled;

(3) Develop recommendations for a coordinated, cost-effective system of helping the families and children find the medical assistance they need during the waiting period;

(4) Develop recommendations for improving the enrollment processes.

Help Me Grow services

As part of its work with ODH, ODJFS may seek federal approval to authorize payment for Medicaid-reimbursable targeted case management services provided in connection with the ODH's Help Me Grow Program and for services provided under the Program. The federal approval must be sought as a Medicaid state plan amendment. On a quarterly basis during fiscal years 2012 and 2013 following federal approval of the state plan amendment, ODJFS must certify to the Director of Budget and Management the state and federal shares of the amount ODJFS expended that quarter for services. On receipt of each quarterly certification, the Medicaid appropriation is increased by an amount equal to the state and federal share of the certified expenditures and the Help Me Grow appropriation is correspondingly reduced.

Prior authorization for community mental health services

(Section 309.30.55)

For fiscal years 2012 and 2013, the act provides that a Medicaid recipient under 21 years of age automatically satisfies all requirements for any prior authorization process for community mental health services provided under a component of the Medicaid program administered by the Ohio Department of Mental Health if the recipient (1) is in the temporary or permanent custody of a public children services agency or private child placing agency, (2) is in a planned permanent living arrangement, (3) has been placed in protective supervision by a juvenile court, (4) has been committed to the Ohio Department of Youth Services, or (5) is an alleged or

adjudicated delinquent or unruly child receiving services under the Felony Delinquent Care and Custody Program.

Health homes for Medicaid recipients

(R.C. 5111.14)

The act authorizes the ODJFS Director to implement within the Medicaid program a system under which Medicaid recipients with chronic conditions are provided with coordinated care through health homes. Federal approval of a Medicaid state plan amendment must be obtained. The ODJFS Director may adopt rules to implement the system.

"Health homes" are authorized under the federal Patient Protection and Affordable Care Act. An eligible Medicaid recipient may select a designated health care provider, a team of health care professionals, or a health team as the recipient's health home relative to chronic conditions. Chronic conditions include (1) a mental health condition, (2) a substance abuse problem, (3) asthma, (4) diabetes, (5) heart disease, and (6) being overweight (as evidenced by having a body mass index over 25). Health home services include care management, care coordination, health promotion, transitional care, patient and family support, and, if appropriate, referral to support services and the use of health information technology.[136]

Health Care Compliance Fund

(Section 309.35.73)

The act permits money in the Health Care Compliance Fund to be used for expenses incurred in implementing or operating health home programs and for the creation, modification, or replacement of federally funded Medicaid health-care systems in fiscal years 2012 and 2013. Otherwise, money in that fund could be used solely (1) to reimburse a Medicaid managed care organization that, after paying a fine for failing to meet a performance standard or other requirement, has come into compliance and (2) to provide financial incentive awards to Medicaid managed care organizations.

Enrollment of Medicaid recipients in group health plans

(R.C. 5111.13)

The act permits implementation of a program under which Medicaid recipients are enrolled in group health plans when the ODJFS determines that it is cost-effective.

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[136] 42 U.S.C. 1396w-4.

Under prior law, implementation of such a program was required. The act eliminates all provisions of prior law specifying how ODJFS must operate the program.

The act authorizes ODJFS to submit a Medicaid state plan amendment to the U.S. Secretary of Health and Human Services for the purpose of implementing the program. The act authorizes the ODJFS Director to adopt rules as necessary to implement the program.

Medicaid managed care for the aged, blind, or disabled

(R.C. 5111.16)

The act expands the group of individuals who may be required or permitted to participate in the Medicaid care management system. The expansion applies to individuals who are included in the Medicaid coverage group known as the "aged, blind, and disabled," or "ABD."

In implementing the care management system, ODJFS is required by continuing law to designate the Medicaid recipient who may or must participate. Generally, ABD Medicaid recipients must be designated as participants, but several exclusions apply.

The act modifies the ABD exclusions by permitting ODJFS, if any necessary waiver of federal Medicaid requirements is granted, to designate any of the following ABD Medicaid recipients as individuals who are permitted or required to participate in the care management system:

(1) Individuals under age 21;

(2) Individuals who reside in a nursing facility;

(3) Individuals who, as an alternative to receiving nursing facility services, are participating in a home and community-based Medicaid waiver program;

(4) Individuals who are dually eligible for Medicaid and Medicare.

Exclusion of BCMH participants

(Section 309.30.53)

In fiscal years 2012 and 2013, the act prohibits ODJFS from including in the Medicaid care management system certain individuals receiving services through the program for medically handicapped children, also known as the Bureau for Children with Medical Handicaps (BCMH), operated by the Ohio Department of Health. The

individuals excluded are BCMH participants who have one or more of the following: (1) cystic fibrosis, (2) hemophilia, or (3) cancer.

The act provides that the exclusion does not apply to a BCMH participant who was already enrolled in the Medicaid managed care system. Otherwise, the exclusion applies regardless of other laws governing Medicaid managed care, including the act's provisions authorizing the system to be expanded to additional ABD individuals.

Pediatric accountable care organizations

(R.C. 5111.161)

If ODJFS receives any necessary federal Medicaid waiver to include ABD individuals under age 21 in the Medicaid care management system, the act requires ODJFS to develop a system to recognize entities as pediatric accountable care organizations for the purpose of meeting the complex medical and behavioral needs of disabled children through new approaches to care coordination. An entity recognized by ODJFS is authorized to develop innovative partnerships between relevant groups and contract directly or subcontract with the state to provide services to ABD Medicaid recipients who are individuals under age 21. The act requires the recognition system to be implemented no later than July 1, 2012.

An entity is required to meet any standards established by ODJFS to be recognized by ODJFS as a pediatric accountable care organization. Unless required by the federal health care reform law[137] or Ohio law, ODJFS is prohibited from adopting a standard that requires an entity to be a health insuring corporation as a condition of receiving ODJFS's recognition. If the standards are met, any of the following may be recognized by ODJFS as a pediatric accountable care organization:

(1) A children's care network, which the act defines as a children's hospital, a group of children's hospitals, or a group of pediatric physicians;

(2) A children's care network that may include one or more other entities, including, but not limited to, health insuring corporations or other managed care organizations;

(3) Any other entity ODJFS determines is qualified to be recognized as a pediatric accountable care organization.

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[137] The Patient Protection and Affordable Care Act established a demonstration project under which pediatric accountable care organizations that meet certain criteria could be provided with performance payments. The project is to be conducted from January 1, 2012 to December 31, 2016. (Public Law 111-148, Title II, Subtitle I, §2706.)

ODJFS is required to adopt rules to implement the recognition system. When adopting the rules, ODJFS is required to consult with the Superintendent of Insurance, children's hospitals, Medicaid managed care organizations, and any other relevant entity ODJFS determines has an interest in pediatric accountable care organizations. ODJFS is to do all of the following in adopting the rules:

(1) Establish application procedures to be followed by an entity seeking recognition as a pediatric accountable care organization;

(2) Ensure that the standards of recognition are the same as and do not conflict with standards adopted pursuant to the federal health care reform law;

(3) Establish requirements regarding the access to pediatric specialty care provided through or by a pediatric accountable care organization;

(4) Establish accountability and financial requirements for an entity recognized as a pediatric accountable care organization;

(5) Establish quality improvement initiatives consistent with any state Medicaid quality plan established by ODJFS;

(6) Establish transparency and consumer protection requirements;

(7) Establish a process for sharing data.

The act declares that nothing in the recognition process limits the authority of the Department of Insurance to regulate the business of insurance.

Medicaid managed care coverage of prescription drugs

(R.C. 5111.172; Section 309.37.50)

Under the act, ODJFS must require that Medicaid coverage of prescription drugs be provided by the health insuring corporations (HICs) under contract with ODJFS for purposes of the Medicaid care management system. To implement this coverage requirement, the act requires ODJFS to enter into new contracts or amend existing contracts with HICs not later than October 1, 2011.

Under prior law, ODJFS was permitted to require HICs to provide prescription drug coverage. During the 2011-2012 biennium, ODJFS did not implement this authority; instead, prescription drugs coverage was provided through the Medicaid fee-for-service system.

Mental health drugs excluded from prior authorization

For drugs that are antidepressants or antipsychotics, the act establishes limitations on the use of prior authorization requirements by HICs. Under the act, ODJFS cannot permit any HIC to impose such a requirement if all of the following apply to the mental health drug:

(1) The drug is administered or dispensed in a standard tablet or capsule form or, if the drug is an antipsychotic, in a long-acting injectable form;

(2) The drug is prescribed by (a) a physician credentialed by the HIC to provide care as a psychiatrist or (b) a psychiatrist practicing at a community mental health agency certified by the Ohio Department of Mental Health;

(3) The drug is prescribed for a use that is indicated on the drug's labeling, as approved by the U.S. Food and Drug Administration.

Continuity period

The act establishes the following limitations that apply during a specified period after ODJFS first implements the act's requirement for coverage of prescription drugs through Medicaid-participating HICs:

(1) If, immediately before the HIC's coverage becomes effective, a Medicaid recipient enrolled in the HIC was being treated with a drug prescribed by a physician, the HIC must provide coverage of the drug without using drug utilization or management techniques that are more stringent than the utilization or management techniques, if any, the person was subject to before the transfer of drug coverage. These requirements apply for a 30-day period after the coverage is effective if the drug was a controlled substance and a 90-day period after the coverage is effective for other drugs.

(2) With respect to mental health drugs, both of the following apply for a 120-day period after the coverage is effective:

--If, immediately before the HIC's coverage becomes effective, a Medicaid recipient enrolled in the HIC was being treating with an antidepressant or antipsychotic in the form specified in the act, the HIC must provide coverage without a prior authorization requirement.

--The HIC must permit the health professional who was prescribing the drug to continue prescribing the drug for the Medicaid recipient, regardless of whether the prescriber is a psychiatrist credentialed by the HIC or practicing at a certified community mental health agency.

Medicaid managed care capital payments

(R.C. 5111.17)

The act requires ODJFS or its actuary to base the hospital inpatient capital payment portion of the payment made to Medicaid managed care organizations on data for services provided to all recipients enrolled in managed care organizations under contract with ODJFS. The hospital inpatient capital payment portion is one part of the calculation used by ODJFS to determine the payments to Medicaid managed care organization. Data reported by hospitals on relevant cost reports is to be used in determining the payment.

Medicaid Managed Care Performance Payment Program

(R.C. 5111.1711; Section 309.30.40)

The act requires ODJFS to establish a Managed Care Performance Payment Program under which ODJFS is permitted to provide payments to managed care organizations that meet performance standards established by ODJFS. The act permits ODJFS to specify in its contract with the managed care organization the standards that must be met to receive the payments.

In establishing the performance standards, ODJFS is permitted to use the most recent Healthcare Effectiveness Data and Information Set (HEDIS). HEDIS is a tool developed by the National Committee for Quality Assurance to measure a health plan's performance on specified dimensions of care and service.[138] ODJFS may also use any quality measures developed under the federal Pediatric Quality Measures Program or core set of adult health quality measures for Medicaid eligible adults used for the federal Quality Measurement Program.[139]

When a managed care organization meets the performance standards, ODJFS must make payments to the organization. The amount of the payments, number of payments, and schedule of making payments are to be established by ODJFS. The payments must be discontinued if the organization no longer meets the performance standards. The act prohibits ODJFS from making or discontinuing payments based on any performance standard that has been in effect as part of an organization's contract for less than six months.

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[138] National Committee for Quality Assurance, *What is HEDIS?* (last visited August 17, 2011), available at <http://www.ncqa.org/tabid/187/Default.aspx>.

[139] The federal Patient Protection and Affordable Care Act required the development of health quality measures for public and privately sponsored health care arrangements (42 U.S.C. 1320b-9a and 1320b-9b).

ODJFS is to establish a percentage amount that is to be withheld from each premium payment made to a Medicaid managed care organization. The amount is to be the same for each organization and the organization must agree to the withholding as a condition of receiving or maintaining its Medicaid provider agreement with ODJFS. The amounts withheld and deposited into the Managed Care Performance Payment Fund, created by the act, are to be used for purposes of the program. The sum of all withholdings cannot exceed 1% of the total of all premium payments made by ODJFS to all Medicaid managed care organizations.

Medicaid managed care exemption from administrative hearings

(R.C. 5111.06)

The act exempts actions ODJFS takes for certain purposes regarding the Medicaid managed care program from a requirement that the action be taken pursuant to a hearing conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The act also eliminates the provider's right to appeal an adverse administrative decision in court. Actions exempted by the act include entering into or refusing to enter into Medicaid managed care provider agreements, and suspending, terminating, renewing, or refusing to renew Medicaid managed care provider agreements.[140]

Reduction in Medicaid payment rates for fiscal years 2012 and 2013

(Section 309.30.30)

The act requires the ODJFS Director to implement, for fiscal years 2012 and 2013, purchasing strategies and rate reductions that result in payment rates for hospital and other Medicaid-covered services, as selected by the Director, being at least 2% less than the respective payment rates for fiscal year 2011. The requirement does not apply to nursing facility and intermediate care facility for the mentally retarded (ICF/MR) services.

When implementing the purchasing strategies and rate reductions, the ODJFS Director must do both of the following:

(1) Notwithstanding the act's provision regarding hospitals' Medicaid rates for fiscal years 2012 and 2013 (see "**Fiscal years 2012 and 2013 hospital Medicaid rates**,"

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[140] According to an ODJFS representative, Medicaid managed care provider agreements are awarded through a competitive bidding process. This process authorizes a person to challenge an adverse decision by filing a written protest with ODJFS's Office of Legal Services. (Electronic correspondence from ODJFS (June 27, 2011).)

below), modernize hospital inpatient and outpatient reimbursement methodologies by (a) modifying the inpatient hospital capital reimbursement methodology, (b) establishing new diagnosis-related groups in a cost-neutral manner, (c) modifying, for hospital discharges that occur during the period beginning October 1, 2011, and ending January 1, 2012, the measures used to determine whether claims for hospital inpatient services qualify for cost outlier payments (i.e., charge high trim points) other than exceptional cost outliers, as in effect on January 1, 2011, by a factor of 13.6%, (d) modifying, for hospital discharges that occur during the period beginning January 1, 2012, and ending on the effective date of the first of the new diagnosis-related groups, charge high trim points (excluding charge high trim points for exceptional cost outliers), as in effect on October 1, 2011, by a factor of 9.72%, and (e) implementing other changes the Director considers appropriate;

(2) Establishing selective contracting and prior authorization requirements for types of medical assistance identified by the Director.

The ODJFS Director must adopt rules under the Administrative Procedure Act as necessary to implement the act's requirements regarding purchasing strategies and rate reductions.

BEACON quality improvement initiatives for children

(Section 309.33.40)

The act permits ODJFS, the Ohio Department of Health, and the Ohio Department of Mental Health, in conjunction with the Governor's Office of Health Transformation, to seek assistance from and work with the Best Evidence for Advancing Child Health in Ohio NOW! (BEACON) Council[141] and hospital and other provider groups to identify specific targets and initiatives to reduce the cost and improve the quality of medical assistance provided under Medicaid to children. The targets and initiatives must focus on reducing (1) avoidable hospitalizations, (2) inappropriate emergency room utilization, (3) use of multiple medications when not medically indicated, (4) Ohio's rate of premature births, and (5) Ohio's rate of elective, preterm births.

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[141] The BEACON Council is a public/private partnership whose mission is to improve the quality of care leading to improved health outcomes of care and reduced cost with a special emphasis on Medicaid-eligible children, youth, and their families (ODH, *BEACON Council* (last visited August 6, 2011), available at <http://www.odh.ohio.gov/ASSETS/78F0EAB110274D50A18E0B21B7F96171/BEACON%20Council%20Projects.pdf>).

If the Departments identify initiatives as described above, they must make the initiatives available on their web sites, along with a list of hospitals and other provider groups involved in the initiatives.

No Medicaid payments for provider-preventable conditions

(R.C. 5111.0214)

The act prohibits ODJFS from knowingly making a Medicaid payment for a provider-preventable condition for which federal financial participation is prohibited under the Patient Protection and Affordable Care Act (federal health care reform).[142] The ODJFS Director is required to adopt rules as necessary to implement this provision.

Medicaid electronic health record incentive payment program

(R.C. 5111.0215)

The act authorizes ODJFS to establish an incentive payment program to encourage the use of electronic health record technology by Medicaid providers who are physicians, dentists, nurse practitioners, nurse-midwives, and physician assistants. This incentive program is authorized by the Health Information Technology and Economic Clinical Health Act.[143] ODJFS may adopt rules under the Administrative Procedure Act to implement the program.

The act requires ODJFS to notify a provider of ODJFS's determination regarding the amount or denial of an incentive payment. Not later than 15 days after receiving the notice, the provider may request in writing that ODJFS reconsider its determination. After receiving the request, ODJFS must reconsider its determination and may uphold, reverse, or modify its original determination. By certified mail, ODJFS must send a written notice of the reconsideration decision. Not later than 15 days after the decision is mailed, the provider may appeal the reconsideration decision to the Court of Common Pleas of Franklin County.

Electronic claims submission process

(R.C. 5111.052)

The act requires certain Medicaid providers to use only an electronic claims submission process to submit Medicaid reimbursement claims to ODJFS. The providers are also required to arrange to receive Medicaid reimbursement from ODJFS by means

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[142] 42 U.S.C. 1396b-1.

[143] 42 U.S.C. 1396b(a)(3)(F) and 1396b(t).

of electronic funds transfer. The act permits the ODJFS Director to adopt rules under the Administrative Procedure Act to implement the process.

Providers must comply not later than January 1, 2013. The act prohibits ODJFS from processing a Medicaid claim submitted on or after January 1, 2013, unless the claim is submitted through an electronic claims submission process.

The electronic claims submission process and the requirement to be reimbursed by means of electronic funds transfer do not apply to the following: (1) nursing facilities, (2) ICFs/MR, (3) Medicaid managed care organizations, or (4) any other provider or type of provider designated by the ODJFS Director.

Outsourcing of pediatric claims review and quality assurance functions

(R.C. 5111.054 (primary), 127.16, and 5101.10 (not in the act))

The act expressly authorizes ODJFS, if it chooses to outsource either or both of the following services, to contract with any qualified person, including the Ohio Children's Hospital Solutions for Patient Safety (OCHSPS), to perform the services on ODJFS's behalf:

(1) The review and analysis of pediatric Medicaid claims in accordance with all state and federal laws governing the confidentiality of patient-identifying information;

(2) The performance of quality assurance and quality review functions, other than those described in (1), above, related to the provision of medical care to Medicaid recipients who are children. These may include functions recommended by the Best Evidence for Advancing Child Health in Ohio NOW! (BEACON) Council.[144] The act specifies that such a contract is exempt from the competitive bidding requirement that typically applies to contracts involving purchases of $50,000 or more.

The act defines OCHSPS as a private, not-for-profit corporation which was formed for the purpose of improving pediatric patient care in Ohio, which performs functions that are included within the functions of a peer review committee, and which consists of all of the following members: Akron Children's Hospital, Cincinnati Children's Hospital Medical Center, Cleveland Clinic Children's Hospital, Dayton Children's Medical Center, Mercy Children's Hospital, Nationwide Children's Hospital, Rainbow Babies & Children's Hospital, and Toledo Children's Hospital.

If ODJFS enters into a contract with OCHSPS to perform either or both of the services described above, the act specifies that OCHSPS is considered to be a "public

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[144] See "**BEACON quality improvement initiatives for children**," above.

entity" for purposes of a provision of continuing law relating to ODJFS's operations. That provision authorizes a public entity that performs a function on behalf of ODJFS to request ODJFS to seek federal financial participation[145] for the costs incurred by the entity.

Ohio Cancer Incidence Surveillance System administrative claiming

(R.C. 5111.83 (primary); R.C. 3701.261 and 3701.262 (not in the act))

The act requires the ODJFS Director to apply, no later than January 1, 2012, for approval of a Medicaid administrative claiming program under which federal financial participation (i.e., federal Medicaid matching funds) is received as reimbursement for the administrative costs incurred by the Ohio Department of Health and the Arthur G. James and Richard J. Solove Research Institute of The Ohio State University in analyzing and evaluating (1) cancer reports under the Ohio Cancer Incidence Surveillance System and (2) the incidence, prevalence, costs, and medical consequences of cancer on Medicaid recipients and other low-income populations. In seeking approval to claim federal financial participation, the act requires the ODJFS Director to consult with the Director of Health. The Directors must cooperate in seeking the approval to the extent they find the approval necessary for the effective and efficient administration of the Medicaid program.

The Ohio Cancer Incidence Surveillance System is a population-based cancer registry established under continuing law. The Arthur G. James and Richard J. Solove Research Institute provides analysis and evaluation services relative to the System.

Medicaid payments to organizations on behalf of providers

(R.C. 5111.051)

The act authorizes the ODJFS Director to submit a state plan amendment or to request a waiver of federal requirements to implement, at the ODJFS Director's discretion, a system under which payments for Medicaid services are made to an organization on behalf of the providers of the services. The system is prohibited from providing to an organization an amount that exceeds, in aggregate, the amount ODJFS would have paid directly to the providers for providing the services.

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[145] "Federal financial participation" is the federal government's share of expenditures made by an entity implementing the Medicaid program (R.C. 5111.054(A)(1)).

Recovery of Medicaid overpayments to hospitals

(R.C. 5111.061)

Continuing law authorizes ODJFS to recover a Medicaid payment or portion of a payment made to a provider to which the provider is not entitled. The recovery may occur at any time during the five-year period following the end of the state fiscal year in which the overpayment is made.

With regard to hospital providers only, the act permits ODJFS, if it determines as a result of a Medicare or Medicaid cost report settlement that the provider received a Medicaid overpayment, to recover the overpayment if ODJFS notifies the provider during either (1) the five-year period following the end of the state fiscal year in which the overpayment is made or (2) the one-year period immediately following the date ODJFS receives from the U.S. Centers for Medicare and Medicaid Services a completed, audited Medicare cost report for the provider that applies to the state fiscal year in which the overpayment was made.

Application fees for Medicaid provider agreements

(R.C. 5111.063 (primary), 5111.06, and 5111.94; Section 309.37.10)

To participate in the Medicaid program, a health care provider must enter into a contract with ODJFS known as a "provider agreement." By signing the agreement, the provider agrees to comply with the terms of the agreement and all applicable state and federal laws. Medicaid reimbursement for providing health care services is contingent on a valid provider agreement being in effect when the services are provided.[146]

Federal regulations require each state to implement a Medicaid provider screening program for the purpose of increasing the program's integrity.[147] States must assess an application fee for a provider agreement, unless the applicant is (1) an individual physician or other practitioner, (2) a provider who is enrolled in Medicare or another state's Medicaid program or Children's Health Insurance Program, or (3) a provider who has paid the application fee to a Medicare contractor or another state.[148]

The act requires the ODJFS Director to charge an application fee to a provider seeking to enter into or renew a Medicaid provider agreement who is not exempt from

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[146] O.A.C. 5101:3-1-17 and 5101:3-1-172.

[147] 42 C.F.R. 455.450.

[148] 42 C.F.R. 455.460.

the fee under federal regulations. The fees are to be deposited into the Health Care Services Administration Fund.

The amount of the fee is to be set by the ODJFS Director in rules adopted under the Administrative Procedure Act. The fee amount cannot be more than necessary to pay for the expenses of implementing the provider screening requirements established by federal regulations.

Automatic suspension of Medicaid provider agreements

(R.C. 5111.035 (primary), 5111.031, and 5111.06)

Overview

The act generally requires ODJFS to do both of the following when ODJFS determines there is a creditable allegation of fraud[149] against a Medicaid provider[150] for which an investigation is pending under the Medicaid program: (1) suspend the provider's Medicaid provider agreement and (2) terminate reimbursement to the provider for services rendered to Medicaid recipients.

The act also authorizes ODJFS to take any of several types of disciplinary action, without a hearing, against a Medicaid provider agreement or an application for a provider agreement when the action is based on a disciplinary action taken by another state's Medicaid agency or for reasons specified in regulations promulgated under the federal Patient Protection and Affordable Care Act.

The act's provisions governing suspension of Medicaid provider agreements, as summarized above, are consistent with federal regulations governing state Medicaid fraud detection and investigation programs.[151]

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[149] The act generally defines "creditable allegation of fraud" consistent with the definition of this term in a federal regulation. Under that definition, modified to conform to Ohio law, a creditable allegation of fraud may be an allegation, which has been verified by ODJFS, from any source, including but not limited to, fraud hotline complaints, claims data mining, and patterns identified through provider audits, false claims cases, and law enforcement investigations. The federal regulation specifies that allegations are considered to be credible when they have indicia of reliability and ODJFS has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis. (42 C.F.R. 455.2.)

[150] A "provider" is any person, institution, or entity that has a Medicaid provider agreement with ODJFS (R.C. 5111.035(A)(2)).

[151] *See* 42 C.F.R. Part 455.

Suspensions based on creditable allegations of fraud

(R.C. 5111.035(B))

In general, the act requires ODJFS, on determining there is a creditable allegation of fraud for which an investigation is pending under the Medicaid program against a Medicaid provider, to do both of the following: (1) suspend the provider agreement held by the provider, and (2) terminate reimbursement to the provider for services rendered to Medicaid recipients.

Exceptions – when suspension does not occur

(R.C. 5111.035(C))

Under the act, ODJFS is prohibited from suspending a Medicaid provider agreement or terminating Medicaid reimbursement based on a creditable allegation of fraud when prescribed by rules adopted by ODJFS or when the provider or owner can demonstrate through the submission of written evidence that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the creditable allegation of fraud.

Duration of suspension

(R.C. 5111.035(B)(2))

The act requires the suspension of a Medicaid provider agreement based on a creditable allegation of fraud to continue in effect until any of the following, as applicable, is the case:

(1) ODJFS or a prosecuting authority determines there is insufficient evidence of fraud by the provider.

(2) The proceedings in any related criminal case are completed through dismissal of the indictment or through conviction, entry of a guilty plea, or finding of not guilty.

(3) ODJFS concludes the process to terminate the provider's agreement, if ODJFS has commenced a process to terminate the suspended agreement.

Prohibition on services relative to other Medicaid providers or risk contractors

(R.C. 5111.035(B)(4))

When a Medicaid provider is subject to a suspension based on a creditable allegation of fraud, a provider, owner,[152] officer, authorized agent, associate, manager, or employee of the provider is prohibited from doing any of the following:

(1) Owning or providing services to any other Medicaid provider or risk contractor;

(2) Arranging for, rendering, or ordering services to any other Medicaid provider or risk contractor;

(3) Arranging for, rendering, or ordering services for Medicaid recipients during the period of suspension;

(4) Receiving reimbursement in the form of direct payments from ODJFS or indirect payments of Medicaid funds in the form of salary, shared fees, contracts, kickbacks, or rebates from or through any participating provider or risk contractor.

Termination of reimbursement

(R.C. 5111.035(D))

The act specifies that termination of Medicaid reimbursement based on a creditable allegation of fraud applies only to payments for Medicaid services rendered by a provider subsequent to the date on which a notice required by the act is sent. Claims for reimbursement of services rendered by the provider prior to issuance of the notice may be subject to prepayment review procedures whereby ODJFS reviews claims to determine whether they are supported by sufficient documentation, are in compliance with state and federal statutes and rules, and are otherwise complete.

Notice

(R.C. 5111.035(E) to (G))

After suspending a provider agreement based on a creditable allegation of fraud, the act requires ODJFS, consistent with federal regulations governing state Medicaid

[152] An "owner" is any person having at least 5% ownership in a noninstitutional Medicaid provider (R.C. 5111.035(A)(3)).

fraud detection and investigation programs,[153] to send notice of the suspension to the affected provider or owner in accordance with the following:

(1) Not later than five days after the suspension, unless a law enforcement agency makes a written request to temporarily delay the notice;

(2) Not later than 30 days after the suspension, if a law enforcement agency makes a written request to temporarily delay the notice. However, the written request may be renewed in writing by a law enforcement agency not more than two times. Under no circumstances may the notice be issued more than 90 days after the suspension occurs.

The notice regarding a suspended provider agreement must do all of the following:

(1) State that payments are being suspended based on creditable allegations of fraud and the federal regulation governing such suspensions;[154]

(2) Set forth the general allegations related to the nature of the conduct leading to suspension, except that it is not necessary for the notice to disclose any specific information concerning an ongoing investigation;

(3) State that the suspension continues to be in effect until either of the following is the case: (a) ODJFS or a prosecuting authority determines there is insufficient evidence of fraud by the provider, or (b) the proceedings in any related criminal case are completed through dismissal of the indictment or through conviction, entry of a guilty plea, or finding of not guilty and, if ODJFS commences a process to terminate the suspended provider agreement, until the termination process is concluded;

(4) Specify, if applicable, the type or types of Medicaid claims or business units of the provider that are affected by the suspension;

(5) Inform the provider or owner of the opportunity to submit to ODJFS, not later than 30 days after receiving the notice, a request for reconsideration of the suspension.

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[153] Specifically, 42 C.F.R. 455.23(b).

[154] 42 C.F.R. 455.23.

Reconsideration process

(R.C. 5111.035(H) and (I))

The act authorizes a provider or owner subject to a suspension based on a creditable allegation of fraud to request a reconsideration of the suspension. The request must be made not later than 30 days after receipt of the notice required by the act. The reconsideration is not subject to a hearing conducted in accordance with the Administrative Procedure Act.

In requesting reconsideration of a suspension, the affected provider or owner must submit written information and documents to ODJFS. The information and documents may pertain to any of the following issues:

(1) Whether the determination to suspend the provider agreement was based on a mistake of fact, other than the validity of an indictment in a related criminal case;

(2) If there has been an indictment in a related criminal case, whether any offense charged in the indictment resulted from an act that would be a felony or misdemeanor under Ohio law and the act relates to or results from (a) furnishing or billing for medical care, services, or supplies under the Medicaid program, or (b) participating in the performance of related management or administrative services;

(3) Whether the affected provider or owner can demonstrate that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the suspension for a creditable allegation of fraud or an indictment in a related criminal case.

The act requires ODJFS to review the information and documents submitted by the affected provider or owner. After the review, the suspension may be affirmed, reversed, or modified, in whole or in part. ODJFS is required to notify the affected provider or owner of the results of the review. The review and notification of its results must be completed not later than 45 days after receiving information and documents submitted in a reconsideration request.

Rules

(R.C. 5111.035(J))

The act authorizes ODJFS to adopt rules in accordance with the Administrative Procedure Act to implement the act's provisions regarding automatic suspension of a Medicaid provider agreement based on a creditable allegation of fraud. The rules may specify circumstances under which ODJFS would not suspend a provider agreement based on such an allegation.

Disciplinary actions based on other states' actions

(R.C. 5111.06(D)(5))

Without conducting a hearing, ODJFS is authorized under the act to deny, terminate, or not renew a Medicaid provider agreement when ODJFS's action is based on the provider's termination, suspension, or exclusion from another state's Medicaid program. In such cases, the out-of-state termination, suspension, or exclusion is binding on the provider's participation in Ohio's Medicaid program.

Disciplinary actions for reasons specified by other federal provisions

(R.C. 5111.06(D)(12))

Without conducting a hearing, ODJFS is authorized under the act to suspend or terminate a provider agreement or deny an application for enrollment or re-enrollment for any of the following reasons authorized or required by regulations promulgated pursuant to the federal Patient Protection and Affordable Care Act:

- The provider did not fully and accurately make a disclosure of information on owners or agents convicted of offenses related to involvement with programs established under Medicaid, Medicare, or the federal Title XX Social Services Block Grant.[155]

- A creditable allegation of fraud has been determined, an investigation is pending under the Medicaid program, and ODJFS does not have good cause to not suspend the provider's payments.[156]

- A person with a 5% or greater direct or indirect ownership interest in the provider:

  --Did not submit timely and accurate information and cooperate with any screening methods required by federal regulations;[157]

  --Has been convicted of a criminal offense related to that person's involvement with Medicare, Medicaid, or the Children's Health Insurance Program (CHIP) in the last ten years, unless ODJFS determined that denial or termination of enrollment was not in the

[155] 42 C.F.R. 455.106(c).

[156] 42 C.F.R. 455.23

[157] 42 C.F.R. 416(a).

best interests of the Medicaid program and documented that determination in writing.[158]

- The provider's agreement to participate in Medicare or in another state's Medicaid program or CHIP was terminated on or after January 1, 2011.[159]

- The provider or a person with an ownership or control interest or who is an agent or managing employee of the provider failed to submit timely or accurate information, unless ODJFS determined that termination or denial of enrollment was not in the best interests of the Medicaid program and documented that determination in writing.[160]

- The provider or a person with a 5% or greater direct or indirect ownership interest in the provider failed to submit sets of fingerprints in the form and manner determined by ODJFS within 30 days of a U.S. Centers for Medicare and Medicaid Services (CMS) or ODJFS request, unless ODJFS determined that termination or denial of enrollment was not in the best interests of the Medicaid program and documented that determination in writing.[161]

- The provider failed to permit access to provider locations for any site visits required by federal regulations,[162] unless ODJFS determined that termination or denial of enrollment was not in the best interests of the Medicaid program and documented that determination in writing.[163]

- CMS or ODJFS (1) determined that the provider falsified any information provided on the application, or (2) cannot verify the identity of an applicant.[164]

- Failure to submit to a criminal background check as a condition of enrolling to be a Medicaid provider, as specified in federal regulations.[165]

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[158] 42 C.F.R. 416(b).

[159] 42 C.F.R. 455.416(c).

[160] 42 C.F.R. 455.416(d).

[161] 42 C.F.R. 455.416(e).

[162] 42 C.F.R. 455.432.

[163] 42 C.F.R. 455.416(f).

[164] 42 C.F.R. 455.416(g).

- Failure to meet screening requirements for Medicaid providers specified in federal regulations.[166]

Physician assistants as Medicaid providers

Claims submissions

(R.C. 5111.053; Section 309.37.53(A))

The act requires ODJFS to establish a process by which a physician assistant may enter into a Medicaid provider agreement. The process must be implemented when the ODJFS Director determines that the computer system improvements necessary to implement the process are in place. The Director must ensure that the improvements are in place not later than July 1, 2012.

As a result of having a Medicaid provider agreement, a physician assistant may submit a claim for, and receive, reimbursement directly from ODJFS (*i.e.*, engage in "direct billing"). This is in contrast to the previous reimbursement system under which Medicaid reimbursement services provided by a physician assistant could be paid only to (1) the physician, physician group practice, or clinic employing the physician assistant, or (2) a hospital (as part of the facility payment).[167]

Although the act requires ODJFS to establish a process by which a physician assistant may enter into a Medicaid provider agreement, the act does not require a physician assistant to enter into an agreement. Under the act, there are two options for submitting a physician assistant's Medicaid claim: either (1) the physician assistant who provided the service, or (2) the physician, group practice, clinic, or other health care facility that employs or contracts with the physician assistant may submit the claim.

If a physician assistant chooses to submit the claim, the physician assistant must have a valid Medicaid provider agreement. When submitting the claim, the physician assistant must use the Medicaid provider number ODJFS has assigned to the physician assistant.

The act authorizes the ODJFS Director to adopt rules to implement the provisions described above.

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[165] 42 C.F.R. 455.434.

[166] 42 C.F.R. 455.450.

[167] O.A.C. 5101:3-4-039(C)(1) and (8); telephone interview with ODJFS representative (April 22, 2011).

Reimbursement rates

(Section 309.37.53(B))

Under the act, the Medicaid reimbursement rates for services provided by physician assistants during fiscal year 2013 cannot be greater than the Medicaid reimbursement rates for physician assistant services provided on June 30, 2012.

Public notice of proposed changes to Medicaid rates

(R.C. 5111.0212)

As necessary to comply with federal law, the act requires the ODJFS Director to give public notice in the Register of Ohio of any change to a method or standard used to determine the Medicaid reimbursement rate for Medicaid providers. Federal law requires that the public notice provide information on the methodologies underlining the rates and an opportunity for the public to review and comment on the proposed rates.[168]

Maximum Medicaid reimbursement rate

General rule

(R.C. 5111.021)

Prior law provided that, in reimbursing any Medicaid provider, ODJFS, except as permitted by federal law and at the discretion of ODJFS, was to reimburse the provider no more than the amount authorized for the same service under the Medicare program. The act instead prohibits Medicaid reimbursement rates for hospital, nursing facility, and ICF/MR services from exceeding the limits established in federal regulations. For all other services, the rates cannot exceed the authorized Medicare reimbursement limit for the same services. These prohibitions, however, do not apply when federal law requires otherwise.

Fiscal years 2012 and 2013 rate for dialysis services

(Sections 309.30.31 and 309.30.32)

For a dialysis service provided during fiscal year 2012 to an individual dually eligible for Medicare and Medicaid, the act requires ODJFS to pay an amount equal to the Medicare copayment amount that applies to the service, as that amount was paid by ODJFS immediately prior to June 30, 2011 (the act's immediate effective date). The

[168] 42 U.S.C. 1396(a)(13)(A).

payment is to be made notwithstanding the act's restriction on Medicaid payments or other state laws.

In fiscal year 2013, ODJFS is permitted to adjust the Medicaid rates that are paid for dialysis services by an amount sufficient to achieve aggregate savings of not more than $9 million in state share expenditures under the Medicaid program. The aggregate savings are to include any savings that may be achieved through measures taken with regard to dialysis services under the act's provision that requires ODJFS to implement, for fiscal years 2012 and 2013, purchasing strategies and rate reductions for Medicaid services. (See "**Reduction in Medicaid payment rates for fiscal years 2012 and 2013**" above.)

Medicaid rates for aide and nursing services

(R.C. 5111.0213)

The act requires ODJFS to reduce the Medicaid program's first-hour-unit price for aide and nursing services provided as home care.[169] The Medicaid program's first-hour-unit price for aide services is to be reduced to 97% of the price paid on June 30, 2011. The Medicaid program's first-hour-unit price for nursing services is to be reduced to 95% of the price paid on June 30, 2011. Additionally, ODJFS is to pay for a service that is an aide service or nursing service provided by an independent provider[170] 80% of the price ODJFS pays for the same service provided by a provider that is not an independent provider. These reductions are effective October 1, 2011.

Not sooner than July 1, 2012, ODJFS must adjust the Medicaid reimbursement rates for aide services and nursing services in a manner that reflects, at a minimum, labor market data, education and licensure status, home health agency and independent provider status, and length of service visit. ODJFS is required to strive to have this adjustment go into effect on July 1, 2012. The reductions that are effective October 1, 2011, are to remain in effect until the adjustment is made.

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[169] For purposes of the act, "aide services" are home health aide services available under the federal Medicaid home health services benefit and home care attendant and personal care aide services under a home and community-based services Medicaid waiver component. "Nursing services" are nursing services available under the federal Medicaid home health services benefit, private duty nursing services, and nursing services available under a home and community-based services Medicaid waiver component. (R.C. 5111.0213(A)(1) and (4).)

[170] The act defines "independent provider" as an individual who personally provides aide services or nursing services and is not employed by, under contract with, or affiliated with another entity that provides those services (R.C. 5111.0213(A)(3)).

The ODJFS Director must adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) as necessary to implement these reductions and adjustments.

Federal upper limit for drugs

(R.C. 5111.086)

The act prohibits ODJFS from making a Medicaid payment for a drug subject to a federal upper reimbursement limit that exceeds, in the aggregate, the federal upper reimbursement limit for the drug.[171] The ODJFS Director is to adopt rules as necessary to implement the act's provision.

Drugs subject to a federal upper limit are those generally referred to as "generic drugs" (*i.e.*, multiple source drugs for which there are three or more therapeutically equivalent drug products).[172] States generally base their Medicaid reimbursements to a retail pharmacy for a covered outpatient drug on the *lowest* of the following:[173]

(1) The state's best estimate of the retail pharmacy's acquisition cost for the drug;

(2) The pharmacy's usual and customary charge for the drug;

(3) The federal upper limit for the drug, if one applies;

(4) The state's maximum allowable cost (MAC) for the drug, if one applies.[174]

The act's prohibition does not affect ODJFS's authority to pay an amount lower than the federal upper limit; it only places a ceiling on the amount of the payment.

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[171] The act defines "federal upper reimbursement limit" as the limit established pursuant to federal law governing payments for outpatient drugs covered by Medicaid (42 U.S.C. 1396r-8(e)).

[172] 42 U.S.C. 1396r-8(e)(4).

[173] Government Accountability Office, *Letter to Joe Barton* (former chairman), U.S. House of Representatives Committee on Energy and Commerce (GAO-07-239R Medicaid Federal Upper Limits) (Dec. 22, 2006).

[174] States that administer a MAC program publish lists of selected multiple source drugs with the maximum price at which the state will reimburse for those drugs. Generally, state MAC lists include more drugs, and establish lower reimbursement prices, than the federal upper limit list.

Medicaid dispensing fee for noncompounded drugs

(Section 309.33.70)

The act sets the Medicaid dispensing fee for each noncompounded drug covered by the Medicaid program at $1.80 for the period beginning July 1, 2011, and ending on the effective date of an ODJFS rule changing the amount of the fee. This is the same amount that was in effect during fiscal years 2010 and 2011.

Fiscal years 2012 and 2013 hospital Medicaid rates

(Section 309.30.35)

The act requires the ODJFS Director to amend rules as necessary to continue, for fiscal years 2012 and 2013, the Medicaid reimbursement rates in effect on June 30, 2011, for Medicaid-covered hospital inpatient and outpatient services that are paid under the prospective payment system established in the rules.

Children's hospitals supplemental funding

(Sections 309.30.38 (primary) and 309.30.33)

The act requires the ODJFS Director to make additional Medicaid payments to children's hospitals for inpatient services. The additional payments are for fiscal years 2012 and 2013 and are to compensate children's hospitals for the high percentage of Medicaid recipients they serve. The payments are to be made under a program modeled on the program ODJFS was required to create for fiscal years 2006 and 2007. The program may be the same as the program the Director used for making payments to children's hospitals for fiscal years 2010 and 2011.

The act provides that nothing in its Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program and the Medicaid Managed Care Hospital Incentive Payment Program (see "**Use of hospital assessments**," below) reduces the additional Medicaid payments to be made to children's hospitals.

Hospital Care Assurance Program

(Sections 690.10 and 690.11)

The act continues the Hospital Care Assurance Program (HCAP) for two additional years. HCAP was scheduled to end October 16, 2011, but under the act will continue until October 16, 2013. Under HCAP, hospitals are annually assessed an amount based on their total facility costs and government hospitals make annual intergovernmental transfers to ODJFS. ODJFS distributes to hospitals money generated

by the assessments and intergovernmental transfers along with federal matching funds generated by the assessments and transfers. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty guidelines.

Hospital assessments

(R.C. 5112.40, 5112.41, 5112.46, and 5112.99; Sections 620.10 to 620.13 and 812.20)

The act continues the assessments imposed on hospitals for two additional years, ending October 1, 2013, rather than October 1, 2011. The assessments are in addition to HCAP, but like HCAP, they raise money to help pay for the Medicaid program (see "**Use of hospital assessments**," below).

A hospital's assessment is based on its total facility costs. The act requires ODJFS to adopt rules specifying the percentage of hospitals' total facility costs that hospitals are to be assessed. The percentage may vary for different hospitals. However, ODJFS must obtain a federal waiver before establishing varied percentages if varied percentages would cause the assessments to not be imposed uniformly as required by federal law.

A hospital's total facility costs are derived from cost-reporting data submitted to ODJFS for purposes of HCAP. The act provides that a hospital's total facility costs are to be derived from other financial statements that the hospital is to provide ODJFS if the hospital has not submitted the HCAP cost-reporting data. The financial statements are subject to the same type of adjustments made to the HCAP cost-reporting data.

Continuing law establishes a schedule for hospitals to pay their assessments. ODJFS is permitted, however, to establish a different payment schedule in rules. The act provides that the purpose of a different payment schedule is to reduce hospitals' cash flow difficulties.

The act requires ODJFS to impose a penalty of 10% of the amount due on any hospital that fails to pay its assessment by the due date.

Offsets of penalties under HCAP and hospital assessments

(R.C. 5112.991; Section 309.35.90)

The act permits ODJFS to collect unpaid penalties regarding HCAP and the assessment on hospitals in the form of offsets. When doing so, ODJFS may reduce the

amount of one or more payments due a hospital under the Medicaid program by an amount not exceeding the amount of the unpaid penalty.

Use of hospital assessments

(Section 309.30.33)

The act provides for a portion of the hospital assessments discussed above to be used to (1) continue the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program, (2) create the Medicaid Managed Care Hospital Incentive Payment Program, and (3) continue fiscal years 2010 and 2011 hospital payment rates (see "**Fiscal years 2012 and 2013 hospital Medicaid rates**," above).[175]

Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program

Am. Sub. H.B. 1 of the 128th General Assembly required the ODJFS Director to seek federal approval for a Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program. The Program was approved and provides supplemental payments to hospitals for Medicaid-covered inpatient and outpatient services. The act requires ODJFS to seek federal approval to continue the Program for fiscal years 2012 and 2013.

Medicaid Managed Care Hospital Incentive Payment Program

The act requires ODJFS to seek federal approval of a Medicaid Managed Care Hospital Incentive Payment Program for the purpose of increasing access to hospital services for Medicaid recipients who are enrolled in Medicaid managed care organizations. If approved, the Program is to provide additional funds to Medicaid managed care organizations to be used by the organizations to increase payments to hospitals for providing services to Medicaid recipients who are enrolled in the Medicaid managed care organizations.

Actuarial study

The act requires ODJFS, not later than July 1, 2012, to select an actuary to conduct a study of contracted reimbursement rates between Medicaid managed care organizations and hospitals. Based on the contracted rates, the actuary is to determine

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[175] While the act provides specific appropriations, it also permits the OBM Director to authorize additional expenditures from the Health Care Federal, Healthcare/Medicaid, and Medicaid-Hospital line items to implement these programs and the act's provision regarding hospitals' Medicaid rates for fiscal years 2012 and 2013. The act specifies that nothing in the programs is to reduce payments that are appropriated to children's hospitals.

if a reduction in the capitation rates paid to Medicaid managed care organizations in fiscal year 2013 is appropriate.

Repayment if state savings are insufficient

If the actuary determines that any reduction in the capitation rates paid to Medicaid managed care organizations in fiscal year 2013 will not achieve $22 million in state savings in that year, the state is to receive from Medicaid managed care organizations and hospitals the difference between what is saved and $22 million. In consultation with the Ohio Association of Health Plans and the Ohio Hospital Association, ODJFS is to establish a methodology under which the difference is to be paid equally by Medicaid managed care organizations and hospitals.

The act authorizes ODJFS to waive the payment requirement if spending for the Medicaid program in fiscal year 2013 is less than the amount that is budgeted for that fiscal year. If ODJFS receives payments, the amounts are to be deposited into the Health Care Compliance Fund, which under continuing law is used to make financial incentive awards to Medicaid managed care organizations that meet or exceed performance standards.

Conditions on implementation

The act specifies that the Program is to be implemented only under the following conditions:

(1) An actuary certifies that the Program would not violate the actuarial soundness of capitation rates paid to Medicaid managed care organizations;

(2) ODJFS implements the Program in a manner that does not result in a hospital receiving less money from the Hospital Assessment Fund than the hospital would have received if the Program were not implemented;

(3) ODJFS implements the Program in a manner that does not result in a Medicaid managed care organization receiving a lower capitation payment rate solely because funds are made available to the organization under the Program;

(4) The Program is not determined to be an impermissible healthcare-related tax under federal law.

Nursing home and hospital long-term care unit franchise permit fees

(R.C. 3721.50, 3721.51, 3721.511, 3721.512, 3721.513, 3721.52, 3721.53, 3721.531, 3721.532, 3721.533, 3721.55, 3721.56 (repealed), 3721.561 (renumbered 3721.56), 3721.58, 3769.08, 3769.20, and 3769.26; Section 512.80)

The act revises the law governing the franchise permit fee that is imposed on nursing homes and hospital long-term care units. The fee is used to generate revenue to help fund Medicaid, including the PASSPORT program, and the Residential State Supplement program.

Amount of franchise permit fee

The act sets the franchise permit fee's base rate at $11.47 for fiscal year 2012 and $11.67 for each fiscal year thereafter. In doing so, the act eliminates the formula that was used to calculate the base rate for prior fiscal years. The act maintains law that provides for adjustments in the amount of the fee due to a federal waiver that exempts certain nursing homes from the fee.

Under prior law, the amount assessed under the franchise permit fee for a fiscal year could not exceed 5.5% of the actual net patient revenues for all nursing homes and hospital long-term care units for that fiscal year. If the rate used in the assessment resulted in a higher assessment, ODJFS had to recalculate the assessment. This was done to address a restriction in federal Medicaid law. The federal restriction changes on October 1, 2011, in a manner that permits the amount assessed under the fee to be as high as 6% of the actual net patient revenues for all nursing homes and hospital long-term care units for a fiscal year. The act addresses the federal change by providing for ODJFS to recalculate the assessment for a fiscal year if the total amount assessed exceeds the indirect guarantee percentage of the actual net patient revenues for all nursing homes and hospital long-term care units for that fiscal year. The indirect guarantee percentage is the maximum percentage of actual net patient revenues that the federal law permits the fee to assess (i.e., 5.5% until October 1, 2011, and 6% thereafter).

Redeterminations of franchise permit fee to reflect bed surrenders

ODJFS is required by continuing law to determine each nursing home's and hospital long-term care unit's franchise permit fee for a fiscal year not later than each September 15. The act requires ODJFS to redetermine each nursing home's and hospital long-term care unit's franchise permit fee not later than the last day of February of each year if one or more bed surrenders occur during the period beginning on May 1 of the preceding calendar year and ending on January 1 of the calendar year in which the redetermination is made. In the case of a nursing home, a bed surrender occurs when a bed is removed from the nursing home's licensed capacity in a manner that reduces the

total licensed capacity of all nursing homes. In the case of a hospital long-term care unit, a bed surrender occurs when a bed is removed from registration with the Ohio Department of Health as a skilled nursing facility bed or long-term care bed in a manner that reduces the total number of hospital beds so registered with ODH.

In redetermining the franchise permit fees, ODJFS is required to provide for the redetermination to be conducted in a manner consistent with the terms of a federal waiver that authorizes the state to exempt certain nursing homes from the fees. Also, ODJFS must recalculate each nursing home's and hospital long-term care unit's fee in the manner of the original calculation with the following changes:

(1) In the case of a nursing home or hospital long-term care unit for which one or more bed surrenders occurred, the number of beds included in the calculation is to exclude the beds for which bed surrenders occurred;

(2) The number of days used in the calculation is to be the number of days in the first half of the calendar year in which the redetermination is made;

(3) The amount of the fee so redetermined is to reflect adjustments made under continuing law regarding the federal waiver discussed above.

Not later than March 1 each year, ODJFS is required by the act to mail to each nursing home and hospital long-term care unit notice of the amount of its redetermined franchise permit fee. Each nursing home and hospital long-term care unit is to pay its redetermined fee to ODJFS in two installment payments not later than 45 days after March 31 and June 30 of the calendar year in which the redetermination is made.

Under continuing law, ODH is required to report annually to ODJFS information regarding the number of beds in nursing homes and hospital long-term care units that is needed for ODJFS to be able to calculate the franchise permit fee for a fiscal year. The act requires ODH also to report annually to ODJFS, for each nursing home and hospital long-term care unit, the number of beds for which a bed surrender occurred. The report is due not later than each January 15 and is to be used in calculating the franchise permit fee redeterminations.

Paying the franchise permit fee after a change of operator

The act specifies who is responsible for paying the franchise permit fee when a nursing home or hospital long-term care unit undergoes a change of operator during a fiscal year. A change of operator occurs when an entering operator becomes the operator of a nursing home or hospital long-term care unit in the place of the exiting operator. The operator is the person or government entity responsible for the daily operating and management decisions for the nursing home or hospital long-term care

unit. The exiting operator is to be responsible for paying the amount of the fee that is for the part of the fiscal year that ends on the day before the day that the entering operator becomes the operator of the nursing home or hospital long-term care unit. The entering operator is to be responsible for the amount of the fee that is for the part of the fiscal year that begins on the day that the entering operator becomes the operator. ODJFS is not required to mail a notice to the entering operator regarding the amount of that fiscal year's fee for which the entering operator is responsible.

The act provides that the following are examples of actions that constitute a change of operator:

(1) A change in an exiting operator's form of legal organization, including the formation of a partnership or corporation from a sole proprietorship;

(2) A transfer of all the exiting operator's ownership interest in the operation of the nursing home or hospital long-term care unit to the entering operator, regardless of whether ownership of any or all of the real property or personal property associated with the nursing home or hospital long-term care unit is also transferred;

(3) A lease of the nursing home or hospital long-term care unit to the entering operator or the exiting operator's termination of the exiting operator's lease;

(4) If the exiting operator is a partnership, dissolution of the partnership;

(5) If the exiting operator is a partnership, a change in composition of the partnership unless the change does not cause the partnership's dissolution under state law and the partners agree that the change does not constitute a change in operator;

(6) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

The act specifies that the following, alone, do not constitute a change of operator:

(1) A contract for an entity to manage a nursing home or hospital long-term care unit as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(2) A change of ownership, lease, or termination of a lease of real property or personal property associated with a nursing home or hospital long-term care unit if an entering operator does not become the operator in place of an exiting operator;

(3) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stock, if the same corporation continues to be the operator.

Use of money raised by the franchise permit fee

The act abolishes one of the two funds into which money raised by the franchise permit fee was deposited. The fund that is abolished is the Home- and Community-Based Services for the Aged Fund. All of the money raised by the franchise permit fee is to be deposited into the remaining fund, the Nursing Facility Stabilization Fund which is renamed the Nursing Home Franchise Permit Fee Fund. Whereas prior law required ODJFS to use money in that fund to make Medicaid payments only to nursing facilities, the act requires ODJFS to use the money to make Medicaid payments to providers of home and community-based services as well as providers of nursing facility services. Additionally, the act permits money in the Nursing Home Franchise Permit Fee Fund to be used for the Residential State Supplement program. Prior law that governed the fund that is abolished, the Home- and Community-Based Services for the Aged Fund, required ODJFS and the Ohio Department of Aging to use money in that fund for the Medicaid program, including the PASSPORT program, and the Residential State Supplement program.

Prior law provided for only the first dollar of the franchise permit fee to be deposited into the Home- and Community-Based Services for the Aged Fund and for the Nursing Facility Stabilization Fund to receive the remainder. Because the act requires all of the money raised by the franchise permit fee to be deposited into the renamed Nursing Facility Stabilization Fund and provides for the money in that fund to be used for home and community-based services and the Residential State Supplement program rather than just nursing facilities, it is possible that more of the money raised by the franchise permit fee will be used for home and community-based services and the Residential State Supplement program than under prior law.

The act abolishes the PASSPORT Fund. Money raised by horse-racing-related taxes that under prior law was deposited into the PASSPORT Fund is required under the act to be deposited into the Nursing Home Franchise Permit Fee Fund. The act continues to require that the money be used for the PASSPORT Program.

Medicaid reimbursement rates for nursing facilities

The act revises the formula used in determining nursing facilities' Medicaid reimbursement rates. The formula is established in the Revised Code and is comprised of various price centers and a quality incentive payment.

Direct care costs

(R.C. 5111.20 and 5111.231)

Direct care costs are one of the price centers used in determining nursing facilities' Medicaid reimbursement rates. The act includes the costs of behavioral and mental health services among the costs included in nursing facilities' direct care costs.

A nursing facility's Medicaid reimbursement rate for direct care costs is based in part on the cost per case-mix unit determined for the nursing facility's peer group. One of the steps in determining a peer group's cost per case-mix unit is to calculate the amount that is a certain percentage above the cost per case-mix unit determined for the nursing facility in the peer group that is at the 25th percentile of the cost per case-mix units. The act changes the percentage used in the calculation to 2% (from 7%). The act adds a last step in calculating a peer group's cost per case-mix unit. After the other steps are completed, ODJFS is to add $1.88 to the cost per case-mix unit. However, ODJFS is to cease to make the $1.88 increase when it first rebases nursing facilities' rates for direct care costs. ODJFS is not required to rebase more than once every ten years. Rebasing is the process under which ODJFS redetermines nursing facilities' rates using information from Medicaid cost reports for a calendar year that is later than the calendar year used for the previous determination.

Once the cost per case-mix unit is determined, that cost is multiplied by a nursing facility's semiannual case-mix score to determine the nursing facility's Medicaid rate for direct care costs. To determine a nursing facility's semiannual case-mix score, ODJFS uses data from a resident assessment instrument for certain residents. The act changes the residents for whom the data is to be used. Beginning in fiscal year 2013, the data is to be used only for a resident who is a Medicaid recipient and not placed in either of the two lowest resource utilization groups, excluding any resource utilization group that is a default group used for residents with incomplete assessment data. In contrast, for fiscal year 2012, the data is used for each resident who is a Medicaid recipient regardless of which resource utilization group a recipient is in.

Ancillary and support costs

(R.C. 5111.24)

Ancillary and support costs are another price center. Nursing facilities' Medicaid reimbursement rates for ancillary and support costs are based on the ancillary and support costs of the nursing facility in a peer group that is at the 25th percentile of the rate for such costs. The act eliminates a 3% adjustment that was applied to that nursing facility's ancillary and support costs when determining the peer group's rate.

Capital costs

(R.C. 5111.25 (primary), 5111.222, and 5111.254)

Another price center is capital costs. Under prior law, a nursing facility's Medicaid reimbursement rate for capital costs was the median rate for capital costs for the nursing facilities in the nursing facility's peer group. Under the act, a peer group's rate for capital costs is to be the rate for capital costs determined for the nursing facility in the peer group that is at the 25th percentile of the rate for capital costs. The act prohibits ODJFS from redetermining a peer group's rate for capital costs based on additional information that it receives after the rate is determined and provides for ODJFS to make a redetermination only if it made an error in determining the rate based on information available to ODJFS at the time of the original determination.

In determining a nursing facility's capital costs, adjustments are sometimes made to certain of the nursing facility's capital costs. Under prior law, an adjustment was based on the lesser of (1) one-half of the change in construction costs as calculated by ODJFS using the Dodge Building Cost Indexes, Northeastern and North Central states, published by Marshall and Swift or (2) one-half of the change in the Consumer Price Index for all items for all urban consumers, as published by the U.S. Bureau of Labor Statistics. The act provides for the adjustment to be based only on one-half of the change in the Consumer Price Index.

Franchise permit fee costs

(R.C. 5111.243 (repealed) and 5111.222)

Effective July 1, 2012, the act eliminates the franchise permit fee rate as one of the price centers that make up a nursing facility's total Medicaid reimbursement rate.

Quality incentive payments

(R.C. 5111.244)

A quality incentive payment is added to a nursing facility's Medicaid reimbursement rate. The amount of a nursing facility's quality incentive payment depends on how many points the nursing facility earns for meeting accountability measures.

The act provides for the pre-existing accountability measures to be used only for one more fiscal year: fiscal year 2012. ODJFS is no longer required to establish in rules the system for awarding points for meeting accountability measures. Instead, while the pre-existing accountability measures are used and with one exception, a nursing facility is to be awarded one point for each of the measures that the nursing facility meets. The

exception is that a nursing facility is to be awarded three points if its Medicaid utilization rate is above the statewide average. Regarding quality incentive points for resident and family satisfaction, a nursing facility is to be awarded points only if a satisfaction survey was conducted for the nursing facility in calendar year 2010.

Beginning in fiscal year 2013, ODJFS is to award each nursing facility points for meeting accountability measures in accordance with amendments to be made to state law governing quality incentive payments not later than December 31, 2011. Under the act, the General Assembly is to provide for all of the following when enacting the amendments:

(1) Meaningful accountability measures of quality of care, quality of life, and nursing facility staffing;

(2) The maximum number of points that a nursing facility may earn for meeting accountability measures;

(3) A methodology for calculating the quality incentive payment that recognizes different business and care models in nursing facilities by providing flexibility in nursing facilities' ability to earn the entire quality incentive payment;

(4) A quality bonus to be paid at the end of a fiscal year in a manner that provides for all funds that the General Assembly intends to be used for the quality incentive payment for that fiscal year to be distributed to nursing facilities.

The act specifies that the amount of funds the General Assembly intends to be used for the quality incentive payment for a fiscal year is to be the product of (a) the number of Medicaid days in the fiscal year and (b) the maximum quality incentive payment the General Assembly has specified in law to be paid to nursing facilities for that fiscal year.

FY 2012 and FY 2013 reimbursement rates

(Sections 309.30.60 and 309.30.70)

As was done for several prior fiscal years, the act requires ODJFS to adjust certain price centers and the quality incentive payment when determining nursing facilities' Medicaid reimbursement rates for fiscal years 2012 and 2013.

FY 2012

ODJFS is to make the following adjustments in calculating a nursing facility's Medicaid rate for fiscal year 2012:

(1) For the purpose of determining the nursing facility's rate for direct care costs, the nursing facility's semiannual case-mix score for the period beginning July 1, 2011, and ending January 1, 2012, is to be the same as the semiannual case-mix score used in calculating the nursing facility's June 30, 2011, rate for direct care costs.

(2) Each of the following are to be increased by 5.08%: the cost per case-mix unit, rate for ancillary and support costs, rate for tax costs, and rate for capital costs.

(3) The per resident per day rate paid for the franchise permit fee is to be $11.47.

(4) The mean payment used in the calculation of the quality incentive payment is to be, weighted by Medicaid days, $3.03 per Medicaid day.

If the rate determined for a nursing facility after these adjustments are made is less than 90% of its June 30, 2011, rate, ODJFS is required to implement a stop loss mechanism under which the amount of the nursing facility's rate reduction becomes less than what it otherwise would be. Under the stop loss mechanism, the nursing facility's fiscal year 2012 rate is to be the percentage determined as follows less than its June 30, 2011, rate:

(1) Determine the percentage difference between the nursing facility's June 30, 2011, rate and the rate determined under the act after the adjustments are made.

(2) Reduce the percentage determined under (1) by ten percentage points;

(3) Divide the percentage determined under (2) by two.

(4) Increase the percentage determined under (3) by ten percentage points.

FY 2013

ODJFS is to make the following adjustments in calculating a nursing facility's Medicaid rate for fiscal year 2013:

(1) Each of the following are to be increased by 5.08%: the cost per case-mix unit, rate for ancillary and support costs, rate for tax costs, and rate for capital costs.

(2) The maximum quality incentive payment is to be $16.44 per Medicaid day.

The rate determined with the above adjustments is not to be paid for nursing facility services provided to low resource utilization residents.[176] Instead, the fiscal year 2013 Medicaid reimbursement rate for those services is to be $130 per Medicaid day.

Franchise permit fee affect on rate

The total Medicaid reimbursement rate determined for nursing facilities for fiscal year 2012 or 2013 is to be reduced if the nursing home franchise permit fee is required to be reduced or eliminated that fiscal year to comply with federal law. The amount of the reduction is to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

Maximum payment for nursing facility services to dual eligible individuals

(R.C. 5111.225)

A dual eligible individual is an individual who is eligible for Medicaid and is entitled to, or enrolled in, Medicare Part A (which covers inpatient hospital services and some post-hospital extended care services such as skilled nursing care) or enrolled in Medicare Part B (which covers services such as physician services, outpatient care, and certain other medical services).

The act requires ODJFS to pay a nursing facility the lesser of the following for services provided on or after January 1, 2012, to a dual eligible individual:

(1) The coinsurance amount for the services as provided under federal law governing Medicare Part A;

(2) 100% of the nursing facility's per diem rate for the day of service, less the amount that Medicare Part A pays for the services.

This causes the maximum reimbursement rate to be reduced, effective January 1, 2012, from 109% to 100% of a nursing facility's Medicaid per diem rate because an ODJFS rule adopted prior to the act set the maximum reimbursement rate at 109%.

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[176] The act defines a "low resource utilization resident" as a Medicaid recipient residing in a nursing facility who, for purposes of calculating the nursing facility's Medicaid reimbursement rate for direct care costs, is placed in either of the two lowest resource utilization groups, excluding any resource utilization group that is a default group used for residents with incomplete assessment data.

Centers of Excellence

(R.C. 5111.259 (primary) and 5111.258)

The act permits the ODJFS Director to seek federal approval to create a Medicaid program to be known as Centers of Excellence. The purpose of the Centers of Excellence program is to increase the efficiency and quality of nursing facility services provided to Medicaid recipients with complex nursing facility service needs.

If federal approval is obtained, the ODJFS Director may adopt rules governing the program, including rules that establish a method of determining the Medicaid reimbursement rates for nursing facility services provided to Medicaid recipients participating in the program. The rules may specify the extent to which, if any, the program is subject to continuing law governing the rates paid for nursing facility services provided to individuals with diagnoses or special care needs that are considered outliers.

Medicaid payments to reserve beds in nursing facilities

(R.C. 5111.331 (primary), 5111.20, 5111.22, 5111.221, 5111.222, 5111.224, 5111.232, 5111.25, 5111.251, 5111.254, 5111.255, 5111.258, 5111.259, 5111.262, 5111.27, 5111.29, 5111.291, and 5111.33)

The act permits ODJFS to make payments to a nursing facility to reserve a bed for a Medicaid recipient during a temporary absence under conditions prescribed by ODJFS. Under prior law, Medicaid reimbursement to a nursing facility had to include a payment to reserve a bed for a recipient during such a temporary absence. The act does not change the maximum period for which a payment may be made to reserve a bed: 30 days.

The act sets the maximum amounts that ODJFS may pay to reserve a bed in a nursing facility. Prior to the act, the amounts were established in an ODJFS rule. Under the act, the per diem rate for calendar year 2011 is not to exceed 50% of the per diem rate the nursing facility would be paid if the recipient were not absent that day. The per diem rate for calendar year 2012 and thereafter is not to exceed the following:

(1) In the case of a nursing facility that had an occupancy rate of more than 90% in the preceding calendar year, 50% of the per diem rate the facility would be paid if the recipient were not absent that day;

(2) In the case of a nursing facility that had an occupancy rate of 90% or less in the preceding calendar year, 18% of the per diem rate the facility would be paid if the recipient were not absent that day.

Report on nursing facility Medicaid-rate methodology

(R.C. 5111.20 and 5111.34 (repealed))

The act repeals a provision that required ODJFS to prepare an annual report containing recommendations on the methodology that should be used to transition paying nursing facilities the Medicaid reimbursement rate for one fiscal year to the rate for the next fiscal year. The ODJFS Director was required to submit a copy of the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives by October 1 each year.

Nursing facility fiscal emergency

(R.C. 5111.511 (primary), 5111.35, 5111.52, 5111.54, and 5111.62)

Temporary resident safety assurance manager

The act authorizes ODJFS, if it determines that a nursing facility is experiencing or is likely to experience a serious financial loss or failure that jeopardizes or is likely to jeopardize the health, safety, and welfare of its residents, to appoint, subject to the provider's consent, a temporary resident safety assurance safety manager in the facility. The manager is to take actions ODJFS determines are appropriate to ensure the health, safety, and welfare of residents.

The act specifies that a provision of continuing law[177] governing the general authority and qualifications of temporary managers of nursing facilities does not apply to temporary resident safety assurance managers. The managers must meet qualifications, if any, established in rules the ODJFS Director adopts under the act.

The act specifies that a temporary resident safety assurance manager is vested with the authority necessary to take actions that ODJFS determines are appropriate to ensure the health, safety, and welfare of the nursing facility's residents. The manager is authorized to use any of the following funds to pay for costs the manager incurs on behalf of the nursing facility:

(1) Medicaid payments made in accordance with the nursing facility's Medicaid provider agreement;

(2) Funds from the Residents Protection Fund that ODJFS provides the manager (see "**Residents Protection Fund**," below);

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[177] See R.C. 5111.54.

(3) Other funds ODJFS determines are appropriate if such use of the funds is consistent with the appropriations that authorize the use of the funds and all other state and federal laws governing the use of the funds.

The act specifies that the nursing facility provider is liable to ODJFS for the amount of any payments ODJFS makes to the temporary resident safety assurance manager, other than Medicaid payments made in accordance with the nursing facility's Medicaid provider agreement. ODJFS is authorized to recover the amount the provider owes ODJFS by doing any of the following: (1) offsetting Medicaid payments, (2) placing a lien on any of the provider's real and personal property, or (3) initiating other collection actions.

The act specifies that the actions ODJFS takes regarding a temporary resident safety assurance manager are not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.).

The ODJFS Director may establish in rules all of the following regarding temporary resident safety assurance managers:

(1) Qualifications persons must meet to be appointed;

(2) Procedures for maintaining a list of qualified appointees;

(3) Procedures consistent with federal law for paying for their services;

(4) Accounting and reporting requirements for the managers;

(5) Other procedures and requirements the Director determines are necessary.

Residents Protection Fund

The act specifies that money in the Residents Protection Fund created by continuing law[178] may be used to make payments to temporary resident safety assurance managers. The Fund consists of proceeds of all fines, including interest, collected pursuant to law governing nursing facility deficiencies. Under prior law, money in the Fund could be used only for the protection of the health or property of residents of nursing facilities in which the Ohio Department of Health found deficiencies.

[178] See R.C. 5111.62.

ICF/MR franchise permit fee

(R.C. 5112.30, 5112.31, 5112.37, 5112.371, and 5112.39)

The act sets the ICF/MR franchise permit fee rate at $17.99 for fiscal year 2012 and $18.32 for fiscal year 2013 and thereafter. The rate for future fiscal years is no longer to be the rate for the immediately preceding fiscal year as adjusted in accordance with a composite inflation factor established in rules.

Under prior law, the amount assessed under the ICF/MR franchise permit fee could not exceed 5.5% of the actual net patient revenues for all ICFs/MR for that fiscal year. If the rate used in the assessment resulted in a higher assessment, ODJFS was required to recalculate the assessment. This was done to address a restriction in federal Medicaid law. The federal restriction changes on October 1, 2011, in a manner that permits the amount assessed under the fee to be as high as 6% of the actual net patient revenues for all ICFs/MR for a fiscal year. The act addresses the federal change by providing for ODJFS to recalculate the assessment for a fiscal year if the total amount assessed exceeds the indirect guarantee percentage of the actual net patient revenues for all ICFs/MR for that fiscal year. The indirect guarantee percentage is the maximum percentage of actual net patient revenues that the federal law permits the fee to assess (i.e., 5.5% until October 1, 2011, and 6% thereafter).

Money raised by the ICF/MR franchise permit fee is deposited into two funds: the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund and the Department of Developmental Disabilities Operating and Services Fund. The act revises the percentages used to determine how much of the money each fund receives. In fiscal year 2012, 81.77% of the money is to be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund. In fiscal year 2013 and thereafter, that fund is to receive 82.2% of the money. For each fiscal year, the Department of Developmental Disabilities Operating and Services Fund is to receive the remainder of the money. The act does not revise the purposes for which money in the funds must be used.

Medicaid reimbursement rates for ICFs/MR

Index used in calculating inflation factors

(R.C. 5111.23, 5111.235, and 5111.241)

The formulas used to determine the direct care, indirect care, and other protected costs of ICFs/MR include provisions regarding inflation adjustments. The act specifies what is to be done if an index used in calculating an inflation adjustment ceases to be published.

In determining the inflation adjustment for direct care costs, ODJFS has been required to use the Employment Cost Index for Total Compensation, Health Services Component, as published by the U.S. Bureau of Labor Statistics. The act specifies that, if the index ceases to be published, ODJFS is to use the index that is subsequently published by the Bureau and covers nursing facilities' staff costs.

In calculating the inflation adjustments for indirect care costs, ODJFS has been required to use the Consumer Price Index for all items for all urban consumers of the North Central region, as published by the U.S. Bureau of Labor Statistics. Under the act, if that index ceases to be published, a comparable index that the Bureau publishes and that ODJFS determines is appropriate is to be used.

In the case of other protected costs, ODJFS has been required to make the inflation adjustment using the Consumer Price Index for all urban consumers for nonprescription drugs and medical supplies, as published by the U.S. Bureau of Labor Statistics. The act specifies that, if the index ceases to be published, the index that the Bureau subsequently publishes and covers nonprescription drugs and medical supplies is to be used.

Refund of excess depreciation

(R.C. 5111.251)

The act eliminates a requirement that an ICF/MR, after the date on which a transaction of sale is closed, refund to ODJFS the amount of excess depreciation that ODJFS paid to the facility for each year it operated under a Medicaid provider agreement. Prior law specified that the amount of the refund had to be prorated according to the number of Medicaid patient days for which the ICF/MR received payment. "Excess depreciation" was defined as an ICF/MR's depreciated basis, which was the ICF/MR's cost less accumulated depreciation, subtracted from the purchase price but not exceeding the amount paid to the ICF/MR for cost of ownership less any amount paid for interest costs.

FY 2012 reimbursement rates

(Section 309.30.90)

The act provides for an existing ICF/MR's Medicaid reimbursement rate for fiscal year 2012 to be the average of its modified and capped rates unless the mean of such rates for all existing ICFs/MR is other than $282.59, in which case the ICF/MR's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than $282.59. An ICF/MR is considered to be an existing ICF/MR if (1) the provider of the ICF/MR has a valid Medicaid provider agreement for the ICF/MR

on June 30, 2011, and a valid Medicaid provider agreement for the ICF/MR during fiscal year 2012 or (2) the ICF/MR undergoes a change of operator that takes effect during fiscal year 2012, the exiting operator has a valid Medicaid provider agreement for the ICF/MR on the day immediately preceding the effective date of the change of operator, and the entering operator has a valid Medicaid provider agreement for the ICF/MR during fiscal year 2012.

An ICF/MR's modified rate is its rate as determined in accordance with Revised Code provisions governing the Medicaid reimbursement rates for ICFs/MR with the following modifications:

(1) In place of the inflation adjustment otherwise made in determining the ICF/MR's rate for other protected costs, its other protected costs, excluding the franchise permit fee component of those costs, from calendar year 2010 is to be multiplied by 1.0123.

(2) In place of the maximum cost per case-mix unit otherwise established for the ICF/MR's peer group, its maximum costs per case-mix unit is to be $108.21 if it has more than eight beds or $102.21 if it has eight or fewer beds.

(3) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for direct care costs, an inflation adjustment of 1.0123 is to be used.

(4) In place of the maximum rate for the indirect care costs of the ICF/MR's peer group, the maximum rate for the indirect care costs for its peer group is to be $68.98 if it has more than eight beds or $59.60 if it has eight or fewer beds.

(5) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for indirect care costs, an inflation adjustment of 1.0123 is to be used.

(6) In place of the efficiency incentive otherwise calculated in determining its rate for indirect care costs, its efficiency incentive for indirect care costs is to be $3.69 if it has more than eight beds or $3.19 if it has eight or fewer beds.

(7) The ICF/MR's efficiency incentive for capital costs is to be reduced by 50%.

An ICF/MR's capped rate is to be its rate as determined in accordance with Revised Code provisions governing the Medicaid reimbursement rates for ICFs/MR reduced by the percentage by which the mean of such rates for all ICFs/MR, weighted by May 2011 Medicaid days and calculated as of July 1, 2011, exceeds $282.59.

ODJFS is required by the act to reduce the amount it pays ICFs/MR for fiscal year 2012 if the U.S. Centers for Medicare and Medicaid Services requires that the ICF/MR

franchise permit fee be reduced or eliminated. The amount of the reduction is to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

FY 2013 reimbursement rates

(Section 309.33.10)

The act provides for an existing ICF/MR's Medicaid reimbursement rate for fiscal year 2013 to be the average of its modified and capped rates unless the mean of such rates for all existing ICFs/MR is other than $282.92, in which case the ICF/MR's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than $282.92. An ICF/MR is considered to be an existing ICF/MR if (1) the provider of the ICF/MR has a valid Medicaid provider agreement for the ICF/MR on June 30, 2012, and a valid Medicaid provider agreement for the ICF/MR during fiscal year 2013 or (2) the ICF/MR undergoes a change of operator that takes effect during fiscal year 2013, the exiting operator has a valid Medicaid provider agreement for the ICF/MR on the day immediately preceding the effective date of the change of operator, and the entering operator has a valid Medicaid provider agreement for the ICF/MR during fiscal year 2013.

An ICF/MR's modified rate is its rate as determined in accordance with Revised Code provisions governing the Medicaid reimbursement rates for ICFs/MR with the following modifications:

(1) In place of the inflation adjustment otherwise made in determining the ICF/MR's rate for other protected costs, its other protected costs, excluding the franchise permit fee component of those costs, from calendar year 2011 is to be multiplied by 1.0123.

(2) In place of the maximum cost per case-mix unit otherwise established for the ICF/MR's peer group, its maximum costs per case-mix unit is to be $108.21 if it has more than eight beds or $102.21 if it has eight or fewer beds.

(3) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for direct care costs, an inflation adjustment of 1.0123 is to be used.

(4) In place of the maximum rate for the indirect care costs of the ICF/MR's peer group, the maximum rate for the indirect care costs for its peer group is to be $68.98 if it has more than eight beds or $59.60 if it has eight or fewer beds.

(5) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for indirect care costs, an inflation adjustment of 1.0123 is to be used.

(6) In place of the efficiency incentive otherwise calculated in determining its rate for indirect care costs, its efficiency incentive for indirect care costs is to be $3.69 if it has more than eight beds or $3.19 if it has eight or fewer beds.

(7) The ICF/MR's efficiency incentive for capital costs is to be reduced by 50%.

An ICF/MR's capped rate is to be its rate as determined in accordance with Revised Code provisions governing the Medicaid reimbursement rates for ICFs/MR reduced by the percentage by which the mean of such rates for all ICFs/MR, weighted by May 2012 Medicaid days and calculated as of July 1, 2012, exceeds $282.92.

ODJFS is required by the act to reduce the amount it pays ICFs/MR for fiscal year 2013 if the U.S. Centers for Medicare and Medicaid Services requires that the ICF/MR franchise permit fee be reduced or eliminated. The amount of the reduction is to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

Study of ICF/MR issues

(Section 309.30.80)

The act requires ODJFS and the Ohio Department of Developmental Disabilities (ODODD) to study issues regarding Medicaid reimbursement for ICF/MR services. ODJFS and ODODD must examine revising the Individual Assessment Form (IAF) Answer Sheet in a manner that provides a more accurate assessment of the acuity and care needs of individuals who need ICF/MR services, especially for individuals with intensive behavioral or medical needs. After examining the issue of revising the IAF Answer Sheet, ODJFS and ODODD are to examine revisions to the Medicaid reimbursement formula for ICF/MR services to (1) ensure that reimbursement for capital costs is adequate for maintaining the capital assets of ICFs/MR in a manner that promotes the well-being of the residents, (2) provide capital incentives for reducing the capacity of ICFs/MR as necessary to achieve goals regarding the optimal capacity of ICFs/MR, (3) ensure that wages paid individuals who provide direct care services to ICF/MR residents are sufficient for ICFs/MR to meet staffing and quality requirements, (4) provide incentives for high quality services, and (5) achieve other goals developed for the purpose of improving the appropriateness and sufficiency of Medicaid reimbursements for ICF/MR services. A report of the study is to be submitted to the Governor and General Assembly. No deadline is established for the report.

At the same time they conduct the study, ODJFS and ODODD must work with the Governor's Office of Health Transformation and persons interested in the issue of ICF/MR services to develop recommendations regarding (1) goals regarding the ratio of ODODD-administered home and community-based Medicaid waiver services and

ICF/MR services that take into account goals regarding the optimal capacity of ICFs/MR, (2) the roles and responsibilities of ICFs/MR owned and operated by ODODD and providers of services under ODODD-administered Medicaid waiver programs that provide home and community-based services, and (3) simplifying and eliminating duplicate regulations regarding ICFs/MR in a manner that lowers the cost of ICF/MR services.

Transfer of ICF/MR services to ODODD

(R.C. 5111.226 (primary) and 5111.211; Section 309.33.20)

The act requires that ODJFS enter into an interagency agreement with ODODD that provides for ODODD to assume the powers and duties of ODJFS with regard to the Medicaid program's coverage of ICF/MR services. The agreement is subject to the approval of the U.S. Secretary of Health and Human Services if such approval is needed. The agreement must include a schedule for ODODD's assumption of the powers and duties. No provision of the agreement may violate a federal law or regulation governing the Medicaid program, unless otherwise authorized by the U.S. Secretary. Once the agreement goes into effect and to the extent necessary to implement the terms of the agreement, ODODD is to be considered ODJFS, and the ODODD Director is to be considered the ODJFS Director, for purposes of state law that gives ODJFS and the ODJFS Director powers and duties regarding ICFs/MR.

Nursing facility and ICF/MR audits and fines

The act revises the law governing audits of Medicaid cost reports that nursing facilities and ICFs/MR must annually file with ODJFS. Cost reports are used to determine Medicaid reimbursement rates.

Audit-related restriction on amending Medicaid cost report

(R.C. 5111.261, 5111.263, and 5111.28)

The act creates an audit-related exception to the right of nursing facilities and ICFs/MR to amend Medicaid cost reports. Under the act, a cost report cannot be amended if ODJFS has notified the nursing facility or ICF/MR that an audit of the cost report or a cost report for a subsequent cost reporting period is to be conducted. The nursing facility or ICF/MR may, however, provide ODJFS information that affects the costs included in the cost report. The information cannot be provided after the adjudication of the final settlement of the cost report.

Determining whether to conduct an audit

(R.C. 5111.27)

Under the act, ODJFS is no longer required, but is instead permitted, to base a decision on whether to audit, and the scope of an audit of, a Medicaid cost report on the prior performance of a nursing facility or ICF/MR.

Requirements in ODJFS manual for field audits

(R.C. 5111.27)

The act requires ODJFS to revise certain requirements included in its manual for field audits. Under prior law, the manual had to require an auditor to include a written summary as to whether the costs included in a Medicaid cost report examined during the audit were presented fairly in accordance with generally accepted accounting principles and ODJFS rules. Under the act, the manual must require an auditor to include a written summary as to whether the included costs are presented in accordance with state and federal laws and regulations. Prior law required the manual to provide for field audits to be conducted by auditors who were otherwise independent as determined by the standards of independence established by the American Institute of Certified Public Accountants. The act requires instead that standards of independence included in government auditing standards produced by the U.S. Government Accountability Office be used to determine an auditor's independence.

Nursing facility fines for adverse findings in audits

(R.C. 5111.271 (primary), 5111.27, and 5111.94)

The act requires ODJFS to fine a nursing facility if an audit report includes adverse findings exceeding (1) 3% of the total amount of Medicaid-reimbursable costs reported in the Medicaid cost report that was audited or (2) 20% of such costs for a particular cost center reported in that cost report. The audit report must include notice of the fine. No fine may be issued until all appeal rights relating to the audit report are exhausted.

Under the act, an audit-related fine is to equal the greatest of the following:

(1) If the adverse findings exceed 3% but do not exceed 10% of the total amount of Medicaid-reimbursable costs reported in the cost report, the greater of 3% of those reported costs or $10,000;

(2) If the adverse findings exceed 10% but do not exceed 20% of the total amount of Medicaid-reimbursable costs reported in the cost report, the greater of 6% of those reported costs or $25,000;

(3) If the adverse findings exceed 20% of the total amount of Medicaid-reimbursable costs reported in the cost report, the greater of 10% of those reported costs or $50,000;

(4) If the adverse findings exceed 20% but do not exceed 25% of Medicaid-reimbursable costs for a particular cost center reported in the cost report, the greater of 3% of the total amount of Medicaid-reimbursable costs reported in the cost report or $10,000;

(5) If the adverse findings exceed 25% but do not exceed 30% of Medicaid-reimbursable costs for a particular cost center reported in the cost report, the greater of 6% of the total amount of Medicaid-reimbursable costs reported in the cost report or $25,000;

(6) If the adverse findings exceed 30% of Medicaid-reimbursable costs for a particular cost center reported in the cost report, the greater of 10% of the total amount of Medicaid-reimbursable costs reported in the cost report or $50,000.

The fines are to be deposited into the Health Care Services Administration Fund.

Collection of long-term care facilities' Medicaid debts

(R.C. 5111.65 (primary), 5111.212, 5111.66, 5111.67, 5111.671, 5111.672, 5111.68, 5111.681, 5111.687, and 5111.689)

The act revises the law that establishes requirements for a nursing facility or ICF/MR that undergoes a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation. The requirements concern the state's collection of debts a nursing facility or ICF/MR owes under the Medicaid program.

Facility closure

(R.C. 5111.65(J))

Prior law specified one circumstance under which a facility closure occurred: when the building, or part of the building, that houses the facility discontinues to be used as a nursing facility or ICF/MR and all of the facility's residents are relocated. The act specifies an additional circumstance under which a facility closure occurs: when the building, or part of the building, that houses a nursing facility or ICF/MR converts to a different use. To be considered a closure under this provision, any necessary license or

other approval needed for the different use must be obtained and one or more of the facility's residents must remain in the facility to receive services under the new use.

Notices

(R.C. 5111.66, 5111.67, 5111.687, and 5111.689)

The Medicaid debt-collection process begins when ODJFS is notified of a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation. The act requires that the notice, and any notice regarding a postponement or cancellation, be provided in accordance with a method ODJFS is to specify in rules.

The act revises the information that must be included in a written notice of a change of operator. The notice must include the exiting operator's seven-digit Medicaid legacy number and ten-digit national provider identifier number rather than the operator's Medicaid provider agreement number. The notice is to include two additional items. The first additional item is the name and address of each person to whom ODJFS should send initial correspondence regarding the change of operator. The second additional item applies when a nursing facility also participates in the Medicare program. In that case, the notice must also include notification of whether the entering operator intends to accept assignment of the exiting operator's Medicare provider agreement. Under the act, an entering operator is no longer required to include a completed application for a Medicaid provider agreement, accompanied by certain financial documents, with a written notice of a change of operator.

The act requires an exiting operator or owner and entering operator to provide ODJFS written notice of any changes to the information included in the notice of the change of operator. The notice of the changes is to be provided in accordance with a method ODJFS is to specify in rules.

Effective date of an entering operator's Medicaid provider agreement

(R.C. 5111.67, 5111.671, and 5111.672)

The act revises the law governing when an entering operator's Medicaid provider agreement for a nursing facility or ICF/MR undergoing a change of operator goes into effect.

An entering operator seeking a Medicaid provider agreement for a nursing facility or ICF/MR undergoing a change of operator must provide ODJFS with copies of certain documents relating to the change of operator. Under prior law, the following documents had to be provided: fully executed leases, management agreements, merger

agreements and supporting documents, and sales contracts and supporting documents. The act requires that ODJFS specify in rules which documents an entering operator must include with a Medicaid provider agreement application. The rules must provide for the documents to include all fully executed leases, management agreements, merger agreements and supporting documents, and *fully executed* sales contracts and other supporting documents culminating in the change of operator. The act also requires that the exiting operator or owner provide ODJFS with documents to be specified in rules.

The date on which an entering operator's Medicaid provider agreement goes into effect depends on certain factors. The provider agreement may go into effect at 12:01 a.m. on the effective date of the change of operator if ODJFS receives the notice of the change of operator by the statutorily prescribed time and the required documents not later than ten days after the effective date of the change of operator. If any of those deadlines are not met, ODJFS is to determine when the provider agreement goes into effect. The act eliminates a factor that was part of ODJFS's determination of the provider agreement's effective date. Under the act, the effective date is not required to be set at a time that gives ODJFS sufficient time to withhold a final Medicaid payment to the exiting operator under the debt collection process until 180 days after either (1) the exiting operator submits a properly completed cost report or (2) ODJFS waives the cost report requirement.

Involuntary termination

(R.C. 5111.212, 5111.65, 5111.68, and 5111.681)

The act provides for the Medicaid debt collection requirements to apply in a new situation: an involuntary termination. In the context of a nursing facility, an involuntary termination occurs when ODJFS terminates the facility's provider agreement and the termination is not at the facility's request. In the context of an ICF/MR, an involuntary termination occurs when ODJFS terminates, cancels, or refuses to renew the ICF/MR's provider agreement and that action is not taken at the ICF/MR's request.

The debt collection process is to begin on the effective date of an involuntary termination. In the case of a nursing facility, the effective date is the date that ODJFS terminates the facility's provider agreement. In the case of an ICF/MR, the effective date is the date that ODJFS terminates the ICF/MR's provider agreement or the last day that the provider agreement is in effect when ODJFS cancels or refuses to renew it.

As part of the debt collection process, ODJFS is to estimate the amount of exiting operator's Medicaid debt. After the estimation is made, ODJFS, subject to a successor liability agreement, may withhold from payment due the exiting operator under the

Medicaid program the total amount of the estimated debt. A successor liability agreement is an agreement made by the exiting operator, the entering operator, or an affiliated operator to assume all or part of the exiting operator's Medicaid debt. The act permits the exiting operator, entering operator, or affiliated operator to enter into a successor liability agreement under the same conditions that continuing law permits such individuals to enter into a successor liability agreement when a change of operator occurs, except that, in the case of an involuntary termination, a successor liability agreement is subject to ODJFS's approval.

The act permits Medicaid payments to be made for nursing facility services and ICF/MR services for up to 30 days after the effective date of an involuntary termination of the facility that provides the services if the services are provided to a Medicaid recipient who is eligible for the services and resided in the facility before the effective date of the involuntary termination.

Rebalancing long-term care

(Section 309.35.10)

The act requires ODJFS, Ohio Department of Aging, and Ohio Department of Developmental Disabilities to continue efforts to achieve a sustainable and balanced delivery system for long-term services and supports. In working to achieve such a delivery system, the Departments are to strive to meet, by June 30, 2013, certain goals regarding the utilization of non-institutionally-based long-term services and supports. The goals are to have the services and supports used as follows: (1) by at least 50% of Medicaid recipients who are age 60 or older and need long-term services and supports and (2) by at least 60% of Medicaid recipients who are less than age 60 and have cognitive or physical disabilities for which long-term services and supports are needed. "Non-institutionally based long-term services and supports" is a federal term that means services not provided in an institution, including (1) home and community-based services, (2) home health care services, (3) personal care services, (4) PACE services, and (5) self-directed personal assistance services.

Balancing Incentive Payments Program

(Sections 309.35.10(C) and 309.35.20)

ODJFS is permitted, if it determines that participating in the Balancing Incentives Payments Program will assist in achieving the goals regarding long-term services, to apply to participate. The Program was created as part of the federal health care reform law to encourage states to increase the use of non-institutional care provided under their Medicaid programs. A participating state receives a larger federal match for non-

institutionally based long-term services and supports provided under its Medicaid program.[179]

The act requires that any funds Ohio receives as the result of the larger federal match be deposited into the Balancing Incentive Payments Program Fund, which the act creates in the state treasury. ODJFS is required to use money in the Fund in accordance with federal requirements governing the use of the money. This means that ODJFS must use the money only for purposes of providing new or expanded offerings of non-institutionally based long-term services and supports under the Medicaid program. The act authorizes the ODJFS Director to seek Controlling Board approval to make expenditures from the Fund.

Ohio Access Success Project

(R.C. 5111.97)

Continuing law permits the ODJFS Director to establish the Ohio Access Success Project to help Medicaid recipients transition from residing in a nursing facility to residing in a community setting. The act eliminates the eligibility requirement under which an applicant must need a nursing facility level of care.

When the Project is being administered as a non-Medicaid program, the act specifies that an applicant must be able to remain in the community as a result of receiving the Project's benefits. The act retains the specification that the cost of the benefits provided when the Project is administered as a non-Medicaid program is not to exceed 80% of the average monthly cost of a Medicaid recipient in a nursing facility.

The act requires the ODJFS Director to assess an applicant's eligibility for participation in the Project regardless of how long the applicant has been a recipient of Medicaid-funded nursing facility services. Under prior law, the Director was to assess the applicant's eligibility only if the application was received before the applicant had been a recipient of Medicaid-funded nursing facility services for six months.

ODJFS and ODA Medicaid home and community-based services

The act revises the law governing various Medicaid programs that provide home and community-based services. Two of the programs – Ohio Home Care and Ohio Transitions II Aging Carve-Out – are administered by ODJFS. Four of the programs – PASSPORT, Assisted Living, Choices, and PACE – are administered by the Ohio Department of Aging (ODA) through an interagency agreement with ODJFS. All but

[179] Section 10202 of the Patient Protection and Affordable Care Act (Public Law 111-148).

PACE are authorized by federal Medicaid waivers. PACE is part of the state's Medicaid plan.

Home First processes are established in statute for the PASSPORT, Assisted Living, and PACE programs. ODJFS has rule-making authority to establish similar processes for other Medicaid waiver programs. Home First processes enable individuals meeting certain requirements to be enrolled in the PASSPORT, Assisted Living, or PACE program ahead of others.

State-funded components of PASSPORT and Assisted Living

(R.C. 173.40, 173.401, 173.404, 173.42, 3721.56, 5111.85, 5111.89, 5111.891, 5111.892, 5111.893, 5111.894, and 5111.971)

The act establishes state-funded components of the PASSPORT and Assisted Living programs. A more limited state-funded component of the PASSPORT program has been authorized by uncodified law for many years.[180] The state-funded components of the PASSPORT and Assisted Living programs are not to be part of the Medicaid program. ODA is to administer the state-funded components independently rather than, as is the case with the Medicaid-funded components of the programs, through an interagency agreement with ODJFS.

For an individual to be eligible for the state-funded component of the PASSPORT program, the individual must be in one of three categories and meet additional eligibility requirements to be established in rules. The three categories are (1) "grandparented" individuals, (2) former recipients, and (3) presumptively eligible individuals. To be in the category for grandparented individuals, an individual must have been enrolled in the state-funded component on September 1, 1991, (as the state-funded component was authorized by uncodified law in effect at that time) and have had one or more applications for enrollment in the Medicaid-funded component (or a replacement Medicaid waiver program) denied. To be in the category for former recipients, an individual's enrollment in the Medicaid-funded component (or a replacement Medicaid waiver program) must have been terminated and the individual must still need the home and community-based services provided under the PASSPORT program to protect the individual's health and safety. To be in the category for presumptively eligible individuals, the individual must have an application for the Medicaid-funded component (or a replacement Medicaid waiver program) pending and ODA or ODA's designee must have determined that the individual meets the nonfinancial eligibility requirements of the Medicaid-funded component (or a replacement Medicaid waiver program) and not have reason to doubt that the

[180] For example, see Section 209.20 of Am. Sub. H.B. 1 of the 128th General Assembly.

individual meets the financial eligibility requirements of the Medicaid-funded component (or a replacement Medicaid waiver program). Eligibility for the state-funded component is limited to a maximum of three months for presumptively eligible individuals.

To be eligible for the state-funded component of the Assisted Living program, an individual must meet some of the requirements that also apply to the Medicaid-funded component. The individual must need an intermediate level of care and, while participating in the program, reside in a residential care facility (popularly known as an assisted living facility). Additionally, however, an individual must be presumptively eligible for the Medicaid-funded component (or a replacement Medicaid waiver program) and meet additional eligibility requirements to be established in ODA rules. To be presumptively eligible, an individual must have an application for the Medicaid-funded component (or a replacement Medicaid waiver program) pending and ODA or ODA's designee must have determined that the individual meets the nonfinancial eligibility requirements of that component (or a replacement Medicaid waiver program) and not have reason to doubt that the individual meets the financial eligibility requirements for that component (or a replacement Medicaid waiver program). Eligibility for the state-funded component is limited to a maximum of three months.

The ODA Director is required by the act to adopt rules to implement the state-funded components of the PASSPORT and Assisted Living programs. The additional eligibility requirements established in the rules for the PASSPORT program may vary for the different eligibility categories.

The act provides that the Home First processes for the PASSPORT and Assisted Living programs apply only to the Medicaid-funded components of the programs.

Assisted Living program eligibility and administration

(R.C. 5111.891 (primary), 5111.89, 5111.893 (repealed), and 5111.894)

The act eliminates certain eligibility requirements for the Medicaid-funded component of the Assisted Living program. Under the act, an individual no longer needs to be one of the following at the time the individual applies:

(1) A nursing facility resident who is seeking to move to an assisted living facility and would remain in a nursing facility for long-term care if not for the Assisted Living program;

(2) A participant of the PASSPORT program, the Choices program, or an ODJFS-administered Medicaid waiver program who would move to a nursing facility if not for the Assisted Living program;

(3) A resident of an assisted living facility who has resided in an assisted living facility for at least six months immediately before the date the individual applies for the Assisted Living program.

The act eliminates a requirement that the Director of the Office of Budget and Management (OBM) approve the interagency agreement between ODA and ODJFS regarding the administration of the Assisted Living program as a condition of ODA being able to administer the program.

The act repeals an obsolete law that required the ODA Director to contract with a person or government entity to evaluate the cost effectiveness of the Assisted Living program and provide the results of the evaluation to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives by June 30, 2007.

ODA unified waiting list

(R.C. 173.404)

The act provides that the requirement for ODA to establish a unified waiting list for the PASSPORT, Choices, Assisted Living, and PACE programs applies if ODA determines that there are insufficient funds to enroll all individuals who have applied and been determined eligible for the programs. Under prior law, ODA was required to establish a unified waiting list regardless of whether such a determination was made.

Evaluation and expansion of PACE

(Section 309.33.50)

The act requires the ODA Director to contract with Miami University's Scripps Gerontology Center for an evaluation of PACE. PACE, or the Program of All-Inclusive Care for the Elderly, is a managed care system that provides participants with coverage of all of needed health care, including care in both institutional and community settings. It is funded by both Medicaid and Medicare.[181]

In order to effectively administer and manage growth within PACE, the act permits the ODA Director, in consultation with the ODJFS Director, to expand PACE to additional regions of Ohio beyond the two service areas in existence on June 30, 2011.[182]

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[181] Ohio Department of Aging, *About PACE* (last visited August 7, 2011) available at: <http://aging.ohio.gov/services/PACE/>.

[182] As of June 30, 2011, the two PACE providers in Ohio are TriHealth Senior Link and McGregor PACE Center for Senior Independence. The service area for the PACE agreement with TriHealth Senior Link is

The expansion may occur only if the following apply: (1) funding is available for the expansion, (2) the Directors mutually determine, taking into consideration the results of the Scripps Gerontology Center's evaluation, that PACE is a cost-effective alternative to nursing home care, and (3) the U.S. Centers for Medicare and Medicaid Services agrees to share with Ohio any savings to Medicare resulting from an expansion of PACE. In implementing an expansion, the act prohibits the ODA Director from decreasing the number of PACE participants in the original PACE sites to a number that is below the number of individuals in those areas who were participants in the program on July 1, 2011.

Ohio Home Care and Ohio Transitions II Aging Carve-Out programs codified

(R.C. 5111.861, 5111.863, and 5111.88)

The act creates the Ohio Home Care and Ohio Transitions II Aging Carve-Out programs in statute (i.e., codifies the programs). Prior law included a reference to the programs, but the programs were not previously created in statute.

Rules for enrollment in Medicaid home and community-based waivers

(R.C. 5111.85)

The act modifies the ODJFS Director's rulemaking authority regarding Medicaid waivers for home and community-based services by doing the following:

(1) Creating a general requirement that the rules establish procedures for prioritizing and approving enrollment of eligible individuals who choose to be enrolled;

(2) Eliminating a requirement that the rules establish procedures for identifying and approving enrollment of individuals on waiting lists who are receiving inpatient hospital services or residing in a nursing facility or ICF/MR.

Unified long-term services and support Medicaid waiver program

(R.C. 5111.864 (primary), 173.40, 173.401, 173.403, 5111.861 (repealed and new enactment), 5111.862, 5111.863, 5111.865, 5111.89, and 5111.894; Section 309.33.30)

The act requires the ODJFS Director to seek federal permission to create a unified long-term services and support Medicaid waiver program to provide home and community-based services to eligible individuals of any age who require the level of care provided by nursing facilities. This requirement replaces a previous requirement

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Hamilton County and certain zip codes in Warren, Butler, and Clermont counties. Cuyahoga County is the service area for the PACE agreement with McGregor PACE.

that the ODJFS Director seek federal permission for a federal Medicaid waiver to consolidate the PASSPORT, Choices, and Assisted Living programs into one Medicaid waiver program.

In seeking federal approval for the unified long-term services and support Medicaid waiver program, the ODJFS Director must work with the ODA Director. The ODJFS Director is also to work with the ODA Director in creating and implementing the program, including adopting rules, if federal approval is obtained. The rules may authorize the ODA Director to adopt rules governing aspects of the program.

ODJFS and ODA are required by the act to work together to determine, on an individual program basis, whether the PASSPORT, Choices, Assisted Living, Ohio Home Care, and Ohio Transitions II Aging Carve-Out programs should continue to operate as separate Medicaid waiver programs or be terminated if the unified long-term services and support Medicaid waiver program is created. If they determine that a program should be terminated, the program is to cease to exist on a date ODJFS and ODA must specify.

If ODJFS and ODA terminate the PASSPORT, Choices, Assisted Living, Ohio Home Care, or Ohio Transitions II Aging Carve-Out program, all applicable statutes, and all applicable rules, standards, guidelines, or orders issued by ODJFS or ODA before the program is terminated, are to remain in full force and effect on and after that date, but solely for purposes of concluding the program's operations, including fulfilling ODJFS's and ODA's legal obligations for claims arising from the program relating to eligibility determinations, covered medical assistance provided to eligible persons, and recovering erroneous overpayments. The right of subrogation for the cost of medical assistance and an assignment of the right to medical assistance continue to apply with respect to the terminated program and remain in force to the full extent provided under law governing the right of subrogation and assignment. ODJFS and ODA are permitted to use appropriated funds to satisfy any claims or contingent claims for medical assistance provided under the terminated program before the program's termination. Neither ODJFS nor ODA has liability under the terminated program to reimburse any provider or other person for claims for medical assistance rendered under the program after it is terminated.

Home First processes

(R.C. 173.401, 173.404, 173.501, and 5111.894)

Under the act, an individual may be enrolled in the PASSPORT, Assisted Living, or PACE program through a Home First process without being placed on a unified waiting list established by ODA. In addition to eliminating a requirement that an

individual be on the unified waiting list to be enrolled through a Home First process, the act requires that an individual have been determined to be eligible, rather than only be eligible, for the PASSPORT, Assisted Living, or PACE program to qualify for enrollment through a Home First process.

The act eliminates a requirement that ODA quarterly certify to the OBM Director the estimated increase in the costs of the PASSPORT, Assisted Living, and PACE programs because of enrollments into those programs through Home First processes.

The act requires ODJFS to establish a Home First process for the Ohio Home Care Program unless it is terminated. An individual is to be eligible for the Program's Home First component if the individual has been determined to be eligible for the Program and at least one of the following applies:

(1) If the individual is under age 21, the individual received inpatient hospital services for at least 14 consecutive days, or had at least 3 inpatient hospital stays during the 12 months, immediately preceding the date the individual applies for the Program.

(2) If the individual is at least age 21 but less than age 60, the individual received inpatient hospital services for at least 14 consecutive days immediately preceding the date the individual applies for the Program.

(3) The individual received private duty nursing services under the Medicaid program for at least 12 consecutive months immediately preceding the date the individual applies for the Program.

(4) The individual does not reside in a nursing facility or hospital long-term care unit at the time the individual applies for the Program but is at risk of imminent admission due to a documented loss of a primary caregiver.

(5) The individual resides in a nursing facility at the time the individual applies for the Program.

(6) At the time the individual applies for the Program, the individual participates in the Money Follows the Person demonstration project and either resides in a residential treatment facility[183] or inpatient hospital setting.

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[183] The act defines a "residential treatment facility" as a residential facility that is licensed by ODMH and serves children and either has more than 16 beds or is part of a campus of multiple facilities that, combined, have a total of more than 16 beds.

An individual determined to be eligible for the Home First component of the Ohio Home Care Program is to be enrolled in the Program in accordance with ODJFS's rules.

The act also requires ODJFS to establish a Home First process for the unified long-term services and support Medicaid waiver program if federal permission is obtained for the program. The Home First process must be similar to the Home First processes for PASSPORT, Ohio Home Care, and Assisted Living programs.

Pilot program for self-directed home and community-based care

(R.C. 5111.97 and 5111.971 (repealed))

The act repeals the requirement that the ODJFS Director create a pilot program for providing up to 200 eligible Medicaid recipients with spending authority to pay for the cost of medically necessary home and community-based services. The spending authorization was not to exceed 70% of the average cost for providing nursing facility services to an individual under Medicaid.

ODODD-administered Medicaid home and community-based services

Reimbursement for services

(R.C. 5111.873)

Continuing law authorizes the ODJFS Director to apply to the U.S. Secretary of Health and Human Services for one or more Medicaid waivers under which home and community-based services are provided to individuals with mental retardation and developmental disabilities as an alternative to placement in an ICF/MR. Prior law required the Director to adopt rules establishing statewide fee schedules for these home and community-based services administered by the Ohio Department of Developmental Disabilities (ODODD). The act requires, instead of establishing fee schedules, that the Director adopt rules establishing the amount of reimbursement or the methods by which amounts of reimbursement are to be determined. The act's conforming changes require that the rules do all of the following:

(1) Establish procedures for ODODD to follow in arranging for the initial and ongoing collection of cost information from a comprehensive, statistically valid sample of private and public entities providing the services at the time the information is obtained;

(2) Establish procedures for the collection of consumer-specific information through an assessment instrument ODODD is required to provide to ODJFS;

(3) With the information described above, an analysis of that information, and other information the Director determines relevant, establish reimbursement standards that (a) assure that the reimbursement is consistent with efficiency, economy, and quality of care, (b) consider the intensity of consumer resource need, (c) recognize variations in different geographic areas regarding the resources necessary to assure the health and welfare of consumers, and (d) recognize variations in environmental supports available to consumers.

The ODJFS and ODODD Directors must review the rules at times they determine are necessary to ensure that the amount of reimbursement or the methods by which amounts of reimbursement are to be determined continue to meet the act's reimbursement standards.

Conversion of ICF/MR beds

(R.C. 5111.874 and 5111.877)

Under continuing law, an operator of an ICF/MR that is licensed by ODODD as a residential facility may convert all of the beds in the facility from providing ICF/MR services to providing ODODD-administered home and community-based services if certain requirements are met. The act permits such an operator of an ICF/MR to convert ***some*** of the beds.

Under the act, the operator must specify whether some or all of the beds are to be converted. If only some of the beds are to be converted, the operator must specify how many of the facility's beds are to be converted and how many are to continue to provide ICF/MR services. In addition, if the operator intends to convert some but not all of the facility's beds, it must notify the residents that they may (1) continue to receive ICF/MR services from any provider willing and able to accept the resident if the resident continues to qualify for ICF/MR services or (2) begin to receive ODODD-administered home and community-based services from any provider of the services that is willing and able to provide the services to the resident, if the resident is eligible for the services and a slot for the services is available.

The act requires that the conversion be approved by both the ODODD Director and the ODJFS Director. Prior law required approval by only the ODODD Director.

Under the act, a decision by the Directors to approve or refuse to approve a proposed conversion is final. In making a decision, the Directors must consider (1) the fiscal impact on the facility if some but not all of the beds are converted, (2) the fiscal impact on the Medicaid program, and (3) the availability of home and community-based services.

If the conversion of only some of the ICF/MR's beds is approved, the Director of Health must reduce the facility's certified capacity by the number of beds being converted. The ODJFS Director must amend the operator's Medicaid provider agreement to reflect the facility's reduced certified capacity.

Under prior law, the maximum number of slots available for home and community-based services provided under an ODODD-administered Medicaid waiver was 100 for the purpose of beds that are converted from providing ICF/MR services to home and community-based services. The act increases to 200 the maximum number of such slots for which the ODJFS Director may seek federal approval.

Transfer of Transitions Developmental Disabilities Medicaid waiver program

(R.C. 5111.871, 5111.872, 5111.873, 5123.01, and 5126.01; Section 309.33.20)

In addition to transferring the powers and duties regarding ICFs/MR to ODODD, the act requires ODJFS to transfer administration of the Transitions Developmental Disabilities Medicaid waiver program to ODODD. The transfer is to be part of an interagency agreement that, under continuing law, provides for ODODD to administer certain other Medicaid waiver programs that provide home and community-based services to individuals with mental retardation and developmental disabilities as an alternative to placement in an ICF/MR. This transfer is also subject to the approval of the U.S. Secretary of Health and Human Services if such approval is needed. The interagency agreement is to include a schedule for the transfer. The act specifies that continuing laws governing ODODD-administered Medicaid waiver programs are to apply to the Transitions Developmental Disabilities Medicaid waiver program only to the extent, if any, provided in the interagency agreement.

Money Follows the Person Enhanced Reimbursement Fund

(Section 309.33.80)

The act provides for the Money Follows the Person Enhanced Reimbursement Fund to continue to exist in the state treasury for fiscal years 2012 and 2013. The Fund was created by Am. Sub. H.B. 562 of the 127th General Assembly. The federal payments made to Ohio under federal law governing Money Follows the Person demonstration projects are to be deposited in the Fund. ODJFS is required to use the money in the Fund for system reform activities related to the demonstration project.

The Deficit Reduction Act of 2005 authorizes the U.S. Secretary of Health and Human Services to award grants to states for Money Follows the Person demonstration

projects.[184] The projects are to be designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under a state's Medicaid program:

(1) Increase the use of home and community-based, rather than institutional, long-term care services;

(2) Eliminate barriers or mechanisms that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice;

(3) Increase the ability of a state's Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institution to a community setting;

(4) Ensure that procedures are in place to provide quality assurance for eligible individuals receiving Medicaid home and community-based services and to provide for continuous quality improvement in such services.

Dual eligible integrated care demonstration project

(R.C. 5111.981 (primary) and 5111.944; Section 309.35.30)

The act permits the ODJFS Director to seek federal approval to implement a demonstration project to test and evaluate the integration of the care that dual eligible individuals[185] receive under the Medicare and Medicaid programs. The federal approval must be from the U.S. Secretary of Health and Human Services in the form of a federal Medicaid waiver, Medicaid state plan amendment, or demonstration grant. If approval is granted, the demonstration project must be implemented in accordance with the terms of the approval, including terms regarding the project's duration. No provision of Ohio's human services laws (R.C. Title 51) applies to the demonstration project if that provision implements or incorporates a provision of federal Medicaid law that does not apply to the demonstration project.

The act also creates the Integrated Care Delivery Systems Fund in the state treasury. This Fund is to receive amounts that the demonstration project saves the

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[184] Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171. The federal health care reform act extended authority for Money Follows the Person demonstration project through federal fiscal year 2016 (Section 2403 of the Patient Protection and Affordable Care Act, Public Law 111-148).

[185] A "dual eligible individual" is an individual who is entitled to, or enrolled for, benefits under Medicare Part A or enrolled for benefits under Medicare Part B, and is eligible for medical assistance under the state Medicaid plan or under a waiver of the plan (42 U.S.C. 1396n(h)(2)(B)).

Medicare program if the terms of the project provide for Ohio to receive those amounts. ODJFS must use the money in the Fund to further develop integrated delivery systems and improved care coordination for dual eligible individuals. The ODJFS Director may seek Controlling Board approval to make expenditures from the Fund.

Joint Legislative Committee for Unified Long-Term Services and Supports

(Section 309.30.73)

The act creates the Joint Legislative Committee for Unified Long-Term Services and Supports. The Committee is to consist of the following members:

(1) Two members of the House of Representatives from the majority party and one member from the minority party, all appointed by the Speaker of the House of Representatives;

(2) Two members of the Senate from the majority party and one member from the minority party, all appointed by the Senate President.

The Speaker of the House is required to designate one of the House members from the majority party to serve as co-chairperson of the Committee. The Senate President is to designate one of the Senate members from the majority party to serve as the other co-chairperson. The Committee is to meet at the call of the co-chairpersons. The co-chairpersons are permitted to request assistance for the Committee from the Legislative Service Commission.

The Committee is required to study the following issues:

(1) Implementing the act's provision regarding the dual eligible integrated care demonstration project (see "**Dual eligible integrated care demonstration project**," above);

(2) Implementing the act's provision regarding a unified long-term services and support Medicaid waiver program (see "**Unified long-term services and support Medicaid waiver program**," above);

(3) Providing consumers choices regarding a continuum of services that meet their health-care needs, promote autonomy and independence, and improve quality of life;

(4) Ensuring that long-term care services and supports are delivered in a cost effective and quality manner;

(5) Subjecting county homes, county nursing homes, and district homes to the nursing home franchise permit fee;

(6) Other issues of interest to the Committee.

The act requires the Committee's co-chairpersons to provide for the Director of the Office of Ohio Health Plans in ODJFS to testify before the Committee not later than September 30, 2011, and at least quarterly thereafter regarding the issues that the Committee examines.

Children's Buy-In Program

(Section 309.33.60 (primary); R.C. 5101.5211 to 5101.5216 (repealed); conforming changes in R.C. 9.231, 9.24, 127.16, 1751.01, 1751.04, 1751.11, 1751.111, 1751.12, 1751.13, 1751.15, 1751.17, 1751.20, 1751.31, 1751.34, 1751.60, 1751.89, 2744.05, 3111.04, 3113.06, 3119.54, 3901.3814, 3923.281, 3963.01, 4731.65, 4731.71, 5101.26, 5101.571, 5101.58, 5111.0112, and 5111.941)

The act abolishes the Children's Buy-In Program as of October 1, 2011. This state-funded program, administered by ODJFS, was established by Am. Sub. H.B. 119 of the 127th General Assembly as a health care program for uninsured individuals under age 19 who had family incomes over 300% of the federal poverty limit and met other eligibility criteria. Participants were required to pay a monthly premium and co-payments.

To conclude the program's affairs, the act does all of the following:

- Suspends new enrollments as of June 30, 2011 (the act's immediate effective date);
- Repeals the program-authorizing statutes on October 1, 2011;
- Permits persons enrolled in the program when it is repealed to continue receiving services through December 31, 2011;
- Requires ODJFS to take steps as necessary to transition persons enrolled in the program to other health coverage options and otherwise conclude program operations;
- Permits ODJFS to use appropriated funds to satisfy any claims or contingent claims for services rendered prior to October 1, 2011, and services rendered to eligible persons through December 31, 2011;

- Provides that ODJFS is not liable for reimbursing any provider or other person for services rendered on or after January 1, 2012.

Military Injury Relief Fund

(R.C. 5101.98)

The act provides that an individual injured while in active service as a member of the U.S. armed forces while serving in Operation New Dawn is eligible for Military Injury Relief Fund grants. Operation New Dawn is the name for the U.S. military operation being conducted in Iraq.

Under continuing law, the ODJFS Director grants money from the Military Injury Relief Fund to individuals injured while in active service as a member of the U.S. armed forces while serving under Operation Iraqi Freedom or Operation Enduring Freedom, and to individuals diagnosed with post-traumatic stress disorder while serving or after having served in those operations. The act, as explained above, extends grant eligibility to individuals involved in Operation New Dawn.

VI. Unemployment Compensation

Unemployment compensation for seasonal employment

(R.C. 4141.33)

The act expressly prohibits an individual whose base period consists of only seasonal employment for a single seasonal employer from being paid benefits for any week between two successive seasonal periods, which is consistent with continuing law. Additionally, effective October 30, 2011, the act prohibits an individual who performs services that significantly consist of services performed in seasonal employment from being paid unemployment compensation benefits for those services for any week in the period between two successive seasonal periods if the individual performed those services in the first of the seasonal periods and there is reasonable assurance that the individual will perform those services in the later of the seasonal periods. "Significantly" means 40% or more of an individual's base period (which is used to determine an individual's unemployment compensation benefit eligibility) consists of services performed in seasonal employment. Reasonable assurance consists of a written, verbal, or implied agreement that the individual will perform services in the same or a similar capacity during the ensuing seasonal period. The act requires the ODJFS Director to adopt rules implementing this provision and concerning individuals' eligibility for benefits under this provision.

Unemployment Compensation Special Administrative Fund

(R.C. 4141.08 and 4141.11)

The act eliminates the authority of the Unemployment Compensation Council with respect to the Unemployment Compensation Special Administrative Fund. The ODJFS Director is required to request the OBM Director to transfer to the Unemployment Compensation Fund any amount in the Unemployment Compensation Special Administrative Fund considered to be excessive by the ODJFS Director, instead of by the Council as under prior law. Under the act, the balance in the Unemployment Compensation Special Administrative Fund is no longer continuously available to the Council for expenditures.

The ODJFS Director, under the act, is no longer required to obtain the approval of the Council before using funds in the Unemployment Compensation Special Administrative Fund whenever it appears that the use is necessary for:

(1) The proper administration of the Unemployment Compensation Law (R.C. Chapter 4141.) and no federal funds are available for the specific purpose for which the expenditure is to be made, provided the moneys are not substituted for appropriations from federal funds, which in the absence of such moneys would be available;

(2) The proper administration of the Unemployment Compensation Law for which purpose appropriations from federal funds have been requested and approved but not received, provided the fund would be reimbursed upon receipt of the federal appropriation;

(3) To the extent possible, the repayment to the Unemployment Compensation Administration Fund of moneys found by the proper agency of the United States to have been lost or expended for purposes other than, or an amount in excess of, those found necessary by the proper agency of the United States for the administration of the Unemployment Compensation Law.

The ODJFS Director is required to pay the operating expenses of the Council from moneys in the Unemployment Compensation Special Administrative Fund, but, under the act, the ODJFS Director no longer has to pay those expenses as determined by the Council.

JOINT COMMITTEE ON AGENCY RULE REVIEW (JCR)

- Provides that the new business rule review process established by S.B. 2 of the 129th General Assembly does not apply to proposed rules that are pending on January 1, 2012, and first applies to proposed rules, the original versions of which are filed on or after January 1, 2012.
- Clarifies how existing rules being reviewed under the Cyclical Review of Rules Act are to be reviewed in light of the new business rule review process.

New businesses rule review process: first applicability

(Sections 610.30 and 610.31)

The act provides that the new business rule review process established by S.B. 2 of the 129th General Assembly does not apply to a proposed rule that is pending for review before the Joint Committee on Agency Rule Review on January 1, 2012. Instead, such a proposed rule will continue to be reviewed under the former small business rule review process (which was repealed by S.B. 2) until the rule-making proceedings are completed.[186] The new small business rule review process will apply only to proposed rules, the original version of which is filed on or after January 1, 2012.

New business rule review process: application under Cyclical Review of Rules Act

(R.C. 119.032; Sections 610.30 and 610.31)

The act clarifies a standard, added by S.B. 2 of the 129th General Assembly, that agencies are required to apply in evaluating an existing rule under the periodic, five-year review schedules of the Cyclical Review of Rules Act (CRRA). Under the act, an agency will be required to determine whether an existing rule it is reviewing under the CRRA has an adverse impact on businesses, reviewing the existing rule *as if* it were a draft rule under the provisions of S.B. 2 that define when a draft rule has an adverse impact on business and that require the Common Sense Initiative Office to prepare a business impact analysis instrument.

[186] R.C. 121.24, not in the act (repealed by S.B. 2).

Agencies are required by S.B. 2 to apply the definition and business impact analysis instrument to *draft* rules to determine whether the draft rules have an adverse impact on business. But the CRRA applies to *existing* rules and not to draft rules. The act therefore requires agencies to apply the definition and business impact analysis instrument in reviewing existing rules under the CRRA, applying the definition and instrument to the existing rules *as if* they were draft rules. And, if an agency thus determines under the CRRA that an existing rule has an adverse impact on business, the agency will be expected to amend or rescind the rule as is appropriate to remedy the adverse impact. (Such an amendment or rescission will be subject to the new business rule review process of S.B. 2.) If, however, the agency concludes there is not such an impact, and none of the other CRRA review standards have an adverse effect, then the agency can file the rule as a "no change" rule. A no-change rule, as its name implies, indicates there is no need to amend or rescind the rule and that it can be left as it is.

The new CRRA review standard, both as enacted by S.B. 2 and as clarified by the act, first applies to existing rules that are subjected to review under the CRRA on or after January 1, 2012.

- Permits a party in a civil action to subpoena a coroner or deputy coroner to give expert testimony at a trial, hearing, or deposition only upon filing with the court a notice with specified information, and prohibits a party that fails to provide such notice, unless good cause is shown, from having the coroner or deputy coroner called to give expert testimony.

- Authorizes a court for good cause shown to permit a coroner or deputy coroner who has not been served with such a subpoena to give expert testimony in a civil action.

- Requires a party that obtains the expert testimony to pay to the county treasury a "deposition fee" or a "testimonial fee," both as defined in the act, and provides a procedure for determining such fees.

- Provides a procedure for the court to resolve a dispute as to the contents of the above notice or whether the testimony sought or given is "expert testimony" or "fact testimony," both as defined in the act.

- Specifically excludes the above provisions from continuing law specifying the fees and mileage allowed for witnesses in civil cases.

- Requires the court to commit a mentally ill criminal defendant who is incompetent to stand trial or not guilty by reason of insanity to the Department of Mental Health for an appropriate placement by the Department for the defendant's treatment and evaluation and not directly to a facility.

- Permits a prosecutor to hold charges against a defendant charged with a nonviolent misdemeanor in abeyance while the defendant engages in mental health treatment or developmental disability services.

- Designates the county or municipal indigent alcohol treatment fund in which the court costs imposed for a violation of an ordinance of a municipal corporation that is a moving violation or for an OVI violation are to be deposited, based on the court with jurisdiction over the municipal corporation.

- Eliminates the duty of the Clerk of the Supreme Court to file annual reports of the transactions and proceedings of the Court with the Governor, the Secretary of State, and the State Library.

- Moves the jurisdiction over the Village of West Millgrove from the Fostoria Municipal Court to the Bowling Green Municipal Court.

- Modifies the experience qualification for a municipal judge, a judge of the court of common pleas, a judge of the court of appeals, and the Chief Justice and a justice of the Supreme Court to hold judicial office by removing the requirement that the minimum of six years of prior practice of law be in Ohio.

- Requires that at least two of the six or more years of prior practice of law or prior service as a judge of a court of record in any jurisdiction in the United States that qualify the judge, Chief Justice, or justice specified in the preceding dot point have been in Ohio.

- Modifies the experience qualification generally for a county court judge to hold judicial office by removing the requirement that the minimum of six years of prior practice of law be in Ohio, requiring that the prior practice of law be in any jurisdiction in the United States, and requiring that at least two of the years of prior practice of law have been in Ohio.

- Provides, as a new option for the disposal of unclaimed or forfeited firearms and dangerous ordnance in the custody of a law enforcement agency, that a court may order the sale of the unclaimed or forfeited firearms and dangerous ordnance, in a manner that the court considers is proper, to a federally licensed firearms dealer.

County coroner: expert testimony in civil cases; fee

(R.C. 2335.061, 2335.05, and 2335.06)

Expert testimony

The act permits a party to subpoena a coroner (defined below) or deputy coroner (a pathologist serving as a deputy coroner) to give expert testimony (testimony given by a coroner or deputy coroner as an expert witness pursuant to the act and the Rules of Evidence) at a trial, hearing, or deposition in a civil action only upon filing with the court a notice that must be served with the subpoena and that includes all of the following:

(1) The name of the coroner or deputy coroner whose testimony is sought;

(2) A brief statement of the issues upon which the party seeks the expert testimony from the coroner or deputy coroner;

(3) An acknowledgment by the party that the giving of that expert testimony at the trial, hearing, or deposition is governed by the act's provisions and that the party will comply with all of the act's requirements;

(4) A statement of the obligations of the coroner or deputy coroner as described below.

The act further provides that for good cause shown, the court may permit a coroner or deputy coroner who has not been served with such a subpoena to give expert testimony at a trial, hearing, or deposition in a civil action. Unless good cause is shown, the failure of a party to file with the court the above described notice prohibits the party from having a coroner or deputy coroner subpoenaed to give expert testimony in a civil action or from otherwise calling the coroner or a deputy coroner to give such expert testimony.

The act requires a party that obtains the expert testimony of a coroner or deputy coroner in a civil action to pay to the treasury of the county in which the coroner or deputy coroner holds office or is appointed or employed a "testimonial fee" or "deposition fee" (both defined below), whichever is applicable, within 30 days after receiving the following described statement. Upon the conclusion of the expert testimony, the coroner or deputy coroner must file a statement with the court on behalf of the county showing the fee due and how the coroner or deputy coroner calculated the fee and must serve a copy of the statement on each of the parties.

The act provides that in the event of a dispute as to the contents of the above notice filed by a party or as to the nature of the testimony sought from or given by a coroner or a deputy coroner in a civil action, the court must determine whether the testimony is expert testimony or fact testimony. In making this determination, the court must consider the act's definitions of "expert testimony" (see above) and "fact testimony" (testimony given by a coroner or deputy coroner regarding the performance of the coroner's duties under the Coroners Law, but not including expert testimony), all applicable rules of evidence, and any other information that the court considers relevant. The act states that nothing in the act is to be construed to alter, amend, or supersede the requirements of the Rules of Civil Procedure or the Rules of Evidence.

The act excludes its provisions from continuing laws that provide for attendance and mileage fees for witnesses in civil cases.

Definitions

The act additionally defines the following terms:

"Coroner" means the coroner of the county in which death occurs or the dead human body is found and includes the coroner of a county other than a county in which the death occurred or the dead human body was found if the coroner of that other county performed services for the county in which the death occurred or the dead human body was found or a medical examiner appointed by the governing authority of a county to perform the duties of a coroner under the Coroners Law.

"Deposition fee" means the amount derived by multiplying the hourly rate by the number of hours a coroner or deputy coroner spent preparing for and giving expert testimony at a deposition in a civil action pursuant to the act.

"Hourly rate" means the compensation established in continuing law's annual compensation schedules and salary increases for a coroner without a private practice of medicine at the class 8 level for calendar year 2001 and thereafter (class population of 1,000,001 or more – $103,480), divided by 2,080.

"Testimonial fee" means the amount derived by multiplying the hourly rate by six and multiplying the product by the number of hours that a coroner or deputy coroner spent preparing for and giving expert testimony at a trial or hearing in a civil action pursuant to the act.

Evaluation of criminal defendant's competence to stand trial

(R.C. 2945.371(A), (D), and (G) and 2945.38)

Under law generally unchanged by the act, if the issue of a defendant's competence to stand trial is raised or if the defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the offense charged. If the court orders an evaluation, the person who examines the defendant must file a written report with the court within 30 days after the court's entry of an order for an evaluation of the defendant. The written report must contain specified findings and recommendations of the person examining the defendant.

The act specifies an additional recommendation that the examiner must include in the written report if the evaluation was ordered to determine the defendant's competence to stand trial. If the defendant is charged with a misdemeanor offense that is not an offense of violence and the examiner is of the opinion that the defendant is presently mentally ill or mentally retarded and is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner must include a recommendation as to whether the defendant is

amenable to engagement in mental health treatment or developmental disability services.

Under law generally unchanged by the act, the court may order a defendant who has not been released on bail or recognizance to be examined at the defendant's place of detention or to be transported for evaluation to a program or facility *operated* by the Ohio Department of Mental Health (ODMH) or the Ohio Department of Developmental Disabilities (ODODD). The act provides that a court may order the defendant to be examined at the defendant's place of detention or to be transported for evaluation to a program or facility operated *or certified* (added by the act) by ODMH or ODODD.

Commitment of a mentally ill defendant to the Ohio Department of Mental Health (ODMH)

(R.C. 2945.38(B))

Continuing law provides that if a court finds, after taking into consideration all relevant reports, information, and other evidence, that a defendant is incompetent to stand trial and that there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court must order the defendant to undergo treatment. However, if the court finds that a defendant is incompetent to stand trial but is unable to determine whether the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court must order the defendant, if the defendant is charged with a felony, to undergo continuing evaluation and treatment.

Prior law retained in part by the act provided that if a defendant was found incompetent to stand trial and the court issued an order that required the defendant to undergo treatment or continuing evaluation and treatment, the court order was required to specify that the treatment or continuing evaluation and treatment was to occur at a facility operated by ODMH or ODODD, at a facility certified by either ODMH or ODODD as being qualified to treat mental illness or mental retardation, at a public or private community mental health or mental retardation facility, or by a psychiatrist or other mental health or mental retardation professional. All court orders committed the defendant to a facility or mental health professional and not to ODMH or ODODD.

The act provides that if a defendant requires treatment or continuing evaluation and treatment for a mental illness the court order for treatment or continuing evaluation and treatment must specify that the defendant is to be committed to the ODMH for treatment or continuing evaluation and treatment at a hospital, facility, or agency as

determined to be clinically appropriate by ODMH. Under the act, the court does not commit a mentally ill defendant directly to a facility for treatment or evaluation and treatment. If the court finds that a defendant requires treatment or continuing evaluation and treatment for a developmental disability, the court order for treatment or continuing evaluation and treatment must specify that the defendant receive treatment or continuing evaluation and treatment at an institution or facility operated by ODODD, at a facility certified by ODODD as being qualified to treat mental retardation, at a public or private community mental retardation facility, or by a mental retardation professional. Under continuing law, the court does not commit the defendant to the ODODD.

Technical changes

Because the act requires the court to commit a defendant to the ODMH for treatment in cases of mental illness while continuing to commit a defendant to a facility in cases of developmental disabilities, throughout the act, references in provisions of continuing law related to the commitment of a defendant are amended to differentiate between the commitment of a defendant to the ODMH for placement in cases of mental illness and the commitment of a defendant to a facility in cases of developmental disabilities (*see* R.C. 2945.371(G)(3)(d), 2945.38(B)(1)(b) and (c), (E), and (G), 2945.39(D)(1) and (2), 2945.40(F) and (G), 2945.401(C), (D)(1), (I), and (J)(2), 2945.401 ("chief clinical officer"), and 2945.402).

Abeyance of charges during treatment

(R.C. 2945.38(B)(1)(d))

The act permits the prosecutor, in the case of a defendant who is charged with a misdemeanor offense that is not an offense of violence, to hold the charges in abeyance (suspension) while the defendant engages in mental health treatment or developmental disability services.

Restrictions on a mentally ill defendant's freedom of movement after commitment and placement alternatives for a developmentally disabled defendant

(R.C. 2945.38(B) and (E), 2945.39(D)(1) and (2), and 2945.40(F))

The act provides that in committing a defendant to the ODMH, the court must consider the extent to which the defendant is a danger to the defendant and to others, the need for security, and the type of crime involved. If a court finds that restrictions on the defendant's freedom of movement are necessary, the court must specify the least

restrictive limitations on the defendant's freedom of movement as are determined to be necessary to protect public safety.

Prior law provided that, in determining placement alternatives for a defendant, a court was required to consider the extent to which a defendant was a danger to the defendant and to others, the need for security, and the type of crime involved and order the least restrictive alternative available that was consistent with public safety and treatment goals. The act amends this provision to limit its application to commitment alternatives for defendants who are determined to require treatment or continuing evaluation and treatment for a developmental disability.

The act also amends prior law to require a court to specify the least restrictive limitations on a mentally ill defendant's freedom of movement necessary to protect public safety and to order the least restrictive commitment alternative for a developmentally disabled defendant's commitment in the case of a court committing a defendant for treatment subsequent to retaining jurisdiction over a defendant in given circumstances after the expiration of the maximum time permitted by law for treatment and in the case of committing a defendant for treatment subsequent to finding the defendant not guilty by reason of insanity.

Under law generally unchanged by the act, if a court commits a defendant who has been found incompetent to stand trial for treatment or continuing supervision and treatment, the defendant cannot be granted unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status, except as otherwise provided by this provision. The act states that the court order of commitment may contain provisions that grant the defendant unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status. The prior law did not refer to court orders in connection with exceptions to restrictions on a defendant's unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status.

Reports to be filed by place of defendant's commitment

(R.C. 2945.39(A) and (D) and 2945.40(A), (F), and (G))

Prior law set limits on the length of time that a defendant could be required to undergo treatment or continuing evaluation and treatment for a mental illness or developmental disability (R.C. 2945.38(C)). A court could retain jurisdiction over the defendant under specified circumstances after the expiration of the maximum time permitted for treatment or after the court found that there was not a substantial probability that the defendant would become competent to stand trial even if the defendant was provided with a course of treatment, and to commit the defendant to the ODMH for the defendant's placement by the ODMH for further treatment of the

defendant's mental illness or to commit the defendant for further treatment of the defendant's developmental disability. If a defendant was found not guilty by reason of insanity, the defendant could be committed to the ODMH for treatment of a mental illness or committed to a facility for developmental disability services.

In such cases, the act eliminates a requirement found in prior law that required the place of commitment, following the admission of the defendant, to send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the defendant were filed a copy of all reports of the defendant's current mental condition and other relevant information provided by the prosecutor to the place of the defendant's commitment, including, if provided, a transcript of the hearing held to retain jurisdiction over the defendant following the expiration of the maximum period allowed by law for the defendant's treatment or the hearing held following a finding of not guilty by reason of insanity to determine if the defendant is a mentally ill person subject to hospitalization or a mentally retarded person subject to institutionalization, relevant police reports, and prior arrest and conviction records that pertain to the defendant.

Development of plan to terminate a person's or defendant's commitment or a change in the conditions of the commitment

(R.C. 2945.401)

Prior law, largely unchanged by the act, provided in the case of a court committing a defendant for treatment subsequent to retaining jurisdiction over a defendant in given circumstances after the expiration of the maximum time permitted by law for treatment and in the case of committing a defendant for treatment subsequent to finding the defendant not guilty by reason of insanity (under R.C. 2945.39 and 2945.40) that the "chief clinical officer" of the defendant's place of commitment (amended by the act to the designee of the ODMH or the managing officer of the institution or director of the facility to which a defendant is committed) could recommend the termination of the defendant's or person's commitment or a change in the conditions of the defendant's or person's commitment. If the chief clinical officer, after following specified procedures, proceeded with the officer's recommendation, the chief clinical officer was required to work with the "board of alcohol, drug addiction, and mental health services or community mental health board serving the area" to develop a plan to implement the recommendation. The act amends the entities that must be worked with to "community mental health agencies, programs, facilities, or boards of alcohol, drug addiction, and mental health services."

Commitment to a "program"

The act amends or deletes language in current law, when found in the act, that refers to a defendant's commitment to a "program," because while a defendant may be committed to or placed at an institution or facility, a physical place, a defendant cannot be committed to a program, an ethereal course of treatment.

Indigent drivers alcohol treatment fund

(R.C. 4511.193; conforming changes to R.C. 4503.235 and 4507.164)

The act provides that any court cost imposed as a result of a violation of a municipal ordinance that is a moving violation and designated for an indigent drivers alcohol treatment fund must be deposited into a municipal or county indigent drivers alcohol treatment fund in accordance with continuing law governing the deposit and disbursement of court funds. This court cost must be deposited into the indigent drivers alcohol treatment fund of the county in which the municipal corporation with the applicable ordinance is located if the municipal court that has jurisdiction over that municipal corporation is a county-operated municipal court. The court cost must be deposited into the indigent drivers alcohol treatment fund of the municipal corporation in which the municipal court is located if the municipal court that has jurisdiction over the municipal corporation with the applicable ordinance is not a county-operated municipal court. These provisions apply regardless of whether the court cost is imposed by a municipal court, a mayor's court, or a juvenile court. If the court cost is imposed for a violation of a municipal ordinance of a municipal corporation that is within the jurisdiction of a county court, the court cost must be deposited into the indigent drivers treatment fund of the county in which the county court with jurisdiction over the municipal corporation is located, regardless of whether the court cost is imposed by a county court, a mayor's court, or a juvenile court. The deposit must be made in accordance with continuing law governing the deposit and disbursement of court funds.

Under continuing law, $25 of any fine imposed for a violation of a municipal OVI ordinance is deposited into a municipal or county indigent drivers alcohol treatment fund. The act provides that the $25 must be deposited into the indigent drivers alcohol treatment fund of the county in which that municipal corporation is located if the municipal court with jurisdiction over that municipal corporation is a county operated municipal court. If the municipal court with jurisdiction over that municipal corporation is not a county-operated municipal court, the $25 must be deposited into the indigent drivers alcohol treatment fund of the municipal corporation in which the municipal court is located. These provisions apply regardless of whether the fine is imposed by a municipal court, a mayor's court, or a juvenile court. Under continuing

law, the fines must be deposited in accordance with the law governing the deposit and disbursement of court funds.

Under continuing law, if the fine was imposed for a violation of a municipal OVI ordinance that is within the jurisdiction of a county court, the $25 must be deposited into the indigent drivers treatment fund of the county in which the county court that has jurisdiction over the municipal corporation is located, regardless of whether the fine is imposed by a county court, a mayor's court, or a juvenile court.

The act provides that for purposes of the above provisions, a "county-operated municipal court" means the Auglaize County, Brown County, Carroll County, Clermont County, Columbiana County, Crawford County, Darke County, Erie County, Hamilton County, Hocking County, Holmes County, Jackson County, Lawrence County, Madison County, Miami County, Montgomery County, Morrow County, Ottawa County, Portage County, Putnam County, or Wayne County municipal court.

Report of Clerk of Supreme Court eliminated

(R.C. 149.01)

The act eliminates prior law's requirement for the Clerk of the Supreme Court to make annually, at the end of each fiscal year, in quadruplicate, a report of the transactions and proceedings of the Court for that fiscal year, except receipts and disbursements unless otherwise specifically required by law. Prior law required the report that is eliminated to contain a summary of the Court's official acts and any suggestions and recommendations that were proper. Under former law, on the first day of August of each year, one of the eliminated reports was required to be filed each with the Governor, the Secretary of State, and the State Library, and one kept in the office of the Clerk.

Municipal court jurisdiction over West Millgrove

(R.C. 1901.02)

Prior law provided that the Fostoria Municipal Court had jurisdiction within Perry Township, which included the municipal corporation of West Millgrove. The act moves West Millgrove to the jurisdiction of the Bowling Green Municipal Court.

Qualifications of judges and justices

(R.C. 1901.06, 1907.13, 2301.01, 2501.02, and 2503.01)

The act modifies one of the qualifications under prior law for a municipal judge, a judge of the court of common pleas, a judge of the court of appeals, and the Chief

Justice and a justice of the Supreme Court to hold judicial office by providing that the judge, Chief Justice, or justice has been, for a total of at least six years preceding appointment or the commencement of the judge's, Chief Justice's, or justice's term, engaged in the practice of law (the act eliminates "in this state") or served as a judge of a court of record in any jurisdiction in the United States, or both. The act requires that at least two of the six or more years of prior practice of law or prior service as a judge that qualify the judge, Chief Justice, or justice have been in Ohio.[187]

The act also revises one of the qualifications under continuing law for a county court judge to hold judicial office by providing that the judge has been engaged, for a total of at least six years preceding the judge's appointment or the commencement of the judge's term, in the practice of law (the act eliminates "in this state") *in any jurisdiction in the United States* (added by the act). The act requires that at least two of the six or more years of prior practice of law that qualify the judge have been in Ohio. The act retains the exception under prior law that the six-year legal practice requirement does not apply to a county court judge who is holding office on July 2, 2010, and who subsequently is a candidate for that office.[188]

Law enforcement disposal of unclaimed firearms and dangerous ordnance

(R.C. 2981.12(A))

Continuing law provides for the disposal of unclaimed or forfeited firearms and dangerous ordnance in the custody of a law enforcement agency pursuant to an order of any court of record that has territorial jurisdiction over the political subdivision that employs the law enforcement agency. Firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use or as museum pieces or collector's items may be sold at public auction. The agency must destroy any other unclaimed or forfeited firearms and dangerous ordnance or send the firearms and dangerous ordnance to the Bureau of Criminal Identification and Investigation (BCII) for destruction by the BCII.

The act provides the court with an additional option for the disposal of unclaimed or forfeited firearms and dangerous ordnance in the custody of a law enforcement agency. The court may order a law enforcement agency, prior to the mandatory destruction of the firearms and dangerous ordnance that remain in the custody of the law enforcement agency, to sell the firearms and dangerous ordnance to a federally licensed firearms dealer in a manner that the court considers proper.

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[187] R.C. 1901.06, 2301.01, 2501.02, and 2503.01.

[188] R.C. 1907.13.

LAKE ERIE COMMISSION (LEC)

- Adds five members appointed by the Governor to the Ohio Lake Erie Commission in addition to the Directors of Environmental Protection, Natural Resources, Health, Agriculture, and Transportation, or their designees, who comprise the Commission under law revised in part by the act.

Ohio Lake Erie Commission

(R.C. 1506.21)

The act adds five members appointed by the Governor to the Ohio Lake Erie Commission and specifies that the new members serve at the pleasure of the Governor. Under law revised in part by the act, the Directors of Environmental Protection, Natural Resources, Health, Agriculture, and Transportation, or their designees, comprise the Commission. The act also specifies that six members of the Commission constitute a quorum rather than three members as in former law.

Under continuing law, the Commission has a variety of duties including: (1) ensuring the coordination of state and local policies and programs pertaining to Lake Erie water quality, toxic pollution control, and resource protection, (2) reviewing and making recommendations concerning the development and implementation of policies, programs, and issues for long-term, comprehensive protection of Lake Erie water resources and water quality that are consistent with the Great Lakes Water Quality Agreement and the Great Lakes Toxic Substances Control Agreement, (3) recommending policies and programs to modify Ohio's coastal management program, and (4) taking other specified actions regarding Lake Erie and the Lake Erie basin.

LEGAL RIGHTS SERVICE (LRS)

- Requires establishment not later than December 31, 2011, of a nonprofit entity to provide advocacy services and client assistance for people with disabilities.

- Requires that the entity be established so as to be in compliance with all federal law regarding a protection and advocacy system.

- Requires, not later than September 30, 2012, the Governor to designate the entity as Ohio's protection and advocacy system and client assistance program for people with disabilities and specifies that, on October 1, 2012, the entity becomes the Ohio Protection and Advocacy System.

- Effective October 1, 2012, abolishes the Ohio Legal Rights Service (OLRS), Legal Rights Service Commission, and OLRS Ombudsperson Section and eliminates all statutory provisions regarding the OLRS, Commission, and OLRS Ombudsperson Section, except provisions dealing with access to and confidentiality of client records.

- Provides for management and retention of OLRS personnel and fiscal records and for transfer of OLRS equipment, assets, and designated positions to the Ohio Protection and Advocacy System.

- Requires that compensation that may be awarded in a class action lawsuit pursued by OLRS or, starting October 1, 2012, the Ohio Protection and Advocacy System, for the work of OLRS and the System's attorneys or attorneys employed by another state agency or political subdivision be limited to the actual hourly rate of pay for that legal work.

Ohio Protection and Advocacy System

(Sections 319.20 (primary) and 120.20 to 120.23; R.C. 5123.60, 5123.601 (new), and 5123.602 (new); conforming changes in R.C. 3721.16, 5111.709, 5119.221, 5122.01, 5122.02, 5122.27, 5122.271, 5122.29, 5122.31, 5122.32, 5123.092, 5123.19, 5123.191, 5123.35, 5123.61, 5123.63, 5123.64, 5123.69, 5123.701, 5123.86, 5123.99, and 5126.33; R.C. 5123.601, 5123.602, 5123.603, 5123.604, and 5123.605 (repealed))

Overview

No later than December 31, 2011, the act requires the establishment of a nonprofit entity to provide advocacy services and client assistance for people with disabilities. Temporarily, the entity is to co-exist with the Ohio Legal Rights Service (OLRS), Legal Rights Service Commission, and OLRS Ombudsperson Section. The Governor must, no later than September 30, 2012, designate the entity as Ohio's protection and advocacy system and client assistance program for people with disabilities. On October 1, 2012, the entity becomes the Ohio Protection and Advocacy System, and OLRS, the Commission, and the OLRS Ombudsperson Section are abolished. Except with regard to access to records, confidentiality of records, and certain notification requirements, the act eliminates on October 1, 2012, most of the statutory provisions that apply to OLRS.

OLRS is Ohio's designated protection and advocacy system and client assistance program for children and adults with mental disabilities. To receive federal funds for services to persons who are mentally disabled, federal law requires Ohio to have a protection and advocacy system.[189] OLRS administers several federally funded programs to protect and advocate for the rights of persons with mental illness, mental retardation, developmental disabilities, or other disabilities. OLRS is governed by the Legal Rights Service Commission, which is composed of seven members appointed by the Chief Justice of the Supreme Court, the Speaker of the House of Representatives, and the Senate President.

Timeline for replacement of OLRS

Under the act, not later than December 31, 2011, the administrator of OLRS, in consultation with the Legal Rights Service Commission, must establish a nonprofit entity to provide advocacy services and a client assistance program for people with disabilities. The entity must be established in such a manner that it complies with all federal law regarding a protection and advocacy system and client assistance program.

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[189] 42 U.S.C. 15041 *et seq.*; the specific requirement is in 42 U.S.C. 15043.

OLRS is permitted to subcontract with the entity to perform any functions OLRS is permitted or required to perform. OLRS, the Commission, and the OLRS Ombudsperson Section continue to exist until October 1, 2012.

Not later than September 30, 2012, the Governor is to designate the nonprofit entity as Ohio's protection and advocacy system and client assistance program. On October 1, 2012, the act abolishes OLRS, the Commission, and the OLRS Ombudsperson Section, and the entity becomes the Ohio Protection and Advocacy System. The System is thereafter required to serve as Ohio's protection and advocacy system and client assistance program.

Eliminated provisions

In contrast to the statutory enumeration of specific powers and duties of OLRS and its administrator, the act provides that the Ohio Protection and Advocacy System is to provide advocacy services for people with disabilities, as provided under the federal "Developmental Disabilities Assistance and Bill of Rights Act of 2000,"[190] and a client assistance program, as provided under the federal "Workforce Investment Act of 1998."[191] It authorizes the System to establish any guidelines necessary for its operation.

In establishing a general duty for the Ohio Protection and Advocacy System to provide advocacy services and a client assistance program, the act eliminates on October 1, 2012, many OLRS-related statutory provisions, including the following:

(1) A description of specific populations to be served, including persons with mental illness or developmental disabilities;

(2) A requirement that there be an administrator, including the requirement that the administrator be an attorney;

(3) The administrator's responsibilities, including preparing a budget and submitting it to the General Assembly and obtaining the OLRS Commission's approval before filing any class action lawsuit;

(4) The administrator's membership on the Medicaid Buy-In Advisory Council;

(5) A requirement that the administrator be notified of any proposed major aversive intervention for a mentally ill patient or a resident of an institution for the mentally retarded;

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[190] 42 U.S.C. 15001.

[191] 29 U.S.C. 732.

(6) Notice requirements regarding the individuals served by OLRS;

(7) Specific authority for an individual served by OLRS or denied service to file a grievance;

(8) Authority to conduct public hearings;

(9) Authority to ask any governmental agency for cooperation, assistance, services, or data necessary to enable the OLRS to perform its duties;

(10) Indemnification of the administrator, attorneys, and staff in any judgment awarded or amount negotiated in a settlement, and for any court costs or legal fees incurred in defense of the claim;

(11) All functions of the OLRS Ombudsperson Section, which mediates complaints and attempts to resolve disputes at the lowest administrative level appropriate;

(12) Powers and duties related to court proceedings.

Continuing provisions

The act maintains all of the following OLRS-related statutory provisions as powers and duties of the Ohio Protection and Advocacy System:

(1) Access to the records of the individuals who may be represented by the System;

(2) Confidentiality of records received or maintained by the System;

(3) Authority to compel testimony by subpoena;

(4) Eligibility for grants or contracts provided through the Ohio Developmental Disabilities Council;

(5) Exemption from the general requirement that reports be made of abuse or neglect regarding persons with mental retardation and developmental disabilities.

Transition provisions

Any aspect of the function of OLRS, the Legal Rights Service Commission, and the OLRS Ombudsperson Section that are commenced, but not completed on October 1, 2012, are to be completed by the Ohio Protection and Advocacy System in the same manner, and with the same effect, as if the function were completed by OLRS. The act specifies that no validation, cure, right, privilege, remedy, obligation, or liability

pertaining to OLRS is lost or impaired by reason of the abolishment of OLRS, and will instead be administered by the System. Any action or proceeding related to the function or duties of OLRS pending on September 30, 2012, is not to be affected by the abolishment of OLRS, but is required to be prosecuted or defended in the name of the System. In those actions and proceedings, on application to the court, the System is to be substituted as a party.

The act provides for OLRS records to be handled as follows after OLRS is abolished:

--All employee personnel records must be retained by the Office of Budget and Management (OBM) according to the applicable retention schedules and then transferred to the Department of Administrative Services to be kept permanently.

--All fiscal records must be retained by OBM until state and federal audits are conducted, audit reports are released, and all discrepancies are resolved. The records must then be destroyed according to the applicable retention schedules.

--All other general administrative and information technology records must be retained by OBM according to the applicable retention schedules.

The act requires all equipment and assets of OLRS, as well as any employment positions designated for transfer by OBM, to be transferred to the System pursuant to an agreement between OLRS and the System.

OLRS and Ohio Protection and Advocacy System class action lawsuits

(R.C. 5123.60 and 5123.602)

The act requires that the compensation that may be awarded in a class action lawsuit pursued by OLRS for the work of OLRS attorneys or attorneys employed by another agency or political subdivision of the state be limited to the actual hourly rate of pay for that legal work. The act extends this requirement to the Ohio Protection and Advocacy System on October 1, 2012.

Public notice requirements

- Revises the requirements for a newspaper to qualify as a "newspaper of general circulation" in which public notices and advertisements are published, and applies the definition to the entire Revised Code.

- Eliminates the requirement that publication be made in a newspaper *published in* a political subdivision, in two newspapers, or in two newspapers of opposite politics.

- Eliminates the requirement that a newspaper have second-class postal privileges, and instead uses the standard of publishing notices and advertisements in a newspaper of general circulation.

- Authorizes mediation under a program operated by the court of common pleas if a newspaper's qualifications as a newspaper of general circulation are in question.

- Specifies that if a codified statute or administrative rule requires a state agency or political subdivision to publish a notice or an advertisement two or more times in a newspaper and the statute or rule authorizes the use of an alternative publication procedure, the state agency or political subdivision may satisfy the multiple publication requirement by publishing the first notice or advertisement in its entirety in a newspaper of general circulation (which may be made in a pre-printed insert), and by publishing a second, abbreviated notice or advertisement in that newspaper and on the newspaper's Internet web site, if any.

- Requires the abbreviated notice to refer to the state public notice web site established under the act, on which web site the entire notice or advertisement must be posted.

- Requires each newspaper to establish a "government rate" for publication of local government public notices and advertisements, which cannot exceed the lowest classified advertising rate and lowest insert rate paid by other advertisers.

- Requires newspapers to post the notices and advertisements free on the newspaper's Internet web site, if the newspaper has one.

- Requires all legal advertisements and notices to be printed in a newspaper of general circulation and posted on the state public notice web site.

- Allows county auditors to charge a land or home owner a flat fee for the cost of publishing the land or home on the delinquent real property or delinquent manufactured home tax lists, and to place the fee as a lien on tax delinquent parcels or manufactured homes if it is not paid.

- Authorizes publication of a succinct summary of a local government's ordinance, resolution, or rule in a newspaper of general circulation, rather than the entire ordinance, resolution, or rule.

Municipal parking facilities

- Allows the operation of municipal parking facilities (1) by municipal officials and employees, (2) by any other person or specified public agency retained by a municipal corporation, or (3) under a public parking franchise granted to any person or specified public agency for a term of not more than 30 years upon a lump sum or a periodic fee payment, or both.

Political subdivision shared services

- Authorizes, generally, political subdivisions to enter into agreements with other political subdivisions to perform services for one another.

- Requires political subdivisions that enter into such an agreement to obtain the written consent of a non-participating subdivision before the agreement is performed within that non-participating subdivision.

Regional councils of governments

- Authorizes a regional council of governments to enter into unit price contracts related to buildings or structures on behalf of member political subdivisions.

Local governments in fiscal distress

- Creates a "**fiscal caution**" designation for municipal corporations, counties, and townships (hereinafter, "local governments").

- Requires local governments in **fiscal watch** to provide a financial recovery plan that identifies the actions to be taken, includes a schedule detailing the approximate dates for beginning and completing those actions, and provides a five-year forecast reflecting the effects of those actions.

- With respect to local governments in **fiscal emergency**:

--Eliminates the requirement that, upon a fiscal emergency, a financial planning and supervision commission be established for all local governments and, instead, specifies that for villages or townships with a population of less than 1,000, the Auditor of State will serve as the financial supervisor with all the powers and responsibilities of a commission;

--Requires that a local government's financial plan include a five-year forecast reflecting the effects of the actions specified in the plan and that the plan be updated annually;

--If a local government fails to submit a financial plan, or fails to substantially comply with it, and the commission gives its certification, requires that all state funding (other than benefit assistance to individuals) be escrowed until a plan is submitted or compliance is achieved;

--In addition to its ongoing authority to limit a local government's general fund expenditures, permits a commission to limit expenditures from any other fund if deemed prudent;

--Adds that, if an officer of a local government in fiscal emergency is convicted of certain violations of ongoing law, the officer is ineligible to hold any public office in Ohio or be employed by a public entity in Ohio for seven years after the conviction;

--Provides for the dissolution of municipal corporations and townships that are in fiscal emergency and meet specified conditions.

- Clarifies that the Auditor of State is to be reimbursed for all expenses incurred with respect to a fiscal emergency, fiscal watch, or fiscal caution from an appropriation for that purpose, and that the Controlling Board may provide sufficient funds if necessary.

Cost savings and modified work weeks

- Extends, from through fiscal year 2011 to through fiscal year 2013, the authority for a county appointing authority to establish a mandatory cost savings program in which its exempt employees must participate, and expands the program to apply to townships and municipal corporations.

- Expands the definition of fiscal emergency for purposes of a county, township, or municipal corporation implementing mandatory cost savings days for its exempt employees in the event of a fiscal watch or fiscal emergency occurring in fiscal year 2014 or later.

- Allows a county, township, or municipal corporation appointing authority to establish a modified work week schedule program applicable to its exempt employees.

County centralized services

- Authorizes a board of county commissioners to require county offices to use centralized purchasing, printing, transportation, vehicle maintenance, human resources, revenue collection, and mail operation services.

- Defines and limits the human resource services that a board may centralize.

- Prohibits the board from centralizing certain purchasing, printing, and collection services.

Continuing education for county recorders

- Requires a county recorder to attend and successfully complete at least 15 hours of continuing education courses during the first year of the recorder's term of office, and at least another eight hours of continuing education courses each year of the remaining term.

- Requires a county recorder, for subsequent terms of office, to attend and successfully complete at least eight hours of continuing education courses in each year of a subsequent term of office.

- Requires the Ohio Recorders' Association to approve continuing education courses, administer the continuing education requirements, and to send a list to the Auditor of State of the courses and number of hours each county recorder has successfully completed.

- Requires that the Association issue an informational "failure to complete notice" to any county recorder who fails to successfully complete the required number of hours of continuing education courses.

- Requires the board of county commissioners to approve, from money appropriated to the county recorder, a reasonable amount requested by the county recorder to cover the recorder's costs of continuing education.

Medical care for confined persons

- Establishes the Medicaid reimbursement rate as the rate of payment for medical care provided to persons confined in multicounty, municipal-county, or multicounty-

municipal correctional centers by medical providers not employed by or under contract with a municipal corporation or township participating in the center.

Joint police districts

- Authorizes boards of township trustees and the legislative authorities of one or more contiguous municipal corporations, by adoption of a joint resolution, to create a joint police district comprising all or any part of the townships or municipal corporations as are mutually agreed upon, rather than a joint township police district.

- Creates a joint police district board to govern the joint police district.

- Grants the powers of a joint township police district board to a joint police district board, such as the power to levy a property tax to defray all or a portion of the district's expenses in providing police protection, and to issue bonds for buying police equipment.

- Authorizes a township or municipal corporation to join or to withdraw from an existing joint police district.

Township noise regulations

- Eliminates a date restriction and applies a township noise regulation to any business or industry regardless of when it came into existence.

Competitive bidding thresholds

- Increases specific competitive bidding thresholds for townships and villages.

- Increases from $10,000 to $25,000 the threshold amount that triggers competitive bidding for service contracts entered into by a board of park trustees for municipal park improvements.

Police constables

- Adds, as one of the methods by which a limited home rule township may meet the requirement to provide law enforcement for the township, designating one or more police constables.

Township mergers

- Authorizes one or more townships to merge into a contiguous township, creating a new township, by initiative petition of the voters of each township proposed for merger.

- Authorizes the boards of township trustees to submit a question of merger to the voters of the townships to be merged, for their approval.

- Requires merging townships to enter into a merger agreement that contains specific terms and conditions of the merger, but if no agreement is entered into or if only partial agreement is reached, requires the new township to function under default terms and conditions prescribed by the act.

- Prohibits a merger from being proposed again for at least three years if the merger was disapproved by the voters.

Joint projects

- Authorizes state institutions of higher education to participate in joint projects with a joint recreation district and other contracting subdivisions.

- Adds educational facilities as one of the projects that may be jointly acquired, constructed, operated, or maintained.

Boards of health

- Authorizes a board of county commissioners to donate or sell property, buildings, and furnishings to any board of health of a general or combined health district.

County spending plans

- Authorizes a board of county commissioners to adopt a quarterly spending plan or amended spending plan for appropriations from any county fund for any county office, department, or division under certain circumstances.

- Authorizes the board also to adopt a two-year spending plan or amended spending plan with a quarterly schedule of expenses and expenditures of appropriations for personal services and payrolls from any county fund, for any county office, department, or division under certain circumstances.

- Requires the board of county commissioners to give written notice to the county office, department, or division for which it intends to adopt a plan.

Township expenses

- Allows townships to compensate the township fiscal officer and township trustees from various township funds, in addition to the township general fund, based on the proportion of time the fiscal officer or township trustee spends providing services related to each fund.

- Requires the township fiscal officer and township trustees to certify the percentage of time spent working on matters to be paid from the township general fund and other township funds.

- Permits a board of township trustees to request that expenses incurred by a county board of elections in relation to a township tax levy ballot issue be withheld from a particular township fund credited with tax revenue in a tax settlement.

Bonds issued for real property

- Allows general obligation bonds issued by a county to finance the acquisition or construction of real property to have a maximum maturity of up to 40 years if supported by a certification as to the property's estimated useful life.

Regional Transit Authority

- Until November 5, 2013, (1) creates an alternative procedure for municipal corporations and townships to join a regional transit authority (RTA) that levies a property tax and that includes in the RTA membership, political subdivisions that are located in a county having a population of at least 400,000 by placing the issue on the ballot and (2) allows a municipal corporation or township that is a member of such an RTA to withdraw from the RTA by placing the issue on the ballot; without end, allows a municipal corporation or township that withdraws from any such RTA after placing the issue on the ballot to contract for the provision of transportation services.

- Prohibits an RTA from extending its service or facilities into another political subdivision without first notifying it and gives the political subdivision 30 days after receiving the notice to comment on the proposal.

- Requires the Ohio Public Transit Association, in consultation with the Ohio Municipal League, the County Commissioners Association of Ohio, and the Ohio Township Association, to study regional transit authority expansion outside territorial boundaries and provide a report to the General Assembly and the Governor not later than December 31, 2011.

Municipal corporation mergers

- Creates a new procedure whereby one or more municipal corporations, whether or not adjacent to one another, may merge with an adjacent municipal corporation; the unincorporated area of a township may merge with one or more municipal corporations; or one or more municipal corporations, whether or not adjacent to one another, may merge with an adjacent unincorporated area of a township.

- Requires the legislative authorities of the municipal corporations and the township proposing a merger to enter into a merger agreement that specifies the conditions of the proposed merger in identical ordinances and resolutions adopted by a simple majority vote of each legislative authority.

- Requires the legislative authorities of the municipal corporations and township, if any, proposed for merger to present the question of merger to the voters for their approval.

- Mandates that a municipal corporation merging into a township has only the rights, powers, and responsibilities afforded by law to townships, and that all other authority ceases to exist on the effective date of the merger.

County automatic data processing boards

- Permits the board of county commissioners to adopt a resolution requiring the county automatic data processing board to assume the duties of the county records commission and the county microfilming board, which resolution must specify the date on which the duties will be transferred.

- Requires, if such a resolution is adopted to expand the duties of the county automatic data processing board, the prosecuting attorney, county engineer, county coroner, sheriff, and a judge of the court of common pleas to be added to the membership of the board.

- Specifies that, after such a resolution is adopted, no county office may purchase, lease, operate, or contract for the use of any automatic data processing equipment, software, or services; microfilming equipment or services; records center or archives facilities; or any other image processing or electronic data processing or record-keeping equipment, software, or services without prior approval of the board.

- Specifies that, if such a resolution is adopted, the functions, powers, duties, and obligations of the county records commission and the county microfilming board are transferred and assigned to, devolved upon, and assumed by the county automatic data processing board, and the county automatic data processing board must be deemed to constitute the continuation of the county records commission and the county microfilming board.

- Permits the county automatic data processing board to establish an automatic data processing center, microfilming center, records center, archives, and any other centralized or decentralized facilities it considers necessary to fulfill its duties, and specifies that these centralized facilities must be used by all county offices.

- Requires the county auditor to prepare an annual estimate of the revenues and expenditures of the county automatic data processing board and submit it to the board of county commissioners, and specifies that the automatic data processing board's funds are to be disbursed by the county auditor's warrant drawn on the county treasury five days after receipt of a voucher approved by a majority of that board and by a majority of the board of county commissioners.

- Permits a county automatic data processing board to enter into a contract with the legislative authority of a political subdivision or special district, with the board of county commissioners or the automatic data processing board or microfilming board of any other county, or with any other federal or state governmental agency to provide microfilming, automatic data processing, or other image processing or electronic data processing or record-keeping services to any of them.

- Expands the authority of a county microfilming board to include other image processing equipment, software, or services.

- For a county automatic data processing board that is not expanded by resolution, expands its authority to include electronic data processing or record-keeping equipment, software, or services.

Marinas

- Eliminates the licensure and inspection of marinas.

Sewer and water districts

- Expands the scope of the contracting authority of a county sewer district when conveying water supply facilities and sewer facilities to a municipal corporation.

- Declares that whenever any portion of a regional water and sewer district is incorporated as, or annexed to, a municipal corporation, the area incorporated or annexed remains under the jurisdiction of the district for purposes of the acquisition, construction, or operation of a water resource project until the project's completion or abandonment.

- Establishes new contracting authority for regional water and sewer districts regarding the conveyance of water resource projects to municipal corporations.

Public defender salaries

- Prohibits the pay ranges for a county public defender and a joint county public defender from exceeding the pay ranges for county prosecutors.

Nontherapeutic abortions

- Prohibits the use of political subdivision funds, with limited exception, for paying the costs, premiums, or charges associated with a health care policy, contract, or plan that provides coverage, benefits, or services related to nontherapeutic abortion.

- Defines "nontherapeutic abortion" to be any abortion that is performed when the life of the mother would not be endangered if the fetus was carried to term, or the pregnancy was not the result of a reported rape or incest.

- Allows for the use of political subdivision funds to pay for the costs, premiums, or charges associated with a health care policy, contract, or plan that includes a rider or other provision offered on an individual basis that allows an individual to obtain a nontherapeutic abortion if the individual pays all of the costs associated with the rider or other provision.

- Prohibits the use of any institution, structure, equipment, or physical asset that is owned, leased, or controlled by the state or any political subdivision, with limited exception, for performing or inducing a nontherapeutic abortion.

Attorney General collection of debts

- Authorizes a political subdivision to certify past due receivables to the Attorney General for collection.

Public records

- Exempts from public records law usage information, including the names and addresses of specific residential and commercial customers of municipally owned or operated utilities.

- Applies a provision allowing journalists to request the address of certain government employees to journalistic requests for customer information maintained by a municipally owned or operated public utility, other than private financial information.

- Consolidates, into one provision of law, the records retention procedure that formerly applied recurrently to municipal corporations, school districts, educational service centers, libraries, special taxing districts, and townships.

- Revises and clarifies the procedure used by the Ohio Historical Society for selecting records of continuing historical value before the entities described above dispose of records.

- Expands the training or educational programs the Attorney General may offer to include the records retention procedure.

County microfilming boards

- Moves the date for meetings of a county microfilming board from the third Monday in January to the second Monday in January.

Sanitary districts

- Establishes procedures for the exclusion of a municipal corporation or a township from the territory of a sanitary district established solely for the reduction of biting arthropods.

Township cemeteries

- Authorizes boards of township trustees to make and enforce all needful rules and regulations for burial, interment, reinterment, or disinterment in the township cemetery.

Sheriff sales

- Specifies that notices of sheriff sales must be published once a week for at least three consecutive weeks before the day of the sale.

Disbursement of court filing fees

- Specifies that disbursements of certain fees collected by local trial courts are subject to a court report listing the use of the funds or appropriation by the board of county commissioners or, in the case of certain fees collected by municipal courts that are not county-operated, appropriation by the legislative authority of the municipal corporation.

Publication of public notices and advertisements

Sub. H.B. 101 of the 126th General Assembly created the Local Government Public Notice Task Force, consisting of 22 members, and assigned the Task Force the task of reviewing public notice requirements for local governments to decide if the notice requirements were still needed, to determine if there were other methods to fulfill those requirements, and to determine if any changes in the publication methods would enhance public availability and provide cost savings to local governments. The Task Force issued a report of its findings on May 31, 2008. The act implements a few of

the Task Force's recommendations. The act also revises some of the publication requirements for state agencies.

Qualification standards for a "newspaper of general circulation"

(R.C. 7.12(A); over 200 R.C. sections in the act; repeal of R.C. 7.14 and 701.04)

The act modifies the requirements for a newspaper to qualify as a "newspaper of general circulation" in which legal publication of notices and advertisements are made as required by law. The act revises numerous local government notice and advertisement statutes throughout the Revised Code to provide that publication must be made in a newspaper *of general circulation in* a political subdivision, rather than in a newspaper *published in* the political subdivision. The act eliminates the requirements of publication in newspapers of opposite politics, in two newspapers, or in newspapers with second-class mailing privileges and instead uses the standard of publishing notices and advertisements in a newspaper of general circulation. Except for daily law journals that existed before July 1, 2001, for purposes of the Revised Code, the act defines a "newspaper" or "newspaper of general circulation" as a publication bearing a title or name that is regularly issued at least once a week, and that:

- Is printed in the English language using standard printing methods, being not less than eight pages in the broadsheet format or 16 pages in the tabloid format.

- Contains at least 25% editorial content, including local news, political information, and local sports.

- Has been published continuously for at least three years immediately preceding legal publication by the state agency or political subdivision.

- Is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication, or in the state, if legal publication is made by a state agency, by proof of a United States Postal Service "Statement of Ownership, Management, and Circulation," PS Form 3526, filed with the local postmaster, or by proof of an independent audit of the publication performed within the 12 months immediately preceding legal publication.

- Has the ability to add subscribers to its distribution list.

Under prior law, to qualify as a newspaper in which notices and advertisements could be published, the newspaper had to be *published in* the political subdivision, or if no newspaper was published in the subdivision, it had to be of general circulation therein. If there were less than two newspapers published in the political subdivision, then publication had to be made in a newspaper regularly issued at stated intervals

from a known office of publication located in the political subdivision. Under prior law, except for daily law journals in which a judge served legal notices and published the court calendar and other matters pending in the court, the newspaper had to bear a title or name, be regularly issued as frequently as once a week for a definite price or consideration paid for by not less than 50% of those to whom distribution was made, had a second-class mailing privilege, be not less than four pages, be published continuously during the immediately preceding one-year period, and be circulated generally in the subdivision in which it was published. Additionally, the newspaper had to be of a type to which the general public resorted for passing events of a political, religious, commercial, and social nature, current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.

The act repeals two provisions[192] that allow publication of notices in a newspaper of general circulation when no newspaper is published in the place designated in a statute or when a publisher refuses to insert a notice in the publisher's newspaper. This "out" is no longer needed because the act establishes the general standard that notices and advertisements are to be published in a newspaper of general circulation in the political subdivision.

Mediation procedure if newspaper's qualifications are in question

(R.C. 7.12(B))

Any person who questions whether a publication is a newspaper of general circulation in which notices or advertisements may be published may request mediation to determine the matter. Under the act, the person who questions the newspaper's qualifications may deliver a written request for mediation to the publisher of the publication and to the court of common pleas of the county in which is located the political subdivision in which the publication is circulated, or in the Franklin County Court of Common Pleas if legal publication is required to be made by a state agency. The court of common pleas must appoint a mediator, and the parties must follow the procedures of the mediation program operated by the court.

Alternative publication procedure for notices or advertisements

(R.C. 7.10, 7.16, and various R.C. sections in the act)

In many instances, continuing law or an administrative rule requires a state agency or political subdivision to publish notices or advertisements more than twice. The act establishes an alternative publication procedure that political subdivisions, and,

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[192] R.C. 7.14 and 701.04.

in some cases, state agencies, may choose to follow for publication of notices and advertisements. The act provides that if a codified statute or administrative rule requires a state agency or political subdivision to publish a notice or advertisement two or more times in a newspaper of general circulation *and the statute or rule refers to* the alternative publication procedure, the *first* publication of the notice or advertisement must be made in its entirety in a newspaper of general circulation and may be made in a pre-printed insert in the newspaper. But the *second* publication otherwise required by that codified statute or administrative rule may be made in abbreviated form in a newspaper of general circulation in the state or in the political subdivision, as designated in that statute or rule, and on the newspaper's Internet web site (if the newspaper has one). The state agency or political subdivision may eliminate any further newspaper publications required by that codified statute or administrative rule, provided that the second, abbreviated notice or advertisement in the newspaper:

(1) Is published in the newspaper of general circulation in which it was first published and on that newspaper's Internet web site, if the newspaper has one;

(2) Includes a title, followed by a summary paragraph or statement that clearly describes the specific purpose of the notice or advertisement, and includes a statement that the notice or advertisement is posted in its entirety on the state public notice web site established by the Office of Information Technology.[193] The notice or advertisement also may be posted on the state agency's or political subdivision's web site.

(3) Includes the Internet addresses of the state public notice web site, and of the newspaper's and state agency's or political subdivision's web site, if the notice or advertisement is posted on those web sites, and the name, address, telephone number, and electronic mail address of the state agency, political subdivision, or other party responsible for the publication.

In choosing to use this alternative publication procedure, a notice or advertisement published on a web site must be published in its entirety in accordance with the codified statute or administrative rule that requires publication. And if a state agency or political subdivision does not operate and maintain, or ceases to operate and maintain, an Internet web site, and if the state public notice web site is not operational, the state agency or political subdivision is prohibited from publishing a notice or advertisement under this alternative procedure, but instead must comply with the original publication requirements.

The act does not revise laws that already require a less stringent publication standard whereby a local government may refer to its web site in the first newspaper

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[193] *See* R.C. 125.182.

publication of a notice or advertisement, for example R.C. 307.37, 505.75, or 731.14, among other statutes. The act also does not eliminate the requirement that a board of elections post election notices on its web site, if any is operated and maintained by the board, for 30 days prior to an election (*see,* for example, R.C. 511.34 or 5705.196).

The act emphasizes that all legal advertisements and notices must be printed in newspapers of general circulation and also must be posted on the state public notice web site and on a newspaper's Internet web site, if the newspaper has one.

Government rate for publication and free Internet postings

(R.C. 7.10 and 7.11)

Continuing law allows newspaper publishers to charge the public officers of state and local governments for publication of advertisements, notices, and proclamations, except those relating to proposed amendments to the Ohio Constitution. The act requires newspaper publishers to establish and charge public officers of a county, municipal corporation, township, school, or other political subdivision (but not public officers of the state) a government rate for the publication of advertisements, notices, and proclamations, which must include free publication of these items on the newspaper's Internet web site, if the newspaper has one. The government rate cannot exceed the lowest classified advertising rate and lowest insert rate paid by other advertisers. The act requires election notices, court session notices, tax notices, bridge and pike notices, notices to contractors, and other notices of interest to taxpayers to be published in display form, and specifies that the government rate, rather than the commercial rate, must be charged for publishing various types of notices printed in display form. Under prior law, newspaper publishers charged the same rates they charged under annual contracts for a like amount of space to other advertisers who advertised in the newspaper's general display advertising columns.

Costs of publishing delinquent tax lists

(R.C. 319.54, 4503.06(H), and 5721.04)

Continuing law allows county auditors to apportion the costs of publishing delinquent manufactured home tax lists, delinquent personal or real property tax lists, delinquent vacant land tax lists, and display notices among the taxing districts in proportion to the amount of delinquent taxes advertised in each taxing district. The act creates another method by which county auditors may collect publication costs. Under the act, a county auditor may charge the owner of a home or land on one of those tax lists a flat fee for the cost of publishing the list and, if the fee is not paid, may place the fee upon the tax duplicate as a lien on each listed home or land, to be collected as other manufactured home or real property taxes.

Publication of delinquent tax lists

(R.C. 5719.04 and 5721.03)

The act provides that a delinquent personal property tax list, delinquent tax list, and delinquent vacant land tax list must be published in a "newspaper of general circulation," as defined in the act, and may be published on a pre-printed insert in the newspaper. Otherwise, the act does not change the number of times these lists must be published, nor does it allow publication of these lists under the alternative publication procedure.

Under the act, the cost of the second publication of any one of these lists cannot exceed three-fourths of the cost of the first publication of the list.

Notices pertaining to sales or foreclosures of delinquent land

(R.C. 323.73(A), 2329.26(A), 5721.18(B), 5721.31(C), and 5722.13)

Notices of public auctions of abandoned land or land held by a subdivision under a land reutilization program, of sales of land taken in execution of a judgment, of foreclosures, and of sales of delinquent land tax certificates must continue to be published the number of times required by continuing law and may not be published under the act's alternative publication procedure. However, the act requires that these notices be published in a "newspaper of general circulation."

Publishing summaries of local government rules, ordinances, and resolutions

(various R.C. sections in the act)

Prior law, for example R.C. 307.791, 705.16, and 731.21, among other statutes, provided that upon passage of a local government's rule, ordinance, or resolution, its complete text, or a succinct summary of it, had to be published in the newspaper or, in some cases, in two newspapers of general circulation. The act requires that a succinct summary of the rule, ordinance, or resolution be published in a newspaper of general circulation, rather than the entire rule, ordinance, or resolution.

Outsourcing or franchising of municipal parking facilities

(R.C. 737.022; Section 737.30)

The act authorizes a municipal corporation (or Director of Public Safety, if applicable) to make and issue rules and regulations concerning the regulation or prohibition of parking on public ways (including a street, road, highway, and sidewalk)

or public property. Under prior law, this authority was specific to a Director of Public Safety and applied to streets, alleys, highways, and public property.

Under the parking rules and regulations, the legislative authority of a municipal corporation may establish and maintain reasonable fees and charges for the privilege of parking in permitted locations; it also may install and operate parking meters or other devices or facilities to collect those fees and charges. The meters, devices, and facilities may be managed and operated directly by municipal officials and employees or by any other person or public agency (including by definition, any county, municipal corporation, port authority, regional transit authority, airport authority, or transportation improvement district) retained by the municipal corporation. The act does not specify any terms for retaining a person or public agency to operate the parking meters, devices, or facilities.

As an alternative, the act authorizes a municipal corporation to grant a public parking franchise to a person or defined public agency. The public parking franchise, which cannot exceed 30 years, is a property right and privilege (1) to occupy and use one or more public ways for the operation of an on-street parking system in all or part of the municipal territory or (2) to install and operate parking meters or other devices or facilities on municipal public property.

The legislative authority of the municipal corporation must approve the terms and conditions in a public parking franchise agreement and may require the person or public agency receiving the franchise to pay to the municipal corporation a lump-sum fee, a periodic fee, or both. The act specifies that public parking franchises "shall not be deemed to be a public utility or an entity otherwise subject to regulation by any state agency or commission."

As determined by the municipal legislative authority, a parking violation may be a criminal misdemeanor punishable as provided by municipal ordinance or a civil infraction for which a charge is prescribed. If the parking violation is a criminal misdemeanor, it must be enforced by authorized law enforcement officers.

Political subdivision shared services

(R.C. 9.482)

The act authorizes political subdivisions to enter into agreements with other political subdivisions under which a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another contracting recipient subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render. The respective legislative authorities

of the contracting political subdivisions must approve the subdivisions' participation in such an agreement.

If the agreement does not determine the officer, office, department, agency, or other authority by which the powers and duties of a contracting political subdivision are to be exercised or performed, the legislative authority of the contracting political subdivision must determine and assign the powers and duties.

The contracting authority is limited in that a political subdivision must not enter into any agreement to levy any tax or to exercise, with regard to public moneys, any investment powers, perform any investment functions, or render any investment service on behalf of a contracting political subdivision. This limitation does not preclude agreements for the shared collection, administration, or enforcement of taxes. Similarly, the limitation does not preclude subdivisions from creating and operating joint economic development districts or joint economic development zones as authorized by continuing law.

An agreement does not suspend the possession by a contracting recipient political subdivision of any power or function that is exercised or performed on its behalf by another contracting political subdivision under the agreement.

The act prohibits any power from being exercised, any function from being performed, or any service from being rendered by a contracting political subdivision pursuant to an agreement within a political subdivision that is not a party to the agreement, without first obtaining the written consent of the political subdivision that is not a party to the agreement and within which the power is to be exercised, a function is to be performed, or a service is to be rendered.

The act specifies that the political subdivision tort liability law applies to political subdivisions that are parties to an agreement and to their employees when they are rendering a service outside the boundaries of their employing political subdivisions under an agreement. Under continuing law, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function, except in cases of negligence.

The act also allows employees acting outside the boundaries of their employing political subdivision, while providing a service under an agreement, to participate in any pension or indemnity fund established by the political subdivision to the same extent as while they are acting within the boundaries of the political subdivision, and entitles them to all the rights and benefits of the Workers' Compensation Law to the

same extent as while they are performing a service within the boundaries of the political subdivision.

Regional councils of governments

(R.C. 167.081)

The act permits a regional council of governments[194] to enter into a contract that establishes a unit price for, and provides upon a per unit basis, materials, labor, services, overhead, profit, and associated expenses for the repair, enlargement, improvement, or demolition of a building or structure if the contract is awarded pursuant to a competitive bidding procedure of a county, municipal corporation, or township or a special district, school district, or other political subdivision that is a council member; a statewide consortium of which the council is a member; or a multistate consortium of which the council is a member. The act specifies that purchases under such a contract are exempt from any competitive selection or bidding requirements otherwise required by law.

Additionally, the act permits a county, municipal corporation, or township and a special district, school district, or other political subdivision that is a council member to participate in such a contract. However, such a council member is not entitled to participate in such a contract if it has received bids for the same work under another contract, unless participation in the council's contract will enable the council member to obtain the same work, upon the same terms, conditions, and specifications, at a lower price.

The act specifies that a public notice requirement pertaining to the contract must be considered to have been met if the public notice is given once a week for at least two consecutive weeks in a newspaper of general circulation within a county in Ohio in which the council has members and if the notice is posted on the council's Internet web site for at least two consecutive weeks before the date specified for receiving bids.

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[194] Chapter 167. of the Revised Code permits political subdivisions to enter into an agreement creating a regional council of government to, among other powers, promote cooperative arrangements and coordinate action among its members, contract among its members and other governmental agencies and private entities to address problems common to its members, and "perform. . . . functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern." Governmental council members, the state, and the federal government may give the regional council moneys, real and personal property, and services. Any political subdivision may contract with the regional council to provide a service to or receive a service from the council, or authorize the council to perform any function or render any service on behalf of the political subdivision.

Local governments in fiscal distress

Fiscal caution

(R.C. 118.025)

The act creates a "fiscal caution" designation for municipal corporations, counties, and townships (hereinafter, "local governments"). The Auditor of State is to develop guidelines for identifying fiscal practices and budgetary conditions of these local governments that, if uncorrected, could result in a future declaration of a fiscal watch or fiscal emergency as provided in ongoing law. If the Auditor of State determines that a local government is engaging in any of those practices or that any of those conditions exist, the Auditor of State may declare the local government to be under a "fiscal caution."

Upon such a declaration, the Auditor of State must promptly notify the local government and request it to provide written proposals for discontinuing or correcting the fiscal practices or budgetary conditions that prompted the declaration and for preventing it from experiencing further fiscal difficulties that could result in a declaration of fiscal watch or fiscal emergency. The Auditor of State, or a designee, may visit and inspect any local government declared to be under a fiscal caution, provide technical assistance to the local government in implementing proposals to eliminate the designated practices or budgetary conditions, and make recommendations concerning those proposals.

If the Auditor of State finds that a local government declared to be under a fiscal caution has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration, and if the Auditor of State considers it necessary to prevent further fiscal decline, the Auditor of State may determine that the local government should be in a state of fiscal watch.

Fiscal watch

(R.C. 118.023)

The act requires the mayor of a municipal corporation, the board of county commissioners of a county, or the board of township trustees of a township for which a fiscal watch was declared, within 120 days after that declaration was made, to submit to the Auditor of State a financial recovery plan that identifies the actions to be taken to eliminate all of the conditions that prompted the declaration. The plan must include a schedule detailing the approximate dates for beginning and completing those actions and a five-year forecast reflecting the effects of the actions. For good cause shown, the

Auditor of State may extend the amount of time by which a financial recovery plan is required to be filed. The plan is subject to review and approval by the Auditor of State.

If a feasible financial recovery plan is not submitted within the 120-day time period or within any extension of time granted to the local government, the Auditor of State must declare that a fiscal emergency condition exists.

Fiscal emergency

Changes regarding financial planning and supervision commissions

(R.C. 118.05)

The act provides an exemption to the ongoing requirement that, upon the occurrence of a fiscal emergency in a local government, a financial planning and supervision commission is established for that local government. Under the act, a commission is *not* established with respect to any village or township with a population of less than 1,000 as of the most recent federal decennial census. Upon the occurrence of a fiscal emergency in such a village or township, the Auditor of State is to serve as the financial supervisor of the village or township with all the powers and responsibilities of a commission.

Under continuing law, the core membership of each financial planning and supervision commission consists of (1) the Treasurer of State, (2) the Director of Budget and Management, and (3) in the case of a municipal corporation, the mayor and the presiding officer of the legislative authority of the municipal corporation; in the case of a county, the president of the board of county commissioners and the county auditor; and in the case of a township, a member of the board of township trustees and the county auditor. Additional membership is determined by the size of the local government. If the local government has a population of 1,000 or more, three additional members are appointed by the Governor. The act removes the requirement that, for local governments with fewer than 1,000 people, one additional member be appointed by the Governor.

The act also removes the express authorization for a mayor serving on a commission to designate a responsible official within the mayor's office or the fiscal officer of the municipal corporation to attend commission meetings when the mayor is absent or unable to attend. If a member appointed by the Governor fails to attend three consecutive meetings, the act permits the chairperson of the commission to remove the individual. In that event, the Governor must fill the vacancy in the same manner as the original appointment.

Financial plans

(R.C. 118.06)

The act requires that the financial plan of a local government in fiscal emergency include a five-year forecast reflecting the effects of the actions to be taken, and that the plan be updated annually. If a local government fails to submit the required financial plan, or fails to substantially comply with an approved financial plan, upon certification of the financial planning and supervision commission, all state funding for that local government − other than benefit assistance to individuals − must be escrowed until a feasible plan is submitted and approved or substantial compliance with the plan is achieved, as the case may be.

Expenditures

(R.C. 118.12)

If a financial plan is not submitted as required, the act permits the commission − if the commission considers it prudent − to limit any non-general fund expenditures of the local government. This is in addition to the limitation on general fund expenditures imposed by ongoing law.

The act permits a local government, after its financial plan is approved, to make expenditures contrary to the plan *if* it receives the advance approval of its financial supervisor. The commission, however, may overrule the decision of the financial supervisor by a majority vote.

Municipal corporation or township dissolution

(R.C. 118.31)

Upon petition of the financial supervisor of a local government and approval of its commission, if any, the Attorney General must file a court action to dissolve a municipal corporation or township if **all** of the following conditions apply:

(1) The municipal corporation or township has a population of less than 5,000 as of the most recent federal decennial census.

(2) The municipal corporation or township has been under a fiscal emergency for at least four consecutive years.

(3) Implementation of the municipal corporation's or township's financial plan cannot reasonably be expected to correct and eliminate all fiscal emergency conditions within five years.

If the court finds that all of those conditions apply, it must appoint a receiver. The receiver, under court supervision, is to work with executive and legislative officers of the municipal corporation or township to wind up the affairs of the municipal corporation or township and dissolve it in accordance with the ongoing law governing village dissolution and township boundary changes.

Prohibited actions

(R.C. 118.99)

Continuing law prohibits officers and employees of a local government under fiscal emergency from taking certain actions relating to its finances and liabilities. For example, an officer and employee cannot enter into any contract or financial obligation, or transfer or borrow money from one fund of the local government to or for another fund, without the required approval of the financial planning and supervision commission. Upon conviction of an officer or employee for violating any of those prohibitions, the officer or employee must forfeit the office or employment.

The act adds that, for the seven-year period immediately following the date of conviction, an officer is ineligible to hold any public office or other position of trust, or be employed by any public entity, in Ohio.

Reimbursement of the Auditor of State

(R.C. 118.04)

The act clarifies that the Auditor of State is to be reimbursed for all expenses incurred relating to a determination or termination of a fiscal emergency, fiscal watch, or fiscal caution, including providing technical and support services, from an appropriation for that purpose. If necessary, the Controlling Board may provide sufficient funds for these purposes.

Cost savings and modified work weeks

(R.C. 124.34, 124.393, and 124.394)

The act establishes and expands cost savings and modified work week schedule programs for counties, townships, and municipal corporations. The cost savings program and modified work week program are not a modification or reduction in pay that can be appealed to the State Personnel Board of Review if an employee affected thereby is in the classified civil service.

Cost savings program

Under the act, a county, township, or municipal corporation appointing authority can establish a mandatory cost savings program applicable to its exempt employees. An "exempt employee" means a permanent full-time or permanent part-time county, township, or municipal corporation employee who is not subject to a collective bargaining agreement between a public employer and an exclusive representative.

Each exempt employee must participate in the mandatory cost savings program for not more than 80 hours, as determined by the appointing authority, in each of state fiscal years 2010 to 2013. The program can include a loss of pay or loss of holiday pay. The act permits the program to be administered differently among employees based on their classifications, appointment categories, or other relevant distinctions. A county, township, or municipal corporation appointing authority must issue guidelines concerning how the appointing authority will implement the cost savings program.

Additionally, after June 30, 2013, a county, township, or municipal corporation appointing authority can implement mandatory cost savings days that apply to its exempt employees in the event of a fiscal emergency. A "fiscal emergency" means: (1) a fiscal emergency declared by the Governor if the Governor determines that the available revenue receipts will likely be less than the appropriations for the year, (2) a local fiscal watch or fiscal emergency has been declared or determined by the Auditor of State, (3) a lack of funds, or (4) reasons of economy.

Under prior law, only a county appointing authority could establish a mandatory cost savings program applicable to its county exempt employees, and only for state fiscal years 2010 and 2011. Thereafter, a county appointing authority could implement mandatory cost savings days in the event of a fiscal emergency. Under prior law, a fiscal emergency did not include a local fiscal watch or emergency declared by the Auditor of State.

Modified work week schedule program

The act authorizes a county, township, or municipal corporation appointing authority to establish a modified work week schedule program applicable to its exempt employees (as defined above). Each county, township, or municipal corporation exempt employee must participate in any established modified work week schedule program in each of state fiscal years 2012 and 2013.

A modified work week schedule program can provide for a reduction from the usual number of hours worked during a week by exempt employees immediately before the establishment of the program. The act allows the reduction in hours to

include any number of hours so long as the reduction is not more than 50% of the usual hours worked by exempt employees immediately before the establishment of the program. The program can be administered differently among exempt employees based on classifications, appointment categories, or other relevant distinctions.

The act specifies that after June 30, 2013, a county, township, or municipal corporation appointing authority can implement a modified work week schedule program that applies to its exempt employees in the event of a fiscal emergency (as defined above).

Although the act appears to confer authority on municipal corporations regarding cost savings days and work week modifications, it is likely municipal corporations already have authority to establish similar programs under their home rule powers of local self-government.[195]

County centralized services

(R.C. 305.23)

The act authorizes a board of county commissioners to adopt a resolution establishing centralized purchasing, printing, transportation, vehicle maintenance, human resources, revenue collection, and mail operation services for a county office. The act defines "county office" as the offices of the county commissioners, county auditor, county treasurer, county engineer, county recorder, county prosecuting attorney, county sheriff, county coroner, county park district, veterans service commission, clerk of the juvenile court, clerks of court for all divisions of the courts of common pleas, including the clerk of the court of common pleas, clerk of a county-operated municipal court, and clerk of a county court, and any agency, department, or division under the authority of, or receiving funding in whole or in part from, any of those county offices.

The act defines and limits the types of human resources services that a board of county commissioners may centralize. "Human resources" is defined as any and all functions relating to human resource management, including civil service, employee benefits administration, collective bargaining, labor relations, risk management, workers' compensation, unemployment compensation, and any human resource management function required by state or federal law, but "human resources" does not authorize a board of county commissioners to adopt a resolution establishing a centralized human resource service that requires any county office to conform to any

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[195] Ohio Constitution, Article XVIII, Sec. 3; see *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma* (1980), 61 Ohio St.2d 375.

classification and compensation plan, position descriptions, or organizational structure; to determine the rate of compensation of any employee appointed by the appointing authority of a county office or the salary ranges for positions of a county office within the aggregate limits set in the board's appropriation resolution; to determine the number of or the terms of employment of any employee appointed by the appointing authority of a county office within the aggregate limits set in the board's appropriation resolution; or to exercise powers relating to the hiring, qualifications, evaluation, suspension, demotion, disciplinary action, layoff, furloughing, establishment of a modified work-week schedule, or the termination of any employee appointed by the appointing authority of any county office.

Before adopting a resolution establishing a centralized service, the board of county commissioners, in a written notice, must inform any other county office that will be impacted by the resolution of the board's desire to establish a centralized service or services. The written notice must include a statement that provides the rationale and the estimated savings anticipated for centralizing a service or services.

In addition, the board may request any other county office to serve as the agent and responsible party for administering a centralized service or services. That county office may enter into an agreement with the board of county commissioners to administer the centralized service or services under the terms and conditions included in the agreement. However, nothing in the centralized service provision authorizes the board of county commissioners to require a county office to serve as the agent and responsible party for administering a centralized service or services at the board's request.

The resolution establishing a centralized service or services must specify all of the following:

(1) The name of the county office that will be the agent and responsible party for administering a centralized service or services, and if the agent and responsible party is not the board of county commissioners, the designation of the county office that has entered into an agreement with the board to be the agent and responsible party;

(2) Which county offices are required to use the centralized services;

(3) If not all of the centralized services, which centralized service each county office must use;

(4) A list of rates and charges the county office must pay for the centralized services; and

(5) The date upon which each county office specified in the resolution must begin using the centralized services.

Not later than ten days after the resolution is adopted, the clerk of the board of county commissioners must send a copy of the resolution to each county office that is specified in the resolution.

The act prohibits the board of county commissioners from centralizing services regarding: (1) purchases made for contract services with moneys from the special fund designated as "general fund moneys to supplement the equipment needs of the county recorder," from the real estate assessment fund, or from the funds that are paid out of the county general fund for the furtherance of justice, (2) purchases of financial software used by the county auditor, (3) the printing of county property tax bills, (4) the collection of any taxes, assessments, and fees the county treasurer is required by law to collect, or (5) purchases of software used by the county recorder.

The act provides that nothing in the centralized service provision authorizes the board of county commissioners to have control or authority over funds that are received directly by a county office under another codified statute, or to control, or have authority regarding, the expenditure or use of these funds.

Continuing education requirements for county recorders

(R.C. 317.06)

The act requires a county recorder who is newly elected to a full term of office to attend and successfully complete at least 15 hours of continuing education courses during the first year of the recorder's term of office, and to complete at least another eight hours of continuing education courses each year of the remaining term. If elected to a subsequent term of office, the act requires the county recorder to attend and successfully complete at least eight hours of continuing education courses in each year of that subsequent term of office. In 86 counties, county recorders are elected for a term of four years.[196] Summit and Cuyahoga counties, which have charters, do not have county recorders but instead have officers that function like county recorders. It appears that under both charters, those officers would have to comply with the act's continuing education requirements.[197]

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[196] R.C. 317.01, not in the act.

[197] Section 5.02, Charter of Cuyahoga County; Section 4.01(2), Charter of Summit County, Ohio.

Approval of continuing education courses

To be counted toward the continuing education hours, a course must be approved by the Ohio Recorders' Association. (According to its web site, the Ohio Recorders' Association is composed of a president, vice president, treasurer, and secretary, all of whom are county recorders.)[198] Any county recorder who teaches an approved course is entitled to credit for the course in the same manner as if the county recorder had attended the course. Under the act, the Association must record and, upon request, verify the completion of the required course work for each county recorder and issue a statement to each county recorder of the number of continuing education hours the county recorder has successfully completed. Each year, the Association must send to the Auditor of State a list of the continuing education courses and the number of hours each county recorder has successfully completed. The Association also must provide a copy of this list to any other individual who requests it.

"Failure to complete" notices

The act requires the Association to issue a "failure to complete notice" to any county recorder who is required to complete continuing education courses but fails to successfully complete:

♦ At least 15 hours of continuing education courses during the first year of the county recorder's first term of office, or a total of at least 39 hours of those courses by the end of that term, including the 15 hours completed in the first year of the first term;

♦ At least eight hours of continuing education courses each year of any subsequent term of office or a total of at least 32 hours of courses by the end of that subsequent term.

The notice is for informational purposes only and does not affect any individual's ability to hold the office of county recorder.

Costs of continuing education

Under the act, each board of county commissioners must approve, from money appropriated to the county recorder, a reasonable amount requested by the county recorder to cover the costs the county recorder must incur to meet the continuing education requirements, including registration fees, lodging and meal expenses, and travel expenses.

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[198] The web site is www.ohiorecorders.com.

Medical care reimbursement rate for confined persons

(R.C. 341.192)

The act establishes the Medicaid reimbursement rate as the amount to be paid to a medical provider who is not employed by or under contract with a municipal corporation or township for providing medical services to persons confined in multicounty, municipal-county, or multicounty-municipal correctional centers. Under continuing law, a county, the Department of Youth Services, or the Department of Rehabilitation and Correction pays medical providers that are not employed by or under contract with them the Medicaid reimbursement rate to provide medical care to persons confined in a county jail or state correctional institution.

Joint police districts

(R.C. 505.482, 505.483, 505.484, 505.51, and 505.551; R.C. 109.64, 109.71, 109.801, 133.01, 311.29, 311.31, 504.16, 505.105, 505.106, 505.107, 505.108, 505.109, 505.172, 505.267, 505.43, 505.48, 505.481, 505.483, 505.484, 505.49, 505.491, 505.492, 505.493, 505.494, 505.495, 505.50, 505.511, 505.52, 505.53, 505.54, 505.541, 505.61, 505.67, 509.15, 511.235, 511.236, 737.04, 737.041, 737.40, 955.012, 1533.83, 1545.131, 1545.132, 1547.30, 1547.301, 1547.302, 1547.303, 1547.304, 1907.53, 2151.3515, 2305.232, 2901.01, 2917.40, 2929.71, 2935.01, 2935.03, 2981.11, 2981.13, 3719.141, 3737.73, 3743.06, 3743.19, 3743.52, 3743.53, 3743.54, 3743.64, 3767.32, 3937.41, 4117.01, 4513.39, 4513.60, 4513.61, 4513.62, 4513.63, 4513.64, 4513.66, 4549.17, 4931.40, 5502.52, 5502.522, 5502.61, 5502.68, and 5705.01)

Composition and governance of the district

The act authorizes the boards of township trustees of one or more contiguous townships and the legislative authorities of one or more contiguous municipal corporations, whether or not within the same county, to create, by adopting a joint resolution, a joint police district comprising all or any part of the townships or municipal corporations as are mutually agreed upon. Under former law, boards of township trustees of two or more contiguous townships could form themselves into a joint township police district. The act's new joint police district replaces that entity, but retains the ability of boards of township trustees of two or more contiguous townships to jointly provide police functions, only through a joint police district, instead of through a joint township police district. The act does not affect the authority of a township to create a township police district under continuing law.

The joint police district is formed within 30 days after the favorable vote by the last board of township trustees or the members of the legislative authority of the last municipal corporation joining the district. The governing body of the joint police district is a joint police district board composed of either all of the township trustees of

each township and all of the members of the legislative authority of each municipal corporation in the district, as agreed to in the joint resolution, or of an odd number of members as is agreed to in the joint resolution, as long as the members are representatives from each board of township trustees of each township and from the legislative authority of each municipal corporation in the joint police district. The joint police district board organizes in the same manner as is currently required for a joint township police district board, by electing a president, secretary, and treasurer.

The act requires the treasurer of the joint police district board, before entering upon the duties of the office, to execute a bond payable to the state, in the amount and with surety to be approved by the joint police district board, conditioned for the faithful performance of all the official duties required of the treasurer. The bond must be deposited with the president of the board, and a copy of the bond, certified by the president, must be filed with the county auditor.[199]

Members of the joint police district police force

The act requires the joint police district board, by a majority vote, to appoint a chief of police for the district, to determine the number of patrol officers and other personnel required by the district, and to establish salary schedules and other conditions of employment for the joint police district.[200] This is consistent with how a joint township police district functioned. The members of the joint police district police force are required to take peace officer training, are the law enforcement officers of the joint police district, and have the same arrest authority and powers as municipal or township police officers.[201]

Duties of the joint police district board

The joint police district board has the same powers as a joint township police district board has under ongoing law, including, among other various powers, the power to do the following:

(1) Issue bonds and notes to buy police equipment;[202]

(2) Levy a property tax on taxable property in the joint police district to defray all or a portion of the district's expenses in providing police protection;[203]

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[199] R.C. 505.484.

[200] R.C. 505.49.

[201] R.C. 109.71 and 505.172.

[202] R.C. 133.01, 505.52, and 505.53.

(3) Purchase or otherwise acquire police apparatus, equipment, including a public communications system, or materials that the joint police district requires, and build, purchase, lease, or lease with an option to purchase any building, buildings, or building site or sites necessary for the police operations of the district;[204]

(4) Establish a parking enforcement unit;[205]

(5) Purchase insurance policies to indemnify the chief of police, patrol officers, and other employees of a joint police district against liability arising from the performance of their duties;[206] and

(6) Provide police protection to other political subdivisions as provided by law.

Joining or withdrawing from the joint police district

The act authorizes a township or municipal corporation, or parts thereof, to join an existing joint police district by adopting a resolution or ordinance, as appropriate, by the entity requesting participation in the district, and upon approval of the existing joint police district board.[207]

A township or municipal corporation may withdraw from a joint police district by adopting a resolution or an ordinance, respectively, ordering withdrawal. On or after January 1 of the year following the withdrawal resolution or ordinance, the township or municipal corporation withdrawing ceases to be a part of the district, and the power of the district to levy a property tax in the withdrawing township or municipal corporation terminates. However, the district must continue to levy and collect taxes for the payment of indebtedness in the territory of the district as it was comprised at the time the indebtedness was incurred.

The act requires that when a township or municipal corporation withdraws from a joint police district, the county auditor must ascertain, apportion, and order a division of the funds on hand and of taxes in the process of collection, except for taxes levied for the payment of indebtedness, credits, and real and personal property, on the basis of the valuation of the respective tax duplicates of the withdrawing township or municipal corporation and the remaining territory of the joint police district.

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[203] R.C. 505.51 and 5705.01.

[204] R.C. 505.50.

[205] R.C. 505.541.

[206] R.C. 505.61.

[207] R.C. 505.482.

When there is only one township or municipal corporation remaining in the joint police district, the district ceases to exist, and the funds, credits, and property remaining after apportionments to the withdrawing townships or municipal corporations are assumed by the one remaining township or municipal corporation. When the district ceases to exist and an indebtedness remains unpaid, the board of county commissioners must continue to levy and collect taxes for payment of the indebtedness within the territory of the joint police district as it was comprised at the time the indebtedness was incurred.[208]

Township noise regulations

(R.C. 505.172)

Under former law, a regulation or order to control noise that was adopted by a board of township trustees applied to any business or industry existing and operating on October 20, 1999, and applied to any new operation or expansion of that business or industry that resulted in substantially increased noise levels from those generated by that business or industry on that date. The act eliminates this date restriction and the operation and expansion applicability, and applies a township noise regulation or order to any business or industry, regardless of when it came into existence.

The act makes it permissive, rather than mandatory, for a board of township trustees to seek an injunction against a person who violates a regulation or order controlling noise.

Township and village competitive bidding thresholds

(R.C. 511.01, 511.12, 515.01, 515.07, 521.05, 731.14, and 5549.21)

The act increases from $25,000 to $50,000 a township's competitive bidding thresholds for all of the following: (1) constructing a memorial building, monument, statue, or memorial, (2) providing artificial lights for any road, highway, public place, building, or territory under its supervision or control when the board of township trustees determines that public safety or welfare requires lighting, (3) lighting improvements for streets and public ways, (4) repairing or maintaining private sewage collection tiles, and (5) purchasing or leasing machinery and tools used on roads and culverts. Prior law required that if the total estimated cost of doing (1) to (5) above exceeded $25,000, the contract had to be let by competitive bidding.

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[208] R.C. 505.551.

The act increases from $10,000 to $50,000 the threshold for submitting a question to the electors of the township regarding building, improving, enlarging, or removing a town hall.

The act increases from $25,000 to $50,000 the competitive bidding threshold for expenditures of a village, other than the compensation of persons employed in the village, or except where the equipment, services, materials, or supplies are to be purchased under a contract with a regional planning commission or the Department of Administrative Services, or when the equipment, services, materials, or supplies are available, or are required by law to be purchased, from a qualified nonprofit agency. Former law required contracts made by the legislative authority of a village to be competitively bid when an expenditure exceeded $25,000.

Competitive bidding threshold for board of park trustees

(R.C. 755.29)

The act increases to $25,000 the threshold amount that triggers competitive bidding for service contracts entered into by a board of park trustees for municipal park improvements. Former law required that a board of park trustees, before entering into any contract for the performance of any work, the cost of which exceeded $10,000, to competitively bid the work.

Generally, a board of park trustees is charged with managing, controlling, and administering property or funds donated to a municipal corporation for park purposes in accordance with continuing law,[209] and may enter into contracts for the improvement of the park grounds and the erection of bridges and structures therein.

Police constables – limited home rule township

(R.C. 504.16)

The act adds, as one of the methods by which a limited home rule township may meet the requirement to provide law enforcement for the township, designating one or more police constables. Under continuing law, each township that adopts a limited home rule government, to fulfill this requirement, also may establish a police district, establish a joint police district, or contract to obtain police protection services.

[209] R.C. 755.19 and 755.20, not in the act.

Merger of townships to form a new township

Overview

(R.C. 523.01 to 523.07)

The act creates a procedure whereby one or more townships may merge with a contiguous township to create a new township, in the manner provided by the act. Merger may be accomplished by initiative petition of the voters of the townships to be merged. The boards of township trustees also may submit the question of merger to the voters of the townships proposed to be merged. The resulting new township has all of, and only, the rights, powers, and responsibilities afforded by law to townships.

Continuing law already authorizes a township to merge with a municipal corporation.[210] If merger conditions are approved by the voters, the merger takes effect with no additional action, and the boundaries of previously unincorporated township territory that is merged with the municipal corporation automatically conforms to the boundaries of the municipal corporation.[211] The act's new merger procedure does not affect such a merger.

Merger proposed by initiative petition of townships' electors

(R.C. 523.02)

A resolution for a merger of townships may be proposed by initiative petition by the electors of each township being proposed for merger, and adopted by election by these electors under the same circumstances, in the same manner, and subject to the same penalties as provided in ongoing law for presenting initiative petitions to municipal corporations,[212] except that all of the following apply:

(1) Each board of township trustees must perform the duties imposed on the legislative authority of the municipal corporation.

(2) Initiative petitions must be filed with the township fiscal officer of each township proposed for merger, who must perform the duties imposed under that existing law upon the city auditor or village clerk.

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[210] R.C. 709.43 to 709.48.

[211] *See* Ohio Att'y Gen. Op. No. 2005-024.

[212] *See* R.C. 731.28 to 731.40 and 731.99.

(3) Initiative petitions must contain the signatures of not less than 10% of the total number of electors in a township proposed for merger who voted for the office of Governor at the most recent general election in the township for that office.

(4) Each signer of an initiative petition must be an elector of the township in which the election on the proposed resolution is to be held.

The merger of the townships takes effect 120 days after certification by the board or boards of elections that the merger has been approved by the electors of each township proposed for merger.

Question of merger may be submitted to the voters

(R.C. 523.03)

The boards of township trustees may decide to submit a merger question to the voters of the townships. Under the act, the boards of township trustees of two or more townships, by adopting resolutions by a majority vote of the board of township trustees of each township, may cause the appropriate board of elections for each township to submit to the electors of each township the question of merger of the townships. The question must be voted upon at the next general election occurring not less than 90 days after the certification of the resolutions to the appropriate board of elections. The board of elections must submit the question in language substantially as set forth in the act, naming the townships to merge, asking whether they should be merged, and stating the name of the resulting new township.

The merger takes effect 120 days after certification by the board or boards of elections that the merger has been approved by the electors of each township proposed for merger.

Merger agreement

(R.C. 523.04)

Within 120 days after approval of the merger by the voters (either by initiative petition or when the boards of township trustees submit the merger question to the voters), each board of township trustees of the townships merged, by adopting a joint resolution approved by a majority of the members of each board, must enter into a merger agreement that contains the specific terms and conditions of the merger. At a minimum, the merger agreement must set forth all of the following:

- The names of the former townships that were merged;
- The name of the new township;

- The place in which the principal office of the new township will be located or the manner in which it may be selected;

- The territorial boundaries of the new township;

- The date on which the merger took effect;

- The governmental operations and organization of the new township, including a plan for electing officers at the next general election that is held not later than 90 days after the merger agreement is finalized;

- A procedure for the efficient and timely transition of specific services, functions, and responsibilities from each township and its respective offices to the new township;

- Terms for the disposition of the assets and property of each township, if necessary;

- The liquidation of existing indebtedness for each township, if necessary;

- A plan for the common administration and enforcement of resolutions of the townships merged, to be enforced uniformly within the new township;

- A provision that specifies whether there will be any zoning changes as a result of the merger, if applicable;

- A plan to conform the boundaries of an existing special purpose district with the new township, to dissolve the special purpose district, or to absorb the special purpose district into the new township. The act defines "special purpose district" as any geographic or political jurisdiction that was created under law by a township merged.

A copy of the joint resolution and the merger agreement must be filed with the township fiscal officer of the new township. The merger agreement takes effect on the day on which the filing is made.

If no merger agreement, or if only a partial merger agreement, is entered into within the 120-day time period prescribed, the new township must comply with and operate under a merger agreement that contains the default terms and conditions required by the act.

Default terms and conditions of merger agreement

(R.C. 523.06)

If a merger agreement is entered into by the boards of township trustees of the townships merged, the default terms and conditions of a merger agreement do not have to be followed. If a merger agreement is not entered into, the merger agreement must contain all of the terms and conditions specified below. If a partial merger agreement is entered into, the default terms and conditions apply only to the extent any term or condition that is required by the act to be addressed in the merger agreement is not addressed in the merger agreement. The default terms and conditions of the merger agreement are as follows:

♦ All members of each board of township trustees must serve as board members of the new township. At the first general election held for township officers occurring not less than 90 days after a merger is approved, the electors of the new township must elect three township trustees with staggered terms of office. The first terms following the election must be modified to an even number of years not to exceed four to allow subsequent elections for the office to be held in the same year as other township officers.

♦ The township fiscal officer of the largest township, by population, is the township fiscal officer for the new township. At the first general election for township officers occurring not less than 90 days after the merger, the electors must elect a township fiscal officer, whose first term of office must be modified to an even number of years not to exceed four to allow subsequent elections for that office to be held in the same year as other township fiscal officers.

♦ Voted property tax levies remain in effect for the parcels of real property to which they applied prior to the merger, and the merger does not affect the proceeds of a tax levy pledged for the retirement of any debt obligation. Upon expiration of a property tax levy, the levy may only be replaced or renewed by vote of the electors in the manner provided by law, to apply to real property within the boundaries of the new township. If the millage levied inside the ten-mill limitation of each township merged is different, the board of township trustees of the new township must immediately equalize the millage for the entire new township.

♦ For purposes of the retirement of all debt obligations of each township merged, the township fiscal officer must continue to track parcels of real property and the tax revenue generated on those parcels by the tax districts that were in place prior to the merger, and must provide that information on an annual basis to the board of township trustees of the new township. Debt obligations that existed at the time of the

merger are to be retired from the revenue generated from the parcels of real property that made up the township that incurred the debt before the merger.

♦ With respect to any agreement entered into under the Public Employees' Collective Bargaining Law[213] (the "law") that covers any of the employees of the townships merged, the State Employment Relations Board, within 120 days after the date the merger is approved, must designate the appropriate bargaining units for the employees of the new township in accordance with the law.[214] Notwithstanding the recognition procedures prescribed in the law,[215] the Board must conduct a representation election with respect to each bargaining unit designated in accordance with the law. If an exclusive representative is selected through this election, the exclusive representative must negotiate and enter into an agreement with the new township under the law. Until the parties reach an agreement, any agreement in effect on the date of the merger applies to the employees that were in the bargaining unit that is covered by the agreement. An agreement in existence on the date of the merger is terminated on the effective date of an agreement negotiated with the new township. If an exclusive representative is not selected, any agreement in effect on the date of the merger applies to the employees that were in the bargaining unit that is covered by the agreement and expires on its terms. Each agreement entered into under the law on or after September 29, 2011, applying to a new township must contain a provision regarding the designation of an exclusive representative and bargaining units for the new township. In addition to the laws listed in the law[216] that prevail over conflicting agreements between employee organizations and public employers, this provision of the merger agreement prevails over any conflicting provisions of agreements between employee organizations and public employers that are entered into on or after September 29, 2011, pursuant to the law.

♦ If the boundaries of the new township are not coextensive with a special purpose district, the new township remains in the existing special purpose district as a successor to the original township, unless the special purpose district is dissolved. (The act defines "special purpose district" as any geographic or political subdivision that was created under law by a township merged.) The board of township trustees of the new township may place a question on the ballot at the next general election held after the merger to conform the boundaries, dissolve the special purpose district, or absorb the

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[213] R.C. Chapter 117.

[214] R.C. 4117.06.

[215] R.C. 4117.05 and 4117.07.

[216] R.C. 4117.10(A).

special purpose district into the new township on the terms specified in the resolution that places the question on the ballot for approval of the electors of the new township.

♦ Zoning codes that existed at the time of the merger must remain in effect after the merger, and the townships that existed before the merger must be treated as administrative districts within the new township for the purposes of zoning.

New township succeeds to certain interests

(R.C. 523.05)

A new township created by merger under the act succeeds to the following interests of each township merged:

(1) All money, taxes, and special assessments, whether in the township treasury or in the process of collection;

(2) All property and interests in property, whether real or personal;

(3) All rights and interests in contracts, or in securities, bonds, notes, or other instruments;

(4) All accounts receivable and rights of action;

(5) All other matters not included in this list that are not addressed in the merger agreement.

A new township created by merger is legally obligated for all outstanding franchises, contracts, debts, and other legally binding obligations of each township merged into the new township. A new township is legally responsible for maintaining, defending, or otherwise resolving any and all legal claims or actions of each township merged into the new township.

Waiting period to again propose a merger

(R.C. 523.07)

If a merger is disapproved by a majority of those voting on it in the townships proposed to be merged, an identical merger cannot be considered for at least three years after the date of the disapproval.

Joint projects by contracting subdivisions

(R.C. 755.16)

The act authorizes a "contracting subdivision," jointly with one or more other contracting subdivisions, in any combination, to acquire property for, and to construct, operate, and maintain, educational facilities. Continuing law authorizes a municipal corporation, township, township park district, county, or school district, jointly with one or more other municipal corporations, townships, township park districts, counties, school districts, or educational service centers, in any combination, and a joint recreation district, to acquire property for, and to construct, operate, and maintain, any parks, playgrounds, playfields, gymnasiums, public baths, swimming pools, indoor recreation centers, or community centers. The act defines "contracting subdivision" to include all of the subdivisions specified in the previous sentence that may enter into joint contracts under continuing law, and adds state institutions of higher education to the list of subdivisions that may be contracting subdivisions.

The act also adds educational facilities as one of the projects that may be jointly acquired, constructed, operated, or maintained, and authorizes a state institution of higher education to provide, by the erection of a state institution of higher education building or premises, or by the enlargement or improvement of such a building or premises, for the inclusion of parks, recreational facilities, educational facilities, and community centers to be jointly acquired, constructed, operated, and maintained. Prior law only allowed school districts or educational service centers to provide, by the erection of any school or educational service center building or premises, or by the enlargement or improvement of such a building or premises, for the inclusion of parks, recreational facilities, and community centers, but not educational facilities, to be jointly acquired, constructed, operated, and maintained.

The act adds to this law a definition of "school district," which means any of the school districts or joint vocational school districts referred to in an existing law (city school districts, local school districts, exempted village school districts, cooperative education school districts, and joint vocational school districts). The act also adds a definition of "state institution of higher education," which is any state university or college, community college, state community college, university branch, or technical college.

Boards of health

(R.C. 3709.341)

Donating or selling property, buildings, and furnishings to a board of health

The act authorizes a board of county commissioners to donate or sell property, buildings, and furnishings to any board of health of a general or combined health district. Upon acceptance by the board of health, the board of county commissioners may convey the property, buildings, and furnishings to the board of health to be used as its quarters. The instrument conveying the property, buildings, and furnishings must include a reverter clause that, in the event the board of health subsequently sells the property, buildings, and furnishings, reverts them to the board of county commissioners if they initially were donated by the board of county commissioners, or specifies how the proceeds of the board of health's subsequent sale of the property, buildings, and furnishings are to be distributed, if they initially were sold by the board of county commissioners.

County quarterly spending plans

(R.C. 5705.392)

The act authorizes a board of county commissioners, by resolution, to adopt a spending plan or an amended spending plan setting forth separately a quarterly schedule of expenses and expenditures of appropriations from *any* county fund, for the second half of a fiscal year and any subsequent fiscal year, for any county office, department, or division that has spent or encumbered more than six-tenths of the amount appropriated for personal services and payrolls during the first half of any fiscal year.

The act also authorizes a board of county commissioners, during any fiscal year, by resolution, to adopt a spending plan or an amended spending plan setting forth separately a quarterly schedule of expenses and expenditures of appropriations from any county fund, for any county office, department, or division that, during the previous fiscal year, spent 110% or more of the total amount appropriated for personal services and payrolls by the board in its annual appropriation measure. This spending plan or amended spending plan must remain in effect two fiscal years, or until the county officer of the office for which the plan was adopted is no longer in office, including terms of office to which the county officer is re-elected, whichever is later.

At least 30 days before a resolution for either type of proposed or amended spending plan authorized by the act is adopted, the board of county commissioners must provide written notice to each county office, department, or division for which it

intends to adopt a spending plan or amended spending plan. The notice must be sent by regular first class mail or provided by personal service, and must include a copy of the proposed spending plan or proposed amended spending plan. The county office, department, or division may meet with the board at any regular session of the board to comment on the notice, or to express concerns or ask questions about the proposed spending plan or proposed amended spending plan.

Under continuing law, a board of county commissioners may adopt as part of its annual appropriation resolution a spending plan (or in the case of an amended appropriation resolution, an amended spending plan) setting forth a quarterly schedule of expenses and expenditures of all appropriations for the fiscal year from the *county general fund*. The spending plan must set forth separately a quarterly schedule of expenses and expenditures for each office, department, and division, and, within each, the amount appropriated for personal services. Each office, department, and division is limited in its expenses and expenditures of moneys appropriated from the general fund during any quarter by the schedule established in the spending plan. The schedule is a limitation during the quarter on entering into contracts and giving orders involving the expenditure of money during the quarter for purposes of obtaining the requisite certificate of available funds under continuing law.

Township fiscal officer compensation

(R.C. 505.24 and 507.09)

Under continuing law, township fiscal officers receive compensation according to a statutory schedule based on the population of the fiscal officer's township. The compensation is paid on a salary basis, in equal monthly installments. The Auditor of State recommends that each township pay this compensation from the township's general fund.[217]

The act specifically authorizes a township to pay its fiscal officer from the township general fund or from other township funds based on the proportion of time that the fiscal officer spends providing services related to each fund. The fiscal officer must document the amount of time spent providing services related to each fund by certification specifying the percentage of time spent working on matters to be paid from the township general fund or other township funds in such proportions as the kinds of services performed.

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[217] The recommendation is included in the Ohio Township Handbook published by the Auditor of State. http://www.auditor.state.oh.us/services/lgs/publications/LocalGovernmentManualsHandbooks/ohio_township_handbook.pdf

A similar method is available in continuing law for the compensation of township trustees. Trustees are paid on either a salary or per-diem basis. If a trustee is paid on a per-diem basis, a board may allow for payment of that trustee from the township general fund and other township funds in such proportions as the kinds of services performed may require. The trustee must notify the township fiscal officer of the number of days spent serving the township and the kinds of services rendered on those days. And, under the act, if a trustee is paid on a salary basis, the trustee must certify the percentage of time spent working on matters to be paid from the township general fund and other township funds in such proportions as the kinds of services performed.

Township tax levy election expenses

(R.C. 3501.17)

Under continuing law, a county board of elections incurs the costs of conducting elections in a county and subsequently allocates those expenses among each political subdivision that participated in an election. After a board of elections charges a political subdivision with an election expense, the county auditor must withhold the amount of that expense from the subdivision's next tax settlement. (In a tax settlement, the county auditor distributes the property tax revenue that the auditor collected from taxes levied by each subdivision.) Prior law did not specify whether the auditor may withhold amounts from a particular fund of a subdivision, such as the subdivision's general fund or a special tax levy or bond fund.

The act specifies that, when a county board of elections incurs expenses related to a township tax levy ballot issue, the board of township trustees may request that those expenses be withheld from a particular township fund. The request must be in the form of a resolution that specifies the ballot issue, the date of the election on the levy issue, and the township fund from which board of elections expenses should be withheld. The particular township fund must be one that will be credited with tax revenue at a tax settlement.

Maturity of securities issued for real property

(R.C. 133.20)

The act provides that general obligation bonds issued by a county to finance the acquisition or construction of real property may have a maximum maturity of up to 40 years if supported by a certification as to the property's estimated useful life. The county fiscal officer must certify that the estimated useful life of the property for which the bonds would issue will exceed 30 years, unless the maximum maturity of the bonds is 30 years or fewer, in which case no certification is required.

Under prior law, the maximum maturity for securities issued by counties was limited to 30 years, and no certification was required.

Regional Transit Authority

Membership

(R.C. 306.322, 306.55, and 306.551)

Until November 5, 2013, the act creates a new procedure allowing a municipal corporation or township to join a regional transit authority (RTA), but only if the RTA is one that (1) levies a property tax and (2) includes in its membership political subdivisions that are located in a county having a population of at least 400,000 according to the most recent federal census. The new procedure is in addition to and an alternative to procedures established in continuing law. Under the act, an eligible municipal corporation or township may adopt a resolution or ordinance proposing to join such an RTA for a limited period of three years or without a time limit. The subdivision proposing to join the RTA must submit its resolution or ordinance to the subdivisions that comprise the RTA.

If within 30 days of receiving the resolution or ordinance a majority of the political subdivisions comprising the RTA approve the inclusion of the additional subdivision, the issue of joining the RTA may be submitted to the voters in the subdivision proposing to join the RTA. If a majority of the electors approve the ballot issue, the addition is effective six months from the date the result is certified. The RTA immediately must amend the resolution or ordinance creating the RTA to include the additional political subdivision. The RTA may extend any existing tax levy to the taxable property in the new territory. If the subdivision was added to the RTA for only three years, no further action is needed to remove the territory added and reduce the RTA to its previous size. The RTA, as reduced, is entitled to levy and collect any previously authorized and unexpired property taxes, as if the enlargement had not occurred.

Until November 5, 2013, any municipal corporation or township that has created or joined an RTA that (1) levies a property tax and (2) includes in its membership political subdivisions that are located in a county having a population of at least 400,000 according to the most recent federal census, may withdraw from the RTA by adopting a resolution to place the issue on the ballot. If a majority of the electors of the subdivision proposing to withdraw from the RTA vote to approve doing so, the withdrawal is effective six months from the date of the certification of its passage, and the power of the RTA to levy a tax on taxable property in the withdrawing subdivision terminates.

Additionally, any municipal corporation or township that withdraws from an RTA under the procedures established by the act may enter into a contract with an RTA or other provider of transit services to provide transportation service for handicapped, disabled, or elderly persons and for any other service the legislative authority of the subdivision determines to be appropriate.

Extension of RTA services

(R.C. 306.35; Section 755.30)

The act prohibits an RTA from extending its service or facilities into another political subdivision without first notifying it and gives the political subdivision 30 days after receiving the notice to comment on the proposal. The act does not address any consequences resulting from comments by the political subdivision.

The act requires the Ohio Public Transit Association, in consultation with the Ohio Municipal League, the County Commissioners Association of Ohio, and the Ohio Township Association, to study RTA expansion outside territorial boundaries and provide a report to the General Assembly and the Governor not later than December 31, 2011 that lists best practices in dealing with various matters regarding the extension of service outside the territorial boundaries of an RTA.

Merger procedures for municipal corporations or municipal corporations and a township

Who may merge

(R.C. 709.43 and 709.44)

The act authorizes the merger under a new, abbreviated merger procedure of one or more municipal corporations, whether or not adjacent to one another, and an adjacent municipal corporation; of the unincorporated area of a township and one or more municipal corporations; or of one or more municipal corporations, whether or not adjacent to one another, and an adjacent unincorporated area of a township. Under continuing law, the territory of one or more municipal corporations, whether or not adjacent to one another, may merge with an adjacent municipal corporation, and the unincorporated area of a township may merge with one or more municipal corporations under a procedure whereby a petition proposing a merger is filed with the board of elections and the electors choose a commission to draw up a statement of conditions for merger.[218] This "commission process" for merging is not affected by the act, other than that the act now authorizes one or more municipal corporations, whether

[218] R.C. 709.45, not in the act.

or not adjacent to one another, and an adjacent unincorporated area of a township also to use the existing commission process to propose a merger, as well as the new, abbreviated merger procedure.

The new merger procedure

(R.C. 709.451)

In lieu of filing a petition for merger under the commission process, if the legislative authorities of each political subdivision that may be merged under the act agree to a merger and adopt, by a two-thirds vote of each legislative authority, an ordinance or resolution proposing a merger, no election of a commission to draw up a statement of conditions for merger of the political subdivisions is held. Instead, the legislative authorities of those political subdivisions have 120 days to enter into a merger agreement that specifies the conditions of the proposed merger, in identical ordinances or a resolution adopted by a simple majority vote of each legislative authority. At a minimum, the proposed merger agreement must include all of the following:

(1) The names of the municipal corporations and township, if any, proposing the merger;

(2) The territorial boundaries of the resulting municipal corporation or township;

(3) The date that the proposed merger will take effect;

(4) A procedure for the efficient and timely transition to the resulting municipal corporation or township of specified services, functions, and responsibilities from each municipal corporation or township and its respective departments and agencies;

(5) A transition plan and schedule.

Question of merger submitted to electors

(R.C. 709.452)

The legislative authority of each municipal corporation or township proposed for merger that adopts a merger agreement under the act's new merger procedure must submit the question of merger to the electors of the municipal corporations and township proposed for merger. The legislative authorities must certify the ordinances or resolution that adopted the merger agreement to the board or boards of elections (if the territory proposed for merger is located in more than one county) directing the submission of the question of merger to the electors of the municipal corporations and

township proposed for merger at a special election to be held on the day of the next primary or general election in the county or counties that occurs not less than 90 days after the ordinances or resolution are certified to the board or boards of elections. The question is to be put on the ballot and voted upon, separately, in each municipal corporation or township proposed for merger.

The ordinances or resolution specifying the merger conditions agreed to by the municipal corporations and township proposed for merger must be posted on the web sites of those municipal corporations and township, and must be published in a newspaper of general circulation in the municipal corporations and township once a week for two consecutive weeks prior to the election.

If the merger is approved by a majority of those voting on it in each municipal corporation or township proposed to be merged, the merger and the merger agreement take immediate effect.

Powers of the merged entity; conflict with charter

(R.C. 709.451(B) and 709.452(D))

On the effective date of the merger, a municipal corporation merging into a township only has the rights, powers, and responsibilities afforded by law to townships, and all other authority ceases to exist.

If an existing charter of a municipal corporation proposed for merger conflicts with the act's new, abbreviated merger processes and procedures (whereby the question of merger is submitted to the electors), the processes and procedures for merger addressed in the municipal corporation's charter apply.

County automatic data processing boards

(R.C. 307.847)

Replacement of county records commission and county microfilming board

In lieu of having a county records commission and a county microfilming board, the act permits a board of county commissioners, by resolution, to require the county automatic data processing board to coordinate the management of information resources of the county, the records and information management operations of all county offices, and the various records and information technologies acquired and operated by county offices. The resolution requiring the board to assume these duties must specify the date on which the county records commission and the county microfilming board no longer exist.

For those counties that do not, by resolution, require the county automatic data processing board to assume additional duties, the act expands the board's authority to include electronic data processing or record-keeping equipment, software, or services.[219]

Continuing law authorizes a board of county commissioners to establish a county microfilming board to coordinate the use of all microfilming equipment in use throughout the county offices. And, continuing law establishes a county records commission in each county to provide rules for retention and disposal of records of the county and to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by county offices.[220] The act permits these functions to be merged into the county automatic data processing board, which may be established under continuing law to coordinate the use of all automatic data processing equipment in use throughout the county offices.

For those counties that do not merge its functions under the authority in the act, the act expands the authority of a county microfilming board to include other image processing equipment, software, or services.[221]

Membership of the board

If the duties of the county automatic data processing board are so expanded, the prosecuting attorney, county engineer, county coroner, sheriff, and a judge of the court of common pleas selected by a majority vote of all judges of the court must be added to the membership of the board. Any of these additional members may designate a representative to serve on that member's behalf.

These new members would be added to the members of the automatic data processing board, as specified in continuing law. Those members include the county treasurer or the county treasurer's representative, the county recorder or the county recorder's representative, the clerk of the court of common pleas or the clerk's representative, a member or representative of the board of county commissioners chosen by the board, two members or representatives of the board of elections chosen by the board of elections (one of whom shall be a member of the political party receiving the greatest number of votes at the most recent general election for the office of Governor and one of whom shall be a member of the political party receiving the second greatest number of votes at such an election), if the board of elections desires to participate, and the county auditor or the county auditor's representative, who serves as

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[219] R.C. 307.84, 307.842, 307.843, and 307.846.

[220] R.C. 149.38.

[221] R.C. 307.80, 307.802, 307.803, and 307.806.

secretary of the board. Additionally, continuing law permits the members of the county automatic data processing board to add to the board any additional members whose officers use the facilities of the board, by majority vote of the board.

New duties of the county automatic data processing board

After a resolution is adopted under the act's provisions, no county office[222] is permitted to purchase, lease, operate, or contract for the use of any of the following, without prior approval of the board:

- Automatic data processing equipment, software, or services;
- Microfilming equipment or services;[223]
- Records center or archives facilities; or
- Any other image processing or electronic data processing or record-keeping equipment, software, or services.

The board is permitted to adopt rules as it considers necessary for its operation, but no rule may derogate the authority or responsibility of any county elected official. The board's rules may include any regulations or standards the board wishes to impose.

Transfer of duties

In the resolution expanding the duties of the county automatic data processing board, the board of county commissioners is required to designate the date on which all equipment, records, files, effects, and other personal property; contractual obligations; and assets and liabilities of the county records commission and the county microfilming board are to be transferred to the county automatic data processing board.

For purposes of succession to the functions, powers, duties, and obligations of the county records commission and the county microfilming board transferred to the county automatic data processing board, the county automatic data processing board is deemed to constitute the continuation of the county records commission and the county microfilming board, as applicable. Any business, proceeding, or other matter

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[222] A "county office" is any officer, department, board, commission, agency, court, or other office of the county and the court of common pleas.

[223] This provision does not apply to a county hospital when the county hospital uses microfilming to record and store for future access physical and psychiatric examinations or treatment records of its patients. However, the county hospital is required to participate, at the request of the county automatic data processing board, in purchasing film and equipment and in entering into contracts for services for microfilming.

undertaken or commenced by the county records commission or the county microfilming board pertaining to or connected with the functions, powers, duties, and obligations transferred or assigned and pending on the date of the transfer of duties to the county automatic data processing board must be conducted, prosecuted or defended, and completed by the county automatic data processing board in the same manner and with the same effect as if conducted by the county records commission or the county microfilming board. In all such actions and proceedings, the county automatic data processing board is to be substituted as a party.

All rules, acts, determinations, approvals, and decisions of the county records commission or the county microfilming board pertaining to the functions transferred and assigned to the county automatic data processing board that are in force at the time of the transfer or assignment are required to continue in force as rules, acts, determinations, approvals, and decisions of the county automatic data processing board until they are duly modified or repealed by the board.

Wherever the functions, powers, duties, and obligations of the county records commission or the county microfilming board are referred to or designated in any law, contract, or other document, the reference or designation must be deemed to refer to the county automatic data processing board, as appropriate. No existing right or remedy of any character is lost, impaired, or affected by reason of the transfer of duties to the county automatic data processing board, except insofar as those rights and remedies are administered by the county automatic data processing board.

Centralized and decentralized facilities

The act permits the county automatic data processing board to establish an automatic data processing center, microfilming center, records center, archives, and any other centralized or decentralized facilities it considers necessary to fulfill its duties. Any such centralized facilities must be used by all county offices. The establishment of either centralized or decentralized facilities is contingent on the appropriation of funds by the board of county commissioners. And the county auditor will be the chief administrator of either centralized or decentralized facilities.

Revenues and expenditures

The act requires the county auditor to prepare an annual estimate of the revenues and expenditures of the county automatic data processing board for the ensuing fiscal year and submit it to the board of county commissioners. The estimate must be sufficient to take care of all the needs of the county automatic data processing board, including, but not limited to, salaries, rental, and purchase of equipment.

The board's funds must be disbursed by the county auditor's warrant drawn on the county treasury five days after receipt of a voucher approved by a majority of that board and by a majority of the board of county commissioners.

On the first Monday in April of each year, the county auditor must file with the county automatic data processing board and the board of county commissioners a report of the operations of each center and a statement of each center's receipts and expenditures during the preceding calendar year.

Contracts for the provision of services to other entities

With the approval of the board of county commissioners, the act permits the county automatic data processing board to enter into a contract with the legislative authority of any municipal corporation, township, port authority, water or sewer district, school district, library district, county law library association, health district, park district, soil and water conservation district, conservancy district, other taxing district, or regional council, or with the board of county commissioners or the automatic data processing board or microfilming board of any other county, or with any other federal or state governmental agency, to provide microfilming, automatic data processing, or other image processing or electronic data processing or record-keeping services to any of them. The board is required to establish a schedule of charges upon which the cost of providing such services is to be based. All moneys collected by the board for services rendered pursuant to these contracts must be deposited in the county general fund, although these moneys may be segregated into a special fund in the county treasury until the end of the calendar year. County offices also may be charged for such services and the appropriations of those offices so charged and the appropriation of the county automatic data processing board so credited.

Licensing and inspection of marinas

(R.C. 3709.09, 3733.21 (repealed), 3733.22 (repealed), 3733.23 (repealed), 3733.24 (repealed), 3733.25 (repealed), 3733.26 (repealed), 3733.27 (repealed), 3733.28 (repealed), 3733.29 (repealed), 3733.30 (repealed), and 3733.99; R.C. 1547.01, 3701.83, and 3709.092 (for cross-references); Section 737.15)

The act repeals the statutes governing the licensure and inspection of marinas, including the requirement that the Public Health Council adopt rules for that purpose. Under former law, the Public Health Council had to adopt those rules in order to ensure that the marinas provided adequate sanitary facilities and that marinas were operated in a sanitary manner. Former law prohibited a person from constructing or altering a marina unless the Director of Health had approved the plans as providing adequate sanitary facilities. In addition, a person could not operate a marina without a license

issued by the board of health of the health district in which the marina was located. However, the Director of Health could become the licensor in a health district if the Director determined that the board of health was not complying with the Marinas Law and rules adopted under it. A license could be denied, suspended, or revoked.

A board of health had to determine any fee for the license in accordance with the Health Districts Law. The fee had to include any additional amount determined by rule of the Public Health Council, which was credited to the General Operations Fund. The portion of any fee retained by the health district had to be paid into a special fund of the health district. That money was used by the Director and the board for the administration of the Marinas Law and rules adopted under it.

A board annually had to inspect each marina, keep a record of the inspection, and require each marina to comply with the Marinas Law and rules adopted under it. A board also had to certify to the Director that a marina had been licensed and was in satisfactory compliance with that Law and the rules. Finally, former law provided for enforcement of that Law and the rules.

County sewer district and regional water and sewer district contracts

(R.C. 6103.04, 6117.05, and 6119.061)

The act expands the scope of the contracting authority of a board of county commissioners regarding a county sewer district. It does so by authorizing a board of county commissioners to convey, by mutual agreement, to a municipal corporation any part of water supply or sanitary facilities of the sewer district that are connected to facilities of the municipal corporation. In addition, a board may convey to a municipal corporation water supply or sanitary facilities acquired or constructed by a county for the service of property located in the district that are also located in the municipal corporation or within an area that is incorporated as, or annexed to, the municipal corporation.

Continuing law provides that any completed water supply or sanitary facilities acquired or constructed by a county for the use of any county sewer district, or any part of those facilities, that are located within a municipal corporation or within any area that is incorporated as, or annexed to, a municipal corporation, or any part of the facilities that provide water or sewer services to a municipal corporation or such an area, may be conveyed, by mutual agreement between the board and the municipal corporation, to the municipal corporation on terms and for consideration as may be negotiated.

The act also establishes new requirements applicable to regional water and sewer districts. Similar requirements exist regarding county sewer districts in continuing law and are established by the act.

Under the act, whenever any portion of a regional water and sewer district is incorporated as, or annexed to, a municipal corporation, the area so incorporated or annexed must remain under the jurisdiction of the district for purposes of the acquisition, construction, or operation of a water resource project until the project has been acquired or completed or is abandoned by the district. The board of trustees of the district, unless and until a conveyance is made to a municipal corporation (see below), must continue to have jurisdiction in the area so incorporated or annexed with respect to the management, maintenance, and operation of all water resource projects so acquired or completed or previously acquired or completed, including the right to establish rules and rates and charges for the use of, and connections to, the projects. The incorporation or annexation of any part of a district cannot affect the legality or enforceability of any public obligations issued or incurred by the district to provide for the payment of the cost of acquisition, construction, maintenance, or operation of any water resource project or the validity of any assessments levied or to be levied on properties within the area to provide for the payment of the cost of acquisition, construction, maintenance, or operation of the project.

The act authorizes the board of trustees of a regional water and sewer district to convey, by mutual agreement, to a municipal corporation any completed water resource project acquired or constructed for the use of, or service of property located in, the regional water and sewer district or any part of that project to which any of the following applies:

(1) The project is located within the municipal corporation or within any area that is incorporated as, or annexed to, the municipal corporation.

(2) The project serves the municipal corporation or any area that is located within or that is incorporated as, or annexed to, the municipal corporation.

(3) The project is connected to water supply or sanitary, drainage, prevention, or replacement facilities of the municipal corporation.

The conveyance must be completed with terms and for consideration that may be negotiated. Upon and after the conveyance, the municipal corporation must manage, maintain, and operate the water resource project in accordance with the agreement. The board of trustees may retain the right to the joint use of all or part of any project so conveyed for the benefit of the district. Neither the validity of any assessment levied or to be levied, nor the legality or enforceability of any public

obligations issued or incurred, to provide for the payment of the cost of the acquisition, construction, maintenance, or operation of the project or any part of the project is affected by the conveyance.

County public defender salaries

(R.C. 120.40; Section 812.10)

Prior and continuing law prohibit the pay ranges established by a board of county commissioners for a county public defender and staff and the pay ranges established by a joint board of county commissioners for the joint county public defender and staff from exceeding the pay ranges assigned under Ohio law for comparable positions of the Ohio Public Defender and staff. The act retains this provision for the staff of a county public defender and a joint county public defender but prohibits the pay ranges established for a county public defender and a joint county public defender from exceeding the pay ranges assigned for county prosecutors. This new prohibition takes effect on January 1, 2012.

Political subdivision funds and nontherapeutic abortions

(R.C. 124.85 (renumbered as R.C. 9.04))

The act prohibits the use of political subdivision funds, other than those of municipal corporations and certain counties that have adopted a charter under Article X, Section 3 of the Ohio Constitution and are exercising local self-government powers, from being expended, directly or indirectly, to pay for any health care policy, contract, or plan that provides coverage, benefits, or services related to nontherapeutic abortion. "Nontherapeutic abortion" is defined to be any abortion that is performed or induced when the life of the mother would not be endangered if the fetus were carried to term, or when the pregnancy was not the result of a rape or incest reported to law enforcement.

The act does not prohibit the use of political subdivision funds from being used to pay for a health care policy, contract, or plan that includes a rider or other provision offered on an individual basis that allows an individual who accepts the offer of the rider or other provision to obtain a nontherapeutic abortion if the individual pays for all of the associated costs.

Use of public facilities for nontherapeutic abortions

(R.C. 5101.57)

The act prohibits the use of any public facility for performing or inducing a nontherapeutic abortion. "Nontherapeutic abortion" means any abortion that is performed when the life of the mother would not be endangered if the fetus was carried to term or when the pregnancy was not the result of a rape or incest reported to law enforcement. "Public facility" means any institution, structure, equipment, or physical asset that is owned, leased, or controlled by the state or any political subdivision of the state. Included in the definition of "public facility" is any state university, state medical college, health district, joint hospital, or public hospital agency. Municipal corporations, and counties that have adopted a charter under Article X, Section 3 of the Ohio Constitution and are exercising local self-government powers, are exempt from the prohibition.

Attorney General collection of political subdivision debts

(R.C. 131.02)

The act authorizes a political subdivision to certify a receivable to the Attorney General for collection when the receivable becomes 45 days past due if the Attorney General authorizes such certification. Under prior law, only receivables of the state could be certified to the Attorney General for collection.

Records of municipally owned or operated utilities

(R.C. 149.43)

The act exempts from public records law usage information, including the names and addresses of specific residential and commercial customers of municipally owned or operated utilities. The act also states that continuing public records law permitting journalists to request the address of certain government employees applies to journalistic requests for customer information maintained by a municipally owned or operated public utility. The act prohibits journalists from requesting private financial information of customers, such as credit reports, and Social Security numbers.

Under continuing public records law, a "journalist" is a person working for any news medium (such as a newspaper, a radio or television station, or a similar medium) for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

Consolidation of records retention procedure

(R.C. 149.38, 149.381, 149.39, 149.41, 149.411, 149.412, 149.42, 1901.41, and 3313.29)

The act consolidates into one provision of law the records retention procedure that formerly applied recurrently to municipal corporations, school districts, educational service centers, libraries, special taxing districts, and townships. Under this procedure, records may be disposed of pursuant to an approved schedule of records retention and disposition approved by the appropriate records commission. When the records commission has approved any application for one time disposal of obsolete records or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. Within a period of 60 days, the Society must complete its review and send the application to the Auditor of State to approve or disapprove within another 60-day period.

Under continuing law clarified by the act, before records are disposed of pursuant to an approved schedule of records retention and disposition, the county records commission must inform the Ohio Historical Society of the disposal through the submission of a certificate of records disposal for only the records required by the schedule to be disposed of and must give the society 15 business days to select for its custody those records, from the certificate submitted, that it considers to be of continuing historical value. Thereafter, public libraries and other specified entities must be notified and given an opportunity to select records of continuing historical value. The act provides that notified entities are responsible for the cost of notification and transportation of the records.

The act's consolidated procedure incorporates the clarified procedure described above and also provides that during the 60-day review period, the Ohio Historical Society may select for its custody from the application for one-time disposal of obsolete records any records it considers to be of continuing historical value, and must denote upon any schedule of records retention and disposition any records for which it will require a certificate of records disposal before their disposal.

The act states that the Ohio Historical Society may not review or select for its custody any record (1) the release of which is prohibited by the public records law pertaining to library patron information, (2) containing personally identifiable information, other than directory information, concerning public school children without the written consent of the parent or guardian of a minor pupil or without the written consent of a pupil who is 18 or over, or (3) the release of which would disqualify an educational institution from receiving federal funds under the Family Educational Rights and Privacy Act of 1974.

Attorney General's training programs

(R.C. 109.43(F))

The act expands the training or educational programs the Attorney General may offer about Ohio's "Sunshine Laws" under continuing law to include the records retention procedure set forth in the act.

County microfilming boards

(R.C. 307.801)

The act changes the date for meetings of a county microfilming board from the third Monday in January to the second Monday in January.

Exclusion of municipal corporation or township from sanitary district established for reduction of biting arthropods

(R.C. 6115.321)

Enactment of ordinance or adoption of resolution

The act authorizes the legislative authority of a municipal corporation or the board of township trustees of a township all or part of whose territory is included within the territory of a sanitary district that is established solely for the reduction of biting arthropods to enact an ordinance or adopt a resolution, as applicable, approving the submission to the court of common pleas that established the district a petition to exclude from the district the applicable territory of the municipal corporation or the township that is included in the district. If a legislative authority or a board enacts such an ordinance or adopts such a resolution, it may submit to the appropriate court of common pleas such a petition. The petition must include an explanation of the reasons for the petition.

Duties of clerk of court

The act requires the clerk of the court to do all of the following if a court of common pleas receives such a petition from the legislative authority of a municipal corporation or a board of township trustees:

(1) Notify the legislative authority of each municipal corporation and the board of township trustees of each township all or part of whose territory is included within the territorial boundaries of the district of the receipt of the petition;

(2) Include a copy of the petition; and

(3) Include a statement informing the legislative authority or the board of township trustees, as applicable, that it may submit to the clerk within 30 days of receipt of the notice written objections concerning the petition in the form of an ordinance enacted by the legislative authority or a resolution adopted by the board, as applicable.

Duties of court

Not sooner than 30 days after the clerk of the court of common pleas notifies legislative authorities of municipal corporations and boards of township trustees, one of the following applies:

(1) The court must enter a decree excluding from the district the territory of the municipal corporation or the township, as applicable, that is the subject of the petition and create a plan (see below) if the court receives written objections concerning the petition of exclusion from fewer than 60% of the municipal legislative authorities and boards of township trustees that were so notified.

(2) The court after a hearing on the petition may enter a decree excluding from the district the territory of the municipal corporation or the township, as applicable, that is the subject of the petition and create a plan if the court receives written objections concerning the petition of exclusion from 60% or more of the municipal legislative authorities and boards of township trustees that were so notified.

Plan for exclusion from district; notification

The act requires the court to do both of the following if it enters a decree excluding from a sanitary district the territory of a municipal corporation or a township:

(1) Establish a plan for the exclusion from the district of the territory that ensures the payment of expenses and indebtedness of the district, and, if necessary because the exclusion effectively dissolves the district, determine the value of the assets of the district and provide for their equitable distribution among the municipal corporations and townships all or part of whose territory is included within the district; and

(2) Send a copy of the court's decree and of the plan to the legislative authority of each municipal corporation and the board of township trustees of each township all or part of whose territory is included within the territory of the district and to the county auditor and treasurer of each applicable county.

Township cemeteries

(R.C. 517.06)

The act authorizes boards of township trustees to make and enforce all needful rules and regulations for burial, interment, reinterment, or disinterment in the township cemetery. Continuing law authorizes the township trustees to make and enforce all needful rules and regulations for the division of the cemetery into lots, for the allotment of lots to families or individuals, and for the care, supervision, and improvement of the lots.

Sheriff sales

(R.C. 2329.26)

The act requires notices of sheriff sales to be published once a week for at least three consecutive weeks before the day of the sale, rather than, as under prior law, at least three weeks before the day of the sale. Under continuing law, lands and tenements taken in execution may not be sold until the officer taking the lands and tenements gives public notice of the date, time, and place of the sale.

Disbursement of court filing fees to be appropriated or reported

(R.C. 1901.261, 1901.262, 1907.261, 1907.262, 2151.541, 2301.031, and 2303.201)

The act makes certain funds collected by local trial courts subject to appropriation by the local legislative authority or to an annual report by the court made available to the public listing the use of all such funds.

When a municipal court, a county court, a juvenile court, a court of common pleas domestic relations division, or a court of common pleas makes a determination that additional fees are required to computerize the court, to make available computerized legal research services, or to do both, the fees collected, or, if there is a surplus in the fees collected, the surplus, cannot be disbursed without either (1) an appropriation by the board of county commissioners in addition to the court order or declaration of surplus required by continuing law or (2) a court order, subject to the court making the report described above. However, in the case of a municipal court that is not county-operated, the fees collected or surplus cannot be disbursed without an appropriation by the legislative authority of the municipal corporation in which the court sits or a court order subject to the court making the report.

Similarly, when a municipal court or county court establishes a fee to defray the cost of establishing dispute resolution procedures, the fees collected, or, if there is a

surplus in the fees collected, the surplus, cannot be disbursed without either (1) an appropriation by the board of county commissioners in addition to the court order required by continuing law or (2) a court order, subject to the court making the report described above. However, in the case of a municipal court that is not county-operated, the fees collected or surplus cannot be disbursed without an appropriation by the legislative authority of the municipal corporation in which the court sits.

Finally, when a court of common pleas determines that, for the efficient operation of the court, additional fees need to be collected for special projects of the court, the fees collected cannot be disbursed without an appropriation by the board of county commissioners in addition to the court order required by continuing law. And if the additional fees for a special project are terminated, they cannot be transferred to a similar project without an appropriation by the board of county commissioners in addition to the court order required by continuing law.

STATE LOTTERY COMMISSION (LOT)

- Would have required the State Lottery Commission to promulgate rules regarding the type of notices that must appear on a lottery ticket, including one that provided information about the percentage of lottery profits contributed to all education funding in Ohio (VETOED).
- Would have required the same notice to appear on any television advertising for the Ohio Lottery and on the first page of the Lottery's web site (VETOED).
- Authorizes the Commission to charge a lottery sales agent license applicant fees, rather than a fee, and makes it permissive for the Commission to charge those license fees and license renewal fees.

Notices regarding the percentage that lottery profits contribute to all education funding in Ohio

(R.C. 3770.03 and 3770.031)

The Governor vetoed a provision that would have added to the list of topics for which the State Lottery Commission must promulgate rules, a requirement that it do so for the type of notices that appear on a lottery ticket, including one that appears if the word "education" was used in any advertising for a statewide lottery, which would have included information as to the percentage that lottery profits contribute to all education funding in Ohio. The act would have required this notice to appear on any television advertising for the Ohio Lottery and on the first page of the Ohio Lottery's web site. Section 6 of Article XV of the Ohio Constitution provides that the entire net proceeds of any state lottery must be paid into a fund of the state treasury and used solely to support elementary, secondary, vocational, and special education programs as determined in appropriations made by the General Assembly.

Lottery sales agent licenses

(R.C. 3770.05(G))

Application and renewal fees

The act authorizes the Commission to charge an applicant fees for a lottery sales agent license, rather than a fee, and makes it permissive for the Commission to charge

those fees. The act likewise makes it permissive for the Commission to charge a renewal fee.

STATE MEDICAL BOARD (MED)

- Permits, rather than requires, the State Medical Board to administer a licensure examination for a certificate to practice the limited branches of medicine of massage therapy and cosmetic therapy.
- Provides that if it administers an examination, the Board must adopt by rule a fee for administering the examination.
- Provides that if it does not administer an examination, the Board must adopt rules specifying an acceptable examination and an acceptable score.
- Eliminates both the $250 licensure examination fee and the $35 examination of preliminary education fee and instead establishes a $150 certificate application fee.
- Increases the biennial certificate registration fee to $100 (from $50).

Limited branches of medicine – massage and cosmetic therapy

(R.C. 4731.15, 4731.16, 4731.17, 4731.171, 4731.18 (repealed), and 4731.19)

The State Medical Board regulates the practices of massage therapy and cosmetic therapy. Prior law required the Board to administer licensure examinations for certificates to practice these "limited branches of medicine." The examinations were required to be administered in accordance with rules adopted by the Board. For the purpose of administering examinations, the Board was permitted to receive assistance from a reputable person in the limited branch for which the examination was held. The licensure examination fee was $250. The act eliminates this fee.

The act instead permits the Board to administer a licensure examination for a certificate to practice a limited branch of medicine. If it administers an examination, the Board must establish by rule a fee to cover the cost of administration. If the Board does not administer an examination, it must adopt rules specifying an acceptable examination and an acceptable score that constitutes evidence of passing the examination.

Application for a certificate

A person seeking a certificate to practice a limited branch of medicine must file with the Board an application in a manner prescribed by the Board. In addition to

continuing application requirements, the act adds requirements that the application include or be accompanied by evidence that the applicant is at least age 18 and of good moral character, evidence of attaining high school graduation or its equivalent, and any other information the Board requires. The application must also be accompanied by an affidavit signed by the applicant attesting to the accuracy and truthfulness of the information submitted and consenting to release of information.

Under the act, an applicant seeking an Ohio license based on licensure in another state is no longer required to hold certification from a national certification body, but instead must have held a current license, registration, or certificate in good standing in that state for massage therapy or cosmetic therapy for not less than five years preceding application.

Under prior law, an applicant for a certificate was required to pay a $35 fee for the Board to examine the applicant's preliminary education. The act eliminates this fee, as well as the $250 license examination fee, and establishes a single certificate application fee of $150. It specifies that no application is considered filed until the Board receives the application fee.

The act authorizes the Board to investigate licensure application materials and contact any agency or organization for recommendations or other information about an applicant.

Prior law required the Board to issue a certificate to practice a limited branch of medicine if an applicant passed the examination and paid the required fees. Under the act, the Board must review all applications received. The Board must determine whether the applicant meets the requirements for a certificate. An affirmative vote of not fewer than six members of the Board is required to determine that an applicant meets the requirements for a certificate. If the Board determines that the requirements have been met and that the documentation required for a certificate is acceptable, the Board must issue the appropriate certificate to practice. Each certificate must be signed by the President and Secretary of the Board and attested by the Board's seal.

Biennial registration fee

A certificate to practice a limited branch of medicine is valid for a two-year period. Continuing law requires a person seeking to renew a certificate to apply for renewal with the Board and submit a biennial certificate registration fee. The act increases the renewal fee to $100 (from $50).

DEPARTMENT OF MENTAL HEALTH (DMH)

- Revises the law under which boards of alcohol, drug addiction, and mental health services (ADAMHS boards) receive subsidies from the Ohio Department of Mental Health (ODMH) by (1) requiring ODMH to establish a methodology for allocating to ADAMHS boards, on a district or multi-district basis, the funds appropriated to ODMH for the purpose of local mental health systems of care and (2) permitting ODMH to allocate to ADAMHS boards a portion of the funds appropriated to ODMH for the operation of state hospital services.

- For fiscal years 2012 and 2013, (1) requires, rather than permits, ODMH to allocate to ADAMHS boards a portion of ODMH's appropriation for state hospital services, (2) requires, with certain exceptions, a board to use the funds to pay for expenditures the board incurs in paying for inpatient hospitalization services provided by state regional psychiatric hospitals to persons involuntarily committed to the board, (3) authorizes ODMH, if the amount distributed to a board exceeds the amount that the board needs to pay for such expenditures, to permit the board to use the excess funds for the board's community mental health plan, and (4) authorizes ODMH to permit a board to have a portion of the funds deposited into the ODMH Risk Fund.

- Repeals a law that provided for ADAMHS boards' community mental health plans to constitute applications for funds from ODMH but maintains a law that conditions a board's eligibility for state and federal funding on an approved community mental health plan or relevant part of a plan.

- Eliminates requirements for (1) ADAMHS boards to receive, compile, and transmit to ODMH applications for state reimbursement and (2) ODMH to review, periodically during a year, the budgets and expenditures of the various facilities and community mental health agencies receiving funds.

- Eliminates certain requirements applicable to an ADAMHS board that elects to accept distribution of its allocation, including requirements for the board to pay into the ODMH Risk Fund and to provide ODMH with the board's projected utilization of state hospitals and other state-operated services.

- Requires an ADAMHS board, as a condition of electing not to accept distribution of its allocation, to provide ODMH written confirmation that the board has received input about the impact that the board's election will have on the mental health system in the board's district.

- Eliminates the authority of an ADAMHS board to utilize a part of its budget as approved by ODMH to purchase insurance and to pool with funds of other boards to pay for the costs of utilizing state hospital facilities that exceed the amount of the board's allocation.

- Specifies that an ADAMHS board's use of its allocated funds is subject to audit by county, state, and federal authorities.

- Requires ODMH to charge unreimbursed costs for services that ODMH provides against an ADAMHS board's allocation of funds for state hospital services.

- Permits, rather than requires, ODMH to withhold state or federal funds from an ADAMHS board that denies an available service on the basis of religion, race, color, creed, sex, national origin, disability, or developmental disability and eliminates ODMH's authority to make a withholding on the grounds that a board denies an available service on the basis of the inability to pay.

- Requires each ADAMHS board to develop its community mental health plan, and submit the plan to ODMH, annually rather than requiring each board to submit its plan not later than six months before the conclusion of the fiscal year in which the board's current plan is scheduled to expire.

- Eliminates requirements that (1) an ADAMHS board's community mental health plan include an explanation of how the board intends to make any payments that it may be required to make under the law governing the funds that ODMH allocates to boards and (2) a board submit an allocation request for state and federal funds with its plan.

- Eliminates the deadline by which ODMH must approve or disapprove an ADAMHS board's community mental health plan.

- Permits an ADAMHS board and ODMH to request that a dispute regarding a community mental health plan be submitted to a third-party mediator at any time while approval remains in dispute rather than having to wait until there are 30 days remaining in the fiscal year in which the board's current plan is scheduled to expire.

- Eliminates a requirement that ODMH, when a community mental health plan is submitted to a third-party mediator, make its final determination regarding approval before the conclusion of that fiscal year.

- Eliminates a provision under which an ADAMHS board's amendment to its community mental health plan was considered to be approved if ODMH failed to approve it within 30 days after it was submitted.

- Eliminates the responsibility of ODMH and ADAMHS boards to pay the nonfederal share for services provided under a component of the Medicaid program that ODMH administers and makes the Ohio Department of Job and Family Services (ODJFS) responsible for paying for such services.

- Requires ODMH, notwithstanding ODJFS's new responsibility, to allocate to ADAMHS boards mental health Medicaid match funds appropriated to ODMH for fiscal year 2012 and requires the boards to use the funds to pay claims for community mental health services provided during that fiscal year under the ODMH-administered Medicaid component and requires the boards also to use all federal financial participation that ODMH receives for claims for such services as the first payment source to pay such claims.

- Requires ODMH to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community mental health services provided before July 1, 2011, and submitted for payment on or after that date and requires that such claims be paid in accordance with the agreements.

- Provides for an ADAMHS board to receive the federal financial participation received for claims for community mental health services that were provided before July 1, 2011, and paid by the board.

- Repeals a law that made the county of residence of an individual with mental illness responsible for (1) the necessary expense of returning the individual to the individual's county of residence and (2) regular probate court fees and expenses incident to an order of hospitalization.

- Gives members of a board of directors, and employees, of a facility or agency in which ODMH places a person committed to ODMH qualified immunity from liability for injury or damages the person suffers.

- Provides for the Attorney General to represent in civil actions persons who, pursuant to an agreement with ODMH, render medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services to patients in an institution ODMH operates.

- Provides that a prohibition against an ADAMHS board member being an employee of an agency with which the board contracts for services or facilities does not apply if the board member's employment duties with the agency consist of providing, only outside the district the board serves, services for which the Medicaid program pays.

- Gives ODMH all the authority necessary to carry out its powers and duties under state law governing ODMH.

- Authorizes the ODMH Director to contract with agencies, institutions, and other entities as necessary for ODMH to carry out its duties under state laws governing ODMH, ADAMHS boards, criminal offenses against the family, criminal trials, and mentally ill persons subject to hospitalization by court order.

- Exempts such contracts from state law governing the state's purchases of services if the contracts are for services provided to individuals with mental illness by agencies, institutions, and other entities not owned or operated by ODMH.

- Provides for ODMH contracts concerning the custody, supervision, care, or treatment of mentally ill persons receiving services elsewhere than within an ODMH hospital also to provide for the evaluation of such persons.

- Eliminates a requirement for ODMH to establish and support a program at the state level to promote a community support system for every ADAMHS district and requires, instead, that ODMH support, to the extent ODMH has available resources and in consultation with ADAMHS boards, a community support system on a district or multi-district basis.

- Eliminates a requirement that ODMH assist in coordinating the planning, evaluation, and delivery of services to facilitate mentally ill persons' access to public services at federal, state, and local levels.

- Permits ODMH to prioritize support for one or more of the elements of a community support system.

- Provides that ODMH's responsibility for promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents applies to the extent ODMH has available resources.

- Provides that the requirement for the ODMH Director to develop and operate a community mental health information system or systems applies to the extent the ODMH Director determines necessary and permits the ODMH Director to contract for the operation of the system or systems.

- Requires the ODMH Director to consult with ADAMHS boards before developing and operating the community mental health information system or systems.

- Requires the ODMH Director to accept from a community mental health agency its accreditation from specified national accrediting organizations as evidence that the agency satisfies Ohio's standards for state certification of the agency's services, if the Director determines that the agency's accreditation is current and appropriate for the

services for which the agency is seeking certification, and specifies that the agency's services are generally not subject to further evaluation.

- Requires the ODMH Director and the Director of the Ohio Department of Alcohol and Drug Addiction Services (ODADAS), not later than December 31, 2011, and in consultation with persons interested in the issues of mental health residential facilities and community behavioral health services and programs, to identify areas of duplicative documentation requirements, align the documentation standards of ODMH and ODADAS, streamline Ohio's standards regarding facilities and services with federal standards, and promote the integration of behavioral and physical health services.

- Requires ODMH to use money in its Trust Fund to pay for expenditures that ODMH incurs in performing any of its duties under state law rather than for specific mental health purposes.

- Transfers to ODMH (from the Ohio Department of Aging (ODA)) the administration of the Residential State Supplement Program (RSS) and provides that no person receiving RSS payments is to be affected by the transfer.

- Eliminates a requirement to prepare an annual report for the General Assembly on the costs and savings achieved through a Home First process for RSS recipients.

- Eliminates a requirement that certain facilities be certified by ODA for residents to be eligible for RSS payments.

- Transfers to ODMH (from ODA) responsibility for the certification of adult foster homes and continues the requirement that employees in direct care positions undergo criminal records checks.

- Transfers to ODMH (from the Ohio Department of Health (ODH)) responsibility for licensing adult care facilities.

- Requires ODMH, rather than the Public Health Council, to adopt rules governing adult care facilities and specifies what the rules are permitted, rather than required, to include.

- Authorizes inspections of adult care facilities to be conducted as desk audits or on-site inspections.

- Provides that if an inspection is conducted to investigate an alleged violation in an adult care facility serving residents receiving publicly funded mental health services or RSS Program payments, the inspection may (rather than must) be coordinated

with the appropriate mental health agency, ADAMHS board, or RSS (rather than PASSPORT) administrative agency.

- Adds the right to be free from seclusion and mechanical restraint to the rights of an adult care facility resident and modifies the definition of "physical restraint."

- Removes the ODA Director and residents' rights advocates from the list of individuals authorized to assert on behalf of adult care facility residents their statutory residents' rights.

- Eliminates the authority of residents' rights advocates and sponsors of current or prospective residents to enter an adult care facility during reasonable hours.

- If a court grants injunctive relief for operating an adult care facility without a license, eliminates a requirement that the facility assist residents' rights advocates in relocating facility residents, and instead requires the facility to assist in relocating residents.

- Specifies that certain government and mental health agency employees and the ODMH Director may release resident-identifying information from the records of an adult care facility, without the resident's consent, if authorized by law to do so.

- Requires criminal records checks of applicants for employment with an adult care facility in a position involving direct care to adult residents, rather than only those positions involving direct care to older adults (persons 60 or older).

- Authorizes (1) hospitals licensed by ODMH to exchange with other healthcare providers a patient's psychiatric records and other pertinent information if the purpose of exchanging the confidential information is to facilitate the continuity of the patient's care and (2) ODMH hospitals, institutions, and facilities, ODMH-licensed hospitals, and community mental health agencies to exchange such records and information with payers.

- Authorizes the conveyance of state-owned real estate to the Board of County Hospital Trustees of The MetroHealth System in Cuyahoga County and requires the ODMH Director to disburse $3.4 million from capital appropriation item C58010, Campus Consolidation, to the grantee within 30 days after the conveyance to pay for demolishing the building situated on the real estate.

ODMH allocations of state mental health subsidies

(R.C. 5119.62 (primary), 340.03, 340.08 (repealed), 340.11, 5119.61, 5119.621, 5119.622, 5119.623, and 5122.15; Section 337.20.60)

The act revises the law under which boards of alcohol, drug addiction, and mental health services (ADAMHS boards) receive subsidies from the Ohio Department of Mental Health (ODMH). Under prior law, ODMH was required, after approving a board's community mental health plan, to authorize payment of subsidies to the board from funds appropriated for that purpose. The subsidies had two sources: (1) funds appropriated to ODMH for local management of mental health services and (2) funds appropriated to ODMH for hospital personal services, hospital maintenance, and hospital equipment, other than such funds that ODMH retained for forensic services. ODMH was required to establish an allocation methodology, including a formula, for the subsidies. The formula had to include as a factor the number of severely mentally disabled persons who resided in each ADAMHS district and could include other factors such as the historic utilization of public hospitals. The methodology was required to provide for a portion of the subsidies to be distributed on the basis of the ratio of each ADAMHS district's population to Ohio's total population.

Allocation of funds for local mental health systems of care

Under the act, ODMH is required to establish a methodology for allocating to ADAMHS boards the funds appropriated to ODMH for the purpose of local mental health systems of care. ODMH is to establish the methodology after notifying and consulting with relevant constituencies, including consumers of mental health services and their families. The methodology may provide for the funds to be allocated to the boards on a district or multi-district basis.

Allocation of funds for state hospital services

In addition to being required to establish a methodology for allocating local mental health systems of care funds, ODMH is permitted to allocate to ADAMHS boards a portion of the funds appropriated to ODMH for the operation of state hospital services. If ODMH allocates the funds, ODMH is required to do all of the following:

(1) In consultation with the boards, annually determine the unit costs of providing state hospital services and establish the methodology for allocating the funds to the boards;

(2) Determine the type of unit costs of providing state hospital services to be included as a factor in the methodology and include that unit cost as a factor in the methodology;

(3) Allocate the funds in a manner consistent with the methodology and state and federal laws and regulations.

The act requires, rather than permits, ODMH to allocate to ADAMHS boards a portion of its appropriation for state hospital services for fiscal years 2012 and 2013. ODMH, in consultation with the boards, must establish a methodology to be used for the allocations. The allocation methodology is to include as factors at least the per diem cost of inpatient hospitalization services at state regional psychiatric hospitals and the estimated number of bed days (days for which a person receives inpatient hospitalization services in a state regional psychiatric hospital) that each board will incur in fiscal years 2012 and 2013 in carrying out its duties regarding mentally ill individuals subject to hospitalization by court order who are involuntarily committed for treatment. ODMH is authorized to require each board to provide ODMH with an estimate of the number of bed days the board will incur in fiscal years 2012 and 2013 for that purpose. A board is required to use the funds allocated to it to pay for expenditures the board incurs in fiscal years 2012 and 2013 in paying for inpatient hospitalization services provided by state regional psychiatric hospitals to persons involuntarily committed to the board. However, if the amount distributed to a board exceeds the amount that the board needs to pay for such expenditures, ODMH may permit the board to use the excess funds for the board's community mental health plan. Also, ODMH may permit a board to have a portion of the funds deposited into the ODMH Risk Fund. Even though the act eliminates the law creating the ODMH Risk Fund, the act provides for the fund to continue to exist in the state treasury until it is no longer needed. While it continues to exist, money in the ODMH Risk Fund is to be used in accordance with guidelines ODMH is to develop in consultation with representatives of the boards.

Eligibility for and distribution of funds

The act repeals a law that provided for ADAMHS boards' community mental health plans to constitute applications for funds from ODMH. The act maintains, however, a law that conditions a board's eligibility for state and federal funding on an approved community mental health plan or relevant part of a plan.

Under the act, ADAMHS boards are no longer required to receive, compile, and transmit to ODMH applications for state reimbursement. ODMH is no longer required to review, periodically during a year, the budgets and expenditures of the various facilities and community mental health agencies receiving funds.

Continuing law requires an ADAMHS board, after ODMH informs the board of the amount of the board's estimated allocation for an upcoming fiscal year, to notify ODMH of whether the board elects to accept distribution of its allocation. The act

eliminates certain requirements applicable to a board that elects to accept distribution of its allocation, including requirements for the board to pay into the ODMH Risk Fund and to provide ODMH with the board's projected utilization of state hospitals and other state-operated services. ODMH is no longer required to retain and expend funds projected to be utilized for state hospitals and other state-operated services. The act also adds a condition that must be met for a board to be able to elect not to accept distribution of its allocation. The additional condition is that the board must provide ODMH written confirmation that the board has received input about the impact that the board's election will have on the mental health system in the board's district from (1) individuals who receive mental health services and their families, (2) boards of county commissioners, (3) juvenile and probate judges, and (4) county sheriffs, jail administrators, and other local law enforcement officials. This condition must be satisfied before the board satisfies a continuing law condition that the board conduct a public hearing on the issue of whether to accept distribution of its allocation.

The act eliminates the authority of an ADAMHS board to utilize a part of its budget as approved by ODMH to purchase insurance and to pool with funds of other boards to pay for the costs of utilizing state hospital facilities that exceed the amount of the board's allocation.

Audits

The act specifies that an ADAMHS board's use of its allocated funds is subject to audit by county, state, and federal authorities.

Charges and withholdings of funds

Whereas prior law permitted ODMH to charge overpayments of state funds against a county and required ODMH to charge any unreimbursed costs for services that ODMH provided against an ADAMHS board's allocation of funds for local management of mental health services, the act requires ODMH to charge such unreimbursed costs against a board's allocation of funds for state hospital services.

ODMH was required by prior law to withhold, in whole or in part, state and federal funds from an ADAMHS board for any program in the event the program failed to comply with certain state laws or ODMH rules. The act permits ODMH to withhold, in whole or in part, funds otherwise allocated to a board if the board fails to comply with the state laws or rules. Whereas prior law specified that one of the laws with which boards had to comply to avoid a withholding was the state law governing the allocations, the act specifies instead that one of the laws is a law requiring boards annually to report to ODMH regarding the use of their allocations.

ODMH was also required by prior law to withhold state or federal funds from an ADAMHS board that denied an available service on the basis of religion, race, color, creed, sex, national origin, disability, developmental disability, or the inability to pay. The act permits, rather than requires, ODMH to make such a withholding and specifies that the funds that are subject to a withholding are funds otherwise to be allocated to a board. Denial of an available service on the basis of the inability to pay is removed from the reasons for which a withholding may be made.

Community mental health plans

(R.C. 340.03 and 5119.61)

The act revises the law governing ADAMHS boards' community mental health plans. Under continuing law, a board's plan is to list the community mental health needs of the board's district and the facilities and community mental health services that will be available under the plan to meet those needs.

Under the act, ADAMHS boards are to develop their plans and submit the plans to ODMH annually. Prior law required that the plans be developed and submitted not later than six months before the conclusion of the fiscal year in which the boards' current plans were scheduled to expire. The act eliminates requirements that (1) a board's plan include an explanation of how the board intends to make any payments that it may be required to make under the law governing the funds that ODMH allocates to boards and (2) a board submit an allocation request for state and federal funds with its plan.

The act eliminates the deadline by which ODMH must approve or disapprove an ADAMHS board's plan. Under prior law, ODMH was required to approve or disapprove the plan within 60 days after determining that the plan was complete. A board and ODMH may request that a dispute regarding a plan be submitted to a third-party mediator at any time while approval remains in dispute rather than, as under prior law, having to wait until there are 30 days remaining in the fiscal year in which the board's current plan was scheduled to expire. The act eliminates a requirement that ODMH, when a plan is submitted to a third-party mediator, make its final determination regarding approval before the conclusion of that fiscal year.

Continuing law establishes a process for an ADAMHS board to seek approval of an amendment to its plan. The act eliminates a provision under which the amendment or part of it was considered to be approved if ODMH failed to approve all or part of it within 30 days after it was submitted.

Payment for mental health services provided under Medicaid

(R.C. 5111.912 (primary), 340.03, 5111.023, 5111.025, and 5111.911; Section 337.30.30)

Under prior law, ODMH and ADAMHS boards were responsible for paying the nonfederal share of any Medicaid payment for services provided under a component of the Medicaid program that ODMH administers on the behalf of the Ohio Department of Job and Family Services (ODJFS). The act makes ODJFS responsible for the payments. If necessary, the ODJFS Director must submit a Medicaid state plan amendment to the U.S. Secretary of Health and Human Services regarding ODJFS's responsibility.

Notwithstanding ODJFS's new responsibility, the act requires ODMH to allocate to ADAMHS boards mental health Medicaid match funds appropriated to ODMH for fiscal year 2012 and requires the boards to use the funds to pay claims for community mental health services provided during that fiscal year under the Medicaid component that ODMH administers. The boards are also required to use all federal financial participation that ODMH receives for claims for such services as the first payment source to pay such claims. The act provides that no board is required to use any other funds to pay for such claims.

ODMH is required by the act to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community mental health services provided before July 1, 2011, and submitted for payment on or after that date. Such claims are required to be paid in accordance with the agreements. A board is to receive the federal financial participation received for claims for community mental health services that were provided before July 1, 2011, and paid by the board.

County of residence responsibilities

(R.C. 5122.36 (repealed))

The act repeals a law that made the county of residence of an individual with mental illness responsible for the following: (1) the necessary expense of returning the individual to the individual's county of residence, and (2) regular probate court fees and expenses incident to an order of hospitalization.

Qualified immunity from liability

(R.C. 5122.341)

The act provides that no member of a board of directors, or employee, of an entity in which ODMH places a person committed to ODMH is liable for injury or damages caused by an action or inaction taken within the scope of the board member's

official duties or employee's employment relating to the commitment of, and services provided to, the person committed to ODMH, unless the action or inaction constitutes willful or wanton misconduct. A board member's or employee's action or inaction does not constitute willful or wanton misconduct if the board member or employee acted in good faith and reasonably under the circumstances and with the knowledge reasonably attributable to the board member or employee. The qualified immunity that the act provides is in addition to and not in limitation of any immunity otherwise conferred by state law or judicial precedent.

Attorney General representing officers and employees

(R.C. 109.36)

The act provides for the Attorney General to represent in civil actions persons who, pursuant to an agreement with ODMH, render medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services to patients in an institution ODMH operates. This replaces a similar responsibility that the Attorney General had under prior law to represent persons who, pursuant to an agreement between an ODMH institution and an ADAMHS board, rendered medical services to patients in the ODMH institution.

Restrictions on serving on and working for an ADAMHS board

(R.C. 340.02)

The act establishes an exception to a provision prohibiting an ADAMHS board member from being an employee of any agency with which the board has entered into a contract for the provision of services or facilities. Under the act, the prohibition does not apply if the board member's employment duties with the agency consist of providing, only outside the district the board serves, services for which the Medicaid program pays.

ODMH's general authority

(R.C. 5119.012)

The act provides that ODMH has all the authority necessary to carry out its powers and duties under state laws governing ODMH, ADAMHS boards, offenses against the family, criminal trials, and hospitalization of individuals with mental illness.

ODMH's contracts with providers

(R.C. 5119.013, 5119.06, and 5119.18)

The act authorizes the ODMH Director to contract with agencies, institutions, and other entities as necessary for ODMH to carry out its duties under state laws governing ODMH, ADAMHS boards, offenses against the family, criminal trials, and hospitalization of individuals with mental illness. Under the act, such contracts are not subject to state law governing the state's purchases of services if the contracts are for services provided to individuals with mental illness by agencies, institutions, and other entities not owned or operated by ODMH.

Evaluation of persons receiving services outside an ODMH hospital

(R.C. 5119.01(E))

Continuing law requires the ODMH Director to contract with persons, organizations, or agencies for the custody, supervision, care, or treatment of mentally ill persons receiving services elsewhere than within an ODMH hospital. The act provides for the contracts also to provide for the evaluation of such persons.

ODMH forensic services

(R.C. 5119.02(D))

Prior law required ODMH to provide and designate facilities for the care, custody, and special treatment of persons who are charged with a crime and found incompetent to stand trial or not guilty by reason of insanity. The act eliminates the requirement to provide for such facilities but maintains the requirement to designate such facilities. In addition to designating facilities for such individuals, ODMH is required by the act to designate hospitals and community mental health agencies. The act also requires ODMH to authorize payment for the custody, care, and special treatment provided to such persons.

Community support system

(R.C. 5119.06(A))

The act eliminates a requirement for ODMH to establish and support a program at the state level to promote a community support system to be available for every ADAMHS district and requires, instead, that ODMH support, to the extent ODMH has available resources and in consultation with ADAMHS boards, a community support system on a district or multi-district basis. The act also eliminates a requirement that ODMH assist in coordinating the planning, evaluation, and delivery of services to

facilitate mentally ill persons' access to public services at federal, state, and local levels. ODMH is permitted by the act to prioritize support for one or more of the elements of a community support system.

ODMH's support of services

(R.C. 5119.06(D))

The act provides that ODMH's responsibility for promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents applies to the extent ODMH has available resources.

Community mental health information system

(R.C. 5119.61(F))

The act provides that the requirement for the ODMH Director to develop and operate a community mental health information system or systems applies to the extent the ODMH Director determines necessary. The act permits the ODMH Director to contract for the operation of the system or systems. The ODMH Director is required by the act to consult with ADAMHS boards before developing and operating the system or systems.

Certification of community mental health services

(R.C. 5119.612 (primary) and 5119.611)

Each community mental health agency is required under continuing law to apply to the ODMH Director for certification of its services. To receive certification under law retained in part by the act, an agency must meet the minimum standards established by the Director.

In lieu of a determination by the ODMH Director of whether a community mental health agency satisfies the minimum standards for certification, the act requires the Director to accept appropriate accreditation of an applicant's services as evidence that the applicant satisfies the standards for certification. Acceptance of accreditation applies to an applicant's mental health services, integrated mental health and alcohol and other drug addiction services, or integrated mental health and physical health services.

Requirements for acceptance of accreditation

For an applicant's accreditation to be accepted under the act, the following requirements apply:

(1) The applicant must hold accreditation from one of the following national accrediting organizations: the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation;

(2) The accreditation must be for services being provided in Ohio;

(3) The ODMH Director must determine that the accreditation is current and is appropriate for the services for which the applicant is seeking certification;

(4) The applicant must meet any other requirements established in rules to be adopted under the act.

If the Director determines that the applicant meets these requirements, the act requires the Director to certify the applicant's services. The act specifies that the certification is to be issued without further evaluation of the services, except for any visit or evaluation otherwise authorized by the act.

Review of accrediting organizations

The act authorizes the ODMH Director to review the national accrediting organizations listed above to evaluate whether the accreditation standards and processes used by the organizations are consistent with service delivery models the Director considers appropriate for mental health services, physical health services, or both. The Director may communicate to an accrediting organization any identified concerns, trends, needs, and recommendations.

Visiting or evaluating agencies for cause

The ODMH Director is authorized by the act to visit or otherwise evaluate a community mental health agency at any time based on cause. Reasons include complaints made by or on behalf of consumers and confirmed or alleged deficiencies brought to the attention of the Director.

Notifications and reports from agencies

Under the act, the ODMH Director must require a community mental health agency to provide notice not later than ten days after any change in the agency's accreditation status. The agency is permitted to notify the Director by providing a copy of the relevant document the agency received from the accrediting organization.

Under the act, the ODMH Director must require a community mental health agency to submit reports of major unusual incidents. The act authorizes the Director to require an agency to submit cost reports pertaining to the agency.

Rules

The act requires the ODMH Director to adopt rules to implement the act's provisions regarding the acceptance of a community mental health agency's accreditation for purposes of state certification. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). In adopting the rules, the Director must do all of the following:

(1) Specify the documentation that must be submitted as evidence of holding appropriate accreditation;

(2) Establish a process by which the Director may review the accreditation standards and processes used by the national accrediting organizations;

(3) Specify the circumstances under which reports of major unusual incidents and agency cost reports must be submitted to the Director;

(4) Specify the circumstances under which the Director may visit or otherwise evaluate a community mental health agency for cause;

(5) Establish a process by which the Director, based on deficiencies identified as a result of visiting or evaluating an agency, may take a range of corrective actions, with the most stringent being revocation of the agency's certification.

Behavioral health documentation, standards, and integration

(Section 337.30.90)

The act requires the ODMH Director and the Director of the Ohio Department of Alcohol and Drug Addiction Services (ODADAS), not later than December 31, 2011, and in consultation with persons interested in the issues of mental health residential facilities and community behavioral health services and programs,[224] to do all of the following:

(1) Identify areas of duplicative and unnecessary documentation requirements associated with licensing residential facilities and certifying community behavioral health services and programs;

(2) Align the documentation standards of ODMH and ODADAS;

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[224] "Community behavioral health services and programs" are (1) ODMH-certified community mental health services and (2) ODADAS-certified alcohol and drug addiction programs (Section 337.30.90(A)).

(3) Streamline the standards of ODMH and ODADAS regarding residential facilities and community behavioral health services and programs with federal standards;

(4) Promote the integration of behavioral and physical health in residential facilities and community behavioral health services and programs.

ODMH Trust Fund

(R.C. 5119.18)

The act expands ODMH's authority to use its Trust Fund money to pay for any expenditure incurred in performing its duties under state law, rather than for the following specific mental health purposes:

(1) Establishing and supporting a program at the state level to promote a community support system to be available for every ADAMHS district;

(2) Providing training, consultation, and technical assistance regarding mental health programs and services and appropriate prevention and mental health promotion activities to ODMH employees, community mental health agencies and boards, and other agencies providing mental health services;

(3) Promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents, especially for severely mentally disabled individuals;

(4) Designing and setting criteria for the determination of severe mental disability;

(5) Establishing standards for evaluation of mental health programs;

(6) Promoting, directing, conducting, and coordinating scientific research concerning the causes and prevention of mental illness, methods of providing effective services and treatment, and means of enhancing the mental health of all Ohio residents;

(7) Fostering the establishment and availability of vocational rehabilitation services and the creation of employment opportunities for consumers of mental health services;

(8) Establishing a program to protect and promote the rights of persons receiving mental health services;

(9) Establishing guidelines for the development of community mental health plans and the review and approval or disapproval of such plans;

(10) Promoting the involvement of persons who are receiving or have received mental health services in the planning, evaluation, delivery, and operation of mental health services;

(11) Notifying and consulting with the relevant constituencies that may be affected by rules, standards, and guidelines issued by ODMH;

(12) Providing training regarding the provision of community-based mental health services to ODMH employees who are utilized in state-operated, community-based mental health services;

(13) Providing consultation to the Department of Rehabilitation and Correction concerning the delivery of mental health services in state correctional institutions.

Transfer of Residential State Supplement program

(R.C. 5119.69, 5119.691, and 5119.692; Section 337.30.50; conforming changes in R.C. 173.14, 173.35, 173.351, 340.091, 2903.33, 3721.56, 3722.04, 5101.35, and 5119.61)

The act transfers to ODMH, from the Ohio Department of Aging (ODA), the implementation of the Residential State Supplement (RSS) program. The RSS program provides cash supplemental payments to eligible aged, blind, or disabled adults who receive benefits under the federal Supplemental Security Income (SSI) program. The cash supplements provided under RSS must be used for the provision of accommodations, supervision, and personal care services.

The transferred RSS program is to be implemented in the same manner as ODA administered the program, except as follows:

(1) Permits, rather than requires, the ODMH Director to adopt rules that specify procedures and requirements for placing an individual on the RSS waiting list and priorities for the order that individuals on the waiting list are to be provided with RSS payments;

(2) Permits, rather than requires, the ODMH Director to adopt rules that establish the method to be used to determine the payment amount an eligible person will receive under the RSS program;

(3) In establishing the method to be used to determine RSS payments, permits, rather than requires, the ODMH Director to consider amounts appropriated by the General Assembly for the program;

(4) Permits, rather than requires, the ODJFS Director to adopt rules establishing standards of eligibility for the program;

(5) Eliminates a requirement that, each year, a report be provided to the General Assembly detailing the number of individuals participating in RSS rather than receiving care in a nursing facility, and the savings achieved as a result of the RSS enrollments (see "**RSS Home First**," below);

(6) Authorizes ODMH to designate an entity as responsible for providing administrative services to the program. For purposes of this requirement, ODMH is authorized to either enter into a contract with, or delegate the responsibility to, an entity to provide the services.

To qualify for RSS, a person must meet a number of conditions. One condition is that the person reside in an approved living facility. As part of transferring the program to ODMH, the act eliminates the requirement that facilities be certified by ODA in order for residents to be eligible for RSS payments. Under the transfer, ODA certification requirements are removed for all of the following facilities:

(1) A home or facility, other than a nursing home, licensed by the Ohio Department of Health (ODH);

(2) A residential facility licensed by ODMH and adult care facilities, which the act requires ODMH to license rather than ODH;

(3) An apartment or room used to provide community mental health housing services;

(4) An adult foster home, which the act requires ODMH to certify rather than ODA.

Transition

The act provides that no person receiving RSS payments when the program is transferred is to be affected by the transfer. The act specifies that the transferred program is the previous program's successor, assumes the program's obligations, and otherwise constitutes a continuation of the program. For purposes of the transition from ODA to ODMH, the act specifies the following:

(1) Any business regarding the RSS program commenced by ODA but not completed before the transfer is to be completed by ODMH;

(2) No validation, cure, right, privilege, obligation, or liability is lost or impaired by reason of the transfer;

(3) Rules, orders, and determinations pertaining to the RSS program are to continue to be in effect after the transfer occurs, until modified or rescinded by ODMH;

(4) Any action or proceeding related to the RSS program that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of ODMH.

RSS Home First

Under Home First provisions of law largely unchanged by the act, each month, RSS administrators are required to notify the ODA long-term care consultation program administrator that a person on the RSS waiting list has been admitted to a nursing facility. The long-term care administrator is to determine if the person admitted to the nursing facility would rather participate in RSS. If so, the person is to be approved to participate in the RSS program instead of receiving services in a nursing facility. The act specifies that the notifications are to be made by the RSS administrators on a periodic schedule determined by ODMH, rather than each month.

Certification of adult foster homes

(R.C. 5119.692; Section 337.30.75)

As discussed above, one of the living arrangements in which an RSS recipient may reside is an adult foster home, which must be certified. The act transfers responsibility for the certification of adult foster homes to ODMH (from ODA). In doing so, the act specifies the following:

(1) Certification of an adult foster home that is valid on July 1, 2011, is deemed to have been issued by ODMH;

(2) Any business regarding the certification of adult foster homes commenced by ODA but not completed before the transfer is to be completed by ODMH;

(3) No validation, cure, right, privilege, obligation, or liability is lost or impaired by reason of the transfer;

(4) Rules, orders, and determinations pertaining to the certification of adult foster homes are to continue to be in effect after the transfer occurs, until modified or rescinded by ODMH;

(5) Any action or proceeding related to the certification process that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of ODMH.

Pre-employment criminal records checks

(R.C. 5119.693)

In transferring the certification of adult foster homes from ODA to ODMH, the act continues the ODA-required criminal records check of applicants seeking employment in direct care positions at adult foster homes.[225] The act permits, rather than requires, ODMH to adopt rules regarding criminal records checks. The act also permits, rather than requires, that the rules specify circumstances under which an adult foster home may employ persons who plead guilty to or are convicted of specified offenses but meet personal character standards set by ODMH.

Adult care facilities

(R.C. 5119.70 to 5119.88 and 5119.99; Section 337.30.80; conforming changes in R.C. 109.57, 109.572, 173.14, 173.21, 173.26, 173.35, 173.36, 173.42, 340.03, 340.05, 2317.02, 2317.422, 2903.33, 3313.65, 3701.07, 3701.74, 3721.01, 3721.02, 3722.99 (repealed), 3737.83, 3737.841, 3781.183, 3791.043, 5101.60, 5101.61, 5111.113, 5119.22, 5119.61, 5119.613, 5119.99, 5123.19, 5701.13, and 5731.39)

Adult care facilities are residential facilities that provide accommodations and supervision to three to 16 unrelated adults, at least three of whom require personal care services.

The act transfers to ODMH, from the Ohio Department of Health (ODH), responsibility for licensing adult care facilities. The transfer is effective July 1, 2011. For purposes of the transition from ODH to ODMH, the act specifies the following:

(1) Adult care facility licenses issued by ODH are deemed to have been issued by ODMH;

(2) Any business regarding the licensure of adult care facilities commenced by ODH but not completed before the transfer is to be completed by ODMH;

(3) No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer;

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[225] The ODA-required criminal records check was part of the ODA law under which applicants for employment in positions involving providing direct care to individuals under community-based long-term care programs administered by ODA must undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation (R.C. 173.39 and 173.394, not in the act).

(4) Rules, orders, and determinations pertaining to the licensure of adult care facilities continue to be in effect after the transfer, until modified or rescinded by ODMH;

(5) Any action or proceeding related to the licensing process that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of ODMH.

Under the act, ODMH (rather than the Public Health Council) is required to adopt rules governing adult care facilities. The act specifies what the rules are permitted, rather than required, to include.

Inspections

(R.C. 5119.73)

During each licensing period, the ODMH Director must make at least one unannounced inspection of an adult care facility and may make additional unannounced inspections as necessary.[226] This is a continuation of the ODH inspection provisions.

The act specifies that inspections of adult care facilities may be conducted as desk audits or on-site inspections. If an inspection is conducted to investigate an alleged violation in an adult care facility serving residents receiving publicly funded mental health services or Residential State Supplement (RSS)[227] payments, the act permits, rather than requires, that the inspection be coordinated with the appropriate mental health agency, ADAMHS board, or RSS (rather than PASSPORT) administrative agency.

Residents' rights

(R.C. 5119.81)

Under continuing law, residents of adult care facilities have certain statutory rights, including the right to be free from physical restraint. The act adds the right to be free from seclusion and mechanical restraint. Under the act, "seclusion" means the involuntary confinement of a resident alone in a room in which the resident is physically prevented from leaving. "Mechanical restraint" means any method of

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[226] The required unannounced inspection during each licensing period is in addition to the inspection to determine whether a license should be issued or renewed (R.C. 5119.73(C)).

[227] The RSS program provides cash supplements to payments made to eligible aged, blind, or disabled adults under the Supplemental Security Income (SSI) program.

restricting a resident's freedom of movement, physical activity, or normal use of the resident's body, using an appliance or device manufactured for this purpose.

The definition of "physical restraint" is modified by the act to mean any method of physically restricting a resident's freedom of movement, physical activity, or normal use of the resident's body without the use of a mechanical restraint. Prior law defined it as any article, device, or garment that interfered with the free movement of the resident and that the resident was unable to remove easily. The act specifies that "physical restraint" is also known as "manual restraint."

The act removes the Director of Aging and residents' rights advocates from the list of individuals authorized to assert on behalf of adult care facility residents their residents' rights. Under law retained in part by the act, the individuals authorized to do so are the ODMH Director[228] and residents' sponsors, which are adult relatives, friends, and guardians.

Relocating residents following injunctions

(R.C. 5119.78)

The act requires an adult care facility to assist in relocating residents if a court grants injunctive relief for operating a facility without a license. This is in place of a requirement that the facility assist residents' rights advocates in relocating the residents.

Authorization to enter facility

(R.C. 5119.84)

The act eliminates the authority of residents' rights advocates and sponsors of current or prospective residents to enter an adult care facility during reasonable hours. Under continuing law, the following individuals may enter the facility: (1) residents' attorneys, (2) ministers, priests, rabbis, or other persons ministering to residents' religious needs, (3) physicians or other persons providing health care services to residents, (4) employees authorized by CDJFSs and local boards of health or health departments, and (5) prospective residents.

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[228] Since the act transfers the licensing of adult care facilities to ODMH from ODH, the ODMH Director (rather than the ODH Director) is authorized to assert residents' rights on behalf of a facility resident.

Records

(R.C. 5119.84)

Under continuing law, certain state and local government and mental health agency officers and employees are authorized to enter an adult care facility at any time and have access to facility records, including records pertaining to residents. The act expands the circumstances when these officers and employees may release resident-identifying information from the records, without the resident's consent. In addition to being authorized to release the information by court order, the act permits the officers and employees, including the ODMH Director, to release the information if authorized by law to do so.

Pre-employment criminal records checks

(R.C. 5119.85)

Prior law required an applicant for employment with an adult care facility in a position involving direct care to an older adult to undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation. "Older adult" was defined as a person age 60 or older. The act instead requires a criminal records check for positions involving direct care to an "adult resident," which is defined by the act as individual residing in an adult care facility licensed by ODMH.

Under continuing law, an adult care facility is generally prohibited from employing a person who pleads guilty to or is convicted of specified offenses. Prior law required the Public Health Council to adopt rules regarding adult care facilities conducting criminal records checks on applicants for employment. The rules were required to specify circumstances under which facilities could employ persons who pleaded guilty to or were convicted of specified offenses but met personal character standards.[229]

In transferring the licensing of adult care facilities to ODMH, the act permits, rather than requires, ODMH to adopt rules regarding criminal records checks. The act also permits, rather than requires, that the rules specify circumstances under which facilities may employ persons who plead guilty to or are convicted of specified offenses but meet personal character standards set by ODMH.

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[229] R.C. 3721.151.

Exchange of confidential health information by ODMH-licensed hospitals and with payers

(R.C. 5122.31)

The act expands one of 15 exceptions to the continuing law provision generally requiring that documents pertaining to the hospitalization of the mentally ill and criminal trials of persons alleged to be insane be kept confidential and not be disclosed unless the patient consents to disclosure. The particular exception continues to permit ODMH hospitals, institutions, and facilities and community mental health agencies to exchange psychiatric records and other pertinent information with other providers of treatment and health services if the purpose is to facilitate continuity of care of a patient. In addition to these authorized entities, the act authorizes hospitals that are not ODMH hospitals, but are licensed by ODMH, to exchange the records and information with other providers of treatment and health services.

The act permits the exchange of the confidential records and information described above with payers. This authority applies to ODMH hospitals, institutions, and facilities, ODMH-licensed hospitals, and community mental health agencies.

Land conveyance to MetroHealth

(Section 753.25)

The act authorizes the Governor to convey real estate that ODMH plans to vacate as part of the consolidation of its two Northcoast Behavioral Healthcare facilities.

Specifically, the act authorizes the Governor to execute a deed in the name of the state conveying to the Board of County Hospital Trustees of The MetroHealth System ("MetroHealth"), in the name of the County of Cuyahoga, State of Ohio, its successors and assigns, all of the state's right, title, and interest in the following listed parcels of real estate located in Cuyahoga County: 00821-008, 00821-009, 00821-010, 00821-011, 00821-012, 00821-013, 00821-014, 00821-015, 00821-016, and 00821-017. In preparing the deed, the Auditor of State, with the assistance of the Attorney General, is to develop a legal description of the real estate in conformity with the actual bounds of the real estate. The real estate together with the building situated upon it is to be conveyed. And the real estate is to be sold as an entire tract and not in parcels.

Consideration for conveyance of the real estate is $10. In addition, the amount of $3.4 million is to be disbursed to MetroHealth to pay for demolishing the building situated on the real estate. Notwithstanding any provision of law to the contrary, the ODMH Director is required to disburse $3.4 million from capital appropriation item C58010, Campus Consolidation, as set forth in Sub. H.B. 462 of the 128th General

Assembly, to the grantee within 30 days after the conveyance of the real estate. After the disbursement, the state must, within four months, complete a physical inventory of assets, relocate assets that are to be removed from the building, and itemize assets that are to remain with the transferred real estate and building.

MetroHealth is prohibited, during any period that any bonds issued by the state to finance or refinance all or a portion of the real estate are outstanding, from using any portion of the real estate for a private business use without the prior written consent of the state. "Private business use" means use, directly or indirectly, in a trade or business carried on by any private person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a private person who is not a natural person is to be presumed to be a trade or business. "Private person" means any natural person or any artificial person (such as a corporation or other business organization or entity), including the United States or any agency or instrumentality of the United States, but excluding any state, territory, or possession of the United States, the District of Columbia, or any political subdivision thereof that is referred to as a "state or local governmental unit" in Treasury Regulation 1.103-1(a) and any person that is acting solely and directly as an officer or employee on behalf of such a governmental unit.

The act prohibits MetroHealth from selling, conveying, or transferring ownership of the real estate before December 1, 2019, or before receiving written confirmation from the state that all of the state's bonded capital indebtedness associated with any of the buildings located on the real estate has been fully satisfied.

The act requires MetroHealth to pay all costs associated with the purchase and conveyance of the real estate, including the costs of any surveys and recordation costs of the deed.

The act requires the Auditor of State, with the assistance of the Attorney General, to prepare a deed to the real estate. The deed must state the consideration and the conditions and restrictions, and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to MetroHealth. MetroHealth must present the deed for recording in the Office of the Cuyahoga County Recorder.

Authority to make the conveyance expires one year after its effective date.

DEPARTMENT OF NATURAL RESOURCES (DNR)

- Authorizes the Director of Natural Resources to enter into contracts or agreements with any federal agency, other public agency, or private entity or organization for the performance of the Department of Natural Resources' duties.

- Eliminates the Natural Resources Publications and Promotional Materials Fund.

- Requires the transfer of the remaining cash balance in the Natural Resources Publications and Promotional Materials Fund to the Departmental Projects Fund and the Geological Mapping Fund in amounts determined by the Director of Budget and Management in consultation with the Director of Natural Resources.

- Requires all moneys from the sale of books, bulletins, maps, or other publications and promotional materials on and after July 1, 2011, to be credited to the Departmental Projects Fund or the Geological Mapping Fund as determined by the Director of Natural Resources.

- Authorizes the Chief of the Division of Forestry to enter into a personal service contract for consulting services to assist the Chief with the sale of timber or other forest products and related inventory.

- Revises and expands the purposes for which money credited to the Geological Mapping Fund may be used, and requires money collected from fees for products provided and services performed by the Division of Geological Survey as required by the act to be credited to the Fund.

- Revises the duties of the Division of Geological Survey concerning all of the following:

  --Types of mineralogical and geological raw materials and natural resources data that must be collected, studied, and interpreted;

  --Special studies and reports of the state's geological resources that are of economic, environmental, or educational significance or significance to public health, welfare, and safety;

  --Storing and cataloging of data, maps, diagrams, records, rock core, samples, profiles, and geologic sections of the state; and

  --Advising, consulting, and collaborating with state agencies, other state governments, and the federal government on geological problems or issues.

- Authorizes the Division of Geological Survey to create custom products and provide information on Ohio's geological nature to governmental agencies, colleges and universities, and persons.

- Requires the Chief of the Division of Geological Survey to adopt rules establishing fee schedules for:

  --Providing manipulated, interpreted, or analyzed data from the Division's archived geologic records, data, maps, rock core, and samples; and

  --Creating custom maps, custom data sets, or other custom products and providing information on Ohio's geological nature.

- Revises the requirements governing well logs and related reports, and establishes a fine for failure to comply with the requirements.

- Revises the purposes for which the Chief of Geological Survey may obtain temporary assistance from specified persons by authorizing the Chief to obtain such assistance for studies and plans for economic development or geologic hazards projects rather than for erosion projects as in prior law.

- Creates the Division of Oil and Gas Resources Management in the Department of Natural Resources, and transfers to the Division the functions and duties of the Division of Mineral Resources Management in the Department with respect to oil and gas.

- Excludes from the Division of Ohio and Gas Resources Management's exclusive authority under law largely retained by the act to regulate the permitting, location, and spacing of oil and gas wells and production operations only those activities that are regulated under federal laws for which oversight has been delegated to the Environmental Protection Agency and activities that are regulated under the statutes governing isolated wetlands.

- States that the Oil and Gas Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of well stimulation and completion.

- Adds site construction and permitting related to site construction and restoration to the activities that are specifically identified as being subject to uniform statewide regulation.

- Establishes a setback of 50 feet for a new well or a new tank battery of a well from a body of water, and authorizes to the Chief of the Division of Oil and Gas Resources

Management to reduce the distance if it is necessary to reduce impacts to the owner of the land or to protect public safety or the environment.

- Allows the surface location of a new well that will be drilled using directional drilling to be located on a parcel of land that is not in the drilling unit of the well, provided that the surface location complies with setback requirements established in ongoing law and the act.

- Expands the definition of "production operation" in the Oil and Gas Law.

- Authorizes the Chief of the Division of Ohio and Gas Resources Management to issue compliance notices.

- Transfers the management of the Ohio Natural Heritage Database from the Division of Natural Areas and Preserves to the Division of Wildlife.

- Requires the Chief of the Division of Wildlife, in addition to the Chief of the Division of Natural Areas and Preserves, to prepare and maintain surveys and inventories of rare and endangered species of plants and animals and other unique natural features for inclusion in the Database.

- Requires the Ohio Natural Areas Council to advise the Director of Natural Resources or the Director's designee, rather than the Chief of the Division of Natural Areas and Preserves as in former law, regarding nature preserves and natural areas.

- Revises the membership of the Ohio Natural Areas Council by terminating the terms of office of the members serving on September 29, 2011 and providing for the appointment of new members, and requires members to be appointed by the Governor rather than the Director of Natural Resources as in prior law.

- Increases the frequency of Ohio Natural Areas Council meetings.

- Requires a nonresident owner of land in Ohio and the owner's children and grandchildren, if applicable, to purchase a nonresident hunting license, deer or wild turkey permit, fur-taker permit, or nonresident fishing license by applying the exemptions in law revised by the act for landowners and their families only to Ohio residents.

- Allows all of the following to hunt without a license, take deer or wild turkey without a permit, hunt or trap fur-bearing animals without a permit, and fish without a license on land owned by a limited liability company, limited liability partnership, or a trust:

--A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a member of a limited liability company that has three or fewer members;

--A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a member of a limited liability partnership that has three or fewer partners; and

--A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a trustee or a beneficiary of a trust whose total number of trustees and beneficiaries does not exceed three individuals.

- Prohibits a wild animal hunting preserve from being located within 1,500 feet, rather than 3,000 feet as in former law, of another hunting preserve or of a commercial bird shooting preserve.

- Requires the boundaries of a wild animal hunting preserve to be clearly defined by the posting of signs at intervals of not more than 400 feet rather than 200 feet as in former law.

- Allows the Chief of the Division of Parks and Recreation to sell or otherwise dispose of by lawful means forest products, in addition to timber as in ongoing law, that require management for specified reasons, and adds to those reasons implementation of sustainable forestry practices.

- Authorizes the Chief of the Division of Parks and Recreation to enter into a memorandum of understanding with the Chief of the Division of Forestry to allow the Division of Forestry to administer the sale of timber and forest products on lands owned or controlled by the Division of Parks and Recreation.

- Requires 75% of any proceeds from such a sale to be credited to the State Park Fund and 25% to be credited to the State Forest Fund.

- Alters the distribution of the proceeds of the sale of standing timber from state forest lands to provide 35% to the State Forest Fund and 65% to the county where the timber was harvested to be redistributed rather than 25% to the State Forest Fund, 65% to the county where the timber was harvested to be redistributed, and 10% to the General Revenue Fund as in former law.

- Authorizes the Chief of the Division of Forestry to annually request the Director of Budget and Management to transfer to the Wildfire Suppression Fund not more

than $100,000 from the State Forest Fund rather than from the General Revenue Fund as in prior law.

- Requires the Administrator of Workers' Compensation each fiscal year, beginning July 1, 2011, and ending June 30, 2013, when requested by the Director of Natural Resources, to transfer from the investment earnings of the Coal-Workers Pneumoconiosis Fund an amount not to exceed $3 million to the Mine Safety Fund and an amount not to exceed $1.5 million to the Coal Mining Administration and Reclamation Reserve Fund.

- Eliminates former law that instead authorized the Administrator of Worker's Compensation to transfer an unspecified portion of the investment earnings to the Mine Safety Fund.

- Requires the Ohio Soil and Water Conservation Commission to establish a Conservation Program Delivery Task Force.

- Requires the Conservation Program Delivery Task Force to make recommendations to the Director of Natural Resources regarding how soil and water conservation districts may advance operations while continuing to provide local program leadership, and requires that the final report of recommendations be submitted no later than December 31, 2011.

Contracting authority for Director of Natural Resources

(R.C. 1501.01 and 1541.03)

The act authorizes the Director of Natural Resources to enter into contracts or agreements with any federal agency, other public agency, or private entity or organization for the performance of the Department of Natural Resources' duties. It eliminates similar authority in prior law for the Chief of the Division of Parks and Recreation.

Natural Resources Publications and Promotional Materials Fund

(R.C. 1501.031 (repealed); Section 512.60)

The act eliminates the Natural Resources Publications and Promotional Materials Fund to which all money received from the sale of publications and promotional materials of the Department of Natural Resources were credited and that was used to pay for the production of those items.

The act requires the Director of Budget and Management, on July 1, 2011, or as soon as possible thereafter, and at the request of the Director of Natural Resources, to transfer the remaining cash balance in the Natural Resources Publications and Promotional Materials Fund to the Departmental Projects Fund and the Geological Mapping Fund. The amount transferred to each of those Funds must be determined by the Director of Budget and Management after consultation with the Director of Natural Resources. Additionally, beginning July 1, 2011, all moneys from the sale of books, bulletins, maps, or other publications and promotional materials must be credited to the Departmental Projects Fund or the Geological Mapping Fund as determined by the Director of Natural Resources.

Division of Forestry personal service contracts

(R.C. 1503.05)

The act authorizes the Chief of the Division of Forestry to enter into a personal service contract for consulting services to assist the Chief with the sale of timber or other forest products and related inventory. Compensation for the consulting services must be paid from the proceeds of the sale. Ongoing law authorizes the Chief to sell timber and other forest products from state forests and state forest nurseries. The Chief may make the sales whenever the Chief considers such a sale desirable.

Division of Geological Survey

(R.C. 1505.01, 1505.04, 1505.05, 1505.06, 1505.09, 1505.11, and 1505.99)

Geological Mapping Fund

The act revises and expands the purposes for which the Chief of the Division of Geological Survey must use money in the Geological Mapping Fund. It requires money in the Fund to be used for performing necessary field, laboratory, and administrative tasks to map and make public reports on the geologic hazards and energy resources, in addition to the geology and mineral resources, of the state. Former law required money in the Fund to be used to conduct those activities regarding the geology and mineral resources of each county of the state.

In addition, the act requires money collected from fees for products provided and services performed by the Division as required by the act to be credited to the Fund (see "**Fee schedules**," below).

Duties of the Division

The act revises the duties of the Division concerning all of the following:

(1) The types of mineralogical and geological raw materials and natural resources data that must be collected, studied, and interpreted by adding dolomite, aggregates, sand, and gravel;

(2) Special studies and reports of the state's geological resources that the Division must make by adding geological resources that are of current or potential environmental significance or of significance to the health, welfare, and safety of the public;

(3) The making and storing of maps, diagrams, profiles, and geologic sections by requiring such information to be cataloged and available in perpetuity rather than for distribution and by adding data, records, rock cores, and samples; and

(4) Advising and consulting with state agencies on problems of a geological nature by adding that the Division also may collaborate with other state governments and the federal government.

The act also expands the Division's duties by authorizing the Division to do both of the following: (1) create custom maps, custom data sets, or other custom products for government agencies, colleges and universities, and persons, and (2) provide information on the geological nature of Ohio to those entities and persons.

Fee schedules

The act requires the Chief of the Division to adopt rules in accordance with the Administrative Procedure Act that establish fee schedules for both of the following:

(1) Requests for manipulated, interpreted, or analyzed data from the geologic records, data, maps, rock cores, and samples archived by the Division. The schedule may include the cost of specialized storage requirements, programming, labor, research, retrieval, data manipulation, and copying and mailing of records.

(2) Creating custom maps, custom data sets, and other custom products and providing geological information of the state. The schedule may include the costs of labor, research, analysis, equipment, and technology.

The rules must establish procedures for the levying and collection of the fees. In addition, the act authorizes the Chief to reduce or waive a fee in a schedule for a student who is enrolled in an institution of higher education. All fees collected pursuant to a schedule must be credited to the Geological Mapping Fund (see above). Any revision to a fee schedule must be established in rules adopted under the Administrative Procedure Act. Finally, the Ohio Geology Advisory Council must

review and the Director of Natural Resources must approve any revision to a fee schedule.

Well logs and related reports

The act requires a government agency, in addition to any person, firm, or corporation as in continuing law, that drills, bores, or digs a well for any liquid or gas production or extraction or that bores or digs, in addition to drills, a well for exploring geological formations to keep a careful and accurate log of the activity. It also requires the log and the results of any rock or fluid analyses or of any production or pressure tests, rather than just production tests as in law revised by the act, to be reported to the Chief. In addition, the act authorizes Division personnel to collect samples from such a well of fluids and gases in addition to samples of cores, chips, or sludge.

The act prohibits a person, firm, agency, or corporation from failing to keep an accurate log or file a report. A violator must be fined between $100 and $1,000 on a first offense and between $1,000 and $2,000 on each subsequent offense.

Use of temporary assistance

The act authorizes the Chief to obtain temporary assistance from specified persons to make studies, surveys, maps, and plans for economic development or geologic hazards projects rather than for erosion projects as in former law.

Division of Oil and Gas Resources Management

(R.C. 1509.02, 121.04, 124.24, 1501.022, 1509.01, 1509.021, 1509.03, 1509.04, 1509.041, 1509.05, 1509.06, 1509.061, 1509.062, 1509.07, 1509.071, 1509.072, 1509.073, 1509.08, 1509.09, 1509.10, 1509.11, 1509.12, 1509.13, 1509.14, 1509.15, 1509.17, 1509.181, 1509.19, 1509.21, 1509.22, 1509.221, 1509.222, 1509.223, 1509.224, 1509.225, 1509.226, 1509.23, 1509.24, 1509.25, 1509.26, 1509.27, 1509.28, 1509.29, 1509.31, 1509.32, 1509.33, 1509.34, 1509.36, 1509.38, 1509.40, 1509.50, 1510.01, 1510.08, 1561.06, 1561.12, 1561.13, 1561.35, 1561.49, 1563.06, 1563.24, 1563.28, 1571.01, 1571.012, 1571.013, 1571.014, 1571.02, 1571.03, 1571.04, 1571.05, 1571.06, 1571.08, 1571.09, 1571.10, 1571.11, 1571.14, 1571.16, 1571.18, 1571.99, 3750.081, and 6111.044; Section 515.20)

The act creates the Division of Oil and Gas Resources Management in the Department of Natural Resources. It transfers to the Division the functions and duties of the Division of Mineral Resources Management in the Department with respect to oil and gas. Those functions and duties include:

(1) Regulation of oil and gas wells in Ohio, including permitting, location and spacing, plugging, restoration of disturbed land, and pooling;

(2) Enforcement of the Oil and Gas Law;

(3) Oversight of oil and gas resources inspectors;

(4) Administration and enforcement of the Underground Storage of Gas Law; and

(5) Examination to become and oversight of the state gas storage well inspector.

The act also establishes transition procedures for the transfer of the functions and duties concerning oil and gas from the Division of Mineral Resources Management to the new Division of Oil and Gas Resources Management.

Oil and Gas Law

(R.C. 1509.02, 1509.01, 1509.021, 1509.022, and 1509.04)

Statewide regulation and comprehensive plan

Law largely retained by the act states that the Division has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations in Ohio. The act excludes from that authority only those activities that are regulated under federal laws for which oversight has been delegated to the Environmental Protection Agency and activities that are regulated under the state statutes governing isolated wetlands.

Law retained by the act also states that the regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation and that the Oil and Gas Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, and operating of oil and gas wells in Ohio, including site restoration and disposal of wastes from those wells. The act adds that the Oil and Gas Law and rules adopted under it also constitute a comprehensive plan with respect to all aspects of well stimulation and completion. It then adds site construction and permitting related to site construction and restoration to the activities that are specifically identified as being subject to uniform statewide regulation.

Setback of new well or tank battery from water sources

The act prohibits the location of a new well or a new tank battery of a well from being within 50 feet of a stream, river, watercourse, water well, pond, lake, or other body of water. However, the Chief of the Division of Oil and Gas Resources Management may authorize a distance that is less than 50 feet from such bodies of water if the Chief determines that the reduction is necessary to reduce impacts to the owner of the land on which the well or tank battery of a well is to be located or to

protect public safety or the environment. Continuing law establishes other setbacks governing the surface location of a well, a tank battery, and other surface facilities of a well.

Surface location of new well using directional drilling

The act allows the surface location of a new well that will be drilled using directional drilling to be located on a parcel of land that is not in the drilling unit of the well, provided that the surface location complies with setback requirements established in continuing law and the act (see above).

Definition of "production operation"

The act expands the definition of "production operation" in the Oil and Gas Law to mean all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under that Law, including operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging. Under the act, it also includes all of the following:

(1) The piping, equipment, and facilities used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

(2) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities; and

(3) The processes and related equipment and facilities associated with production compression, gas lift, gas injection, fuel gas supply, well drilling, well stimulation, and well completion activities, including dikes, pits, and earthen and other impoundments used for the temporary storage of fluids and waste substances associated with well drilling, well stimulation, and well completion activities.

Under former law, "production operation" instead meant site preparation, access roads, drilling, well completion, well stimulation, well operation, site reclamation, and well plugging. It also included all of the following:

(1) The piping and equipment used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

(2) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, and measurement of hydrocarbon gas and liquids; and

(3) The processes associated with production compression, gas lift, gas injection, and fuel gas supply.

Compliance notices

The act authorizes the Chief to issue compliance notices as part of the Chief's enforcement authority in addition to entering into compliance agreements under ongoing law.

Ohio Natural Heritage Database

(R.C. 1517.02 and 1531.04)

The act transfers the management of the Ohio Natural Heritage Database from the Division of Natural Areas and Preserves to the Division of Wildlife. It requires the Chief of the Division of Wildlife, in addition to the Chief of the Division of Natural Areas and Preserves, to prepare and maintain surveys and inventories of rare and endangered species of plants and animals and other unique natural features for inclusion in the Database. It retains the requirement that the Chief of the Division of Natural Areas and Preserves prepare and maintain surveys and inventories of natural areas for inclusion in the Database.

Ohio Natural Areas Council

(R.C. 1517.03; Section 515.23)

The act requires the Ohio Natural Areas Council to advise the Director of Natural Resources or the Director's designee, rather than the Chief of the Division of Natural Areas and Preserves as in former law, regarding the administration of nature preserves and natural areas. It then makes changes in the Council itself and increases the frequency of Council meetings.

The act terminates the terms of office of the members of the Council serving on September 29, 2011 and provides for the appointment of new members. The following members are to be appointed to the Council by the Governor with the advice and consent of the Senate:

(1) One member representing natural history museums;

(2) One member representing metropolitan park districts;

(3) One member representing colleges and universities;

(4) One member representing outdoor education programs in primary and secondary education;

(5) One member representing nature centers; and

(6) Two members representing the public.

Each appointed member must be active or interested in natural area preservation. Not more than four of the appointed members can belong to the same political party. The Director or the Director's designee is a nonvoting ex officio member of the Council.

The act requires the Governor to make appointments to the Council not later than 30 days after September 29, 2011. It provides for staggered four-year terms and establishes standard appointment procedures for the members of the Council. The Department of Natural Resources must furnish clerical, technical, legal, and other services required by the Council in the performance of its duties. The Council must hold at least one regular meeting every three months.

Under former law, the Council could not have fewer than five members as determined and appointed by the Director. Former law did not specify entities or interests to be represented on the Council. Members' terms of office were determined by the Director. The Council was required to hold at least one regular meeting in each calendar year.

Hunting license, deer or wild turkey permit, fur-taker permit, and fishing license exemption

(R.C. 1533.10, 1533.11, 1533.111, and 1533.32)

The act requires a nonresident owner of land in Ohio and the owner's children and grandchildren, if applicable, to purchase a nonresident hunting license, deer or wild turkey permit, fur-taker permit, or nonresident fishing license by applying the exemptions in law revised in part by the act for landowners and their families only to Ohio residents. Under those exemptions, the owner of lands in Ohio and the owner's children of any age and grandchildren under 18 years of age may hunt on the lands without a hunting license. Similarly, the owner of lands in Ohio and the owner's children of any age may hunt on the land without a deer or wild turkey permit, hunt or trap fur-bearing animals on the land without a fur-taker permit, and take frogs and turtles and catch certain fish on waters on the land without a fishing license.

The act also allows all of the following to hunt without a license, take deer or wild turkey without a permit, hunt or trap fur-bearing animals without a permit, and

fish without a license on land owned by a limited liability company, a limited liability partnership, or a trust:

(1) A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a member of a limited liability company that has three or fewer members;

(2) A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a member of a limited liability partnership that has three or fewer partners; and

(3) A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a trustee or a beneficiary of a trust whose total number of trustees and beneficiaries does not exceed three individuals.

Wild animal hunting preserves

(R.C. 1533.731)

The act prohibits a wild animal hunting preserve from being located within 1,500 feet, rather than 3,000 feet as in former law, of another hunting preserve or of a commercial bird shooting preserve. The act also requires the boundaries of a wild animal hunting preserve to be clearly defined by the posting of signs at intervals of not more than 400 feet rather than 200 feet as in former law.

Under continuing law, game and nonnative wildlife that have been approved by the Chief of the Division of Wildlife, that have been legally acquired or propagated under the authority of a propagating license, and that are properly marked and tagged may be released and hunted within the confines of the licensed wild animal hunting preserve. Hunting may take place between sunrise and sunset, without regard to sex, bag limit, or open season, by licensed hunters authorized by the holder of the wild animal hunting preserve license to hunt on those lands. The Chief is required to establish, by rule, the allowable methods of taking game and nonnative wildlife in a wild animal hunting preserve.

Sale of timber and forest products from state parks

(R.C. 1541.05)

The act allows the Chief of the Division of Parks and Recreation, with the approval of the Director of Natural Resources, to sell or otherwise dispose of by lawful means forest products, in addition to timber as in ongoing law, that require

management for specified reasons. Under continuing law, those reasons include the improvement of wildlife habitat, protection against wildfires, provision of access to recreational facilities, and improvement of the safety, quality, or appearance of any state park area. The act adds implementation of sustainable forestry practices as another reason for which forest products and timber may be sold or disposed of.

Under continuing law, the Chief also may sell or otherwise dispose of standing timber that as a result of certain natural occurrences may present a hazard to life or property and timber that has weakened or fallen on lands under the control and management of the Division.

The act authorizes the Chief of the Division of Parks and Recreation to enter into a memorandum of understanding with the Chief of the Division of Forestry to allow the Division of Forestry to administer the sale of timber and forest products on lands owned or controlled by the Division of Parks and Recreation. 75% of the proceeds from such a sale must be credited to the State Park Fund, and 25% of the proceeds must be credited to the a State Forest Fund.

Under law revised in part by the act, proceeds from the disposition of items by the Chief of the Division of Parks and Recreation, including timber and forest products specified above and agricultural products that are grown or raised by the Division, must be credited to the State Park Fund. That distribution does not apply in the case of a memorandum of understanding entered into under the act.

Distribution of proceeds of timber sales

(R.C. 1503.05 and 1503.141)

The act alters the distribution of the proceeds of the sale of standing timber from state forest lands. Under the act, 35% of the proceeds must be distributed to the State Forest Fund, and 65% must be distributed to the county where the timber was harvested to be redistributed. Under former law, 25% of the proceeds were distributed to the State Forest Fund, 65% to the county where the timber was harvested to be redistributed, and 10% to the General Revenue Fund.

The act also authorizes the Chief of the Division of Forestry to annually request the Director of Budget and Management to transfer to the Wildfire Suppression Fund not more than $100,000 from the State Forest Fund. Former law required any such annual transfer to the Wildfire Suppression Fund to be made from the General Revenue Fund. Under both the act and former law, money so transferred must come from the sale of standing timber from state forest lands.

Under continuing law, the State Forest Fund is required to be used for the administration, operation, maintenance, development, or utilization of the state forests, forest nurseries, and forest programs and for facilities or equipment incident to them. The Fund also must be used for the purchase of lands for state forest or forest nursery purposes and, in the case of contributions resulting from the issuance of Smokey Bear license plates, for fire prevention purposes. The Wildfire Suppression Fund is required to be used by the Chief to reimburse firefighting agencies and private fire companies for their costs incurred in the suppression of wildfires.

Coal-Workers Pneumoconiosis, Mine Safety, and Coal Mining Administration and Reclamation Reserve Funds

(R.C. 4131.03)

The act authorizes the Director of Natural Resources, beginning July 1, 2011, and ending June 30, 2013, annually to request the Administrator of Workers' Compensation to transfer to the Mine Safety Fund and to the Coal Mining Administration and Reclamation Reserve Fund a portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund. If the Administrator receives such a request, the Administrator, on July 1 or as soon as possible after that date, must transfer from those investment earnings an amount not to exceed $3 million to the Mine Safety Fund and an amount not to exceed $1.5 million to the Coal Mining Administration and Reclamation Reserve Fund. The act eliminates former law that instead authorized the Administrator to transfer an unspecified portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund to the Mine Safety Fund. It retains law that requires the Administrator to adopt rules to ensure the solvency of the Coal-Workers Pneumoconiosis Fund.

Conservation Program Delivery Task Force

(Section 715.10)

The act requires the continuing Ohio Soil and Water Conservation Commission to establish a Conservation Program Delivery Task Force. The Task Force must provide recommendations to the Director of Natural Resources regarding how soil and water conservation districts established under continuing law may advance effective and efficient operations while continuing to provide local program leadership. The act also requires the Task Force to examine methods for improving services and removing impediments to organizational management and explore opportunities for sharing services across all levels of government.

The Task Force must hold its first meeting no later than September 1, 2011, and submit a final report of recommendations to the Director and the Commission no later

than December 31, 2011. Upon submission of the final report, the Task Force ceases to exist.

Under the act, the chairperson of the Commission in consultation with the Director can appoint no more than nine members to the Task Force. The Task Force must include members of the boards of supervisors of soil and water conservation districts and other individuals who represent diverse geographic areas of the state and may include members from the Ohio Federation of Soil and Water Conservation Districts, the Natural Resources Conservation Service in the United States Department of Agriculture, the County Commissioners' Association of Ohio, the Ohio Municipal League, and the Ohio Township Association. The Task Force may consult with those organizations and agencies.

The act states that the chairperson of the Commission or another member of the Commission who is designated by the chairperson must serve as chairperson of the Task Force. Members appointed to the Task Force must serve without compensation and cannot be reimbursed for expenses. The Division of Soil and Water Resources in the Department of Natural Resources must provide technical and administrative support as needed by the Task Force.

OPTICAL DISPENSERS BOARD (ODB)

- Eliminates the prorated fee schedule for the optician licensure application and makes the fee $50, regardless of which quarter of the calendar year the application is submitted.
- Decreases to $50 (from $75) the reciprocity fee for out-of-state opticians seeking licensure in Ohio.
- Increases to $20 (from $10) the initial and annual optician apprentice registration fees.

Fees charged by the Optical Dispensers Board

Licensure application fee

(R.C. 4725.48 and 4725.50)

The act eliminates the prorated fee schedule for applicants seeking initial licensure as an optician and makes the fee $50, regardless of which quarter of the calendar year the application is submitted. Under prior law, the prorated fee schedule for licensure applications was as follows:

--January to March: $50;

--April to June: $37.50;

--July to September: $25;

--October to December: $12.50.

Reciprocity licensure fee and requirements

(R.C. 4725.57)

The act decreases to $50 (from $75) the reciprocity fee for an out-of-state optician seeking licensure in Ohio. Law retained by the act requires out-of-state applicants to meet age, moral character, and education requirements. The act specifies that the Optical Dispensers Board may also require that an out-of-state applicant have received a passing score, as determined by the Board, on an examination that is substantially the same as the examination required to be taken by in-state applicants.

Apprentice registration fee

(R.C. 4725.52)

The act increases both the initial registration fee and annual registration renewal fee for optician apprentices to $20 (from $10).

STATE BOARD OF OPTOMETRY (OPT)

- Increases the initial and renewal fees for an optometrist certificate of licensure from $110 to $130.
- Increases the initial and renewal fees for an optometrist therapeutic pharmaceutical agents certificate and the renewal fee for an optometrist topical ocular pharmaceutical agents certificate from $25 to $45.
- Increases the fee for late completion of continuing optometric education from $75 to $125 and creates a fee of $125 for late submission of the continuing education (or both late completion and late submission).
- Increases the fee for late renewal of one or more expired optometrist certificates from $75 to $125.

Fees for optometrists

(R.C. 4725.34)

The act increases the following fees charged by the State Board of Optometry to optometrists and licensure applicants:

(1) Initial certificate of licensure: $130 (from $100);

(2) Initial therapeutic pharmaceutical agents certificate: $45 (from $25);

(3) Renewal of certificate of licensure: $130 (from $110);

(4) Renewal of a topical ocular pharmaceutical agents certificate: $45 (from $25);

(5) Renewal of a therapeutic pharmaceutical agents certificate: $45 (from $25);

(6) Late completion of continuing optometric education: $125 (from $75);

(7) Late renewal of one or more expired certificates: $125 (from $75).

The act creates a fee of $125 for late submission of continuing optometric education. A single fee of $125 is to be charged if the optometrist is late in both completing and submitting the continuing education.

- Exempts the following from the requirement to be licensed as a pain management clinic: (1) a facility operated by a hospital for the treatment of pain or chronic pain, (2) a physician practice owned or controlled, in whole or in part, by a hospital or an entity that owns or controls, in whole or in part, one or more hospitals, and (3) an interdisciplinary pain rehabilitation program with specified accreditation from the Commission on Accreditation of Rehabilitation Facilities.

- Modifies a provision prohibiting a pain management clinic from employing an individual with a felony record by specifying that the prohibition applies only if the offense was a felony drug abuse offense or a felony theft offense.

- Authorizes the State Board of Pharmacy to contract with private entities for processing licensure applications for wholesale and terminal distributor of dangerous drugs, requires the Board to give preference to Ohio-based companies when entering into the contracts, and prohibits the contracts from transferring to the private entities any of the Board's enforcement or disciplinary authority.

- Increases to $750 (from $150) the initial and renewal registration fees charged to wholesale distributors of dangerous drugs.

- Increases to $150 (from $55) the penalty for reinstatement of a wholesale distributor of dangerous drugs registration certificate that has not been timely renewed.

Pain management clinic licensure and operation

(R.C. 4729.552 and 4731.054)

Am. Sub. H.B. 93 of the 129th General Assembly established requirements for the licensure and operation of pain management clinics. The State Board of Pharmacy is required to license the clinics as terminal distributors of dangerous drugs with a pain management classification. There are a number of exemptions from the licensure requirement, including one that applies to hospitals.

Hospital-related entities

The act replaces the exemption from pain management clinic licensure that applied under prior law to facilities owned in whole or in part by a hospital. Under the act, both of the following are exempt from licensure:

--A facility operated by a hospital for the treatment of pain or chronic pain;

--A physician practice owned or controlled, in whole or in part, by a hospital or by an entity that owns or controls, in whole or in part, one or more hospitals.

Interdisciplinary pain rehabilitation programs

The act establishes an exemption from pain management clinic licensure for certain rehabilitation programs. For the exemption to apply, the act specifies that the program must be an interdisciplinary pain rehabilitation program with three-year accreditation from the Commission on the Accreditation of Rehabilitation Facilities (CARF). CARF is a private, nonprofit accrediting organization.[230]

Clinic employees with felony records

(R.C. 4729.552)

Under prior law, a pain management clinic could not employ an individual who had been previously convicted of, or pleaded guilty to, *any offense* that was a felony in Ohio, another state, or the United States. In place of this provision, the act establishes a prohibition on employment that does not apply with respect to all felony offenses. Specifically, the act prohibits a clinic from employing an individual who has previously been convicted of, or pleaded guilty to, a felony only in the case of an offense that is either of the following:

--A drug abuse offense[231] that is a felony under Ohio law, another state law, or federal law;

--A theft offense[232] that is a felony under Ohio law, another state law, or federal law.

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[230] CARF International, *Who We Are* (last visited August 17, 2011), available at <http://www.carf.org/About/WhoWeAre/>.

[231] "Felony drug abuse offense" is defined in continuing law (see R.C. 2925.01 (not in the act).

[232] The following crimes are identified under continuing law as theft offenses: robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud. This law includes references to felonies under municipal ordinances. (See R.C. 2913.01(K)(3) (not in the act).)

Wholesale and terminal distributor licensure

Processing applications through private entities

(R.C. 4729.50)

The act authorizes the State Board of Pharmacy to enter into contracts with private entities for processing applications and renewal applications for wholesale and terminal distributors of dangerous drugs. When contracting, the Board must give preference to Ohio-based companies. The act prohibits a contract from transferring to a private entity any of the Board's enforcement or disciplinary authority.

Any revenue received by the Board from the contracts must be deposited into the Occupational Licensing and Regulatory Fund. The act specifies that the money may be used for any purpose the Board determines to be relevant to its duties, including the Ohio Automated Rx Reporting System (OARRS).

Fees for wholesale distributors

(R.C. 4729.52)

The act increases the fees charged by the State Board of Pharmacy to wholesale distributors of dangerous drugs as follows:

--Initial registration: $750 (from $150);

--Renewal of registration: $750 (from $150);

--Penalty for reinstatement of a registration certificate that has not been timely renewed: $150 (from $55). The penalty is in addition to the renewal fee.

DEPARTMENT OF PUBLIC SAFETY (DPS)

- Restricts the issuance of Freemason license plates to persons who are members in good standing of the Grand Lodge of Free and Accepted Masons of Ohio.
- Modifies the provisions governing the sale of a used motor vehicle by a motor vehicle dealer and a used manufactured home or mobile home by a manufactured housing dealer when the dealer does not have a certificate of title to the vehicle or home in the dealer's name.
- Modifies the payments motor vehicle and manufactured housing dealers must make to the Attorney General for deposit into the Title Defect Recision Fund.
- Repeals a provision in the Motor Vehicle Dealers Law regarding a vehicle repair guarantee.
- Revises the application requirements for a new motor vehicle dealer's license and for a motor vehicle salesperson's license.
- Repeals an exception that permitted two or more motor vehicle dealers to sell manufactured or mobile homes in the same manufactured home park without having to agree to joint, several, and personal liability.
- Makes changes to the Motor Vehicle Dealers Law to conform with Am. Sub. H.B. 1 of the 128th General Assembly.
- Clarifies the relationship between a construction equipment auction license issued by the Registrar of Motor Vehicles and auction-related licenses issued by the Department of Agriculture.

Freemason license plates

(R.C. 4503.70)

The act restricts the issuance of existing Freemason license plates to persons who are members in good standing of the Grand Lodge of Free and Accepted Masons of Ohio and requires a person who applies for these license plates to present satisfactory evidence showing that the person is a member in good standing of the Grand Lodge.

Sale of a used motor vehicle, manufactured home, or mobile home when the dealer does not have a certificate of title in the dealer's name

(R.C. 4505.181)

The act modifies the certificate of title provisions governing the display, offering for sale, or sale of (1) a used motor vehicle by a motor vehicle dealer or person acting on behalf of such a dealer or (2) a used manufactured home or mobile home by a manufactured housing dealer or person acting on behalf of such a dealer when the dealer has not obtained a certificate of title for the used vehicle or home ("vehicle") in the dealer's name.

Bill of sale for the used vehicle or a power of attorney from the prior owner

The act requires the dealer to possess either a bill of sale for each used vehicle that will be displayed, offered for sale, or sold or a properly executed power of attorney or other related documents from the prior owner of the vehicle giving the dealer authority to have a certificate of title to the vehicle issued in the name of the dealer. Prior law required the dealer to possess both a bill of sale and a properly executed power of attorney or other related document from the prior vehicle owner.

Posting of a bond by a dealer

Under prior law, a dealer had to post with the Attorney General's office in favor of this state a bond of a surety company authorized to do business in this state, in an amount of at least $25,000, that was used solely for the purpose of compensating retail purchasers of motor vehicles, manufactured homes, or mobile homes who suffered damages due to failure of the dealer to comply with these certificate of title provisions if (1) the Attorney General had paid a retail purchaser of the dealer under these provisions or (2) the dealer had been licensed as a dealer for less than three years. The act (1) applies the requirement of the posting of a bond if the Attorney General has paid a secured party (on behalf of the retail purchaser), not just a retail purchaser and (2) eliminates the requirement that a bond be posted in the case of a dealer who has been licensed as a dealer for less than three years. The act also provides that failure to post the required bond constitutes a deceptive act or practice in connection with a consumer transaction and is a violation of the Consumer Sales Practices Act.

Payment by a dealer to the Attorney General for deposit into the Title Defect Recision Fund

The act eliminates the provision of prior law that if the dealer had been a licensed dealer longer than the three-year period preceding the date of sale of the used vehicle and the Attorney General had not paid a retail purchaser of the dealer under these

certificate of title provisions within three years prior to that date, the dealer had to pay $150 to the Attorney General for deposit into the Title Defect Recision Fund.

Circumstances under which the retail purchaser of a used vehicle may demand recision of the sale

Prior law provided that if a retail purchaser purchased a used vehicle for which the dealer did not have a certificate of title issued in the name of the dealer at the time of the sale (1) the retail purchaser had an unconditional right to rescind the transaction if any of four specified circumstances applied and (2) the dealer had an obligation to refund to the retail purchaser the full purchase price of the vehicle. "Full purchase price," as used in the act, means the contract price, including charges for dealer-installed options and accessories, all finance, credit insurance, and service contract charges incurred by the retail purchaser, all sales tax, license and registration fees, and the amount of any negative equity that was not already paid by the dealer to a third party to satisfy a lien, as reflected in the contract. The act (1) eliminates the power of the purchaser to rescind the transaction in favor of a right by the purchaser to demand that the dealer rescind the transaction, (2) eliminates the (unqualified) obligation of the dealer to refund to the retail purchaser the full purchase price of the vehicle, and (3) adds a fifth circumstance in which the transaction may be rescinded. The five specified circumstances are as follows:

(1) The dealer fails, on or before the 40th day following the date of the sale, to obtain a title in the name of the retail purchaser. (Continuing law.)

(2) The title for the vehicle indicates that it is a rebuilt salvage vehicle, and the fact that it is a rebuilt salvage vehicle was not disclosed to the retail purchaser in writing prior to the execution of the purchase agreement. (Continuing law.)

(3) The title for the vehicle indicates that the dealer has made an inaccurate odometer disclosure to the retail purchaser. (Continuing law.)

(4) The title for the vehicle indicates that it is a "buyback" vehicle (a vehicle that a motor vehicle dealer was required to buy back from the purchaser under the Nonconforming New Motor Vehicle Law, also known as the Lemon Law) and the fact that it is a "buyback" vehicle was not disclosed to the retail purchaser in the written purchase agreement. (New circumstance added by the act.)

(5) The motor vehicle is a used manufactured home or used mobile home that has been repossessed, but a certificate of title for the repossessed home has not yet been transferred by the repossessing party to the dealer on the date the retail purchaser purchases the used manufactured home or mobile home from the dealer, and the dealer fails to obtain a certificate of title on or before the 40th day after the dealer obtains the

certificate of title for the home from the repossessing party or the date on which an occupancy permit for the home is delivered to the purchaser by the appropriate legal authority, whichever occurs later. (Continuing law.)

Under the act, if circumstance (1) applies, a retail purchaser or the retail purchaser's representative must provide the dealer notice of the request for recision. Prior law required the retail purchaser or the retail purchaser's representative to notify the dealer and afford the dealer the opportunity to comply with the dealer's obligation to refund the full purchase price of the vehicle. The act requires the notice of the request for recision to occur not later than 60 days from the date the motor vehicle is titled in the name of the retail purchaser. The dealer must have the opportunity to comply with the dealer's obligation to refund the full purchase price of the motor vehicle. Reimbursement to the retail purchaser is limited to any money the retail purchaser actually paid and, in the case of a lender of the retail purchaser, the amount the lender paid to purchase the contract or finance the vehicle sale. If a vehicle was taken in trade as a down payment, the dealer is required to return the vehicle to the consumer unless the dealer remitted payment to a third party to satisfy a security interest. If the dealer remitted payment, the dealer must reimburse the purchaser the value of the vehicle, as evidenced by the bill of sale. These same provisions apply if circumstance (2), (3), or (4) applies, except that a retail purchaser or the retail purchaser's representative must provide notice to the dealer of a request for recision not later than 180 days from the date the vehicle is titled in the name of the retail purchaser.

If circumstance (5) applies, the retail purchaser or the retail purchaser's representative is required to notify the dealer and afford the dealer the opportunity to comply with the dealer's obligation to rescind the manufactured home or mobile home transaction; no deadline is specified.

Failure of a retail purchaser to give the dealer timely notice of request for recision

The act provides that if the retail purchaser does not deliver notice to the dealer within the applicable specified time period, the retail purchaser is not entitled to any recovery and does not have a cause of action under these provisions.

Application by a retail purchaser to the Attorney General for payment from the Title Defect Recision Fund

Under prior law, if a retail purchaser notified a dealer of one or more of the specified circumstances and the dealer failed to refund to the retail purchaser the full purchase price of the vehicle or reach a satisfactory compromise with the retail purchaser within three business days of presentation of the retail purchaser's recision claim, the retail purchaser could apply to the Attorney General for payment from the

Title Defect Recision Fund. No time limit for notification was prescribed. Under the act (1) notice to the dealer must be given by the retail purchaser within the applicable time period specified in the act (60 or 180 days from the date the vehicle is titled in the name of the retail purchaser) and (2) the dealer has seven days to rescind the transaction or reach a satisfactory compromise with the retail purchaser before the purchaser may apply to the Attorney General for payment from the Fund of the full purchase price to the retail purchaser.

Upon application by a retail purchaser for payment from the Fund, if the Attorney General is satisfied that one or more of the prescribed circumstances exist, the Attorney General must cause the full purchase price of the vehicle to be paid to the retail purchaser from the Fund. Corresponding to other provisions made by the act, the act requires also that notification must have been given to the dealer within the applicable time period. Additionally, reimbursement from the Fund is to include the cost of any additional temporary license placards but may not exceed that cost and the full purchase price of the vehicle. Prior law provided that reimbursement from the Fund was to be paid to the retail purchaser after delivery of the vehicle to the Attorney General; under the act, the Attorney General may require delivery of the used vehicle to the Attorney General prior to reimbursement from the Fund, which may be only one of the following:

(1) To the retail purchaser, any money the retail purchaser actually paid and, in the case of a lender of the retail purchaser, the amount the lender paid to purchase the contract or finance the sale of the vehicle;

(2) If the retail purchaser wishes to retain the vehicle, the Attorney General, in the Attorney General's sole discretion, may pay a lienholder of record or other holder of a secured interest so that title can be transferred to the retail purchaser free of encumbrances, other than a security interest granted by the retail purchaser at the time of vehicle purchase.

The Attorney General also may pay the cost of additional temporary license placards for the vehicle from the Fund.

Failure of a dealer to pay the holder of a secured interest on a trade-in vehicle

Under the act, if a dealer fails to submit payment to the holder of a secured interest on a trade-in vehicle as agreed to by the dealer and retail purchaser and none of the specified circumstances that can serve as the basis for recision apply, the retail purchaser may apply to the Attorney General for payment to the secured creditor from the Title Defect Recision Fund. The Attorney General must demand immediate payment from the dealer, and if payment has not been made or is not immediately

forthcoming, the Attorney General may cause an amount equal to that which the dealer agreed to pay to the secured creditor to be paid from the Fund, along with any additional interest and late fees resulting from the dealer's failure to pay the secured creditor in a timely manner.

Dealer assessments for the Title Defect Recision Fund

The act provides that if, at any time during any calendar year, the balance in the Title Defect Recision Fund is less than $300,000, the Attorney General may assess all licensed motor vehicle dealers and manufactured housing dealers $150 for deposit into the Fund until the balance in the Fund reaches $300,000. A notice of assessment must be sent to each dealer at its licensed location.

This is in contrast to prior law, which provided that (1) all licensed motor vehicle dealers and manufactured housing dealers had to pay to the Attorney General for deposit into the Title Defect Recision Fund $150 each year until the balance in the Fund was not less than $300,000 and (2) all such dealers also had to pay to the Attorney General for deposit into the Fund that same amount during any year and subsequent years during which the balance in the Fund was less than $300,000 until the balance in the Fund reached that amount.

Sources of money for the Title Defect Recision Fund

The act adds two references to sources of money for the Title Defect Recision Fund. One reference is to money collected when a motor vehicle dealer is issued a certificate of title; this source was enacted in Am. Sub. H.B. 114 of the 129th General Assembly, which was the Transportation Appropriations Act for that General Assembly. The other reference is to money collected from each applicant for an initial motor vehicle dealer's license or motor vehicle leasing dealer's license; this new requirement is contained in the act.

The act also provides that money in the Fund must be used not only for maintaining and administering the Fund and providing restitution to retail purchasers of motor vehicles who are unable to obtain a certificate of title from a motor vehicle dealer and so suffer damages, but also for providing other remedies to such retail purchasers.

Attorney fees

The act provides that nothing in these certificate of title provisions may be construed as providing for payment of attorney fees to the retail purchaser.

Vehicle repair guarantee repeal

(R.C. 4517.12)

The act repeals a provision in prior law governing motor vehicle dealers that permitted the Registrar of Motor Vehicles to require certain applicants for licensure to sell new motor vehicles to demonstrate that such applicants would provide each customer with a binding agreement ensuring that the customer has the right to have the vehicle repaired at a dealer who is licensed to sell the same line of vehicles.

Motor vehicle dealers license

(R.C. 4517.04)

The act requires a person applying for a new motor vehicle dealer's license to apply biennially instead of annually, as was required under prior law, for a license in each county where the person is doing business.

Motor vehicle salesperson license

(R.C. 4517.09)

The act requires a person applying for a motor vehicle salesperson's license to apply biennially instead of annually, as was required under prior law, for a license.

Motor vehicle dealer joint liability

(R.C. 4517.24)

The act repeals the exception under prior law that permitted two or more motor vehicle dealers to sell manufactured or mobile homes in the same manufactured home park without having to agree to joint, several, and personal liability.

Am. Sub. H.B. 1 of the 128th General Assembly conforming changes

(R.C. 4517.01, 4517.04, 4517.09, 4517.10, 4517.12, 4517.13, 4517.14, 4517.23, and 4517.44)

The act removes references to manufactured home brokers within the motor vehicle dealers law in order to conform with Am. Sub H.B. 1 of the 128th General Assembly, which transferred licensing of manufactured home dealers to the Manufactured Homes Commission.

Motor vehicle dealer and motor vehicle leasing dealer license fee

(R.C. 4517.10, 1345.52, and 4505.181)

The act requires each applicant for an initial motor vehicle dealer's license or motor vehicle leasing dealer's license to pay a separate fee "equal to the last assessment" required of motor vehicle dealers for purposes of the Title Defect Recision Fund and requires the Registrar of Motor Vehicles to deposit the separate fee into that fund. The Title Defect Recision Fund consists in part of money that motor vehicle dealers are required to pay to the Attorney General, dependent upon the balance in the fund; the payment is $150. The fund is used solely to provide restitution to retail purchasers of motor vehicles who are unable to obtain a certificate of title from a dealer and so suffer damages.

Construction equipment auction license

(R.C. 4517.01 and 4517.02)

In regard to the recently created construction equipment auction license, the act clarifies that such a license is required only when a person is in the business of auctioning *both* large construction or transportation equipment *and also*, incidental to that business, motor vehicles. Additionally, the act specifies that the new construction equipment auction license does not in any way affect the conduct of auctions by any person holding an auction-related license issued by the Department of Agriculture who is acting in compliance with those licensing requirements.

Lastly, the act modifies the definition of a "construction equipment auctioneer" so that a person may engage in the business of auctioning large construction equipment if the person has not only a valid construction equipment auction license issued by the Registrar of Motor Vehicles but also a valid auction firm license issued by the Department of Agriculture, rather than a valid construction equipment auction license and an auctioneer's license as required under prior law.

PUBLIC UTILITIES COMMISSION (PUC)

- Exempts, from regulation by the Power Siting Board, manufacturing facilities that create byproducts that may be used in the generation of electricity as defined by the Board.
- Requires the Public Utilities Commission of Ohio (PUCO), by the end of 2011, to determine appropriate methods to ensure that the reduction in assessments for the Office of the Consumers' Counsel for fiscal years 2012 and 2013 is distributed to the benefit of utility customers, and requires timely implementation.
- Repeals the Community-voicemail Service Pilot Program, and requires assessments made under the Pilot Program to cease and the PUCO to refund the assessments, without interest, by August 29, 2011.

Byproducts exemption from Power Siting Board regulation

(R.C. 4906.01)

The act exempts, from regulation by the Power Siting Board, a manufacturing facility that creates byproducts that may be used in the generation of electricity, as defined by the Board. With this exemption, such a facility is not required to obtain a certificate from the Board for facility construction.[233] Prior law was not clear as to whether such a facility was required to obtain this certificate.

The act also clarifies that other facilities that are exempt from Board regulation, specifically electric, gas, natural gas distributing lines and gas or natural gas gathering lines and associated facilities, are included as such exempt facilities by Board definition.

Distribution of reduced assessments

(Section 749.10)

The act requires the Public Utilities Commission (PUCO), by the end of 2011, to determine appropriate methods to ensure that the reduction in public utility assessments paid to the Office of the Ohio Consumers' Counsel (OCC) for fiscal years 2012 and 2013 is distributed to the benefit of Ohio customers of those public utilities.

[233] R.C. 4906.04, not in the act.

The act requires the PUCO to implement its distribution methodology in a timely manner.

Because the OCC is funded by public-utility assessments, and those assessments must equal the OCC's appropriation in each fiscal year,[234] the act's reduced OCC appropriations result in reduced assessment payments for public utilities. Public utilities include assessment payments in cost-of-service determinations during rate cases, so the payments are factored into rate determinations. But because rate cases may be sought whenever a public utility wishes to change its rates, and are not required to be filed regularly, the reduced OCC assessments would not, in the absence of the act's requirement to distribute the reduction in assessments, result in any reduction for customers until a public utility's next rate case.

Repeal of Community-voicemail Service Pilot Program

(R.C. 4927.17; Section 365.10, Sections 620.51, 620.52, and 620.53)

The act repeals the Community-voicemail Service Pilot Program and the Community-voicemail Service Pilot Program Fund established by Sub. S.B. 162 of the 128th General Assembly (the act revising Ohio's telecommunications law) and requires all assessments made under the Pilot Program to cease. Under the act, the PUCO must refund the assessments, without interest, to the telephone companies that were assessed under the Pilot Program. All refunds must be made by August 29, 2011.

The act removes the requirement that the ongoing Select Committee on Telecommunications Regulatory Reform include in its study (due September 13, 2014) a report on the Community-voicemail Service Pilot Program. The act also deletes references to the program in ongoing law regarding telephone company rate change notices.

Former law repealed by the act required the PUCO to implement a two-year Community-voicemail Service Pilot Program, in at least one urban area and one rural area of the state, for individuals in a state of transition, including the homeless, clients of battered-spouse programs, and displaced and returning veterans, who do not have access to traditional telephone exchange service or alternatives. The Pilot Program was funded through assessments collected from each telephone company that is a local exchange carrier.

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[234] R.C. 4911.18, not in the act.

OHIO BOARD OF REGENTS (BOR)

Term of the Chancellor

- Changes the Chancellor's term of office from five years to the term of the appointing Governor.

- Changes removal of the Chancellor to the pleasure of the Governor, instead of by the Governor only for specific reasons.

Residency status for in-state tuition

- Grants residency status, for purposes of in-state college tuition, to Ohio high school graduates who enroll in a state institution of higher education and re-establish domicile in Ohio, regardless of residence prior to enrollment.

- Refuses residency status, for purposes of in-state college tuition, to any person who is not a U.S. citizen or U.S. national unless the person has been granted the right either (1) to live in the U.S. permanently and without work restrictions or (2) to reside temporarily in the U.S.

College costs

- Limits annual increases in in-state undergraduate tuition for fiscal years 2012 and 2013 to (1) 3.5%, in the case of state universities, university branches, and the Northeast Ohio Medical University and (2) $200, in the case of community colleges, state community colleges, and technical colleges.

- Requires each state institution of higher education to submit to the Chancellor, by December 31, 2011, a plan to reduce the cost to students of textbooks and other educational resource materials.

Charter universities

- Requires the Chancellor to develop a plan for designating public institutions of higher education as charter universities, allowing qualifying institutions increased flexibility in managing their finances and operations.

- Requires the Chancellor to report, by August 15, 2011, recommendations for changes in policy, statute, and administrative rules, and states the General Assembly's intent to take actions necessary for implementation of the plan to commence July 1, 2012.

- Prohibits formation of charter universities, and adoption, amendment, or recission of rules designating charter universities by the Chancellor, until the General Assembly enacts legislation establishing a procedure to designate charter universities.

Three-year baccalaureate degrees

- Requires all state institutions of higher education that offer baccalaureate degrees to issue a statement describing a method of earning those degrees in three years, and sets a timeline by which institutions must complete the statements for 10% and 60% of majors offered, not including programs that qualify as cooperative education programs.

College remediation

- Requires the presidents of the state institutions of higher education jointly to establish by December 31, 2012, uniform statewide standards in math, science, reading, and writing for a student to be considered as having a "remediation-free" status.

- Requires the state institutions annually to report (1) their remediation costs, both in the aggregate and disaggregated according to the school districts from which the students graduated and (2) any other information with respect to remedial courses that the Chancellor considers appropriate.

- Requires the Chancellor and the Superintendent of Public Instruction to issue an annual report recommending policies and strategies for reducing the need for college remedial courses at state institutions.

Distance and digital learning

- Requires that the distance learning clearinghouse be located, during the 2011-2013 biennium, in the Ohio Resource Center for Mathematics, Science, and Reading administered by the College of Education and Human Ecology at Ohio State University.

- Requires that each school district, community school, and STEM school (1) encourage and assist students to take advantage of distance learning offered through the clearinghouse and (2) award credit for successfully completed courses equal to credit that would be awarded for similar courses offered by the district or school.

- Establishes "guiding principles" for the clearinghouse for students in grades K to 12, including that students may earn unlimited academic credit through distance learning, may utilize distance learning for all or any portion of their curriculum requirements, and may take distance learning courses throughout the calendar year.

- Establishes the Ohio Digital Learning Task Force to make recommendations, by March 1, 2012, to the Governor and General Assembly on the expansion of digital learning opportunities.

- Requires the Chancellor to take steps to (1) facilitate full implementation of digital textbook pilot programs planned at state institutions of higher education and (2) ensure that those pilot programs examine cost savings, efficiencies, and academic benefits of digital content.

Other provisions

- Allows colleges and universities to propose Choose Ohio First initiatives that award scholarships for a STEMM teacher education master's program to students who establish domicile in Ohio and commit to teach for at least three years in a hard-to-staff Ohio school district.

- Expands the definition of products that employees of public colleges or universities may hold equity in, under rules adopted by the institution's board of trustees, to include "intellectual property."

- Prohibits state institutions of higher education from denying benefits to a religious student group based on the group's requirement that its leaders and members adhere to its sincerely held religious beliefs or standards of conduct.

- Permits a state institution of higher education to enter into an agreement to convey auxiliary facilities to a conduit entity, which will enter into a lease-leaseback agreement with an independent funding source.

- Authorizes state institutions of higher education and university housing commissions to enter into lease agreements with nonpublic vendors to provide campus housing facilities.

- Eliminates the Ohio State University Highway and Transportation Research Fund and requires the cash balance in the fund be paid to the Ohio State University.

Term of office of the Chancellor

(R.C. 121.03 and 3333.03; Section 630.12)

The act changes the term of the Chancellor of the Board of Regents and broadens the Governor's authority to remove the Chancellor from office. Under prior law, the Chancellor was appointed by the Governor, with the advice and consent of the Senate, for a five-year term, and could be removed by the Governor only for (1) inefficiency or dereliction of duty, (2) a violation of the Ethics Law, (3) failure to file a financial disclosure statement with the Ohio Ethics Commission or filing a false one, or (4) corruption.

Under the act, the Chancellor's term of office is the same as that of the appointing Governor, and the Chancellor may be removed at the pleasure of the Governor. (The act retains the requirement for the Senate's advice and consent in the Chancellor's appointment.) These changes essentially make the Chancellor's appointment, term, and removal the same as for other members of the Governor's cabinet.

Finally, the act adjusts the term of the Chancellor in office on the act's effective date so that it coincides with that of the Governor. Under prior law, the Chancellor's current term would have expired in 2012.

Residency status for in-state tuition; tuition for non-citizens

(R.C. 3333.31)

The act grants residency status to Ohio high school graduates who re-establish domicile in the state. This provision pertains to graduates who move out of state after high school graduation, since those who remain in Ohio retain their residency status. Specifically, if a student graduates from an Ohio high school, and was eligible for in-state tuition at the time of high school graduation, the graduate may re-establish domicile in Ohio *at any time* to qualify for in-state tuition.

However the act excludes from residency status any person who is not a U.S. citizen or U.S. national unless the U.S. Bureau of Citizenship and Immigration Services has granted that person either: (1) the right to reside permanently in, and to work without restrictions in, the U.S. or (2) the right to reside temporarily in the U.S.

Cap on undergraduate tuition increases

(Section 371.20.70)

For fiscal years 2012 and 2013 (the 2011-2012 and 2012-2013 academic years), the act requires state institutions of higher education to limit increases in in-state

undergraduate instructional and general fees. The maximum increase allowed for each of those years is:

(1) 3.5% over the previous year, in the case of state universities, university branches, and the Northeast Ohio Medical University; and

(2) $200 over the previous year, in the case of community colleges, state community colleges, and technical colleges.

As in previous biennia when the General Assembly capped tuition increases, this cap does not apply to increases required to comply with institutional covenants related to an institution's obligations or to meet unfunded legal mandates or legally binding obligations incurred or commitments made prior to the act's effective date, such as bond obligations. Further, the Chancellor may modify the cap, with Controlling Board approval, to respond to exceptional circumstances as the Chancellor identifies.

Textbook and materials costs

(Section 371.60.50)

The act requires each state institution of higher education to submit to the Chancellor a plan to reduce the cost to students of textbooks and other educational resource materials. The plans are due December 31, 2011.

Charter universities

(R.C. 3345.81)

The act requires the Chancellor to develop a plan for designating some state institutions of higher education as charter universities, having increased flexibility in managing their finances and operations. But the act prohibits institutions from being designated as charter universities until the General Assembly, after considering the Chancellor's plan, has enacted legislation establishing a procedure for making such a designation. The act further prohibits the Chancellor from adopting, amending, or rescinding rules with respect to designating institutions as charter universities until legislation is enacted.

Initial recommendations; statement of legislative intent to take action

By August 15, 2011, the Chancellor must submit to the General Assembly and the Governor findings and recommendations for use in developing changes to policy, statute, and administrative rules necessary to implement the plan. The act states that "the General Assembly intends that the General Assembly, Governor, and Chancellor

will take actions necessary for the plan for charter universities to commence July 1, 2012."

Development of the plan

In developing the plan, the Chancellor must:

(1) Study the administrative and financial relationships between the state and its public institutions of higher education, to determine the extent to which they can manage their operations more effectively when accorded flexibility through selected delegation of authority;

(2) Examine legal and other issues, and the feasibility and practicability, related to restructuring the relationship between the state and its public institutions of higher education; and

(3) Consult with the presidents of the institutions.

Contents of the plan

The plan must specify:

(1) The manner in which an institution may become eligible, and performance measures and criteria to determine eligibility. The measures and criteria must address an institution's ability to manage its administrative and financial operations without jeopardizing its financial integrity and stability.

(2) Specific areas of financial and operational authority that are subject to increased flexibility; and

(3) The nature and term of the management agreement between the state and an institution.

Assistance to the Chancellor

The Office of Budget and Management, the Department of Administrative Services, and each state institution of higher education must provide the Chancellor, upon the Chancellor's request, with research assistance, fiscal and policy analysis, and other services during the Chancellor's development of the plan. Any other state agency also must provide any other assistance requested by the Chancellor.

Three-year baccalaureate degrees

(R.C. 3333.43)

The act requires the Chancellor to require all state institutions of higher education (state universities, community colleges, technical colleges, state community colleges, and university branches) that offer baccalaureate degrees to submit a statement describing how each major for which the school offers a baccalaureate degree may be completed within three academic years. The statement must include a chronology starting in the fall semester of a student's first year. Schools that fail to comply stand to lose authorization from the Chancellor to offer such programs. However, the act specifies that institutions are not required to take any action that would violate the requirements of any independent association that accredits baccalaureate degree programs.

Each institution must provide statements for 10% of all baccalaureate degree programs offered by the institution not later than October 15, 2012. Not later than June 30, 2014, institutions must provide statements for 60% of all baccalaureate degrees.

Co-op programs exempted

However, the act specifies that these requirements do not apply to baccalaureate degree programs that qualify as cooperative education programs. A cooperative education program is a program that (1) combines periods of academic study and work experience in appropriate fields, (2) provides students with academic credit from the institution of higher education and wages from the employer, (3) evaluates each student's performance in the cooperative position from the perspective of both the institution of higher education and the employer, and (4) is part of a degree or certificate program for which a percentage of the total program acceptable to the Chancellor involves cooperative education.[235]

Publication and contents

Each institution must post its three-year option statements on its website and provide that information to the Department of Education, which, in turn, must distribute it to the superintendent, high school principal, and guidance counselor, or the equivalents, of each school district, community ("charter") school, and STEM school in the state.

The statement may include any of the following methods to contribute to earning a degree in three years:

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[235] R.C. 3333.71, not in the act.

(1) Advanced placement credit;

(2) International baccalaureate program credit;

(3) A waiver of degree and credit-hour requirements earned by completion of college courses through community colleges, on-line courses from state or private, nonprofit institutions of higher education, or the Post-Secondary Enrollment Options program;

(4) Completion of coursework during summer sessions; or

(5) A foreign language requirement waiver based on a proficiency examination specified by the institution.

College remediation

(R.C. 3345.061)

The act requires the presidents, or their designees, of all state institutions of higher education (state universities, community colleges, state community colleges, university branches, and technical colleges) jointly to establish uniform statewide standards in math, science, reading, and writing for a student to be considered as having a "remediation-free" status. These standards must be adopted by December 31, 2012. The presidents also must establish any assessments they find necessary to assess student knowledge in those fields. Each institution must assess the needs of its enrolled students in the manner adopted by the presidents, and each board of trustees must adopt the agreed-upon standards and any related assessments into the institution's policies. The Chancellor must assist in coordinating the presidents' work.

The act also requires each state institution of higher education to report to the Governor, General Assembly, Chancellor, and Superintendent of Public Instruction annually, on a date established by the Chancellor, all of the following information: (1) the institution's aggregate costs for providing academic remedial or developmental courses, (2) the amount of those costs disaggregated according to the city, local, or exempted village school districts from which the students taking those courses received their high school diplomas, and (3) any other information concerning academic remedial and developmental courses that the Chancellor considers appropriate.

Finally, the act requires the Chancellor and Superintendent of Public Instruction to issue an annual report recommending policies and strategies for reducing the need for academic remediation and developmental courses at state institutions of higher education. The first report is due December 31, 2011, with subsequent reports due on December 31 each year thereafter.

Distance learning clearinghouse

(R.C. 3333.81 to 3333.85 and 3333.87; Section 371.60.70; conforming change in R.C. 3313.603)

Background

The Chancellor is required under continuing law to establish and maintain a distance learning clearinghouse. Under that program, school districts, community schools, STEM schools, public and private colleges and universities, and other nonprofit and for-profit course providers may offer on-line or other distance learning courses through the clearinghouse for sharing with other school districts, community schools, STEM schools, public and private colleges and universities, and individuals. In operating the clearinghouse, the Chancellor must use a "common statewide platform" to support the delivery of courses, but the provider is solely responsible for the course content. The Chancellor has maintained the clearinghouse as the "OhioLearns! Gateway," including an online searchable database of both primary-secondary and higher education courses offered through the program (see http://www.ohiolearns.org/).

Relocation of clearinghouse to OSU College of Education

The act specifies, in an uncodified and temporary section, that the distance learning clearinghouse must be located at the Ohio Resource Center for Mathematics, Science, and Reading administered by the College of Education and Human Ecology at Ohio State University.[236] Presumably, this means that the Chancellor is required to relocate the clearinghouse to the College by contracting with the College to operate the program. But the act also eliminates some of the language of prior, permanent law that specifically permitted the Chancellor to contract out the clearinghouse.[237] At the very least, it appears that the College is required to operate the clearinghouse under the auspices of the Chancellor, in lieu of the Chancellor's operating it directly, for the 2011-2013 fiscal biennium.

The act requires the College to provide access to its online repository of educational content to offer courses from multiple providers at competitive prices for Ohio students in grades K to 12. It does not indicate whether the College is required to also to maintain the prior offerings of the clearinghouse, including those offered for higher education students.

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[236] Section 371.60.70.

[237] R.C. 3333.82(F).

Under the act, the College must review the content of each course offered to assess the course's alignment with the state academic content standards adopted by the State Board of Education, and to publish its determination about the degree of that alignment. Presumably, this requirement applies only to the courses offered for credit in a primary or secondary school. It therefore appears that the College in administering the program must take some responsibility for course content. Conversely, however, continuing permanent law specifies that the Chancellor bears no responsibility for the content of the coursed offered through the clearinghouse.[238]

The College also must indicate for each course offered the academic credit that a student "may reasonably expect to earn upon successful completion of the course." Although the temporary provision stipulates that a student's school district or school retains "full authority to determine the credit awarded to the student," the permanent provisions require a student's district or school to award credit for a successfully completed course (see "**Participation by primary and secondary schools**" below).[239]

The College is specifically permitted to establish policies to protect the proprietary interest in or intellectual property of the educational content and courses offered through the clearinghouse. The College may require users to agree to the terms of any such policies prior to accessing the repository.[240]

As under continuing permanent law, the act's temporary provision specifies that the fee charged for a course offered through the clearinghouse, as it is operated by the College, is set by the course provider. But the act permits the College to retain a percentage of the fee to offset the cost of maintaining the clearinghouse. The Chancellor is also permitted under continuing permanent law to retain a percentage of a provider's fee.[241] Thus, it appears that both the Chancellor and the College might be able to retain amounts from the fee for a single course if necessary to offset their respective costs.

Participation by primary and secondary schools

The act eliminates a restrictive provision that permitted a primary and secondary student to enroll in a course through the clearinghouse only if the student's district or school approved it and agreed to accept for credit the grade assigned by the course provider. Instead, the act requires each school district, community school, and STEM school to encourage students to take advantage of the distance learning opportunities

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[238] R.C. 3333.82(A); Section 371.60.70(B).

[239] R.C. 3333.85(B); Section 371.60.70(C).

[240] Section 371.60.70(E).

[241] R.C. 3333.84(C); Section 371.60.70(D).

offered through the clearinghouse and to assist them in selecting and scheduling courses that both satisfy the district's or school's curriculum requirements and promote the student's post-secondary college or career plans. It also requires districts and schools to award credit for successfully completed courses that is equivalent to the credit that would be awarded for similar courses offered at the students' districts or schools. Moreover, districts and schools are prohibited from denying or limiting access to or participation in courses offered through the clearinghouse and from refusing to recognize courses that fulfill the minimum high school curriculum.[242]

However, the act also states that a school district, community school, or STEM school is not required to pay the fee charged for a course taken by a student. Under continuing permanent law, not changed by the act, the Chancellor is responsible for prescribing the manner in which the fee for a course "shall be collected or deducted from the school district, school, college or university, or individual subscribing to the course and in which manner the fee shall be paid to the course provider."[243] Presumably, a district or school is free to pay the fee on behalf of a student but cannot be compelled to do so. Still, it is not clear whether a district or school can require a student to take a course through the clearinghouse if it cannot offer the course directly unless it pays for the course on behalf of the student.

Distribution of information by eTech

The act requires the eTech Ohio Commission, in consultation with the Chancellor and the State Board of Education, to distribute information to students and parents describing the clearinghouse. The information must be provided in an easily understandable format.[244]

Guiding principles

The act prescribes "principles" for how the clearinghouse is to be administered for K-12 students. They are as follows.

"(1) All Ohio students shall have access to high quality distance learning courses at any point in their educational careers.

(2) All students shall be able to customize their education using distance learning courses offered through the clearinghouse and no student shall be denied access to any course in the clearinghouse in which the student is eligible to enroll.

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[242] R.C. 3333.83 and 3333.85. See also R.C. 3313.603(C).

[243] R.C. 3333.84(A) and (D).

[244] R.C. 3333.82(F).

(3) Students may take distance learning courses for all or any portion of their curriculum requirements and may utilize a combination of distance learning courses and courses taught in a traditional classroom setting.

(4) Students may earn an unlimited number of academic credits through distance learning courses.

(5) Students may take distance learning courses at any time of the calendar year.

(6) Student advancement to higher coursework shall be based on a demonstration of subject area competency instead of completion of any particular number of hours of instruction."[245]

Rules for implementation of the clearinghouse

Prior law required the Chancellor to adopt rules in accordance with the Administrative Procedure Act prescribing procedures for implementation of the clearinghouse. The act prescribes instead that the Chancellor and the State Board of Education, jointly, must adopt such rules. And the Chancellor and State Board must consult with the Director of the Governor's Office of 21st Century Education in adopting those rules.[246]

The Ohio Digital Learning Task Force

(Section 371.60.80)

The act establishes the Ohio Digital Learning Task Force "to develop a strategy for the expansion of digital learning that enables students to customize their education, produces cost savings, and meets the needs of Ohio's economy."

The Task Force consists of the following members:

(1) The Chancellor or the Chancellor's designee;

(2) The Superintendent of Public Instruction or the Superintendent's designee;

(3) The Director of the Governor's Office of 21st Century Education or the Director's designee;

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[245] R.C. 3333.82(A).

[246] R.C. 3333.87.

(4) Up to six members appointed by the Governor, who must be representatives of school districts or community schools that are "high performing of their type" and have demonstrated the ability to incorporate technology into the classroom successfully; and

(5) One member each appointed by the Senate President and the Speaker of the House. The act does not state whether those two members must or may be members of the General Assembly or the public.

All members must be appointed within 60 days after the act's (immediate) effective date. The Governor must designate the chairperson of the Task Force. Meetings of the Task Force are held at the call of the chairperson.

Issues for study

The act specifically requires the Task Force to do all of the following:

(1) Request information from textbook publishers about digital textbooks and digital content distribution methods and examine that information;

(2) Examine potential cost savings of using digital textbooks and digital content distribution in primary and secondary schools and in higher education institutions;

(3) Examine the academic benefits of using digital textbooks and digital content distribution, including, but not limited to, the ability to individualize content to specific student learning styles, accessibility for individuals with disabilities, and the integration of formative and other online assessments; and

(4) Examine current digital content pilot programs and state-level initiatives operating in Ohio.

Recommendations

The Task Force must issue a report, by March 1, 2012, to the Governor, President of the Senate, and Speaker of the House with recommendations regarding all of the following:

(1) The "creation of high quality digital content and instruction" for free access by public and nonpublic schools and students receiving home instruction;

(2) "High quality professional development for teachers and principals providing online instruction or blended learning programs";

(3) Funding strategies;

(4) Student assessment and accountability;

(5) Infrastructure to support digital learning;

(6) Mobile learning and mobile learning applications;

(7) The distance learning clearinghouse (see above);

(8) "Ways to align the resources and digital learning initiatives of state agencies and offices";

(9) Methods for removing redundancy and inefficiency in, and for providing coordination of, all digital learning programs, including the provision of free online instruction to public and nonpublic schools statewide; and

(10) Methods of addressing future changes in technology and learning.

Upon issuing its report, the Task Force will cease to exist.

Electronic textbook programs at state higher education institutions

(Section 371.60.90)

The act requires the Chancellor, by December 29, 2011, to do both of the following:

(1) Facilitate full implementation of digital textbook and content pilot programs currently planned at state institutions of higher education; and

(2) Ensure that those pilot programs examine cost savings, efficiencies, and academic benefits of digital content, including, but not limited to, the ability to individualize content to specific student learning styles, accessibility for individuals with disabilities, and the integration of formative and other online assessments.

Choose Ohio First scholarship to recruit STEMM teachers

(R.C. 3333.66)

The law authorizing the Choose Ohio First scholarship program generally contemplates that the program will award money for scholarships to undergraduate students in the STEMM fields (science, technology, engineering, math, or medicine) or in STEMM education. But it also directs the Chancellor to encourage colleges and universities to submit proposals to attract Ohio residents attending college elsewhere to return to Ohio for *graduate-level* study in a STEMM field or in STEMM education.

The act directs the Chancellor to encourage a second type of proposal for graduate students, to retain students already in Ohio to take a master's teacher education program in a STEMM field and teach in a hard-to-staff Ohio school district. Specifically, it directs the Chancellor to encourage proposals to award scholarships to STEMM graduates (or undergraduates who will graduate in time to participate in the proposed program by the subsequent school year) from an Ohio college or university to participate in a teacher education masters program in a STEMM field. To qualify for approval, a proposal must require that a participant establish domicile in Ohio and commit to teach for a minimum of three years in a hard-to-staff school district, as defined by the Department of Education, after completing the master's degree program. (The act does not elaborate how the three-year teaching obligation might be enforced; presumably, through contractual obligation.) Moreover, the Chancellor may require a proposing college or university to give priority to qualified candidates who graduated from an Ohio high school.

Financial interests in intellectual property

(R.C. 3345.14)

Under continuing law, the board of trustees of a state college or university may adopt rules under which an employee may solicit or accept, or a person may give or promise to an employee, a financial interest in any entity (firm, corporation, or other association) to which the board has given (assigned, licensed, or transferred) or sold the university's interests in the employee's discoveries, inventions, or patents. The act broadens the potential products that a board could allow an employee to hold a financial interest in to include any "intellectual property." Thus, under the act, an employee of a state college or university may, if permitted under the rules adopted by the institution's board of trustees, hold equity in any intellectual property created by the employee that the college or university has transferred or sold to another entity.

Religious student groups

(R.C. 3345.023)

The act prohibits a state institution of higher education from denying a religious student group any benefit that any other student group would receive, based on the fact that the religious student group requires its leaders or members to adhere to its sincerely held religious beliefs or standards of conduct.

The act specifies that benefits to which such religious groups must have equal access include recognition by the institution and registration of that group. Institutions must also provide these religious student groups access to the institution's channels of communication and funding sources available to any other student group. Finally,

these groups must also be able to use the institution's facilities for speaking purposes, but this requirement is subject to the institution's authority to deny use of facilities to advocates for or members of organizations that advocate the overthrow of the U.S. government by force, or persons "whose presence is not conducive to high ethical or moral standards or the primary educational purposes and orderly conduct of the functions of the institution."[247]

Leasing campus auxiliary facilities

(R.C. 3345.54)

The act authorizes the board of trustees of a state institution of higher education, subject to approval by the Chancellor and the Controlling Board, to enter into a financing agreement with a conduit entity and an independent funding source and convey to the conduit entity title to any auxiliary facilities owned by the state institution. The conduit entity and independent funding source must be selected either through a competitive selection process or by direct negotiations. For purposes of the act, "**auxiliary facilities**" means buildings, structures, and other improvements, and equipment, real estate, and interests in such real estate, to be used for or in connection with student activity or service facilities, housing and dining facilities, dining halls, and other food service and preparation facilities, parking facilities, bookstores, athletic and recreational facilities, faculty centers, auditoriums, assembly and exhibition halls, hospitals, infirmaries and other medical and health facilities, research, and continuing education facilities. "**Conduit entity**" means an organization described in Section 501(c)(3) of the Internal Revenue Code that qualifies as a public charity under Section 509(a)(2) or 509(a)(3) of the Internal Revenue Code, whose corporate purpose allows it to perform the functions and obligations of a conduit entity prescribed in a financing agreement under the act. "**Independent funding source**" means a private entity that enters into a financing agreement with a conduit entity and a state institution.

The financing agreement envisioned by the act is a contract between a state institution of higher education, a conduit entity, and an independent funding source that provides for all of the following:

(1) The conveyance of auxiliary facilities owned by a state institution of higher education to the conduit entity for consideration deemed adequate by the institution.

(2) The lease of the conveyed property by the conduit entity to the independent funding source and leaseback of the conveyed property to the conduit entity for a term not to exceed 99 years.

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[247] R.C. 3345.021, not in the act.

(3) Such other terms and conditions negotiated and agreed upon by the parties, including terms regarding:

(a) Payment to the institution by the conduit entity of revenues received from the conveyed property in excess of the payments it is required to make to the independent funding source;

(b) Pledge, assignment, or creation of a lien in favor of the independent funding source by the conduit entity of any revenues derived from the conveyed property; and

(c) Reverter or conveyance of title to the conveyed property to the institution when the property is no longer subject to a lease with the independent funding source.

(4) Terms and conditions required by the Chancellor or the Controlling Board as a condition of approval of the financing agreement.

The institution and the conduit entity may enter into agreements or contracts under which the institution may maintain or administer the conveyed property and may collect and disburse revenues on behalf of the conduit entity.

The parties also may modify or extend the financing agreement subject to approval by the Chancellor and the Controlling Board.

The property that is conveyed pursuant to a financing agreement retains its exemption from property taxes and assessments, as though title to the conveyed property were held by the institution during any part of a tax year that title was held by the institution or the conduit entity and, if held by the conduit entity, remains subject to the lease-leaseback arrangement between the conduit entity and the independent funding source. The conduit entity, however, must apply for continued exemption of the conveyed property as provided by law after the conveyed property is transferred to it and during the term of the lease-leaseback arrangement.

Finally, the act provides that nothing in this provision is intended to abrogate, amend, limit, or replace any existing authority that state institutions of higher education may have with respect to the conveyance, lease, lease-leaseback, finance, or acquisition of auxiliary facilities.

Leasing campus housing facilities

(R.C. 3345.55)

In addition to the authority for leasing campus auxiliary facilities (see "**Leasing campus auxiliary facilities**" above), the act authorizes a university (defined to include state institutions of higher education and university housing commissions) to enter into

a lease agreement with a nonpublic vendor to provide housing services in campus housing facilities to students of the university. The lease agreement may require the vendor to construct new campus housing facilities to serve students. The lease agreement must be for a term of at least 20 but no more than 30 years and include the following requirements:

(1) The vendor must be responsible for the operation and maintenance of the housing facilities;

(2) The vendor must lease housing units to students of the university;

(3) The vendor is bound by and must enforce any university housing policies.

The act provides that a university may revoke the lease and regain operational control over dormitories if the vendors violate the terms of the lease agreement.

OSU Highway and Transportation Research Fund

(Repealed R.C. 3335.45; Section 371.70.10)

The act eliminates the Ohio State University Highway and Transportation Research Fund and requires the cash balance in the fund be paid to Ohio State University.

DEPARTMENT OF REHABILITATION AND CORRECTION (DRC)

- Revises the authority of the Department of Rehabilitation and Correction (DRC), a county, or a municipality to contract for the private operation and management of a state or specified local correctional facility by a private person or entity by repealing a 2-year limitation on the duration of an initial contract and repealing a requirement that the contractor generally must be accredited by the American Correctional Association.

- Expressly authorizes DRC's Director and the Director of Administrative Services to contract with a private person or entity for the private operation of the Lake Erie Correctional Facility, the Grafton Correctional Institution, the North Coast Correctional Treatment Facility, the North Central Correctional Institution, and the vacated correctional facility previously operated by the Department of Youth Services that is adjacent to the North Central Correctional Institution (transferred to DRC and renamed the North Central Correctional Institution Camp) and the transfer of the state's right, title, and interest in the facility to the private person or entity, and requires additional terms in a contract of that nature.

- Authorizes the sale of the state's right, title, and interest in the real property on which a facility described in the preceding dot point is situated and any surrounding land to the private person or entity privately operating the facility pursuant to a contract described in that dot point.

- Specifies that any facility described in the second preceding dot point that is transferred must be returned to the county auditor's tax list and duplicate and is subject to all real property taxes and assessments, that no exemption from real property taxation under R.C. Chapter 5709. applies to any such facility that is sold, and that the gross receipts and income of a contractor to whom any such facility is sold that are derived from operating the facility are exempt from gross receipts and income taxes levied by the state and its subdivisions.

- Specifies that after the sale of any facility described in the third preceding dot point the state has a right to repurchase the facility if the contractor wants to sell or otherwise transfer the facility or becomes insolvent, defaults on the contract, or defaults on the financial agreement for the purchase of the facility (PARTIALLY VETOED).

- Provides that if a contract for the operation and management of a facility described in the fourth preceding dot point is terminated, the operation and management of the facility must be transferred to another contractor under the same terms or DRC

and the new contractor or DRC may purchase the terminated contractor's equipment, supplies, furnishings, and consumables.

- Requires that any case challenging the constitutionality of R.C. 9.06 or Section 753.10 (sale of DRC facilities) or the legality of certain official actions taken pursuant to those provisions be brought in the Franklin County Court of Common Pleas and that the case and any appeal from a final order in the case be given priority and be decided expeditiously.

- Permits rather than requires the DRC to provide laboratory services to itself and the departments of Mental Health (DMH), Developmental Disabilities, and Youth Services.

- Expands the definition of a DRC "psychiatric hospital" operated for the treatment of inmates to also include a part of a facility.

- Provides that a psychiatric hospital is all or a part of a facility that is operated and managed by DMH pursuant to an agreement with DRC or an accredited psychiatric hospital licensed by DMH and operated and managed by DRC or a contractor of DRC.

- Transfers specified responsibilities related to inmate patient care and treatment from the warden of a psychiatric hospital to DRC.

- Provides that any money received by DRC for agricultural products produced in penal and correctional institutions be deposited into the Ohio Penal Industries Manufacturing Fund.

- Renames the Services and Agricultural Fund the Institutional Services Fund.

- Modifies the purposes for which money in the Institutional Services Fund may be used.

- Modifies the purposes for which money in the Ohio Penal Industries Manufacturing Fund may be used.

- Permits the Division of Business Administration of the Department of Rehabilitation and Correction to enter into a lease or agreement with a state agency, political subdivision, or private entity that allows the agency, subdivision, or entity to use property and facilities that are under the jurisdiction of the Department but that are not being used by the Department.

Correctional facilities – private operation and transfer of state facilities to private owner

Private operation of state or local correctional facilities

(R.C. 9.06; Section 753.10)

Continuing law authorizes the Department of Rehabilitation and Correction (DRC) to contract for the private operation and management of any state correctional institution. It also generally authorizes counties and municipal corporations to contract for the private operation and management of a county, multicounty, municipal, municipal-county, or multicounty-municipal jail, workhouse, prison, or other correctional facility used only for misdemeanants. Any state correctional institution or local facility that is the subject of any such contract is a "facility" for purposes of the provision. Prior law specified that a contract under the provision had to be for an initial term of not more than two years with an option to renew for additional periods of two years. Prior law also required that a person or entity that entered into a contract to operate and manage a state correctional institution or local facility under the provision (the contractor) generally had to be accredited by the American Correctional Association (ACA) and, at the time of the person's or entity's application to enter into the contract, had to operate and manage one or more facilities accredited by the ACA. Continuing law establishes procedures that govern the execution of any such contract, prescribes terms that must be in the contract, imposes duties and standards that apply to the contractor in operating the facility, and specifies other criteria that apply to the operation of the facility. Among the mandatory contract terms under prior law was a requirement that the contractor retain accreditation from the ACA throughout the contract term.

The act modifies prior law regarding a contract for the private operation and management of a state correctional institution or for any of the specified local facilities in several ways:

(1) First, it replaces the requirement that any such contract must be for an initial term of not more than two years with a requirement that the contract must be for an initial term specified in the contract.

(2) Second, it repeals the requirement that the contractor generally must be accredited by the ACA and the related mandatory contract term that specifies that any such contract must include a requirement that the contractor retain accreditation from the ACA throughout the contract term. However, it retains the requirement that, at the time of the application to operate and manage a facility, the contractor operates and

manages one or more facilities accredited by the ACA (the ACA accredits facilities, not operators).

(3) Third, it expands the provision to include new language that applies only in relation to the private operation and management of any of five state institutions that DRC and the Department of Administrative Services (DAS) are authorized to sell, as described below in "**Authorization for sale of state facilities**." The institutions are four specified state correctional institutions and one closed Department of Youth Services (DYS) institution, jurisdiction of which the act transfers to DRC. Regarding those institutions, the act expands the definition of "facility" that applies to the provision so that the term includes any of those institutions at any time prior to or after any sale to a contractor of the state's right, title, and interest in the facility, the land situated thereon, and specified surrounding land. It specifies that if, on or after June 30, 2011, a contractor enters into a contract with DRC for the operation and management of any of those institutions, if the contract provides for the sale of the facility to the contractor, if the facility is sold to the contractor subsequent to the execution of the contract, and if the contractor is privately operating and managing the facility, notwithstanding the contractor's private operation and management of the facility, all of the following apply:

(a) Except as expressly provided to the contrary in the provision, the facility being privately operated and managed by the contractor is to be considered for purposes of the Revised Code as being under the control of, or under the jurisdiction of, DRC.

(b) Any reference in the provision to "state correctional institution," any reference in R.C. Chapter 2967. to "state correctional institution," other than the definition of that term set forth in R.C. 2967.01, or to "prison," and any reference in R.C. Chapter 2929., 5120., 5145., 5147., or 5149. or any other R.C. provision to "state correctional institution" or "prison" is to be considered to include a reference to the facility being privately operated and managed by the contractor, unless the context makes the inclusion of that facility clearly inapplicable.

(c) Upon the sale and conveyance of the facility: (i) the facility must be returned to the tax list and duplicate maintained by the county auditor and is subject to all real property taxes and assessments, (ii) no exemption from real property taxation under R.C. Chapter 5709. applies to the facility, and (iii) the gross receipts and income of the contractor to whom the facility is conveyed that are derived from operating and managing the facility under the provision are exempt from gross receipts and income taxes levied by the state and its subdivisions, including the taxes levied pursuant to R.C. Chapters 718., 5747., 5748., and 5751.

(d) After the sale and conveyance of the facility, all of the following apply:

(i) Before the contractor may resell or otherwise transfer the facility and the real property on which it is situated, any surrounding land that also was transferred under the contract, or both, the contractor first must offer the state the opportunity to repurchase the facility, real property, and surrounding land and must sell it to the state if the state so desires, pursuant to and in accordance with the repurchase clause included in the contract. The Governor vetoed language that established a formula for determining the maximum repurchase price.

(ii) Upon the default by the contractor of any financial agreement for the purchase of the facility and the real property on which it is situated, any surrounding land that also was transferred under the contract, or both, the default by the contractor of any other term in the contract, or the financial insolvency of the contractor or inability of the contractor to meet its contractual obligations, the state may repurchase the facility, real property, and surrounding land, if the state so desires, pursuant to and in accordance with the repurchase clause included in the contract. The Governor vetoed language that established a formula for determining the maximum repurchase price.

(iii) If the contract for the operation and management of the facility is terminated, the operation and management responsibilities of the facility must be transferred to another contractor under the same terms and conditions as applied to the original contractor or to the Department of Rehabilitation and Correction, and the Department or the new contractor, whichever is applicable, may enter into an agreement with the terminated contractor to purchase the terminated contractor's equipment, supplies, furnishings, and consumables.

Authorization for sale of state facilities

(Section 753.10; R.C. 9.06 and 5120.092)

The act authorizes the DAS Director and the DRC Director to award one or more contracts through requests for proposals for the operation and management by a contractor of one or more of the facilities described in this paragraph, pursuant to the provision described above in "**Private operation of state or local correctional facilities**," and for the transfer of the state's right, title, and interest in the real property on which the facility is situated and any surrounding land. This provision applies to the Lake Erie Correctional Facility, the Grafton Correctional Institution, the North Coast Correctional Treatment Facility, and the North Central Correctional Institution. It also applies to the vacated facility previously operated by DYS that is adjacent to the North Central Correctional Institution, which the act transfers to DRC and renames the North

Central Correctional Institution Camp. The act identifies the approximate acreage of the authorized land transfer for each of the five identified facilities.

If the DAS Director and the DRC Director award a contract of the type described in the preceding paragraph to a contractor regarding any of the five specified facilities, in addition to the requirements, statements, and authorizations that must be included in the contract pursuant to the provision described above in "**Private operation of state or local correctional facilities**," the contract must include all of the following regarding the facility that is the subject of the contract:

(1) An agreement for the sale to the contractor of the state's right, title, and interest in the facility, the land situated thereon, and specified surrounding land;

(2) A requirement that the contractor provide preferential hiring treatment to DRC employees in order to retain staff displaced as a result of the transition of the operation and management of the facility and to meet the administrative, programmatic, maintenance, and security needs of the facility;

(3) Notwithstanding any Revised Code provision and subject to the condition described in the following sentence, authorization for the transfer to the contractor of any supplies, equipment, furnishings, fixtures, or other assets considered necessary by the DRC Director and the DAS Director for the continued operation and management of the facility. If the contract is for the transfer of the state's right, title, and interest in the real property on which the Grafton Correctional Institution is situated and any surrounding land, the DRC Director may transfer to another state correctional institution to be determined by the Director the Braille printing press and related accessories located at the Grafton Correctional Institution and all programs associated with the Braille printing press.

(4) A binding commitment that irrevocably grants to the state a right to repurchase the facility and the real property on which it is situated, any surrounding land that is to be transferred under the contract, or both if: (a) the contractor or the contractor's successor wants to sell or otherwise transfer to a third party the facility and the real property on which it is situated, any surrounding land transferred under the contract, or both, or (b) the contractor defaults on any financial agreement for the purchase of the facility and real property on which it is situated, any surrounding land transferred with the facility, or both, defaults on any term of the contract, or becomes insolvent or unable to meet its contractual obligations. Under (a), the contractor or successor first must offer the facility or property to the state at least 120 days before it intends to make the sale or transfer to the third party. The Governor vetoed provisions requiring that, in either situation, the state's purchase price must be not greater than the price the contractor paid, less depreciation from the time of the conveyance to the

contractor, plus the depreciated value of any capital improvements funded by anyone other than the state after the conveyance to the contractor.

(5) A requirement that if the contract for the operation and management of the facility is terminated, (a) the operation and management responsibilities of the facility will be transferred to another contractor under the same terms and conditions as applied to the original contractor or to DRC, and (b) DRC or the new contractor, whichever is applicable, may enter into an agreement with the terminated contractor to purchase the terminated contractor's equipment, supplies, furnishings, and consumables.

If the DAS Director and the DRC Director award a contract of the type described above to a contractor regarding any of the five specified facilities, notwithstanding any Revised Code provision, the state may transfer to the contractor in accordance with the contract any supplies, equipment, furnishings, fixtures, or other assets considered necessary by the DRC Director and the DAS Director for the continued operation and management of the facility. For purposes of this paragraph and the transfer authorized under it, any such supplies, equipment, furnishings, fixtures, or other assets are not considered supplies, excess supplies, or surplus supplies as defined in R.C. 125.12 and may be disposed of as part of the transfer of the facility to the contractor.

The act states that nothing in the provisions described in the preceding paragraphs or in its parts that identify the five specified facilities and provide the procedures and details of a sale of any of those facilities restricts DRC from contracting for only the private operation and management of any of those facilities.

The act provides procedures and details regarding the sale of any of the five specified facilities. It authorizes the Governor to execute a deed in the name of the state conveying to the grantee, its successors and assigns, all of the right, title, and interest of the state in the particular facility, the land situated thereon, and any surrounding land. Consideration for conveyance of the real estate must be set forth in the contract and be paid in accordance with its terms. The deed may contain any restriction that the DAS Director and the DRC Director determine is reasonably necessary to protect the state's interest in neighboring state-owned land. The deed must contain restrictions prohibiting the grantee from using, developing, or selling the real estate, or the correctional facility on it, except in conformance with the restriction, or if the use, development, or sale will interfere with the quiet enjoyment of the neighboring state-owned land. The real estate must be sold as an entire tract and not in parcels. Upon payment of the purchase price as set forth in the contract, the Auditor of State, with the assistance of the Attorney General, is to prepare a deed to the real estate. The grantee must present the deed for recording in the office of the recorder of the county in which the particular facility is located. The grantee must pay all costs associated with the

purchase and conveyance of the real estate, including recordation costs of the deed. The authorizations for the sale of the five specified facilities expire June 30, 2013.

The proceeds of the conveyance of any of the five specified facilities must be deposited into the state treasury to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund, which the act creates. The proceeds must be used to redeem or defease the outstanding portion of any state bonds issued for the facilities sold, in accordance with procedures specified in the act, and any remaining proceeds after the redemption or defeasance must be transferred to the General Revenue Fund. Upon completion of that transfer, the Fund is abolished.

Legal challenges to sale of facilities

(R.C. 9.06(K))

The act requires that any action asserting that R.C. 9.06 or Section 753.10 of the act violates any provision of the Ohio Constitution or that any action taken by the Governor, DAS, or DRC pursuant to those sections violates any provision of the Ohio Constitution or the Revised Code be brought in the Franklin County Court of Common Pleas. Under the act, the court must give any such action priority over all other civil cases pending on its docket and expeditiously make a determination on the claim, and the court of appeals must give like priority to an appeal from any final order issued in the case and decide the appeal expeditiously.

State and local taxes

(R.C. 9.06(J)(3))

The act expressly subjects a private contractor that enters into a contract to own and operate one of the five prisons authorized by the act to state and municipal income taxes and the commercial activity tax. Further, sales involving a contractor in the contractor's role as a consumer or purchaser are subject to all state and local sales and use taxes unless exempted under another existing provision of sales and use tax law. After a prison facility is sold to a contractor, the facility is placed on the county tax list and duplicate, with the effect of making the facility subject to all real property taxes and assessments, with no exemption from real property taxation applying to the conveyed facility.

Laboratory services

(R.C. 5120.135)

The act permits rather than requires DRC to provide laboratory services to itself and the departments of Mental Health, Developmental Disabilities, and Youth Services.

The act also removes from law a complementary provision detailing what happens if DRC provides unsatisfactory laboratory services to the departments of Mental Health, Developmental Disabilities, and Youth Services.

Definition of a Department "psychiatric hospital"

(R.C. 5120.17(A)(3), (D)(2), (E), (I), and (J))

Under continuing law, DRC may transfer an inmate who is a mentally ill person subject to hospitalization from a state correctional institution to a psychiatric hospital, pursuant to specified procedures. The act redefines a "psychiatric hospital" for this purpose.

The act amends the prior definition of a psychiatric hospital to define a psychiatric hospital as *all or part of* a facility that is operated *and managed by the Department of Mental Health (DMH) to provide psychiatric hospitalization services pursuant to an agreement between the Directors of DRC and DMH* (added by the act) or is licensed by the DMH *as a psychiatric hospital accredited by a healthcare accrediting organization approved by the DMH and operated and managed by DRC within a facility operated by DRC, by a contractor for DRC within a facility operated by DRC, or by an entity that has contracted with DRC to provide psychiatric hospitalization services in a community* (added by the act). As defined prior to the act, a psychiatric hospital did not include "part" of a facility. Under the prior definition, a part of a facility otherwise meeting the qualifications of a psychiatric hospital was not a psychiatric hospital.

Under the prior definition, the psychiatric hospital was operated by DRC, rather than by DMH pursuant to an agreement with DRC, and was required to be in substantial compliance with standards set by the Joint Commission on Accreditation of Heathcare Organizations (JCAHO), rather than being required to be accredited by an approved healthcare accrediting organization. The prior definition did not specify the entities that could operate and manage the psychiatric hospital.

Law largely unchanged by the act prohibited inmate patients in the *physical custody* of DRC who were transported or transferred to a psychiatric hospital from being subjected to convulsive therapy, major aversive interventions, unusually hazardous treatment procedures, or psychosurgery. The act prohibits inmate patients who are transported to a psychiatric hospital *within a facility operated by DRC* from being subjected to these treatments.

Law largely retained by the act provided that the warden of a psychiatric hospital or the warden's designee was responsible for ensuring that inmate patients hospitalized in a psychiatric hospital received statutorily required care and treatment. The act places that responsibility on DRC. Law largely retained by the act permitted the

warden of a psychiatric hospital to file an affidavit with the probate court prior to the release of an inmate patient from a psychiatric hospital, alleging that the inmate patient was mentally ill and subject to hospitalization by court order or was mentally retarded and subject to institutionalization by court order. The act permits DRC or a designee of DRC to file this affidavit.

Law retained in part by the act required DRC to set standards for the treatment provided to inmate patients consistent, where applicable, with the standards set by JCAHO. Under the act, DRC's treatment standards are not required to be consistent with JCAHO standards.

Deposit into Institutional Services Fund and Ohio Penal Industries Manufacturing Fund

(R.C. 5120.28(B) and (C))

Prior law required that any money received by DRC for labor and services performed and agricultural products produced be deposited into the Services and Agricultural Fund. That money was required to be used for specified purchases and payments and to be accounted for pursuant to an accounting system for the allocation of the earnings of each prisoner, created by rule pursuant to R.C. 5145.03(B).

The act removes the requirement that those moneys be deposited into the Services and Agricultural Fund and instead requires that any money received by DRC for labor and services performed be deposited into the Institutional Services Fund (new name for the Services and Agricultural Fund). The act requires that money received by DRC for agricultural products produced also be deposited into the Ohio Penal Industries Manufacturing Fund instead of the Renamed Institutional Services Fund.

Institutional Services Fund

(R.C. 5120.29(A))

Prior law created the Services and Agricultural Fund and specified the purposes for which the Fund may be used. The act renames the Services and Agricultural Fund the Institutional Services Fund. It also alters several of the purposes for which the money in the Institutional Services Fund may be used by specifying that the money may be used for the following purposes:

(1) Purchasing material, supplies, and equipment and the erection and extension of buildings used in *services provided between institutions of the Department of Rehabilitation and Correction* (replacing service industries and agriculture);

(2) Payment of compensation to employees necessary to carry on *institutional services* (replacing the service industries and agriculture);

(3) Payment of prisoners confined in state correctional institutions a portion of their earnings in accordance with rules adopted by DRC (same as prior law).

The act also eliminates the purchase of lands and buildings for service industries and agriculture as one of the purposes of the Fund.

Ohio Penal Industries Manufacturing Fund

(R.C. 5120.28(C) and 5120.29(B))

Continuing law requires that the Ohio Penal Industries Manufacturing Fund be used for the following:

(1) Purchasing material, supplies, and equipment and the erection and extension of buildings used in manufacturing;

(2) Purchasing of lands and buildings necessary to carry on or extend the manufacturing industries;

(3) Payment of compensation necessary to carry on the manufacturing industries;

(4) Payment of prisoners confined in state correctional institutions a portion of their earnings in accordance with rules adopted by DRC.

The act modifies the purposes of the Ohio Penal Industries Manufacturing Fund by allowing the purchase of materials, supplies, and equipment, the erection and extension of buildings, the purchase of lands and buildings, and the payment of compensation of employees for agriculture.

Lease of unused Department of Rehabilitation and Correction facilities

(R.C. 5120.22(C))

The act permits the Division of Business Administration of the Department of Rehabilitation and Correction to enter into a lease or agreement with a state agency, political subdivision, or private entity, which lease or agreement allows the state agency, political subdivision, or private entity to use property and facilities that are under the jurisdiction of the Department that are not being used by the Department. The act provides that all money collected for leasing and services performed in accordance with the lease or agreement must be deposited into the Property Receipts

Fund and that the money in the Fund is to be used for any expenses resulting from the lease or agreement. These expenses include, but are not limited to, expenses for services performed, construction, maintenance, repair, reconstruction, or demolition of the facilities or other property.

The Property Receipts Fund is a previously existing fund and will continue to also be used to pay for any expenses necessary to provide for state-owned housing under the Department's jurisdiction that is used by the Department's employees.

REHABILITATION SERVICES COMMISSION (RSC)

- Adds the Administrator of the Ohio Rehabilitation Services Commission (ORSC) as a member of the Ohio Family and Children First Cabinet Council.
- Requires funding agreements between ORSC and a public or private entity to comply with federal regulations for third-party cooperative agreements by public agencies.
- Increases to 25% (from 13%) the maximum percentage of funds that ORSC may receive under a third-party funding agreement and removes the specification that ORSC use the funds for administration.

Ohio Family and Children First Cabinet Council membership

(R.C. 121.37)

The act adds the Administrator of the Ohio Rehabilitation Services Commission (ORSC) as a member of the Ohio Family and Children First Cabinet Council. The Council helps families seeking government services by streamlining and coordinating existing government services. It also includes the Superintendent of Public Instruction and the Directors of Youth Services, Job and Family Services, Mental Health, Health, Alcohol and Drug Addiction Services, Developmental Disabilities, Aging, Rehabilitation and Correction, and Budget and Management.

ORSC third-party funding

(R.C. 3304.181 and 3304.182)

The act requires all funding agreements between ORSC and a public or private entity to comply with federal regulations[248] for third-party cooperative agreements by public agencies. Continuing law specifies that the agreements must comply with state statutes.

The act increases the maximum percentage of funds that ORSC may receive under a third-party funding agreement from 13% to 25%. Additionally, the act removes the specification that ORSC use these funds for administration.

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[248] 34 C.F.R. 361.28.

RETIREMENT (RET)

- Designates a retirement plan a provider for purposes of Ohio law governing alternative retirement plans if it was established by a public institution of higher education prior to July 1, 2000, and is a qualified trust under federal tax law.
- Except for the contributions to mitigate negative financial impact on the State Teachers Retirement System (STRS) and interest on those contributions, provides that such an institution is not required to pay any retirement contributions or interest due STRS for an employee who made an election prior to July 1, 2000.
- Permits an institution that failed to timely file with STRS a copy of an election made prior to July 1, 2000, to file it not later than December 28, 2011.

Alternative retirement plans

(Section 733.20)

For purposes of Ohio law governing alternative retirement plans[249] for employees of public institutions of higher education, the act designates as a provider a plan established prior to July 1, 2000, that is a qualified trust under section 401(a) of the Internal Revenue Code (IRC). Continuing law requires the board of trustees of each public institution of higher education to adopt an alternative retirement plan and enter into a contract with each provider designated by the Ohio Department of Insurance that is willing to provide investment options under the plan.[250] The Department may designate only plans that are qualified trusts under the IRC.

Contributions

Continuing law requires (1) an employee electing to participate in an alternative retirement plan to contribute the percentage of compensation the employee would contribute to the public retirement system that would otherwise cover the employee

[249] An alternative retirement plan is a defined contribution plan that provides retirement and death benefits through investment options. Certain full-time academic and administrative employees of public institutions of higher education may elect to participate in an alternative retirement plan instead of the public retirement system that would otherwise cover their positions: the Public Employees Retirement System, State Teachers Retirement System, or School Employees Retirement System.

[250] R.C. 3305.03 and 3305.04.

and (2) the institution employing the employee to contribute an amount equal to a percentage of the employee's compensation. An amount equal to up to 6% of the employee's compensation is used to mitigate the negative financial impact of the alternative retirement program on the public retirement system.[251]

Except for the contributions to mitigate negative financial impact and interest on those contributions, the act provides that an institution is not required to pay any retirement contributions due STRS for an employee who made an election prior to July 1, 2000, to participate in an alternative retirement plan that is designated as a provider under the act. This applies from the date of the election as long as participation by the employee continues.[252]

Notice of election

Under continuing law, an employee who elects to participate in an alternative retirement plan must submit an election in writing to the employing institution. A certified copy of the election must be filed by the institution with the appropriate state retirement system.[253]

The act permits an institution that failed to timely file with STRS a copy of an election made prior to July 1, 2000, to file it not later than December 28, 2011 (which is the date that is 90 days after the act's 90-day effective date of September 29, 2011. STRS is required to accept the election as though it was timely filed.

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[251] R.C. 3305.06.

[252] R.C. 3305.054(A)(2).

[253] R.C. 3305.05(C)(1).

STATE BOARD OF SANITARIAN REGISTRATION (SAN)

- Increases the registration renewal fee for a registered sanitarian and a sanitarian-in-training from $74 to $80.
- Increases the late fee for a renewal application from $27 to $50, and specifies that the late fee is in addition to the renewal fee.
- Authorizes the State Board of Sanitarian Registration to establish by rule fees for additional copies of pocket identification cards and wall certificates.

Fees for registered sanitarians and sanitarians-in-training

(R.C. 4736.12)

The act increases the registration renewal fee for registered sanitarians and sanitarians-in-training that the State Board of Sanitarian Registration charges from $74 to $80. Additionally, the act increases the late fee for a renewal application from $27 to $50 and specifies that the late fee is in addition to the renewal fee. Finally, the act authorizes the Board to adopt rules establishing fees for additional copies of pocket identification cards and wall certificates.

SCHOOL FACILITIES COMMISSION (SFC)

- Increases to 13 months (from one year) the period after which the conditional approval of state funding for a school district's classroom facilities construction project lapses if the district voters do not approve a bond issue and tax levy to pay the district's portion of the project cost.

- Specifies procedures for setting a new project scope and cost estimate for districts for which funding has lapsed.

- Requires that funds reserved to pay the state and school district shares of all projects be spent simultaneously, in proportion to their respective shares, instead of spending the state funds first.

- Specifies procedures for close-out of projects.

- Codifies and makes permanent the Corrective Action Program.

- Eliminates the prohibition of a school district that is within three fiscal years of eligibility for the Classroom Facilities Assistance Program from participating in the Exceptional Needs Program.

- Codifies and makes permanent an Exceptional Needs sub-program to assist districts to relocate or replace a facility due to environmental contamination.

- Authorizes the School Facilities Commission, with Controlling Board approval, to provide funding to a STEM school that is not governed by a single school district board, and requires the STEM school to secure at least 50% of the total cost from nonstate sources.

- Would have revised the method for computing the wealth percentile rankings of school districts, including Expedited Local Partner districts, that had relatively higher percentages of tangible personal property valuation before the law phased out the tax on most tangible personal property (VETOED).

- Permits a school district that received classroom facilities assistance under pre-1997 law and that is eligible for additional assistance to undertake a segment that addresses only part of a facility to renovate or replace work from the earlier project.

- Adds the cost of nonrequired locally funded initiatives, in an amount of up to 50% of the district's project cost, to the list of improvements for which a district

participating in a state-assisted classroom facilities project may incur debt in excess of the ordinary debt limit of 9% of its tax valuation.

- Modifies the standards by which the Superintendent of Public Instruction may certify a school district as a "special needs" district that may exceed the ordinary debt limit to acquire permanent improvements.

- Increases the debt a "special needs" district may incur.

- Permits a joint vocational school district, in the same resolution, to commit existing or new tax levies to finance the annual debt service on bonds issued for both its state-assisted classroom facilities project and locally funded initiatives related to that project.

- Requires school districts, when applying to the School Facilities Commission to purchase energy conservation measures, to report both (1) forgone residual value of materials or equipment replaced by the energy conservation measures and (2) a baseline analysis of energy consumption data for the preceding five years.

- Requires that a district's report on its monitoring of the approved energy cost-saving measures be submitted annually to the Commission, instead of be made available to the Commission upon request.

- Authorizes the Commission to request the Director of Administrative Services to debar a contractor from contract awards for Commission projects in the same manner the Director debars contractors from contracts for other public improvements.

Background to school facilities programs

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in constructing classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Joint vocational school districts are

served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides funding for districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, in advance of their districtwide CFAP projects to construct single buildings in order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of *district* money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program allows certain Big-Eight school districts[254] to receive CFAP assistance earlier than otherwise permitted.

Lapse of project funding

(R.C. 3318.032, 3318.05, and 3318.41)

Once a district is eligible for funding under CFAP or the Vocational School Facilities Assistance Program, it must secure local funding to pay its portion of the project cost. Usually, the district seeks approval by its voters for a bond issue and an accompanying property tax levy to pay its share. Under prior law, if the voters did not approve the bond issue and tax levy within one year after the School Facilities Commission's conditional approval of the project, the encumbrance of state funds for the project lapsed. In other words, a district had one year to secure funds to pay its share of the project. If it could not do so by that time, those state funds were offered to other eligible districts. A district for which funding lapses does have first priority for funding in the future, however.

The act extends to 13 months the period from conditional approval to lapse of funding if a district does not secure funding for its share of the project. This extension provides a district the same number of levy opportunities as before H.B. 48 of the 128th General Assembly increased the election filing deadline from 75 to 90 days.

[254] The program applies to Akron, Dayton, Cincinnati, Columbus, Cleveland, and Toledo. The other two Big-Eight districts, Canton and Youngstown, had received CFAP funding before the Accelerated Urban Program began.

New estimates for renewal of lapsed projects

(R.C. 3318.032, 3318.05, 3318.054, and 3318.41)

As noted above, a district for which state funding lapses because the voters fail to approve local funding has first priority for funding in the future. But prior law did not specify what project scope and costs a district board must resubmit to the voters after a project's funding lapses. In practice, it has been the former project scope and costs that were resubmitted, which may not reflect the district's current needs, tax valuation, and relative wealth. In fact, the new election may be years after the project was conditionally approved. Thus, what the voters approve might not be enough to pay the district's portion. Or a district might wish to scale down its project before resubmitting the project to the voters. In either case, prior law did not provide guidance to districts in seeking voter approval after their projects lapse.

The act establishes procedures for a district board to follow if it wishes to revive its project after lapse. To do so, the board must request that the School Facilities Commission set a new scope and estimated cost for the project based on the district's *current* wealth percentile and tax valuation. In the case of districts that participated in the Expedited Local Partnership Program and are now eligible for CFAP funding, their respective shares will continue to be based on the percentage specified in their Expedited Local Partner agreements.

The new scope and estimated costs are valid for one year. The district board may resubmit the project, based on the new estimates, to the district's voters. If approved by the voters, the district's project will receive first priority for funding as it becomes available, as provided under continuing law.

Simultaneous spending of state and school district shares

(R.C. 183.51, 3318.08, 3318.38, and 3318.41)

Under prior law, for all school districts except the Big-Eight districts participating in the Accelerated Urban Program or joint vocational districts, the state funds encumbered for a district's project were to be spent before the district's funds were spent. For the Accelerated Urban districts and joint vocational districts, the state and district funds must be spent simultaneously, in proportion to their respective percentages of the total project cost. The act requires simultaneous spending of the state and district shares for *all* district projects. As is the case under continuing law for the Accelerated Urban districts and joint vocational districts, the act authorizes a district to spend a greater portion of its own funds during any specific period than would otherwise be required, if necessary to maintain the federal tax status or tax-exempt status of the notes or bonds issued by the district.

Final close-out of projects

(R.C. 3318.12 and 3318.48)

The act specifies some procedures for the School Facilities Commission to use in closing out completed projects.

First, it requires the Commission to issue a "certificate of completion" to the district's board when all of the following have occurred: (1) all facilities have been completed and the district has received permanent certificates of occupancy, (2) the Commission has issued certificates of contract completion on all prime construction contracts, (3) the Commission has completed a final accounting of the district's project construction fund and determined that all payments were in compliance with Commission policies, (4) any litigation concerning the project has been resolved, and (5) all construction management services provided by the Commission have been delivered and no state funds for those services remain encumbered.

However, the act permits the Commission to issue a certificate of completion prior to satisfaction of those conditions, if the Commission determines that the circumstances preventing their satisfaction "are so minor in nature that the project should be considered complete." When doing so, the Commission may specify any of the following: (1) the work that has yet to be completed and the manner in which the district board must oversee its completion, (2) terms and conditions for the resolution of pending litigation, or (3) any remaining responsibilities of the project construction manager.

Finally, the act also permits the Commission to issue a certificate of completion even when the district does not voluntarily participate in the close-out process. The Commission may do so if the construction manager verifies that all facilities have been completed and the facilities have been occupied for at least a year. If there are any state funds remaining in the project construction fund that have not been returned within 60 days after issuance of the certificate of completion, the Auditor of State must issue a finding for recovery against the district and request legal action by the Attorney General.

Corrective Action Program

(R.C. 3318.49; Sections 620.30 and 620.31)

H.B. 462 of the 128th General Assembly, the capital reauthorization act for the 2010-2012 biennium, gave temporary authority to the School Facilities Commission and appropriated $23.3 million for grants to districts to correct defective or omitted work connected with a project. The act codifies that authority and makes it a permanent

program. Beginning July 1, 2011, the Commission must operate the program using the new codified statutory language.

For purposes of the permanent program, the Commission must define both "defective" and "omitted" and establish procedures and deadlines for districts to use in applying for assistance. The permanent authorization also differs from H.B. 462's temporary provisions as follows:

(1) It changes the deadline for a school district to notify the Commission of defects or omissions to five years after facility occupancy, instead of five years after project close-out as under H.B. 462.

(2) It states that the Commission's procedures for corrective action first must focus on engaging the responsible contractors.

(3) It requires a local share of the cost of the corrective work, based on the method used to determine respective shares of CFAP or vocational district projects. But the act allows a district to request additional state assistance if it cannot provide its share.

(4) The act requires the Commission to seek recovery from responsible parties and to apply any recovered funds first to the district's share of the cost of the corrective work and then to the state's share.

Eligibility for Exceptional Needs Program

(R.C. 3318.37)

The act eliminates the stipulation of prior law that, regardless of other qualifications, any district reasonably expected to be eligible for CFAP within three fiscal years after its application for assistance under the Exceptional Needs Program is ineligible for the Exceptional Needs Program.

As noted above, the Exceptional Needs Program provides districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, with funding in advance of their districtwide CFAP projects to address acute health and safety issues.

Environmental contamination program

(R.C. 3318.371)

In 1999, the General Assembly authorized a temporary sub-program of the Exceptional Needs Program to assist districts that needed to relocate or replace a facility

due to environmental contamination. Established in uncodified law, it has been reauthorized in every biennial budget act since. The act codifies and makes permanent that authority. As in the prior temporary provisions, the new codified sub-program is available to any district regardless of wealth. And, if a district receives restitution for the contamination from the federal government or some other public or private entity, it must repay the state any amount of that restitution that exceeds the district's share of the cost of the project under the sub-program.

On the other hand, the act's new permanent sub-program differs from the temporary sub-program in that, first, it requires the School Facilities Commission to adopt guidelines for determining district eligibility and funding. Second, it makes the Commission's use of environmental consultants optional, rather than mandatory. Third, it specifies that the contamination may include any contamination of air, soil, or water that impacts the occupants of a classroom facility. Prior uncodified law referred only to "extreme environmental contamination."

Finally, the most recent enactment of the temporary sub-program, in H.B. 1 of the 128th General Assembly, capped a district's local share at 50% of the project cost, regardless of the district's wealth ranking. The sub-program, as codified by the act, does not cap a district's share.

Classroom facilities funding for certain STEM schools

(R.C. 3318.70)

The act authorizes the School Facilities Commission, with Controlling Board approval, to provide funding to any STEM school that is not governed by a single school district board. Under the act, if the governing body of an eligible STEM school wishes to receive classroom facilities funding, it must submit a written proposal to the Commission indicating the total amount of state funding requested and the amount of nonstate funding pledged for the project, the latter of which must not be less than the requested state funding. In other words, the STEM school must secure at least 50% of the project cost from nonstate sources.

However, the act does not stipulate how the Commission should prioritize funding among eligible schools and school districts under this and its other programs. Nor does the act set any limit on the size of a STEM school's project, but, presumably, the Commission will evaluate each project in the same manner as it does under its other programs. The act does require the project agreement between the Commission and a STEM school to include a stipulation of the ownership of the classroom facilities in the event the school permanently closes.

Background

A STEM school is an independent, public science, technology, engineering, and mathematics school for any of grades 6 to 12 established through a collaborative endeavor of both public and private entities, including at least one school district.[255] They are established and receive state operating funding under one of two models. Under the original model, each STEM school receives a per-pupil amount for each of its enrolled students that is deducted from the student's resident school district, in the same manner as funds are paid to community schools. It is this type of STEM school that may receive facilities funding under the act.

Under the alternative model, a single school district board of education is the governing body of the STEM school. That district includes its resident students attending the STEM school in its student count, receives state funding directly for those students, and must allocate to the school funds at least equal to what would be calculated for the students under the open enrollment laws. If students from other districts enroll in a STEM school established under this alternative model, the Department of Education must transfer state funds from the students' resident school districts to the district operating the STEM school using the formulas of the open enrollment laws. The act does not authorize facilities funding for STEM schools established under the alternative model.

Accounting for reduced tangible personal property valuations (VETOED)

(R.C. 3318.011 and 3318.36; Section 387.70)

The Governor vetoed a provision that would have changed the way the average adjusted valuation per pupil is computed for school districts that had relatively high tangible personal property valuations before the law phased out the tax on most tangible personal property.

The annual wealth percentile rankings of school districts for school facilities funding is based on the "total" taxable value of each district, averaged over three years. That total taxable value is the sum of both the district's real property tax valuation and its tangible personal property tax valuation. Beginning in 2005, however, the tax on tangible personal property that is not public utility personal property was phased down over several years and is now fully phased out.[256] Thus, the value of that tangible personal property is no longer included in a district's current total taxable value. But since the formula for determining a district's wealth percentile, which in turn is used to

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[255] R.C. 3326.03, not in the act. See generally R.C. Chapter 3326.

[256] R.C. 5711.22, not in the act.

determine its share of its CFAP project cost, is averaged over three years and itself includes a three-year average of a district's tax valuation, some districts may appear to have a greater tax capacity than they actually have for a few years, until that former tangible personal property valuation is no longer reflected in their averaged tax valuations.

The act would have addressed this situation by specifying that, if a school district's tangible personal property valuation, minus its public utility personal property valuation, made up 18% or more of its total taxable value for tax year 2005, its three-year "average taxable value" used in determining the wealth percentiles must include only its real property and public utility personal property tax valuations, and not its other tangible personal property tax valuation. Since the Department of Education had already certified the equity list for fiscal year 2011 to determine funding under the School Facilities Commission's programs for fiscal year 2012, the act also would have required the Department to calculate and certify a new, alternate equity list for use in fiscal year 2012 using the revised definition of "average taxable value." Finally, the act would have made an exception to the general requirement that school districts participating in the Expedited Local Partnership Program "lock in" their local share percentage when they eventually become eligible for CFAP. Under the act, when an Expedited Local Partner district became eligible for CFAP, if the district's tangible personal property valuation, not including public utility personal property, made up 18% or more of its total taxable value for tax year 2005, the district's share of its CFAP project cost would have been the least of (1) the percentage locked in under the Expedited Local Partner agreement, (2) the percentage computed using its current wealth percentile rank, or (3) for a CFAP project approved for fiscal year 2012, the amount computed under the alternative equity list as described above.

Segmented projects for "1990 look-back" districts

(R.C. 3318.034)

A school district is permitted to divide its CFAP project into segments and to proceed with only one or more separate segments of the total project at a time. Thus, a district need not seek voter approval for a bond issue for the complete project all at once. However, (1) each segment must consist of new construction or complete renovation of one or more entire buildings, (2) the district's share of the cost of each segment must equal at least 4% of the district's tax valuation, and (3) a segment may not leave a building uncompleted.

The act exempts from these requirements certain segmented projects by "1990 look-back" districts. Those districts are ones that received assistance under CFAP as it was administered by the Department of Education before creation of the School

Facilities Commission in 1997. That program often did not provide for district-wide assistance to a district. Continuing law permits such districts to receive additional assistance, when their wealth percentiles are eligible, if they did not receive assistance for a complete district-wide renovation prior to 1997.

Under the act, when a 1990 look-back district opts to segment its new project, it may create a segment that addresses only a *part* of a facility in order to renovate or replace work done under its prior project, if the Commission determines that the renovation or replacement is necessary to protect the facility. The cost of the segment is to be shared by the state and the district in the usual manner, but the minimum size requirements described above do not apply. Also, the district need not seek a maintenance levy for that segment, as is otherwise required for all CFAP projects. (Continuing law generally requires each district participating in a state classroom facilities program to levy an additional tax of one-half mill for 23 years or generate the equivalent of that amount by some other means.)

School district debt limit

(R.C. 133.06(E) and (I); Section 733.40)

All political subdivisions, including school districts, are subject to some debt limit that is based on a percentage of their property tax valuations. The percentage and the types of debt that are included in those limits vary among types of subdivisions. Generally, a school district may not incur debt in a net amount greater than 9% of its tax valuation. However, a school district may incur debt exceeding that limit when undertaking a state-assisted classroom facilities project or if the state Superintendent certifies that the district has "special needs" for public improvements that it cannot finance without exceeding the limit. The act makes changes to both of these exceptions to the general school district debt limit.

State-assisted school facilities projects

Under continuing law, a district undertaking a state-assisted facilities project may exceed the ordinary debt limit to raise funds necessary to pay for (1) the district's share of the project, (2) the site for the project, and (3) any "required" locally funded initiatives. The School Facilities Commission may require districts to pay the entire amount for certain items that do not meet the Commission's specifications but are closely associated with the state-assisted portion of the entire project. The act adds, to this list of improvements for which the district may exceed the debt limit, the cost of other, *nonrequired* locally funded initiatives in an amount of up to 50% of the district's project cost.

Special needs districts

Upon application, the state Superintendent may declare a school district as a "special needs" district, permitting the district to incur debt in excess of the ordinary limit in order to acquire needed permanent improvements. The act makes several changes to the process to apply for a special needs certification and the amount of additional debt a special needs district may incur.

First, in applying for this certification, prior law required a district to submit to the state Superintendent a history and projection of the growth of the district's student population. The act eliminates that requirement, but it retains in continuing law the requirement that a district submit to the state Superintendent (1) a history and projection of the growth of its tax valuation, (2) its projected facilities needs, and (3) the estimated cost to meet those projected needs.

Next, the act changes the standard for certification of special needs. Under prior law, the state Superintendent could certify a district as an "approved special needs district" if the Superintendent found that the growth in the district's tax valuation during the next five years is projected to average at least 3% per year. The act reduces required projected average tax valuation growth to only 1.5% per year. It retains in continuing law a requirement that the state Superintendent also find that the district does not have available sufficient funds from state or federal sources to meet its projected facilities needs.

Finally, the act increases the amount of debt a certified special needs district may incur. Under prior law, a special needs district could incur debt equal to the greater of:

(1) 9% of the sum of its tax valuation plus the product of the tax valuation times the percentage by which the tax valuation has increased over the 60-month period prior to an election on the issuance of securities; or

(2) 9% of the sum of its tax valuation plus the product of the tax valuation times the percentage the state Superintendent projects the district's tax valuation will increase during the next 10 years.

The act increases the percentages to 12% of either sum as described above, instead of 9%.

Applicability to pending proceedings

The act provides that the provisions amending the law governing school district limits may apply to proceedings that are pending or completed, elections that are

authorized, conducted, or certified, or securities that are authorized or issued on the date those provisions take effect (September 29, 2011).

Financing under the Vocational School Facilities Assistance Program

(R.C. 3318.44)

The Vocational School Facilities Assistance Program provides assistance to joint vocational school districts (JVSDs) on a graduated, cost-sharing basis in a manner similar to other districts under CFAP. Continuing law provides JVSDs with a wide array of options for financing their shares of their projects. The act expands those options by permitting a JVSD board to combine in a single resolution propositions to commit the use of existing or new tax levies to finance the annual debt service on bonds issued for *both* its state-assisted classroom facilities project and locally funded initiatives related to that project.

Energy conservation measures

(R.C. 133.06(G) and 3313.372)

Continuing law permits a school district, subject to approval by the School Facilities Commission, to issue bonds to purchase energy conservation improvements without voter approval in an amount up to 9/10 of 1% of the district's tax valuation. The debt service on the bonds is paid with the estimated savings on energy costs. In a similar manner, districts may enter into a series of installment contracts for energy conservation improvements with the approval of the Commission.

In applying for approval, continuing law requires a district to submit to the Commission a report that includes estimates of all costs of design, engineering, installation, maintenance, repairs, debt service, and amounts by which energy consumption and resultant operational and maintenance costs may be reduced. The act adds requirements that the report also include estimates of both (1) forgone residual value of materials or equipment replaced by the new energy conservation measures, and (2) a baseline analysis of actual energy consumption data for the preceding five years.

Continuing law also requires the district board to monitor the savings and maintain a report of those savings. Under prior law, the district board had to make that report available to the Commission upon request. The act, instead, requires outright that the district board submit its report to the Commission annually.

Debarment of contractors on SFC projects

(R.C. 153.02 and 3318.31)

The act authorizes the School Facilities Commission to request the Director of Administrative Services to debar a contractor from contract awards for classroom facilities projects. The Director is to use the same grounds, and follow the same procedures, for debarring a contractor from public improvement contract awards under pre-existing law. During the period of debarment, the contractor is not eligible to bid for or participate in any contract for a public improvement or a classroom facilities project.

SECRETARY OF STATE (SOS)

- Removes the requirement for the Secretary of State to compile and publish specified numbers of nonelectronic copies of election statistics and official rosters of officers.

- Requires the Secretary of State to charge a filing fee for multiple agents' change filings.

- Creates the Information Systems Fund in the state treasury for the information technology related expenses of the Secretary of State's office.

- Creates the Help America Vote Act (HAVA) Fund in the state treasury, and specifies that HAVA moneys received by the Secretary of State from the U.S. Election Assistance Commission are to be credited to the fund and used for activities conducted pursuant to HAVA.

- Creates the Election Reform/Health and Human Services Fund in the state treasury, and specifies that HAVA moneys received by the Secretary of State from the U.S. Department of Health and Human Services are to be credited to the fund and used to assure access for disabled individuals.

- Establishes a privately funded Citizen Education Fund in the state treasury, and requires the Secretary of State to use moneys in the fund for preparing, printing, and distributing voter registration and educational materials and for conducting related workshops and conferences.

- Eliminates the Secretary of State's duty to publish and distribute the session laws in a bound format and provides for more flexible publishing and distribution requirements.

- Abolishes the Secretary of State Business Technology Fund.

- Requires the Secretary of State to use ordinary or electronic mail instead of certified mail or notices sent "in writing" to give businesses certain notices.

- Harmonizes inconsistent filing fee statutes by referencing the statute specifying fees to be charged by the Secretary.

- Increases from $1,800 to $2,400 the fee that must be paid by a voting machine vendor in order to have the Board of Voting Machine Examiners test the voting equipment for possible certification in Ohio.

- Allows a nonprofit corporation that is formed under Ohio law to convert into another, specified entity, if the conversion is also permitted by the law under which the converted entity would exist.
- Defines "entity," as used in the Nonprofit Corporation Law.
- Expands the definition of "entity," as used in the Limited Liability Company Law, to include nonprofit corporations.

Election statistics and official rosters of federal, state, county, township, and municipal officers

(R.C. 111.12)

The act removes the specified numbers of nonelectronic copies of election statistics and official rosters of federal, state, county, township, and municipal officers that formerly were required to be compiled and published biennially by the Secretary of State. The act, instead, requires that the statistics and rosters must be compiled and published biennially in a paper, book, or electronic format.

Filing fees for multiple agent changes

(R.C. 111.16)

The act requires the Secretary of State to charge and collect $125, plus $3 per entity record being changed, for a multiple change of agent name or address, standardization of agent address, or resignation of agent for corporations, nonprofit corporations, foreign corporations, foreign nonprofit corporations, limited liability companies, foreign limited liability companies, business trusts, real estate investment trusts, partnerships, or limited partnerships.

Information Systems Fund

(R.C. 111.181)

The act creates the Information Systems Fund in the state treasury for the information technology related expenses of the Secretary of State's office. The fund is to receive revenue from fees charged to customers for special database requests, including corporate and Uniform Commercial Code filings. The fund was established in temporary prior law; the act codifies the fund's creation in permanent law.

Help America Vote Act funds

(R.C. 111.28)

The act creates, in the state treasury, the Help America Vote Act (HAVA) Fund. All moneys received by the Secretary of State from the United States Election Assistance Commission must be credited to the fund. The Secretary of State is required to use the moneys credited to the fund for activities conducted pursuant to the Help America Vote Act of 2002.[257] All investment earnings of the fund must be credited to the fund.

The act also creates, in the state treasury, the Election Reform/Health and Human Services Fund. All moneys received by the Secretary of State from the United States Department of Health and Human Services must be credited to the fund. The Secretary of State is required to use the moneys credited to the fund for activities conducted pursuant to grants awarded to the state under the Help America Vote Act of 2002[258] to assure access for individuals with disabilities. All investment earnings of the fund must be credited to the fund.

The Help America Vote Act of 2002, among other provisions, provides for grants of money to states to assist in the acquisition of voting machines and to ensure that polling places and voting equipment are accessible to individuals with disabilities. The act establishes, in permanent law, funds that previously existed only in temporary law to receive federal moneys pursuant to HAVA.

Citizen Education Fund

(R.C. 111.29)

The act creates, in the state treasury, the Citizen Education Fund. The fund is to receive gifts, grants, fees, and donations from private individuals and entities for voter education purposes. The Secretary of State is required to use moneys credited to the fund for preparing, printing, and distributing voter registration and educational materials and for conducting related workshops and conferences for public education. The fund was previously established in temporary law.

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[257] Pub. L. No. 107-252, 116 Stat. 1666.

[258] Title II, Subtitle D, Sections 261 to 265.

Electronic format and more flexible distribution requirements for session laws

(R.C. 149.091 and 149.11)

The act requires the Secretary of State to publish the session laws (the Laws of Ohio) in a paper or electronic format as an alternative to the former requirement for a permanently bound format (with a minimum of 25 copies in permanently bound volumes). The act also eliminates former specific numbers of copies to be produced and relaxes the distribution requirements by authorizing instead of requiring the free distribution of the session laws to specified persons (county auditors, county law libraries, and other public officials). The persons who would have received free bound copies under prior law (the clerks of both houses of the General Assembly, the Legislative Service Commission, the Ohio Supreme Court, the Library of Congress, the State Library, the Ohio Historical Society, and the Secretary of State) must continue to receive free copies of the session laws in paper or electronic format from the Secretary of State.

Abolishment of the Secretary of State Business Technology Fund

(R.C. 1309.528 and 111.18)

The act abolishes the Secretary of State Business Technology Fund in the state treasury. The money in the Fund resulted from transfers of 1% of the money credited to the Corporate and Uniform Commercial Code Filing Fund. The moneys credited to the Secretary of State Business Technology Fund were used only for the upkeep, improvement, or replacement of equipment, or for the training of employees in the use of equipment, that is used to conduct business of the Secretary of State under the Uniform Commercial Code or the General Corporation Law.[259] Funds that were transferred to the Secretary of State Business Technology Fund will be retained in the Corporate and Uniform Commercial Code Filing Fund.

Notices sent by the Secretary of State

(R.C. 1329.04, 1329.42, 1701.07, 1702.59, 1776.83, and 1785.06)

The act requires the Secretary of State to use ordinary or electronic mail instead of certified mail or notices sent "in writing" to notify businesses of the need to renew registrations of trade names, reports of fictitious names, and registrations of names, marks, or devices to indicate ownership of articles or supplies; to renew statements of continued existence; to revoke statements of qualification of partnerships that fail to file

[259] R.C. Titles XIII and XVII.

biennial reports; to give notices of failure to file a biennial statement; and to appoint a new statutory agent or file a statement of change of address for that agent. These notices are to be sent to the last known physical or electronic mail address of the businesses, rather than the last known address.

Filing fees for transactions of business and mergers or consolidations

(R.C. 1703.031 and 1703.07)

The act removes the former specific fee ($100) from the statute requiring a bank, savings bank, or savings and loan association chartered under the laws of the United States and whose main office is located in another state to provide notice it is transacting business in Ohio with the Secretary of State, and instead cross references the statute detailing the fees to be charged and collected by the Secretary of State,[260] which under continuing law sets this fee at $125. Similarly, the act removes the former fee specified ($10) in the statute requiring a filing fee to be collected by the Secretary of State before filing a certificate of a foreign corporation's merger or consolidation and instead cross references the statute detailing the fees to be charged and collected by the Secretary of State, which under continuing law sets this fee at $125. This cures an inconsistency in prior law between the fees charged for these two activities.

Voting equipment testing fee

(R.C. 3506.05)

The act increases from $1,800 to $2,400 the fee that must be paid by a voting machine vendor in order to have the Board of Voting Machine Examiners test the vendor's voting equipment for possible certification in Ohio. The Board of Voting Machine Examiners is required to test voting machines, marking devices, and automatic tabulating equipment that a vendor submits for possible certification for use in Ohio. Upon submission of voting equipment for testing, and the payment of the required fee by the vendor, the Board must examine the voting equipment to determine whether it meets the statutory standards for vote retention, security, storage, and other crucial operations of the equipment as may be determined by the Board. If the Board determines that the voting equipment is secure and capable of performing the required functions, it may recommend that the Secretary of State certify the equipment for use in Ohio.

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[260] R.C. 111.16.

Conversion of a nonprofit corporation into another business entity

Conversion, generally

(R.C. 1702.01, 1702.461, 1702.462, and 1705.01; R.C. 1705.361, 1776.01, and 1776.72, not in the act)

In general, the act allows a nonprofit corporation that is formed under Ohio law to convert into any of the following entities:

(1) A nonprofit corporation existing under the laws of another state;

(2) A common law trust existing under the laws of Ohio, the United States, or any other state;

(3) An unincorporated nonprofit organization, including a general or limited partnership, existing under the laws of Ohio, the United States, or any other state;

(4) A limited liability company existing under the laws of Ohio, the United States, or any other state.

For the conversion to occur, the conversion also must be permitted by the law under which the converted entity would exist. Ohio's Uniform Partnership Law allows already for the conversion of a nonprofit corporation into a partnership. The act redefines "entity," as that term is used in the Limited Liability Company Law, to include a nonprofit corporation. The effect of this change is to allow a nonprofit corporation to convert into a limited liability company under that law.

Additionally, all conversions that occur under the act must occur pursuant to the nonprofit corporation's written declaration of conversion (see "**Written declaration of conversion**," below). Also, no conversion is permitted if there are reasonable grounds to believe that the conversion or substitution would render the converted entity unable to pay its obligations as they become due in the usual course of its affairs.

Written declaration of conversion

Declaration contents

(R.C. 1702.461(B), (C), and (G))

The written declaration of conversion, pursuant to which a nonprofit corporation conversion must occur, must set forth all of the following information:

(1) The name and form of entity that is being converted, the name and form of entity into which the entity will be converted, and the jurisdiction of formation of the converted entity;

(2) The complete terms of all documents required under the law of the converted entity's formation to form the converted entity;

(3) If the converted entity is a foreign entity, the consent of the converted entity to be sued and served with process in Ohio, and the irrevocable appointment of the Secretary of State as the agent of the converted entity to accept service of process in Ohio to enforce against the converted entity any obligation of the converting corporation or to enforce the rights of a dissenting shareholder of the converting corporation;

(4) If the converted entity is a foreign entity, and if the converted entity desires to transact business in Ohio, the information required to qualify or to be licensed under Ohio law;

(5) All other statements and matters required to be set forth in the declaration of conversion by applicable Ohio law, if the converted entity is a domestic entity, or by the laws under which the converted entity will be formed, if the converted entity is a foreign entity;

(6) The terms of the conversion, the mode of carrying them into effect, and the manner and basis of converting the interests of the converting corporation into, or substituting the interests in the converting corporation for, interests in the converted entity.

In addition to the above information, the written declaration of conversion also can set forth any of the following information:

(1) The effective date of the conversion (see "**Effective date of conversion**," below);

(2) A provision authorizing, prior to the filing of the certificate of conversion (see "**Certificate of conversion**," below), the converting corporation to abandon the proposed conversion by action of the converting corporation's trustees or by the same vote as was required to adopt the declaration of conversion;

(3) A provision authorizing, prior to the filing of the certificate of conversion, the trustees of the converting corporation to amend the declaration of conversion, except as prohibited under the act (see "**Amendments to the declaration**," below);

(4) A statement of, or a statement of the method to be used to determine, the fair value of the assets owned by the converting corporation at the time of the conversion;

(5) The parties to the declaration of conversion in addition to the converting entity;

(6) Any additional provision necessary or desirable with respect to the proposed conversion or the converted entity.

Declaration approval and adoption

(R.C. 1702.461(D), (E), (F), and (G)(1))

Under the act, the declaration of conversion must be approved by the converting corporation's trustees and adopted by the converting corporation's members before taking effect. The approval and adoption must occur at a meeting of the members held for that purpose. Notice of the meeting, accompanied by a copy or a summary of the material provisions of the declaration of conversion, must be given to all members of the corporation, whether or not they are entitled to vote.

The vote required to adopt a declaration of conversion is the affirmative vote of the members of that corporation entitling them to exercise at least two-thirds of the voting power of the corporation on the proposal, or a different proportion as provided in the articles. In no case, however, can the required vote be less than a majority. If the nonprofit corporation is converting to a foreign corporation, a different proportion as the articles provide for a merger or consolidation, and the affirmative vote of the members of any particular class as required by the articles of the converting corporation, is sufficient. For all conversions, if the declaration of conversion would authorize any particular corporate action that under any applicable provision of law or the articles could be authorized only with a specified vote of members, the declaration of conversion also must be adopted by the same affirmative vote as required for that action.

The trustees can abandon the conversion at any time before the filing of the certificate of conversion with the Secretary of State, if the trustees are authorized to do so by the declaration of conversion. The trustees can accomplish this action by the same vote of the members as was required to adopt the declaration of conversion.

Amendments to the declaration

(R.C. 1702.461(G)(2))

The converting corporation's trustees can amend the declaration of conversion, before the certificate of conversion is filed with the Secretary of State, if permitted under

the declaration of conversion. The act prohibits the trustees, however, from amending the declaration of conversion to do any of the following:

(1) Alter or change any term of the converted entity's organizational documents except for alterations or changes that are adopted with the vote or action of the persons, the vote or action of which would be required for the alteration or change after the conversion;

(2) Alter or change any other terms and conditions of the declaration of conversion if any of the alterations or changes, alone or in the aggregate, materially and adversely would affect the members of the converting corporation.

Certificate of conversion

(R.C. 1702.462)

The act requires the converting corporation, either upon adoption of the declaration of conversion or at a later time as authorized by the declaration of conversion, to file a certificate of conversion with the Secretary of State. The certificate must be on a form prescribed by the Secretary of State and it must be signed by an authorized representative of the converting entity.

The certificate must set forth the following information:

(1) The name and form of entity of the converting entity and the state under the laws of which the converting entity exists;

(2) A statement that the converting entity has complied with all of the laws under which it exists and that the laws permit the conversion;

(3) The name and mailing address of the person or entity that is to provide a copy of the declaration of conversion in response to any written request made by a member of the converting entity;

(4) The effective date of the conversion;

(5) The signature of the representative or representatives authorized to sign the certificate on behalf of the converting entity and the office held or the capacity in which the representative is acting;

(6) A statement that the declaration of conversion is authorized on behalf of the converting entity and that each person signing the certificate on behalf of the converting entity is authorized to do so;

(7) The name and form of the converted entity and the state under the laws of which the converted entity will exist;

(8) If the converted entity is a foreign entity that will not be licensed in Ohio, the name and address of the statutory agent upon whom any process, notice, or demand may be served.

The certificate also must be accompanied by the following items, as applicable:

(1) If the nonprofit corporation is converting into a limited liability company, limited partnership, or other partnership, any organizational document that would be filed upon the creation of the new entity.

(2) If the converted entity is a foreign entity that desires to transact business in Ohio, both of the following:

(a) Consent of the converted entity to be sued and served with process in Ohio, and the irrevocable appointment of the Secretary of State as the agent of the converted entity to accept service of process in Ohio to enforce against the converted entity any obligation of the converting corporation or to enforce the rights of a dissenting shareholder of the converting corporation;

(b) The information required to qualify or to be licensed under Ohio law;

(3) If a foreign or domestic corporation licensed to transact business in Ohio is the converting entity, the certificate of conversion must be accompanied by the affidavits, receipts, certificates, or other evidence that is required under continuing law in the case of a nonprofit corporation dissolution, with respect to a converting domestic corporation, or, with respect to a converting foreign corporation, by the affidavits, receipts, certificates, or other evidence required under continuing law when a foreign corporation files a certificate of surrender with the Secretary of State, surrendering its license to transact business in Ohio.

The act requires also that all documents required to be filed in connection with the conversion by the laws under which the entity is or will be formed must be filed in the proper office.

Effective date of conversion

(R.C. 1702.462(D))

A nonprofit corporation conversion is effective either upon the filing of a certificate of conversion or at any later date that the certificate of conversion specifies.

Secretary of State's certificate

(R.C. 1702.462(E))

The act requires that the Secretary of State furnish, upon request and payment of the fee for creating and affixing the seal of the Office of the Secretary of State to certain certificates (which, under continuing law is $25), the Secretary of State's certificate setting forth all of the following:

(1) The converting entity's name and form of entity and the state under the laws of which it existed prior to the conversion;

(2) The converted entity's name and form of entity and the state under the laws of which it will exist;

(3) The date of filing of the certificate of conversion with the Secretary of State and the effective date of the conversion.

Filing for record in the office of the county recorder

(R.C. 1702.462(F))

The act specifically permits either the certificate of the Secretary of State or a copy of the certificate of conversion certified by the Secretary of State to be filed for record in the office of the recorder of any Ohio county. If filed, the certificate must be recorded in the records of deeds for that county. The county recorder must charge and collect the same fee for the recording as in the case of deeds.

"Entity" under the Nonprofit Corporation Law and the Limited Liability Company Law

(R.C. 1702.01 and 1705.01)

The act defines "entity," as used throughout the Nonprofit Corporation Law, and changes the definition of "entity" as used in the Limited Liability Company Law. In the Nonprofit Corporation Law, the act defines "entity" as any of the following:

(1) A nonprofit corporation existing under the laws of Ohio or any other state;

(2) Any of the following organizations existing under the laws of Ohio, the United States, or any other state:

(a) A common law trust;

(b) An unincorporated nonprofit organization, including a general or limited partnership;

(c) A limited liability company;

(d) A for profit corporation.

While this new definition appears to limit the meaning of the term "entity" as it is used in the Nonprofit Corporation Law, it appears to have no actual effect on that Law.

In the Limited Liability Company Law, the act includes nonprofit corporations in the definition of "entity." The effect of this change is to allow nonprofit corporations to convert into limited liability companies under the Limited Liability Company Law, as other entities are permitted to do under continuing law.

SOUTHERN OHIO AGRICULTURAL COMMUNITY DEVELOPMENT TRUST FUND (SOA)

- Repeals the limitation that no more than 5% of the total disbursements, encumbrances, and obligations of the Southern Ohio Agricultural and Community Development Foundation be for administrative expenses in the same fiscal year.

Repeal of administrative expenses cap for Southern Ohio Agricultural and Community Development Foundation

(R.C. 183.30)

The act repeals the limitation that no more than 5% of the total disbursements, encumbrances, and obligations of the Southern Ohio Agricultural and Community Development Foundation be for administrative expenses in the same fiscal year. The act also repeals a provision stating that the 5% limitation on administrative expenses does not apply to any fiscal year for which the Controlling Board approved a spending plan that the Foundation submitted to the Board.

BOARD OF TAX APPEALS (BTA)

Board of Tax Appeals review

(Section 757.30)

The act requires the Tax Commissioner to review the operations of the Ohio Board of Tax Appeals (BTA) and make recommendations for how the operations could be improved. The Commissioner's review must include consultations with people who have or have had matters before the BTA. The recommendations must address internal operations, the appeals process, and "other operational matters." The Commissioner must report the review and recommendations by November 15, 2011, to the Governor, President of the Senate, and Speaker of the House. The Commissioner may designate an employee to conduct the review.

DEPARTMENT OF TAXATION (TAX)

Tax exemptions for privatized state services

- Exempts from taxation private contractors contracting to operate the turnpike and the liquor merchandising function (JobsOhio); affected taxes are commercial activity tax and state and local income and sales/use taxes.

- Continues tax exemption of real property used by such contractors if the state continues to own the property during the contract.

Local Government Fund and Public Library Fund

- Reduces the amount of state tax revenue credited to the Local Government Fund (LGF) to 75% of fiscal year 2011 levels for each month between August of 2011 and June of 2012 and to 50% of fiscal year 2011 levels for all months in fiscal year 2013.

- Reduces the amount of state tax revenue credited to the Public Library Fund (PLF) for all months between August of 2011 and June of 2013 to 95% of fiscal year 2011 levels.

- Provides that distributions to the LGF and PLF after fiscal year 2013 will depend on the total amount allocated to the respective funds in fiscal year 2013 as a percentage of total state tax revenue credited to the General Revenue Fund (GRF) in that fiscal year.

- Requires, beginning in August of 2011, pro rata distributions from the LGF to county undivided LGFs and municipal corporations based on the proportionate share each subdivision received from the LGF in fiscal year 2011, and reflecting the 25% (FY 2012) and 50% (FY 2013) reductions in the tax revenue credited to the LGF.

- Requires minimum distributions to county LGFs in fiscal years 2012 and 2013, such that a county that received a total distribution of over $750,000 in fiscal year 2011 may not receive less than $750,000, while county LGFs that would receive less than $750,000 because of the reductions must receive at least the same amount the county LGF received in fiscal year 2011.

- Provides a supplemental payment to county LGFs in FY 2012 in a total amount of $49,270,000, to be distributed on a pro rata basis according to each county LGF's share of the FY 2011 LGF.

- Authorizes, for the period between July and December of 2011, pro rata distributions from the PLF to counties based on the proportionate share each county received in 2010 and, for the period between January of 2012 and June of 2013, pro rata distributions to counties based on the proportionate share each county received in 2011.

- Provides that county undivided local government funds shall no longer receive 5/8 of the revenue from the dealers in intangibles tax on unaffiliated dealers, and instead allocates all revenue from that tax to the GRF.

Tangible personal property tax reimbursements

- Decreases the portion of commercial activity tax and kilowatt-hour tax revenue earmarked for reimbursing school districts and other taxing units for business and public utility personal property tax losses, and increases the GRF portion.

- Requires all natural gas distribution tax revenue to be credited to the GRF.

- Replaces the previous business and public utility property reimbursement schedules for fixed-rate levy losses with ones that:

  --Over the FY 2012-2013 fiscal biennium, terminate payments if a taxing unit's reimbursement for calendar year 2010 (non-school taxing units) or fiscal year 2011 (school districts) fails to exceed an annually increasing "threshold" percentage of the taxing unit's total resources (a fixed measure of its state aid and local levy revenues);

  --Over the FY 2012-2013 fiscal biennium, reduce payments for taxing units whose 2010 or 2011 reimbursement exceeds the threshold percentage by paying the unit its 2010 or 2011 reimbursement minus the threshold percentage of its total resources; and

  --After the biennium, reimburse taxing units at FY 2013 (schools) or tax year 2013 (others) levels indefinitely for taxing units that received payments in FY 2013 or tax year 2013.

- Reduces the reimbursements for non-current expense fixed-rate levy losses over the biennium for school districts and municipal corporations. (Other taxing units' non-current expense, fixed-rate levies, if any exist, are disregarded.)

- Retains the prior law reimbursements for unvoted debt levies and fixed-sum levies (i.e., school district "emergency" and similar fixed-dollar levies, and voted debt levies).

- Requires debt levies authorized by a municipal charter to be levied without a vote of municipal electors to be reimbursed as an unvoted debt levy.

- Reduces the business personal property reimbursement frequency for school districts from three payments per year (one-third in August, October, and May) to two payments per year (two-thirds in November and one-third in May).

- Changes the business property reimbursement installment fractions for non-school taxing units to one-seventh in May and six-sevenths in November through 2013, and thereafter to one-half in both May and November.

- Terminates payments of "surplus" public utility property reimbursement money remaining in the Local Government Property Tax Replacement Fund after all reimbursement is paid; previously the surplus was distributed among counties on a per-capita and prorated utility property tax loss basis and was paid to taxing units in the counties in proportion to current property taxes.

- Changes the manner of apportioning reimbursement payments among school districts that have transferred or merged territory to reflect the changes in the factors for computing reimbursement payments and to apportion payments on the basis of the per-pupil values of those factors.

- Changes the default method for apportioning reimbursement payments among other local governments for mergers or annexations from a property value basis to a square mileage basis.

- Phases out the county administrative fee losses caused by the tangible personal property tax phase-out from 2012 to 2016. The reimbursement equals a percentage of the 2010 administrative fee loss reimbursement (80% for 2012 and declining to 0% in 2016 in 20% increments).

- Repeals the law creating, as of January 1, 2011, the Public Utility Tax Study Committee, which was to study the extent to which school districts had been compensated by the tax loss reimbursements.

Job retention, investment tax credits and other credits

- Expands the job retention tax credit (JRTC) program, which includes both a permanent nonrefundable and a temporary refundable credit program, to provide for a new, separate refundable tax credit available to certain eligible businesses for a limited time.

- Requires recipients of the new refundable credit to have an annual payroll of at least $20 million, invest at least $5 million at a project site located within the same jurisdiction as that in which the business has its principal place of business, and meet other JRTC program requirements.

- Modifies the JRTC eligibility requirement that a business must retain at least 500 employees by instead requiring a business to either meet the 500-employee retention requirement or have an annual payroll of $35 million.

- Authorizes the new credit only temporarily by providing that the Tax Credit Authority may only enter agreements for the new credit between July 1, 2011 and December 31, 2013.

- Provides a new annual credit limit applicable to both the pre-existing and new refundable JRTC credits by allowing the authorization of up to $25 million of new refundable credits in 2011 and 2012 combined, and up to $25 million of new credits in 2013, for a total limit of $50 million in annual credits claimable in 2013 and every year thereafter for up to 15 years.

- Grants an income tax credit for investments in small businesses with a specified minimum business presence in Ohio.

- Extends perpetually the credit for rehabilitating an historic building.

- Requires credits to be awarded after the rehabilitation or a stage in the rehabilitation is complete, depending on the length of the rehabilitation period.

- Requires a credit recipient to repay any credit if the project is not completed.

- Allows the Department of Development and Ohio Historic Preservation Office to charge reasonable fees for the administration of the credit.

- Requires expenditures of projects with costs over $200,000 to be certified by an accountant.

- Requires the adoption of administrative rules for conducting cost-benefit analyses of each rehabilitation project.

- Permits the Director of Development to rescind an application in which the applicant has failed to obtain financing for the project within 18 months of being approved for a credit.

- Allows foreign and domestic insurance company taxpayers to be eligible for a refundable historic rehabilitation tax credit equal to 25% of the dollar amount indicated on a rehabilitation tax credit certificate.

- Extends the final date on which horse racing permit holders are eligible for tax reductions to recover the costs that they incurred in certain renovation, reconstruction, or remodeling projects at their tracks.

- Authorizes the Tax Credit Authority to grant a full or partial sales and use tax exemption for equipment purchased by a business for use at an "eligible computer data center," provided that the business agrees to make a capital investment of at least $100 million and maintain an annual payroll of at least $5 million at the center.

- Requires the Tax Commissioner to grant a direct payment permit to businesses that enter into an agreement with the Tax Credit Authority for a computer data center equipment sales and use tax exemption.

Estate tax

- Repeals estate tax for the estates of individuals dying on or after January 1, 2013.

Tax amnesty

- Requires the Tax Commissioner to administer a temporary tax amnesty program from January 1, 2012, to February 15, 2012, with respect to delinquent state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes.

- Requires the Commissioner to administer a separate temporary use tax amnesty program specifically for consumers with outstanding use tax obligations.

- Reduces the time within which the Commissioner must issue an assessment for unpaid use tax from ten to seven years when no shorter time limit applies.

- Permits taxpayers assessed for unpaid use tax between four and seven years after the tax was due to file a refund claim for overpaid sales or use tax for up to seven prior years.

Tax administration

- Authorizes the Tax Commissioner to adopt rules requiring employer income tax withholding, use tax, motor fuel tax, cigarette and tobacco product excise tax, or severance tax returns or reports to be filed, or payments made, electronically, unless exempted for good cause.

- Authorizes the Commissioner to issue notices and orders using delivery means other than certified mail or personal service if the alternative means records when the notice or order is placed with the delivery service and when it is accepted from a recipient, and if the delivery service is available to the general public and is as timely and reliable as the U.S. Postal Service.

- Authorizes the Commissioner to use a change of address service offered by such an alternative delivery service to attempt to deliver notices or orders if certified mail is returned undelivered.

- Authorizes the Commissioner to provide notice of retail license suspension or revocation by a delivery service other than certified mail.

- Eliminates requirement that the Department of Taxation include mail-in voter registration materials with income tax returns.

- Requires all claims and inquiries regarding the repealed Ohio Inheritance Tax to be submitted to the Department before 2013.

Miscellaneous

- Extends by two years the deadlines by which the owner of a qualified energy project must submit a property tax exemption application, begin construction, and place into service an energy facility using renewable energy resources or advanced energy technology to qualify for an ongoing real and tangible personal property tax exemption.

- Extends to joint vocational school districts the same terms of compensation and the same notification regarding pending tax increment financing arrangements that currently apply to city, local, and exempted village school districts.

- Extends by one year the authority of local governments to offer Enterprise Zone economic development incentives.

- Authorizes a property tax exemption for a convention center owned by the largest city in a county with a population between 700,000 and 900,000; incidentally applies an existing sales and use tax exemption for building materials incorporated into the convention center.

- Provides for the abatement of unpaid taxes with respect to the convention center for any tax year at issue in a tax exemption application or appeal proceeding pending on September 29, 2011.

- Creates an income tax refund "check-off" contribution for the benefit of the Ohio Historical Society.

- Authorizes school districts, with voter approval of a single ballot question, to levy both a property tax for a fixed amount of revenue and an income tax.

- Excludes from the sales and use tax the value of gift cards or certificates redeemed by a consumer in exchange for the vendor's goods or services as part of the vendor's awards, loyalty, or promotional program.

- Modifies the statutory language governing the agricultural "use on use," "direct use," and agricultural land tile sales and use tax exemptions by applying them to tangible personal property used "primarily" rather than "directly" for such purposes.

- Authorizes a sales and use tax exemption for building materials and related services incorporated into a structure for keeping fish, horses, or captive deer for food or other agricultural purposes.

- Allows school districts to transfer surplus money in a bond fund or bond retirement fund to a specific permanent improvement fund with the approval of the county budget commission.

- Expands the purposes for which a political subdivision may propose a police or fire services property tax levy to include the payment of salaries and retirement fund contributions for EMS personnel, part-time police personnel, and police and fire communications and administrative personnel.

- Clarifies that the ballot for a school property tax levy for cultural center purposes must state that the levy is for cultural center purposes.

- Authorizes county treasurers that sell delinquent property tax certificates to shorten the deadline by which certificate holders must initiate foreclosures to as few as three years.

- Authorizes tax certificates being sold at public auction to be advertised electronically.

- Extends by one year the authority of the prosecuting attorney or treasurer of Hamilton County to appropriate up to 50% of delinquent tax and assessment funds above the amount necessary to collect additional delinquent taxes and assessments and to use the excess to pay operating expenses of the respective office otherwise paid from the general fund.

- States that, for the purpose of the existing corporation franchise (i.e., financial institution) tax credit for research expenses incurred by one or more members of a commonly owned or controlled group of corporations, an insurance company may be included in the group, even though insurance companies are not subject to the corporation franchise tax.

- Divides each county's Delinquent Tax and Assessment Collection Fund into two separate funds, one for the expenses of the county treasurer and one for the expenses of the county prosecuting attorney.

- Authorizes the county treasurer or prosecuting attorney to suspend the crediting of delinquent tax collections to the respective officer's fund if the balance of the fund reaches a specified threshold.

- Authorizes a commercial activity tax exemption for receipts received from transactions that occur within a "uranium enrichment zone" certified by the Tax Commissioner.

- Changes the composition of the Ohio Business Gateway steering committee by increasing the number of business representatives and decreasing the number of municipal tax administrator representatives.

Tax exemptions for privatized state services

(R.C. 126.60, 126.604, 718.01(A)(1), 4313.02(A), 5739.02(B)(51), 5747.01(A)(30), and 5751.01(F)(2)(ff))

Privatized state services

The act provides a municipal and state income tax deduction, a sales tax exemption, and an exclusion from "gross receipts" for the purposes of calculating commercial activity tax for an entity that operates facilities and services previously operated by the state. The two parties covered by the tax exemptions authorized by the act are a contractor operating the turnpike under the act's authority for the state to contract for such services (R.C. 126.60 through 126.605), and JobsOhio with regard to the transfer of state liquor merchandising operations as authorized by the act (R.C. 4313.02). Privatized correctional facilities are not covered.

Tax exemptions

Under the act, a contractor operating the turnpike ("turnpike contractor") may deduct, for the purpose of calculating the contractor's state and municipal income tax,

any income realized by the contractor from the services provided by the contractor. JobsOhio may deduct income realized from state liquor merchandising operations or from the transfer of those operations from JobsOhio's adjusted gross income, assuming JobsOhio or its involved subsidiaries are otherwise subject to such taxes (JobsOhio is to be organized as a nonprofit corporation, although its subsidiaries might not be nonprofit). (R.C. 718.01 and 5747.01.)

A transfer or lease of tangible personal property between a turnpike contractor and the state is exempted from state and local sales and use taxes. The transfer of state liquor merchandising operations to JobsOhio is exempt from state and local sales and use taxes. (R.C. 5739.02.)

Receipts directly attributed to providing highway (i.e., turnpike) services pursuant to a contract with the state are excluded from "gross receipts" for the purpose of calculating a contractor's commercial activity tax. Receipts directly attributed to a transfer agreement regarding state liquor merchandizing operations between JobsOhio and the state and receipts directly attributed to the liquor operations are excluded from JobsOhio's gross receipts. (R.C. 5751.01. As with the income tax deduction, the effect of this provision on JobsOhio, if any, is uncertain because the CAT does not apply to nonprofit organizations.)

Privatized public services and property tax

The act exempts from property taxation any property used by a turnpike contractor under contract with the state to perform highway (i.e., turnpike) services if the property is still owned by the state. (R.C. 126.604.) Also exempted from property taxation is any property transferred to JobsOhio as part of the transfer of the liquor merchandizing operations to the extent the property would be exempted if it had not been transferred. (R.C. 4313.02(A).)

Local Government Funds

(R.C. 131.44, 131.51, 5747.46 to 5747.48, and 5747.50 to 5747.51; Section 757.10)

The act reduces the amount of state tax revenue credited to the Local Government Fund (LGF) and the Public Library Fund (PLF), and thus the amount of revenue available for distribution to counties, municipalities, townships, public library systems, and other special-purpose political subdivisions receiving revenue sharing payments through each county's undivided LGF. However, the act includes a limited hold-harmless provision that guarantees minimum payments to some county LGFs in fiscal years 2012 and 2013. Specifically, any county undivided LGF that received over $750,000 in fiscal year 2011 must receive a minimum of $750,000 in each of those fiscal years, even if the act's reductions would otherwise result in a lower distribution.

Similarly, any county undivided LGF that received $750,000 or less in fiscal year 2011 must continue to receive at least the same amount distributed to the fund in that year.

State funding of the Local Government Fund (LGF)

(R.C. 131.51(A); Section 757.10)

Continuing permanent law requires monthly allocations to the LGF to be made from any or all GRF tax sources. Under prior law, 3.68% of the total of all those tax sources were allocated to the LGF. The act reduces the amount of the allocation to reflect the reductions in the distributions to local governments, first by reducing the allocation for FY 2012 and 2013 (beginning in August 2011; the July 2011 allocation is unaffected by the act), and then by permanently reducing the percentage of tax sources allocated to the LGF beginning in FY 2014. The act specifies that, between August 2011 and June 2013, only personal income tax revenue will be used to make allocations to the LGF.

The monthly allocation of personal income tax revenue to the LGF from August 2011 through the end of FY 2013 will be composed of two components, with a third supplemental component allocated only from August 2011 through the end of FY 2012. The first component will be whatever amount is required to pay each county undivided LGF and each municipal corporation receiving direct LGF distributions a fixed percentage of the amount the county LGF or municipal corporation received in the corresponding month of FY 2011: 75% in FY 2012 and 50% in FY 2013.

The second component is to guarantee a minimum distribution level for county LGFs that receive relatively small shares of total state LGF distributions. The allocation amount is sufficient to ensure that county LGFs that received $750,000 or less in FY 2011 receive the same amount in FY 2012 and FY 2013, and that county LGFs whose FY 2012 or FY 2013 distribution would fall below $750,000 because of the act's 25% and 50% reductions will receive at least $750,000 in FY 2012 and FY 2013. (In determining whether a county LGF qualifies for this allocation in FY 2012, payments to the county from the third component, described below, are counted.)

The third component of the monthly allocation is a supplemental amount payable only for the 11 months from August 2011 through the end of FY 2012. It is about $4,479,091 per month (i.e., one-eleventh of $49,270,000). This allocation is to be divided pro rata among all county undivided LGFs based on their respective shares of total LGF distributions for the corresponding month in FY 2011.

Beginning with FY 2014, allocations from the LGF to county undivided LGFs and to municipal corporations will revert to continuing permanent law, except that the total amount of state GRF tax revenue devoted to making those allocations will no longer be

the fixed 3.68% of GRF tax revenue. Instead, the total allocation will be whatever percentage of those revenues are required to freeze the post-FY 2013 allocations at the FY 2013 levels, which reflect the 50% reduction (compared to FY 2011 levels) and the amount of the minimum distributions to county undivided LGFs receiving guaranteed minimum distributions.

State funding of the Public Library Fund (PLF)

(R.C. 131.51(B); Section 757.10)

Under continuing permanent codified law, the state Public Library Fund (PLF) receives monthly allocations equal to 2.22% of total GRF tax revenue credited in the preceding month. However, that percentage was temporarily reduced to 1.97% for all months between August of 2009 and June of 2011 in Am. Sub. H.B. 1 of the 128th G.A. (see Section 381.20 of that act). The act further reduces these monthly allocations beginning in August of 2011.

Under the act, between August of 2011 and June of 2013, each month's PLF allocation equals 95% of the allocation made in that month in fiscal year 2011. These reduced allocations must be made from income arising from the sales tax and kilowatt-hour tax, rather than from any state tax revenue credited to the GRF. Beginning in July of 2013, the percentage of state tax revenue allocated to the PLF in any month will be based on the total percentage of state tax revenue allocated to the PLF in fiscal year 2013. PLF allocations after June of 2013 may be made from any state tax revenue credited to the GRF.

LGF distributions to local governments

Permanent codified law

(R.C. 5747.50 to 5747.51)

Continuing permanent codified law provides for the distribution of LGF funds to county undivided local government funds in every county of the state. Local governments in the county agree on how money in the county LGF is allocated among the various political subdivisions within each county. (In a few counties, a default statutory formula determines the allocation.) The amounts disbursed are to be used for the current operating expenses of the subdivisions. In addition, more than 500 municipal corporations receive direct distributions from the LGF. Such distributions are made to a municipal corporation's general fund.

Distributions to a particular county undivided LGF or municipal corporation general fund depend on the amounts distributed to those funds in 2007. Each county

and municipal corporation must receive at least the same amount distributed to their respective fund in that year. If revenue in the state LGF is insufficient to meet these minimum distributions, then each county and municipal corporation must receive a reduced share prorated according to their share of 2007 distributions. However, if there is excess revenue in the state LGF after making the minimum distributions, each county undivided LGF may receive a prorated share of the excess based on the county's proportionate share of the state population, according to U.S. Census Bureau estimates from the previous year. No additional revenue is allocated to municipal corporations.

The act

(Section 757.10(E))

The act adjusts the LGF allocation method to provide for distributions to county undivided LGFs and directly to municipal corporation general funds based on the amounts distributed to those funds in fiscal year 2011. In each month between August of 2011 and June of 2013, the initial amount credited to the state LGF must be distributed to county LGFs and municipal corporations on a pro rata basis based on the proportionate share of state distributions each fund received in fiscal year 2011. For each county LGF, this initial distribution amount equals the fund's proportionate share of the LGF distributions made to all county LGFs in that month in fiscal year 2011 (however, any dealers in intangibles taxes received by a county undivided LGF in FY 2011 would not be counted in the county's proportionate share). Similarly, each municipal corporation that receives direct LGF distributions will receive a share equal to its proportionate share of all municipal corporation direct distributions made in that month in fiscal year 2011.

A county undivided LGF will receive an additional amount in any month that the fund's initial distribution amount falls below the applicable minimum distribution level. Any county LGF that received total distributions of $750,000 or less in fiscal year 2011 must receive an additional amount calculated to ensure that the fund will receive the same total amount the fund received in that fiscal year. A county LGF that received total distributions of over $750,000 in fiscal year 2011 will receive an additional amount only if the total amount to be distributed to that fund in either fiscal year 2012 or 2013 would be less than $750,000. (In determining the total amount distributed to a county undivided LGF for this purpose, payments received from the supplemental component of LGF distributions in FY 2012 – i.e., from the additional $49,270,000 allocated that year – are included.) In such a case, the fund must receive an additional amount calculated to ensure that the fund's total distributions for the respective fiscal year will equal $750,000. The act's minimum distribution levels do not apply to direct municipal corporation distributions.

PLF distributions to local governments

Permanent codified law

(R.C. 5705.32, 5705.321, and 5747.46 to 5747.48)

Under continuing permanent codified law, county undivided public library funds in every county receive a distribution from the state PLF. Agreements among local governments (and, in a few cases, a statutory formula) determine the amounts to be allocated to libraries within the county, and county treasurers distribute the amounts accordingly. (In a few counties, other kinds of local governments receive a share of the county PLF.)

The amount a county undivided PLF receives in a given year under permanent law depends upon the fund's "guaranteed share" and its "share of the excess." A fund's "guaranteed share" is the amount the fund received in the previous year after an adjustment for inflation. In any year, if the guaranteed shares of all counties exceed the total balance of the state PLF, then the share of county funds must be reduced proportionately. Alternatively, if the balance of the state PLF exceeds the guaranteed shares of the counties, then each county may receive a "share of the excess." That share is calculated by determining an equalization ratio for each county that is based on the county's population and its guaranteed share from the previous year.

The act

(Section 757.10(F) and (G))

Under the act, a county undivided PLF's distribution would be based on the fund's proportionate share of distributions in prior years, rather than on the actual amounts received in those prior years, thus reflecting the 5% reduction in the state PLF. In each month between July and December of 2011, each county undivided PLF will receive a share of the state PLF equal to the county's proportionate share of all state PLF distributions it received in 2010. Similarly, between January of 2012 and June of 2013, each fund's share would be based on that fund's proportionate share of all distributions it received in 2011.

Tax Commissioner estimates

(Section 757.10(H))

Under continuing permanent law, the Tax Commissioner must periodically certify estimates of the amount of revenue that each county undivided LGF and PLF will receive in the following year. For county undivided LGFs, the estimates for a distribution year must be provided by July 25 of the preceding year. The Commissioner

must provide three separate estimates to county undivided PLFs for a given year: one each in July and December of the preceding year and one in June of the distribution year.

The act excuses the Commissioner from compliance with these certification requirements in the 2012 and 2013 distribution years. Instead, the Commissioner must send to each county only one estimate of the total amount to be received from the LGF and the PLF by July 20 of the preceding year. The Commissioner may provide additional revised estimates at any time.

Dealers in intangibles tax

(R.C. 5707.03, 5725.01, 5725.151, 5725.18, and 5725.24)

Prior law allocated ⅝ of the tax revenue from most dealers in intangibles to county undivided local government funds. Under the act, counties will no longer receive that portion of tax revenue after December 31, 2011; all revenue will be allocated to the General Revenue Fund (GRF).

Background

Continuing law provides for the taxation of shares in and capital employed by dealers in intangibles. The tax applies to businesses that operate in Ohio and engage in certain financial and lending activities (e.g., stockbrokers, mortgage companies, nonbank loan companies). The tax also applies to "qualifying dealers," which are generally dealers in intangibles that are subsidiaries of a financial institution or insurance company. The tax is levied on the fair value of capital employed by or value of shares of dealers of intangibles at a rate of .8% (8 mills).

Under continuing law, all tax revenue collected from qualifying dealers is paid into the GRF. However, under prior law the revenue collected from all other dealers in intangibles was divided between the GRF and county undivided local government funds. The GRF received ⅜ of those receipts, while counties received ⅝. The act instead allocates all revenue collected from any dealer in intangibles to the GRF.

Local taxing unit reimbursement for business personal property tax losses

(R.C. 5751.20, 5751.21, and 5751.22)

The act replaces the prior schedule for phasing out the reimbursements paid to school districts and other local taxing units for their loss of business tangible personal property tax revenue caused by the previously legislated repeal of those taxes. The general effect is to accelerate the pace of the phase-down during the FY 2012-2013 biennium and to pay reimbursements after the biennium at the reduced level paid at

the end of FY 2013. The new phase-out is scaled according to a taxing unit's reliance on those reimbursements as a percentage of the taxing unit's total budget. The prior reimbursement was based primarily on a fixed fractional reduction each year through 2017 or 2018 (depending on the type of taxing unit) without regard to a percentage-of-budget factor.

From 2005 to 2011, state law phased out taxes levied by school districts and other local taxing units on business personal property. To compensate the taxing units for the resulting property tax losses, state law established a schedule of "replacement" payments. Under prior law, the schedule reimbursed taxing units in full for their levy losses each year until tax year 2011 (non-school taxing units) or fiscal year 2013 (school districts), when the payments themselves were to begin being phased out.[261] The schedule terminated payments as of fiscal year 2019 for school districts or tax year 2018 or 2019 for non-school taxing units, depending on the type of personal property.

Commercial activity tax revenue allocation

Replacement payments are made from commercial activity tax (CAT) revenue, which, for fiscal year 2011, was credited as follows: 0% to the General Revenue Fund (GRF), 70% to the School District Tangible Property Tax Replacement Fund (SDRF), and 30% to the Local Government Tangible Property Tax Replacement Fund (LGRF). Over fiscal years 2012 through 2018, prior law reduced the amount credited to the LGRF and increased the amount credited to the GRF correspondingly. In fiscal years 2019 and thereafter, no CAT revenue was to be credited to the LGRF. The amount credited to the SDRF, however, was not scheduled to decline, even though prior law terminated school district reimbursement payments as of fiscal year 2019. The amount credited to the SDRF that was not distributed was reserved for unspecified "school purposes."

As shown in the table below, the act reallocates the portion of CAT revenue credited to the GRF, SDRF, and LGRF over the FY 2012-2013 fiscal biennium. It also eliminates the reservation of undistributed SDRF money for "school purposes."

Fiscal Year	General Revenue Fund	School District Property Tax Replacement Fund	Local Government Property Tax Replacement Fund
2012	~~5.3%~~ 25.0%	~~70.0%~~ 52.5%	~~24.7%~~ 22.5%
2013 and thereafter	~~10.6%~~ 50.0%	~~70.0%~~ 35.0%	~~19.4%~~ 15.0%

[261] A "tax year" is the same as the calendar year. For example, tax year 2011 means January 1, 2011 through December 31, 2011.

TPP loss reimbursement

Losses experienced by city, local, or exempted village school districts, joint vocational school districts, and other local taxing units for legislated personal property tax reductions are divided into three types: fixed-rate levy losses, fixed-sum levy losses, and losses on unvoted debt levies (i.e., debt levies within the 10-mill limit).

Fixed-rate levy loss reimbursement

In general, a taxing unit's fixed-rate levy losses equal its 2004 personal property taxable values multiplied by the sum of the effective tax rates for its fixed-rate levies in effect in tax year 2004 or applicable to tax year 2005 (so long as the levy was approved by voters before September 1, 2005). For school districts, from this product is subtracted the district's "state education aid offset," which is the increase in state funding a school district receives due to the loss of its personal property tax base. (The offset is discussed in more detail below under "**Transfers to GRF for school districts' state aid**.")

Prior law. Under prior law, fixed-rate levies that did not apply to a tax year after 2010 did not qualify for reimbursement beginning with the later of 2011 or the first tax year to which the levy did not apply. With respect to all other fixed-rate levies, the losses were reimbursed in full through October 2010 for non-school taxing units and through May 2013 for school districts and, as shown below, and with one exception, were reduced to zero by fiscal or tax year 2018.

School Districts Prior law	
Fiscal Year	Percentage of Loss Reimbursed
2011, 2012, and 2013	100%
2014	9/17 (~ 53%)
2015	7/17 (~ 41%)
2016	5/17 (~ 29%)
2017	3/17 (~ 18%)
2018	1/17 (~ 6%)
2019 and thereafter	0%

Non-school Taxing Units Prior law		
Tax Year	Percentage of Loss Reimbursed (Machinery and equipment, inventory, and furniture and fixtures fixed-rate levy losses)	Percentage of Loss Reimbursed (Telephone property fixed-rate levy losses)
2011	14/17 (~ 82%)	100%
2012	11/17 (~ 65%)	87.5%
2013	9/17 (~ 53%)	75%
2014	7/17 (~ 41%)	62.5%
2015	5/17 (~ 29%)	50%
2016	3/17 (~ 18%)	37.5%
2017	1/17 (~ 6%)	25%
2018	0%	12.5%
2019 and thereafter	0%	0%

New law. The act changes the manner in which fixed-rate levy loss reimbursements are computed. Beginning in fiscal year 2012, the base for a taxing unit's fixed-rate levy loss reimbursement is, for school districts, the district's "current expense TPP allocation" and, for non-school taxing units, the unit's "TPP allocation." Current expense TPP allocation is the portion of the reimbursement the school district received in fiscal year 2011 relating to fixed-rate current expense levies, excluding any portion relating to levies that have expired. TPP allocation is the sum of the reimbursements the non-school taxing unit received in tax year 2010 relating to fixed-rate and fixed-sum levies. (For ease of explanation, current expense TPP allocation will be referred to hereafter as "TPP allocation.")

Over the FY 2012-2013 fiscal biennium, fixed-rate levy loss reimbursements are either reduced or terminated. To determine whether a taxing unit is entitled to fixed-rate levy loss reimbursement for a fiscal year (school districts) or tax year (non-school taxing units), the taxing unit's TPP allocation is compared to its "total resources," which, as described below in "**Total Resources**," is the unit's total receipts over a single fixed period from certain state and local sources. If the taxing unit's TPP allocation does not exceed a threshold percentage of its total resources, it is no longer entitled to reimbursement for fixed-rate levy losses. If its TPP allocation does exceed the threshold, its reimbursement for the fiscal or tax year equals the difference of its TPP allocation minus the threshold percentage of its total resources. The foregoing can be symbolized as follows:

TPP Allocation ≤ Th% of Total Resources:	**Reimbursement = $0.00**
TPP Allocation > Th% of Total Resources:	**Reimbursement = TPP Allocation – Th% of Total Resources**

For school districts, the threshold percentage is 2% for fiscal year 2012 and 4% for fiscal years 2013 and thereafter. For non-school taxing units, the threshold percentage is 2% for tax year 2011, 4% for tax year 2012, and 6% for tax years 2013 and thereafter.

Reimbursement for fixed-rate levies for purposes other than current expenses (as the act defines "current expenses") will be reduced by 50% (school districts) or 75% (municipal corporations) over the fiscal biennium. The school district reimbursement is reduced by 25% in FY 2012 and by 50% in FY 2013 and thereafter; the other taxing units' reimbursement is reduced by 25% for tax year 2011, 50% for 2012, and 75% for 2013 and thereafter. Only school districts and municipal corporations will receive this reimbursement. The payments are computed on the basis of the reimbursement received under the prior reimbursement formula in fiscal year 2011 (school districts) or tax year 2010 (municipal corporations).

Total resources

"Total resources" is the measure employed in the act's new reimbursement method to calculate the phase-out of fixed-rate current expense levies (by comparing the TPP allocation to total resources). "Total resources" is defined separately depending on the type of taxing unit: school districts, joint vocational school districts, counties, municipal corporations, townships, and all other taxing units. With respect to counties, total resources is defined separately for different county functions: mental health and disabilities, senior services, children's services, public health, and all other functions.

As described more fully in the table below, "total resources" for a city, local, or exempted village school district equals the sum of its 2010 state aid, its fiscal year 2010 business and utility TPP reimbursement for unexpired fixed-rate current expense and capital improvement levy losses, and current expense property and income taxes (including emergency property taxes):

Total Resources (City, local, and exempted village school districts)
• The district's fiscal year 2010 state aid; • The district's fiscal year 2010 reimbursement for current expense fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) and non-debt fixed-sum levy losses due to (1) the phase-out of business tangible personal property taxes ("business TPP"), and (2) the reduction in assessment rates for electric and gas utility personal property ("utility TPP"), excluding the portion attributable to levies for joint vocational school district purposes;[262] • The average of the school district's current expense real and public utility taxes charged and payable for tax years 2008 and 2009 (determined after the H.B. 920 tax reduction but before the 2.5% and 10% rollbacks, for which school districts are reimbursed by the state), excluding taxes levied for joint vocational school district purposes, and including emergency levies; • The district's current expense taxes charged and payable (determined as above) on non-public utility personal property for tax year 2009 (taxes on the personal property of a telephone telegraph, or interexchange telecommunications company had not been fully phased out by tax year 2009); • The district's fiscal year 2009 receipts from a school district income tax levied for current expenses (except for certain receipts allocated to a state-assisted classroom facilities project); • The district's receipts during calendar year 2009 from a municipal income tax levied for municipal and school district purposes.

[262] Prior law terminated reimbursements for fixed-sum levies that expire and are not renewed, substituted, or converted. (See "**Fixed-sum and unvoted debt levy loss reimbursement**.")

For a joint vocational school district, "total resources" equals the sum of its 2010 state aid, its fiscal year 2010 business and utility TPP reimbursement for unexpired fixed-rate current expense and capital improvement levy losses, and property taxes:

Total Resources (Joint vocational school districts)
• The district's fiscal year 2010 state aid; • The district's fiscal year 2010 reimbursement for current expense fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) and fixed-sum levy losses due to (1) the phase out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP; • The average of the school district's current expense real and public utility taxes charged and payable for tax years 2008 and 2009 (determined after the H.B. 920 tax reduction but before the 2.5% and 10% rollbacks, for which taxing units are reimbursed by the state); • The average of the real and public utility taxes charged and payable for tax year 2008 and 2009 from city, local, or exempted village school district levies devoted to the joint vocational school district; • The district's current expense taxes charged and payable (determined as above) on non-public utility personal property for tax year 2009.

For counties, "total resources" is defined separately for mental health and disability functions, senior services functions, children's services functions, public health functions, and, finally, for all other functions.[263] Total resources for mental health and disability, senior services, children's services, and public health functions equals the sum of the specified function's portion of (1) the calendar year 2010 reimbursement for unexpired business and utility TPP fixed-rate levy losses and business TPP fixed-sum levy losses and (2) property taxes:

Total Resources (Each for county mental health and disability, senior services, children's services, and public health functions)
• The portion of the county's calendar year 2010 reimbursement attributable to the

[263] The effect of this separation on the comparison of TPP allocation to the threshold percentage of total resources is not clear. The counties' TPP allocation is not similarly separated, and the act does not indicate whether a county's total resources equals the sum of the subsidiary total resources or whether a separate comparison of TPP allocation to some percentage of total resources should be made for each subsidiary total resources.

Total Resources (Each for county mental health and disability, senior services, children's services, and public health functions)
specified function for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP and for fixed-sum levy losses due to the business TPP tax phase-out; • Real and public utility taxes charged and payable for the specified function for tax year 2009.

The total resources for the county catch-all category is the same as for the function-specific total resources, except the referenced function is "all other purposes," taxes charged and payable for debt is not counted, and the following amounts are added:

- The county's share of Local Government Fund and Dealers in Intangibles Tax allocations from the count undivided local government fund for calendar year 2010;

- The county's receipts in calendar year 2010 from the county sales and use tax that may be levied at a rate of up to 1% and used for general purposes or for criminal and administrative justice services in the county.

For municipal corporations, total resources equals the sum of the municipality's 2010 business and utility TPP reimbursement for unexpired fixed-rate levy losses and for business TPP fixed-sum losses, its 2010 share of Local Government Fund and Dealers in Intangibles Tax allocations, and property, municipal income, admissions, and estate taxes:

Total Resources (Municipal corporations)
• The municipality's calendar year 2010 reimbursement for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP and for fixed-sum levy losses due to the phase-out of business tangible personal property taxes; • The municipality's share of Local Government Fund and Dealers in Intangibles Tax allocations from the county undivided local government fund for calendar year 2010; • The municipality's receipts directly from the Local Government Fund for calendar year 2010; • The municipality's current expense real and public utility taxes charged and payable for tax year 2009; • The municipality's admissions tax collections in calendar year 2008, or if such information has not yet been reported to the Tax Commissioner, in the most recent year

Total Resources (Municipal corporations)
before 2008 for which the municipality has reported data to the Commissioner; • The municipality's income tax collections in calendar year 2008, or if such information has not yet been reported to the Tax Commissioner, in the most recent year before 2008 for which the municipality has reported data to the Commissioner; • The median estate tax distribution to a municipality for the period 2006 through 2009.[264] If a municipality received no distributions in any of such years, its median estate tax distribution equals zero.

For townships, total resources equals the sum of the township's 2010 business and utility TPP reimbursement for fixed-rate losses and for business TPP fixed-sum losses (excluding fixed-rate and fixed-sum debt levies), its 2010 share of Local Government Fund and Dealers in Intangibles Tax allocations, and its 2009 real and public utility property taxes charged and payable (except from debt levies):

Total Resources (Townships)
• The township's calendar year 2010 reimbursement for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP and for fixed-sum levy losses due to the phase-out of business TPP taxes, excluding the portion attributable to fixed-rate or fixed-sum debt levies; • The township's share of Local Government Fund and Dealers in Intangibles Tax allocations from the county undivided local government fund for calendar year 2010; • The township's real and public utility taxes charged and payable for tax year 2009 (except taxes to pay debt).

Total resources for all other taxing units equals the sum of the unit's 2010 business and utility TPP reimbursement for unexpired fixed-rate levy losses and for business TPP fixed-sum losses, its 2010 share of Local Government Fund and Dealers in Intangibles Tax allocations, property taxes (except for debt repayment), transit authority sales and use taxes, and certain allocations for state community college districts.

Total Resources (All other taxing units)
• The taxing unit's calendar year 2010 reimbursement for fixed-rate levy losses (excluding

[264] Presumably, the distributions will be ordered according to value and not chronologically.

Total Resources (All other taxing units)
the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP, and for fixed-sum levy losses due to the phase-out of business TPP taxes; • The taxing unit's share of Local Government Fund and Dealers in Intangibles Tax allocations from the county undivided local government fund for calendar year 2010; • The taxing unit's real and public utility taxes charged and payable for tax year 2009 (except taxes to pay debt); • A transit authority's calendar year 2010 receipts from transit authority sales and use taxes; • For state community college districts receiving property tax revenue, the district's final state share of instruction allocation for fiscal year 2010.

Fixed-sum and unvoted debt levy loss reimbursement

Losses from fixed-sum levies and from unvoted debt-purpose levies (i.e., levies within the 10-mill limit for debt purposes) are computed in the same manner as fixed-rate levy losses, except there is no deduction for state education aid increases, and, for fixed-sum levies, one-half mill is subtracted from the sum of the effective fixed-sum tax rates. Under prior law, fixed-sum levy losses were reimbursed in full until the levy (or, in the case of school districts, its successor fixed-sum levy) expired. (School district fixed-sum levies include "emergency," "substitute," "renewal," and "conversion" levies.) Losses on unvoted debt levies were to be reimbursed in full through fiscal year 2018. No reimbursement was scheduled to occur thereafter. If the unvoted levy was no longer used for debt purposes, it became subject to the phase-out schedule for fixed-rate levy losses.

The act retains the reimbursement for fixed-sum and unvoted debt levy losses, although the timing and weighting of payments is altered. (See "**Reimbursement payments**," below.) The act also specifies that debt levies that have been imposed pursuant to a municipal charter and that do not have to be approved by voters (so-called "charter millage") will, like other unvoted debt levies, continue to be reimbursed at 100% as long as the levy was still being levied to pay debt in 2010 and as long as it continues to be levied to pay debt.

Appeal

A school district or local taxing unit is permitted to appeal how a levy has been classified for the purpose of the new reimbursement method or how its total resources have been computed. The appeal must be filed in writing with the Tax Commissioner (including electronic mail). The Commissioner must consider any appeal and make any

changes the Commissioner deems warranted. The Commissioner's decision is final and not appealable. No changes are permitted after June 30, 2013. (Section 757.20.)

Reimbursement payment schedule

Under prior law, reimbursement payments were to be made on the last day of August, October, and May. For school district fixed-sum levy losses, one-third of the reimbursement for a fiscal year was distributed in each payment. For all other loss types, the reimbursement for a fiscal or tax year was distributed as follows: 3/7 (August), 3/7 (October), and 1/7 (May). Beginning in fiscal year 2012, however, reimbursements for school district fixed-rate and unvoted debt levy losses were to be distributed in one-third installments.

The act eliminates the August and October payments and replaces them with a payment to be made on or before November 20. Beginning in fiscal year 2012, one-half of fiscal year reimbursement for school district fixed-rate and unvoted debt levy loss reimbursement is to be distributed in November and May. For school district fixed-sum levy losses, two-thirds of the fiscal year reimbursement is to be paid in November and one-third in May. For non-school taxing units, 1/7 of the calendar year reimbursement for all losses is to be distributed in May and 6/7 in November for years 2011 through 2013. For years 2014 and thereafter, one-half is to be distributed in May and one-half in November.

School district mergers and territory transfers

Continuing law establishes a procedure to determine how fixed-rate and fixed-sum levy loss reimbursements are computed when a school district or joint vocational school district merges with or transfers territory to another district. The act amends this procedure as follows:

Type of merger or transfer of territory	Fixed-rate levy loss	Fixed-sum levy loss

Type of merger or transfer of territory	Fixed-rate levy loss	Fixed-sum levy loss
Complete merger of two or more districts	**Prior law:** Successor district received the sum of the fixed-rate levy losses for each district merged. **Act:** The total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation of the successor district equals the sum of such items from the merging districts.	**Prior law:** Successor district received the sum of the fixed-sum levy losses for each district merged. **Act:** No change.
Transfer of part of a district's territory to an existing district	**Prior law:** The recipient district received a pro rata share of the transferring district's total fixed-rate levy loss based on the value of business tangible personal property on the land being transferred. **Act:** The recipient district received a pro rata share of the transferring district's total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation based on the ADM being transferred as compared to the total ADM of the district from which the territory is transferred.	**Prior law:** The Department of Education, in consultation with the Tax Commissioner, made an equitable division of the fixed-sum levy loss reimbursements. **Act:** No change.
Transfer of part of a district's territory to a newly created district	**Prior law:** No fixed-rate levy losses were transferred. **Act:** No total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation are transferred.	**Prior law:** The Department of Education, in consultation with the Tax Commissioner, made an equitable division of the fixed-sum levy loss reimbursements. **Act:** No change.

Taxing unit mergers and annexations

Under prior law, if all or a part of the territories of two or more non-school taxing units were merged, or if territory of a township was annexed by a municipal corporation, the Tax Commissioner was required to adjust the reimbursement payments "in proportion to the tax value loss apportioned to the merged or annexed territory," or as otherwise provided by a written agreement between the taxing units.

The act requires the reimbursement payments to be apportioned according to the square mileage of the merged or annexed territory as a percentage of the total square mileage of the jurisdiction from which the territory originated.

County administrative fee loss reimbursement

(R.C. 5751.23)

Under continuing law, county auditors and treasurers are entitled to a percentage of the property taxes collected to help cover the cost of administering and collecting property taxes, including the percentage credited to the real estate assessment fund to defray the cost of assessing real property. When business tangible personal property taxes were phased out, county auditors and treasurers were to be compensated for the loss of those administrative fees through 2017. The compensation is paid from current collections of real property taxes. Under prior law, the fee reimbursement for a county equaled its 2010 reimbursement multiplied by the fractions used to phase out local taxing unit fixed-rate levy losses:

2011	14/17 (~ 82%)
2012	11/17 (~ 65%)
2013	9/17 (~ 53%)
2014	7/17 (~ 41%)
2015	5/17 (~ 29%)
2016	3/17 (~ 18%)
2017	1/17 (~ 6%)
2018	0%

The act changes the manner in which fee losses are computed and phases reimbursements out by 2016. The losses for a county equal 14/17 (~ 82%) of the county's 2010 fee loss for 2011, and is reduced by one-fifth of the 2011 payments each year thereafter.

Transfers to GRF for school districts' state aid

(R.C. 5751.21(A)(1)(c))

Prior law adjusted some school districts' reimbursement for fixed-rate levy losses to account for the fact that those districts' state aid increased as the taxable value of their business tangible personal property was phased out. The increase in state aid arising from the reduction in taxable business personal property value was subtracted from a school district's reimbursement payment to avoid overcompensating the tax loss; this subtraction is the "state education aid offset." The total amount of the offset for all school districts is transferred from the School District Tangible Property Tax Replacement Fund to the GRF on a quarterly basis to cover the increased state formula aid paid from the GRF.

The act specifies that this quarterly transfer is to end with the June 2013 transfer. For the purpose of computing the amount of the transfer until then, the act fixes the amount of the offset for fiscal years 2012 and 2013 equal to the fiscal year 2011 offset.

Local taxing unit reimbursement for utility personal property tax losses

(R.C. 5727.84, 5727.85, and 5727.86)

In tax year 2001, the assessment rates for taxes levied by school districts and other taxing units against electric and rural electric company personal property were reduced.[265] In tax year 2002, assessment rates for natural gas property also were reduced.[266] To compensate taxing units for the resulting property tax losses, state law established a schedule of "replacement" payments. Under prior law, the schedule reimbursed school districts in full for their levy losses through 2016. Thereafter, no payments were to be made. Non-school taxing units were reimbursed in full through 2006. In 2007, payments to non-school taxing units began to be phased out. The prior schedule terminated payments as of 2017.

Kilowatt-hour tax and natural gas tax revenue allocation

Replacement payments are made from kilowatt-hour tax and natural gas distribution tax revenue. Revenue from these taxes is allocated among three funds: the General Revenue Fund, the School District Property Tax Replacement Fund, and the Local Government Property Tax Replacement Fund. (Payments are made from the replacement funds.) The act reallocates the revenue as follows, beginning in FY 2012:

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[265] S.B. 3 of the 123rd General Assembly.

[266] S.B. 287 of the 123rd General Assembly.

Tax	General Revenue Fund	School District Property Tax Replacement Fund	Local Government Property Tax Replacement Fund
Kilowatt-hour tax	~~63%~~ 88%	~~25.4%~~ 9%	~~11.6%~~ 3%
Natural gas tax	~~0%~~ 100%	~~68.7%~~ 0%	~~31.3%~~ 0%

TPP loss reimbursement

Losses experienced by city, local, or exempted village school districts, joint vocational school districts, and other local taxing units for public utility personal property tax losses are divided into three types for the purposes of reimbursement: fixed-rate levy losses, fixed-sum levy losses, and losses on unvoted debt levies (i.e., debt levies within the 10-mill limit).

Fixed-rate levy loss reimbursement

In general, a taxing unit's fixed-rate levy losses equal the difference between electric and natural gas personal property taxes due using the old (higher) assessment rates and the taxes due using the new (lower) assessment rates.[267] For school districts, from this product is subtracted the district's "state education aid offset," which is the increase in state funding a school district receives due to the reduction of its public utility personal property tax base. If a school district's offset exceeds its fixed-rate levy loss (i.e., its loss is compensated wholly by state aid increases), no fixed-rate levy reimbursement is paid. For all taxing units, if the unit is entitled to reimbursement for a particular fixed-rate levy, it continues to be reimbursed even if the levy expires.

Under prior law, non-school taxing units experiencing a fixed-rate levy loss currently were reimbursed according to the following schedule:

Non-school taxing units	
Year	Percentage of Loss Reimbursed
2002-2006	100%
2007-2011	80%

[267] For electric and rural electric company property, 1998 taxable values were used; for gas company property, 1999 values were used; and for nuclear power plant property, values for 2000 and 2001 or 2005 and 2006 were used. Losses relating to certain nuclear fuel and assemblies and natural gas were determined using a three-year average. For electric companies, 1998 tax rates were used, and for natural gas companies 1999 tax rates were used.

Non-school taxing units	
Year	Percentage of Loss Reimbursed
2012	66.7%
2013	53.4%
2014	40.1%
2015	26.8%
2016	13.5%
2017 and thereafter	0%

A school district's fixed-rate levy loss was reimbursed through 2016 or until increases in the district's state aid above its 2002 level exceeded its fixed-rate reimbursement in 2002 adjusted for inflation, whichever occurred first.

The act changes the manner in which fixed-rate levy loss reimbursements are computed. The computation is nearly identical to that for reimbursement of business personal property tax losses. (See "**Fixed-rate levy loss reimbursement**" under the heading "**Local taxing unit reimbursement for business personal property tax losses**," above.) Beginning in fiscal year 2012, the base for a taxing unit's fixed-rate levy loss reimbursement is, for school districts, the district's "2011 current expense S.B. 3 allocation," and, for non-school taxing units, the unit's "2010 S.B. 3 allocation." The 2011 current expense S.B. 3 allocation is the portion of the reimbursement the school district received in fiscal year 2011 for current expense fixed-rate levy losses. 2010 S.B. 3 allocation is the portion of the reimbursement a non-school local taxing unit received in tax year 2010 for fixed-rate levy losses. In both instances, if a levy comprising a portion of the reimbursement has expired, its value is subtracted from the total reimbursement. (For ease of explanation, both reimbursements will be referred to as "S.B. 3 allocation.")

Over the FY 2012-2013 fiscal biennium, fixed-rate levy loss reimbursements are either reduced or terminated. To determine whether a taxing unit is entitled to fixed-rate levy loss reimbursement for the fiscal year (school districts) or tax year (non-school taxing units), one-half of the taxing unit's S.B. 3 allocation is compared to its "total resources," which is the unit's total receipts over a single fixed period from certain state and local sources. If one-half of the taxing unit's S.B. 3 allocation does not exceed a threshold percentage of the unit's total resources, it is no longer entitled to reimbursement for fixed-rate levy losses. If one-half of its S.B. 3 allocation does exceed the threshold, each reimbursement payment (two per year) equals the difference of one-

half of its S.B. 3 allocation minus the threshold percentage of its total resources. Reimbursement terminates for all taxing units in February 2030.

A taxing unit's "total resources" is the same as its total resources for purposes of determining its reimbursement for business personal property fixed-rate levy losses. (See "**Total Resources**" under the heading "**Local taxing unit reimbursement for business personal property tax losses**," above.) For school districts, the threshold per cent is 2% for fiscal year 2012 and 4% for fiscal years 2013 and thereafter. For non-school taxing units, the threshold percentage is 2% for calendar year 2011, 4% for 2012, and 6% for 2013 and thereafter.

Reimbursement for school district and municipal corporation fixed-rate levies that are not for current expenses is reduced by 50% (school districts) or 75% (municipal corporations) over the fiscal biennium. The school district reimbursement is reduced by 25% in FY2012 and by 50% in FY2013; the other taxing units' reimbursement is reduced by 25% for tax year 2011, 50% for 2012, and 75% for 2013 and thereafter. The reimbursement amount is based on the reimbursement paid for those levies in fiscal year 2011 (school districts) or tax year 2010 (municipal corporations).

Fixed-rate levy loss reimbursement for certain taxing units

Under prior law, the following non-school taxing unit received 100% of its fixed-rate levy losses through 2016: a taxing unit in a county of less than 250 square miles that received 80% or more of its combined general fund and bond retirement fund revenues from property taxes and tax rollback reimbursements based on 1997 actual revenue as presented in its 1999 tax budget, and in which electric and rural electric property comprises over 20% of its property valuation.

The act requires this taxing unit to be reimbursed in the same manner as all other non-school taxing units beginning in 2011.

Fixed-sum and unvoted debt levy loss reimbursement

Fixed-sum levy losses and losses relating to taxes levied within the ten-mill limit for debt purposes are computed in the same manner as fixed-rate levy losses, except there is no deduction for state education aid increases. Fixed-sum levies are reimbursed for all but one-fourth of a mill per dollar (0.025%). Fixed-sum levy losses are reimbursed in full (less one-fourth mill's worth) until the levy expires. School district emergency levies are considered not to have expired if the school district levies another emergency levy that raises an amount equal to or greater than the difference of the amount raised by the expiring levy minus the amount of reimbursement the school district receives for that expiring levy.

Losses on unvoted debt levies are reimbursed in full through fiscal year 2016. No reimbursement is paid thereafter.

The act leaves unchanged the reimbursement provisions for fixed-sum levy losses. With respect to municipal unvoted debt levies within the ten-mill limit, however, it states that if the levy was no longer levied for debt purposes for tax year 2010 or for any tax year thereafter, payments for that levy are to be made under the new reimbursement mechanism for fixed-rate levy losses beginning the earlier of tax year 2012 or the first tax year for which it is no longer levied for debt purposes. (See "**Fixed-rate levy loss reimbursement**" above.)

The act requires losses relating to municipal charter millage for debt purposes to be reimbursed in the same manner as inside-millage debt levies.

Reimbursement payments − timing

Under prior law, reimbursement payments were made in late August and late February. Each payment equaled 50% of the annual fixed-rate, fixed-sum, or unvoted debt levy tax levy losses.

The act requires payments to be made on or before August 31 and February 28.

State education aid offset transfer

Under prior law, the greater of the amount in the SDRF or the aggregate annual amount of state education aid offset was required to be transferred from the SDRF to the GRF in one-half installments near the first of September and in early May.

The act terminates such transfers as of the end of fiscal year 2011.

Appeal

A school district or local taxing unit has the same right to appeal how a levy has been classified or how its total resources have been determined as it does under the business personal property reimbursement scheme.

Taxing unit mergers, territory transfers, and annexations

Prior law established a procedure to determine how fixed-rate and fixed-sum levy loss reimbursements were to be computed when two or more taxing units merged, a portion of a school district's territory was transferred to another district, or if township territory was annexed by a municipal corporation. The procedures generally were the same as those under the provisions of law regarding business personal property tax loss reimbursements. (See "**School district mergers and territory**

transfers" and "**Taxing unit mergers and annexations**" under the primary heading "**Local taxing unit reimbursement for business personal property tax losses**," above.)

The act amends this procedure in the same manner as it does with respect to business personal property tax loss reimbursements.

Distribution of "surplus" LGRF money

The act terminates distributions of "surplus" money among non-school taxing units when there is money remaining in the LGRF after the levy losses are reimbursed according to the reimbursement schedule. Under prior law, if any money remained in the fund, one-half of the excess was allocated to counties on a per-capita basis and one-half was allocated to counties in proportion to the utility property tax losses of taxing units in each county. Each county's share of the surplus was then distributed among the non-school taxing units in the county in proportion to taxing units' respective property tax billings. The payment of the surplus is terminated with the January 2011 payment. Any future surpluses are to be transferred to the GRF.

Public utility tax study committee

Prior law established the Public Utility Tax Study Committee as of January 1, 2011. The committee was to study the extent to which school districts have been compensated by the tax loss reimbursements discussed above.

The act repeals the creation of this committee.

New refundable job retention tax credit

(R.C. 122.171)

Credit eligibility

Continuing law authorizes the Ohio Tax Credit Authority to award to eligible businesses involved in significant capital investment projects a refundable or nonrefundable job retention tax credit (JRTC) against the income tax, commercial activities tax, insurance company premiums tax, or corporation franchise tax. Either credit is measured as a percentage of the state income taxes withheld from employees working at a project site. However, qualifying businesses may only receive the refundable credit if the business' credit application is recommended for approval before July 1, 2011.

The act authorizes the Tax Credit Authority to grant a new, separate refundable credit to certain qualifying businesses between July 1, 2011, and December 31, 2013. To

qualify for the new refundable credit, an eligible business must have an annual payroll of at least $20 million, invest at least $5 million at a project site located within the same political subdivision as that in which the business has its principal place of business, and meet other JRTC program requirements.

Employee retention or annual payroll requirement

Under prior law, in order to qualify as an "eligible business" for the purposes of either pre-existing JRTC, a business was required to employ and retain at least 500 "full-time equivalent employees." A business' number of "full-time equivalent employees" is calculated by dividing its total employee-hours at a project by 2,080, which the number of hours in a 40-hour-per-week, 52-week work year.

The act amends this requirement to provide that, to be considered an "eligible business" for the pre-existing JRTCs, a business may either meet the employee retention requirement or have an annual payroll of at least $35 million. The act further requires that, to qualify for the new refundable JRTC, an eligible business must either (1) have an annual payroll of at least $20 million and retain at least 500 employees, or (2) have an annual payroll of $35 million or more.

Summary of JRTC employment requirements		
	Prior law	**Act**
Nonrefundable (ongoing availability)	Retain 500 FTE	Retain 500 FTE or $35M annual payroll
Pre-existing refundable (expired July 1, 2011)	Retain 1,000 FTE	No change
New refundable (July 1, 2011 through 2013)	(not applicable)	Retain 1,000 FTE or retain 500 FTE and $20M annual payroll

Capital investment requirement

To be considered an "eligible business" for the purposes of the pre-existing credits, a business must invest at least $50 million in assets in manufacturing operations or $20 million in assets for "significant corporate administrative functions." Additionally, a business applying for the pre-existing refundable JRTC must make a capital investment of $25 million, regardless of investment type. The required capital investment must involve capitalized costs of basic research or new product development, or the acquisition, construction, renovation, or repair of buildings, machinery, or equipment. (The act does not change the investment requirement for the pre-existing credits.)

To qualify for the act's new refundable credit, a business need only make a capital investment of $5 million.

Additional requirements for existing and proposed refundable credits

In addition to the requirements described above, an eligible business may qualify to receive the pre-existing refundable credit only if the business received a written offer of financial incentives from another state in 2010 and if the Director of Development determined that offer to be sufficient inducement for the business to relocate to the state. The business' tax credit application must also receive a recommendation for approval before July 1, 2011. These requirements do not apply to either the nonrefundable credit or to the refundable credit authorized by the act.

However, the act does impose additional requirements on applicants for the new refundable credit that do not apply to the other credits. To receive the new credit, an eligible business must demonstrate that its capital investment project will be located in the same political subdivision as that in which the business maintains its principal place of business. In addition, the business' tax credit application must be approved by the Tax Credit Authority between July 1, 2011, and December 31, 2013.

Refundability

Under continuing law, a business may not claim a nonrefundable JRTC in excess of the business' annual tax liability. The excess, however, may be carried forward for up to three years. Alternatively, a business that qualifies for the pre-existing refundable credit or the act's refundable credit may claim the full amount of the credit in one year; if the amount of the credit exceeds outstanding tax liability, the business would be entitled to a refund.

Credit amount and term

As under continuing law, the act requires that the amount and term of a new refundable JRTC be specified in an agreement between the eligible business and the Tax Credit Authority. The amount of the credit may equal up to 75% of the state income taxes withheld from eligible full-time employees. An eligible business may receive the credit for a period of up to 15 years; however, under Department of Development regulations, the Tax Credit Authority may not grant a nonrefundable JRTC for a term longer than ten years unless the Authority determines that there is "significant retention" of employees associated with the project.

Credit application and agreement

The act requires recipients of the new refundable JRTC to comply with the same application procedures, agreement provisions, and reporting measures required of

recipients of the pre-existing refundable or nonrefundable JRTC. For any of the credits, an eligible business must apply to the Tax Credit Authority to enter into a tax credit agreement. The agreement must describe the capital investment project that is the subject of the agreement and require that the business maintain operations at the project site for at least the greater of (1) the term of the credit plus three years, or (2) seven years.

In order to continue receiving any credit, the business must file annual reports with the Department of Development and receive a certification verifying the accuracy of the reports. If a business fails to comply with any of the conditions specified in a tax credit agreement, the Tax Credit Authority may amend the agreement to reduce the percentage or term of the credit.

Aggregate credit limits

Continuing law limits the total amount of nonrefundable or refundable tax credits issued in any calendar year. In 2010, the limit for the nonrefundable credit was $13 million; this amount will increase every year between 2011 and 2024 by $13 million over the previous year's amount until the total reaches $195 million. The limit applicable to the pre-existing refundable tax credit was $8 million.

The act imposes a new aggregate limit that includes both the pre-existing and new refundable credits. In the 2011, 2012, and 2013 calendar years combined, the Tax Credit Authority may authorize up to $25 million of refundable job retention credits. Beginning in 2014, the total amount authorized between 2011 and 2013 is the maximum amount that may be awarded in each year of the ensuing 15-year period.

Small business investment tax credit

(R.C. 122.86, 5747.81, and 5747.98)

The act authorizes a new personal income tax credit for individuals, estates, and taxable trusts that make qualifying investments in "small" businesses with specified minimum operating presence in Ohio. Investments may be made either directly, or indirectly through one or more tiers of partnerships or other form of pass-through entity owned wholly or partly by the taxpayer. The credit is not refundable, but it may be carried over for up to seven subsequent years. The credit amount is 10% of the taxpayer's cash investment. Limits are placed on the total amount of credits allowed each fiscal biennium ($100 million) and on each taxpayer's credit each biennium ($1 million, or $2 million for joint filers).

Qualifying "small business enterprises"

For an investment to qualify for the tax credit, the investment must be made in a "small business enterprise," which must satisfy all of the following qualifications:

- It has assets of no more than $50 million or annual sales revenue of no more than $10 million;
- It employs 50 or more full-time equivalent employees in Ohio, or at least one-half its U.S.-based employees are employed in Ohio. Employees must be subject to Ohio income tax withholding to count toward the employment threshold.
- Within six months after a taxpayer invests in the business, the business spends an equal amount of money on any of the following:
    - Tangible personal property used in Ohio. If the property is a motor vehicle for use on public roads, the vehicle must be purchased and registered in Ohio, must be used primarily for business, and must be necessary for the business' operations.
    - Real property in Ohio used in business.
    - Intangible personal property (e.g., licenses, patents, trade or service marks, or copyrights) used in business primarily in Ohio.
    - Employee compensation, other than for increased compensation for the business' owners, officers, or "managers."[268]

For real property or either form of personal property, the property must satisfy the foregoing use and location requirements from the time it is acquired until the end of the taxpayer-investor's required investment holding period (either two or five years, depending on when the investment is made; see below under "**Holding period**").

For an investment in a business to qualify for the tax credit, the business must provide any records or other evidence that the Director of Development requests to show that the business satisfies the foregoing qualifications. The Director is to determine whether a business qualifies, and must compile a register of qualifying businesses. The register is to be certified to the Tax Commissioner.

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[268] Although the act refers to compensation for "new" employees, it states that a "new" employee includes "retained" employees.

"Qualifying investments"

To qualify for the credit, a taxpayer's investment must be an investment of money in a small business enterprise to acquire capital stock or other equity interest in the business. The investment must be made on or after July 1, 2011. An investment does not qualify to the extent the investor's money is derived from a government grant or loan, including, specifically, from the Third Frontier program (R.C. Chapter 184.).

Qualifying investments are valid for tax credits only if the investor applies for and obtains a certificate from the Director of Development. (Alternatively, a small business enterprise may apply on behalf of its investors.) Certificates are available on a first-come, first-served basis and only until the total value of investments applied for does not exceed the $100 million-per-biennium limit. Any one investor may not apply for certificates representing more than $10 million in investments per biennium. To obtain a certificate, investors must pledge to hold investments for the applicable holding period.

Holding period

A credit is allowed only if the investor holds the investment for a specified minimum period of time. The minimum holding period depends on when the investment is made. If the investment is made before July 1, 2013, the holding period is two years; if made on or after July 1, 2013, the holding period is five years. The required holding period applies to the person making the investment. If that person is a taxpayer, the taxpayer must hold the investment for the holding period, and must claim the credit for the taxpayer's taxable year that includes the last day of the holding period. If the investor is a pass-through entity, the pass-through entity must hold the investment for the holding period. Any taxpayer that owns an equity interest in the pass-through entity on the last day of the entity's taxable year in which the holding period ends may claim the taxpayer's proportionate share of the credit allocated to the entity; the taxpayer need not have owned a part of the entity when the entity made the investment.

Rulemaking

The act requires the Director of Development to adopt rules, in consultation with the Tax Commissioner, for administration of the tax credit. The rules must address at least the following matters:

(1) Information or documentation small business enterprises and investors must provide;

(2) How the number of a small business' required employment level is to be determined;

(3) Means of verifying a small business' required spending on tangible or intangible personal property, including when an expenditure is made and where the property is used;

(4) Circumstances under which small businesses or investors may be considered to be subverting the purposes of the law granting the credit.

Historic building rehabilitation tax credit

(R.C. 149.311)

Permanent extension

The historic building rehabilitation tax credit is a credit against the income tax (R.C. Chapter 5747.), corporation franchise tax (R.C. Chapter 5733.), and dealers in intangibles tax (R.C. 5707.03(D) and 5725.15). The credit equals 25% of qualified expenditures made for rehabilitating a building of historical significance, and that meets certain historic preservation criteria as determined by the State Historic Preservation Officer.

Under prior law, the credit effectively ended on June 30, 2011, the last day on which applications for credits could be filed. The act removes this deadline, extending the credit perpetually.

As under prior law, the act limits the amount of credits that may be issued in a fiscal year to $60 million.

Credit applications and cost-benefit analyses

The act requires a person applying for a rehabilitation tax credit certificate to apply to the Director of Development, who evaluates the application with the assistance of the State Historic Preservation Officer. Under prior law, the person applied to the State Historic Preservation Officer, who then forwarded applications to the Director for evaluation.

In reviewing applications, the Director and State Historic Preservation Officer currently must determine (1) that the applicant owns a historic building, (2) that the rehabilitation will satisfy historic preservation standards prescribed in federal law, and (3) that receiving the tax credit is a major factor in the applicant's decision to rehabilitate the building or increase the applicant's level of investment in the rehabilitation.

The act additionally requires that, before the Director of Development may approve an application, the Director must conduct a cost-benefit analysis to determine whether rehabilitation of the historic building will result in a net revenue gain in state or local taxes after the rehabilitation is completed. The Director must "consider" the results of the cost-benefit analysis when approving or denying an application, but is not required to approve or deny an application based on particular results. The act also requires the Director to enact rules establishing procedures for conducting such cost-benefit analyses.

Tax credit certificate issuance and projects completed in stages

For an applicant whose time period for rehabilitation is not projected to exceed 24 months, the Director of Development is required, under continuing law, to award credit certificates upon the project's completion of the rehabilitation. But for an applicant that plans to complete the rehabilitation in stages, the act requires the Director to issue credit certificates after a stage in the rehabilitation is complete, depending on the length of the rehabilitation period, but the total period may not exceed 60 months, in accordance with federal law governing the federal rehabilitation tax credit.

Applicants awarded a tax credit for a completed stage of rehabilitation are required to repay any amounts received if the project is not completed. Under prior law, the Director could not award a credit certificate until a project was completed. The Director may reallocate unused tax credits from a prior fiscal year for new applicants.

Administration fees

The act permits the Department of Development and Ohio Historic Preservation Office each to charge reasonable fees for the administration of the Historic Preservation Tax Credit Program. The fees are to be deposited in the Historic Rehabilitation Tax Credit Operating Fund created by the act, and used to pay costs incurred by the Department of Development and the Ohio Historic Preservation Office in administering the credit.

Miscellaneous changes

The act requires expenditures of a project with total costs exceeding $200,000 to be certified by a certified public accountant.

The act permits, rather than requires as under prior law, the Director to rescind an application in which the applicant has failed to obtain financing for the project within 18 months of being approved for a credit.

The act requires the Tax Commissioner and Director to submit an annual report in April of each year. Prior law required an annual report through 2011. The act requires the Commissioner and the Director to submit recommendations regarding the effectiveness of the program by December 2015 and not in 2012, as required under prior law.

Historic rehabilitation tax credit against insurance tax

(R.C. 149.311, 5725.34, 5725.98, 5729.17, and 5729.98)

The act extends eligibility to foreign and domestic insurance company taxpayers for the refundable historic rehabilitation tax credit. A foreign or domestic insurance company is thus permitted to claim the credit against the insurance company gross premiums taxes, provided the company satisfies all other eligibility requirements.

Under continuing law, a refundable credit is provided against the dealer in intangibles tax, the corporation franchise tax (on financial firms), or the income tax equal to 25% of the "qualified rehabilitation expenditures" incurred by the property owner in rehabilitating an historic building. "Qualified rehabilitation expenditures" are those paid or incurred during the "rehabilitation period," and before and after that period as determined under federal rehabilitation tax credit law, by an owner of an historic building to rehabilitate the building. The maximum credit amount is $5 million, but not more than $3 million may be taken in a year; any excess above $3 million may be applied to up to five subsequent years' tax liability.

Racing facility capital improvement tax reduction extension

(R.C. 3769.20)

The act extends to December 31, 2017, from December 31, 2014, the final date on which horse racing permit holders are eligible to take tax reductions to recover the costs that permitholders incur in renovation, reconstruction, or remodeling projects costing at least $6 million at their race tracks. Under this tax reduction program, the taxes a permit holder pays to the state, in excess of the amounts required to be paid into the nursing home franchise permit (formerly PASSPORT) Fund, are reduced by 1% of the total amount wagered.

Computer data center equipment sales and use tax exemption

(R.C. 122.175)

The act allows businesses to receive a full or partial exemption from the sales and use tax for purchases of certain personal property that will be used at an "eligible computer data center."

Eligibility for the exemption

To qualify for the exemption, a business must agree to make a capital investment at an "eligible computer data center" in the state. A computer data center is eligible if the business agrees (1) to invest at least $100 million in the computer data center or in equipment for use at the center and (2) to maintain an annual payroll of at least $5 million at the center. Regarding the capital investment, the act does not prescribe a beginning date after which investments count toward the $100 million minimum. Instead, the Tax Credit Authority is authorized to establish the beginning date. The act does not require that the date fall after June 30, 2011.

The act defines a "computer data center" as a facility used primarily to house computer data center equipment used in conducting a computer data center business. A computer data center business is a business that provides access to computer equipment by means of telecommunications equipment for the purpose of (1) examining or acquiring data that is stored in or accessible to the computer equipment or (2) placing data into the computer equipment that can be retrieved by recipients with access to the computer equipment.

Computer data center equipment includes tangible personal property used in conducting a computer data center business, including the equipment necessary to supply electricity for the center or cooling systems that manage the performance of the equipment. Building and construction materials incorporated into the computer data center also qualify.

Exemption application

A business must apply to the Tax Credit Authority to enter into an agreement for a complete or partial sales and use tax exemption for computer data center equipment that will used at an eligible computer data center. The Director of Budget and Management, Tax Commissioner, and Director of Development must review the application, determine the economic impact of the proposed computer data center, and make recommendations in regards to the application.

After reviewing those recommendations, the Tax Credit Authority may enter into an agreement authorizing a sales and use tax exemption only if it determines all of the following: (1) the business' capital investment in the proposed computer data center will increase payroll and the amount of Ohio income taxes that will be withheld from the compensation paid to employees of the center, (2) the business has the ability to complete the proposed capital investment, (3) the business intends to and has the ability to maintain operations at the eligible computer data center for the term of the

agreement, and (4) receiving the exemption is a major factor in the business' decision to begin, continue, or complete the capital investment.

If the Tax Credit Authority approves an application, the authorized exemption will apply to the business' purchases of computer data center equipment and to any charges for the delivery, installation, or repair of that equipment.

Agreement with Tax Credit Authority

An agreement for a computer data center equipment sales and use tax exemption must include the following:

(1) A description of the eligible computer data center, the amount of the capital investment that will be made at the center, the timeline for the capital investment, the annual payroll at the proposed center, and the anticipated amount of Ohio income taxes to be withheld from the compensation of employees of the center.

(2) The percentage of the approved exemption, the length of time the exemption will apply, and the first date the exemption will apply.

(3) A requirement that the business maintain operations, and an annual payroll of at least $5 million, at the eligible computer data center for the term of the agreement.

The agreement must also include several provisions similar to those required in agreements for a job creation or retention tax credit under R.C. 122.17 and 122.171. Those provisions include an annual reporting requirement, a limitation on employment position relocations, and a requirement that the business waive any limitations periods applicable to tax assessments payable if the business does not comply with the agreement.

Agreement compliance

Under the act, the Tax Credit Authority may amend an agreement to reduce the percentage or term of an authorized exemption if a business fails to comply with any condition of the agreement.

The Tax Credit Authority may also terminate an agreement if a business does not maintain operations at an eligible computer data center for the term of the agreement. In such instances, the Authority may require the business to pay all or a portion of the taxes that would have been owed on equipment exempted under the agreement. The act allows the Authority discretion in determining the portion of the unpaid taxes to charge a business.

Direct payment permits

The act requires the Tax Commissioner to grant a direct payment permit to a business that enters into an agreement for a computer data center equipment sales or use tax exemption. Under continuing law, a direct payment permit allows an eligible business to forgo the payment of sales and use tax at the time of purchase and to instead accrue and pay the tax directly to the Department of Taxation.

Under the act, a business' direct payment permit must allow the business to pay directly to the Department of Taxation any sales and use taxes due on computer data center equipment (if the business has a partial exemption) or other nonexempt goods or services purchased for use at an eligible computer data center. The business must file a return that details the amount of computer data center equipment purchased, the amount of other goods and services purchased for use at the eligible computer data center, the exemption percentage, the amount of tax that would be due absent the exemption agreement, and the amount of tax due as a result of the exemption.

Exemption from Public Records Law

Under the act, financial statements or other information submitted to the Department of Development or Tax Credit Authority in relation to an exemption authorized by the act are not available to the public under Ohio's Public Records Law. However, the Authority must provide such information to the Tax Commissioner upon request. The Authority may also use such information to issue public reports or in connection with court proceedings.

Annual report

On or before August 1 of each year, the Director of Development must prepare an annual report that includes the number of agreements the Department entered into in the previous year, a description of the eligible computer data centers that are the subjects of those agreements, and a status update on all eligible computer data centers that are the subject of an exemption agreement. The report must be filed with the Governor, the Senate President, and the House Speaker.

Estate tax repeal

(R.C. 5731.02, 5731.19, and 5731.21)

Estate tax

The act effectively repeals the Ohio estate tax by limiting its application to estates of decedents dying before January 1, 2013. Estates of persons dying on or after that date would not be subject to the tax.

Overview of estate tax

The tax on Ohio residents' estates is levied on the value of the taxable estate, which generally is the value of all property in which the decedent had an interest on the date of death, minus certain deductions for marital transfers, debts, charitable donations, and administration expenses, among other things. The tax is levied at graduated rates, through six tax brackets, ranging from 2% for taxable estates of $40,000 or less, to $23,600 plus 7% of the excess over $500,000 for estates of more than $500,000.

A credit is allowed in the amount of $13,900, which equates to a deduction of $338,333. Thus, taxable estates worth $338,333 or less (after allowable deductions) owe no tax. If the gross estate does not exceed that threshold, no tax return must be filed.

The nonresident estate tax is levied on the portion of a nonresident's estate that is located in Ohio. The tax is determined by dividing the gross value of the property located in Ohio by the entire gross estate, wherever located. That fraction is then multiplied by the tax the estate would owe if the decedent had been an Ohio resident.

Intangible personal property located in Ohio owned by a nonresident is not taxed unless it is used to carry on a business within Ohio. If it is used to carry on a business within Ohio, it will not be taxed if the state where the nonresident was domiciled would not tax the intangible personal property of decedents domiciled in Ohio.

Estate tax revenues are divided between the state and the local government where the tax is deemed to have originated: 80% is distributed to the local government, and 20% is distributed to the state General Revenue Fund. Origination of a tax depends upon the type of property, its location when the decedent died, and whether it is owned by a resident or by a nonresident.

Temporary tax amnesty program

(Sections 757.40 and 757.41)

Program description

The act requires that the Tax Commissioner administer a temporary tax amnesty program from May 1, 2012, to June 15, 2012, with respect to delinquent personal income tax, commercial activity tax, sales tax, corporation franchise tax, estate tax, school district income tax, motor fuel tax, natural gas company excise tax, dealers in intangibles tax, and use tax owed by an out-of-state seller. The program applies only to taxes that were due and payable as of May 1, 2011, which were unreported or underreported, and which remain unpaid when the program commences. The program

does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued, or for which an audit has been conducted or is pending. Nor does the program apply to any unpaid tax that pertains to a tax period that ends after September 29, 2011. A separate amnesty program is proposed specifically for the use tax owed by consumers, as described in the following section.

If, during the program, a person pays the full amount of delinquent taxes owed by the person and one-half of any interest that has accrued on the taxes, the Commissioner is required to waive or abate all applicable penalties and the other one-half of any interest that accrued on the taxes. The act authorizes the Commissioner to require a person participating in the program to file applicable returns or reports, including amended returns or reports. The Commissioner may contract with a third party to administer the amnesty or provide advertising or computer support for the amnesty.

In addition to receiving a waiver of penalties and one-half of accrued interest, a person who participates in the program is immune from criminal prosecution or any civil action with respect to the taxes paid through the program. The act specifies, further, that no assessment may be issued against any person with respect to tax paid through the program.

The act requires that the Commissioner issue forms and instructions for the program, and take any other actions necessary to implement the program. The act directs the Commissioner to publicize the program so as to maximize public awareness of the program and participation in it. The sections authorizing the amnesty are repealed effective June 16, 2012.

Distribution of taxes collected under the program

Generally, taxes and interest collected under the program will be credited to the General Revenue Fund. However, any tax collected under the program that a local taxing authority would have received had the tax been timely paid is distributed to that taxing authority.

Use tax amnesty

(R.C. 5703.58; Section 757.42)

The act requires the Tax Commissioner to establish and administer a temporary use tax amnesty program specifically for consumers owing outstanding use tax. The general amnesty program is available to out-of-state sellers who register with the Commissioner and are required to collect and remit use tax. These sellers are not authorized to participate in the use tax amnesty program. A consumer that has been

assessed for delinquent use tax on or before the program begins is not eligible to participate in the program. The Commissioner may not waive interest or penalties due on use tax paid pursuant to the amnesty by a consumer who registered for payment of the use tax with the Commissioner on or after June 1, 2011.

The use tax program begins October 1, 2011 and runs until May 1, 2013. Under the program, a consumer with outstanding use tax liability is required to self-report and remit the amount of use tax owed by the consumer from January 1, 2009 forward. If the consumer pays the required amount of delinquent use tax, the Commissioner is required to waive or abate all delinquent use tax owed by the consumer before January 1, 2009, and all applicable interest and penalties accruing on any delinquent use tax owed by the consumer. A consumer that makes the required payments pursuant to the program may not be the subject of a criminal or civil action with regard to the remitted tax, and the Commissioner may not issue an assessment against the consumer for that tax. A consumer that does not participate in the use tax amnesty program may be audited and assessed for delinquent use tax owed on or after January 1, 2008, and any interest or penalties that have accrued on that tax. Under prior law, an assessment against a consumer had to be issued within ten years after the tax was due, except in cases of fraud, for which there was no time limit.

The Commissioner is required to issue forms and instructions and to adopt rules to administer the program and contract with parties for the promotions, computer support, or administration of the program. As soon as practicable after the program begins, the Commissioner is required to implement installment payment plans for participants in the amnesty program. No payment plan may last more than seven years. If a consumer that has entered into a payment plan with the Commissioner fails to make the required payments, the Commissioner is required to certify to the Attorney General any unpaid amount for the Attorney General to begin collection proceedings, and interest will accrue on this unpaid amount at the state-set rate that applies to overdue taxes (currently 4% per year), compounded annually.

Any taxes and interest from payment plans collected under the program are credited to the General Revenue Fund or to the appropriate counties or transit authorities.

Seven-year sales and use tax assessment and refund period

(R.C. 5703.58 and 5739.07)

The act places a seven-year time limit within which the Tax Commissioner must issue an assessment for any alleged unpaid use tax when no shorter time limit applies under continuing law. Prior law imposed a ten-year time limit. The change from ten to seven years applies only to use taxes; other taxes remain subject to the ten-year limit.

Generally, the new seven-year limit will apply in cases where no return was filed, the return was fraudulent, or the tax was collected but not remitted to the state. Under continuing law, there remain shorter time limits within which assessments for most taxes must be issued, except in cases where a return has not been filed, a return is fraudulent, or the tax has been collected but not remitted to the state. The time limit is currently four years for sales and use taxes. The time limits begin to run when the tax return is due or when it is filed, whichever is later. This four-year time limit is not affected by the amendment.

Taxpayers who are assessed for unpaid use tax between four and seven years after the tax was due are authorized to file a refund claim for overpaid sales or use tax for up to seven prior years, provided the application is filed within six months after the date the assessment was issued. Any refund allowed to such a taxpayer may not exceed the amount the taxpayer was assessed for unpaid use taxes during the same period. Prior law required taxpayers to apply for a refund of overpaid sales and use taxes within four years after the tax overpayment in all cases.

Electronic tax filing rules

(R.C. 5703.059)

The act authorizes the Tax Commissioner to adopt rules requiring that tax returns or payments for employer income tax withholding, use tax, motor fuel tax, cigarette and tobacco product excise taxes, and severance tax be filed electronically. The electronic filing of returns may be required by use of the Ohio Business Gateway, the Ohio "telefile" system (telephone filing), or another electronic method. (Under continuing law, the Ohio Business Gateway is a computer network system that enables businesses to electronically file forms with state agencies.) The electronic payment of those taxes may be required in a manner approved by the Commissioner.

The requirements could not be imposed on filings or payments required to be made within the first six months after the rules take effect.

Any taxpayer that is required under the rules to file or pay electronically may apply to the Commissioner to be excused from the requirement. The Commissioner must excuse the taxpayer if the taxpayer shows good cause for being excused.

Any rule adopted that requires electronic filing must be publicized on the Department's web site, as well as through seminars, workshops, conferences, or other similar outreach activities.

Tax notices and change of address service by alternative means

(R.C. 5703.056 and 5703.37)

The act permits the Tax Commissioner, when issuing a notice or order to a taxpayer or other person or when otherwise required by the Revised Code to use personal service or certified mail, to send it by certain means other than personally or by certified mail. The Commissioner may send the notice or order by a delivery service that postmarks the envelope and records the date when the notice or order was given to the delivery service and when it was received and by whom. The dates of delivery and receipt must be recorded electronically in a database that the delivery service keeps in the regular course of business. The delivery service must be available to the general public and must be at least as timely and reliable as the U.S. Postal Service. The Commissioner is further authorized to use a change of address service offered by such an alternative delivery service if a notice issued by the Commissioner via certified mail is returned due to an undeliverable address.

Previous law required such notices and orders to be delivered either personally or by certified mail unless the intended recipient agreed in writing to accept them by some other means and for the Commissioner to use change of address service from the U.S. Postal Service.

Vendor license revocation or suspension notices

(R.C. 5703.056 (not in the act), 5703.37, 5739.19, and 5739.30)

The act authorizes the Tax Commissioner to notify a sales tax vendor that the vendor's retail license has been revoked or suspended by using a delivery service other than certified mail if the Commissioner finds that the delivery service is timely, reliable, and available to the general public and it records the name of the person who accepted delivery and the date delivery was accepted. Prior law required the Commissioner to deliver such notices via personal service or by certified mail.

Voter registration forms with income tax forms

(R.C. 5703.05)

The act eliminates the requirement in prior law that the Department of Taxation include mail-in voter registration materials with income tax returns in odd-numbered years. The Secretary of State was required to bear the costs of printing and mailing the materials.

Ohio inheritance tax claims

(Section 757.50)

The Ohio Inheritance Tax was repealed in 1968 and replaced by the Estate Tax (Chapter 5731.). The act requires all claims and inquiries regarding files for which "ultimate succession" has not been finalized to be submitted to the Department of Taxation before 2013.

Joint vocational school districts: TIF compensation and notice

(R.C. 5709.40, 5709.41, 5709.73, 5709.78, 5709.82, and 5709.83)

The act requires a township, county, or municipal corporation authorizing a tax increment financing property tax exemption (TIF) to compensate the affected joint vocational school district (JVSD). The compensation terms must be equivalent to any compensation provided to the city, local, or exempt village school district.

The act also changes the schedule for subdivisions to notify JVSDs of pending TIF exemptions. The time in which a township, county, or municipal corporation is required to notify a JVSD before adopting a TIF resolution is increased from 14 days, as required under prior law, to 45 days if the city, local, or exempted village school district also receives a 45-day notice. Under prior law, notice was required to be given to all school districts at least 14 days before a TIF was formally authorized unless the tax exemption exceeded 75% or lasted for more than ten years. In those cases, a 45-day notice is required, but only for city, local, and exempted village school districts. The 45-day period allows time for negotiating compensation for the school district.

Qualified energy project tax exemption

(R.C. 5727.75)

The act extends by two years the deadlines by which the owner or lessee of a qualified energy project must submit a property tax exemption application, submit a construction commencement application, begin construction, and place into service an energy facility using renewable energy resources (wind, solar, biomass, etc.) or advanced energy technology (clean coal, advanced nuclear, or cogeneration) to qualify for an ongoing real and tangible personal property tax exemption.

With respect to an energy facility using renewable energy resources, prior law required the owner or lessee to submit an exemption application to the Director of Development, to submit a construction commencement application to the Power Siting Board (or, for smaller projects, to any other state or local agency having jurisdiction),

and to commence construction before 2012. Prior law also required the owner or lessee to place the energy facility into service before 2013. The act extends each of these deadlines by two years.

With respect to an energy facility using advanced energy technology, prior law required the owner or lessee to submit an exemption application to the Director of Development before 2014 and to place the energy facility into service before 2017. The act extends each of these deadlines by two years.

Enterprise zone extension

(R.C. 5709.62, 5709.63, and 5709.632)

Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into enterprise zone agreements with businesses for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone or to relocate its operations to the zone in exchange for property tax exemptions and other incentives.

Prior law authorized local governments to enter into enterprise zone agreements through October 15, 2011. The act extends the time during which local governments may enter these agreements to October 15, 2012.

Convention center property tax exemption

(R.C. 5709.084; Section 757.95)

The act authorizes a property tax exemption for a convention center owned by the largest city in a county with a population between 700,000 and 900,000. Under the act, the convention center may be leased to or operated or managed by another person and still qualify for exemption, as long as it is owned by a qualifying city. For purposes of the exemption, the population of a county is determined by reference to the most recent federal decennial census.

The act also provides for the abatement of unpaid taxes due in regards to an application for exemption of a qualifying convention center if the application, or an appeal from the denial of an application, is pending on September 29, 2011.

Applicability of related sales tax exemption

(R.C. 5739.02(B)(13))

Ongoing law allows a sales and use tax exemption for construction materials and services sold to a contractor for incorporation into a convention center that qualifies for exemption under the statutory provision that authorizes the exemption described above. (That same provision also authorizes an exemption for a qualifying convention center located in a county with a population exceeding 1.2 million.) The sales and use tax exemption expires one year after the completion of the convention center's construction. This exemption would also apply to any convention center for which the act authorizes the property tax exemption, subject to the one-year-from-completion time limit.

Ohio Historical Society income tax check-off

(R.C. 149.308 and 5747.113)

The act authorizes taxpayers who are due a refund of overpaid Ohio income tax to specify that all or a part of the refund be paid to the Ohio Historical Society. Contributions are to be credited to the Ohio Historical Society Income Tax Contribution Fund, a fund created by the act. The Society must use money in the fund in furtherance of its public functions as provided by law (summarized below). In addition to income tax refund contributions, the fund may accept direct contributions. Under prior law, there were only three income tax refund contributions or "check-offs": one for the benefit of the Natural Areas and Preserves Fund; one for the benefit of the Nongame and Endangered Wildlife Fund; and one for the benefit of the Military Injury Relief Fund. The Natural Areas and Preserves Fund and the Nongame and Endangered Wildlife Fund are administered by the Department of Natural Resources. The Military Injury Relief Fund is administered by the Department of Job and Family Services for the benefit of military personnel injured while serving under Operation Iraqi Freedom or Operation Enduring Freedom (Afghanistan).

As with the check-offs that were created prior to this act, the Ohio Historical Society check-off would authorize taxpayers to direct that all or part of their refund be credited to the designated fund. The designation is made on the annual income tax return. The designation may not be revoked once the designation is made and the return is filed.

The act requires the Ohio Historical Society to submit a biennial report on the effectiveness of the check-off to the General Assembly in January of every odd-numbered year. The report must include information about how the Society spent money from the Ohio Historical Society Income Tax Contribution Fund and the amount

of money contributed (including both the amount contributed through the refund check-off and the amount contributed directly). The report must provide this information for each of the five preceding years.

The Department of Taxation is entitled to reimbursement for its costs of administering the check-offs. Previously, reimbursement was paid from the then-existing check-off funds in equal one-third shares. Under continuing law, the reimbursement may not exceed 2½% of the total amount contributed. Under the act, the reimbursement would be divided in equal one-fourth shares among the two DNR funds, the Military Injury Relief Fund, and the Ohio Historical Society Income Tax Contribution Fund.

Income tax refunds may be contributed to the Ohio Historical Society beginning with taxable years that begin in or after 2011.

Ohio Historical Society

The Ohio Historical Society is a state-chartered, nonprofit corporation having the purpose of promoting knowledge of history and archeology, and performing any other public functions prescribed by law. (R.C. 149.30.) Among its prescribed functions are the following:

- Holding and maintaining state memorials and certain state-owned properties and making them available for the public, and holding and maintaining other sites;
- Administering state archives and preserving various historical documents;
- Administering the state historical museum;
- Publishing materials and conducting research about history, archeology, and natural sciences;
- Assisting local historical societies;
- Establishing criteria for the designation of historic and archeological sites.

Combined school district income tax and property tax levy

(R.C. 145.56, 319.301, 3305.08, 3307.41, 3309.66, 3316.041, 3316.06, 3316.08, 3317.08, 5505.22, 5705.214, 5705.29, 5748.01, 5748.05, 5748.081, and 5748.09; Section 757.90)

The act authorizes school districts to levy both a property tax for a fixed amount of revenue and an income tax through voter approval of a single ballot question. Prior

law allowed school districts to propose both types of levy questions at a single election but not as a single issue on the ballot.

Levy proposal

To propose a combined levy, a school district board of education, by a vote of two-thirds of its members, must adopt a resolution declaring the necessity of raising a specified amount from each tax levy in order to support school operations. The resolution must be certified to the Tax Commissioner, who must estimate the income and property tax rates that would be necessary to raise the amount required to be raised from the income tax levy, and to the county auditor, who must calculate the property tax millage necessary to raise the amount required to be raised from the property tax levy.

After receiving the Tax Commissioner and county auditor estimates, the board of education, by a vote of two-thirds of its members, may adopt a resolution proposing to submit the combined levy question to voters at a special election (i.e., any of the four election dates each year). The resolution must state the income tax rate and property tax millage, the purpose of the income tax, the amount of money to be raised from the property tax, the date on which the income tax will take effect (which must be January 1 of any year following the year in which the question is submitted), and the tax list upon which the property tax will first be levied (which may be the current year's tax list).

The resolution must also specify the duration of each levy. Either tax may be levied for a specified number of years or for a continuing period of time; however, if the property tax is levied for a specified number of years, the number of years cannot exceed ten. Additionally, the resolution must state whether the income tax will be levied on all the taxable income of both resident individuals and estates, or only on the earnings of individuals. (Similar to other school district income tax levies, if the school district levies the income tax on both individuals and estates, the district may later replace the tax with a tax only on individuals' earnings.)

Submission of levy to voters

After the board adopts a resolution, the matter must be presented to school district voters in a single ballot question on the date of the special election specified in the resolution. Notice of the election must be published in one or more newspapers of general circulation in the school district once a week for two consecutive weeks before the election. (Under an unrelated law enacted by the act, the second notice may be published in abbreviated form. R.C. 7.16.) Additionally, if the board of elections maintains a web site, notice of the election must also be posted on that web site for 30 days before the election.

If the taxes are approved by voters, the school district may issue notes in anticipation of a portion of the proceeds from each tax.

Exemption from H.B. 920 tax reduction law

Similar to other property taxes levied for a fixed amount, a property tax levy that may be combined with an income tax levy under the act is exempt from the H.B. 920 tax reduction law. (The H.B. 920 tax reduction law operates to prevent the appreciation of real estate values from resulting in corresponding increases in property taxes. Generally, if the proceeds from a tax levied on real property in one year will exceed the proceeds from that tax, levied on that same property, in the preceding year, then the amount of the tax charged in the current year must be reduced by the difference. However, this reduction does not apply to a tax levy that is designed specifically to raise a fixed amount of revenue each year.)

Annual limitation on levy proposals

A school district may propose a combined income tax and property tax levy question up to twice per year. If the board submits the question more than once, at least one of the elections at which the question is submitted must be the November general election.

Levy reduction or repeal

As with other school district levies, voters may initiate a petition to repeal a school district income tax if it is levied for more than five years or to reduce a property tax levied for a continuing period of time.

Levy renewal

When one or both of the taxes levied through a combined levy are set to expire, the board of education may propose to renew either or both of the taxes through the submission of separate ballot questions. Alternatively, if both taxes are set to expire in the same calendar year, the board may propose a single ballot question to renew both existing taxes.

Applicability to pending proceedings

The act provides that the provisions authorizing a combined income tax and property tax levy may apply to proceedings that are pending or completed, elections that are authorized, conducted, or certified, or securities that are authorized or issued on the date those provisions take effect.

Sales and use tax exemption for customer loyalty coupons

(R.C. 5739.01(H)(1)(c), (I), and (PPP))

The act excludes from the sales and use tax the value of gift cards or certificates redeemed by a consumer in exchange for a vendor's goods or services as part of the vendor's awards, loyalty, or promotional program.

Under the act, sales and use taxes will not apply to any portion of the price of an item or service paid for with a gift card or certificate if (1) the gift card or certificate was distributed through a customer awards, loyalty, or promotional program and (2) the vendor does not receive any reimbursement or compensation from a third party to cover any part of the value of the gift card or certificate. A past or present purchase by the consumer is not considered compensation to the vendor for the gift card or certificate. The exclusion does not apply to gift cards purchased by consumers or sold by vendors. The act defines a gift card to be a document, card, or certificate or a tangible or intangible record that can be redeemed for a dollar value when a purchase is made.

Agricultural sales tax exemptions

Agricultural "direct use," "use on use," and land tile exemptions

(R.C. 5739.01(OO) and (OOO) and 5739.02(B)(17) and (42); Section 757.60)

The act modifies the statutory language governing the agricultural "use on use" and "direct use" sales and use tax exemptions by applying them to sales of tangible personal property used "primarily" for producing tangible personal property used for farming, agriculture, horticulture, or floriculture or used "primarily" for those purposes, respectively. The act also modifies the exemption for agriculture tile by requiring the tile to be used "primarily," instead of directly, for production in farming, agriculture, horticulture, or floriculture.

Under prior law, sales of tangible personal property to farmers, agriculturists, horticulturists, and floriculturists who purchase such items for the purpose of incorporating them into other tangible personal property that is to be produced for sale or to use them "directly" to produce other things for sale ("use on use"), and sales of articles to be used in farming, agriculture, horticulture, or floriculture "directly" in producing tangible personal property for sale ("direct use"), were not subject to sales and use tax. Also, under prior law, agricultural land tile, for tax exemption purposes, was defined as fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated into a subsurface drainage system appurtenant to land used or to be used "directly" in production by farming, agriculture, horticulture, or floriculture.

Livestock structure exemption

The act removes horses and fish from the definition of excluded livestock for the purpose of the ongoing sales and use tax exemption for livestock-related property, thereby extending the exemption to purchases of building materials and related services that are incorporated into a building or structure used for keeping fish or horses for food. The exemption covers purchases of materials or services incorporated into buildings and structures used to house, feed, raise, or shelter livestock kept for food or other agricultural purposes, store or handle feed, or handle manure and waste.

The act also exempts from sales and use tax purchases of any building materials and related services that are incorporated into a building or structure used for keeping "captive deer" by specifying that such deer are "livestock" for the purpose of the existing exemption for livestock structures. "Captive deer" are deer and other cervidae that have been legally acquired, or the offspring of such cervidae privately owned for agricultural or farming purposes.

The act states that its changes to the livestock structures exemption are intended to clarify the General Assembly's intent of the exemption when enacted.

Transfers from school district bond fund or bond retirement fund

(R.C. 5705.14)

Continuing law requires political subdivisions and school districts to establish different funds into which particular types of revenue are deposited, including a general fund, a sinking fund for the retirement of non-serial bonds, a bond retirement fund for the retirement of serial bonds, a special fund for each special tax levy, and a special bond fund for each bond issue. The subdivision or school district may transfer money between its funds only if the type of transfer is specifically authorized in law.

Under prior law, surplus money in a bond fund could be transferred only to the sinking fund or bond retirement fund. Similarly, money in a bond retirement fund could be transferred to the sinking fund or, if the subdivision does not have a sinking fund and if the Court of Common Pleas approves the transfer, to any other fund. Surplus money in a bond retirement fund could have been transferred only after the retirement of all debt obligations of the fund.

The act authorizes transfers from a bond fund or bond retirement fund to a permanent improvement fund, even if all of the obligations payable from the fund have not been retired. However, the act limits the availability of this new option to school districts that receive approval for such a transfer from the county budget commission. When approving such transfers, a county budget commission must determine that the

money to be transferred will not be necessary to meet any outstanding obligations of the fund after considering the amount of outstanding obligations, the balance of the fund, and the fund's revenue sources.

School district levy for cultural center

(R.C. 5705.21)

The act clarifies that, if a school district seeks to levy a property tax for the purpose of operating a cultural center, the ballot must state that the levy is for the purpose of operating the cultural center. Continuing law requires the ballot to state the purpose of a levy.

Property tax levy for the payment of police and fire services personnel

(R.C. 5705.19)

The act expands the expressly permissible uses of property tax receipts for fire and police services. Continuing law allows political subdivisions to levy property taxes to pay for fire and police services and related property within the subdivision. The authorizing statute enumerates various specific categories of expenses that the levy's revenue may be spent for.

In addition to such expenses as the acquisition and maintenance of firefighting, ambulance, or emergency medical services equipment and buildings, the proceeds of a fire services levy may used for the payment of "permanent, part-time, or volunteer firefighters or firefighting companies." The act specifically authorizes subdivisions to also use the proceeds of a fire services tax levy to pay "emergency medical service, administrative, and communications" personnel involved in the subdivision's firefighting or emergency medical service operations.

Similarly, in addition to non-personnel related expenses, the proceeds of a police services levy may be used for the payment of "permanent police personnel." The act specifically adds the payment of part-time police personnel as a permitted expense, as well as permanent or part-time communications or administrative personnel involved in the operation of the police department.

In regard to both types of levies, the proceeds from a levy for the payment of personnel may be used to make employer contributions to retirement or pension funds for those personnel.

Tax certificate sales

(R.C. 5721.30, 5721.31, 5721.32, 5721.37, 5721.38, and 5721.42)

Continuing law authorizes county treasurers to sell delinquent real estate tax "certificates," which represent a legal claim on delinquent taxes owed on real estate. This authority enables taxing authorities to recover unpaid taxes before the ordinary tax foreclosure proceedings are concluded. The lien for the taxes is essentially transferred to private persons, who then may initiate foreclosure proceedings or request the county treasurer to initiate proceedings on the certificate owner's behalf. The certificates bear interest at a rate of up to 18% per year. The interest rate is set by either bid (for auctioned certificates, with the lowest rate bid the winner) or by negotiation (private sale). The interest accrues until the certificate is redeemed, either by the holder initiating foreclosure or the delinquent taxes being paid.

Foreclosure initiation deadline

Under prior law, the certificate holder must have initiated a foreclosure action between one year and six years after the date the tax certificate was *sold* if the certificate was sold in a public auction, or not later than six years after the date the certificate was *delivered* if the certificate was sold in a private sale. In effect, there was a five-year period during which a foreclosure must have been initiated. The six-year deadline was extended if the certificate holder entered into a payment plan with the property owner or other person entitled to redeem the property (e.g., lienholder). The deadline also was extended if under federal bankruptcy law the property became protected by the automatic stay, in which case, the deadline to foreclose was the later of six years or 180 days after the property was no longer property of the bankruptcy estate.

The act authorizes county treasurers to shorten the five-year period during which foreclosures must be initiated to as little as two years. With respect to certificates sold at public auction, the treasurer may establish a deadline of between three and six years after the certificate is sold. With respect to private sales, the treasurer may negotiate a deadline with the purchaser of between three and six years after the date the certificate is delivered to the purchaser. As under prior law, the deadline is extended if the certificate holder enters into a payment plan or if, before the deadline, the property owner files a petition in bankruptcy. If a bankruptcy is filed, the deadline is extended to the later of the original deadline or 180 days after the property is no longer property of the bankruptcy estate.

Continuing law grants to the holder of a tax certificate a first right of refusal to purchase the next tax certificate issued with respect to the same parcel. Under the act, if the certificate holder purchases the subsequent certificate, the foreclosure initiation

deadline with respect to the subsequent certificate is the same deadline (date) the treasurer established for the certificate giving rise to the first right of refusal.

Payment plans

Prior law authorized the owner of a tax-delinquent parcel subject to a tax certificate and certain other persons (e.g., lienholders) to redeem the parcel by entering into a payment plan with the tax certificate holder. With respect to parcels subject to a tax certificate sold in a private sale, the payment plan could be entered at any time after the certificate was sold, but the last installment required under the plan could not be due after six years after the date the certificate was sold.

The act provides that the last installment may not be due after the expiration of the deadline by which the certificate holder may initiate a foreclosure action.

Advertisement of public auction

Under continuing law, a tax certificate may be sold in a public auction or in a private sale. When the sale is by public auction, the treasurer must publish notice of the auction by placing an advertisement in a newspaper once a week for two consecutive weeks. The advertisement must include the date, time, and place of the auction; descriptions of the properties; and the names of the property owners of record.

The act authorizes the public auction to be published alternatively "in an electronic format."

Delinquent Tax and Assessment Collection Fund

(Sections 640.10 and 640.11)

The act extends the temporary authority of a prosecutor or treasurer of a county with a population of between 800,000 and 900,000 – currently only Hamilton County – to determine that the funds appropriated to the respective office from the Delinquent Tax and Assessment Collection Fund exceeds the amount required to be used by that office in collecting additional delinquent taxes and assessments. The prosecutor or treasurer may spend up to 50% of the excess to pay the expenses of operating the respective office that otherwise would be payable from appropriations from the county general fund. This authority, originally authorized by Section 6 of Am. Sub. S.B. 124 of the 128th General Assembly, had been scheduled to expire on December 31, 2011. The act extends this authority through December 31, 2012.

Franchise tax credit for research expenses

(R.C. 5733.351; Section 757.93)

Under ongoing law, a credit is allowed against the corporation franchise tax (CFT) for tax years 2004 through 2008 equal to 7% of the amount of qualified research expenses "incurred . . . by the taxpayer" during the taxable year that exceeded the taxpayer's average amount of research expenses over the three previous taxable years. The credit is nonrefundable but may be carried forward for up to seven years.[269]

In the case of a taxpayer that is a member of a "qualifying controlled group" (e.g., the taxpayer owns another taxpayer or the two are both owned by a third taxpayer, in which case the Tax Commissioner may treat them collectively as a single taxpayer for purposes of computing CFT liability), the credit is computed as if all taxpayers are one single taxpayer. The credit may then be allocated to such taxpayers in any manner selected by the taxpayers.

The act states that an insurance company may be included in the qualifying controlled group, even though insurance companies are not subject to the corporation franchise tax, and therefore not "taxpayers." (Insurance companies are subject to a different tax measured by premiums received to cover risks in Ohio.) The act declares that the amendment is a clarification of existing law.

County Delinquent Tax and Assessment Collection Fund

(R.C. 321.261, with conforming changes in R.C. 149.38, 323.73, 323.75, 5721.19, and 5723.18)

The act divides each county's Delinquent Tax and Assessment Collection Fund (DTAC Fund) into two separate funds, one for the expenses of the county treasurer and one for the expenses of the county prosecuting attorney. Under prior law, the county DTAC Fund received 5% of all delinquent real property, personal property, and manufactured mobile home taxes and assessments collected in the county, including 5% of the delinquent taxes and assessments collected on property sold at a tax foreclosure sale. The Fund also received 20% of the proceeds from the public auction of abandoned

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[269] "Taxpayer" is a defined term meaning a corporation subject to the CFT, which before tax year 2010 included corporations generally, but not insurance companies, and for tax years 2010 and thereafter includes only financial institutions and certain other financial-related corporations. (R.C. 5733.04.) "Qualified research expenses" is a term defined under section 41 of the Internal Revenue Code. It means, generally, research to discover technological information useful in the development of a new or improved business component, substantially all of the activities of which constitute experimentation to determine whether the component performs well. It excludes software developed for internal use.

lands (i.e., unoccupied tax-delinquent real property foreclosed through nonjudicial proceedings) and 10% of the taxes and assessments collected from the sale of forfeited land (i.e., tax-delinquent real property forfeited to the state pursuant to tax-foreclosure proceedings).

The county treasurer and prosecuting attorney were each apportioned one-half of the money allocated to the county DTAC Fund. The officers used these allocations to pay for the costs each office incurred in collecting delinquent taxes and assessments. The county treasurer may also use part of an appropriation to support a county land reutilization corporation.

The act instead requires counties to establish a separate treasurer's DTAC Fund and prosecuting attorney's DTAC Fund, each of which would receive 2.5% of the delinquent taxes and assessments collected in the county. The separate funds would also receive one-half of the delinquent taxes and assessments received from tax foreclosure or forfeiture sales. However, all 20% of the proceeds from public auctions of abandoned lands must be credited to the treasurer's DTAC Fund.

Use of surplus money in a DTAC Fund

Under prior law, if either the county treasurer or prosecuting attorney determined that the officer's appropriation from the county DTAC Fund would exceed the amount the officer needed for the purposes of collecting delinquent taxes and assessments for the current year, the officer could spend that surplus "to prevent residential mortgage foreclosures," "to address problems associated with other foreclosed property," and, in some counties, to help local governments abate nuisances incident to foreclosures. The act extends this option to the separate treasurer and prosecutor funds.

The act additionally allows the county treasurer or prosecuting attorney to suspend the crediting of delinquent taxes and assessments to the officer's respective fund if the balance of the fund exceeds three times the total amount deposited in the fund in the previous year. The officer must direct the county auditor to suspend allocations to the officer's fund for the upcoming year before October 20 of the current year. Any allocations diverted from a treasurer's or prosecuting attorney's DTAC Fund must be distributed instead to all taxing units in the county.

Allocations to county land reutilization corporations

Under prior law, a board of county commissioners could have deposited up to an additional 5% of delinquent tax collections into the county DTAC Fund for the benefit of a county land reutilization corporation. The act requires that any such additional amounts be deposited in the county treasurer's DTAC Fund.

Applicability of laws affecting county DTAC Funds

The act provides that prior law applicable to county DTAC Funds related to annual accounting requirements, records retention, and employee travel expenses continue to apply to the respective treasurer's and prosecuting attorney's DTAC Funds.

Commercial activity tax exclusion for qualified uranium receipts

(R.C. 5751.01(F)(2)(hh))

The act provides an exemption from the commercial activity tax for receipts received from transactions that occur within a "uranium enrichment zone" certified by the Tax Commissioner. A "uranium enrichment zone" includes all of the real property comprising a uranium enrichment facility that is licensed by the U.S. Nuclear Regulatory Commission and that is or was owned or controlled by the U.S. Department of Energy or its successor.

Uranium enrichment zone certification

The Tax Commissioner must certify a uranium enrichment zone before the exemption authorized by the act applies to receipts from transactions occurring within the zone. Any person that owns, leases, or operates real or personal property constituting or located within a uranium enrichment zone may apply for the certification.

Within 60 days of receiving an application for certification, the Tax Commissioner must approve the application if the property meets the definition of a uranium enrichment zone. If an application is denied, the Tax Commissioner must state the reasons for the denial. The Tax Commissioner may request additional information before approving or denying an application.

An applicant may appeal the denial of an application to the Board of Tax Appeals. In such a case, the Tax Commissioner must conditionally certify the applicant's property until final resolution of the appeal. The act requires the applicant to retain records related to the applicant's tax liability throughout the appeals process. Upon final resolution of the appeal, the property's conditional certification automatically expires.

Ohio Business Gateway steering committee

(R.C. 5703.57)

The act increases the number of committee members on the Ohio Business Gateway steering committee who may be representatives from the business community

from two to four and reduces the number of committee members who may be representatives of municipal tax administrators from three to one. The act further makes the hiring of committee staff permissive rather than required.

The steering committee oversees the Ohio Business Gateway, the state government's electronic filing and payment system. It is also used for electronic filing and payment of municipal income taxes.

DEPARTMENT OF TRANSPORTATION (DOT)

- In regard to the authority recently granted to the Ohio Department of Transportation to enter into public-private partnership agreements, eliminates (1) a requirement for the agreements to be for a period not to exceed the biennium, (2) authorization for an agreement to include certain costs of transportation facilities prior to acquisition and construction of the facilities, and (3) language specifying that the agreement does not constitute a debt or pledge of the state's faith and credit and that the operator has no right to have taxes or excises levied for payment under the agreement.

- Permits the Director of Transportation to enter into agreements with an agency of the United States government for the purpose of dedicating staff to the review of environmentally related documents submitted by ODOT that are necessary for the approval of federal permits.

- Permits the Director of Transportation to expend funds for the design, construction, inspection, maintenance, repair, and replacement of bridge and bridge approaches for the Ironton-Russell Bridge, which spans the Ohio River between Ironton, Ohio, and Russell, Kentucky, and to expend funds in the same manner for the bridge that will replace the Ironton-Russell Bridge.

- Provides that an applicant for a certificate of qualification from ODOT in an amount of $5 million or more, rather than $2 million or more as specified in prior law, must submit to the Director of Transportation a financial audit report prepared and attested to by an independent certified public accountant, and an applicant for such a certificate of qualification from ODOT in an amount less than $5 million, rather than less than $2 million as specified in prior law, must submit a financial review report to the Director.

- Permits a transportation improvement district (TID) and any one or more governmental agencies, until December 31, 2011, to enter into an agreement providing for the joint financing, construction, acquisition, or improvement of any project, which includes a street, highway, parking facility, or freight rail tracks and necessarily related freight rail facilities; provides that a municipal corporation, county, or township that is a party to such an agreement, in certain circumstances, may issue securities to provide for the payment of its portion of the project's cost; and allows the TID to purchase those securities directly from the municipal corporation, county, or township.

ODOT public-private partnership agreements

(R.C. 5501.73)

The act eliminates the following provisions from the language governing the Ohio Department of Transportation's (ODOT) recently established authority to enter into public-private agreements related to transportation facilities: (1) a requirement that agreements be for a period not to exceed the then current two-year period for which appropriations have been made to ODOT and that any agreement may be renewed for succeeding two-year periods when the General Assembly makes appropriations to ODOT for each successive biennium, (2) authority for the public-private agreements to include any agreement by ODOT with respect to any costs of transportation facilities to be included prior to acquisition and construction of the facilities, (3) a declaration that public-private agreements do not constitute a debt or pledge of the faith and credit of the state, or of any political subdivision of the state, and the operator has no right to have taxes or excises levied by the General Assembly, or the taxing authority of any political subdivision of the state, for payments under the agreement, and (4) a related requirement for public-private agreements to contain a statement to the effect of that declaration.

Agreements by the Ohio Department of Transportation regarding federal review of environmentally related documents

(Section 755.10)

The act allows the Director of Transportation to enter into agreements with the United States or any U.S. department or agency solely for the purpose of dedicating staff to the expeditious and timely review of environmentally related documents submitted by ODOT, as necessary for the approval of federal permits. Such an agreement may include provisions for advance payment by ODOT for labor and all other identifiable costs of providing services by the United States or any U.S. department or agency as may be estimated by the United States or the department or agency. The act specifically includes the U.S. Army Corps of Engineers, the U.S. Forest Service, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service as federal agencies with which the Director may enter into agreements but does not limit the Director's authority to those agencies. The Director must submit a request to the Controlling Board indicating the amount of the agreement, the services to be performed by the United States or the U.S. department or agency, and the circumstances giving rise to the agreement.

This provision was included in early versions of the most recent Transportation Budget, Am. Sub. H.B. 114 of the 129th General Assembly, but the Legislative Service Commission inadvertently deleted it from later versions of that budget prior to enactment.

Ironton-Russell Bridge

(R.C. 5501.44)

In 1982, the Ironton-Russell Bridge, which spans the Ohio River between Ironton, Ohio, and Russell, Kentucky, was transferred from the Ohio Bridge Commission to ODOT and the Commission was abolished. The act permits the Director of Transportation to expend funds for the design, construction, inspection, maintenance, repair, and replacement of bridge and bridge approaches for the Ironton-Russell bridge. Following the replacement of that bridge, the Director may expend funds for the design, construction, inspection, maintenance, repair, and replacement of bridge and bridge approaches. The act permits the expenditure of funds in this manner, notwithstanding two provisions of continuing law not changed by the act. The first provision prescribes permissible uses by ODOT of money in the Highway Operating Fund and the second provides that an agreement with another state, a subdivision of another state, or the United States relative to cooperation in the repair, maintenance, or construction of a bridge crossing a stream that forms a boundary line of Ohio cannot obligate Ohio to expend more than the cost of the construction of the portion of the bridge that is located within Ohio and not more than 50% of the maintenance costs of such a bridge, with a maximum annual maintenance obligation for Ohio of $300,000.

ODOT certificate of qualification for bidders

(R.C. 5525.04)

Most classes of prospective bidders on an ODOT construction project must be prequalified as to their competence, responsibility, compliance with affirmative action programs, and possession of specified financial resources. A prospective bidder who is found to possess the required qualifications is issued a certificate of qualification, which fixes the aggregate amount of work that the applicant may have under construction and uncompleted at any one time and may limit the class of work for which the person may submit bids.

The act provides that an applicant for a certificate of qualification in an amount of $5 million or more, rather than $2 million or more as specified in prior law, must submit to the Director of Transportation a financial audit report prepared and attested to by an independent certified public accountant. The act also provides that an applicant for a certificate of qualification in an amount less than $5 million, rather than

less than $2 million as specified in prior law, must submit a financial review report to the Director. An audit provides a higher level of assurance than a review as to the fairness of presentation of the financial statements of the prospective bidders.

Agreement between a transportation improvement district and a municipal corporation, county, or township for a project

(R.C. 133.09 and 5540.01; Section 755.20)

The act provides that, until December 31, 2011, a TID and any one or more governmental agencies may enter into an agreement providing for the joint financing, construction, acquisition, or improvement of any "project," which includes a street, highway, parking facility, or freight rail tracks and necessarily related freight rail facilities. Such an agreement must be approved by resolution or ordinance passed by the legislative authority of each of the parties to the agreement. The resolution or ordinance must authorize the execution of the agreement by a designated official or officials of that party, and the agreement, when so approved and executed, takes full force and effect.

Subject to a limiting provision of the act, any municipal corporation, county, or township that is a party to such an agreement may issue securities pursuant to state law to provide for the payment of its portion of the cost of the project and, notwithstanding any other provision of state law, a TID may purchase those securities directly from the municipal corporation, county, or township as an investment or to provide for the payment of bond service charges on bonds issued by a TID. For any project undertaken pursuant to an agreement entered into under these provisions for which a TID purchases such securities, more than half of the property necessary for the project must be located within the territory of the TID.

The act provides that in calculating the net indebtedness of a township, no obligation a township incurs in connection with a project undertaken pursuant to these provisions may be considered. The act also provides that "revenues" of a TID include money it receives under these provisions or under a similar provision that was in effect in 2007.

TREASURER OF STATE (TOS)

- Provides for the Treasurer of State to supersede and replace the Ohio Building Authority (OBA) as the issuing authority in all matters relating to the issuance of obligations for the financing of capital facilities for housing branches and agencies of state government and for the financing of community or technical college capital facilities pursuant to the Bond Intercept Program.
- Does not repeal the OBA's current bond issuance authority for these purposes.
- Excepts from the transfer of authority, OBA's duties, interests, and responsibilities regarding the James A. Rhodes State Office Tower, the Vern Riffe Center for Government and the Arts, the Frank J. Lausche State Office Building, the Michael V. DiSalle Government Center, the Oliver R. Ocasek Government Office Building, and the State of Ohio Computer Center.
- Creates four specific bond service trust funds used for the payment of bond service charges for bond sales credited to four specific building funds that the act consolidates into the bond authority law.
- Expands the financial instruments that the Treasurer of State may place with an eligible lending institution under the Small Business Linked Deposit Program for purposes of lending money to eligible small businesses at a rate below the present borrowing rate.

Bond issuance authority of the Ohio Building Authority

(R.C. 123.10, 154.02, 154.07, 154.11, 154.24, 154.25, 3333.90, and 5120.105; Section 701.50)

The act states that on September 29, 2011 the Treasurer of State supersedes and replaces the Ohio Building Authority (OBA) as the issuing authority in all matters relating to the issuance of obligations for the financing of capital facilities for (1) housing branches and agencies of state government and (2) community or technical colleges pursuant to the ongoing Bond Intercept Program.[270] It provides specifics about the transfer of authority, including with respect to duties, functions, and responsibilities, documents and records, appropriations, leases and agreements,

[270] R.C. 3333.90.

pending judicial and administrative proceedings, and contracts. OBA is authorized to take any action necessary to effect an orderly transition.

The act does not, however, repeal OBA's current authority to issue bonds for these purposes.[271] Further, the act does not transfer OBA's interests in, responsibilities for, or any lease or agreement relating to the operation and maintenance of the James A. Rhodes State Office Tower, the Vern Riffe Center for Government and the Arts, the Frank J. Lausche State Office Building, the Michael V. DiSalle Government Center, the Oliver R. Ocasek Government Office Building, and the State of Ohio Computer Center.

Housing branches and agencies of state government

The act expressly permits the Treasurer of State to issue revenue bonds in accordance with R.C. Chapter 154. to pay the costs of capital facilities for housing branches and agencies of state government, including capital facilities for the purpose of housing personnel, equipment, or functions that a state agency is responsible for housing and any related parking and storage facilities, and the costs of capital facilities in which one or more state agencies are participating with the federal government, municipal corporations, counties, or other governmental entities and in which the portion of the facility allocated to the participating state agencies is to be used for the purpose of housing branches and agencies of state government. Such participation may be by grants, loans, or contributions to other participating governmental agencies for any of those capital facilities.

The Ohio Public Facilities Commission is permitted to lease the capital facilities to, and make other agreements regarding the use or purchase of them with, any state agency or governmental agency having authority under law to operate such capital facilities.

Bond service trust funds

As part of the transfer of bonding authority regarding the housing of branches or agencies of state government, the act formally creates the Administrative Facilities Bond Service Trust Fund, the Adult Correctional Facilities Bond Service Trust Fund, the Juvenile Correctional Facilities Bond Service Trust Fund, and the Public Safety Bond Service Trust Fund. The funds are to be used for payment of bond service charges for the sales of obligations that are credited to the Administrative Building Fund, the Adult Correctional Building Fund, the Juvenile Correctional Building Fund, and the Public Safety Building Fund, which the act also creates in relation to the transfer of bonding authority. The act deletes the reference in the Revised Code to the establishment of the

[271] See R.C. Chapter 152.

Administrative Building Fund and updates appropriate cross references to this Fund and the Adult Correctional Building Fund that appeared in prior law.

Community or technical college capital facilities; Bond Intercept Program

Under the act, the Treasurer of State is expressly authorized to issue, on behalf of a community or technical college district, revenue obligations under Article VIII, Section 2i of the Ohio Constitution and R.C. Chapter 154. for the cost of community or technical college capital facilities, *provided* the issuance of the obligations is subject to the execution of a written agreement under the ongoing Bond Intercept Program for the withholding and depositing of funds otherwise due the district, or the college it operates, in respect of its allocated state share of instruction. Generally, "community or technical college capital facilities" means auxiliary facilities, education facilities, and housing and dining facilities, and further includes site improvements, utilities, machinery, furnishings, and any separate or connected buildings, structures, improvements, sites, open space and green space areas, utilities, or equipment to be used in connection with such facilities.

Small Business Linked Deposit Program investments

(R.C. 135.61, 135.65, and 135.66)

The act expands the financial instruments that the Treasurer of State may place with an eligible lending institution for the purposes of lending money to eligible small businesses at a rate below the present borrowing rate. Under the act, the Treasurer may place other financial institution instruments with a lending institution for this purpose. "Other financial institution instrument" has the same meaning as under the Housing Linked Deposit Program.[272] Former law allowed the Treasurer to place only certificates of deposit with lending institutions to lend money to small businesses at a reduced rate.

[272] "Other financial institution instrument" means "a fully collateralized product that otherwise would pay market rates of interest approved by the Treasurer of State, for the purpose of providing eligible housing linked deposit participants with the benefits of a housing linked deposit." (R.C. 135.81, not in the act.)

TUITION TRUST AUTHORITY (TTA)

- Requires the Tuition Trust Authority to establish, within the Variable College Savings Program, a "default investment option" to benefit contributors who are first-time investors or have low to moderate incomes.

Default investment option

(R.C. 3334.19)

The act requires the Tuition Trust Authority (TTA) to establish a "default investment option" within its Variable College Savings Program for contributors who are first-time investors or have low to moderate incomes. The act itself does not describe or define the term "default investment option," but it likely refers to an investment plan that does not require the investor to choose from among savings instruments or plan administrators or to make periodic decisions whether to transfer money among investment options. The act does not specify whether the intent is simply for TTA to market the default option as one choice, or to restrict investors with certain characteristics (such as low or moderate incomes) to the default option.

The TTA is a state agency under the purview of the Chancellor of the Board of Regents. It operates two college savings programs that correspond to the types permitted by federal tax law: (1) a guaranteed savings program, which is now closed to new investors, and (2) a variable savings program. Under the Variable College Savings Program, an individual contributes money to an investment account managed by the state, or its agent, for the benefit of the beneficiary. Assets of the Variable Program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

WORKERS' COMPENSATION COUNCIL (WCC)

- Abolishes the Workers' Compensation Council.
- Transfers all of the Council's records to the Legislative Service Commission and all other assets, liabilities, and funds to the Bureau of Workers' Compensation.

Abolition of the Workers' Compensation Council

(R.C. 4121.75, 4121.76, 4121.77, 4121.78, and 4121.79 (all repealed); Sections 610.20 and 610.21, with conforming changes in R.C. 101.532, 101.82, 102.02, 127.14, 4121.03, 4121.12, 4121.121, 4121.125, 4121.128, 4121.44, 4123.341, 4123.342, and 4123.35)

The act abolishes the Workers' Compensation Council, which reviewed the soundness of the workers' compensation system and legislation involving or affecting the workers' compensation system. On June 30, 2011, or as soon as possible thereafter, the Council must wind up its affairs. All of the Council's records must be transferred to the Legislative Service Commission and all of its other assets and liabilities are transferred to the Bureau of Workers' Compensation (BWC). BWC is thereupon and thereafter successor to, and assumes the obligations of, the Council. Any business commenced but not completed by the Council or the Director of the Council on June 30, 2011, must be completed by the Administrator of Workers' Compensation in the same manner, and with the same effect, as if completed by the Council or the Director. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer required by the act and must be administered by the Administrator. All Council employees cease to hold their positions of employment on June 30, 2011.

With respect to the Workers' Compensation Council Remuneration Fund, the Director of Budget and Management, once the Council is abolished, must transfer the unexpended and unencumbered cash balances to the State Insurance Fund. Similarly, with respect to the Workers' Compensation Council Fund, once the Council is abolished, the Treasurer of State must transfer the unexpended and unencumbered balance to the State Insurance Fund. Upon completion of the transfers, the funds are abolished.

Wherever the Director or Council is referred to in any law, contract, or other document, the act requires the reference to be deemed to refer to the Administrator or BWC, whichever is appropriate. No action or proceeding pending on June 30, 2011, is

affected by the transfer, and any such action must be prosecuted or defended in the name of the Administrator or BWC. In all such actions and proceedings, the Administrator or BWC, upon application to the court, must be substituted as a party.

DEPARTMENT OF YOUTH SERVICES (DYS)

- Requires the Department of Youth Services to coordinate and assist juvenile justice systems by visiting and inspecting jails, detention facilities, correctional facilities, facilities that may hold juveniles involuntarily, and any other facility that may temporarily house juveniles on a voluntary or involuntary basis for the purpose of compliance with the federal "Juvenile Justice and Delinquency Prevention Act of 1974."

- Requires a county and the juvenile court that serves the county to prioritize the use of the moneys in the county treasury's Felony Delinquent Care and Custody Fund to research-supported, outcome-based programs and services.

- Authorizes the sale of DYS facilities that are closed before January 1, 2012.

Inspection of juvenile facilities

(R.C. 5139.11(K)(1)(g))

Prior law required the Department of Youth Services to coordinate and assist juvenile justice systems by performing a list of specified duties. The act adds an additional duty to this list by requiring the Department to visit and inspect jails, detention facilities, correctional facilities, facilities that may hold juveniles involuntarily, or any other facility that may temporarily house juveniles on a voluntary or involuntary basis for the purpose of compliance pursuant to the "Juvenile Justice and Delinquency Prevention Act of 1974," 88 Stat. 1109, as amended.

Prioritization for the use of moneys in a Felony Delinquent Care and Custody Fund

(R.C. 5139.43(B)(2)(a)(iii))

Law generally unchanged by the act specifies uses for the moneys in the county treasury's Felony Delinquent Care and Custody Fund. However, the law does not prioritize the use of the moneys in the Fund. The act requires a county and the juvenile court that serves the county to prioritize the use of the moneys in the Fund to research-supported, outcome-based programs and services.

Sale of Department of Youth Services facilities

(Section 753.30)

The act authorizes the Director of Administrative Services and the Director of Youth Services to sell any facility under the management and control of the Department of Youth Services if the facility is closed before January 1, 2012, and the Director of Administrative Services determines the property is no longer required for state purposes. The facility must be sold pursuant to a bidding process conducted by the Director of Administrative Services at a price acceptable to both Directors. The contract of sale must require the purchaser to give preference in hiring to employees or former employees of the Department of Youth Services displaced by the closure of the facility located on the property and a binding commitment that irrevocably grants to the state a right to repurchase the facility and the real property on which it is situated, any surrounding land that is to be transferred under the contract, or both if: (1) the purchaser or the purchaser's successor wants to sell or otherwise transfer to a third party the facility and real property on which it is situated, any surrounding land transferred under the sale, or both or (2) the purchaser defaults on any financial agreement for the purchase of the facility and real property on which it is situated, any surrounding land transferred under the sale, or both, defaults on any term of the contract, or becomes insolvent or unable to meet its contractual obligations. Under (1), the purchaser or successor first must offer the facility or property to the state at least 120 days before it intends to make the transfer to the third party. In either situation, the state's purchase price must be not greater than the price the contractor paid, less depreciation from the time of the conveyance to the purchaser, plus the depreciated value of any capital improvements funded by anyone other than the state after the conveyance to the purchaser. The deed to the purchaser is to be prepared by the Auditor of State with the assistance of the Attorney General and executed by the Governor. The act requires that the proceeds of the sale be deposited into the Adult and Juvenile Correctional Facilities Bond Retirement Fund to retire state bonds that were issued for the transferred facilities. Section 753.30, which authorizes and sets forth the details pertaining to the sale of the facility, expires September 29, 2013.

MISCELLANEOUS (MSC)

- Increases the filing fee for most disclosure statements that are required to be filed with the appropriate ethics commission.

- Limits the cumulative total amount recovered in a civil action for forfeiture ($10,000) and the amount of attorney's fees (not to exceed the forfeiture amount recovered) for a violation of the prohibition against the unlawful removal, destruction, mutilation, transfer, or other damage to or disposition of the records of a public office.

- Provides that a person is not aggrieved by such a violation if clear and convincing evidence shows that the request for a record was contrived as a pretext to create potential liability.

- Precludes the recovery of a forfeiture by others involving the same record once a person has recovered a forfeiture, regardless of the number of persons aggrieved or the number of civil actions commenced.

- Prescribes a five-year period of limitations for a civil action for injunctive relief or for forfeiture for a violation of the prohibition.

- Changes the name of the Ohio Community Service Council to the Ohio Commission on Service and Volunteerism.

- Specifies that (1) the expenses of a decedent's last continuous stay in a nursing home, residential facility for persons with mental retardation or a developmental disability, or hospital long-term care unit are seventh in the order in which a decedent's debts are to be paid and (2) the decedent's last continuous stay includes up to 30 consecutive days during which the decedent was temporarily absent from the facility.

- Removes the requirement that the bill of costs for the prosecution of a nonindigent felon be presented to and certified by the prosecuting attorney.

- Authorizes the conveyance of state-owned real estate in Brown County to Ripley Union Lewis Huntington School District for the construction and operation of a water well.

- Authorizes the conveyance of state-owned real estate in Stark County to Jackson Township.

- Extends the expiration date for an authorization to convey state land to the Dayton Public Schools.
- Authorizes conveyance of the real estate in the possession of Cleveland State University to a purchaser who is to be determined.

Ethics disclosure statements

(R.C. 102.02(E))

Filing fees

The act increases the filing fee for most required disclosure statements filed with the Ohio Ethics Commission, the Joint Legislative Ethics Commission, and the Board of Commissioners on Grievances and Discipline of the Supreme Court. Most public offices are required to file a statement, including: every elected state, county, or city official; State Board of Education members; every business manager, treasurer, or superintendent of a city, local, exempted village, joint vocational, or cooperative education school district or an educational service center; every office of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district or of a governing board of an educational service center; and Ohio Livestock Care Standards Board members.

The act eliminates the special $25 filing fee paid by the members of the Ohio Livestock Care Standards Board, which may result in the members of that Board paying the general $40 fee or no fee, depending upon how the amendment is interpreted.

The act increases disclosure statement filing fees for the following offices:

--For state offices, except members of the State Board of Education, from $65 to $95;

--For county offices, from $40 to $60;

--For city offices, from $25 to $35;

--For office of member of a city, local, exempted village, or cooperative education board of education or educational service center governing board, from $20 to $30;

--For position of business manager, treasurer, or superintendant of a city, local, exempted village, joint vocational, or cooperative education school district or educational service center, from $20 to $30.

The act does *not* increase the disclosure statement filing fees paid by General Assembly members ($40) and State Board of Education members ($25).

Destruction or damage of records

(R.C. 149.351)

Continuing law provides that all records are the property of the public office concerned and generally prohibits their removal, destruction, mutilation, transfer, or other damage or disposition, in whole or in part. Under former law, any person who was aggrieved by the removal, destruction, mutilation, or transfer of, or by other damage to or disposition of a record in violation of the above prohibition or by threat of any such act could bring a civil action for injunctive relief or a civil action to recover a forfeiture in the amount of $1,000 for each violation and obtain an award of the reasonable attorney's fees incurred by the person in the action. The act limits the cumulative total amount to be recovered in forfeiture to a maximum of $10,000, regardless of the number of violations, and limits the amount of attorney's fees to a maximum of the forfeiture amount recovered.

Under the act, a person is not aggrieved by a violation of the above prohibition if clear and convincing evidence shows that the request for a record was contrived as a pretext to create potential liability under the above provisions. The commencement of a civil action waives any right under R.C. Chapter 149. to decline to divulge the purpose for requesting the record, but only to the extent needed to evaluate whether the request was contrived as a pretext to create potential liability. If clear and convincing evidence in a civil action shows that the request for a record was a pretext to create potential liability, the court may award reasonable attorney's fees to any defendant or defendants in the action. Once a person recovers a forfeiture in a civil action, the act precludes any other person from recovering a forfeiture for a violation of the prohibition involving the same record, regardless of the number of persons aggrieved by a violation of the prohibition or the number of civil actions commenced.

The act further provides that a civil action for injunctive relief or a civil action to recover a forfeiture must be commenced within five years after the day in which the prohibition was allegedly violated or was threatened to be violated.

Ohio Community Service Council

(R.C. 121.40, 121.401, 121.402, 121.403, 121.404, 1501.40, 3301.70, 3333.043, and 4503.93; Section 803.40)

The act changes the name of the Ohio Community Service Council to the Ohio Commission on Service and Volunteerism. The purpose, duties, authority, and

membership of the agency continue without change. Only the agency's name is changed.

Decedent's expenses include last stay in a long-term care facility

(R.C. 2117.25)

Law amended by the act specifies the order in which an executor or administrator must apply the assets of an estate in paying a decedent's debts. The act provides for the expenses of a decedent's last continuous stay in a nursing home, residential facility for persons with mental retardation or a developmental disability, or hospital long-term care unit to be seventh in the order in which a decedent's debts are to be paid. A decedent's last continuous stay is to include up to 30 consecutive days during which the decedent was temporarily absent from the nursing home, residential facility, or hospital long-term care unit.

Personal property taxes, claims made under the Medicaid estate recovery program, and obligations for which a decedent was personally liable to the state or any of its subdivisions are moved to eighth in the order in which a decedent's debts are to be paid. Debts for manual labor performed for the decedent within 12 months preceding the decedent's death, not exceeding $300 to any one person, are moved to ninth and other debts that are not listed higher on the debt order list and for which claims have been presented and finally allowed are moved to tenth on the debt order list.

Collection of court costs from a felon

(R.C. 2949.14)

Under continuing law, upon conviction of a nonindigent person for a felony, the clerk of the court of common pleas makes and certifies under the clerk's hand and seal of the court a complete itemized bill of the costs made in that prosecution. *That bill of costs must be presented by the clerk to the prosecuting attorney, and the prosecuting attorney must examine each item charged and certify to it if correct and legal. Upon the prosecuting attorney's certification the clerk must attempt to collect the costs from the person convicted.* The act removes the requirement that the bill of costs be presented to and certified by the prosecuting attorney (removes language in italics).

Land conveyance to Ripley Union Lewis Huntington School District

(Section 753.20)

The act authorizes the Governor to execute a deed in the name of the state conveying to the Ripley Union Lewis Huntington School District, its successors and assigns, all of the state's right, title, and interest in real estate in Brown County to be used for the construction and operation of a water well.

Consideration for the conveyance of the real estate is the mutual benefit accruing to the state and the Ripley Union Lewis Huntington School District from the use of the real estate to construct and operate the water well.

If the Ripley Union Lewis Huntington School District ceases to use the real estate to construct and operate the water well, all right, title, and interest in the real estate immediately reverts to the state without the need for any further action by the state.

The Ripley Union Lewis Huntington School District must pay the costs of the conveyance.

By October 29, 2011, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate. The deed must state the consideration and the condition. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the office of the Auditor of State for recording, and delivered to the Ripley Union Lewis Huntington School District. The Ripley Union Lewis Huntington School District must present the deed for recording in the office of the Brown County Recorder.

Authority to make the conveyance expires September 29, 2012.

Authorizes conveyance of Kent State University real estate to Jackson Township

(Section 753.23)

The act authorizes the Governor to execute a deed in the name of the state, on behalf of Kent State University, conveying all of the state's right, title, and interest in real estate located in Stark County to the Board of Township Trustees of Jackson Township in Stark County, and its successors and assigns.

Consideration for the conveyance is the mutual benefit accruing to the state from Jackson Township's use of the real estate for a fire station. If use of the real estate as a fire station is discontinued, the real estate reverts to Kent State University, and Jackson

Township is required to raze the building currently on the real estate and to remove from the real estate any contaminants relating to the building's use as a fire station.

The Board of Township Trustees of Jackson Township is required to pay the costs of the conveyance.

The Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate. The deed must state the consideration and the reverter. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the Board of Township Trustees of Jackson Township. The Board of Township Trustees of Jackson Township must present the deed for recording in the Office of the Stark County Recorder.

Authority to make the conveyance expires September 29, 2012.

Dayton Public Schools land conveyance

(Sections 620.20 and 620.21)

The act extends the expiration date for an authorization to convey state land to the Dayton Public Schools to October 16, 2013, in order to provide more time for the school system to complete the required demolition and construction. The authorization otherwise is scheduled to expire on July 17, 2011.[273]

Cleveland State University land conveyance

(Section 753.27)

The act authorizes conveyance of the real estate formerly used as the residence for the President of Cleveland State University to a purchaser who is to be determined. Specifically, the act authorizes the Governor to execute a deed in the name of the state, on behalf of Cleveland State University, conveying to a purchaser who is to be determined, its heirs and assigns or its successors and assigns, all of the state's right, title, and interest in the real estate located at 21425 Shelburne Road, City of Shaker Heights, County of Cuyahoga, State of Ohio, such real estate consisting of the building formerly used as the residence for the President of Cleveland State University and the land on which the building is situated. In preparing the deed, the Auditor of State, with the assistance of the Attorney General, is to develop a legal description of the real estate in conformity with the actual bounds of the real estate.

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[273] Section 753.60 of Am. Sub. H.B. 1 of the 128th General Assembly.

Consideration for conveyance of the real estate is to be as is agreed upon by Cleveland State University and the purchaser.

The deed may contain any condition or restriction that the Governor or Cleveland State University determines is reasonably necessary to protect the state's interests.

The purchaser must pay all costs associated with the conveyance, including recordation costs of the deed.

Upon payment of the purchase price, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate. The deed must state the consideration and any conditions or restrictions, and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the purchaser. The purchaser must present the deed for recording in the Office of the Cuyahoga County Recorder.

Authority to make the conveyance expires September 29, 2011.

NOTE ON EFFECTIVE DATES

(Sections 809.10 and 812.10 to 812.40)

Section 1d, Article II of the Ohio Constitution states that "laws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with respect to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly is to determine which sections go into immediate effect.

The act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section in the act is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The act also includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect. For example, provisions that are or relate to an appropriation for current expenses go into immediate effect.

The act also specifies that an item that composes the whole or part of an *uncodified* section contained in the act (other than an amending, enacting, or repealing clause) has no effect after June 30, 2013, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE
Introduced	03-15-11
Reported, H. Finance & Appropriations	05-04-11
Passed House (59-40)	05-05-11
Reported, S. Finance	06-08-11
Passed Senate (23-10)	06-08-11
House refused to concur in Senate amendments (0-98)	06-08-11
Senate requested conference committee	06-09-11
House acceded to request for conference committee	06-14-11
Senate agreed to conference committee report (22-11)	06-28-11
House agreed to conference committee report (59-40)	06-29-11

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