## 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

[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.

[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,

[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).