Ohio Legislative Service Commission

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(As Passed by the House)

Reps. Amstutz (By Request), Beck, Blair, Buchy, Combs, McClain, Sears, Sprague, Stebelton, Terhar, Wachtmann

TABLE OF CONTENTS

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

Within each category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation. Items generally are presented in the order in which they appear in the Revised Code.

DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

Ohio Facilities Construction Commission

- Creates the Ohio Facilities Construction Commission to replace the Office of the State Architect and Engineer and the Office of Energy Services.

- Maintains the Ohio School Facilities Commission as an independent agency within the Ohio Facilities Construction Commission.

- Transfers the powers, duties, and obligations of the Office of the State Architect and Engineer to the Ohio Facilities Construction Commission, and requires the Ohio Facilities Construction Commission to continue the operations and management of the Office of the State Architect and Engineer as provided in continuing law or in any agreements relating to capital expenditures for construction operations functions to which the Office of the State Architect and Engineer is a party.

- Transfers several duties, including the planning, supervision of construction, keeping of records, and disposition of capital facilities, from the Department of Administrative Services (DAS) to the Ohio Facilities Construction Commission.

- Deems all statutory references to the Office of the State Architect and Engineer to be references to the Ohio Facilities Construction Commission.

- Specifies that the Ohio Facilities Construction Commission must complete any activities related to operations functions that are not completed by the Office of the State Architect and Engineer on the date of transfer with the same effect as if completed by the Office of the State Architect and Engineer.

- Specifies that judicial and administrative actions will proceed with the Ohio Facilities Construction Commission being substituted as a party for the Office of State Architect and Engineer.

- Specifies that notwithstanding any provision of continuing law to the contrary, and if requested by the Commission, that the Director of Budget and Management is to make budget changes necessitated by the transfer, if any, including administrative organization, program transfers, the creation of new funds, the transfer of state funds, and the consolidation of funds.

- Appropriates established encumbrances plus any additional amounts determined to be necessary for the Ohio Facilities Construction Commission to perform the

construction, energy, and capital funding operation functions of the Office of State Architect and Engineer.

- Requires, not later than 30 days after the transfer and consolidation of the construction, energy, and capital funding operations function of the Office of State Architect and Engineer to the Ohio Facilities Construction Commission, an authorized officer to certify to the Ohio Facilities Construction Commission the unexpended balance and location of any funds and accounts designated for building and facility operation and management functions, and the custody of the funds and accounts is to be transferred to the Commission.

- Requires the Ohio Facilities Construction Commission and the Department of Natural Resources (DNR) to cooperate in and, not later than December 31, 2012, complete a study to determine which operation functions, if any, of the DNR Division of Engineering should be integrated and consolidated into the Commission.

Civil service law

- Amends civil service law so that certain provisions will be applicable only with respect to positions in the classified service of the state and not to service with the counties or other political subdivisions.

- Modifies the protocol for appointment to positions in the classified civil service of the state from eligible lists resulting from civil service examinations.

- Modifies state civil service law with respect to the official who is authorized to find that it is impracticable, for certain positions, to determine fitness by competitive examination.

- Authorizes the Director of DAS to appoint a designee to register applicants in the unskilled labor class.

- Clarifies civil service law with respect to the right of an employee in the unclassified service to resume a position in the classified service.

- Eliminates the authority of the Director to establish, modify, or rescind a job classification plan for county agencies that elect not to use the services of the county personnel department.

- Specifies that the right to request a job audit applies only to classified employees in the service of the state.

- Modifies the law with respect to the authority for county agencies to contract with DAS for human resources services.

- Requires a county, by statute rather than by rule, to adhere to merit system principles, and makes a county financially liable to the state for the loss of federal funding due to the action or inaction of the county personnel department.

Enterprise services

- Authorizes the Directors of Budget and Management and Administrative Services to determine ways to improve efficiencies of "enterprise services."

- Authorizes the Directors of Budget and Management and Administrative Services to improve efficiencies of "enterprise services" by consolidation and transfer of services, and budget and program changes, notwithstanding any law to the contrary.

- Authorizes the Directors of Budget and Management and Administrative Services to agree, notwithstanding any law to the contrary, to establish any new funds, appropriations, full or partial encumbrances, and consolidate funds and transfer cash as necessary to accomplish improved efficiencies in enterprise services.

- Authorizes the Directors of Budget and Management and Administrative Services to transfer employees, assets and liabilities, including records, contracts, and agreements, to accomplish the improvements in enterprise services.

Compressed Natural Gas Study Committee

- Creates a seven-member committee to examine the use of compressed natural gas in the state and political subdivision motor vehicle fleets; authorizes the committee to hire consultants or experts; and, not later than six months after the last initial appointment is made, requires the committee to issue a report on its findings and recommendations on using compressed natural gas to fuel the state and political subdivision motor vehicle fleets, including any recommendation for funding the conversion to compressed natural gas.

Creation of the Ohio Facilities Construction Commission and transfer of duties from other entities

(R.C. 121.04, 123.01, 123.011 (123.22), 123.024 (123.06), 123.04 (123.02), 123.07 (123.03), 123.08 (123.18), 123.09 (123.04), 123.10 (123.05), 123.101 (123.27), 123.11 (123.07), 123.13 (123.08), 123.14 (123.09), 123.15 (123.10), 123.152, 123.17 (123.24), 123.21 (123.11), 123.21 (enacted new), 123.23 (enacted), 123.25 (enacted), 123.26 (enacted), 123.46 (123.12), 123.47 (123.13), 123.48 (123.14), 123.49 (123.15), 123.77 (123.17), 126.14, 152.18, 152.24,

153.01, 153.011, 153.013, 153.02, 153.04, 153.06, 153.07, 153.08, 153.09, 153.11, 153.12, 153.14, 153.16, 153.17, 153.502, 153.503, 153.53, 1506.42, 3318.10, 3318.30, 3318.31, 3345.16, 3345.50, 3345.51, 3345.69, 3347.03, 3383.02, 3383.07, and 5120.105; Section 701.70.10)

The bill creates the Ohio Facilities Construction Commission to administer the design and construction of improvements to public facilities of the state. The new Commission replaces the Office of the State Architect and Engineer and the Office of Energy Services, as well as taking over some duties from the Department of Administrative Services. The Ohio School Facilities Commission remains an independent agency within the Ohio Facilities Construction Commission. The bill also requires the Ohio Facilities Construction Commission to cooperate in a study with the Department of National Resources (DNR) to determine whether the DNR Division of Engineering also should be consolidated into the Ohio Facilities Construction Commission.[1]

As is described below in detail, the bill transfers the powers, duties, and programs of the Office of the State Architect and Engineer and the Office of Energy Services to the Ohio Facilities Construction Commission, and transfers several duties, including the planning, supervision of construction, keeping of records, and disposition of capital facilities, from the Department of Administrative Services to the Ohio Facilities Construction Commission.

The Ohio Facilities Construction Commission consists of three members: (a) the Director of Budget and Management, (b) the Director of Administrative Services, and (c) a member appointed by the Governor. The Governor must appoint the member within 60 days of the effective date of the bill. The initial term of appointment ends three years after the effective date of the bill. Subsequent terms are for three years.

The members of the Ohio Facilities Construction Commission must meet at least once each calendar year, must serve without compensation, and must file an annual report of the Commission's activities and finances with the Governor, the Speaker of the House of Representatives, the President of the Senate, and the chairpersons of the House and Senate Finance Committees. The Ohio Facilities Construction Commission is exempt from review by the Sunset Review Committee.[2]

The Ohio Facilities Construction Commission must appoint and fix the compensation of an Executive Director, who is to serve at the pleasure of the Ohio Facilities Construction Commission. The Attorney General must serve as the legal

[1] Section 701.70.10(G).

[2] R.C. 123.20.

representative for the Ohio Facilities Construction Commission, and the Attorney General may appoint other counsel as necessary for that purpose.[3]

Commission functions

The Ohio Facilities Construction Commission may perform any actions necessary to fulfill its duties and to exercise its powers. The Ohio Facilities Construction Commission may do all of the following:

- Prepare, or contract with licensed architects or engineers to prepare, surveys, general and detailed plans, specifications, bills of materials, and estimates of cost for any projects, improvements, or public buildings to be constructed by state agencies that may be authorized by legislative appropriations or any other funds made available for the purpose, provided that the construction of the projects, improvements, or public buildings is a statutory duty of the Commission;

- Supervise the construction of any projects, improvements, or public buildings constructed for a state agency, and inspect materials prior to their incorporation into those projects, improvements, or public buildings;

- Make contracts for and supervise the design and construction of any projects and improvements or the construction and repair of buildings that are under the control of a state agency. All these contracts may be based in whole or in part on the unit price or maximum estimated cost, with payment computed and made upon actual quantities or units.

- Adopt, amend, and rescind rules for the administration of the Ohio Facilities Construction Commission programs that are authorized by law;

- Adopt, amend, and rescind rules pertaining to the administration of the construction of the public works of the state;

- Contract with, retain the services of, or designate, and fix the compensation of, any agents, accountants, consultants, advisers, and other independent contractors that are necessary or desirable to carry out the authorized programs of the Ohio Facilities Construction Commission, or authorize the Executive Director of the Ohio Facilities Construction Commission to do so;

[3] R.C. 123.21.

- Receive and accept any gifts, grants, or donations to be used for the Ohio Facilities Construction Commission programs that are authorized by law;

- Make and enter into all contracts, commitments, and agreements, and execute all instruments, necessary or incidental to the performance of the Ohio Facilities Construction Commission's duties and the execution of its rights and powers, or authorize the Executive Director of the Ohio Facilities Construction Commission to perform the powers and duties;

- Debar a contractor.

Ohio Facilities Construction Commission Fund

The Executive Director of the Ohio Facilities Construction Commission must set the rate of tolls to be collected on the construction or improvement of the public works of the state, and must collect all tolls, rents, fines, commissions, fees, and any other revenues that result from the construction or improvement of the public works of the state. Under current law, the Director of Administrative Services sets these rates and collects these revenues.

This money must be deposited into the Ohio Facilities Construction Commission Fund, along with any transfers of money that are authorized by the General Assembly and the amount of the investment earnings of the Administrative Building Fund that the Director of Budget and Management deems to be appropriate and in excess of the amounts required to meet federal arbitrage rebate requirements.

The Ohio Facilities Construction Commission may use the money in the Ohio Facilities Construction Commission Fund for the following purposes:

- To pay personnel and other administrative expenses of the Commission;

- To pay the cost of conducting evaluations of public works;

- To pay the cost of building design specifications;

- To pay the cost of providing project management services;

- To pay the cost of operating the Local Administration Competency Certification Program (which currently is administered by the Office of the State Architect and Engineer); and

- For any other purpose that the Executive Director of the Commission deems necessary for the Commission to execute its duties.[4]

In addition to the functions discussed above, the bill transfers several specific duties and powers from the Office of the State Architect and Engineer, the Office of Energy Services, and the Department of Administrative Services to the Ohio Facilities Construction Commission. The bill also retains the Ohio School Facilities Commission as an independent agency within the new Commission.

Ohio School Facilities Commission

Background

The Ohio School Facilities Commission administers the construction of the state's public primary and secondary schools and assists school districts in the planning, design, and renovation of public schools. The Ohio School Facilities Commission also administers several programs that provide state funding to school districts and community schools for the construction of classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides funding for districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, in advance of their districtwide CFAP projects to construct single buildings in order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of *district* money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program

[4] R.C. 123.26.

allows certain Big-Eight school districts[5] to receive CFAP assistance earlier than otherwise permitted.

Changes to the Ohio School Facilities Commission

The bill retains the Ohio School Facilities Commission as an independent agency within the Ohio Facilities Construction Commission. The bill allows the Ohio School Facilities Commission to share employees and facilities with the Ohio Facilities Construction Commission. The Ohio School Facilities Commission may request the Ohio Facilities Construction Commission, instead of the Director of Administrative Services, to debar a contractor.

The bill clarifies that the Ohio School Facilities Commission may adopt, amend, and rescind rules pertaining to the administration of the construction of the school facilities of the state, and that the Executive Director of the Ohio School Facilities Commission may exercise all powers that the Ohio School Facilities Commission possesses.[6] The bill also specifies that, in addition to the continuing procedures for the planning and construction of school facilities, a school district may, with the approval of the Ohio School Facilities Commission, utilize any otherwise lawful construction delivery method for the construction of a project.[7]

Office of the State Architect and Engineer

The bill eliminates the Office of the State Architect and Engineer, which currently exists within the Department of Administrative Services to oversee the design and construction of facilities for state agencies, boards, and commissions, and institutions of higher education. The Ohio Facilities Construction Commission assumes all of the functions of the Office of the State Architect and Engineer, including the duties to:

- Administer the Local Administration Competency Certification Program to certify institutions of higher education to administer capital facilities projects without the supervision, control, or approval of the Ohio Facilities Construction Commission;[8]

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[5] The program applies to Akron, Dayton, Cincinnati, Columbus, Cleveland, and Toledo. The other two Big-Eight districts, Canton and Youngstown, had received CFAP funding before the Accelerated Urban Program began.

[6] R.C. 3318.30.

[7] R.C. 3318.10.

[8] R.C. 123.24.

- Set standards to be followed by construction managers at risk (i.e., construction managers who provide the state agency a guaranteed maximum price for a project)[9] and by design-build firms when establishing prequalification criteria for prospective bidders on subcontracts to be performed under a construction management or design-build contract. Under existing law, the Office of the State Architect and Engineer works with the Department to set the standards, while under the bill, the Ohio Facilities Construction Commission independently sets the standards.[10]

- Contribute a voting member to the Ohio Cultural Facilities Commission, which provides for the development, performance, and presentation to the public of cultural events and professional sports and athletics.[11]

Office of Energy Services

The bill eliminates the Office of Energy Services, which currently exists within the Office of the State Architect and Engineer to provide state agencies with certain energy engineering and design services, as well as energy auditing and contracting opportunities to promote energy efficiency and conservation. The bill transfers some of the functions of the Office of Energy Services to the Ohio Facilities Construction Commission, while the Department, which oversaw the Office of Energy Services, remains responsible for some other duties. The bill transfers to the Ohio Facilities Construction Commission the duties to:

- Develop energy efficiency and conservation programs for new construction design and review, existing building audit and retrofit, energy-efficient procurement, and alternative fuel vehicles;[12]

- Adopt rules that specify cost-effective energy efficiency and conservation standards to govern the lease, design, construction, operation, and maintenance of all state-funded facilities, except facilities of state-funded institutions of higher education and facilities operated by a political subdivision;[13]

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[9] R.C. 9.33 (not in the bill).

[10] R.C. 153.502 and 153.503.

[11] R.C. 3383.02.

[12] R.C. 123.22(B).

[13] R.C. 123.22(D).

- Consult with a committee to develop guidelines for the board of trustees of each state institution of higher education to use to ensure energy efficiency and conservation in on- and off-campus buildings.[14]

The bill transfers from the Office of Energy Services to the Department the duties to:

- Adopt rules, exchange information with other agencies, and monitor the performance of motor vehicles and other equipment, to ensure that energy efficiency and conservation are considered in the purchase of products and equipment by any state agency or institution;[15]

- Adopt rules prescribing a fleet average fuel economy, and ensure that all of the passenger vehicles state agencies and institutions acquire, except for emergency vehicles, meet the fleet average fuel economy rules.[16]

Duties transferred from the Department

The bill transfers from the Department to the Ohio Facilities Construction Commission the duties and powers to:

- Make rules and regulations that are necessary for the improvement of the public works of the state;[17]

- Regulate the rate of tolls to be collected on the *construction or improvement* of the public works of the state, fix all rentals, and collect all tolls, rents, fines, commissions, fees, and other revenues arising from any source in the *construction or improvement* of the public works of the state. The revenues collected under this provision are paid into the Ohio Facilities Construction Commission Fund.[18] The Director of Administrative Services retains the duty to regulate the rate of tolls to be collected on the public works of the state, to fix all rentals, and to collect all tolls, rents, fines, commissions, fees, and other revenues arising from any source in the public works, including the purchase or rental of property, except that

[14] R.C. 3345.69.

[15] R.C. 123.01(A)(14) and (15) and 123.22(E).

[16] R.C. 123.01(A)(16) and 123.22(F).

[17] R.C. 123.04.

[18] R.C. 123.26.

the Director may not collect a commission or fee from a real estate broker or a private owner when real property is leased or rented to the state.[19]

- Receive mandatory reports from public entities about the completion of state-funded capital facilities projects, except from the Ohio School Facilities Commission, the Ohio Public Works Commission, the Ohio Cultural Facilities Commission, and for any project for which the Ohio Facilities Construction Commission has entered into a joint use agreement;

- Receive mandatory reports from the Attorney General about any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered;[20]

- Order the payment of claims against the state for the improvement of the public works of the state, including the salary and expenses of all employees engaged in the work;[21]

- Declare a public exigency when an injury or obstruction occurs in any public works of the state that materially impairs its immediate use or places in jeopardy property adjacent to it, when an immediate danger of such an injury or obstruction exists, or when an injury or obstruction, or the immediate danger of an injury or obstruction, occurs during the construction of any public works and immediately impairs its immediate use or places in jeopardy property adjacent to it. In the case of a public exigency, the Ohio Facilities Construction Commission may enter into the necessary contracts without competitive bidding or selection. The Executive Director of the Ohio Facilities Construction Commission must notify the Director of Budget and Management and the Controlling Board before any project may begin.[22] The Director of Administrative Services retains the power to declare a public exigency under the same standards and procedures for any public works that is maintained by the Director of Administrative Services. In that case, the Director of Administrative Services may request the Ohio Facilities Construction Commission to enter into the necessary contracts without competitive bidding or

[19] R.C. 123.05.

[20] R.C. 123.27.

[21] R.C. 123.09.

[22] R.C. 123.23.

selection, but the Director may not independently enter into these contracts.[23]

- Construct, reconstruct, enlarge, improve, alter, repair, paint, or decorate for a state entity any capital facility that is financed by the Ohio Building Authority, but that the Ohio Building Authority has not constructed, reconstructed, rehabilitated, remodeled, renovated, enlarged, improved, altered, maintained, equipped, furnished, repaired, painted, or decorated. The Department, or with the consent of the Department, the state entity that is using the facility, is responsible to rehabilitate, remodel, renovate, maintain, equip, or furnish the facility.[24]

- Investigate alleged violations of the requirement that steel products used in constructing state-funded projects be made in the United States and refer violations to the Attorney General for a civil action;[25]

- Debar a contractor from contract awards for projects or public improvements, upon proof that the contractor has committed certain violations;[26]

- Prescribe the materials, forms, and procedures that contractors should use to prepare plans, details, bills of material, specifications of work, cost estimates, life-cycle cost analyses, bids, and other information;[27]

- Make orders regarding the form and phraseology of public notices of bidding for contracts, make orders determining in which newspapers or by what electronic means the notices must appear, and make rules regarding the electronic broadcast of public bid openings;[28]

[23] R.C. 123.10.

[24] R.C. 152.18.

[25] R.C. 153.011.

[26] R.C. 153.02.

[27] R.C. 153.04 and 153.06.

[28] R.C. 153.06, 153.07, 153.08, and 153.09.

- Make copies of plans, details, estimates of cost, and specifications available for public inspection during the period of publication and bidding;[29]

- Establish alternative dispute resolution procedures to resolve disputes between contractors and the state regarding the terms of public improvement contracts or the breach of such a contract, before the contractor may bring an action in the Court of Claims;[30]

- Establish policy and procedure guidelines for contract documents in conjunction with the administration of public works contracts that the state or any state institution enters into;[31]

- Under certain circumstances, give permission to the owner of a project to employ additional workers or to obtain additional materials when a contractor neglects the project or does not meet the terms of the contract;[32]

- Authorize without Controlling Board approval the expenditure, for the purposes of completing a project, of any money gained because of the forfeiture of a surety bond when a contractor defaults on the project contract;[33]

- Adopt rules regarding the procedures and criteria for determining the best value selection of a design-build firm or a construction manager at risk; set standards to be followed by construction managers at risk and by design-build firms when establishing prequalification criteria for prospective bidders on subcontracts to be performed under the construction management or design-build contract; prescribe the form for contract documents to be used by a general contractor, a construction manager at risk, or a design-build firm when entering into a subcontract; and prescribe the form for contract documents to be used by a public

[29] R.C. 153.07.

[30] R.C. 153.12.

[31] R.C. 153.16.

[32] R.C. 153.17(A).

[33] R.C. 153.17(B).

authority when entering into a contract with a design-build firm or a contract manager at risk;[34]

- Every five years, evaluate and adjust for inflation the monetary threshold for a project that triggers the necessity to commission an architect or engineer to draw up certain plans, details, specifications, cost estimates, and life-cycle cost analyses;[35]

- With the Director of Administrative Services, ensure that no capital money appropriated by the General Assembly for any purpose is expended unless the project for which the money was appropriated provides for an affirmative action program for the employment and effective utilization of persons who are disadvantaged because of their cultural, racial, or ethnic background or other similar causes, including their race, religion, sex, disability, military status, national origin, or ancestry;[36]

- With the Chancellor of the Ohio Board of Regents, develop criteria to determine whether a state university, state community college, or Northeast Ohio Medical University that is certified under the Local Administration Competency Certification Program and that meets other qualifications may administer, without the supervision, control, or approval of the Ohio Facilities Construction Commission, a capital facilities project for which the General Assembly has appropriated funds;[37]

- With the Chancellor of the Ohio Board of Regents, develop criteria for and approve requests for any state university, state community college, or Northeast Ohio Medical University that is not certified under the Local Administration Competency Certification Program to administer, without the supervision, control, or approval of the Ohio Facilities Construction Commission, capital facilities projects for which the General Assembly's appropriation does not exceed $4 million;[38]

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[34] R.C. 153.502 and 153.503.

[35] R.C. 153.01 and 153.53.

[36] R.C. 153.59.

[37] R.C. 123.24 and 3345.51.

[38] R.C. 3345.50.

- Administer a capital facilities project when the Chancellor of the Ohio Board of Regents has revoked the institution's authority to administer the project;[39]

- Provide for the construction of cultural projects, except for projects administered by the Ohio Cultural Facilities Commission or its designee;[40]

- Provide for the construction of halfway house facilities, except that the Department of Rehabilitation and Correction may administer these projects.[41]

Transitional provisions

The bill provides for the Ohio Facilities Construction Commission to assume the powers and obligations of, and to continue the operations and management of the Office of the State Architect and Engineer. Because the Office of Energy Services is a division within the Office of the State Architect and Engineer, the term "Office of the State Architect and Engineer" as it is used in these transitional provisions appears to include the Office of Energy Services.

All employees of the Office of the State Architect and Engineer are to be transferred to the Ohio Facilities Construction Commission as the Commission determines to be necessary.

The bill provides that all statutory references to the Office of the State Architect and Engineer are deemed to refer to the Ohio Facilities Construction Commission, and that all judicial and administrative actions will proceed with the Ohio Facilities Construction Commission being substituted as a party for the Office of the State Architect and Engineer. The Ohio Facilities Construction Commission must complete any activities related to operations functions that are not completed by the Office of the State Architect and Engineer on the date of transfer with the same effect as if completed by the Office of the State Architect and Engineer.

The bill specifies that notwithstanding any provision of continuing law to the contrary, and if requested by the Commission, the Director of Budget and Management is to make budget changes necessitated by the transfer, if any, including administrative organization, program transfers, the creation of new funds, the transfer of state funds,

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[39] R.C. 3345.51(E).

[40] R.C. 3383.07.

[41] R.C. 5120.105.

and the consolidation of funds. The bill appropriates established encumbrances plus any additional amounts determined to be necessary for the Ohio Facilities Construction Commission to perform the construction, energy, and capital funding operation functions of the Office of State Architect and Engineer.

The bill also requires, not later than 30 days after the transfer and consolidation of the construction, energy, and capital funding operations function of the Office of State Architect and Engineer to the Ohio Facilities Construction Commission, an authorized officer to certify to the Ohio Facilities Construction Commission the unexpended balance and location of any funds and accounts designated for building and facility operation and management functions, and the custody of the funds and accounts is to be transferred to the Commission.

Finally, the bill requires the Ohio Facilities Construction Commission and the Department of Natural Resources (DNR) to cooperate in a study to determine which operation functions, if any, of the DNR Division of Engineering should be integrated and consolidated into the Commission. The study must be completed not later than December 31, 2012.[42]

Other changes to facilities construction law

The bill requires that when a proposed change to the plans, details, bills of material, or specifications of a project are approved, accepted, and filed, the alterations are considered as being a part of the original contract, but the bond that the contractor executed for the purposes of the contract must be increased or decreased to cover the change in the contract. Under existing law, the original bond is considered to cover the change in the contract.[43]

Civil service law

(R.C. 124.04, 124.06, 124.11, 124.12, 124.14, 124.241, 124.231, 124.241, 124.25, 124.26, 124.27, 124.30, and 124.31)

The bill modifies the authority of the Department of Administrative Services (DAS) with respect to certain provisions of civil service law. These modifications generally regard the authority over the examination for and classification of positions. The authority is modified to be applicable with respect only to positions in the classified

[42] Section 701.70.10.

[43] R.C. 153.11.

service of the state.[44] Under current law, DAS authority for these provisions extends to all positions in the classified state service, which, in addition to the state, includes the counties and general health districts. The modified authorities concern:

(1) Preparation, conduct, and grading of all competitive and noncompetitive examinations;

(2) Preparation of eligible lists containing the names of persons who are qualified for appointment to positions;

(3) Allocation, reallocation, and classification of positions;

(4) Development and conduct of personnel recruitment services;

(5) Development and conduct of personnel training programs;[45]

(6) The manner and means for appointment, removal, transfer, layoff, suspensions, reinstatements, promotions, or reductions of officers or employees;[46]

(7) Development of written descriptions of the nature of employment in the unclassified civil service;[47]

(8) Formal application requirements;[48]

(9) Preparation of eligible lists from the returns of examinations;[49]

(10) Protocols for appointments from an eligible list, and original and promotional appointments;[50]

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[44] "Service of the state" or "civil service of the state" includes all offices and positions of trust or employment with the government of the state. "Service of the state" and "civil service of the state" do not include offices and positions of trust or employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, or civil service townships of the state, or with JobsOhio (R.C. 124.01, not in the bill).

[45] R.C. 124.04.

[46] R.C. 124.06.

[47] R.C. 124.12(C).

[48] R.C. 124.25.

[49] R.C. 124.26.

[50] R.C. 124.27 and 124.31.

(11) Protocols for filling positions without competitive examination;[51]

(12) The requirement for special examinations to be administered to legally blind or legally deaf persons.[52]

Under continuing law, municipal civil service commissions must prepare, amend, and enforce rules that are not inconsistent with the Civil Service Act that applies to the state classified service.[53]

The bill modifies the protocol for appointment from an eligible list. Under current law an appointing authority generally must select from a name that ranks in the top 25% of the eligible list, or, if the entire list is ten or fewer names, from any name on the list. The bill permits an appointing authority alternatively to select from a name in the top ten of the eligible list when the top 25% of the eligible list is ten or fewer names.[54]

The bill modifies state civil service law[55] with respect to the official who is authorized to find that it is impracticable, for certain positions, to determine fitness by competitive examination. Under current law, the Director of Administrative Services must find it impracticable to determine by competitive examination the fitness for these positions. The bill specifies that any appointing authority, rather than only the Director, possesses the authority to make such a determination. The positions effected by this change include bailiffs, constables, official stenographers, and commissioners of courts of record, deputies of clerks of the courts of common pleas who supervise or who handle public moneys or secured documents, officers and employees of courts of record and of deputies of clerks of the courts of common pleas.[56]

The bill authorizes the Director to appoint a designee to register applicants in the unskilled labor class.[57] Under continuing law, the classified service consists of two classes, designated as the competitive class and the unskilled labor class.

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[51] R.C. 124.30.

[52] R.C. 124.231.

[53] R.C. 124.40 (not in the bill).

[54] R.C. 124.27(A).

[55] Chapter 124. of the Revised Code.

[56] R.C. 124.11(A)(10).

[57] R.C. 124.11(B)(2).

The bill clarifies civil service law with respect the right of an employee in the unclassified service to resume a position in the classified service. Under continuing law, a person who holds a position in the classified service and who is appointed to a position in the unclassified service, retains the right to resume the position and status held by the person in the classified service immediately prior to the person's appointment to the position in the unclassified service. The employee's right to resume the position in the classified service may be exercised only when the appointing authority has demoted the employee to a pay range lower than the employee's current pay range or revoked the employee's appointment to the unclassified service. The bill specifies also that the employee must have either held a certified position prior to July 1, 2007, in the classified service within the appointing authority's agency, or held a permanent position on or after July 1, 2007, in the classified service within the appointing authority's agency.[58]

The bill eliminates the authority of the Director to establish, modify, or rescind a job classification plan for county agencies that elect not to use the services of the county personnel department. Under continuing law, the Director must establish, and may modify or rescind, a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state.[59]

The bill modifies the law with respect to the right of a classified employee to request that the Director perform a job audit to review the classification of the employee's position. Under current law, this right is available to any classified employee, which presumably includes employees in the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships. The bill specifies that the right to request a job audit applies to only classified employees in the service of the state.[60]

The bill modifies the law with respect to the authority for county agencies to contract with DAS for human resources services. The bill expressly authorizes county agencies to contract with DAS for any human resources services, including, but not limited to, establishment and modification of job classification plans, competitive testing services, and periodic audits and reviews to guarantee the county's uniform application of the powers, duties, and functions specified in state and county personnel

[58] R.C. 124.11(D).

[59] R.C. 124.14(A)(5).

[60] R.C. 124.14(D)(2).

law[61] with regard to employees in the service of the county.[62] The provisions of the bill expressly do not modify the powers and duties of the State Personnel Board of Review with respect to employees in the service of a county or limit the right of any employee who possesses the right of appeal to the State Personnel Board of Review to continue to possess that right of appeal.

The bill eliminates the authority of the Director, by rule, to require county personnel departments to adhere to merit system principles with regard to employees of certain county agencies so that there is no loss of federal funding. Instead, the bill expressly requires a county to adhere to these principles, and makes the county financially liable to the state for the loss of federal funding due to the action or inaction of the county personnel department.[63]

Study teleconferencing and web conferencing for state government

(Section 701.41)

The bill requires the Department of Administrative Services to study optimizing the use of teleconferencing and web conferencing to reduce travel expenses in state government. The bill specifies that the Department is to assess current teleconferencing capabilities within state government operations, research industry standards and best practices, and make recommendations that will optimize the use of these technologies. The Department must report its findings not later than December 31, 2012, to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Governor.

Compressed Natural Gas Study Committee

(Section 701.80)

The bill creates the Compressed Natural Gas Study Committee to examine the use of compressed natural gas in the motor vehicle fleets of the state and political subdivisions (a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state). The Committee consists of two Senate members, of different political parties, appointed by the Senate President; two members of the House of Representatives, of different political parties, appointed by the Speaker of the House of

[61] Sections 124.01 to 124.64 and Chapter 325. of the Revised Code.

[62] R.C. 124.14(G)(2)(c) and (H).

[63] R.C. 124.14(G)(6).

Representatives; one person appointed by the Governor who must be an Ohio resident and have knowledge of or experience in the use of alternative motor vehicle fuels; the Director of Administrative Services or the Director's designee; and the Director of Transportation, or the Director's designee.

The initial Committee appointments must be made not later than 30 days after the effective date of the provision creating the Committee. The Committee must select a chairperson, a vice-chairperson, and a secretary from among its members. Committee members serve without compensation but must be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

The Committee must examine the feasibility, budgetary effect, and return on investment from using compressed natural gas in the motor vehicle fleets of the state and political subdivisions, including transit fleets. In examining the potential return on investment, the Committee must consider the impact of converting all or part of the different motor vehicle fleets over a period of two to four years and also must develop various proposals for funding the conversion of the motor vehicle fleets. The Committee must utilize any information collected by the Department of Administrative Services as part of its fleet management and current requirements concerning use of alternative fuels. The Committee may conduct public hearings and may hire consultants or experts and other persons considered necessary to fulfill its duties.

Not later than six months after the last initial Committee appointment is made, the Committee must issue its findings and recommendations on using compressed natural gas to fuel the motor vehicle fleets, including any recommendation for funding the conversion to compressed natural gas. It must furnish copies of its report to the Governor, the Senate, and the House of Representatives. Upon issuing its report, the Committee ceases to exist.

DEPARTMENT OF AGING (AGE)

Criminal records checks

- Revises the law governing criminal records checks for employment positions with the Office of the State Long-Term Care Ombudsperson Program.

- Permits the Director of the Ohio Department of Aging (ODA) to adopt rules that require employees of the Office to undergo criminal records checks and database reviews.

- Creates a database review process regarding employment positions with the Office.

- Provides that a criminal records check for an employment position with the Office is not required for an applicant or employee found by a database review to be ineligible for the position.

- Revises the list of disqualifying offenses that may make an individual ineligible for an employment position with the Office.

- Revises the law governing criminal records checks for employment positions with community-based long-term care agencies.

- Permits the ODA Director to adopt rules that require employees of community-based long-term care agencies to undergo criminal records and database reviews.

- Creates a database review process regarding employment positions with community-based long-term care agencies.

- Provides that a criminal records check for an employment position with a community-based long-term care agency is not required for an applicant or employee found by a database review to be ineligible for the position.

- Revises the list of disqualifying offenses that may make an individual ineligible for an employment position with a community-based long-term care agency.

Legal representation

- Requires the Attorney General to provide legal counsel to the Office of the State Long-Term Care Ombudsperson Program and to represent any representative of the Office against whom any legal action is brought in connection with the representative's duties, in place of ODA's existing duty to ensure that legal counsel is available and legal representation is provided for these purposes.

- Requires the Attorney General to provide legal counsel to the regional long-term care ombudsperson programs and to represent any representative of a regional program against whom any action is brought in connection with the representative's official duties.

PASSPORT

- Limits to 90 days, rather than three months, the time an individual may participate in the state-funded component of the PASSPORT program on the basis that the individual's application for the Medicaid-funded component of PASSPORT (or the potential replacement program called the Unified Long-Term Services and Support Medicaid waiver program) is pending while a determination is being made of whether the individual meets the financial eligibility requirements.

Home First

- Eliminates a provision under which an individual may potentially qualify for the Assisted Living Program's Home First component on the basis that the individual resided in a residential care facility for at least six months immediately before applying for the Assisted Living Program and is at risk of imminent admission to a nursing facility because the costs of residing in the residential care facility have depleted the individual's resources such that the individual is unable to continue to afford that cost.

Aging in Place pilot program

- Requires the Department of Aging to establish the Aging in Place pilot program in Butler, Clermont, Hamilton, and Warren counties.

- Provides for the pilot program to be operated for two years.

- Provides for up to 180 eligible individuals to enroll in the pilot program to receive home repairs and modifications.

- Requires the Department of Aging to contract with a 501(c)(3) organization that provides professional and critical home repair and modification services and meets other requirements to administer the pilot program.

- Requires the Aging in Place administrator to seek nongovernmental funds to help pay the costs of the pilot program.

- Requires the Department of Job and Family Services to seek a federal Medicaid waiver to make the pilot program part of the Medicaid program but requires the Department of Aging to establish it as a non-Medicaid program if the federal waiver is denied.

State Long-Term Care Ombudsperson Program criminal records checks

(R.C. 173.27 (primary), 109.57, and 109.572)

The bill revises the law governing criminal records checks for employment positions with the Office of the State Long-Term Care Ombudsperson Program.

Current law requires the State Long-Term Care Ombudsperson or the Ombudsperson's designee to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of each

applicant. An applicant is a person under final consideration for employment with the Office in a full-time, part-time, or temporary position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients. Volunteers are not included. If the person is applying to be the State Long-Term Care Ombudsperson, the Director of the Ohio Department of Aging (ODA) is to request the criminal records check.

Employees subject to database reviews and criminal records checks

The bill permits the ODA Director to adopt rules that require employees to undergo criminal records checks. The rules also may require employees to undergo database reviews that the bill creates (see "**Database reviews**," below). An employee is a person employed by the Office in a full-time, part-time, or temporary position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients. Volunteers are not included. The ODA Director may exempt one or more classes of employees from the database review and criminal records check requirements. If the rules require employees to undergo database reviews and criminal records checks, the rules must specify the times at which the database reviews and criminal records checks are to be conducted.

Continuing law permits the Office to charge an applicant a fee regarding a criminal records check if the Office notifies the applicant of the fee at the time the applicant initially applies for employment. The fee may not exceed the amount that the Office pays to BCII for the criminal records check. The bill does not authorize the Office to charge an employee a fee regarding a criminal records check.

The Office may not employ an applicant who fails to complete a BCII criminal records check form or to provide fingerprint impressions on a BCII standard impression sheet. Under the bill, the Office also is prohibited from continuing to employ an employee who fails to complete the form or provide the employee's fingerprint impressions on the BCII impression sheet.

Database reviews

The bill creates a database review process. An applicant is to undergo a database review as a condition of employment with the Office in a position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients. If the ODA Director's rules so require, an employee is to undergo a database review as a condition of continuing employment with the Office in such a position. A database review is to determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by the Department of Health;

(7) Any other database, if any, the ODA Director is permitted to specify in rules.

The bill prohibits the Office from employing an applicant or continuing to employ an employee if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates;

(2) There is in the state nurse aide registry a statement detailing findings by the Director of Health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(3) The applicant or employee is included in one or more of the other databases that the ODA Director may specify in rules and the rules prohibit the Office from employing an applicant or employee included in such a database in a position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients.

An applicant or employee is not required to undergo a criminal records check in addition to a database review if the applicant or employee is found by the database review to be ineligible for the job.

The State Long-Term Care Ombudsperson or the Ombudsperson's designee is required to inform each applicant that a database review will be conducted to determine whether the Office is prohibited from employing the applicant. The Ombudsperson or designee also must inform each applicant about the criminal records check requirement. The ODA Director is to provide the information to an applicant for employment as the Ombudsperson.

The Office is permitted by current law to employ conditionally an applicant before obtaining the results of the applicant's criminal records check if the criminal records check is requested not later than five business days after the applicant begins conditional employment. The bill prohibits the Office from conditionally employing an applicant who is found by a database review to be ineligible for the job.

Disqualifying offenses

Current law prohibits the Office from employing a person in a position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients if the person has been convicted of or pleaded guilty to certain disqualifying offenses. However, the Office may employ such a person in such a position if the person meets personal character standards set by the ODA Director in rules. Under the bill, the Office may not employ an applicant or continue to employ an employee in such a position if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense unless the applicant or employee meets personal character standards specified in rules to be adopted by the ODA Director.

The following is a list of the disqualifying offenses (an asterisk indicates that an offense is not currently a disqualifying offense):

(1) Cruelty to animals (R.C. 959.13)*; cruelty against a companion animal (R.C. 959.131)*; aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041)*; felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15)*; failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211)*; menacing (R.C. 2903.22)*; patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341)*; kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05)*; extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04)*; sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08);

public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21)*; promoting prostitution (R.C. 2907.22)*; procuring (R.C. 2907.23)*; soliciting (R.C. 2907.24)*; prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33)*; aggravated arson (R.C. 2909.02)*; arson (R.C. 2909.03)*; disrupting public service (R.C. 2909.04)*; support of terrorism (R.C. 2909.22)*; terroristic threats (R.C. 2909.23)*; terrorism (R.C. 2909.24)*; aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05)*; passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32)*; Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41)*; tampering with records (R.C. 2913.42)*; securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44)*; unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441)*; defrauding creditors (R.C. 2913.45)*; illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46)*; insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48)*; identity fraud (R.C. 2913.49)*; recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01)*; aggravated riot (R.C. 2917.02)*; riot (R.C. 2917.03)*; inducing panic (R.C. 2917.31)*; abortion without informed consent (R.C. 2919.12)*; unlawful abortion (R.C. 2919.121)*; unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123)*; endangering children (R.C. 2919.22)*; interference with custody (R.C. 2919.23)*; contributing to unruliness or delinquency (R.C. 2919.24)*; domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03)*; perjury (R.C. 2921.11); falsification (R.C. 2921.13)*; compounding a crime (R.C. 2921.21)*; disclosure of confidential information (R.C. 2921.24)*; assaulting police dog, horse, or assistance dog (R.C. 2921.321)*; escape (R.C. 2921.34)*; aiding escape or resistance to authority (R.C. 2921.35)*; prohibited conveying of certain items onto property of state facilities (R.C. 2921.36)*; impersonation of certain officers (R.C. 2921.51)*; carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122)*; illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123)*; having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162)*; improperly furnishing firearms to minor (R.C. 2923.21)*; engaging in a pattern of corrupt activity (R.C. 2923.32)*; criminal gang activity (R.C. 2923.42)*; corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of

drugs or cultivation of marihuana (R.C. 2925.04)*; illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041)*; funding of drug or marihuana trafficking (R.C. 2925.05)*; illegal administration or distribution of anabolic steroids (R.C. 2925.06)*; sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09)*; drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14)*; deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24)*; illegal dispensing of drug samples (R.C. 2925.36)*; unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55)*; unlawful sale of a pseudoephedrine product (R.C. 2925.56)*; ethnic intimidation (R.C. 2927.12)*; adulteration of food (R.C. 3716.11); felonious sexual penetration in violation of former law (former R.C. 2907.12)*; a violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04)*;

(2) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) above;

(3) A violation of an existing or former municipal ordinance* or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) or (2) above.

Release of criminal records check report

Continuing law provides that a criminal records check report is not a public record and may be released only to certain persons. The bill provides that a report may be released to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid or a program ODA administers.

Community-based long-term care agency criminal records checks

(R.C. 173.394 (primary), 109.57, 109.572, and 173.391; Sections 610.10, 610.11, and 751.20)

The bill revises the law governing criminal records checks for employment positions with community-based long-term care agencies.

Current law requires applicants to undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation (BCII). An applicant is a person under final consideration for employment with a community-based long-term care agency in a full-time, part-time, or temporary position that involves providing direct care to an individual. The bill provides that the following is also an applicant: a person who is referred to a community-based long-term care agency by an employment

service for a position that involves providing direct care to an individual. Continuing law provides that volunteers are not applicants and, therefore, are not included in the criminal records check requirements.

Generally, the chief administrator of a community-based long-term care agency is the one who must request that BCII conduct a criminal records check for an applicant. Current law provides that a chief administrator does not have to make the request for an applicant referred to the agency by an employment service if (1) the chief administrator receives from the employment service or applicant a criminal records check report regarding the applicant that BCII conducted within the one-year period immediately preceding the applicant's referral and (2) the report demonstrates that the applicant has not been convicted of or pleaded guilty to a disqualifying offense or, despite having been convicted of or pleaded guilty to a disqualifying offense, the applicant meets personal character standards specified in rules adopted by the Ohio Department of Aging (ODA).

Employees subject to database reviews and criminal records checks

The act that established the criminal records check requirement for community-based long-term care agency applicants, Am. Sub. S.B. 160 of the 121st General Assembly, provided that the requirement applies only to persons seeking employment on or after January 27, 1997. The bill eliminates this exemption and permits the ODA Director to adopt rules that require employees to undergo criminal records checks. The rules also may require employees to undergo database reviews that the bill creates (see "**Database reviews**," below). An employee is a person employed by a community-based long-term care agency in a full-time, part-time, or temporary position that involves providing direct care to an individual and a person who works in such a position due to being referred to an agency by an employment service. Volunteers are not included. The ODA Director may exempt one or more classes of employees from the database review and criminal records check requirements. If the rules require employees to undergo database reviews and criminal records checks, the rules must specify the times at which the database reviews and criminal records checks are to be conducted.

Continuing law permits a community-based long-term care agency to charge an applicant a fee regarding a criminal records check if the agency notifies the applicant of the fee at the time the applicant initially applies for employment and Medicaid does not reimburse the agency the fee it pays for the criminal records check. The fee may not exceed the amount that the agency pays to BCII for the criminal records check. The bill does not authorize an agency to charge an employee a fee regarding a criminal records check.

A community-based long-term care agency may not employ an applicant who fails to complete a BCII criminal records check form or to provide fingerprint impressions on a BCII standard impression sheet if the agency provides the form and impression sheet to the applicant. Under the bill, an agency also is prohibited from continuing to employ an employee who fails to complete the form or provide the employee's fingerprint impressions on the BCII impression sheet if the agency provides the form and impression sheet to the employee.

Database reviews

The bill creates a database review process. An applicant is to undergo a database review as a condition of employment with a community-based long-term care agency in a position that involves providing direct care to an individual. If the ODA Director's rules so require, an employee is to undergo a database review as a condition of continuing employment with an agency in such a position. A database review is to determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by the Department of Health;

(7) Any other databases, if any, the ODA Director is permitted to specify in rules.

The bill prohibits an agency from employing an applicant or continuing to employ an employee if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's

Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates;

(2) There is in the state nurse aide registry a statement detailing findings by the Director of Health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(3) The applicant or employee is included in one or more of the other databases that the ODA Director may specify in rules and the rules prohibit an agency from employing an applicant or employee included in such a database in a position that involves providing direct care to an individual.

An applicant or employee is not required to undergo a criminal records check in addition to a database review if the applicant or employee is found by the database review to be ineligible for the job.

The chief administrator of a community-based long-term care agency is required to inform each applicant that a database review will be conducted to determine whether the agency is prohibited from employing the applicant. The chief administrator also must inform each applicant about the criminal records check requirement. However, the notification requirement may not apply if the applicant is referred by an employment service (see "**Referrals by an employment service**," below).

A community-based long-term care agency is permitted by current law to employ conditionally an applicant before obtaining the results of the applicant's criminal records check if the criminal records check is requested not later than five business days after the applicant begins conditional employment. The bill prohibits an agency from conditionally employing an applicant who is found by a database review to be ineligible for the job.

Referrals by an employment service

The bill maintains provisions of current law regarding applicants who are referred to community-based long-term care agencies by employment services and applies the provisions to database reviews and employees who work at agencies due to being referred by employment services. Under these provisions, an agency is not required to subject an applicant or employee to a database review or criminal records check if the applicant or employee is referred to the agency by an employment service and both of the following apply:

(1) The agency's chief administrator receives from the employment service confirmation that a database review was conducted of the applicant or employee;

(2) The chief administrator receives from the employment service, applicant, or employee a report of the results of a criminal records check of the applicant or employee that has been conducted by BCII within the one-year period immediately preceding the following:

(a) In the case of an applicant, the date of the applicant's referral by the employment service to the agency;

(b) In the case of an employee, the date by which the agency would otherwise have to request a criminal records check of the employee.

Disqualifying offenses

Current law prohibits a community-based long-term care agency from employing a person in a position that involves providing direct care to an individual if the person has been convicted of or pleaded guilty to certain disqualifying offenses. However, an agency may employ such a person in such a position if the person meets personal character standards set by ODA in rules. Under the bill, an agency may not employ an applicant or continue to employ an employee in such a position if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense unless the applicant or employee meets personal character standards to be specified in rules adopted by the ODA Director.

The following is a list of the disqualifying offenses (an asterisk indicates that an offense is not currently a disqualifying offense):

(1) Cruelty to animals (R.C. 959.13)*; cruelty against a companion animal (R.C. 959.131)*; aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041)*; felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15)*; failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211)*; menacing (R.C. 2903.22)*; patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341)*; kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05)*; extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04)*; sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21)*; promoting prostitution (R.C. 2907.22)*; procuring (R.C. 2907.23)*; soliciting (R.C. 2907.24)*; prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31);

pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33)*; aggravated arson (R.C. 2909.02)*; arson (R.C. 2909.03)*; disrupting public service (R.C. 2909.04)*; support of terrorism (R.C. 2909.22)*; terroristic threats (R.C. 2909.23)*; terrorism (R.C. 2909.24)*; aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05)*; passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32)*; Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41)*; tampering with records (R.C. 2913.42)*; securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44)*; unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441)*; defrauding creditors (R.C. 2913.45)*; illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46)*; insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48)*; identity fraud (R.C. 2913.49)*; recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01)*; aggravated riot (R.C. 2917.02)*; riot (R.C. 2917.03)*; inducing panic (R.C. 2917.31)*; abortion without informed consent (R.C. 2919.12)*; unlawful abortion (R.C. 2919.121)*; unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123)*; endangering children (R.C. 2919.22)*; interference with custody (R.C. 2919.23)*; contributing to unruliness or delinquency (R.C. 2919.24)*; domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03)*; perjury (R.C. 2921.11); falsification (R.C. 2921.13)*; compounding a crime (R.C. 2921.21)*; disclosure of confidential information (R.C. 2921.24)*; assaulting police dog, horse, or assistance dog (R.C. 2921.321)*; escape (R.C. 2921.34)*; aiding escape or resistance to authority (R.C. 2921.35)*; prohibited conveying of certain items onto property of state facilities (R.C. 2921.36)*; impersonation of certain officers (R.C. 2921.51)*; carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122)*; illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123)*; having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162)*; improperly furnishing firearms to minor (R.C. 2923.21)*; engaging in a pattern of corrupt activity (R.C. 2923.32)*; criminal gang activity (R.C. 2923.42)*; corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04)*; illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041)*; funding of drug or marihuana trafficking (R.C. 2925.05)*; illegal administration or distribution of

anabolic steroids (R.C. 2925.06)*; sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09)*; drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14)*; deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24)*; illegal dispensing of drug samples (R.C. 2925.36)*; unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55)*; unlawful sale of a pseudoephedrine product (R.C. 2925.56)*; ethnic intimidation (R.C. 2927.12)*; adulteration of food (R.C. 3716.11); felonious sexual penetration in violation of former law (former R.C. 2907.12)*; a violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04)*;

(2) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) above;

(3) A violation of an existing or former municipal ordinance* or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) or (2) above.

Release of criminal records check report

Continuing law provides that a criminal records check report is not a public record and may be released only to certain persons. The bill provides that a report may be released to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid or a program ODA administers.

Legal representation for long-term care ombudsperson programs

(R.C. 173.23)

The bill requires the Attorney General to provide legal counsel to the Office of the State Long-Term Care Ombudsperson Program and to represent any representative of the Office against whom any legal action is brought in connection with the representative's duties. Under current law, the Department of Aging is required to ensure that this legal counsel is available for advice and consultation and that this legal representation is provided.

The bill also requires the Attorney General to provide legal counsel to the regional long-term care ombudsperson programs and to represent any representative of a regional program against whom any action is brought in connection with the representative's official duties. Existing law does not require this legal counsel and legal representation to be provided.

State-funded component of the PASSPORT Program

(R.C. 173.40)

The bill revises the period of time that an individual may participate in the state-funded component of the PASSPORT program on the basis that the individual's application for the Medicaid-funded component of PASSPORT (or the potential replacement program called the Unified Long-Term Services and Support Medicaid waiver program) is pending while a determination is being made of whether the individual meets the financial eligibility requirements. Under the bill, an individual may participate in the state-funded component on that basis for 90 days rather than three months.

Assisted Living Program's Home First component

(R.C. 5111.894)

The bill revises the eligibility requirements for the Assisted Living Program's Home First component. The Home First process enables individuals meeting certain requirements to be enrolled in the Assisted Living Program ahead of others.

To qualify for the Assisted Living Program's Home First component, an individual must have been determined to be eligible for the Medicaid-funded component of the Assisted Living Program and must be in at least one of five circumstances. The bill eliminates one of the circumstances with the result that an individual must be in one of four circumstances. Under the circumstance that is eliminated, an individual must have resided in a residential care facility for at least six months immediately before applying for the Assisted Living Program and have been at risk of imminent admission to a nursing facility because the costs of residing in the residential care facility had depleted the individual's resources such that the individual was unable to continue to afford the cost of residing in a residential care facility.

Aging in Place pilot program

(Section 751.15)

The bill requires the Department of Aging to establish the Aging in Place pilot program in Butler, Clermont, Hamilton, and Warren counties. Up to 180 individuals may enroll in the pilot program to receive home repairs and modifications that are covered by the pilot program. The pilot program is to be operated for two years.

Eligibility

The bill establishes eligibility requirements for the Aging in Place pilot program. To be eligible, an individual must meet all of the following requirements:

(1) The individual must be at least 50 years of age or a veteran of any age. ("Veteran" is defined as (1) a former member of the U.S. armed forces who served on active military duty and received an honorable discharge or honorable separation or (2) a member of the U.S. Army or Navy Transport Service who has an honorable report of separation from the active duty military service, form DD214 or DD215.)

(2) The individual must be a resident of one of the counties in which the pilot program is established.

(3) The individual must reside in a private residence that is not a nursing home, residential care facility, residential facility for persons with mental illness, residential facility for persons with mental retardation or developmental disabilities, or other facility that may not operate legally without a license, certificate, or other authority issued by a state or local government agency.

(4) The individual or a member of the individual's household must own the private residence in which the individual resides.

(5) The individual must be at risk of moving to a nursing home or residential care facility due to a medical condition.

(6) The private residence in which the individual resides must be in need of a repair or modification covered by the pilot program.

(7) The individual must meet any other requirements specified in rules the Director of Aging is to adopt.

Covered services

The Aging in Place pilot program is to cover home repairs and modifications that the Director of Aging is to specify in rules.

Aging in Place administrator

The Department of Aging is required by the bill to contract with an organization meeting certain requirements to administer the Aging in Place pilot program. To qualify to serve as the Aging in Place administrator, an organization must (1) have been founded not later than 1975, (2) provide professional and critical home repair and modification services to individuals who reside in the counties in which the pilot

program is established and have low incomes or are elderly or disabled, and (3) be exempt from federal income taxation as a 501(c)(3) organization.

Coordination with home health services

The Aging in Place administrator is permitted to help coordinate the home repairs and modifications provided under the Aging in Place pilot program with home health services that individuals enrolled in the pilot program receive under Medicaid or other programs.

Private and Medicaid funding

The Aging in Place administrator is required to seek nongovernmental funds to help pay the costs of the Aging in Place pilot program.

The Department of Job and Family Services is required to apply for a federal Medicaid waiver to make the pilot program a component of Medicaid. If the waiver is granted, the Department must enter into an interagency agreement with the Department of Aging regarding the Department of Aging's duties concerning the pilot program and the Department of Aging is to establish the pilot program as a Medicaid component. If the waiver is not granted, the Department of Aging must establish the pilot program as a non-Medicaid program.

Rules

The Director of Aging is required to adopt rules as necessary to implement the bill's provisions regarding the Aging in Place pilot program. If the pilot program is established as a Medicaid component, the Director of Job and Family Services must adopt any rules that are necessary for the Director of Aging to be able to adopt the rules for the pilot program.

Report

The bill requires the Department of Aging to prepare a report regarding the Aging in Place pilot program. The report must be prepared not later than 90 days after the pilot program's termination. On completion of the report, the Department must submit it to the Governor, Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and Director of the Legislative Service Commission. The report is to include the Department's findings regarding all of the following:

(1) The number of individuals in Ohio who would benefit from the services covered by the pilot program if the services were made available statewide;

(2) How governmental and nongovernmental resources can be leveraged most efficiently to make the service available statewide;

(3) The costs, if any, that Medicaid and other governmental health care programs would incur if the services were available statewide;

(4) The impact that the services would have on the quality of patient care and treatment;

(5) The impact that the services would have on the communities in which they would be provided;

(6) The overall costs and benefits to the state that the services would have.

DEPARTMENT OF AGRICULTURE (AGR)

- Eliminates various agriculture funds, including the Pilot Farmland Preservation Fund, and transfers any cash in those funds to the Indirect Cost Fund.
- Exempts the operation of a micro market from the licensure requirements for retail food establishments, food service operations, and vending machine locations established under the Retail Food Establishments and Food Service Operations Law until the Director of Agriculture adopts rules under that Law governing the licensure of micro markets, and defines "micro market."
- Requires the operator of a micro market, not later than 60 days following the adoption of the rules, to apply for a license.

Elimination of various agriculture funds

(R.C. 901.54; Section 211.10 of Am. Sub. H.B. 153 of the 129th General Assembly)

The bill eliminates the statutory creation of the Pilot Farmland Preservation Fund. The Fund consists of money received by the Office of Farmland Preservation in the Department of Agriculture and is used to leverage or match other farmland preservation funds provided from federal, local, or private sources. The bill provides for the transfer of any cash from the Fund to the Indirect Cost Fund.

In addition, the bill eliminates the following funds and provides for the transfer of any cash balances in them to the Indirect Cost Fund: (1) Federal Grants Fund, (2)

Specialty Crops Support Fund, (3) Fruits and Vegetables Fund, (4) Dairy Fund, (5) Animal Industry Fund, (6) Scale Certification Fund, (7) Weights and Measures Permits Fund, (8) Food Policy Council Fund, (9) Sustainable Agriculture Fund, (10) Farm Service Electronic Filing Fund, and (11) Seed Fund.

Exemption of micro markets from licensure under Retail Food Establishments and Food Service Operations Law

(Section 737.40)

The bill exempts the operation of a micro market from the licensure requirements for retail food establishments, food service operations, and vending machine locations established under the Retail Food Establishments and Food Service Operations Law until the Director of Agriculture adopts rules under that Law governing the licensure of micro markets. The exemption applies to a micro market that the Director has exempted under current law from being licensed as a retail food establishment. Not later than 60 days following the adoption of rules by the Director governing the licensure of micro markets, the operator of a micro market must apply for a license in accordance with those rules.

Under the bill, a micro market is an area or room that has displays of not more than 250 linear feet that offer either of the following:

(1) Prepackaged foods that are not time- or temperature-controlled for food safety purposes; or

(2) Prepackaged foods that are refrigerated or frozen and time- or temperature-controlled for food safety purposes and that are stored in equipment that complies with rules adopted under the Retail Food Establishments and Food Service Operations Law.

DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES (ADA)

- Requires the Ohio Department of Drug and Alcohol Addiction Services (ODADAS) to develop, administer, and revise as necessary a comprehensive statewide gambling addiction services plan.

- Renames the Council on Alcohol and Drug Addiction Services the "Council on Alcohol, Drug, and Gambling Addiction Services" and adds the following as members: (1) an individual who has received or is receiving gambling addiction services, and (2) the executive directors of the Casino Control Commission, the Lottery Commission, and the State Racing Commission.

- Includes veterans among the other examples of underserved groups to be addressed when ODADAS fulfills its existing duty to develop a comprehensive statewide alcohol and drug addiction services plan.

- Requires ODADAS to conduct a pilot program to provide to certain opioid-, alcohol-, or opioid- and alcohol-dependent offenders within the criminal justice system treatment that includes nonabusable and nondependency forming medication to prevent relapse.

Gambling addiction services planning

Comprehensive statewide gambling addiction services plan

(R.C. 3793.041)

The bill requires the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to develop, administer, and revise as necessary a comprehensive statewide gambling addiction services plan. The requirement is similar to ODADAS's existing duty to develop, administer, and revise as necessary a comprehensive statewide alcohol and drug addiction services plan.

The plan must provide for allocation and distribution of funds from the Problem Casino Gambling and Addictions Fund, which is described in the Ohio Constitution,[64] and any funding to be distributed by ODADAS for problem gambling.

The plan must specify the methodology that ODADAS will use for determining how the funds will be allocated and distributed. A portion of the funds must be allocated on the basis of the ratio of the population of each alcohol, drug addiction, and mental health service district to Ohio's total population as determined from the most recent federal census or the most recent official estimate made by the U.S. Census Bureau.

The plan must also ensure that gambling addiction services of a high quality are accessible to, and responsive to the needs of, all persons, especially those who are members of underserved groups, including (but not limited to) African Americans, Hispanics, Native Americans, Asians, juvenile and adult offenders, women, veterans, and persons with special services needs due to age or disability. The plan must include a program to promote and protect the rights of those who receive services.

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[64] Ohio Const., Art. XV, Sec. 6(C)(3)(g).

To aid in formulating the plan and in evaluating the effectiveness and results of gambling addiction services, ODADAS, in consultation with the Department of Mental Health, must establish and maintain an information system or systems. ODADAS must specify the information that has to be provided by boards of alcohol, drug addiction, and mental health services and by gambling addiction programs for inclusion in the system. ODADAS is prohibited from collecting any personal information from the boards except as required or permitted by state or federal law for purposes related to payment, health care operations, program and service evaluation, reporting activities, research, system administration, and oversight.

In consultation with boards, programs, and persons receiving services, ODADAS must establish guidelines for the use of funds allocated and distributed as described above.

Council on Alcohol, Drug, and Gambling Addiction Services

(R.C. 3793.09)

The bill renames the Council on Alcohol and Drug Addiction Services the "Council on Alcohol, Drug, and Gambling Addiction Services." The bill requires the Council to advise ODADAS in the development and implementation of the statewide plan for gambling addiction services and retains the Council's duty to advise ODADAS regarding the statewide plan for alcohol and drug addiction services.

The bill expands the Council's membership by four members. Specifically, the bill increases to 14 (from 13) the number of members appointed by the Governor. The one additional appointed member must be an individual who has received or is receiving gambling addiction services. The bill also increases to 13 (from 10) the members who are public officials. The additional public official members are the executive directors of the Casino Control Commission, the Lottery Commission, and the State Racing Commission.

Under current law, the Council's membership consists of the following:

--13 members appointed by the Governor with the advice and consent of the Senate. These must be representatives of boards of alcohol, drug addiction, and mental health services; the criminal and juvenile justice systems; and alcohol and drug addiction services.

--10 public official members: the Directors of Health, Public Safety, Mental Health, Rehabilitation and Correction, and Youth Services; the Superintendents of Public Instruction and Liquor Control; the Attorney General; the Adjutant General; and

the Executive Director of the Division of Criminal Justice Services in the Department of Public Safety.

Comprehensive statewide alcohol and drug addiction services plan

(R.C. 3793.04)

Similar to the bill's provisions regarding a statewide plan for gambling addiction services, current law requires ODADAS's comprehensive statewide alcohol and drug addiction services plan to ensure that high-quality services are accessible to, and responsive to the needs of, all persons, especially underserved groups. The bill adds veterans to the groups currently listed in statute as examples of underserved groups.

Pilot program for opioid and alcohol dependent offenders

(Section 737.70)

The bill requires ODADAS to conduct a pilot program to provide to certain opioid-dependent, alcohol-dependent, or opioid- and alcohol-dependent offenders within the criminal justice system treatment to prevent relapse into dependency, including medication-assisted treatment. The medication-assisted treatment must be provided by using one or more drugs that constitute long-acting antagonist therapy and meet all of the following conditions:

(1) There is no potential for abuse of the drugs by the person to whom they are given or through diversion of the drugs to others.

(2) There is no potential for a person to become addicted to or otherwise dependent on the drugs.

(3) The drugs have been approved by the federal Food and Drug Administration to prevent relapse into opioid dependency, alcohol dependency, or opioid and alcohol dependency.

Program requirements

ODADAS must conduct the program in Franklin and Scioto counties and may conduct the program in any one or more other counties it selects. In conducting the program, ODADAS must collaborate with the boards of alcohol, drug addiction, and mental health services that serve the counties included in the program. ODADAS also must collaborate with the Departments of Mental Health, Job and Family Services, and Health and with any other state agency that ODADAS determines may be of assistance in accomplishing the objectives of the program.

Program participants

The program must serve not more than 150 opioid-dependent or alcohol-dependent offenders selected by ODADAS, each of whom meets all of the following criteria:

(1) Is either being released from a community-based correctional facility or being diverted from prosecution by a county drug court or municipal court;

(2) Is transitioning to community-based programs as prescribed by the court;

(3) Was opioid dependent, alcohol dependent, or opioid and alcohol dependent at the time of committing the offense for which the offender was most recently sentenced;

(4) Resides in Ohio and in the offender's own court-approved residence or court-approved transitional housing.

A program participant must do both of the following:

--Commit to participate in the program for 12 months and comply with all requirements established by the program, including testing, counseling, medication therapies, and reporting requirements;

--Attend any on-site programming specified by the sentencing court or treatment provider.

Treatment provided by the program

Treatment under the program must be provided by an alcohol and drug addiction program certified by ODADAS. Treatment must be based on an integrated service delivery model. The treatment provider must do all of the following:

(1) Conduct a professional, comprehensive substance abuse and mental health diagnostic assessment of each person who is a potential program participant to determine whether the person is opioid dependent, alcohol dependent, or opioid and alcohol dependent and would benefit from substance abuse treatment and monitoring to address the dependency;

(2) Determine treatment needs for each program participant based on the diagnostic assessment;

(3) Develop individualized goals and objectives for each program participant that follow guidelines provided by ODADAS;

(4) Provide initial treatment to each program participant by persons professionally qualified to provide substance abuse counseling or treatment;

(5) Provide substance abuse and co-occurring disorder treatment that includes psychosocial therapies and monthly medication-assisted treatment;

(6) Provide access to long-acting antagonist therapies to the same extent that access may be provided to any other medication-assisted treatment approved by the federal Food and Drug Administration;

(7) Monitor program compliance through regular urinalysis drug testing.

Report of the program's findings

Not later than three months after the program has ended, Kent State University must prepare a report of the findings obtained from the program, along with its recommendations, if any. The University must include in the report data derived from the drug testing performed under the program. In preparing the report, the University must obtain assistance from ODADAS. When the report is complete, the University must submit the report to the Governor; President of the Senate; Speaker of the House of Representatives; Departments of Mental Health, Job and Family Services, and Health; and any other agency ODADAS collaborates with in conducting the program.

ATTORNEY GENERAL (AGO)

- Eliminates the requirements that: (1) a law enforcement agency that has any seized or forfeited property during any calendar year prepare and send to the Attorney General an annual report with respect to the agency's acquisition and disposition of that property, and (2) the Attorney General send a notice to the President of the Senate and Speaker of the House of Representatives of the Attorney General's receipt of the reports described in clause (1) and of the access to and availability of those reports.

- Changes the date by which the Attorney General is required to report on the Attorney General's operations with regard to Consumer Sales Practices Act, and on violations of that Act, to the Governor and the General Assembly from January 1 to January 31 of each year.

Law enforcement agency reports – seized or forfeited property

(R.C. 2981.11)

Current law

The current Forfeiture Law in R.C. Chapter 2981. generally applies to and governs both criminal and civil asset forfeitures to the state or a political subdivision relating to any act or omission that could be charged as a criminal offense or a delinquent act, whether or not a formal prosecution or delinquency proceeding began when a forfeiture is initiated. The Law does not apply to forfeitures under the Motor Vehicle Law or with respect to a few other specified types of property. Property that is subject to forfeiture under the Law is contraband involved in an offense, proceeds derived from or acquired through the commission of an offense, or an instrumentality used in or intended to be used in the commission or facilitation of specified category of offense when the use or intended use, consistent with specified factors, is sufficient to warrant forfeiture under the Law. The specified categories of offenses with respect to which the "instrumentality" provision applies are felonies, misdemeanors when forfeiture is specifically authorized by statute or ordinance, and attempts or conspiracies to commit or complicity in committing either of the prior specified categories. R.C. 2981.11 generally governs the custody and disposition of forfeited property and other specified types of property. Under the section:

(1) Any property that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited and that is in the custody of a law enforcement agency must be kept safely by the agency, pending the time it no longer is needed as evidence or for another lawful purpose, and must be disposed of in a specified manner.

(2) Each law enforcement agency with custody of any property that is subject to the section must adopt and comply with a written internal control policy that provides for keeping detailed records as to the amount of property the agency acquired, the date the property was acquired, and the disposition of the property. The records regarding disposition must specify the manner in which the property was disposed, the date of disposition, detailed financial records concerning any property sold, the name of any person who received the property, the general types of expenditures made with amounts gained from the sale of the property and retained by the agency, and the specific amount expended on each general type of expenditure. The records kept under the internal control policy are open to public inspection during the agency's regular business hours.

(3) Each law enforcement agency that during any calendar year has any seized or forfeited property covered by the section in its custody, including amounts distributed to its law enforcement trust fund or a similar fund created for the State Highway Patrol, Department of Public Safety, Department of Taxation, or State Board of Pharmacy, must prepare a report covering the calendar year that cumulates all of the information contained in all of the public records the agency kept pursuant to the section for that calendar year. The agency must send a copy of the cumulative report to the Attorney General not later than March 1 of the calendar year following the calendar year covered by the report. Each report received by the Attorney General is a public record open for inspection under the state's Public Records Law.

(4) Not later than April 15 of each calendar year in which reports are sent to the Attorney General as described above in (3), the Attorney General must send to the Senate President and the Speaker of the House of Representatives a written notice that indicates that the Attorney General received reports that cover the previous calendar year, that the reports are open for inspection under the state's Public Records Law, and that the Attorney General will provide a copy of any or all of the reports to the President or Speaker upon request.

Operation of the bill

The bill repeals the provisions described above in (3) and (4) under "**Current Law**." Under the bill, law enforcement agencies will not have to prepare the cumulative reports described above in (3) or send them to the Attorney General, and the Attorney General will not have to send the written notices described above in (4) to the Senate President and the Speaker of the House of Representatives.

Consumer Sales Practices Act annual report date change

(R.C. 1345.05)

The bill changes the date by which the Attorney General is required to report on the Attorney General's operations with regard to the Consumer Sales Practices Act, and on violations of that Act, to the Governor and the General Assembly from January 1 to January 31 of each year.

- Requires the officers of a regional council of governments to notify the Auditor of State of its existence within ten business days after its formation, and the officers of an existing regional council of governments to notify the Auditor of State of its existence within 30 business days after the requirement takes effect.
- Requires the Auditor of State to issue a report to the Governor and the General Assembly regarding the number of regional councils of governments and their effectiveness.
- Requires the Auditor of State to establish, operate, and maintain a state online clearinghouse web site to provide information about joint purchasing programs, streamlining government operations, collaboration, and shared services.

Notice of formation of a regional council of governments; report

(R.C. 167.04(D); Section 701.60)

The bill requires the officers of a regional council of governments to notify the Auditor of State of its existence within ten business days after its formation and to provide on a form prescribed by the Auditor of State information regarding the regional council that the Auditor of State considers necessary.

Any regional council of governments that was formed and is operating before this provision's effective date must notify the Auditor of State of its existence within 30 business days after that effective date and must provide on the Auditor of State's form the necessary information.

The Auditor of State must review the information provided and, within one year after the provision's effective date, must issue a report to the Governor and the General Assembly. The report must address how many regional councils of governments are operating, whether those regional councils continue to meet the objectives for which they were first authorized in 1967, and whether regional councils are an efficient and effective way for local governments to share services or to participate in cooperative arrangements.

For purposes of these provisions, a "business day" means a day of the week, excluding Saturday, Sunday, or a legal holiday.

Auditor of State web site about streamlining government operations

(Section 701.20)

The bill requires the Auditor of State to establish, operate, and maintain one or more state web sites to serve as an online clearinghouse of information about existing joint purchasing programs between or among political subdivisions in Ohio, streamlining government operations, collaboration, and shared services to reduce the cost of government in Ohio. The web site may be developed by the Auditor of State or through the use of outside vendors. Existing web sites may be used if their content conforms to the requirements of the provision.

In establishing, maintaining, and operating the online clearinghouse web site, the Auditor of State is required to: (1) use a domain name that will be easily recognized, remembered, and understood by users of the web site, (2) maintain the web site so 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) enable information to be accessed by key word, by program name, by county, by type of product or service, and by other useful identifiers, (5) compile information provided by political subdivisions about joint purchasing arrangements they are involved in that the Auditor of State verifies, through meetings with various statewide associations and others, to have resulted in verifiable cost savings, and consolidate that information on the web site in a consistent manner and compile information provided by political subdivisions that includes savings recommendations from performance audits, examples of shared services among communities, shared services agreements to use as templates, and other tools developed independently by the Auditor of State or requested by political subdivisions and agreed to by the Auditor of State, (6) enable political subdivisions to register and request inclusion of their submitted information on the web site, as well as to report state and local barriers to collaboration, (7) maintain adequate systemic security and back-up features, and develop and maintain a contingency plan for coping with and recovering from power outages, systemic failures, and other unforeseen difficulties that may affect the web site, and (8) 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.

The bill requires the Auditor of State to bear the expense of establishing, operating, and maintaining the online clearinghouse web site.

- Prohibits any transfer from the GRF to the Budget Stabilization Fund based on the surplus revenue that existed on June 30, 2012, without the prior approval of the General Assembly.

- Repeals a requirement that the Office of Internal Auditing in the Office of Budget and Management submit a report regarding the effectiveness and expenditure of federal stimulus funds to legislative leaders on August 1, 2012, February 1, 2013, and August 1, 2013.

GRF transfer to Budget Stabilization Fund

(Section 701.100)

The bill prohibits the Director of Budget and Management from making a transfer from the General Revenue Fund to the Budget Stabilization Fund based on the surplus revenue that existed on June 30, 2012, without the prior approval of the General Assembly.

Oversight of federal stimulus funds

(Section 521.70 of Am. Sub. H.B. 153 of the 129th General Assembly)

The bill modifies a requirement that the Office of Internal Auditing in the Office of Budget and Management submit semi-annual reports to legislative leaders regarding (1) the effectiveness of federal stimulus funds allocated to Ohio under the American Recovery and Reinvestment Act of 2009 (ARRA) and (2) how stimulus funds are spent by each state agency. Currently, the Office must submit each semi-annual report by February 1, 2012, August 1, 2012, February 1, 2013, and August 1, 2013. The bill repeals the requirement that the Office submit the latter three reports.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD (CSR)

- Reduces membership on the Capitol Square Review and Advisory Board from 13 to 12 by removing the member who represents the Ohio Building Authority.

Membership

(R.C. 105.41)

The bill reduces the total membership on the Capitol Square Review and Advisory Board from 13 members to 12 members by removing from the Board the representative of the Ohio Building Authority.

DEPARTMENT OF COMMERCE (COM)

- Renames the Division of Labor, under the Department of Commerce, to be the Division of Industrial Compliance.

- Requires the written agreement between an owner of unclaimed funds and a person who assists in their recovery to disclose that the Director of Commerce will direct the Director of Budget and Management to pay from the unclaimed funds any legal amount specified in the agreement directly to the person.

- Requires the agreement to specify that any fee charged by the Director of Commerce will be deducted from the direct payment and that the remaining unclaimed funds will be paid directly to the owner.

- Requires the Director of Budget and Management, instead of the Auditor of State as required under current law, to make the payment of unclaimed funds when the owner of the unclaimed funds has entered into an agreement with another person to locate, deliver, recover, or assist in the recovery of those unclaimed funds.

- Requires each person that files a claim for unclaimed funds with the Director of Commerce under an agreement to include a copy of the agreement with the claim.

- Generally replaces the term "unclaimed funds" with "property presumed abandoned."

- Requires the payment of interest to claimants of property presumed abandoned.

- Requires criminal records checks for applicants for registration to assist in locating property presumed abandoned.

- Changes the method of notifying out-of-state owners and holders of property presumed abandoned by generally requiring publication on the Internet.

- Eliminates the $50 filing fee for registration of securities by description for an offering of $50,000 or less.

- Provides that the penalty for failure to submit required filings regarding certain sales of securities to the Division of Securities due to excusable neglect is equal to the greater of the required filing fee or $100, rather than equal to the amount of the filing fee.

- Requires that 45% of the money in the existing Undivided Liquor Permit Fund be distributed to the State Liquor Regulatory Fund created by the bill rather than to the General Revenue Fund as in current law, and requires the new Fund to be used to pay the operating expenses of the Division of Liquor Control and the Liquor Control Commission.

- Requires the Director of Budget and Management, whenever in the Director's judgment the amount of money in the State Liquor Regulatory Fund is in excess of the amount that is needed to pay those operating expenses, to credit the excess to the General Revenue Fund.

- Generally requires all B-2a and S liquor permit fees to be credited to the State Liquor Regulatory Fund rather than the existing Liquor Control Fund.

- Requires payments from JobsOhio for the Division's operation of the spirituous liquor merchandising operations to be credited to the Liquor Operating Services Fund created by the bill rather than the Liquor Control Fund as in existing law.

- Authorizes the D-5l liquor permit to be issued only to the owner or operator of a retail food establishment or a food service operation licensed under the Retail Food Establishments and Food Service Operations Law rather than to any business establishment as in current law.

- Adds a restriction that provides that a D-5l permit may only be issued to a premises that has gross annual receipts from the sale of food and meals that constitute not less than 75% of its total gross annual receipts.

- Extends the hours that a D-5g liquor permit holder may sell beer or intoxicating liquor for consumption on the premises.

The Division of Labor becomes Division of Industrial Compliance

(R.C. 121.04, 121.08, 121.083, 121.084, 124.11, 3301.55, 3703.01, 3703.03 to 3703.08, 3703.10, 3703.21, 3703.99, 3713.01 to 3713.10, 3721.071, 3743.04, 3743.25, 3781.03, 3781.102, 3781.11, 3783.05, 3719.02, 3791.04, 3791.05, 3791.07, 4104.01, 4104.02, 4104.06 to 4104.101, 4104.12, 4104.15 to 4104.19, 4104.21, 4104.33, 4104.42, 4104.43, 4104.44, 4104.48, 4105.01, 4105.02 to 4105.06, 4105.09, 4105.11 to 4105.13, 4105.15 to 4105.17, 4105.191 to 4105.21, 4115.10, 4115.101, 4169.02 to 4169.04, 4171.04, 4740.03, 4740.11, 4740.14, 5104.051, 5119.71, 5119.73, and 5119.731; Section 701.70.20)

The bill changes the name of the Division of Labor, under the Department of Commerce, to the Division of Industrial Compliance. To effect the change, all powers, appropriations, real and personal property, duties, obligations, and rules of the Superintendent and Division of Labor are transferred to the Superintendent and Division of Industrial Compliance.

Unclaimed Funds Law changes

(R.C. 169.01, 169.02, 169.03, 169.06, 169.08, 169.13, 169.14, and 169.16)

Compensation under an unclaimed funds recovery assistance agreement

Contents of agreement

The bill requires an unclaimed funds recovery assistance agreement between an owner of unclaimed funds and a person who assists in the recovery of unclaimed funds to include a provision notifying the parties that the Director of Commerce will direct the Director of Budget and Management (instead of the Auditor of State) to do, and the bill requires the Director to do, all of the following with respect to the agreement:

(1) Pay from the unclaimed funds any legal amount specified in the agreement to compensate a person for assisting in the recovery of the unclaimed funds under the agreement;

(2) Pay the amount directly to the person who assisted with recovery of the unclaimed funds (referred to as the "registrant" in the bill), minus any amount the bill authorizes the Director of Commerce to establish as a reasonable fee for the processing and delivery of any payment to a registrant; and

(3) Pay any remaining unclaimed funds directly to the owner.

Copy of agreement to be filed with claim

The bill additionally requires each person who files a claim with the Director of Commerce under an agreement to include with that claim a copy of the agreement.

Background – unclaimed funds recovery agreements

Under current law, following a two-year period after a holder of unclaimed funds reports those funds to the Director of Commerce, a person entitled to receive unclaimed funds and an entity may enter into a paid agreement to locate, deliver, recover, or assist in the recovery of unclaimed funds only if certain conditions are met, including: charging an aggregate fee not in excess of 10% of the amount recovered; the agreement is in writing, signed by the owner, and notarized; the agreement discloses certain identifying items of the owner of the funds and of the person or entity holding the funds; the agreement does not include a power of attorney for the payment of the unclaimed funds to any person other than the owner; if the agreement involves recovery of the contents of a safe deposit box, certain additional requirements; and the agreement discloses that the Auditor of State will pay the unclaimed funds directly to the owner of the funds, or that the Director of Commerce will deliver the contents of a safe deposit box to the owner.

A person who assists in the recovery of unclaimed funds is required to file for a certificate of registration (become a "registrant") from the Director of Commerce to engage in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds for a fee, compensation, commission, or other remuneration.

Replacement of term "unclaimed funds" with "property presumed abandoned"

The bill generally replaces the term "unclaimed funds" with the term "property presumed abandoned," although the bill does retain "unclaimed funds" in certain sections of the Revised Code. The bill defines "unclaimed funds" to mean property presumed abandoned.

Interest paid to claimants of property presumed abandoned

The bill provides that if a claim is allowed, the Director of Commerce must pay over or deliver to the claimant the property presumed abandoned in the amount the Director actually received, or the net proceeds if securities or other intangible property delivered to the Director have been sold, together with any interest required to be paid by the bill. With respect to any claim paid on or after the bill's effective date, the Director must pay simple interest on the claim at a rate determined by the Director, who must adopt administrative rules governing the payment of interest on property

delivered to the Director. Any returns on investment or interest earned beyond what the Director must pay as interest to the owner must be retained by the Director to fund administration of the Property Presumed Abandoned Law. Under existing law, interest is not payable to claimants of unclaimed funds held by the state.

Criminal records checks for registrants to assist in locating property presumed abandoned

The bill requires the Superintendent of Unclaimed Funds in the Department of Commerce to request the Superintendent of the Bureau of Criminal Identification and Investigation, or a vendor approved by the Bureau, to conduct a criminal records check on the fingerprints of a person applying to become a registrant. Notwithstanding a provision of existing law that prohibits the Department of Commerce from requesting a criminal records check from the Federal Bureau of Investigation unless the person who is the subject of the check resides outside Ohio, has resided outside Ohio during the preceding five years, or may have a criminal record outside Ohio, the Superintendent of Unclaimed Funds must request that criminal record information from the Federal Bureau of Investigation be obtained as part of the criminal records check. The applicant must pay any fees required to be paid for the criminal records check.

The bill refers to a criminal records check being conducted in accordance with R.C. 109.572(A)(11), which requires the Superintendent of the Bureau of Identification and Investigation to search for and determine whether the person who is the subject of the check has been convicted of or pleaded guilty to a felony in Ohio or another state. This cross-reference appears to be erroneous because: (1) the bill requires a federal check to be conducted as well, which would include federal offenses, and (2) the disqualifying offenses for an applicant include misdemeanors.

Publication of information about owner of property presumed abandoned

The bill requires that, if the address of an owner of property presumed abandoned is outside Ohio or the address is unknown and the holder has no principal place of business in Ohio, publication be made on the Department of Commerce's web site for a period of time the Director reasonably selects.

The bill removes provisions in current law that require the Director of Commerce to do the following:

(1) For any person who appears to be an owner of property presumed abandoned for whom no address is listed and of which the holder has no principal place of business in Ohio, to make publication as the Director determines most effective;

(2) If the person's address is outside Ohio, to publish notice in a newspaper of general circulation in the county or parish of any state in the United States in which the person's last known address is located;

(3) If the last known address is in a foreign country, to make publication as the Director determines most effective.

Dollar threshold for owner/beneficiary list

The bill provides that with respect to items of property presumed abandoned each having a value of $50 or more, the Director must have available in the Director's office during business hours an alphabetical list of owners and, if the holder is a person providing life insurance coverage, beneficiaries and their latest known addresses, if any, whose funds are being held by the state. Under current law, this threshold amount is $10.

Division of Securities

Elimination of filing fee for certain registration of securities by description

(R.C. 1707.08)

The bill eliminates the $50 filing fee for the registration of securities by description for an offering of $50,000 or less. Under current law, securities are required to be registered prior to being sold by one of three means: description, qualification, or coordination. Currently, the $50 filing fee must be paid to the Division of Securities in the Department of Commerce for all registrations by description to become effective.

Penalty fee for failing to submit filings regarding the sale of securities

(R.C. 1707.391)

The bill modifies the penalty fee charged for failure to submit filings regarding sales of securities made in reliance on the Securities Law where the failure is due to excusable neglect. Under the bill, the penalty fee is equal to the greater of the required filing fee or $100. The bill also clarifies that the penalty fee must be paid in addition to any applicable fee, such as a filing fee, that has not already been paid, but only if such fee is required. Under current law, if securities have been sold in reliance on certain provisions of the Securities Law (for example, provisions requiring registration of securities sales or exempting sales from registration), but that reliance was improper because the required filings were not timely or properly made due to excusable neglect, the sale can nevertheless be deemed exempt, qualified, or registered upon the filing of an application with the Division of Securities and the payment of the required fee and a penalty equal to the amount of the required fee.

Liquor control funds

(R.C. 4301.30 and 4313.02)

Undivided Liquor Permit and State Liquor Regulatory Fund

Currently, 45% of the Undivided Liquor Permit Fund, which consists of fees collected by the Division of Liquor Control, must be disbursed to the General Revenue Fund. The bill instead requires the 45% to be distributed to a new State Liquor Regulatory Fund created by the bill in the state treasury. The State Liquor Regulatory Fund must be used to pay the operating expenses of the Division in administering and enforcing the liquor control laws and the operating expenses of the Liquor Control Commission. Investment earnings of the Fund must be credited to the Fund. Whenever, in the judgment of the Director of Budget and Management, the amount of money in the State Liquor Regulatory Fund is in excess of the amount that is needed to pay the operating expenses of the Division and the Commission, the Director must credit the excess amount to the General Revenue Fund.

The bill generally requires all B-2a and S liquor permit fees to be credited to the State Liquor Regulatory Fund rather than the existing Liquor Control Fund as in current law. It retains the requirement that, once during each fiscal year, an amount equal to 50% of the fees so collected be paid into the General Revenue Fund.

Liquor Services Operating Fund

The bill requires payments from JobsOhio for the Division's operation of the spirituous liquor merchandising operations to be credited to the Liquor Operating Services Fund, which is created by the bill in the state treasury. Currently, those payments are credited to the Liquor Control Fund. The new Fund is to be used to pay for that operation.

Issuance of D-5l liquor permits

(R.C. 4303.181)

The bill revises certain provisions governing the issuance of D-5l liquor permits. It authorizes the D-5l permit, which under continuing law may be issued only in revitalization districts, to be issued only to the owner or operator of a retail food establishment or a food service operation licensed under the Retail Food Establishments and Food Service Operations Law rather than to any business establishment as in current law. Additionally, it restricts the issuance of a D-5l permit to a premises that has gross annual receipts from the sale of food and meals that constitute not less than 75% of its total gross annual receipts.

Under continuing law, the D-5l permit authorizes a permit holder to sell beer and intoxicating liquor for on- and off-premises consumption. In addition to limiting its issuance to revitalization districts, current law establishes other parameters for its issuance based on the number of D-5 permits issued in a specified area and on county population.

A revitalization district may be designated under current law for bounded areas located in municipal corporations or unincorporated areas of townships that meet certain population requirements. The bounded areas may include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to certain establishments such as restaurants, sports facilities, and convention facilities.

Division of Liquor Control

(R.C. 4303.181)

Extends to 2:30 a.m. the hours that a D-5g liquor permit holder may sell beer or intoxicating liquor. Under current law these permit holders must cease sales at 1:00 a.m. Under continuing law, the D-5g permit may be issued to a nonprofit corporation that is either the owner or the operator of a national professional sports museum. The holder of a D-5g permit may sell beer and any intoxicating liquor for consumption on the premises where sold.

COURT OF CLAIMS OF OHIO (CLA)

Wrongful imprisonment

- Provides that a determination that a person is a wrongfully imprisoned individual must be made in a separate civil action in the court of common pleas in the county where the underlying criminal action was initiated and requires the prosecuting attorney to defend those civil actions.

- Removes "an error in procedure that resulted in the individual's release" from the possible criteria a person must satisfy to be considered a wrongfully imprisoned individual.

- Expands the criteria for determining that an individual is a wrongfully imprisoned individual by providing that at the time of the offense in question the individual was not engaging in any other criminal conduct arising out of the incident for which the individual was initially charged.

- Requires an individual to prove by clear and convincing evidence each of the criteria the individual must satisfy to be considered a wrongfully imprisoned individual.

- Provides that if the individual at the time of the wrongful imprisonment was serving concurrent sentences on other convictions that were not vacated, dismissed, or reversed on appeal, then the individual is not eligible for any portion of the wrongful imprisonment that occurred during such a concurrent sentence.

- Allows a prosecuting attorney or the Attorney General, or their assistants, to inspect sealed conviction and bail forfeiture records for the purpose of defending a civil action to determine if a person is a wrongfully imprisoned individual.

- Removes a requirement that the court that determines that a person is a wrongfully imprisoned individual orally inform the individual that the individual has the right to have counsel of that individual's own choice in the civil action in the Court of Claims to recover damages from the state and the specific statement that a wrongfully imprisoned individual has the right to have counsel of the individual's own choice.

Civil action thresholds

- Increases the threshold below which the state is barred from filing a third-party complaint or counterclaim in a civil action that is filed in the Court of Claims from $2,500 to $10,000.

- Increases the threshold below which a civil action against the state must be determined administratively by the Clerk of the Court of Claims from $2,500 to $10,000.

Wrongful imprisonment

(R.C. 309.09, 2305.02, 2743.48, and 2953.32)

Civil action to determine if individual is a wrongfully imprisoned individual

Under existing law, when a court of common pleas determines, on or after September 24, 1986, that a person is a wrongfully imprisoned individual, the court must provide the person with a copy of R.C. 2743.48 and orally inform the person and the person's attorney of the person's rights under R.C. 2743.48 to commence a civil action against the state in the Court of Claims because of the person's wrongful imprisonment and to be represented in that civil action by counsel of the person's own choice. The bill

eliminates the requirement that the court orally inform the person and the person's counsel of the person's right to be represented by counsel of the person's choice.

Under the bill, in order to be declared a wrongfully imprisoned individual, a person may file a civil action in the court of common pleas in the county where the underlying criminal action was initiated. That civil action must be separate from the underlying finding of guilt by the court of common pleas. There is no right to a jury trial in that action. The prosecuting attorney of that county must defend that civil action and must be served with a copy of the complaint. Upon the filing of a civil action to be determined to be a wrongfully imprisoned individual, the Attorney General must also be served with a copy of the complaint and must be heard.

Existing law provides that a court of common pleas has exclusive, original jurisdiction to hear and determine an action or proceeding that is commenced by an individual who satisfies R.C. 2743.48(A)(1) to (4) (criteria to be considered a wrongfully imprisoned individual) and that seeks a determination by the court that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person. If the court enters the requested determination, it must comply with R.C. 2743.48(B). The bill modifies the first sentence above by providing that *the* court of common pleas *in the county where the underlying criminal action was initiated* has exclusive, original jurisdiction to hear and determine *a civil* action or proceeding that is commenced by an individual who *seeks a determination by that court that the individual* satisfies R.C. 2743.48(A)(1) to *(6)*, as modified by the bill.

Under existing law, within 60 days after the date of the entry of a court of common pleas determination that a person is a wrongfully imprisoned individual, the clerk of the court of claims must forward a preliminary judgment to the President of the Controlling Board requesting the payment of 50% of the amount the wrongfully imprisoned individual is entitled to receive under Ohio law to the wrongfully imprisoned individual. The bill instead requires the clerk to forward that preliminary judgment within 60 days after the date of the filing of the complaint for damages in the Court of Claims and the finding by the Court of Claims of the number of days of wrongful imprisonment in a state correctional institution. The bill also provides that if an individual was serving at the time of the wrongful imprisonment concurrent sentences on other convictions that were not vacated, dismissed, or reversed on appeal, the individual is not eligible for compensation for any portion of that wrongful imprisonment that occurred during a concurrent sentence of that nature.

Rebuttable presumption that individual is a wrongfully imprisoned individual

Existing law provides that in a civil action filed in the Court of Claims to recover a sum of money because of the individual's wrongful imprisonment, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the Court of Claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. No other evidence is required of the complainant to establish that the claimant is a wrongfully imprisoned individual, and the claimant must be irrebuttably presumed to be a wrongfully imprisoned individual. The bill specifies that the certified copy of the entry of determination is from the court of common pleas *under R.C. 2743.48(B)(2)* (i.e., in the county where the underlying criminal action was initiated that determined that the claimant is a wrongfully imprisoned individual) and that the claimant must be *rebuttably* presumed to be a wrongfully imprisoned individual *absent a violation of any provision of R.C. 2743.48 or of R.C. 2305.02 (the court of common pleas in the county where the underlying criminal action was initiated has exclusive, original jurisdiction to hear and determine a civil action to determine that the person is a wrongfully imprisoned individual).*

Presentation of requisite proof

Existing law provides that in a civil action filed in the Court of Claims to recover a sum of money because of the individual's wrongful imprisonment, upon presentation of requisite proof to the court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of certain specified amounts. The bill specifies that the presentation of requisite proof is to the Court of Claims.

Deduction of known debts of wrongfully imprisoned individual

The bill requires the Court of Claims to deduct any known debts owed by the wrongfully imprisoned individual to the state or a political subdivision from the sum of money recovered by the wrongfully imprisoned individual and requires that those deducted amounts must be paid to the state or political subdivision, whichever is applicable.

Award of court costs and other expenses

Under existing law, if the wrongfully imprisoned individual was represented in the civil action in the Court of Claims by counsel of the wrongfully imprisoned individual's own choice, the Court of Claims must include in the judgment entry an award for reasonable attorney's fees of that counsel. The bill instead requires the Clerk of the Court of Claims to include in the judgment entry an award for the payment of the

court costs, transcripts, expert witness fees, and other reasonable out-of-pocket litigation expenses related to that civil action.

Eligibility to recover

Under existing law, in order to be eligible to recover a sum of money because of wrongful imprisonment, a wrongfully imprisoned individual cannot have been, prior to September 24, 1986, the subject of an act of the General Assembly that authorized an award of compensation for the wrongful imprisonment or have been the subject of an action before the former Sundry Claims Board that resulted in an award of compensation for wrongful imprisonment. Additionally, to be eligible to so recover, the wrongfully imprisoned individual must commence a civil action in the Court of Claims no later than two years after the date of the entry of the determination of *a* court of common pleas that the individual is a wrongfully imprisoned individual. The bill specifies that the entry of determination must be from the court of common pleas in the county where the underlying criminal action was initiated that made the determination that the individual is a wrongfully imprisoned individual.

Criteria to be considered a wrongfully imprisoned individual

Under existing law, a "wrongfully imprisoned individual" means an individual who satisfies, each of the following:

(1) The individual was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, September 24, 1986, and the violation charged was an aggravated felony or felony.

(2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.

(3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.

(4) The individual's conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.

(5) Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

The bill provides that a "wrongfully imprisoned individual" means an individual who *proves* each of those criteria, as modified by the bill, *by clear and convincing evidence*. It modifies the provisions described in (1), (2), and (5) above. First, it removes the requirement in (1) above that the individual was charged with a violation of the Revised Code by an indictment or information *prior to, or on or after, September 24, 1986.* Second, it requires in the provision described in (2) above that the individual was found guilty of the particular charge or a lesser-included offense by the court or jury involved, *the offender did not plead guilty or no contest to the particular charge or a lesser-included offense, whether or not the guilty or no contest plea was accepted and whether or not the guilty or no contest plea was later withdrawn, vacated, voided by operation of law, overturned, set aside, or otherwise invalidated by any court, by executive pardon, or by post-conviction proceeding*, and requires that the offense of which the individual was found guilty was an aggravated felony or felony. In the provision discussed in (5) above an error in procedure that resulted in the individual's release no longer will result in the individual meeting the definition of a wrongfully imprisoned individual, and the bill specifies that *the court of common pleas in the county where the underlying criminal action was initiated* is the court that determines that the *charged* offense, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

The bill adds a sixth criterion for an individual to be considered a wrongfully imprisoned individual by providing that at the time of the offense that individual was not engaging in any other criminal conduct arising out of the incident for which the individual was initially charged.

Inspection of sealed records of wrongfully imprisoned individual

Under existing law, inspection of sealed conviction or bail forfeiture records may be made only by certain persons or for certain purposes, including by a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which the person is to be charged would be affected by virtue of the person's previously having been convicted of a crime, by a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case, or by any law enforcement agency or any authorized employee of a law enforcement agency or by the Department of Rehabilitation and Correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or

with the Department as a corrections officer. The bill provides that a prosecuting attorney or the Attorney General, or the assistants of either, may inspect sealed records of conviction or bail forfeiture for the purpose of defending a civil action brought by a person in the court of common pleas in the county where the underlying criminal action was initiated in order to determine if the person is a wrongfully imprisoned individual.

Civil action thresholds

(R.C. 2743.02 and 2743.10)

Third-party complaints or counterclaims

Under current law, the state may file a third-party complaint or counterclaim in any civil action that is filed in the Court of Claims except a civil action for $2,500 or less. The bill increases the threshold from $2,500 to $10,000.

Administrative determination of civil actions against the state

Under current law, civil actions against the state for $2,500 or less must be determined administratively by the Clerk of the Court of Claims. The bill increases the threshold from $2,500 to $10,000.

DEPARTMENT OF DEVELOPMENT (DEV)

- Authorizes the Director of Development to enter into cooperative or contractual agreements with others to create, administer, or otherwise be involved with Ohio tourism-related promotional programs.
- Requires approval by the Director for duties and functions regarding project funding that are carried out by the Ohio Coal Development Office and its director.
- Requires a metropolitan housing authority (MHA) to make publicly available an annual report of an accurate account of its activities, receipts, and expenditures.
- Removes the requirement that an MHA make an annual report of its activities, receipts, and expenditures directly to the Director.
- Changes the date by which the Ohio Housing Study Committee must provide its report from March 31, 2012, to December 31, 2012.
- Specifies that the Committee will be abolished upon issuance of its report on December 31, 2012.

- Creates the Economic Gardening Technical Assistance Pilot Program in the Department of Development to provide eligible businesses with services related to marketing, market research, and the development of business connections.

- Appropriates $250,000 to the pilot program for fiscal year 2013 and provides for the repeal of the program after two years.

Contractual agreements for tourism promotion

(R.C. 122.07)

Under current law, the Department of Development has authority to disseminate information concerning Ohio's advantages and attractions and to provide technical assistance to public and private agencies involved in the preparation of programs designed to attract business, industry, and tourists. The bill authorizes the Director of Development to enter into cooperative or contractual agreements with individuals, organizations, and businesses to create, administer, or otherwise be involved with Ohio tourism-related promotional programs. The Director has discretion to authorize payment to the contracting party under these agreements. Payment can include deferred compensation in an amount specified by the Director. Amounts due under agreements entered into by the Director are payable from the Travel and Tourism Cooperative Projects Fund created by the bill. "Excess" revenue generated by Ohio tourism-related promotional programs must be remitted to the fund and reinvested in ongoing tourism marketing.

Ohio Coal Development Office

(R.C. 1551.33, 1555.02, 1555.03, 1555.04, 1555.05, and 1555.06)

The bill requires the approval of the Director of Development for the exercise of the duties and functions of the Ohio Coal Development Office and its director regarding project funding. Those duties and functions include making and guaranteeing loans and making grants from the Coal Research and Development Fund; requesting the issuance of coal research and development general obligations; entering into necessary agreements and contracts; and applying to the Controlling Board for funds for surveys or studies by the Office of any proposed coal research and development project subject to repayment.

Under current law, the director of the Office may exercise any powers and duties that the director considers appropriate or desirable to achieve the Office's purposes, including powers and duties of the Director of Development specified in the statutes

governing the Office. The bill requires the approval of the Director of Development for the exercise of such powers and duties by the director of the Office and also requires the Director of Development to identify which powers and duties are to be exercised by the director of the Office.

Metropolitan housing authority annual reports

(R.C. 3735.37)

The bill requires a metropolitan housing authority to make publicly available the annual report consisting of an accurate account of all its activities and of all receipts and expenditures that is required by continuing law. The bill removes current law's requirement that the annual report be made to the Director of Development.

Ohio Housing Study Committee

(Section 601.40 and 601.41, amending sec. 701.40 of Am. Sub. H.B. 153 of the 129th General Assembly)

The bill changes the date by which the Ohio Housing Study Committee is required to provide its report to the Governor, the Speaker of the House of Representatives, and the President of the Senate. Current law requires the report to be provided by March 31, 2012. The bill changes the date to December 31, 2012. In addition, the bill specifies that upon issuance of the report, the Committee will cease to exist. Continuing law provides that the Committee's purpose is to review the policies, programs, and partnerships of the Ohio Housing Finance Agency.

Economic Gardening Technical Assistance Pilot Program

(Section 261.10, 701.90, and 701.91)

The bill creates the Economic Gardening Technical Assistance Pilot Program. Under the two-year program, the Department of Development may provide eligible businesses with business development services, including technical assistance in market research, marketing, and the development of connections with trade associations, academic institutions, business advocacy groups, peer-based learning sessions, mentoring programs, and other businesses. The Director may contract or coordinate with outside entities to aid in the administration and operation of the program.

Eligibility and selection criteria

A business is eligible to receive assistance under the pilot program if it is for-profit, has between six and 99 employees, generates between $750,000 and $25 million in annual revenue, has maintained its principal place of business in Ohio for the

previous two years, and has increased its gross revenue and number of full-time Ohio employees during three of the past five years.

When selecting eligible businesses to assist under the program, the Director of Development must select businesses from more than one industry and, to the extent practicable, businesses that are geographically distributed throughout the state. Once selected, a business must agree to attend a specified number of meetings with the Director, to provide the Director with financial and job creation data, and to comply with any additional reporting requirements the Director requires.

Program report

Within one year after the creation of the program, the Director must publish a report that evaluates the effectiveness of the program, recommends any changes, and details the number of businesses assisted under the program, the types and locations of such businesses, the number of full-time jobs created as a result of the assistance, and the total compensation paid to full-time employees whose jobs were created as a result of the assistance. The Director must provide the report to the Governor and General Assembly and publish the report on the Department of Development's web site.

DEPARTMENT OF DEVELOPMENTAL DISABILITIES (DDD)

Criminal records checks

- Revises the law governing criminal records checks for employment positions with the Ohio Department of Developmental Disabilities (ODODD), county boards of developmental disabilities (county DD boards), and providers of specialized services.

- Requires a subcontractor that contracts with a provider or another subcontractor to comply with the criminal records checks requirements if the subcontractor employs a person in a direct services position.

- Permits the ODODD Director to adopt rules requiring employees to undergo criminal records checks and requiring ODODD, county DD boards, providers, and subcontractors to obtain the driving records of employees.

- Revises the list of disqualifying offenses for which a criminal records check is to search.

- Requires ODODD, county DD boards, providers, and subcontractors to request certain applicants' and (if rules so require) employees' driving records from the Bureau of Motor Vehicles.

- Establishes criminal records check requirements for the chief executive officers of businesses and independent providers seeking initial or renewed supported living certificates.

Registry of MR/DD employees

- Expands the list of offenses for which an MR/DD employee is to be included in the registry of MR/DD employees pertaining to abuse, neglect, or misappropriation of property.

- Provides that independent providers of supported living are MR/DD employees for the purpose of the law governing the registry.

- Requires ODODD or a county DD board to provide to an MR/DD employee who is an independent provider an annual notice regarding the conduct for which an MR/DD employee may be included in the registry.

County DD boards

- Prohibits a former employee of a county DD board from serving as a member of the same county DD board within four years (rather than one year as currently provided) of the date that employment ceases.

- Prohibits a former county DD board employee from serving as a member of another county DD board within two years of the date that employment ceases.

- Modifies and clarifies other provisions of the law governing ineligibility to serve as a county DD board member based on having certain familial relationships or being a current or former employee.

Employment-related provisions

- Transfers to superintendents of county DD boards the responsibility, currently held by the ODODD Director, for the certification or registration of persons to be employed, either by a county DD board or an entity contracting with a county DD board, in positions serving individuals with mental retardation or developmental disabilities.

- Maintains the ODODD Director's responsibility to take such actions relative to county DD board superintendents.

- Eliminates most of the statutory provisions establishing specific standards and procedures for the certification or registration of employees and instead requires the standards and procedures to be established in rules adopted by the ODODD Director.

- Requires the rules to include (1) the employment positions that will require certification or registration and (2) the training, education, and experience requirements that must be met, taking into account the needs of the individuals being served.

- Eliminates provisions regarding fees to be charged for certification or registration, including the use of the fees for the supported living program residential facility licensing, and providing continuing education and professional training to providers of services to individuals with mental retardation or developmental disabilities.

- Eliminates a requirement that a county DD board reemploy a management employee for one year if the board superintendent fails to notify the employee 90 days before the expiration of the employee's contract that the board does not intend to rehire the employee (but maintains the notification requirement).

- Eliminates a provision specifying that a management employee's benefits include sick leave, vacation leave, holiday pay, and such other benefits.

- Eliminates provisions referring to procedures for retention of management employees who were under contract or in probationary periods at the time the statutes for contracting with management employees were modified in 1988.

- Eliminates provisions referring to procedures for retention of professional employees who were employed by a county DD board at the time the statutes for certification of employees were modified in 1990.

- Eliminates a provision prohibiting a teacher, professional employee, or management employee from terminating an employment contract with a county DD board without either receiving the board's consent or giving 30 days' notice.

- Eliminates provisions specifying (1) that an employee of a county DD board may be a member of the governing board of either a political subdivision, including a board of education, or an agency that does not provide specialized services to persons with developmental disabilities, and (2) that the county DD board may contract with that governing board even though its membership includes a county DD board employee.

- Eliminates a requirement that a service and support administrator employed by a county DD board ensure that each recipient of services have a designated person responsible for providing continuous representation, advocacy, advice, and assistance regarding the daily coordination of services.

- Eliminates a provision requiring ODODD, when directed to do so by a county DD board that is part of a regional council of governments, to distribute funds for that county DD board to the regional council's fiscal officer.

Licensure of ICFs/MR

- Repeals a law that makes an ICF/MR subject to licensure by the Department of Health as a nursing home rather than by ODODD as a residential facility if the ICF/MR was certified before June 30, 1987, or had an application to convert intermediate care facility beds to ICF/MR beds pending on that date.

- Requires a person or government agency that is operating an ICF/MR pursuant to a nursing home license, as a condition of continuing to operate the ICF/MR on and after July 1, 2013, to apply to the ODODD Director for a residential facility license not later than February 1, 2013, and to obtain the residential facility license not later than July 1, 2013.

Choosing providers of certain ODODD programs

- Eliminates a requirement that county DD boards with Medicaid local administrative authority create lists of all persons and government entities eligible to provide habilitation, vocational, or community employment services under a Medicaid waiver administered by ODODD.

- Eliminates a requirement that ODODD monthly create a list of all persons and government entities eligible to provide residential services and supported living.

- Revises the law governing the rights of individuals with mental retardation and developmental disabilities to choose providers of services by providing that (1) such an individual who is eligible for home and community-based services provided under an ODODD-administered Medicaid waiver has, except as otherwise provided by a federal Medicaid regulation, the right to obtain the services from a qualified and willing provider and (2) such an individual who is eligible for non-Medicaid residential services or supported living has the right to obtain the residential services or supported living from any qualified and willing provider.

Retention of records

- Permits records on institution residents kept by ODODD to be deposited (after a period of time determined by ODODD) with the Ohio Historical Society.

- Generally prohibits the records or information in them from being disclosed by the Historical Society, except to the resident's closest living relative on the relative's request.

Other provisions

- Prohibits ODODD from charging a county DD board a fee for Medicaid paid claims for home and community-based services provided under the Transitions Developmental Disabilities Waiver.

- Eliminates a provision authorizing only the guardian of an individual with mental retardation or another developmental disability who has been adjudicated incompetent to make decisions regarding the individual's receipt of services from a county DD board.

- Establishes the following decision-making procedures regarding an individual's receipt of services or participation in a program provided for or funded by a county DD board or ODODD: (1) permits the individual to make such decisions unless a guardian has been appointed for the individual, (2) permits the individual to seek support and guidance from an adult family member or other person, (3) permits the individual to authorize (in writing) an adult to make such decisions so long as the adult does not have a financial interest in the decisions, and (4) requires an adult or guardian who makes such decisions to make them in the best interests of the individual and consistent with the individual's needs, desires, and preferences.

- Eliminates the role of county DD boards regarding recommendations for plans to develop residential services for persons with mental retardation or developmental disabilities.

- Revises the law governing a county DD board's responsibility under certain circumstances to pay the nonfederal share of Medicaid expenditures for an individual's care in a state-operated intermediate care facility for the mentally retarded by (1) giving ODODD the option of collecting the amount the county DD board owes by submitting an invoice for payment of that amount to the county DD board rather than using funds otherwise allocated to the county DD board and (2) authorizing the ODODD Director to grant to a county DD board a waiver that exempts the county DD board from responsibility for the nonfederal share in an individual's case.

ODODD, county DD board, provider, and subcontractor criminal records checks

(R.C. 5123.081 (primary), 109.57, 109.572, 5123.033, 5123.082, 5123.542, 5126.0221, 5126.0222, 5126.25, 5126.28 (repealed), and 5126.281 (repealed); Sections 620.10, 620.11, and 751.20)

Under current law, the ODODD Director and the superintendent of a county DD board must request that the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of applicants for appointment or employment with ODODD or the county DD board. An entity under contract with a county DD board to provide specialized services to individuals with mental retardation or developmental disabilities is required to request that BCII conduct a criminal records check of applicants for employment with the contracting entity in a position in which the applicant would have physical contact with, the opportunity to be alone with, or exercise supervision or control over individuals with mental retardation or developmental disabilities.

The bill revises this law. The following is a discussion of this law as it is to exist under the bill. Some of the provisions discussed below are included in, or are similar to, current law.

Terminology

The provisions discussed below use certain terms that are given specific meanings. The following is a discussion of the terms.

Applicant – The following are applicants: (1) persons under final consideration for appointment to or employment with ODODD or a county DD board, (2) persons being transferred to ODODD or a county DD board, (3) employees being recalled to or reemployed by ODODD or a county DD board after layoffs, and (4) persons under final consideration for direct services positions with a provider or a subcontractor. Neither of the following is an applicant: (1) a person employed by a responsible entity in a position for which a criminal records check is required and either is being considered for a different position with the responsible entity or is returning after a leave of absence or seasonal break in employment, unless the responsible entity has reason to believe that the person has committed a disqualifying offense and (2) a person who is to provide only respite care under a family support services program if a family member of the individual with mental retardation or a developmental disability who is to receive the respite care selects the person.

Direct services position – A direct services position is an employment position in which the employee has the opportunity to be alone with or exercises supervision or

control over one or more individuals with mental retardation or a developmental disability.

Employee – Both of the following are employees: (1) persons appointed to or employed by ODODD or a county DD board and (2) persons employed in a direct services position by a provider or subcontractor. A person is not an employee if the person provides only respite care under a family support services program if a family member of the individual with mental retardation or a developmental disability who receives the respite care selected the person.

Provider – A provider is a person that provides specialized services to individuals with mental retardation or developmental disabilities and employs one or more persons in direct services positions.

Responsible entity – The following are responsible entities:

(1) ODODD in the case of (a) a person who is an applicant because the person is under final consideration for appointment to or employment with ODODD, being transferred to ODODD, or being recalled to or reemployed by ODODD after a layoff and (b) a person who is an employee because the person is appointed to or employed by ODODD.

(2) A county DD board in the case of (a) a person who is an applicant because the person is under final consideration for appointment to or employment with the county DD board, being transferred to the county DD board, or being recalled to or reemployed by the county DD board after a layoff and (b) a person who is an employee because the person is appointed to or employed by the county DD board.

(3) A provider in the case of (a) a person who is an applicant because the person is under final consideration for a direct services position by the provider and (b) a person who is an employee because the person is employed in a direct services position by the provider.

(4) A subcontractor in the case of (a) a person who is an applicant because the person is under final consideration for a direct services position by the subcontractor and (b) a person who is an employee because the person is employed in a direct services position by the subcontractor.

Specialized services – A service is a specialized service if it is a program or service designed and operated to serve primarily individuals with mental retardation or developmental disabilities, including a program or service provided by an entity licensed or certified by ODODD. If there is a question as to whether a provider or subcontractor is providing specialized services, the provider or subcontractor is

permitted to request that the ODODD Director make a determination. The ODODD Director's determination is final.

Subcontractor – A person is a subcontractor if the person employs one or more persons in direct services positions and has either (1) a subcontract with a provider to provide specialized services included in the contract between the provider and ODODD or a county DD board or (2) a subcontract with another subcontractor to provide specialized services included in a subcontract between the other subcontractor and a provider or other subcontractor.

Statement regarding criminal record

Before employing an applicant in a position for which a criminal records check is required, ODODD, a county DD board, a provider, or a subcontractor, whichever is the responsible entity, must require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The responsible entity also must require the applicant to sign an agreement under which the applicant agrees to notify the responsible entity within 14 calendar days if, while employed by the responsible entity, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement must provide that the applicant's failure to provide the notification may result in termination of the applicant's employment.

Criminal records check

As a condition of employing any applicant in a position for which a criminal records check is required, a responsible entity must request BCII to conduct a criminal records check of the applicant. If the ODODD Director adopts rules requiring an employee to undergo a criminal records check, a responsible entity must request BCII to conduct a criminal records check of the employee at times specified in the rules as a condition of continuing to employ the employee in a position for which a criminal records check is required.

A responsible entity must (1) provide to each applicant and employee required to undergo a criminal records check a copy of the BCII-prescribed form for requesting a criminal records check and the BCII standard fingerprint impression sheet, (2) obtain the completed form and impression sheet from the applicant or employee, and (3) forward them to BCII at the time the criminal records check is requested. An applicant or employee who receives the BCII form and impression sheet and is requested to complete the form and provide a set of the applicant's or employee's fingerprint impressions must complete the form or provide all the information necessary to

complete the form and provide the applicant's or employee's fingerprint impressions on the impression sheet. A responsible entity may not employ an applicant or continue to employ an employee if the applicant or employee fails to comply with these requirements.

Disqualifying offenses

Except as provided in rules adopted by the ODODD Director, a responsible entity may not employ an applicant or continue to employ an employee if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

The following are the disqualifying offenses:

(1) One or more of the following offenses: cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting

prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) One or more violations of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(3) One or more violations of interference with custody (R.C. 2919.23) that would have been a violation of the former offense of child stealing (former R.C. 2905.04) as that offense existed before July 1, 1996, had the violation occurred before that date;

(4) One violation of the offense of drug possession that is not a minor drug possession offense;

(5) Two or more violations of the offense of drug possession, regardless of whether any of the violations are a minor drug possession offense;

(6) One or more violations of the former offense of felonious sexual penetration (former R.C. 2907.12);

(7) One or more violations of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (6) above;

(8) One or more felonies contained in the Revised Code that are not listed in (1) to (7) above, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled;

(9) One or more offenses contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided by the responsible entity;

(10) One or more violations of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (9) above.

Other criminal record reports

A responsible entity is permitted to request any other state or federal agency to supply the responsible entity with a written report regarding the criminal record of an applicant or employee. If an employee holds an occupational or professional license or other credentials, the responsible entity may request that the state or federal agency that regulates the employee's occupation or profession supply the responsible entity with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or in the process of renewing the employee's license or other credentials. The responsible entity is permitted to consider the reports when determining whether to employ the applicant or to continue to employ the employee.

Driving record

As a condition of employing an applicant in a position for which a criminal records check is required and that involves transporting individuals with mental retardation or developmental disabilities or operating a responsible entity's vehicles for any purpose, the responsible entity must obtain the applicant's driving record from the Bureau of Motor Vehicles. If rules the ODODD Director adopts so require, the responsible entity must obtain an employee's driving record from the Bureau at times specified in the rules as a condition of continuing to employ the employee. The responsible entity may consider the applicant's or employee's driving record when determining whether to employ the applicant or continue to employ the employee.

Conditional employment

A responsible entity is permitted to employ an applicant conditionally pending receipt of a report regarding the applicant requested under the provisions discussed above. The responsible entity must terminate the applicant's employment if it is determined from a report that the applicant failed to inform the responsible entity that the applicant had been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

Applicants charged a fee

A responsible entity is permitted to charge an applicant a fee for costs the responsible entity incurs in obtaining a report regarding the applicant under the provisions discussed above if the responsible entity notifies the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the responsible entity will not consider the applicant for employment. The fee is not to exceed the amount of the fee, if any, the responsible entity pays for the report. A responsible entity is not authorized to charge the fee to an employee.

Release of reports

A report obtained under the provisions discussed above is not a public record and is not to be made available to anyone except the following:

(1) The applicant or employee who is the subject of the report or the applicant's or employee's representative;

(2) The responsible entity that requested the report or its representative;

(3) ODODD if a county DD board, provider, or subcontractor is the responsible entity that requested the report and ODODD requests the responsible entity to provide a copy of the report to ODODD;

(4) A county DD board if a provider or subcontractor is the responsible entity that requested the report and the county DD board requests the responsible entity to provide a copy of the report to the county DD board;

(5) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

--The denial of employment to the applicant or employee;

--The denial, suspension, or revocation of a supported living certificate; a certificate for MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings; or a certificate for a registered nurse to provide MR/DD personnel training courses;

--A civil or criminal action regarding Medicaid or a program ODODD administers.

An applicant or employee for whom a responsible entity has obtained a report may request the responsible entity to have copies of the reports sent to any state agency, entity of local government, or private entity. The applicant or employee is to specify in the request the agencies or entities to which the copies are to be sent. On receiving the request, the responsible entity must send copies of the reports to the agencies or entities so specified.

A responsible entity is permitted to request that a state agency, local government entity, or private entity send copies to the responsible entity of any report regarding a records check or criminal records check that the agency or entity possesses, if the responsible entity obtains the written consent of the individual who is the subject of the report.

A responsible entity must provide each applicant and employee with a copy of any report obtained about the applicant or employee under the provisions discussed above.

Rules

The ODODD Director is required to adopt rules to implement the provisions discussed above.

The rules may do any of the following:

(1) Require employees to undergo criminal records checks;

(2) Require responsible entities to obtain the driving records of employees;

(3) Exempt one or more classes of employees from the requirements described in (1) and (2), above, if the rules establish either or both of those requirements.

The rules must do both of the following:

(1) If either or both of the requirements described in (1) and (2) above are established, specify the times at which the criminal records checks are to be conducted and the driving records are to be obtained;

(2) Specify circumstances under which a responsible entity may employ an applicant or employee who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense but meets standards in regard to rehabilitation set by the Director.

Supported living criminal records checks

(R.C. 5123.169 (primary), 109.57, 109.572, 5123.16, 5123.161, 5123.162, 5123.163, 5123.164, 5123.166, and 5123.1610)

Continuing law prohibits any person or government entity from providing supported living without a valid supported living certificate issued by the ODODD Director. The bill establishes new conditions that the chief executive officer of a business and an independent provider must meet to obtain an initial or renewed supported living certificate. A business is (1) an association, corporation, nonprofit organization, partnership, trust, or other group of persons or (2) an individual who employs, directly or through contract, one or more other individuals to provide supported living. An independent provider is a provider who provides supported living on a self-employed basis and does not employ, directly or through contract, another individual to provide the supported living.

Statement regarding criminal record

Before issuing a supported living certificate to an applicant who is the chief executive officer of a business or who seeks to be an independent provider or renewing such an applicant's certificate, the ODODD Director must require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The Director also must require the applicant to sign an agreement under which the applicant agrees to notify the Director within 14

days if, while holding a supported living certificate, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement is to provide that the applicant's failure to provide the notification may result in the Director taking action against the applicant's certificate.

Criminal records check

As a condition of receiving a supported living certificate or having a certificate renewed, an applicant must request BCII to conduct a criminal records check of the applicant. If an applicant does not present proof to the ODODD Director that the applicant has been a resident of Ohio for the five-year period immediately before the date that the applicant applies for issuance or renewal of the certificate, the Director must require the applicant to request that BCII obtain information from the Federal Bureau of Investigation (FBI) as part of the criminal records check. If the applicant provides proof of residency, the Director may require the applicant to request that BCII include information from the FBI in the criminal records check. An applicant may provide the proof of residency by presenting, with a notarized statement asserting that the applicant has been an Ohio resident for the five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the Director considers acceptable.

Each applicant is required to do all of the following:

(1) Obtain a copy of the BCII-prescribed form for requesting a criminal records check and the BCII standard fingerprint impression sheet;

(2) Complete the form and provide the applicant's fingerprint impressions on the impression sheet;

(3) Forward the completed form and impression sheet to BCII at the time the criminal records check is requested;

(4) Instruct BCII to submit the results of the criminal records check directly to the ODODD Director;

(5) Pay to BCII the fee charged for conducting the criminal records check.

The ODODD Director is prohibited from issuing or renewing a supported living certificate if the applicant fails to comply with these requirements.

Disqualifying offenses

Except as provided in rules adopted by the ODODD Director, the Director may not issue or renew a supported living certificate if the applicant is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The rules are to specify circumstances under which the Director may issue or renew the certificate despite the conviction, guilty plea, or eligibility for intervention in lieu of conviction if the applicant meets standards regarding rehabilitation.

The following are the disqualifying offenses:

(1) One or more of the following offenses: cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor

vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) One or more violations of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(3) One or more violations of interference with custody (R.C. 2919.23) that would have been a violation of the former offense of child stealing (former R.C. 2905.04) as that offense existed before July 1, 1996, had the violation occurred before that date;

(4) One violation of the offense of drug possession that is not a minor drug possession offense;

(5) Two or more violations of the offense of drug possession, regardless of whether any of the violations are a minor drug possession offense;

(6) One or more violations of the former offense of felonious sexual penetration (former R.C. 2907.12);

(7) One or more violations of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (6) above;

(8) One or more felonies contained in the Revised Code that are not listed in (1) to (7) above, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled;

(9) One or more offenses contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided by the responsible entity;

(10) One or more violations of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (9) above.

Other criminal record report

The ODODD Director is permitted to request any other state or federal agency to supply the Director with a written report regarding the criminal record of an applicant. The Director may consider the reports when determining whether to issue or renew a supported living certificate.

Driving record

An applicant who seeks to be an independent provider or is an independent provider seeking renewal of the applicant's supported living certificate must obtain the applicant's driving record from the Bureau of Motor Vehicles and provide a copy of the report to the ODODD Director if the supported living that the applicant will provide involves transporting individuals with mental retardation or developmental disabilities. The Director may consider the applicant's driving record when determining whether to issue or renew the certificate.

Release of reports

A report obtained under the provisions discussed above is not a public record and is not to be made available to any person, other than the following:

(1) The applicant who is the subject of the report or the applicant's representative;

(2) The ODODD Director or the Director's representative;

(3) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

--The denial of or refusal to renew a supported living certificate;

--The denial, suspension, or revocation of a certificate for MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings or a certificate for a registered nurse to provide MR/DD personnel training courses;

--A civil or criminal action regarding Medicaid or a program ODODD administers.

An applicant for whom the Director has obtained reports discussed above may submit a written request to the Director to have copies of the reports sent to any person or state or local government entity. The applicant must specify in the request the person or entities to which the copies are to be sent. On receipt of the request, the Director must send copies of the reports to the persons or entities so specified.

The Director is permitted to request that a person or state or local government entity send copies to the Director of any report regarding a records check or criminal records check that the person or entity possesses if the Director obtains the written consent of the individual who is the subject of the report.

The Director must provide each applicant with a copy of any report about the applicant obtained under the provisions discussed above.

Registry of MR/DD employees regarding abuse, neglect, or misappropriation

(R.C. 5123.50, 5123.51, and 5123.542)

ODODD is required to review any report it receives that an MR/DD employee has abused, neglected, or misappropriated the property of an individual with mental

retardation or another developmental disability. ODODD must investigate the allegation and determine whether there is a reasonable basis for the allegation. If ODODD determines that a reasonable basis exists, it must conduct an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).

In conducting the hearing, the hearing officer appointed by ODODD must determine whether there is clear and convincing evidence that the MR/DD employee has committed certain actions. The ODODD Director must establish a registry of MR/DD employees found to have committed any of the actions. A person or government entity must inquire whether an individual is included in the registry before hiring, contracting with, or employing an individual as an MR/DD employee. In general, a person or government entity is prohibited from hiring, contracting with, or employing the individual if the individual is included in the registry.[65]

List of actions included in the registry

An MR/DD employee may be included in the registry of MR/DD employees if the employee is found to have done any of the following:

(1) Misappropriated the property of one or more individuals with mental retardation or a developmental disability that has a value, either separately or taken together, of $100 or more;

(2) Misappropriated such an individual's property that is designed to be used as a check, draft, negotiable instrument, credit card, charge card, or device for initiating an electronic fund transfer at a point of sale terminal, automated teller machine, or cash dispensing machine;

(3) Knowingly abused such an individual;

(4) Recklessly abused or neglected such an individual, with resulting physical harm;

(5) Negligently abused or neglected such an individual, with resulting serious physical harm;

(6) Recklessly neglected such an individual, creating a substantial risk of serious physical harm;

[65] R.C. 5123.52 (not in the bill).

(7) Engaged in sexual conduct or had sexual contact with such an individual who was not the employee's spouse and for whom the employee was employed or under a contract to provide care;

(8) Unreasonably failed to make a mandatory report of suspected abuse or neglect when the employee knew or should have known that the failure would result in a substantial risk of harm to such an individual.

The bill expands the list of actions for which an MR/DD employee may be included in the registry by including the following:

--Misappropriation of prescribed medication of an individual with mental retardation or a developmental disability;

--Being convicted of or entering a plea of guilty to any of the following offenses if the victim of the offense is an individual with mental retardation or a developmental disability: sex offenses, theft offenses, fraud offenses, failing to provide for a functionally impaired person, patient abuse or neglect, patient endangerment, endangering children, or an offense of violence.[66]

MR/DD employees subject to the registry

Current law defines "MR/DD employee" as (1) an employee of ODODD, (2) an employee of a county DD board, and (3) an employee in a position that includes providing specialized services to an individual with mental retardation or another developmental disability. The bill provides that independent providers also are MR/DD employees; therefore, they are subject to inclusion in the registry regarding their acts of abuse, neglect, or misappropriation of property. An independent provider is an individual who provides supported living on a self-employed basis and does not employ, directly or through contract, another individual to provide supported living.

[66] Offenses of violence are defined by current law as aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, abduction, extortion, trafficking in persons, rape, sexual battery, gross sexual imposition, aggravated arson, arson, terrorism, aggravated robbery, robbery, aggravated burglary, burglary, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidating certain persons in a case, escape, improper discharge of a firearm, an offense other than a traffic offense that was committed purposely or knowingly and the offense resulted in harm or the risk of serious physical harm, and conspiracy or attempt to commit or complicity in committing any of these offenses. (R.C. 2901.01(A)(9).)

Notice regarding the registry

Continuing law provides for MR/DD employees to receive an annual notice explaining the conduct for which an MR/DD employee may be included in the registry of MR/DD employees. ODODD, county DD boards, and providers of specialized services to individuals with mental retardation or developmental disabilities are to provide the notice. The bill requires ODODD or a county DD board to provide the notice to an MR/DD employee who is an independent provider.

Members of county DD boards

(R.C. 5126.023)

Certain persons are prohibited by current law from serving on a county DD board based on their familial relationships or their status as current or former employees. The bill modifies some of these restrictions and clarifies others. Under the bill's changes, none of the following may serve as a county DD board member:

(1) An immediate family member of a member of the *same* county DD board. Currently, a person cannot serve as a county DD board member if the person is an immediate family member of *another county DD board member.*

(2) An employee of *any* county DD board. Currently, a person cannot serve as a county DD board member if the person is *a county DD board employee*.

(3) An immediate family member of an employee of the *same* county DD board. Currently, a person cannot serve as a county DD board member if the person is an immediate family member of *a county DD board employee*.

(4) A former employee of a county DD board whose employment ceased less than *four* calendar years before the employee would begin to serve as a member of the *same* county DD board. This is an increase in the current law waiting period of *one* calendar year.

(5) A former employee of a county DD board whose employment ceased less than two years before the former employee would begin to serve as a member of a different county DD board. This is not addressed in current law.

The bill eliminates a provision that prohibits (unless there is no conflict of interest) a person from serving as a county DD board member if the person is, or has an immediate family member who is, an employee or board member of an agency contracting with the county DD board that is not licensed or certified by ODODD to provide services to individuals with mental retardation or developmental disabilities.

The bill eliminates a corresponding provision specifying that (1) all questions relating the existence of a conflict of interest are to be submitted to the local prosecuting attorney for resolution and (2) the Ohio Ethics Commission may examine any issues arising under the ethics laws pertaining to public officers,[67] the criminal law prohibiting public officials from having an unlawful interest in a public contract,[68] and the criminal law prohibiting public servants from soliciting improper compensation.[69]

Certification or registration of employees

(R.C. 5126.25, 5123.033, 5123.0414, 5123.0415, 5123.081, 5123.082 (repealed), 5123.083 (repealed), 5126.0220, 5126.20, 5126.22, 5126.251, 5126.252 (repealed), and 5126.26 (repealed))

Overview

The bill transfers to superintendents of county DD boards the responsibility for the certification or registration of persons to be employed in positions serving individuals with mental retardation or developmental disabilities.

Transfer to county DD boards

Current law requires the ODODD Director to adopt rules establishing uniform standards and procedures for the certification or registration of persons for employment by county DD boards or employees of the entities with which county DD boards contract to serve individuals with mental retardation and developmental disabilities. The standards and procedures apply to the following: superintendents; management, professional, and service employees; and investigative agents. The bill transfers to superintendents of county DD boards the responsibility for the certification or registration of persons to be employed in positions serving individuals with mental retardation or developmental disabilities. The bill maintains the ODODD Director's responsibility to take these actions relative to county DD board superintendents. As under current law, the bill provides that no person may be employed in a position requiring certification or registration without valid certification or registration, and no

[67] R.C. Chapter 102.

[68] R.C. 2921.42 and 2921.421.

[69] R.C. 2921.43.

person may continue to be employed if the required certification or registration is denied, revoked, or not renewed.[70]

Rules on certification or registration

The bill requires the ODODD Director to adopt the rules to be followed by county DD boards regarding certification or registration. The rules apply to persons seeking employment with or employed by either a county DD board or an entity that contracts with a county DD board to operate programs and services for individuals with mental retardation or developmental disabilities.

The ODODD Director is required to adopt rules establishing all of the following:

(1) The positions of employment subject to certification or registration;

(2) The requirements that must be met to receive the certification or registration, including standards regarding education, specialized training, and experience, taking into account the needs of individuals with mental retardation or developmental disabilities and the specialized techniques needed to serve them;[71]

(3) Application requirements for a person seeking certification or registration for employment;

(4) Initial certification or registration procedures and requirements for renewal, including continuing education and professional training requirements;

(5) Grounds for which certification or registration may be denied, suspended, or revoked and procedures for appealing the denial, suspension, or revocation.

Superintendents of each county DD board are responsible for taking all actions regarding certification and registration of employees (other than the position of superintendent). These actions, which must be taken in accordance with the ODODD Director's rules, include issuing, renewing, denying, suspending, and revoking a certificate or registration. A person subject to a denial, suspension, or revocation may

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[70] As under current law, the certification and registration requirements do not apply to a teacher holding a valid license or certificate or another licensed professional (such as health care professionals) performing duties for which the professional is authorized to perform.

[71] As provided under current law, the ODODD Director may not require a person designated as a service employee to have or obtain a bachelor's or higher degree. A "service employee" is defined as a person employed by a county DD board in a position for which a bachelor's degree is not required and includes a workshop specialist, workshop specialist assistant, contract procurement specialist, community employment specialist, and any assistant to a professional employee.

appeal the decision in accordance with the Director's rules. The ODODD Director is to retain responsibility for all of these actions relative to the position of superintendent.

The bill maintains a provision under current law permitting a person with a valid certificate or registration on the effective date of any rule change to have not less than one year to meet the new certification or registration standards; this would apply to any rule changes made by the Director regarding the new certificates or registration of the bill.

The bill specifies that a person with valid certification or registration issued by one county DD board is qualified to be employed in any other county DD board or entity contracting with a county DD board. The bill does not address the effect of the new certification and registration system on persons who were certified or registered prior to the bill's effective date.

Fees

The bill eliminates provisions of current law requiring that fees be charged for certification or registration and that those fees be deposited in the Program Fee Fund. That fund is used by ODODD for employee certification and registration, the supported living program, the licensing of residential facilities, and to provide continuing education and professional training to providers of services to individuals with mental retardation or developmental disabilities. The bill does not specify if any fees are to apply to the bill's certificates or registration or the purposes for which those fees may be used.

Eliminated provisions

All of the following provisions of current law are eliminated in the transfer of the responsibility of employee certification and registration to county DD boards (if indicated, the ODODD Director is to address the issue in rules):

(1) A specific requirement that an investigative agent requires certification, must hold or obtain no less than an associate degree from an accredited college or university or hold or obtain comparable experience or training, and must complete continuing education;

(2) A requirement that certificates and evidence of registration be provided according to categories, levels, and grades;

(3) A requirement that the ODODD Director approve courses of study meeting certification standards and provide for the inspection of the courses to ensure the maintenance of satisfactory training procedures;

(4) A requirement that courses of study be approved only if given by a state university or college or an institution that has received a certificate by the Ohio Board of Regents to confer degrees;

(5) A requirement that applicants seeking certification or evidence of registration apply to ODODD on a form established by the Director and include an application fee;

(6) A requirement that the ODODD Director take disciplinary actions against the holder of a certificate or registration;

(7) Specific offenses for which the ODODD Director is authorized to take disciplinary actions and the hearing requirements regarding those actions (requirements to be adopted in rules);

(8) Provisions on the completion of necessary courses of instruction by an applicant for a certificate, when the applicant has not completed necessary courses;

(9) Authorization for a county DD board superintendent or superintendent's designee to certify to the ODODD Director that a county DD board or contracting entity employee has met continuing education or professional training requirements as a condition of renewal of certification or registration;

(10) A provision providing for an automatic suspension or refusal to renew a certificate or registration if a person fails to comply with a child support order.

County DD board employees

Management employees

(R.C. 5126.20 and 5126.21)

A person employed by a county DD board as a "management employee" is an employee in a position having supervisory or managerial responsibilities and duties. The bill modifies the law governing these employees as follows:

(1) Eliminates a requirement that a county DD board reemploy a management employee for one year at the same salary, and any authorized salary increase, if the board superintendent fails to notify the employee 90 days before the expiration of the employee's contract that the board does not intend to rehire the employee. The bill maintains the notification requirement.

(2) Eliminates a provision specifying that a management employee's benefits include sick leave, vacation leave, holiday pay, and such other benefits and instead

provides that management employees receive employee benefits as established by the board.

(3) Eliminates provisions referring to procedures for retention of management employees who were under contract or in probationary periods at the time the statutes for contracting with management employees were modified in 1988.

Professional employees

(R.C. 5126.26 and 5126.27 (repealed))

As discussed above, unless exempt from certification requirements, no person is permitted to be employed by a county DD board unless the person holds the proper credentials applicable to the employment position.

The bill eliminates an obsolete exemption that applies to professional employees who were employed by a county DD board at the time the statutes for certification of employees were modified in 1990. That exemption provided that employees employed on that date were permitted to do one of the following:

(1) Accept an employment position at the county DD board for which the employee meets the certification requirements;

(2) Remain in the position and comply with a professional development plan.

Termination of contracts

(R.C. 5126.29 (repealed))

Current law provides that no professional or management employee in a position requiring an educator's license issued by the State Board of Education or a certificate issued by the ODODD Director may terminate the person's contract without first giving 30 days' notice to the county DD board or seeking prior written consent from the board. A person violating this requirement may have the person's license or certificate suspended for a period of time not to exceed one year. The bill eliminates this requirement.

County DD board employees as members of governing board

(R.C. 5126.0222)

The bill eliminates a provision specifying that an employee of a county DD board may be a member of the governing board of either a political subdivision, including a board of education, or an agency that does not provide services designed and operated

to serve primarily individuals with mental retardation or a developmental disability. The bill also eliminates a provision that specifies that the county DD board is authorized to contract with that governing board even though its membership includes a county DD board employee.[72]

Service and support administration

(R.C. 5126.15)

County DD boards are authorized, and in certain instances required, to provide service and support administration to individuals. Those employed by a board as service and support administrators are required to assist individuals in receiving services, including assessing individual needs for services, establishing an individual's eligibility for services, and ensuring that services are effectively coordinated.

The bill eliminates a requirement that service and support administrators ensure that each individual receiving services has a "designated person." This person is to be responsible on a continuing basis for providing the individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services. The bill also eliminates a provision permitting the individual to designate that person.

Distribution of funds for county DD boards in regional councils of government

(R.C. 5126.13)

The bill eliminates a provision requiring ODODD, when directed to do so by a county DD board that is part of a regional council of governments, to distribute funds for that county DD board to the regional council's fiscal officer.

Existing law permits political subdivisions to enter into an agreement creating a regional council of government to, among other things, promote cooperative arrangements and coordinate action among its members, contract among its members and other governmental agencies and private entities to address problems common to its members, and perform functions and duties performed or capable of performance by members of the council. Regional council members, the state, and the federal government may give the regional council moneys, real and personal property, and services. Any political subdivision may contract with the regional council to provide a service to or receive a service from the council, or authorize the council to perform any function or render any service on behalf of the political subdivision.

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[72] These employees would remain subject to any continuing laws governing ethics or unlawful influence in public contracts that otherwise apply to governing board members and county DD board employees.

Licensure of ICFs/MR as residential facilities

(R.C. 5123.192 (repealed and new enactment), 3702.62, 3721.01, 3721.21, 3721.50, 5123.171, 5123.19, 5123.41, and 5126.51; Sections 110.20, 110.21, 110.22, and 751.10)

The bill repeals a grandfather clause that makes a facility subject to licensure by the Department of Health as a nursing home rather than licensure by ODODD as a residential facility if the facility, on June 30, 1987, contained beds that the Department of Health had certified before that date as ICF/MR beds or had an application pending with the Department of Health to convert intermediate care facility beds to ICF/MR beds. The grandfather clause does not apply, however, to such a facility that applies for recertification as an ICF/MR after its certification or provider agreement is not renewed or is terminated pursuant to a final order for which all appeal rights have been exhausted. The grandfather clause also does not apply to additional ICF/MR beds such a facility obtains.

A residential facility is a home or facility in which an individual with mental retardation or a developmental disability resides. However, none of the following is a residential facility: (1) the home of a relative or legal guardian in which an individual with mental retardation or a developmental disability resides, (2) a certified respite care home, (3) a county or district home, or (4) a dwelling in which the only residents with mental retardation or developmental disabilities are in independent living arrangements or being provided supported living.

Under the bill, a person or government agency operating an ICF/MR pursuant to a nursing home license under the grandfather clause must apply, not later than February 1, 2013, to the ODODD Director for a residential facility license for the ICF/MR and obtain the license not later than July 1, 2013, or cease to operate the ICF/MR. A grandfathered ICF/MR's nursing home license ceases to be valid at the earliest of (1) the date that its nursing home license is revoked or voided, (2) the date that it obtains a residential facility license, and (3) July 1, 2013. No bed that is part of a grandfathered ICF/MR may be used as part of a nursing home on and after the earlier of the date that it obtains a residential facility license and July 1, 2013.

In addition to repealing the grandfather clause, the bill eliminates a law that requires a nursing home that is certified as an ICF/MR to apply for licensure as a residential facility of the portion of the home that is certified as an ICF/MR. Presumably, the law does not apply to ICFs/MR that are subject to the grandfather clause. In place of this law, the bill provides that a residential facility includes a facility certified as an ICF/MR.

The bill provides that despite the repeal of the grandfather clause an ICF/MR operating under a nursing home license is to continue to be a nursing home for the purposes for which it is considered to be a nursing home under the law in effect on the day immediately preceding the repeal of the grandfather clause until the earliest of (1) the date that its nursing home license is revoked or voided, (2) the date that it obtains a residential facility license, and (3) July 1, 2013. The repeal of the grandfather clause does not change an ICF/MR's status regarding (1) the law regarding abuse, neglect, or misappropriation of residents' property at long-term care facilities, (2) the franchise permit fees on nursing homes and ICFs/MR, (3) the law that permits certain individuals who provide specialized services to individuals with mental retardation or developmental disabilities to administer prescribed medications, perform health-related activities, or perform tube feedings, or (4) the law governing the Residential Facility Linked Deposit Program.

The bill provides that the certificate of need (CON) law does not apply to any part of a long-term care facility's campus that is certified as an ICF/MR. Current law, in contrast, provides that a nursing home certified as an ICF/MR that is required to apply for licensure by ODODD as a residential facility is not, with respect to the portion of the home certified as an ICF/MR, subject to the CON law.

Choosing providers of certain ODODD programs

(R.C. 5126.046 (primary), 5123.044, and 5126.055)

Current law requires certain county DD boards to create a list of all persons and government entities eligible to provide habilitation, vocational, or community employment services provided as part of home and community-based services available under a Medicaid waiver administered by ODODD. This applies to a county DD board that has Medicaid local administrative authority for the services. If a county DD board chooses and is eligible to provide the services, the county DD board must include itself on the list. The county DD board must make the list available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for the services and to such individuals' families. The bill eliminates these requirements.

The bill also eliminates a requirement for ODODD to create, each month, a list of all persons and government entities eligible to provide residential services and supported living. Current law requires that ODODD include on the list all licensed residential facilities and certified supported living providers. ODODD must distribute the lists to county DD boards that have Medicaid local administrative authority for residential services and supported living provided as part of home and community-based services available under an ODODD-administered Medicaid waiver. A county

DD board that receives a list must make it available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such residential services and supported living and to the families of such individuals.

The bill provides that, except as otherwise provided by a federal Medicaid regulation, an individual with mental retardation or other developmental disability who is eligible for home and community-based services provided under an ODODD-administered Medicaid waiver program has the right to obtain the services from any provider that is qualified to furnish the services and is willing to provide the services to the individual. An individual with mental retardation or other developmental disability who is eligible for non-Medicaid residential services or non-Medicaid supported living has the right under the bill to obtain the services from any provider of the residential services or supported living that is qualified to furnish the services and is willing to provide the services or support to the individual. Current law, in contrast, provides that an individual with mental retardation or other developmental disability who is eligible for habilitation, vocational, or community employment services may choose the provider of the services and that an individual who is eligible for residential services or supported living may choose the provider of the residential services or supported living.

Under the bill, the ODODD Director, rather than ODODD and the Department of Job and Family Services, must adopt rules regarding these provisions.

Retention of records of developmental disabilities institutions

(R.C. 5123.31 and 5123.89; conforming changes in 5123.166)

ODODD maintains records on residents of the institutions governed by it. These records must show the resident's name, residence, sex, age, nativity, occupation, condition, and date of entrance or commitment; the date, cause, and terms of the resident's discharge; the condition of the resident at the time of leaving; a record of the resident's transfer from one institution to another; and, if the resident dies while in the care and custody of ODODD, the date and cause of the resident's death.

The bill permits ODODD, after a period of time it determines, to deposit such records with the Ohio Historical Society. The bill generally prohibits the Historical Society from disclosing a resident's records or the information in them, except that disclosure may be made to the closest living relative of the resident on the relative's request.

The bill also corrects erroneous cross references in a related section of law (R.C. 5123.166).

Fees charged county DD boards for home and community-based services

(R.C. 5123.0412 (primary) and 5123.01)

The bill prohibits ODODD from charging a county DD board a fee for Medicaid paid claims for home and community-based services provided under the Transitions Developmental Disabilities Waiver. Continuing law requires ODODD to charge each county DD board an annual fee equal to 1.25% of the total value of all Medicaid paid claims for home and community-based services provided under other ODODD-administered Medicaid waiver programs during the year to an individual eligible for services from the county DD board.

Decision-making by and for individuals with mental retardation and developmental disabilities

(R.C. 5126.043)

The bill eliminates a provision authorizing only the guardian of an individual with mental retardation or another developmental disability who has been adjudicated incompetent to make decisions regarding the individual's receipt of services from a county DD board. In place of the eliminated provision, the bill establishes the following decision-making procedures regarding an individual with mental retardation or other developmental disability:

(1) Guardian appointed for the individual

If a guardian has been appointed for the individual, the guardian must make all decisions described above. The decisions must be in the best interests of the individual on whose behalf the decisions are made and be consistent with the needs, desires, and preferences of the individual.

(2) Guardian not appointed for the individual

If a guardian has not been appointed for the individual, two options are available. First, the individual may make any one or more decisions described above. In making such decisions, the individual is permitted to obtain support and guidance from an adult family member or other person, but doing so does not affect the individual's right to make such decisions. Second, the individual may authorize an adult to make any one or more decisions described above on the individual's behalf as long as the adult does not have a financial interest in the decision. The authorization must be in writing. In addition, the decisions the authorized adult makes must be in the individual's best interests and consistent with the needs, desires, and preferences of the individual.

Plans for residential services

(R.C. 5123.042 and 5123.19; Sections 110.20, 110.21, and 110.22)

The bill eliminates a law that does all of the following:

(1) Requires a county DD board, in accordance with its comprehensive service plan, to review all proposals to develop residential services for individuals with mental retardation or developmental disabilities that are submitted to it and, if a proposal is acceptable to the county DD board, recommend providers of the services;

(2) Requires ODODD to approve proposals based on the availability of funds and in accordance with rules;

(3) Prohibits a county DD board from recommending providers if it is an applicant to provide services;

(4) Requires the ODODD Director, in cases of possible conflict of interest, to appoint a committee that must, in accordance with an approved county comprehensive service plan, review and recommend providers;

(5) Permits the ODODD Director, if a county DD board fails to establish a comprehensive service plan, to establish residential services development goals for the county DD board based on documented need as determined by ODODD;

(6) Permits ODODD, if a county DD board fails to develop or implement a comprehensive service plan, to review and select providers without the county DD board's involvement;

(7) Requires the ODODD Director to adopt rules establishing:

- Uniform standards under which a person or agency must submit plans to a county DD board for the development of residential services within the county the county DD board serves and the county DD board reviews the plans and recommends providers;

- Eligibility criteria for selecting persons and agencies to provide residential services, taking into consideration a county DD board's recommendations.

In place of this law, the bill requires each person or government entity seeking to develop or modify existing residential services to submit to ODODD a plan for the development or modification. ODODD is required to approve a plan that is submitted

in accordance with rules the bill requires the ODODD Director to adopt and meets the uniform standards for plans established in the rules.

The bill maintains current law that exempts an applicant for an initial residential facility license or a modification of an existing residential facility license from the requirement to obtain approval of a plan for the proposed new facility or modification to the existing facility if (1) the new or modified facility is to serve individuals who have diagnoses or special care needs for which a special Medicaid reimbursement rate is set, (2) the Director of the Ohio Department of Job and Family Services (ODJFS) and ODODD Director determine that there is a need under the Medicaid program for the new or modified facility and that approving the facility is fiscally prudent for the Medicaid program, and (3) the Director of the Office of Budget and Management (OBM) notifies the ODJFS and ODODD directors that the OBM Director agrees with their determination.

County DD board responsibility for certain Medicaid costs

(R.C. 5123.38)

The bill revises the law governing a county DD board's responsibility under certain circumstances to pay the nonfederal share of Medicaid expenditures for an individual's care in a state-operated intermediate care facility for the mentally retarded (ICF/MR). Under current law, ODODD must, except under certain circumstances, use funds otherwise allocated to a county DD board as the nonfederal share of Medicaid expenditures for an individual's care in a state-operated ICF/MR if the individual receives supported living or home and community-based services funded by the county DD board when the individual is committed to the state-operated ICF/MR. The bill requires instead that ODODD collect the amount of the nonfederal share for which a county DD board is responsible by either withholding that amount from funds ODODD has otherwise allocated to the county DD board or submitting an invoice for payment of that amount to the county DD board.

Current law provides that a county DD board is not responsible for the nonfederal share under two circumstances. First, a county DD board is not responsible if, not later 90 days after the date of the commitment of a person receiving supported services to a state-operated ICF/MR, the county DD board commences funding of supported living for an individual who resides in a state-operated ICF/MR on the date of the commitment or another eligible individual designated by ODODD. Second, a county DD board is not responsible if the county DD board, not later than 90 days after the date of the commitment of a person receiving Medicaid-funded home and community-based services, commences funding of such services for an individual who resides in a state-operated ICF/MR on the date of the commitment or another individual

designated by ODODD. The bill establishes a third circumstance under which a county DD board is not responsible for the nonfederal share. The third circumstance is to apply if the ODODD Director, after determining that circumstances warrant granting a waiver in an individual's case, grants a county DD board a waiver that exempts the county DD board from responsibility for the nonfederal share for that case.

DEPARTMENT OF EDUCATION (EDU)

- Eliminates the 10% or 25% income-based reduction required by current law for scholarships and tutorial assistance grants under the Cleveland Scholarship Program.

- Extends the Ohio Digital Learning Task Force's existence through June 30, 2012, and requires it to monitor implementation of its prior recommendations and to issue a report by June 30, 2012, on whether digital learning is advancing in Ohio and any recommendations to enhance digital learning.

- Requires each early childhood education program that receives state funding from the Department of Education to participate in the Step Up to Quality Program administered by the Department of Job and Family Services, and to be rated in the Program by July 1, 2016.

- Requires school districts, educational service centers, and county DD boards serving preschool children with disabilities also to participate in the Step Up to Quality Program, and to be rated in the Program by July 1, 2018.

- Until December 31, 2012, permits a school district board to offer real property to a state university, rather than first having to offer it to community schools located in the district as otherwise required by current law, if the university has a main campus in-state undergraduate enrollment between 17,000 and 22,000 and the property is within 100 yards of a university classroom or administrative building.

- Provides that a district's offer to a state university may be either or both (1) to exchange that property for in-kind services, educational programs, or other assistance valued in an amount "reasonably related" to the property's appraised fair market value, or (2) to sell the property for not more than its appraised fair market value.

- Authorizes entities that purchased school district real property in 2005 under the terms of Section 206.10.21 of H.B. 66 of the 126th General Assembly to use the property for residential, as well as commercial, development.

Cleveland Scholarship Program

(R.C. 3313.976, 3313.978, and 3313.979)

The bill removes the current stipulation limiting the actual scholarship payment under the Cleveland Scholarship Program to 90% (for low-income families) or 75% (for other families) of the calculated scholarship amount. As a result, beginning in the 2012-2013 school year, eligible students may receive up to the maximum amount in its entirety to use towards tuition: $4,250 for grades K to 8 and $5,000 for grades 9 to 12. The bill also eliminates similar limits on tuition assistance grants, so that students may receive up to the maximum $400 grant.

In a conforming change, the bill adjusts the current parameters by which a private school may or may not charge scholarship students beyond the scholarship amount. Under the bill, for students in grades K through 8 with family incomes at or below 200% of the federal poverty guidelines, private schools must agree not to charge any tuition in excess of the scholarship amount. For students in grades K through 8 with family incomes above 200% whose scholarship amounts are less than the actual tuition charge of the school, and for high school students, private schools must agree not to charge more than the difference between the actual tuition charge of the school and the scholarship amount.

In the current law, a student is eligible for a scholarship of up to either 90% or 75% of the maximum award amount, depending upon family income. The remaining 10% or 25%, respectively, is required to be provided by "a political subdivision, a private nonprofit or for profit entity, or another person."[73] A school cannot charge any tuition to "low-income families" in excess of 10% of the scholarship amount for students in grades K through 8 who receive the 90% amount. For elementary students who receive the 75% amount, and for high school students, current law permits a private school to charge the difference between the school's actual tuition charge and the student's scholarship amount.

Background

The Cleveland Scholarship Pilot Program provides scholarships to attend alternative schools, including private schools, and tutorial assistance grants to certain students who reside in any school district that is or has been under a federal court order requiring supervision and operational management of the district by the Superintendent of Public Instruction. Currently, only the Cleveland Metropolitan School District meets this criterion. The program has been authorized since 1995. It is

[73] R.C. 3313.978(C)(4).

financed partially with state funds and partially with an earmark of Cleveland's state payments.

Ohio Digital Learning Task Force

(Section 371.60.80 of H.B. 153 of the 129th General Assembly)

The bill delays, from March 1, 2012, to June 30, 2012, the termination of the Ohio Digital Learning Task Force, and requires it to monitor the implementation of the recommendations it previously was required to submit to the Governor, the Senate President, and the Speaker of the House. Not later than June 30, 2012, the bill requires the Task Force also to report to the Governor, the Senate President, and the Speaker of the House whether digital learning is advancing in Ohio schools and any recommendations to enhance the delivery of digital learning programs and services. The bill terminates the Task Force on June 30, 2012.

Background

The Task Force was created in H.B. 153 of the 129th General Assembly "to develop a strategy for the expansion of digital learning that enables students to customize their education, produces cost savings, and meets the needs of Ohio's economy." Consisting of the Chancellor of the Board of Regents, the Superintendent of Public Instruction, the Director of the Governor's Office of 21st Century Education, or their designees, up to six members appointed by the Governor, one member appointed by the Senate President, and one member appointed by the Speaker of the House, the Task Force was ordered to examine several factors, including cost savings and academic benefits of using digital textbooks and digital content, digital content pilot programs and state-level initiatives in Ohio, information on digital textbooks, and digital content distribution methods.

The Task Force was required to submit a report by March 1, 2012, to the Governor, the Senate President, and the Speaker of the House regarding recommendations on various initiatives, including (1) access to digital content instruction for public and nonpublic schools and students receiving home instruction, (2) professional development for educators providing digital content, (3) funding strategies, (4) student assessment and accountability, (5) infrastructure to support digital learning, (6) mobile learning and mobile learning applications, (7) the distance learning clearinghouse, (8) ways to align the resources and digital learning initiatives of state agencies and offices, (9) methods for providing coordination of and removing redundancy and inefficiency in digital learning programs, and (10) ways of addressing future changes in technology and learning. Upon submittal of the report, the Task Force was to cease to exist.

Early childhood education programs subject to ODJFS rating program

(Sections 267.10.10 and 267.30.20 of H.B. 153)

The bill amends uncodified sections of H.B. 153 that prescribe standards for early childhood education programs that receive state funding from the Department of Education. It requires the programs receiving the funding to participate in the Step Up to Quality Program administered by the Ohio Department of Job and Family Services (ODJFS), and sets deadlines for them to be rated by the ODJFS program. Specifically:

(1) Early childhood education programs receiving state funding must be rated by July 1, 2016; and

(2) Special education programs for preschool children with disabilities that are operated by school districts, educational service centers, and county DD boards must be rated by July 1, 2018.

Disposal of school district property

Offer to state university

(Section 733.10)

The bill grants temporary authority for a school district board to transfer real property to a state university. Specifically, until December 31, 2012, when a school district board of education has decided to dispose of district real property, the bill permits the board to offer the right of first refusal to acquire that property to a state university if: (1) the property is within the 100 yards of a classroom or administrative building on the university's main campus, and (2) the university has a main campus in-state undergraduate enrollment of more than 17,000 but less than 22,000 for fiscal year 2012. The state universities meeting this enrollment qualification appear to be: the University of Akron, the University of Cincinnati, Kent State University, and Ohio University.

The district board may offer the property to the university in either or both of the following ways: (1) exchange the property, in an "as is" condition, in return for agreed-upon in-kind services, educational programs, or other assistance provided by the university to the district with an aggregate value "reasonably related" to the property's appraised fair market value, or (2) for money at a price that is not higher than the property's appraised fair market value. If the university does not accept the offer, or if an agreement is not entered into between the district and university, within 60 days after the offer is made, the district board then must offer the property for sale to start-up

community schools located within the district, in the same manner as it would under current law.

Use of property sold in 2005

(Section 753.11)

The bill expands the uses authorized for former school district real property that was sold in 2005 under the terms of Section 206.10.21 of H.B. 66 of the 126th General Assembly, by allowing the property to be used for residential development, as well as commercial development. Originally, that section provided a temporary exception (from June 30 to December 31, 2005) to the general statute governing sale of school district property, if the property, "when sold will be used for commercial development." A school district could, "in support of economic development within its territory," dispose of *certain* property by direct sale, in lieu of any of the existing alternatives, including the requirement to offer the property first to community schools within the district. The property exempted from the general law by the H.B. 66 provision was required to meet the following conditions:

(1) The property must be encumbered by easements, liens, or other restrictions that benefit the purchaser; and

(2) The property must be part of or adjacent to real property previously disposed of by the district.

Background

Under current law, when a school district board of education decides to dispose of real property worth $10,000 or more, it generally must sell that property through a public auction. If the district board offers the property for sale by public auction at least once, and the property is not sold, the district board can sell it at a private sale. However, before a district board can offer the property to any buyer, including at auction, it must first offer the property to start-up community schools located within the district's territory at a price no higher than the property's appraised fair market value. If no community school accepts the offer to buy within 60 days, the district can dispose of the property by auction or by another authorized way. As an alternative to a public auction, after offering the property to community schools, the district can sell the property to a public entity, including state colleges and universities or their branch campuses, the Adjutant General, political subdivisions, taxing authorities, park

commissioners, and school library districts. School district boards can also include the property in a trade or an exchange.[74]

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Transfer of Division of Recycling and Litter Prevention

- Abolishes the Division of Recycling and Litter Prevention in the Department of Natural Resources, transfers its functions and responsibilities to the Environmental Protection Agency (EPA), and transfers applicable appropriations to the EPA.

- Transfers the authority to make grants from the Recycling and Litter Prevention Fund from the Chief of the Division of Recycling and Litter Prevention with the approval of the Director of Natural Resources to the Director of Environmental Protection.

- Generally prohibits information that is submitted to, acquired by, or exchanged with EPA employees in order to obtain a grant from the Fund from being used in any manner for the purpose of enforcement of any requirement established in an environmental law or used as evidence in any judicial or administrative enforcement proceeding.

- States that the above provision does not confer immunity on persons from enforcement that is based on information that is obtained by the Director or the Director's authorized representatives who are not EPA employees who administer or provide services under the grant program.

- Transfers the authority to make grants from the Scrap Tire Grant Fund from the Chief of the Division of Recycling and Litter Prevention to the Director.

- Makes necessary conforming changes.

Clean Air Fund

- Eliminates the Clean Air Fund, which is used by EPA to administer Title V and non-Title V air pollution control programs, and replaces it with the Title V Clean Air Fund and the Non-Title V Clean Air Fund.

[74] R.C. 3313.41, not in the bill.

- Retains the existing fee structure that provides money to the Clean Air Fund, but distributes the proceeds of those fees to either the new Title V Clean Air Fund or the new Non-Title V Clean Air Fund.

- Requires fees related to emissions from a Title V air contaminant source to be credited to the Title V Clean Air Fund and certain fees related to non-Title V air contaminant sources to be credited to the Non-Title V Clean Air Fund.

- Requires money in the Title V Clean Air Fund generally to be used to administer and enforce the Title V permit program

- Requires money in the Non-Title V Clean Air Fund generally to be used to administer and enforce laws pertaining to the prevention, control, and abatement of air pollution other than the Title V program and, as in current law, other than motor vehicle inspection and maintenance programs.

- Specifies that an existing transfer from the Clean Air Fund to the Small Business Assistance Fund be transferred instead from the Title V Clean Air Fund and that it be transferred via an interstate transfer voucher.

- Requires that, annually, money in the Title V Clean Air Fund be transferred to the Small Business Ombudsperson Fund in an amount that is necessary for the operation of the Office of Ombudsperson.

- Makes technical changes, including the repeal of statutory authority for certain fees that have expired.

Consensual administrative order agreements

- Authorizes the Director to enter into consensual administrative order agreements in furtherance of the purposes of the state's environmental laws.

- Authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements with persons, in addition to governmental entities, affected groups, and industries as in current law, in furtherance of those purposes.

Operators of water supply and wastewater systems

- Establishes a new fee schedule for certification of operators of water supply and wastewater systems by consolidating the application fee with the fee schedule for examinations administered by the Director for each class of operator.

- Establishes all of the following fees:

--$45 for certification as an operator of a water supply system or wastewater system for a person who has passed an examination administered by an approved examination provider;

--$500 to apply to be a water supply system or wastewater system operator examination provider; and

--10% annually of the fees assessed and collected by an approved examination provider for administering examinations to persons seeking certification in Ohio as water supply system or wastewater system operators.

Public water system licenses

- Requires the Director to adopt rules governing the issuance, conditioning, and denial of public water system licenses and license renewals in addition to rules governing the suspension and revocation of licenses as in current law.
- Allows the Director to condition a license or license renewal in addition to suspending or revoking a license or license renewal as in current law.
- With regard to an application for a new license, states that the Director has the authority to issue, issue with terms and conditions, or deny the license.
- Requires applications for initial licenses to be submitted at least 45 days prior to the commencement of the operation of a public water system.
- Makes additional organizational and technical changes to the law governing public water system licenses and license renewals.

Transfer of functions and responsibilities of Division of Recycling and Litter Prevention to Environmental Protection Agency

(R.C. 121.04, 125.082, 125.14, 1501.04, 1502.01 (3736.01), 1502.02 (3736.03), 1502.03 (3736.02), 1502.04 (3736.04), 1502.05 (3736.05), 1502.06 (3736.06), 1502.07 (3736.07), 1502.12 (3734.822), 1502.99 (3736.99), 3714.073, 3734.51, 3734.55, 3734.82, and 5733.064; Sections 737.20 and 737.30)

The bill abolishes the Division of Recycling and Litter Prevention in the Department of Natural Resources and transfers its functions and responsibilities to the Environmental Protection Agency (EPA). It establishes transition procedures for that transfer and also transfers applicable appropriations to the EPA. Under current law, the

Division and its Chief are responsible for implementing programs and making grants related to recycling and litter prevention as discussed below.

Programs

The bill transfers responsibility for establishing and implementing statewide source reduction, recycling, recycling market development, and litter prevention programs to the Director of Environmental Protection. It then requires those programs to be consistent with the state solid waste management plan that is adopted under the Solid, Hazardous, and Infectious Wastes Law.

Recycling and Litter Prevention Fund

The bill transfers the authority to make grants from the continuing Recycling and Litter Prevention Fund from the Chief of the Division of Recycling and Litter Prevention with the approval of the Director of Natural Resources to the Director of Environmental Protection. The Fund may be used to make grants for all of the following programs: (1) assessment of waste generation within the state and implementation of source reduction practices, (2) implementation of recycling and recycling market development activities and projects, (3) litter prevention assistance to enforce antilitter laws, educate the public, and stimulate collection and containment of litter, and (4) research and development regarding source reduction, recycling, and litter prevention.

The bill then prohibits information that is submitted to, acquired by, or exchanged with EPA employees in order to obtain a grant from the Fund from being used in any manner for the purpose of enforcement of any requirement established in an environmental law or used as evidence in any judicial or administrative enforcement proceeding unless the information reveals a clear and immediate danger to the environment or to the health, safety, or welfare of the public. For that purpose, an environmental law is a law that is administered by the EPA. The bill adds that nothing in the statute governing the Fund confers immunity on persons from enforcement that is based on information that is obtained by the Director or the Director's authorized representatives who are not EPA employees who administer or provide services under that statute.

Scrap Tire Grant Fund

The bill also transfers the authority to make grants from the Scrap Tire Grant Fund to the Director of Environmental Protection. Grants from the Fund may be made to support marketing development activities for scrap tires and synthetic rubber from tire manufacturing and recycling processes and to support scrap tire amnesty and cleanup events sponsored by solid waste management districts.

Conforming changes

As a result of the abolishment of the Division, the bill makes necessary conforming changes. For example, it removes the chairperson of the Recycling and Litter Prevention Advisory Council, which the bill transfers to within EPA, from the Recreation and Resources Commission in the Department of Natural Resources. It also removes the Director of Natural Resources from the Solid Waste Management Advisory Council in the EPA.

Title V Clean Air Fund and Non-Title V Clean Air Fund

(R.C. 3704.035, 3706.19, 3734.79, 3745.11, 3745.111 (repealed), 3745.112, 5709.212, and 6109.21)

The bill repeals the existing Clean Air Fund and replaces it with the Title V Clean Air Fund and the Non-Title V Clean Air Fund. The bill requires the Director of Environmental Protection to expend money in the Title V Clean Air Fund generally to administer and enforce the Title V program pursuant to the federal Clean Air Act, the state Air Pollution Control Law, and rules adopted under it. The bill requires the Title V Clean Air Fund to consist of existing fees levied on Title V air contaminant sources. The bill also specifies that an existing transfer from the Clean Air Fund to the Small Business Assistance Fund be transferred instead from the Title V Clean Air Fund and that it be transferred via an interstate transfer voucher. The bill requires that, annually, money in the Title V Clean Air Fund, instead of the existing Clean Air Fund, be transferred to the Small Business Ombudsperson Fund in an amount that is necessary for the operation of the Office of Ombudsperson.

The bill requires the Director to expend money in the Non-Title V Clean Air Fund exclusively to pay the cost of administering and enforcing the laws of Ohio pertaining to the prevention, control, and abatement of air pollution, rules adopted under those laws, and terms and conditions of permits, variances, and orders issued under those laws. However, the Director is prohibited from expending money credited to the Non-Title V Clean Air Fund for the administration and enforcement of the Title V permit program, rules adopted under that program, or motor vehicle inspection and maintenance programs. The bill requires the Non-Title V Clean Air Fund to consist of existing fees related to non-Title V air contaminant sources. The bill also requires certain fees related to air pollution control facilities to be credited to the Non-Title V Clean Air Fund rather than the Clean Air Fund as in current law, provided that certain circumstances established in current law are applicable.

The bill also makes technical changes, including the repeal of statutory authority for certain air pollution control fees that have expired.

Under current law, the Director is required to expend money in the Clean Air Fund for the following purposes:

--To administer and enforce the Title V program pursuant to the federal Clean Air Act, the state Air Pollution Control Law, and rules adopted under it; and

--To pay the cost of administering and enforcing the laws of Ohio pertaining to the prevention, control, and abatement of air pollution, rules adopted under those laws, and terms and conditions of permits, variances, and orders issued under those laws, except that the Director is prohibited from expending money credited to the Clean Air Fund for motor vehicle inspection and maintenance programs.

Consensual administrative order agreements

(R.C. 3745.01)

The bill authorizes the Director to enter into consensual administrative order agreements with other Ohio agencies, the federal government, other states, interstate agencies, affected groups, political subdivisions, and industries in furtherance of the purposes of the state's environmental laws. Under current law, the Director is authorized to advise, consult, cooperate, and enter into contracts or agreements for those purposes, but is not specifically authorized to enter into consensual administrative order agreements.

The bill further authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements, including consensual administrative order agreements, with persons. Current law authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements only with the governmental entities, affected groups, and industries discussed above.

Water supply system and wastewater system operator certification fees

(R.C. 3745.11(O))

The bill alters the fee schedule for certification of operators of water supply and wastewater systems. The bill does this by consolidating the current application fee of $45 with the current fee schedule for examinations administered by the Director, applicable through November 30, 2014, for each class of operator of a water supply system or a wastewater system. The bill also consolidates the $25 application fee that is applicable on and after December 1, 2014 with the fee schedule for examinations applicable on and after that date. Below is a list of the fee schedules applicable through November 30, 2014, and on and after December 1, 2014.

Through November 30, 2014

Class A operator – $35 (existing fee), $80 (consolidated fee under the bill)

Class I operator – $60 (existing fee), $105 (consolidated fee under the bill)

Class II operator – $75 (existing fee), $120 (consolidated fee under the bill)

Class III operator – $85 (existing fee), $130 (consolidated fee under the bill)

Class IV operator – $100 (existing fee), $145 (consolidated fee under the bill)

On and after December 1, 2014

Class A operator – $25 (existing fee), $50 (consolidated fee under the bill)

Class I operator – 45 (existing fee), $70 (consolidated fee under the bill)

Class II operator – $55 (existing fee), $80 (consolidated fee under the bill)

Class III operator – $65 (existing fee), $90 (consolidated fee under the bill)

Class IV operator – $75 (existing fee), $100 (consolidated fee under the bill)

The bill also establishes the following new fees:

--$45 for certification as an operator of a water supply system or wastewater system for a person who has passed an examination administered by an approved examination provider;

--$500 to apply to be a water supply system or wastewater system operator examination provider; and

--10% annually of the fees assessed and collected by an approved examination provider for administering examinations to persons seeking certification in Ohio as water supply system or wastewater system operators.

Public water system licenses

(R.C. 6109.21 and 3734.11 (for cross reference purposes only))

The bill alters the statutory requirements governing the issuance of licenses for public water systems and makes numerous organizational and technical changes to the law governing those systems. The bill also makes substantive changes to that law. First, the bill requires the Director to adopt rules in accordance with the Administrative

Procedure Act establishing procedures and requirements governing the issuance, conditioning, suspension, revocation, and denial of licenses and license renewals. Current law requires the rules to establish procedures governing applications, suspensions, and revocations. The bill retains unchanged the requirement that the Director adopt rules establishing the information to be included on applications for licenses and license renewals.

The bill allows the Director to condition, suspend, or revoke a license or license renewal at any time if the Director finds that the public water system was not or will not be operated in substantial compliance with the Safe Drinking Water Law and rules adopted under it. Current law allows the Director only to suspend or revoke a license or license renewal if the Director finds that the public water system was not operated in substantial compliance with that Law and rules adopted under it.

The bill authorizes the Director, with respect to a new license application, to: (1) issue the license, (2) issue the license with terms and conditions, or (3) deny the license. It retains those options established in current law for license renewals.

The bill requires a license application to be submitted at least 45 days prior to commencing operation of the public water system. Current law requires that a license application be submitted prior to commencing operation of the system, but does not specify a date certain by which the application must be submitted.

eTECH OHIO COMMISSION (ETC)

- Abolishes the eTech Ohio Commission, effective July 1, 2012.
- Transfers to the Chancellor of the Board of Regents the Commission's duties for educational telecommunications activities and teacher professional development.
- Transfers to the Department of Education the Commission's duties for technology assistance for schools.
- Eliminates the requirement for the development of a state educational technology plan.
- Eliminates the Interactive Distance Learning Pilot Project.
- Eliminates the Education Technology Trust Fund and the Information Technology Service Fund.

Abolishment of the eTech Ohio Commission

Background

The bill abolishes and transfers the duties of the eTech Ohio Commission. The Commission was created in 2005 by a merger of the Ohio SchoolNet Commission and the Ohio Educational Telecommunications Network Commission. It is a state agency that provides financial and technical assistance to school districts, other educational entities, public television and radio stations, and radio reading services for the acquisition and use of educational technology and for the development of educational materials. The Commission consists of 13 members, nine of whom are voting members and four of whom are nonvoting legislative members. The voting members include six representatives of the public, the Superintendent of Public Instruction (or a designee), the Chancellor of the Board of Regents (or a designee), and the state chief information officer (or a designee). Of the six public members, four are appointed by the Governor (with the advice and consent of the Senate) and one each is appointed by the Speaker of the House and the President of the Senate. The Commission appoints an executive director and other employees to carry out its functions. Its employees are unclassified civil servants and are, generally, exempt from collective bargaining. Some employees, who transferred from one of the Commission's predecessor agencies may be entitled to collectively bargain if they were included in a bargaining unit with the predecessor agency.

Abolishment of the Commission

(R.C. 105.41, 125.05, 152.09, 154.25, 3301.75, 3313.603, 3314.074, 3317.06, 3317.50, 3317.51, 3319.22, 3319.235, 3333.59, 3333.82, 3333.89, 3333.90, 3333.91, 3333.92, 3333.93, 3333.94, and 3345.12; repealed R.C. 3353.02, 3353.03, and 3353.04; Sections 515.10 to 515.13)

The bill abolishes the eTech Ohio Commission effective July 1, 2012. On that date, its duties regarding the operations of the state's educational telecommunications activities and technology-related teacher professional development programs are transferred to the Chancellor of the Board of Regents. Its other duties to provide assistance to school districts and schools in the acquisition and use of educational technology are transferred to the Department of Education. The Commission's employees will be transferred (subject to the normal civil service layoff provisions) to either the Chancellor's office or to the Department depending upon their duties. As before, transferred employees retain their collective bargaining rights, only if they were included in a bargaining unit with one of the Commission's predecessors. Also, like the eTech Ohio Commission, and the former Ohio SchoolNet Commission, the activities transferred to the Chancellor are exempt from competitive bidding requirements.

State technology plan

(Repealed R.C. 3353.09)

The eTech Ohio Commission is charged with developing, implementing, and updating a state technology plan "to create an aligned educational technology system" from preschool through higher education. The Commission must consult with the State Board of Education in the development and modification of the plan.

The bill eliminates the requirement for the plan.

Interactive Distance Learning Pilot Project

(Repealed R.C. 3353.20)

H.B. 1 of the 128th General Assembly, in 2009, required the eTech Ohio Commission, with assistance from the Department of Education and the Chancellor, to establish an interactive distance learning pilot project to provide at least three courses free of charge to high schools. The bill eliminates this requirement.[75]

Education Technology Trust Fund and Information Technology Service Fund

(Repealed R.C. 183.28 and 3353.15; Section 512.60)

The bill eliminates the Education Technology Trust Fund, which formerly held tobacco settlement moneys dedicated to educational technology. It also eliminates the Information Technology Service Fund. The latter fund was created in 2011 by H.B. 153 to hold money received by the eTech Ohio Commission from educational entities for the provision of information technology services.

[75] The Chancellor is required to maintain a distance learning clearinghouse on a "common statewide platform" for the delivery of courses developed by a variety of public and private providers. The clearinghouse is currently operated as a program known as "OhioLearns"!

ETHICS COMMISSION (ETH)

- Modifies the filing fees for the disclosure statements required to be filed by certain pubic offices with the appropriate ethics commission.

Ethics disclosure statements

(R.C. 102.02(E))

The bill modifies the filing fees for the disclosure statements required to be filed by certain public offices with the appropriate ethics commission. The general filing fee, which is the filing fee for public offices not specifically identified and assigned a special dollar amount, is increased from $40 to $60. The special filing fee for a member of the State Board of Education is increased from $25 to $35. And for members appointed to the Ohio Livestock Care Standards Board, the bill clarifies that they are subject to the general filing fee.

EXPOSITIONS COMMISSION (EXP)

- Adds the Director of Natural Resources or the Director's designated representative to the membership of the Ohio Expositions Commission.

Membership

(R.C. 991.02)

The bill adds the Director of Natural Resources or the Director's designated representative to the membership of the Ohio Expositions Commission as an ex officio member with voting rights. Currently, the Commission is composed of the Directors of Development and Agriculture or their designated representatives, who are ex officio members with voting rights, the chairpersons of the standing committees in the House of Representatives and the Senate to which matters dealing with agriculture are generally referred, who are nonvoting members, and nine members appointed by the Governor. The Commission is responsible for conducting the Ohio State Fair and managing the State Fairgrounds.

DEPARTMENT OF HEALTH (DOH)

Patient Centered Medical Home Education Program

- Establishes the Patient Centered Medical Home Education Program within the Ohio Department of Health (ODH).

- Requires the ODH Director, to the extent funds are available, to implement the existing Patient Centered Medical Home Education Pilot Project.

- Authorizes the ODH Director to adopt rules defining what constitutes a "patient centered medical home" for purposes of an entity authorized to provide care coordination services, rather than defining a "health home" as provided under current law.

- Maintains, in part, the existing Patient Centered Medical Home Education Advisory Group, but specifies that the Advisory Group is to provide recommendations to the ODH Director rather than serve as a decision-making body.

- Removes the limit on the number of physician practices that may be permitted to participate in the Pilot Project and provides that a practice is ineligible to participate in the Pilot Project unless the practice submitted an application not later than April 15, 2011.

- Eliminates the authority of the Advisory Group to appoint an executive director and employ other necessary staff and a requirement that, upon securing funding, the Advisory Group provide participating practices in the Pilot Project reimbursement for up to 75% of the cost incurred in purchasing health information technology.

- Includes curricula for physician assistants in the patient centered medical home model of care curricula development program required by existing law.

Informed consent brochures

- Requires ODH to publish on its web site instead of causing to be published materials that inform a pregnant woman seeking an abortion about family planning, pregnancy and childbirth assistance, adoption agencies, and probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at certain points during the pregnancy.

- Eliminates the duty of ODH to produce more than one copy of the materials described above to any person, hospital, physician, or medical facility that requests more than one copy.

- Eliminates the affirmative defense available to a physician or agent of the physician in a civil action that the physician or agent of the physician requested hard copies of the materials from ODH and ODH failed to produce them.

Abolishment of Public Health Council

- Abolishes the Public Health Council and transfers the Council's duties to the ODH Director.

Lupus Education and Awareness Program

- Authorizes ODH to establish, promote, and maintain a Lupus Education and Awareness Program and to establish both an intergovernmental council and an advisory panel to oversee the program.

- Authorizes ODH to establish the following grant programs: (1) a grant program to support nonprofit health organizations with expertise in lupus and (2) a grant program to educate and train health care professionals and service providers with the grants to be awarded to applicants affiliated with the Lupus Foundation of America.

Home health agency criminal records checks

- Revises the law governing criminal records checks for employment positions with home health agencies.

- Permits the ODH Director to adopt rules that require employees of home health agencies to undergo criminal records checks and database reviews.

- Creates a database review process regarding employment positions with home health agencies.

- Provides that a criminal records check for an employment position with a home health agency is not required for an applicant or employee found by a database review to be ineligible for the position.

- Revises the list of disqualifying offenses that may make an individual ineligible for an employment position with a home health agency.

The Ohio Violent Death Reporting System

- Requires the ODH Director to establish and maintain the Ohio Violent Death Reporting System to monitor the incidence and causes of various types of violent deaths in Ohio.

- Requires the ODH Director to adopt rules necessary to establish, maintain, and carry out the purposes of the Reporting System.

- Establishes confidentiality requirements for information, data, and records collected for use and maintained by, and all work products created in carrying out the purposes of, the Reporting System.

Certificate of Need Program

- Modifies terms used in certificate of need (CON) law to reflect previous changes that limit the law to projects related to long-term care facilities.

- With respect to a CON application, specifies that (1) the application fee is nonrefundable unless the Director of ODH determines that the application cannot be accepted and (2) the Director's determination that a CON application is not complete is final and not subject to appeal.

- Eliminates a provision allowing, and in some cases requiring, a community public informational hearing on a CON application.

- Eliminates a requirement that the Director invite interested parties to a meeting requested by one or more people about a CON application.

- Requires the Director to consider all written comments received regarding a CON application, but eliminates the requirement that an administrative hearing be conducted when written comments are received.

- Establishes requirements that must be met on completion of a project under which beds are relocated after approval of a CON application, including an application approved during the initial phase of a four-year review period.

- Eliminates requirements that the Director (1) regularly conduct health system data collection and analysis for the CON program, prepare reports, and make recommendations and (2) issue, and annually review and revise, a state health resources plan.

- Eliminates a provision requiring the Public Health Council to authorize the creation of one or more nursing home placement clearinghouses.

- Provides that the Director's determination that a CON has expired is final and not subject to appeal.

- Provides that persons whose sole involvement with a CON application is testifying or submitting written comments on the application are not "affected persons" and therefore are no longer permitted to appeal.

- Modifies the process for reviewing applications for replacement or relocation of long-term care beds from a county with excess beds to a county with fewer beds than needed.

- Modifies requirements for the review of applications for an increase in beds in an existing nursing home to limit the increase to a total of no more than 30 beds for all applications combined.

- Requires the Director to accept applications for replacement CONs under certain conditions.

- Requires the Director as part of the determination of the long-term care bed supply to include beds in a hospital that are registered as special skilled nursing beds, long-term beds, or long-term care beds.

- Eliminates the requirement that the Director designate health service areas and health service agencies for each area and all requirements related to health service areas and agencies.

- Makes technical and conforming changes.

Other provisions

- Provides that rules governing nursing homes (1) cannot prescribe the number of social workers that nursing homes with 120 or fewer beds must employ, (2) must require each nursing home with more than 120 beds to employ one social worker on a full-time basis, and (3) must require each nursing home to offer its residents medically related social services that assist the residents in attaining or maintaining their highest practicable physical, mental, and psychosocial well-being.

- Decreases the penalty for late payment of a fee charged by ODH under the Radiation Control Program to an additional 10% of the original fee when the fee remains unpaid on the 91st day after the invoice date, in place of the existing fee assessments made as follows: (1) two times the original fee if not paid within 90 days and (2) five times the original fee if not paid within 180 days.

Patient Centered Medical Home Education Program

Overview

The bill provides that the temporary Patient Centered Medical Home Education Pilot Project currently administered by the Patient Centered Medical Home Education Advisory Group be administered instead as a temporary Pilot Project by the Ohio Department of Health (ODH) within a permanent Patient Centered Medical Home Education Program. The Advisory Group is to provide recommendations to the ODH Director regarding the Program rather than serve as a decision-making body for the Pilot Project.

Pilot Project – background

(R.C. Chapter 185.)

The Patient Centered Medical Home Education Pilot Project was established by Sub. H.B. 198 of the 128th General Assembly for the purpose of advancing medical education in the patient centered medical home model of care. This model of care is described in current law and the bill as an "enhanced model of primary care in which care teams attend to the multifaceted needs of patients, providing whole person comprehensive and coordinated patient centered care." Currently, the Pilot Project is to provide financial support to physician and practices and advanced practice nurse primary care practices to support this model of care.

Establishment of Patient Centered Medical Home Education Program

(R.C. 185.01 (3701.92), 3701.921, and 3701.922; R.C. 3701.032 (repealed))

The bill establishes within ODH the Patient Centered Medical Home Education Program and applies the purposes of the existing Pilot Project – to advance education in the patient centered medical home model of care – to that Program. The ODH Director is authorized to do any of the following to implement the Program:

(1) The Director may develop and implement programs of education or training on the patient centered medical home model of care or other similar enhanced models of coordinated patient centered care that are intended to address the multifaceted needs of patients and provide whole person comprehensive and coordinated patient centered care.

(2) The Director may advise, consult, cooperate with, and assist, by contract or other arrangement, government agencies or institutions or private organizations, corporations, or associations in the development and promotion of programs pertaining

to the evaluation and implementation of the patient centered medical home model of care or other similar enhanced models of coordinate patient centered care.

(3) In addition to being required, to the extent funds are available, to implement the Pilot Project described below, the Director may establish additional pilot projects that evaluate or implement, or provide education or training in the patient centered medical home model of care or other similar enhanced models of coordinated patient centered care.

(4) The Director may seek and administer state funds or grants from other sources to carry out any function of the Program. Any funds or grants received by the Director for purposes of the Program are to be used for the Program.

(5) The Director may adopt rules to implement and administer the Program, including definitions on what constitutes a "patient centered medical home" for purposes of identifying an entity authorized to provide care coordination services. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The bill eliminates the Director's authority under current law to define a "health home" for the same purpose.

Patient Centered Medical Home Education Pilot Project

(R.C. 185.02 (3701.923), 185.06 (3701.926), and 185.07 (3701.927); 185.04 (repealed), 185.08 (repealed), 185.10 (repealed), and 185.11 (repealed))

To the extent that funds are available, the Program is to include the Patient Centered Medical Home Education Pilot Project established under existing law, with certain modifications. The ODH Director is to do all of the following if the Pilot Project is implemented:

(1) Select practices led by physicians and primary care practices led by advanced practice nurses to participate in the Pilot Project and make the selection in accordance with current law that specifies requirements that apply to participating practices;[76]

(2) Conduct the Pilot Project in a manner that advances education in the patient centered medical home model of care;

(3) Evaluate learning opportunities generated by the Pilot Project, training of physicians and advanced practice nurses under the Pilot Project, costs of the Pilot

[76] These include certification requirements, capacity to adapt the practice to comply with standards for the operation of a patient centered medical home, and any other criteria established by the ODH Director (rather than the Advisory Group).

Project, and the extent to which the Pilot Project met expected outcomes developed by the Advisory Group;

(4) Assess and review results of the Pilot Project;

(5) Recommend best practices and opportunities for improving technology, education, comprehensive training, consultation, and technical assistance for health care service providers in the patient centered medical home model of care.

In implementing the Pilot Project, the Director is authorized to contract with an entity that has significant experience in assisting physician-led practices and advanced practice nurse-led primary care practices in transitioning to the patient centered medical home model of care. Such a contract is to require that the entity do both of the following:

(1) For each participating practice, provide comprehensive training, consultation, and technical assistance in the operation of a patient centered medical home, including assistance with leadership training, scheduling changes, staff support, and care management for chronic health conditions;

(2) Assist the Director in identifying necessary financial and operational requirements and any barriers or challenges associated with transitioning to a patient centered medical home model of care.

Although existing law requires the submission of a final report on the project (see "**Reports**," below), it does not specifically establish a beginning and ending date, for the Pilot Project. The bill provides that the Pilot Project is to begin when the first practice begins to participate in the Project and end no later than two years after the final practice selected by the Director begins participation.

While the Pilot Project to be administered by the Director retains in large part the provisions of existing law's Pilot Project, the following provisions that apply to the Pilot Project under current law are modified as follows:

(1) Participating practices are to be selected by the Director, rather than the Advisory Group;

(2) The limit of 40 physician practices that may participate in the Pilot Project is removed;

(3) A practice must have submitted an application to participate not later than April 15, 2011;

(4) A practice must enter into a contract with the Director to participate, rather than with the Advisory Group.

The bill provides that the contract entered into with the Director may include requirements regarding the number of patients served by the practice who are Medicaid recipients and individuals without health insurance. The contract is also required to specify that a participating practice provide *comprehensive, coordinated primary care services* rather than *primary care services*.

As part of the transfer to ODH, the bill eliminates all of the following as they relate to the Pilot Project:

(1) Authority of the Advisory Group to appoint an executive director and employ other staff considered necessary;

(2) A requirement, on securing funding, to provide reimbursement to participating practices for up to 75% of the cost incurred in purchasing necessary health information technology;

(3) Authority of the Advisory Group to seek funding and hold the funds in an account to support the Pilot Project.

Patient Centered Medical Home Education Advisory Group

(R.C. 185.03 (3701.924) and 185.05 (3701.925))

The existing Patient Centered Medical Home Education Advisory Group is recreated in a modified form under the bill with substantially the same membership. The Advisory Group will no longer be responsible for implementing and administering the Pilot Project, instead acting as a recommending body to the ODH Director on the Pilot Project specifically and the Program generally. The Advisory Group is required to develop and provide to the Director a set of expected outcomes for the Pilot Project.

The responsibility of the Advisory Group to select practice participants for the Pilot Project is eliminated. The Advisory Group is instead to provide recommendations to the Director; the recommendations must be made in accordance to the requirements specified under existing law.[77] The Advisory Group is to provide a copy of all applications received to the Director after making its recommendations.

[77] These include requirements to recommend practices with certain affiliations and a diverse range of specialties and to consider the percentage of patients served by the practice who are part of a medically underserved population.

The composition of the Advisory Group is modified in part by the bill. Members who were appointed by a recommending authority are no longer appointed by that authority and instead are appointed by the Director, in consultation with their respective recommending authority. Under the bill, recommended members serve at the pleasure of the Director. In addition, former nonvoting, ex officio members are included as full voting members. The bill adds an employee of ODH and no more than five additional members with relevant expertise, appointed by the Director.

In making the original appointments to the recreated Advisory Group, the Director is required to appoint members serving on the existing Advisory Group on the effective date. If one of those members is unable to serve, the Director is to request from the specified recommending authority a list of no less than two persons qualified to serve on the Advisory Group and appoint one of those recommended. This process is also to be used in filling a vacancy.

In its organization, the Director, rather than the Advisory Group, is to appoint from its members a chairperson and vice-chairperson. The bill provides that the Advisory Group is to meet not less than annually and at the call of the Director. The bill maintains an existing provision requiring that members serve without compensation. The Advisory Group must have a majority of a quorum to make any recommendations, and a majority of the members of the Advisory Group constitutes a quorum.

Curricula development

(R.C. 185.09 (3701.928))

Existing law requires the Advisory Group, as part of the Pilot Project, to jointly work with all medical and nursing schools in Ohio to develop appropriate curricula designed to prepare primary care physicians and advanced practice nurses to practice within the patient centered medical home model of care.

The bill provides that the ODH Director, or at the Director's request the Advisory Group, is *authorized*, rather than *required*, to work with medical, nursing, and *physician assistant* schools or programs in the development of the curricula. The bill also provides that the curricula and training components designed to prepare professionals to practice in the patient centered medical home model of care is to include physician assistants as well as physicians and nurses. Similarly, the bill provides that access to the curricula developed be extended to physician assistants. Rather than being required to work in association with medical and nursing schools to identify funding sources to ensure the development of this curricula, the bill provides that the Director or Advisory Group is *authorized* to work in association with medical, nursing, and *physician assistant* schools or programs to identify those funding sources.

Reports

(R.C. 185.12 (3701.929))

The bill maintains the requirement that two reports on the Pilot Project be submitted to the Governor, President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, and Director of the Legislative Service Commission. However, the bill provides that the reports are to be prepared by the ODH Director and specifies different deadlines. The first report is to be issued not later than six months after the last practice enters into a contract with the Director to participate in the Project, rather than when the first funding for the Project is released. The final report is to be issued not later than two years after the last practice enters into a contract with the Director to participate in the Project.

Informed consent brochures

(R.C. 2317.56)

Current law requires ODH *to cause to be published* in English and in Spanish the following materials:

(1) Materials that inform a pregnant woman about family planning information, of publicly funded agencies that are available to assist in family planning, and of public and private agencies and services that are available to assist her through the pregnancy, upon childbirth, and while the child is dependent, including, but not limited to, adoption agencies;

(2) Materials that inform a pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two-week gestational increments for the first 16 weeks of pregnancy and at four-week gestational increments from the 17th week of pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable.

The bill instead requires ODH to *publish* the above materials *on ODH's web site*.

Under current law, ODH is required to provide the requested number of copies of the above materials to any person, hospital, physician, or medical facility that requests one or more copies of the materials. The bill requires ODH to provide only one copy of the materials to any person, hospital, physician, or medical facility that requests a copy.

Affirmative defenses to a civil action for failure to provide informed consent materials

Current law unchanged by the bill provides that an abortion may be performed or induced only if several conditions are satisfied, except in cases when there is a medical emergency or medical necessity. One of these conditions is that at least 24 hours prior to the performance or inducement of the abortion one or more physicians or their agents must do each of the following in person, by telephone, by certified mail, return receipt requested, or by regular mail evidenced by a certificate of mailing:

(1) Inform the pregnant woman of the name of the physician who is scheduled to perform or induce the abortion.

(2) Give the pregnant woman copies of the materials described above under "**Informed consent brochures**."

(3) Inform the pregnant woman that the materials described above under "**Informed consent brochures**," are *provided* by the state and that they describe the embryo or fetus and list agencies that offer alternatives to abortion.

Additionally, current law unchanged by the bill provides that a physician who performs or induces an abortion with actual knowledge that any of the conditions mentioned above have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied is liable in compensatory and exemplary damages in a civil action to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as a result of the failure to satisfy those conditions.

Current law provides the following three affirmative defenses to a civil action described in the preceding paragraph:

(1) The physician performed or induced the abortion because of a medical emergency or medical necessity.

(2) The physician made a good faith effort to satisfy the conditions mentioned above.

(3) The physician or an agent of the physician requested copies of the materials described above under "**Informed consent brochures**," but the physician was not able to give a pregnant woman copies of the materials because ODH failed to make the requested number of copies available to the physician or agent.

The bill eliminates this affirmative defense.

Abolishment of Public Health Council

(R.C. 3701.02 (repealed), 3701.12 (repealed), 3701.33 (repealed), 3701.34 (repealed), and 3701.35 (repealed); conforming changes in Sections 601.50 and 601.51 and R.C. 140.03, 140.05, 313.121, 313.122, 313.16, 339.091, 955.16, 955.26, 1923.02, 2307.89, 2907.29, 3313.71, 3701.021, 3701.023, 3701.024, 3701.025, 3701.03, 3701.05, 3701.07, 3701.072, 3701.11, 3701.132, 3701.146, 3701.161, 3701.20, 3701.201, 3701.21, 3701.221, 3701.23, 3701.232, 3701.24, 3701.241, 3701.242, 3701.248, 3701.341, 3701.342, 3701.343, 3701.344, 3701.345, 3701.347, 3701.352, 3701.40, 3701.507, 3701.508, 3701.509, 3701.57, 3701.87, 3702.52, 3702.522, 3702.57, 3702.58, 3705.24, 3709.03, 3709.04, 3709.06, 3709.09, 3709.092, 3709.32, 3709.35, 3710.01, 3710.02, 3710.04, 3710.05, 3710.051, 3710.06, 3710.07, 3710.08, 3710.09, 3710.10, 3710.12, 3710.13, 3710.17, 3711.04, 3711.06, 3711.08, 3711.12, 3711.21, 3712.03, 3712.04, 3712.09, 3715.01, 3715.025, 3715.60, 3715.61, 3715.62, 3715.68, 3716.01, 3716.03, 3717.01, 3717.04, 3717.05, 3717.07, 3717.45, 3717.51, 3718.02, 3718.021, 3718.022, 3718.05, 3718.06, 3718.07, 3718.09, 3721.01, 3721.011, 3721.03, 3721.032, 3721.04, 3721.07, 3721.121, 3721.13, 3721.21, 3721.28, 3721.29, 3723.06, 3723.07, 3723.09, 3725.02, 3727.42, 3729.02, 3729.03, 3729.04, 3729.07, 3729.08, 3730.10, 3733.02, 3733.021, 3733.022, 3733.025, 3733.04, 3733.05, 3733.091, 3733.10, 3733.101, 3733.13, 3733.41, 3733.42, 3734.01, 3742.01, 3742.02, 3742.03, 3742.04, 3742.05, 3742.30, 3742.47, 3742.50, 3748.04, 3748.05, 3748.10, 3748.12, 3748.15, 3748.20, 3749.02, 3749.03, 3749.04, 3781.06, 4731.22, 4736.01, and 4773.08)

The bill abolishes the Public Health Council, which was created in 1917 as part of the Ohio Department of Health (ODH).[78] The bill transfers the Council's duties to the ODH Director.

Under current law, the Council is required to consider any matter relating to the preservation and improvement of the public health and to advise the Director accordingly. The Council must conduct hearings in cases when ODH is required by law to give hearings; the Council's decisions govern the Director's subsequent actions. The Council must prescribe by rule the number and functions of divisions and bureaus within ODH and the qualifications of their chiefs.

The Council has general authority to adopt, amend, and rescind rules of general application throughout Ohio. Several statutes require the Council to adopt rules governing ODH's programs pertaining to public health, including rules regarding the following:

--Prevention and treatment of certain health conditions and diseases;

[78] ODH, *Public Health Council* (last visited March 16, 2012), available at <http://www.odh.ohio.gov/rules/publicHealthCouncil/publicHealthCouncil.aspx>.

--Infectious disease surveillance and investigation;

--Licensing and operation of certain health care facilities and providers, including nursing homes, residential care facilities, and hospice care programs;

--Implementation of the Certificate of Need Program, which governs the number and distribution of long-term care facilities in the state;

--Implementation of Ohio's Pure Food and Drug Law, establishment of the Ohio Uniform Food Safety Code, and licensure of food service operations;

--Licensing of asbestos abatement, lead abatement, and radon professionals and workers;

--Regulation of handlers of radiation-generating equipment of radioactive material under the Radiation Control Program and licensure of general x-ray machine operators, radiographers, radiation therapy technologists, or nuclear medicine technologists;

--Installation and maintenance of private water systems and sewage treatment systems;

--Licensing and operation of public swimming pools and public spas;

--Licensing and operation of manufactured home parks and recreational vehicle parks.

Transition provisions

(Section 737.10)

For purposes of transferring the Council's duties to the ODH Director, the bill specifies the following:

(1) Any business commenced by the Council but not completed before the transfer is to be completed by the Director;

(2) No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer;

(3) Rules, orders, and determinations of the Council continue to be in effect after the transfer, until modified or rescinded by the Director;

(4) Any action or proceeding that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of the Director.

Lupus Education and Awareness Program

(R.C. 3701.77(A) and (B))

The bill authorizes the Ohio Department of Health (ODH) to establish, promote, and maintain a Lupus Education and Awareness Program that focuses on communities at risk for contracting lupus. Lupus is an autoimmune disease that causes a person's immune system to attack otherwise healthy tissues and organs, resulting in chronic inflammation and tissue damage. Some of the most common symptoms are extreme fatigue, painful or swollen joints, unexplained fever, skin rashes, and kidney problems. The cause of lupus is unknown, although scientists believe that it is caused by a combination of genetic and environmental factors. Lupus tends to affect certain groups of individuals more than others. More women than men have lupus, and lupus is two to three times more common in African American women than in Caucasian women. Lupus is also more common in women of Hispanic, Asian, and Native American descent.[79]

In creating and implementing the program, ODH is authorized to do all of the following:

(1) Provide sufficient staff and appropriate training to carry out the program;

(2) Create a grant program to support nonprofit health organizations with expertise in lupus to increase public awareness and improve health professional education and understanding of the disease;

(3) Establish an intergovernmental council and advisory panel to oversee the program's implementation;

(4) Identify appropriate entities to carry out the program;

(5) Base the program on the most up-to-date scientific information and findings;

(6) Coordinate efforts with government entities, community leaders and organizations, health and human services providers, and national, state, and local lupus organizations, such as the Lupus Foundation of America, to maximize state resources in the areas of lupus awareness and education;

[79] National Institute of Arthritis and Musculoskeletal and Skin Diseases, *Lupus* (last visited April 12, 2012), available at <http://www.niams.nih.gov/Health_Info/Lupus/default.asp>.

(7) Identify and use other successful lupus education and awareness programs and obtain related materials and services from organizations with expertise and knowledge of lupus.

Program funding

(R.C. 3701.77(C) and (D) and 3701.775)

The bill creates the Lupus Education and Awareness Fund in the state treasury. The bill does not contain an appropriation.

Under the bill, ODH is authorized to accept grants, donations, and gifts from foundations, organizations, medical schools, and other entities for fulfilling the program's requirements. ODH may also accept grants from the federal government. ODH may seek any federal waiver necessary to maximize funds from the federal government. If ODH establishes the program, money collected from any of these entities must be credited to the Lupus Education and Awareness Fund, which must be used to administer the program.

Intergovernmental council

(R.C. 3701.773)

As part of establishing the Lupus Education and Awareness Program, the bill authorizes ODH to create an intergovernmental council to oversee the program's implementation. In establishing the council, ODH must seek to ensure coordination of lupus education and awareness efforts.

The council must include representatives from appropriate state agencies, including entities with responsibility for Medicaid, health disparities, public health programs, education, and public welfare. The ODH Director is to serve as the chairperson of the council.

The bill requires the council to do all of the following:

(1) Provide oversight for the program and other lupus programs ODH conducts;

(2) Develop and issue grant applications and policies and procedures for programs aimed at health professionals and the public;

(3) Establish a mechanism for sharing lupus information among those involved in implementing lupus-related programs;

(4) Assist ODH and other offices in developing and coordinating plans for lupus education and health promotion and ensure that lupus-related issues are integrated into other statewide plans.

The council must prepare an annual report describing state-sponsored lupus education initiatives and the council's recommendations for new lupus education initiatives. The report must be transmitted to the General Assembly and made available to the public.

Advisory panel

(R.C. 3701.774)

The bill authorizes ODH to establish an advisory panel to advise ODH and the intergovernmental council on the implementation of the Lupus Education and Awareness Program. ODH must consult with the panel on a regular basis.

The panel members are to be appointed by the ODH Director. Each member must have familiarity with lupus and lupus-related issues. Individuals and organizations may submit nominations for appointment to the panel. The membership must include (1) at least three individuals with lupus, (2) not more than two representatives from ODH, (3) at least five individuals from lupus nonprofit health organizations, with preference given to individuals from the Lupus Foundation of America, and (4) at least five scientists or clinicians with experience in lupus who practice in a variety of scientific fields.

ODH must select one of the panel members to serve as the panel's chairperson. The panel must meet at the call of the chairperson, but not fewer than four times per year. Panel members' terms are for a period of two years, and a panel member may serve no more than two terms. Members are to serve without compensation but may be reimbursed for actual and necessary expenses.

Needs assessment and program administration

(R.C. 3701.771)

The bill authorizes ODH to conduct a needs assessment to identify all of the following:

(1) The level of lupus awareness in Ohio among health professionals and the public;

(2) The existence, in Ohio and nationwide, of lupus education, awareness, and treatment programs and related technical assistance;

(3) The educational and support service needs of health care providers in Ohio as the needs relate to lupus;

(4) The needs of people with lupus, as well as their families and caregivers;

(5) The services available to people with lupus.

The bill authorizes ODH to develop and maintain a directory of lupus-related services and health care providers that specialize in diagnosing and treating lupus. ODH may distribute the directory to all stakeholders, including individuals with lupus, families, representatives from voluntary organizations, health professionals, health plans, and state and local health agencies.

The bill authorizes ODH to undertake activities to raise public awareness about lupus symptoms, risk factors, diagnosis, and treatment options, with a focus on elevated-risk populations. The activities may include (1) implementing a statewide campaign to educate the general public about lupus through public service announcements, advertisements, posters, and other materials, (2) distributing health information and conducting risk assessments at public events, and (3) distributing information through local health departments, schools, area agencies on aging, employer wellness programs, health professionals, hospitals and health plans, community-based and other organizations, and regional ODH offices.

Grant programs

The bill authorizes ODH to establish two grant programs related to lupus awareness and education. One grant program is for educating health professionals and other service providers affiliated with the Lupus Foundation of America. The other grant program is for supporting nonprofit organizations in promoting public awareness and increasing education of health professionals. As discussed above, the bill does not contain an appropriation (see "**Program funding**").

Grant program for health professionals and service providers

(R.C. 3701.772)

Under one of the bill's grant programs, ODH is to award grants to educate and train physicians, health professionals, and other service providers in the most current scientific and medical information on lupus. This includes education on lupus diagnosis, treatment, medical best practices for dealing with lupus in special populations, and the risks and benefits of medications.

The bill requires that grant awards be allocated in amounts proportionate to the populations of areas served by the Ohio chapters of the Lupus Foundation of America. Only applicants who are affiliated with the Foundation are eligible to receive grants.

The bill requires each grant recipient to do all of the following:

(1) Develop health professional educational materials with the latest scientific and medical information;

(2) Work to increase knowledge among health and human services professionals about the importance of lupus diagnosis, treatment, and rehabilitation;

(3) Use available curricula for training community leaders and health and human services providers on lupus detection and treatment;

(4) Support continuing medical education programs in Ohio presented by leading state academic institutions;

(5) Provide seminars and workshops for the professional development of lupus care providers;

(6) Conduct statewide conferences on lupus.

Each grant recipient is to prepare and submit to ODH an annual report that describes the use of the grant money.

Grant program for nonprofit organizations

(R.C. 3701.77(B)(2))

Under the other grant program that may be established, ODH is to support nonprofit health organizations with expertise in lupus. The purpose of the grant program is to aid these organizations in increasing public awareness and enhancing health professional education and understanding of the symptoms and consequences of lupus and the populations most at risk of contracting the disease.

Legislative findings and intent

(Section 737.60)

Under the bill, the General Assembly's findings regarding lupus are specified as including the following:

- Lupus is a serious, complex, and debilitating autoimmune disease that can cause inflammation and tissue damage to virtually any organ system in

the body, including the skin, joints, other connective tissue, blood and blood vessels, heart, lungs, kidneys, and brain.

- The Lupus Foundation of America estimates that approximately 1.5 to 2 million Americans live with lupus.

- According to the Centers for Disease Control and Prevention, the rate of lupus mortality has increased since the late 1970s.

- The pain and fatigue associated with lupus can threaten the ability to live independently, maintain employment, and lead a normal life. One in five individuals with lupus is disabled by the disease, and consequently receives support from government programs, including Medicare, Medicaid, Social Security Disability, and Social Security Supplemental Income.

- The estimated average annual cost of medical treatment for an individual with lupus is between $10,000 and $30,000; for individuals with the most serious form of lupus, medical costs can greatly exceed this amount, causing a significant economic, emotional, and social burden to the entire family and society.

- More than half of individuals with lupus suffer four or more years and visit three or more physicians before obtaining a diagnosis of lupus. Early diagnosis of and treatment for lupus can prevent or reduce serious organ damage, disability, and death.

- Despite the magnitude of lupus, health professional and public understanding of lupus remains low. Only one in five Americans can provide basic information about lupus, and awareness of lupus is lowest among adults 18 to 34 years of age--the age group most likely to develop lupus.

- Lupus is a significant national health issue that deserves a comprehensive and coordinated response by state and federal governments with involvement of the health care provider, patient, and public health communities.

The bill specifies that its purpose is to create a multi-pronged, statewide program to promote public and health professional awareness and increase knowledge concerning the causes and consequences of lupus, the importance of early diagnosis and appropriate management, and effective treatment and management strategies. The bill identifies the following activities:

- Conducting educational and training programs for health professionals on lupus diagnosis and management;

- Developing and disseminating educational materials and information to patients and health professionals on lupus research results and health care services available;

- Designing and implementing a statewide public education campaign aimed at heightening public awareness of lupus;

- Leveraging educational and training resources and services previously developed by organizations with appropriate expertise and knowledge of lupus.

Home health agency criminal records checks

(R.C. 3701.881 (primary), 109.57, 109.572, 1121.23, 1155.03, 1163.05, 1315.141, 1321.37, 1321.53, 1321.531, 1322.03, 1322.031, 1733.47, 1761.26, 2151.86, 3712.09, 3721.121, 4763.05, 5104.012, 5104.013, and 5104.09; Sections 610.10, 610.11, 620.10, 620.11, and 751.20)

The bill revises the law governing criminal records checks for employment positions with home health agencies.

Current law requires applicants to undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation (BCII). There are two types of applicants under current law: (1) persons under final consideration for appointment to or employment with home health agencies in positions as persons responsible for the care, custody, or control of children and (2) persons under final consideration for employment with a home health agency in a full-time, part-time, or temporary position (but not a volunteer position) that involves providing direct care to a person age 60 or older. Different procedures and disqualifying offenses apply to the two types of applicants. For example, the chief administrator of a home health agency generally is the person who is required to request that BCII conduct a criminal records check of an applicant. However, a chief administrator is not required to make the request for an applicant who is referred to the home health agency by an employment service for a position that involves providing direct care to persons age 60 or older if (1) the chief administrator receives from the employment service or applicant a criminal records check report regarding the applicant that BCII conducted within the one-year period immediately preceding the applicant's referral and (2) the report demonstrates that the applicant has not been convicted of or pleaded guilty to a disqualifying offense or, despite having been convicted of or pleaded guilty to a disqualifying offense, the applicant meets personal character standards specified in rules adopted by the Ohio Department of Health (ODH).

The bill makes the criminal records check processes and database reviews (see "**Database reviews**," below) uniform for applicants. Instead of distinguishing between two types of applicants based on whether children or older adults will receive care, the bill provides that an applicant is a person under final consideration for employment with a home health agency in a full-time, part-time, or temporary position that involves providing direct care to an individual or is referred to a home health agency by an employment service for such a position. As a result, the criminal records check and database review requirements apply to applicants who will provide direct care to persons of any age and volunteers are no longer expressly excluded. "Direct care" is defined as any of the following:

(1) Skilled nursing care, physical therapy, speech-language pathology, occupational therapy, medical social services, or home health aide services provided in a patient's place of residence used as the patient's home;

(2) Any activity that requires the person performing the activity to be routinely alone with a patient or to routinely have access to a patient's personal property or financial documents regarding a patient;

(3) For each home health agency individually, any other routine service or activity that the agency's chief administrator designates as direct care.

Employees subject to database reviews and criminal records checks

The act that established the criminal records check requirement for an applicant seeking a position with a home health agency in which the applicant would be responsible for the care, custody, or control of children, Am. Sub. S.B. 38 of the 120th General Assembly, provided that the requirement applies only to persons seeking such employment on or after October 29, 1993. The act that established the criminal records check requirement for an applicant seeking a position with a home health agency in a position that involves providing direct care to a person age 60 or older, Am. Sub. S.B. 160 of the 121st General Assembly, provided that the requirement applies only to persons seeking such employment on or after January 27, 1997. The bill eliminates these exemptions and permits the ODH Director to adopt rules that require employees to undergo criminal records checks. The rules also may require employees to undergo database reviews that the bill creates (see "**Database reviews**," below). An employee is a person employed by a home health agency in a full-time, part-time, or temporary position that involves providing direct care to an individual and a person who works in such a position due to being referred to a home health agency by an employment service. The ODH Director may exempt one or more classes of employees from the database review and criminal records check requirements. If the rules require employees to undergo database reviews and criminal records checks, the rules must

specify the times at which the database reviews and criminal records checks are to be conducted.

Continuing law permits a home health agency to charge an applicant a fee regarding a criminal records check if the agency notifies the applicant of the fee at the time the applicant initially applies for employment and Medicaid does not reimburse the home health agency the fee it pays for the criminal records check. The fee may not exceed the amount that the home health agency pays to BCII for the criminal records check. The bill does not authorize a home health agency to charge an employee a fee regarding a criminal records check.

A home health agency may not employ an applicant who fails to provide the information necessary to complete a BCII criminal records check form or to provide fingerprint impressions on a BCII standard impression sheet if the home health agency requests the applicant to do so. Under the bill, a home health agency is prohibited from employing an applicant or continuing to employ an employee who fails to complete the form or provide the employee's fingerprint impressions on the BCII impression sheet if the home health agency provides the form and impression sheet to the applicant or employee.

Database reviews

The bill creates a database review process. An applicant is to undergo a database review as a condition of employment with a home health agency in a position that involves providing direct care to an individual. If the ODH Director's rules so require, an employee is to undergo a database review as a condition of continuing employment with a home health agency in such a position. A database review is to determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by ODH;

(7) Any other database, if any, the ODH Director is permitted to specify in rules.

The bill prohibits a home health agency from employing an applicant or continuing to employ an employee if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates.

(2) There is in the state nurse aide registry a statement detailing findings by the ODH Director that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident.

(3) The applicant or employee is included in one or more of the other databases that the ODH Director may specify in rules and the rules prohibit a home health agency from employing an applicant or employee included in such a database in a position that involves providing direct care to an individual.

An applicant or employee is not required to undergo a criminal records check in addition to a database review if the applicant or employee is found by the database review to be ineligible for the job.

The chief administrator of a home health agency is required to inform each applicant that a database review will be conducted to determine whether the agency is prohibited from employing the applicant. The chief administrator also must inform each applicant about the criminal records check requirement. However, the notification requirement may not apply if the applicant is referred by an employment service (see "**Referrals by an employment service**," below).

Conditional employment

An applicant may be employed conditionally by a home health agency before a criminal records check is completed. The terms of conditional employ vary for the different types of applicants under current law. For example, an applicant for a position in which the applicant would be responsible for the care, control, or custody of a child may be employed conditionally until the criminal records check is completed

and the home health agency receives the results. But an applicant for a position that involves providing direct care to a person age 60 or older may be employed conditionally if the home health agency requests the criminal records check not later than five business days after the applicant begins conditional employment and the home health agency must terminate the conditional employment if the results, other than results from the Federal Bureau of Investigation (FBI), are not obtained within the period ending 30 days after the date the request is made.

The bill makes the terms of conditional employment uniform for all applicants. Under the bill, a home health agency may conditionally employ an applicant before obtaining the results of a criminal records check if the agency is not prohibited by a database review from employing the applicant and either of the following applies:

(1) The agency's chief administrator requests the criminal records check not later than five business days after the applicant begins conditional employment.

(2) The applicant is referred to the home health agency by an employment service, the employment service or the applicant provides the agency's chief administrator a letter that is on the letterhead of the employment service, the letter is dated and signed by a supervisor or another designated official of the employment service, and the letter states all of the following:

(a) That the employment service has requested BCII to conduct a criminal records check of the applicant;

(b) That the requested criminal records check is to include a determination of whether the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for an offense that makes the applicant ineligible for the job at the home health agency (see "**Disqualifying offenses**," below);

(c) That the employment service has not received the results of the criminal records check as of the date set forth on the letter;

(d) That the employment service promptly will send a copy of the results of the criminal records check to the home health agency's chief administrator when the employment service receives the results.

If a home health agency conditionally employs an applicant who is referred by an employment service, the employment service, on receiving the results of the criminal records check, must promptly send a copy of the results to the agency's chief administrator.

The home health agency must terminate the conditional employment of an applicant, regardless of whether the applicant is referred to the agency by an employment service or applies directly to the agency, if the results of the criminal records check, other than the results of any request for information from the FBI, are not obtained within the period ending 30 days after the date the request for the criminal records check is made. Regardless of when the results are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the home health agency must terminate the applicant's employment unless the applicant meets personal character standards specified in the ODH Director's rules and the agency chooses to employ the applicant.

Referrals by an employment service

The bill maintains certain provisions of current law regarding applicants who are referred to home health agencies by employment services and applies the provisions to database reviews and employees who work at home health agencies due to being referred by employment services. Under these provisions, a home health agency is not required to subject an applicant or employee to a database review or criminal records check if the applicant or employee is referred to the home health agency by an employment service and both of the following apply:

(1) The agency's chief administrator receives from the employment service confirmation that a database review was conducted of the applicant or employee;

(2) The chief administrator receives from the employment service, applicant, or employee a report of the results of a criminal records check of the applicant or employee that has been conducted by BCII within the one-year period immediately preceding the following:

(a) In the case of an applicant, the date of the applicant's referral by the employment service to the home health agency;

(b) In the case of an employee, the date by which the home health agency would otherwise have to request a criminal records check of the employee.

Disqualifying offenses

Current law prohibits a home health agency from employing a person in a position in which the person is responsible for the care, custody, or control of a child if the person previously has been convicted of or pleaded guilty to a disqualifying offense. However, a home health agency may employ such a person in such a position if the person meets standards in regard to rehabilitation set by ODH in rules. A home

health agency is prohibited from employing a person in a position that involves providing direct care to a person age 60 or older if the person previously has been convicted of or pleaded guilty to a disqualifying offense unless the person meets personal character standards specified in ODH rules. There are differences in the lists of disqualifying offenses for the two types of positions.

Under the bill, a home health agency may not employ an applicant or continue to employ an employee in a position that involves providing direct care to an individual if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense unless the applicant or employee meets personal character standards specified in rules to be adopted by the ODH Director.

The following is the uniform list of disqualifying offenses:

(1) One or more of the following offenses: cruelty to animals (R.C. 959.13); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie

evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); disturbing a lawful meeting (R.C. 2917.12); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); interference with custody (R.C. 2919.23); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) One or more violations of the former offense of felonious sexual penetration (former R.C. 2907.12);

(3) One or more violations of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(4) One violation of the offense of drug possession when the violation is not a minor drug possession offense;

(5) Two or more violations of the offense of drug possession, regardless of whether any of the violations are a minor drug possession offense;

(6) One or more violations of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (5) above;

(7) One or more violations of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (6) above.

Release of criminal records check report

Continuing law provides that a criminal records check report is not a public record and may be released only to certain persons. The bill provides that a report may be released to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid.

The Ohio Violent Death Reporting System

(R.C. 3701.93 to 3701.9314)

Subject to available funds, the bill requires the Director of Health to establish the Ohio Violent Death Reporting System to collect and maintain information, data, and records regarding violent deaths in Ohio.

Duties of the Reporting System

Regarding the violent death information, data, and records it maintains, the Reporting System must do all of the following:

(1) Monitor the incidence and causes of the various types of violent deaths;

(2) Make appropriate epidemiologic studies of the violent deaths;

(3) Analyze trends and patterns in, and circumstances related to, the violent deaths;

(4) With the assistance of the advisory group established by the Director under the bill (see discussion below), recommend actions to relevant entities to prevent violent deaths and make any other such recommendations the Director determines necessary.

Data collection

The bill requires that the data collection model used by the Reporting System follow the data collection model used by the United States Centers for Disease Control and Prevention National Violent Death Reporting System and any other data collection model set forth by the Director in rules.

The bill requires the Director to adopt rules in accordance with the Administrative Procedures Act that do all of the following:

(1) If determined appropriate by the Director, set forth any other data collection model to be used by the Reporting System;

(2) Specify the types of violent deaths that shall be included in the Reporting System;

(3) Specify the information, data, and records to be collected for use by the Reporting System;

(4) Specify the sources from which the information, data, and records are to be collected for use by the Reporting System.

The bill also specifies that the Director is permitted to collect information about violent deaths in Ohio only from existing sources related to violent crimes and explicitly prohibits the Director from conducting independent criminal investigations in order to obtain information, data, or records for use by the Reporting System.

Data sharing

The bill requires that every state department, agency, and political subdivision in Ohio provide information, data, and records, and otherwise assist in the execution of the Reporting System at the request of the Director. Notwithstanding any section of the Revised Code pertaining to confidentiality, the bill also specifically requires any individual, public social service agency, or public agency that provides services to individuals or families, law enforcement agency, coroner, or public entity that provided services to an individual whose death is a violent death, to provide information, data, records, and otherwise assist in the execution of the Reporting System.

Similarly, the bill permits (but does not require) any other individual or entity, at the individual's or entity's discretion, to provide information, data, records, and

otherwise assist in the execution of the Reporting System at the request of the Director. Any information, data, and records provided to the Director by any other individual or entity must contain only information, data, or records that are available or reasonably drawn from any information, data, and record developed and kept in the normal course of business.

Confidentiality

Except as otherwise provided for confidential information made available to researchers under the bill, the following are not public records under the Public Record Law, they are confidential, and they are to be published only in statistical form:

(1) Information, data, and records collected for use and maintained by the Reporting System including, but not limited to, medical records, law enforcement investigative records, coroner investigative records, laboratory reports, and other records concerning a decedent;

(2) Work products created in carrying out the purposes of the Reporting System.

Researcher access to confidential information

The bill requires the Director to adopt rules in accordance with the Administrative Procedures Act to establish standards and procedures to make available to researchers confidential information collected by the Reporting System. Researchers complying with those standards and procedures also must comply with the bill's confidentiality requirements described above.

Exemption from subpoena or discovery

Information, data, and records collected for use and maintained by, and all work products created in carrying out the purposes of, the Reporting System are not subject to subpoena or discovery while in the possession of the Reporting System or admissible in any criminal or civil proceeding if obtained through, or from, the Reporting System.

Advisory group

The bill requires the Director to establish an advisory group of interested parties and stakeholders to recommend actions to relevant entities to prevent violent deaths and make other recommendations the Director determines necessary.

General rule-making authority

The bill permits the Director to adopt additional rules in accordance with the Administrative Procedures Act necessary to establish, maintain, and carry out the purposes of the Reporting System.

Certificate of Need Program

(R.C. 3702.51, 3702.511, 3702.52, 3701.521 (repealed), 3702.522 (3702.521), 3702.523 (3702.522), 3702.524 (3702.523), 3702.525 (3702.524), 3702.526 (3702.525), 3702.526 (new), 3702.527 (new), 3702.5210 (repealed), 3702.5211 (repealed), 3702.5212 (repealed), 3702.5213 (repealed), 3702.53, 3702.531, 3702.54, 3702.55, 3702.56, 3702.57, 3702.58 (repealed), 3702.59, 3702.591 (repealed), 3702.592, 3702.593, 3702.594, 3702.60, and 3702.62; conforming changes in R.C. 1751.01, 1751.02, 1751.13, 3701.503, 3701.63, 3702.141, 3702.31, 3705.30, 3721.01, 3727.01, and 3781.112)

Certificate of need program applicable to long-term care facilities

The bill updates terms used in the certificate of need (CON) law to reflect that the program now applies only to long-term care facilities. Ohio has had a CON program since the late 1970s. Under the original program, a health care facility was permitted to conduct a "reviewable activity" only if a CON was approved by the Director of Health. Reviewable activities include such activities as building or renovating a facility or adding additional beds. CON requirements for hospital construction and many other activities related to health care facilities were phased out in the late 1990s, but an approved CON must still be obtained to construct, replace, or renovate a long-term care facility or to add or relocate long-term care beds.

CON applications

The bill specifies that the fee for a CON application, which is established by administrative rule, is nonrefundable unless the Director determines that the application cannot be accepted. It also specifies that the Director's determination that a CON application is not complete is final and not subject to appeal.

The bill eliminates a provision allowing, and in some cases requiring, a community public informational hearing on a CON application. Under existing law, the Director is permitted to conduct this type of hearing and must do so at the request of an affected person made not later than 15 days after notice that the application is complete is mailed. The hearing must be conducted in the community in which the activities authorized by the CON would be carried out, and any affected person is permitted to testify at the hearing. The Director is permitted to designate a health service agency to conduct the hearing.

The bill also eliminates a requirement that the Director invite interested parties to a meeting or conference call that is requested by one or more people and is about a CON application.

With respect to comments regarding a CON application, the bill requires the Director to consider all written comments received but eliminates the requirement that an administrative hearing be conducted under R.C. Chapter 119. on receipt of the comments. Under current law, the Director must assign a hearing examiner to conduct an administrative hearing concerning a CON application whenever written objections to the application are received. The applicant, Director, and affected persons that filed objections are parties to the hearing, and the affected persons bear the burden of proving by a preponderance of evidence that the project is not needed or that granting the CON would not be in accordance with the CON law.

Completion of a project to relocate beds

The bill modifies the requirement that must be met on completion of a project under which beds are relocated after approval of a CON application. Under existing law, when a CON application is approved during the initial phase of a four-year review period, on completion of the project, that number of beds must cease to be operated in the health care facility from which they were relocated. If the licensure or certification of those beds cannot be or is not transferred to the facility to which the beds are relocated, the licensure or certification must be surrendered.

In the bill, these requirements are modified and applied to all projects that relocate beds, not just those in the initial phase of a four-year review period. The bill requires all of the following:

--The end of operation of a number of beds in the long-term care facility equal to the number of beds relocated from the facility, except that the beds may continue to be operated for up to 15 days to allow relocation of residents to the facility to which the beds have been relocated;

--For beds in a nursing home licensed by the Director, the reduction of the license for beds in that facility by the number of licensed beds relocated (the reduction is to occur within 15 days of the relocation with no further action required by the Director);

--The surrender of the certification for any relocated beds that are certified under the Medicare or Medicaid program;

--For beds that are registered with the Department of Health as skilled nursing beds or long-term care beds, removal of the beds from registration not later than 15 days after relocation.

CON appeals

The bill provides that the Director's determination that a CON has expired is final and not subject to appeal.

The bill also provides that persons whose sole involvement with a CON application is testifying or submitting written comments on the application are not "affected persons" and therefore are no longer permitted to appeal a decision regarding the application.

Replacements CONs

The bill requires the Director to accept applications for replacement CONs under certain conditions. Replacement CONs are for any change in the bed capacity or site, or any other failure to conduct a reviewable activity in substantial accordance with the approved application for which a CON concerning long-term care beds was granted, if the change is made within five years after the implementation of the reviewable activity for which the CON was granted. The Director must accept the application if (1) the applicant is the same as the applicant for the approved CON or an affiliate or related person, (2) the source of any long-term care beds to be relocated is the same as in the approved CON, and (3) the application for the approved CON was not subject to comparative review.

For the purpose of determining whether long-term care beds are from an existing long-term care facility, the Director must consider the date of filing of the application for a replacement CON to be the same as the date of filing of the original application for the approved CON.

The Director must not accept an application for a replacement CON that proposes to increase the number of long-term care beds to be relocated specified in the application for the approved CON.

The bill requires an applicant for a replacement CON to submit with the application a nonrefundable fee equal to the application fee for the approved CON.

Any long-term care beds that were approved in the approved CON remain approved in the application for a replacement CON. Upon approval of the application for a replacement CON, the original CON is automatically voided.

Review of applications for replacement or relocation of long-term beds

The bill modifies the process for reviewing applications for replacement or relocation of long-term beds from a county with excess beds to a county with fewer beds than needed.

It requires comparative review for some applications, rather than requiring comparative review for all applications as under current law. Under the bill, comparative review is required if two or more applications are submitted during the same review period and any of the following applies:

--The applications propose to relocate beds from the same county and the number of beds for which CONs are being requested totals more than the number of beds available in the county from which beds are to be relocated.

--The applications propose to relocate beds to the same county and the number of beds for which CONs are being requested totals more than the number of beds needed in the county to which the beds are to be relocated.

--The applications propose to relocate beds from the same service area and the number of beds left in the service area from which the beds are being relocated would be less than the state bed need rate determined by the Director.

The bill permits a person who has submitted a bed replacement or relocation application that is not subject to comparative review to revise the site of the proposed project.

Review of applications for an increase in beds in an existing nursing home

The bill modifies requirements for the review of applications for an increase in beds in an existing nursing home to limit the increase to a total of no more than 30 beds for all applications combined. Once the cumulative total of beds relocated reaches 30, the bill prohibits further applications from being accepted until the monitoring period expires.

Determination of long-term care bed supply

The bill requires the Director as part of the determination of long-term care bed supply to include beds in a hospital that are registered as skilled nursing beds, long-term care beds, or special skilled nursing beds.

Health system data

The bill eliminates requirements that the Director regularly conduct health system data collection and analysis activities for the CON program, prepare reports, and make recommendations to the Public Health Council based on these activities.

State health resources plan

The bill repeals a requirement that the Director issue, and annually review and revise, a state health resources plan. Current law requires this plan to include (1) a description of the optimal quantity and distribution of all health services, facilities, and other resources in this state, (2) a description of existing deficiencies in the health resources of this state, and (3) a description of excess health resources in this state.

Nursing home placement clearinghouses

The bill eliminates a provision requiring the Public Health Council to adopt rules authorizing creation of nursing home placement clearinghouses. Under existing law, any public or private agency or facility may apply to the Department to serve as a nursing home placement clearinghouse. The Department is authorized to approve one or more clearinghouses, as long as no more than one is approved in any county. Hospitals may utilize a nursing home placement clearinghouse prior to admitting a patient to a skilled nursing bed within the hospital and prior to keeping a patient in a skilled nursing bed within a hospital in excess of 30 days. The Department must provide a list of designated nursing home placement clearinghouses to hospitals on at least an annual basis.

Health service areas

The bill repeals the requirement that the Director designate health service areas and health service agencies for each area. It removes all requirements related to health service areas and health service agencies from existing law.

Technical and conforming changes

The bill eliminates CON provisions that are obsolete due to elapsed time periods or the resolution of pending cases. It also relocates existing definitions of "health service," "health care facility," "osteopathic hospital," "children's hospital," and "freestanding birthing center" to Revised Code sections outside the CON law.

Nursing homes' social worker staff requirements

(R.C. 3721.04)

The bill establishes restrictions and requirements the Director of Health must follow when adopting rules regarding the number and qualifications of personnel in nursing homes or rules regarding social services to be provided by nursing homes. The bill prohibits the rules from prescribing the number of individuals licensed as social workers that a nursing home with 120 or fewer beds must employ. The rules must require each nursing home with more than 120 beds to employ on a full-time basis one

individual licensed as a social worker. The rules also must require each nursing home to offer its residents medically related social services that assist the residents in attaining or maintaining their highest practicable physical, mental, and psychosocial well-being.

Late fees under the Radiation Control Program

(R.C. 3748.04, 3748.07, 3748.12, and 3748.13)

The bill decreases the penalty for late payment of a fee charged by the Department of Health under the Radiation Control Program to an additional 10% of the original fee when the fee remains unpaid on the 91st day after the invoice date. Under current law, when fees are not paid timely by a generator of low-level radioactive waste or handler of radiation-generating equipment, the fees are assessed as follows:

--Two times the original fee if not paid within 90 days (a penalty of an additional 100% of the original fee);

--Five times the original fee if not paid within 180 days (a penalty of an additional 400% of the original fee).

OFFICE OF HEALTH TRANSFORMATION (OHT)

Identification of health transformation initiatives and adoption of operating protocols for state agencies

- Authorizes the Executive Director of the Office of Health Transformation or the Director's designee to facilitate the coordination of operations and exchange of information between certain state agencies.

- In furtherance of the authority described above, requires the Executive Director or the Director's designee to identify each health transformation initiative in Ohio that involves the participation of two or more state agencies ("participating agencies") and that permits or requires an interagency agreement to be entered into for purposes of specifying each participating agency's role in the initiative or facilitating the exchange of data or other information for the initiative.

- For each identified health transformation initiative, requires the Executive Director or the Director's designee to adopt, in consultation with each participating agency, one or more operating protocols for the initiative.

- Specifies that provisions in an operating protocol supersede any conflicting provisions in an interagency agreement.

- Specifies certain terms an operating protocol is required and permitted to include.

- Specifies that an operating protocol has the same force and effect as an interagency agreement or data sharing agreement, and requires each participating agency to comply with it.

- Requires the Director of Job and Family Services to determine whether a waiver of federal Medicaid requirements or a Medicaid state plan amendment is necessary to fulfill the bill's requirements and to apply for such a waiver or state plan amendment if necessary.

Exchange of protected health information and personally identifiable information related to and in support of health transformation initiatives

- Consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, authorizes participating agencies to exchange "protected health information" (as defined by the HIPAA Privacy Rule) with each other relating to eligibility for or enrollment in a health plan or relating to participation in a government program providing public benefits if the exchange of information is necessary for operating a health plan or coordinating, or improving the administration or management of, the health care-related functions of at least one government program providing public benefits.

- Only for fiscal year 2013, authorizes a participating state agency to exchange "personally identifiable information" (as defined by the bill) for purposes related to and in support of an identified health transformation initiative.

- Imposes certain conditions on a participating agency's use or disclosure of personally identifiable information.

Use and disclosure of protected health information by covered entities

- Enacts, into state law, federal requirements for a covered entity's (as defined by the HIPAA Privacy Rule) use and disclosure of protected health information.

- Specifies that any state or local requirement that conflicts with the state law requirements referenced above, or that conflicts with other provisions of the bill pertaining to the confidentiality, privacy, security, or privileged status of protected health information, is generally unenforceable.

- Restricts the circumstances under which a covered entity may disclose protected health information to an "approved health information exchange" without valid authorization from the individual who is the subject of the information or the individual's personal representative.

- Specifies that a covered entity that uses or discloses protected health information in conformance with the bill is immune from civil liability, criminal prosecution, and professional disciplinary action arising out of or relating to the use or disclosure.

- Specifies that an approved health information exchange is immune from civil liability and not subject to criminal prosecution arising out of or related to a covered entity's disclosure of protected health information to the exchange, or use of protected health information accessed from the exchange, if the disclosure or use is in conformance with the bill.

Standard authorization form – use and disclosure of protected health information and substance abuse records

- Requires the Director of Job and Family Services, in consultation with the Office of Health Transformation, to adopt rules prescribing a standard authorization form meeting federal requirements for the use and disclosure of protected health information and substance abuse records.

- Requires a standard authorization form adopted by the Director to be accepted by any person or governmental entity in Ohio as valid authorization for the use or disclosure of protected health information and substance abuse records to the persons or governmental entities specified in the form.

- Specifies that the bill does not preclude a form other than a standard authorization form from being accepted as valid authorization for the use or disclosure of protected health information and substance abuse records in Ohio if the other form meets all federal requirements.

Health information exchanges

- Authorizes the Director of Job and Family Servies, in consultation with the Office of Health Transformation, to adopt rules to establish standards the Director must use to approve health information exchanges operating in Ohio and for other purposes related to approved health information exchanges.

- Requires the Director's rules on approval of health information exchanges to be consistent with certification standards for health information exchanges established

in federal statutes and regulations, including nationally recognized standards for interoperability.

- Delays adoption of the rules on approval of health information exchanges until the earlier of (1) 60 days following the adoption of a federal certification process for health information exchanges or (2) January 1, 2013.

Identification of health transformation initiatives

(R.C. 191.06(A) to (C))

For fiscal year 2013 only, the bill authorizes the Executive Director of the Office of Health Transformation or the Director's designee to facilitate the coordination of operations and exchange of information between state agencies.[80] The bill specifies that the purpose of the Executive Director's authority is to support agency collaboration for health transformation purposes, including modernization of the Medicaid program, streamlining of health and human services programs in Ohio, and improving the quality, continuity, and efficiency of health care and health care support systems in Ohio.

In furtherance of the Executive Director's authority, the Executive Director or the Director's designee must identify each health transformation initiative in Ohio that involves the participation of two or more state agencies and that permits or requires an interagency agreement to be entered into for the purposes of specifying each participating agency's role in coordinating, operating, or funding the initiative, or facilitating the exchange of data or other information for the initiative. The bill requires the Executive Director to publish a list of the identified health transformation initiatives on the Internet web site maintained by the Office of Health Transformation.

[80] The bill defines "state agency" as each of the following: the Department of Aging; the Department of Alcohol and Drug Addiction Services; the Department of Development; the Department of Developmental Disabilities; the Department of Education; the Department of Health; the Department of Insurance; the Department of Job and Family Services; the Department of Mental Health; the Department of Rehabilitation and Correction; the Department of Taxation; the Department of Veterans Services; and the Department of Youth Services (R.C. 191.01(H)).

Operating protocols for the initiatives

Adoption of the protocols

(R.C. 191.06(D))

For each health transformation initiative that is identified as described above, the Executive Director of the Office of Health Transformation or the Director's designee must, in consultation with each participating agency, adopt one or more operating protocols. The bill specifies that notwithstanding any statute or rule adopted by a state agency, the provisions in a protocol supersede any provisions in an interagency agreement. These include statutes that authorize the Director of Job and Family Services to enter into (1) contracts or agreements with public and private entities and make grants to public and private entities[81] and (2) contracts with one or more other state agencies or political subdivisions to have the state agency or political subdivision administer one or more components of the Medicaid program, or one or more aspects of a component, under the Department of Job and Family Services' supervision.[82]

Operating protocol contents

(R.C. 191.06(E))

An operating protocol that is adopted as described above must include both of the following:

(1) All terms necessary to meet the requirements of "other arrangements" between a covered entity and a business associate that are referenced in a provision of the HIPAA Privacy Rule;[83]

(2) If known, the date on which the protocol will terminate or expire.

In addition, the bill permits a protocol to specify the extent to which each participating agency is responsible and accountable for completing the tasks necessary for successful completion of the initiative, including tasks related to the following components of the initiative: workflow, funding, and exchange of date or other information that is confidential pursuant to state or federal law.

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[81] R.C. 5101.10.

[82] R.C. 5111.91.

[83] 45 C.F.R. 164.314(a)(2)(ii).

Status of and compliance with an operating protocol

(R.C. 191.06(F))

The bill specifies that an operating protocol has the same force and effect as an interagency agreement or data sharing agreement, and each participating agency must comply with it.

Medicaid waiver or state plan amendment

(R.C. 191.06(G))

The bill requires the Director of Job and Family Services to determine whether a waiver of federal Medicaid requirements or a Medicaid state plan amendment is necessary to fulfill the bill's provisions on operating protocols. If the Director determines a waiver or amendment is necessary, the Director must apply for it to the U.S. Secretary of Health and Human Services.

Exchange of protected health information and personally identifiable information related to and in support of health transformation initiatives

Identification of government programs providing public benefits

(R.C. 191.02)

The bill requires the Executive Director of the Office of Health Transformation, in consultation with all of the following individuals, to identify each government program administered by a state agency that is to be considered a "government program providing public benefits" for purposes of the bill's provision governing the authority of state agencies to exchange protected health information with each other (see "**Exchange of protected health information**," below): the Director of Aging, the Director of Alcohol and Drug Addiction Services, the Director of Development, the Director of Developmental Disabilities, the Director of Health, the Director of Job and Family Services, the Director of Mental Health, the Director of Rehabilitation and Correction, the Director of Veterans Services, the Director of Youth Services, the Administrator of the Rehabilitation Services Commission, the Administrator of Workers' Compensation, the Superintendent of Insurance, the Superintendent of Public Instruction, and the Tax Commissioner.

Exchange of protected health information

(R.C. 191.04(A))

The bill authorizes a state agency to exchange protected health information with another state agency relating to eligibility for or enrollment in a health plan[84] or relating to participation in a government program providing public benefits if the exchange of information is necessary for either or both of the following:

(1) Operating a health plan;

(2) Coordinating, or improving the administration or management of, the health care-related functions of at least one government program providing public benefits.

The exchange of protected health information must be in accordance with federal laws governing the confidentiality of individually identifiable health information. These laws include HIPAA and regulations promulgated to implement HIPAA.

Exchange of personally identifiable information

(R.C. 191.04(B))

For fiscal year 2013 only, the bill also permits a state agency to exchange personally identifiable information[85] with another state agency for purposes related to and in support of an identified health transformation initiative (see "**Identification of health transformation initiatives**," above).

Conditions for the use or disclosure of personally identifiable information

(R.C. 191.04(C))

With respect to a state agency that uses or discloses personally identifiable information, the bill specifies that all of the following conditions apply:

(1) The state agency must use or disclose the information only as permitted or required by state and federal law. In addition, if the information is obtained during fiscal year 2013 from an exchange of personally identifiable information permitted by

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[84] "Health plan" is defined in federal regulations (45 C.F.R. 160.103) to mean an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the Public Health Services Act, 42 U.S.C. 300gg-91(a)(2)).

[85] The bill defines "personally identifiable information" as information that meets both of the following criteria: (1) it identifies an individual or there is reasonable basis to believe that it may be used to identify an individual, and (2) it relates to an individual's eligibility for, application for, or receipt of public benefits from a government program providing public benefits (R.C. 191.01(G)).

the bill as described above, the agency must also use or disclose the information in accordance with all operating protocols that apply to the use or disclosure.

(2) If the state agency is a state agency other than the Department of Job and Family Services and it uses and discloses protected health information relating to a Medicaid recipient, the agency must also comply with all state and federal laws that apply to the Department when it, as Ohio's single state agency to supervise the Medicaid program, uses or discloses protected health information.

(3) A state agency must implement administrative, physical, and technical safeguards for the purpose of protecting the confidentiality, integrity, and availability of personally identifiable information the creation, receipt, maintenance, or transmittal of which is affected or governed by an operating protocol.

(4) If a state agency discovers an unauthorized use or disclosure of unsecured protected health information or unsecured individually identifiable health information, the state agency must, not later than 72 hours after the discovery, do all of the following:

(a) Identify the individuals who are the subject of the protected health information or individually identifiable health information;[86]

(b) Report the discovery and the names of all individuals identified as described above to all other state agencies and the Executive Director of the Office of Health Transformation or the Director's designee;

(c) Mitigate, to the extent reasonably possible, any potential adverse effects of the unauthorized use or disclosure.

(5) A state agency must make available to the Executive Director or the Director's designee, and to any other state or federal governmental entity required by law to have access on that entity's request, all internal practices, records, and

[86] "Protected health information" is defined in federal regulations (45 C.F.R. 160.103) to generally mean individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. "Individually identifiable health information" (also defined in federal regulations (45 C.F.R. 160.103)) is health information, including demographic information collected from an individual, that meets all of the following criteria: (1) it is created or received by a health care provider, a health plan, an employer, or a health care clearinghouse, (2) it relates to (a) the past, present, or future physical or mental health or condition of an individual, (b) the provision of health care to an individual, or (c) the past, present, or future payment for the provision of health care to an individual, and (3) it identifies the individual, or there is reasonable basis to believe it could be used to identify the individual.

documentation relating to personally identifiable information it receives, uses, or discloses that is affected or governed by an operating protocol.

(6) On termination or expiration of an operating protocol and if feasible, a state agency shall return or destroy all personally identifiable information received directly from or received on behalf of another state agency. If the personally identifiable information is not returned or destroyed, the state agency maintaining the information must extend the protections described above for as long as it is maintained.

(7) If a state agency enters into a subcontract or, when required by federal regulations,[87] a business associate agreement, the subcontract or agreement shall require the subcontractor or business associate to comply with the bill's provisions discussed above as if the subcontractor or business associate were a state agency.

Use and disclosure of protected health information by covered entities

(R.C. 3798.03, 3798.04, 3798.06, and 3798.07)

Overview

The bill generally enacts provisions in state law (1) requiring covered entities[88] to comply with requirements established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, and (2) prohibiting covered entities from violating prohibitions established by the HIPAA Privacy Rule. According to the U.S. Department of Health and Human Services, the HIPAA Privacy Rule, promulgated by the U.S. Secretary of Health and Human Services and otherwise known as the "standards for privacy of individually identifiable health information," provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information while at the same time permitting the disclosure of personal health information needed for patient care and other important purposes.[89]

Requirements

With respect to protected health information, the bill requires a covered entity to do both of the following:

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[87] 45 C.F.R. 164.502(e)(2).

[88] "Covered entity" is defined in federal regulations (45 C.F.R. 160.103) to mean a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Privacy Rule.

[89] U.S. Department of Health and Human Services, *Understanding Health Information Privacy* (last visited March 12, 2012), accessible at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>.

(1) If an individual's protected health information[90] is maintained by the covered entity in a designated record set,[91] provide the individual or the individual's representative with access to that information in a manner consistent with a specified provision of the HIPAA Privacy Rule.[92]

(2) Implement and maintain appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information in a manner consistent with a specified provision of the HIPAA Privacy Rule.[93]

The bill provides that if a covered entity is a hybrid entity,[94] the requirements apply only to the health care component[95] of the hybrid entity.

Prohibitions in general

With respect to protected health information, the bill prohibits a covered entity from doing either of the following:

(1) Using or disclosing protected health information without patient authorization that is valid pursuant to a specified provision of the HIPAA Privacy

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[90] "Protected health information" is defined in federal regulations (45 C.F.R. 160.103) to generally mean individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. "Individually identifiable health information" (also defined in federal regulations (45 C.F.R. 160.103)) is health information, including demographic information collected from an individual, that meets all of the following criteria: (1) it is created or received by a health care provider, a health plan, an employer, or a health care clearinghouse, (2) it relates to (a) the past, present, or future physical or mental health or condition of an individual, (b) the provision of health care to an individual, or (c) the past, present, or future payment for the provision of health care to an individual, and (3) it identifies the individual, or there is reasonable basis to believe it could be used to identify the individual.

[91] "Designated record set" is defined in federal regulations (45 C.F.R. 164.501) to mean (1) a group of records maintained by or for a covered entity that is: (a) the medical records and billing records about individuals maintained by or for a covered health care provider, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (c) used, in whole or in part, by or for the covered entity to make decisions about individuals.

[92] 45 C.F.R. 164.524.

[93] 45 C.F.R. 164.530(c).

[94] "Hybrid entity" is defined in federal regulations (45 C.F.R. 164.103) to mean a single legal entity: (1) that is a covered entity, (2) whose business activities include both covered and non-covered functions, and (3) that designates health care components in accordance with 45 C.F.R. 164.105(a)(2)(iii)(C).

[95] "Health care component" is defined in federal regulations (45 C.F.R. 164.103) to mean a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with 45 C.F.R. 164.105(a)(2)(iii)(C).

Rule[96] and, if applicable, federal regulations governing the use and disclosure of substance abuse records,[97] except when the use or disclosure is required or permitted without such authorization by specified provisions of the HIPAA Privacy Rule[98] and, if applicable, federal regulations governing the use and disclosure of substance abuse records;[99]

(2) Using or disclosing protected health information in a manner not consistent with a specified provision of the HIPAA Privacy Rule.[100]

Prohibitions related to disclosure to a health information exchange

The bill prohibits a covered entity from disclosing protected health information to a health information exchange[101] without an authorization that is valid under a specified provision of the HIPAA Privacy Rule[102] unless, as described above, disclosure without authorization is required or permitted by the HIPAA Privacy Rule or all of the following are true:

(1) The disclosure is to an approved health information exchange (see "**Health information exchanges**," below).

(2) The covered entity is a party to a valid participation agreement with the approved health information exchange that meets the requirements in rules to be adopted under the bill (see "**Health information exchanges; Rules – participation agreements**," below).

(3) The disclosure is consistent with all procedures established by the approved health information exchange.

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[96] 45 C.F.R. 164.508.

[97] 42 C.F.R. part 2.

[98] Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations.

[99] 42 C.F.R. part 2.

[100] 45 C.F.R. 164.502.

[101] The bill defines "health information exchange" as any person or governmental entity that provides in Ohio a technical infrastructure to connect computer systems or other electronic devices used by covered entities to facilitate the secure transmission of health information. The bill specifies that the term excludes health care providers engaged in direct exchange, including direct exchange through the use of a health information service provider. "Direct exchange" is defined as the activity of electronic transmission of health information through a direct connection between the electronic record systems of health care providers without the use of a health information exchange.

[102] 45 C.F.R. 164.508.

(4) Prior to the disclosure, the covered entity furnishes to the individual or the individual's personal representative[103] a written notice that complies with rules to be adopted under the bill (see "**Health information exchanges; Rules – processes for various exchange functions**," below).

Conditions – related to disclosure to a health information exchange

In addition to being subject to the general prohibition described above on disclosure of protected health information to a health information exchange without a valid authorization, the bill specifies that a covered entity is also subject to the following conditions when it discloses protected health information to a health information exchange:

(1) The covered entity must restrict disclosure consistent with all applicable federal laws governing the disclosure.

(2) If the protected health information concerns a minor,[104] the covered entity must restrict disclosure in a manner that complies with Ohio laws pertaining to the circumstances under which a minor may consent to the minor's own receipt of health care or make medical decisions on the minor's own behalf, including circumstances when a minor is examined following sexual assault,[105] diagnosed or treated for venereal diseases,[106] diagnosed or treated for substance abuse,[107] provided medical care while incarcerated in a state correctional facility for one or more adult offenses,[108] provided

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[103] The bill defines a "personal representative" as a person who has authority under applicable law to make decisions related to health care on behalf of an adult or emancipated minor, or the parent, legal guardian, or other person acting in loco parentis who is authorized under law to make health care decisions on behalf of an unemancipated minor. "Personal representative" does not, however, include the parent or legal guardian of, or another person acting *in loco parentis* to, a minor who consents to the minor's own receipt of health care or a minor who makes medical decisions on the minor's own behalf pursuant to law, court approval, or because the minor's parent, legal guardian, or other person acting *in loco parentis* has assented to an agreement of confidentiality between the provider and the minor (R.C. 3798.01(K)).

[104] The bill requires the ODJFS Director to adopt rules for purposes of specifying the criteria a person who is mentally or physically disabled and who is under 21 years of age must meet to be considered a "minor" for purposes of the bill's provisions governing the use and disclosure of protected health information – R.C. 3798.07 and 3798.12 (R.C. 3798.13).

[105] R.C. 2907.29.

[106] R.C. 3709.241.

[107] R.C. 3719.012.

[108] R.C. 5120.172.

outpatient mental health services that exclude the use of medication,[109] or required to make a decision regarding the minor's receipt of a service or participation in a program provided for or funded by the Ohio Department of Developmental Disabilities or a county board of developmental disabilities.[110]

(3) The covered entity must restrict disclosure in a manner that is consistent with a written request from the individual or the individual's personal representative to restrict disclosure of all of the individual's protected health information.

(4) The covered entity must restrict disclosure in a manner that is consistent with a written request from the individual of the individual's personal representative concerning specific categories of protected health information to the extent that rules to be adopted under the bill require the covered entity to comply with such a request.

The bill specifies that the conditions described above do not render unenforceable or restrict in any manner any of the following:

(1) A section of Ohio law not in R.C. Chapter 3798.;

(2) A rule as defined by the Administrative Procedure Act (R.C. Chapter 119.);[111]

(3) An internal management rule as defined by R.C. 111.15;[112]

(4) Guidance issued by an agency;

(5) Orders or regulations of a board of health of a city health district;[113]

(6) Orders or regulations of a board of health of a general health district;[114]

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[109] R.C. 5122.04.

[110] R.C. 5126.043 (as amended by the bill).

[111] R.C. 119.01 defines a rule as any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency, and includes an appendix to a rule. "Rule" does not include any internal management rule of an agency unless the internal management rule affects private rights and does not include any guideline adopted pursuant to R.C. 3301.0714 for a statewide education management information system.

[112] R.C. 111.15 defines an internal management rule as any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.

[113] R.C. 3709.20.

[114] R.C. 3709.21.

(7) An ordinance or resolution adopted by a political subdivision;[115]

(8) A professional code of ethics.

Immunity

(R.C. 3798.08)

The bill specifies that a covered entity that uses or discloses protected health information in a manner that complies with the bill's requirements discussed above and is not in violation of the bill's prohibitions discussed above is not liable in a civil action and is not subject to criminal prosecution or professional disciplinary action arising out of or relating to the use or disclosure.

The bill also specifies that an approved health information exchange is not liable in a civil action and not subject to criminal prosecution arising out of or relating to a covered entity's disclosure of protected health information to the approved health information exchange, or use of protected health information accessed from the approved health information exchange, if the covered entity's disclosure or use complies with the bill's requirements discussed above and is not in violation of the bill's prohibitions discussed above.

Supremacy of bill's provisions

(R.C. 3798.12)

Subject to certain exceptions discussed below, the bill specifies that any of the following pertaining to the confidentiality, privacy, security, or privileged status of protected health information transacted, maintained in, or accessed through a health information exchange is unenforceable if it conflicts with the bill's provisions pertaining to the use and disclosure of protected health information and approved health information exchanges (R.C. Chapter 3798.):

(1) A section of Ohio law not in R.C. Chapter 3798.;

[115] The bill defines a "political subdivision" as 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 (R.C. 3798.01(L)).

(2) A rule as defined by the Administrative Procedure Act (R.C. Chapter 119.);[116]

(3) An internal management rule as defined by R.C. 111.15;[117]

(4) Guidance issued by an agency;

(5) Orders or regulations of a board of health of a city health district;[118]

(6) Orders or regulations of a board of health of a general health district;[119]

(7) An ordinance or resolution adopted by a political subdivision;[120]

(8) A professional code of ethics.

Exceptions

The bill specifies that, notwithstanding the general supremacy of its provisions, the bill does not render unenforceable or restrict in any manner any of the following:

(1) A provision of the Revised Code that on the bill's effective date requires a person or governmental entity to disclose protected health information to a state agency,[121] political subdivision, or other government entity;

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[116] R.C. 119.01 defines a rule as any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency, and includes an appendix to a rule. "Rule" does not include any internal management rule of an agency unless the internal management rule affects private rights and does not include any guideline adopted pursuant to R.C. 3301.0714 for a statewide education management information system.

[117] R.C. 111.15 defines an internal management rule as any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.

[118] R.C. 3709.20.

[119] R.C. 3709.21.

[120] The bill defines a "political subdivision" as 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 (R.C. 3798.01(L)).

[121] The bill defines "state agency" as any one or more of the following: the Department of Aging; the Department of Alcohol and Drug Addiction Services; the Department of Developmental Disabilities; the Department of Education; the Department of Health; the Department of Insurance; the Department of Job and Family Services; the Department of Mental Health; the Department of Rehabilitation and Correction; the Department of Youth Services; the Bureau of Workers' Compensation; the Rehabilitation Services Commission; the Office of the Attorney General; or a health care licensing board created under Title 47 of the Revised Code that possesses individually identifiable health information (see footnote above for definition of "individually identifiable health information").

(2) The confidential status of proceedings and records within the scope of a peer review committee of a health care entity;[122]

(3) The confidential status of quality assurance program activities and quality assurance records;[123]

(4) The testimonial privilege between a physician or dentist and a patient;[124]

(5) A statute, rule, or other provision described above (see "**Supremacy of bill's provisions**," (1) to (8)) that governs any of the following: (a) the confidentiality, privacy, security, or privileged status of protected health information in the possession or custody of an agency, (b) the process for obtaining from a patient consent to the provision of health care or consent for participation in medical or other scientific research, (c) the process for determining whether an adult has a physical or mental impairment or an adult's capacity to make health care decisions for purposes of the law governing county boards of developmental disabilities (R.C. Chapter 5126.), or (d) the process for determining whether a minor has been emancipated;

(6) When a minor[125] is authorized to consent to the minor's own receipt of health care or make medical decisions on the minor's own behalf, including circumstances when a minor is examined following sexual assault,[126] diagnosed or treated for venereal diseases,[127] diagnosed or treated for substance abuse,[128] provided medical care while incarcerated in a state correctional facility for one or more adult offenses,[129] provided outpatient mental health services that exclude the use of medication,[130] or required to make a decision regarding the minor's receipt of a service or participation in a program

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[122] R.C. 2305.252.

[123] R.C. 5122.32.

[124] R.C. 2317.02(B).

[125] The bill requires the ODJFS Director to adopt rules for purposes of specifying the criteria a person who is mentally or physically disabled and who is under 21 years of age must meet to be considered a "minor" for purposes of the bill's provisions governing the use and disclosure of protected health information – R.C. 3798.06 and 3798.12 (R.C. 3798.13).

[126] R.C. 2907.29.

[127] R.C. 3709.241.

[128] R.C. 3719.012.

[129] R.C. 5120.172.

[130] R.C. 5122.04.

provided for or funded by the Ohio Department of Developmental Disabilities or a county board of developmental disabilities.[131]

Standard authorization form – use and disclosure of protected health information and substance abuse records

(R.C. 3798.10)

The bill requires the Director of the Ohio Department of Job and Family Services (ODJFS), in consultation with the Office of Health Transformation and not later than six months after the bill's effective date, to prescribe by rules adopted in accordance with the Administrative Procedure Act a standard authorization form for the use and disclosure of protected health information by covered entities in Ohio. The form must meet all requirements of a specified provision of the HIPAA Privacy Rule pertaining to authorization forms[132] and, where applicable, federal law governing the use and disclosure of substance abuse records.[133]

If the authorization form prescribed by the ODJFS Director is properly executed by an individual or the individual's personal representative, the bill provides that the form must be accepted by any person or governmental entity in Ohio as valid authorization for the use or disclosure of the individual's protected health information to the persons or governmental entities specified in the form.

The bill specifies that nothing in it precludes a person or governmental entity from accepting as valid authorization for the use or disclosure of protected health information a form, other than one described above, if the other form meets all requirements specified in the relevant HIPAA Privacy Rule provision[134] and, if applicable, federal law governing the use and disclosure of substance abuse records.[135]

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[131] R.C. 5126.043 (as amended by the bill).

[132] 45 C.F.R. 164.508.

[133] 42 C.F.R. part 2.

[134] 45 C.F.R. 164.508.

[135] 42 C.F.R. part 2.

Health information exchanges

Rules – standards to approve the exchanges

(R.C. 3798.14)

The bill requires the ODJFS Director, in consultation with the Office of Health Transformation, to adopt rules in accordance with the Administrative Procedure Act for the purpose of establishing standards the Director must use to approve health information exchanges operating in Ohio. The rules may not be adopted until the earlier of 60 days following the adoption of a federal certification process for health information exchanges by the Office of the National Coordinator for Health Information Technology in the U.S. Department of Health and Human Services or January 1, 2013. The rules must be consistent with certification standards for health information exchanges established in federal statutes and regulations, including nationally recognized standards for interoperability,[136] and may include standards and procedures to be followed by a health information exchange regarding the following:

(1) Access to and use and disclosure of protected health information maintained by or on an approved health information exchange;

(2) Demonstration of adequate financial resources to sustain continued operations in compliance with the rules the Director adopts;

(3) Participation in outreach activities for individuals and covered entities;

(4) Conduct of operations in a transparent manner to promote consumer confidence;

(5) Implementation of security breach notification procedures.

Rules – processes for various exchange functions

(R.C. 3798.15)

The bill requires the ODJFS Director, in consultation with the Office of Health Transformation, to adopt rules in accordance with the Administrative Procedure Act for the purpose of establishing processes for all of the following:

[136] "Interoperability" is defined by the bill to mean the capacity of two or more information systems to exchange information in an accurate, effective, secure, and consistent manner (R.C. 3798.01(G)).

(1) A health information exchange to obtain approval to operate as an approved health information exchange in Ohio and, at times specified by the Director, obtain reapproval of such status;

(2) The Director to investigate and resolve concerns and complaints submitted to the Director regarding an approved health information exchange;

(3) A health information exchange to apply for reconsideration of a decision the Director makes under a process established under (1) or (2), above;

(4) Covered entities and approved health information exchanges to enter into participation agreements and enforce the terms of such agreements.

The bill specifies that any decision the Director makes in relation to a request for reconsideration made as described in (3), above, is not subject to an appeal under the Administrative Procedure Act.

Rules – content of participation agreements

(R.C. 3798.16)

The bill requires the ODJFS Director, in consultation with the Office of Health Transformation, to adopt rules in accordance with the Administrative Procedure Act for the purpose of specifying the contents of agreements governing covered entities' participation in approved health information exchanges. At a minimum, the rules must require the content of such participation agreements to include all of the following:

(1) Procedures for a covered entity to disclose an individual's protected health information to an approved health information exchange;

(2) Procedures for a covered entity to access an individual's protected health information from an approved health information exchange;

(3) A written notice to be provided by a covered entity to an individual or the individual's personal representative prior to the covered entity's disclosure of the individual's protected health information to an approved health information exchange;

(4) Documentation the covered entity must use to verify that a notice described in (3), above, has been provided by the covered entity to an individual or the individual's personal representative prior to the disclosure of the individual's protected health information to an approved health information exchange;

(5) Procedures, which must take into consideration the technical capabilities of software available to health information exchanges, for an individual or the individual's

personal representative to submit to the covered entity a written request to place restrictions on the covered entity's disclosure of protected health information to the approved health information exchange;

(6) The standards a covered entity must use to determine whether, and to what extent, to comply with a written request described in (5), above;

(7) The purposes for which a covered entity may access and use protected health information from the approved health information exchange.

Notice prior to disclosure

With respect to a written notice described in (3), above, the rules *may* specify that the notice can be incorporated into the covered entity's notice of privacy practices required by a specified provision of the HIPAA Privacy Rule[137] and *must* specify that the notice include the following statements:

(1) The individual's protected health information will be disclosed to the approved health information exchange to facilitate the provision of health care to the individual.

(2) The approved health information exchange maintains appropriate safeguards to protect the privacy and security of protected health information.

(3) Only authorized individuals may access and use protected health information from the approved health information exchange.

(4) The individual or the individual's personal representative has the right to request in writing that the covered entity do either or both of the following: (a) not disclose any of the individual's protected health information to the approved health information exchange, or (b) not disclose specific categories of the individual's protected health information to the exchange.

(5) Any restrictions on the disclosure of protected health information an individual requests as described in (4)(a) or (b), above, may result in a health care provider not having access to information that is necessary for the provider to render appropriate care to the individual.

(6) Any restrictions on the disclosure of protected health information an individual requests as described in (4)(a), above, must be honored by the covered entity.

[137] 45 C.F.R. 164.520.

(7) Any restrictions on the disclosure of protected health information an individual requests as described in (4)(b), above, must be honored if the restriction is consistent with rules the Director is required to adopt.

General Assembly's intent

(R.C. 3798.02)

The bill specifies that it is the General Assembly's intent in enacting all of the provisions discussed above (concerning the use and disclosure of protected health information by covered entities, standard authorization forms, and approved health information exchanges) to make the laws of Ohio governing these items consistent with, but generally not more stringent[138] than, the HIPAA Privacy Rule for the purpose of eliminating the barriers to the adoption and use of electronic health records and health information exchanges. The bill specifies that it is also the General Assembly's intent in enacting these provisions to supersede any judicial or administrative ruling issued in Ohio that is inconsistent with the provisions discussed above.

[138] "More stringent" is defined in federal regulations (45 C.F.R. 160.202) to mean (in the context of a comparison of a provision of state law and a standard, requirement, or implementation specification adopted by the HIPAA Privacy Rule) a state law that meets one or more of the following criteria: (1) with respect to a use or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under the HIPAA Privacy Rule, except if the disclosure is (a) required by the U.S. Secretary of Health and Human Services in connection with determining whether a covered entity is in compliance with the HIPAA Privacy Rule, or (b) to the individual who is the subject of the individually identifiable health information, (2) with respect to the rights of an individual who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable, (3) with respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information, (4) with respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable, (5) with respect to recordkeeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration, (6) with respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

DEPARTMENT OF INSURANCE (INS)

- Eliminates a requirement that employers who employ more than ten workers establish cafeteria plans to allow employees to pay for health insurance coverage by a salary reduction arrangement.

Cafeteria plans and health insurance coverage by salary reduction

(R.C. 4113.11 (repealed))

The bill eliminates the current law requirement that employers who employ more than ten workers establish cafeteria plans to allow employees to pay for health insurance coverage by a salary reduction arrangement. The current law requirement is contingent on the Superintendent of Insurance receiving written confirmation from the federal government that the rules adopted by the Superintendent pursuant to this provision would permit employers to establish cafeteria plans in accordance with federal law; it appears that this confirmation has not been received.

DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

I. General

- Eliminates the requirement that the Ohio Department of Job and Family Services (ODJFS) report twice a year on the characteristics of individuals participating in or receiving services from programs ODJFS operates.

- Eliminates provisions specifying certain procedures ODJFS is permitted or required to follow in preparing and submitting reports on its programs.

- Requires ODJFS to prepare an annual (rather than biennial) Title XX social services plan and to report on the use of Title XX funds each federal fiscal year (rather than each state fiscal year).

II. Child Care

- Requires ODJFS to suspend a contract to provide publicly funded child care if (1) the provider receives an improper payment, or (2) ODJFS receives notice that the provider has been charged with certain criminal offenses.

- Prohibits a suspended provider from providing publicly funded child care and requires ODJFS to withhold payment for publicly funded child care provided by a suspended provider.

III. Child Welfare

- Grants a court of appeals jurisdiction over any appeal brought by any party, including a public children services agency, in relation to a ruling on a motion to modify a prior dispositional order and provides that a public children services agency has a substantial right in protecting alleged abused, neglected, or dependent children and in achieving permanency for a child committed to the agency in any proceeding in a court of appeals.

IV. Temporary Assistance for Needy Families

- Permits ODJFS to adopt rules specifying circumstances under which a county department of job and family services (CDJFS) is not required to take action to recover erroneous payments made under Ohio Works First.

V. Health Programs (including Medicaid)

- Requires the ODJFS Director to submit Medicaid reports to the General Assembly semiannually, rather than quarterly, on programs for cost containment, efficiency, and health promotion, and eliminates provisions requiring that each report include information on specified topics.

- Revises the law governing criminal records checks of non-waiver Medicaid providers, applicants for non-waiver Medicaid provider agreements, and owners and prospective owners, officers and prospective officers, board members and prospective board members, and employees and prospective employees of the providers and applicants.

- Permits ODJFS to require a non-waiver Medicaid provider or applicant to determine whether an employee or prospective employee is included in databases specified in rules before requiring the provider or applicant to require the employee or prospective employee to undergo a criminal records check.

- Authorizes the ODJFS Director to adopt rules specifying the circumstances under which a non-waiver Medicaid provider or applicant is prohibited from employing a person who is found by a database review to be included in a database.

- Revises the list of disqualifying offenses that may make an individual ineligible to be a non-waiver Medicaid provider or employee, owner, officer, or board member of a provider or applicant.

- Permits a criminal records check to be made available to a non-waiver Medicaid provider or applicant that requires the criminal records check and to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid.

- Revises the law governing criminal records checks for employment positions that involve providing home and community-based services provided by waiver agencies under ODJFS-administered Medicaid waiver programs.

- Establishes a database review system to precede a criminal records check regarding such positions.

- Permits the ODJFS Director to adopt rules requiring employees to undergo database reviews and criminal records checks as a condition of continuing employment in such positions.

- Revises the list of disqualifying offenses for which a criminal records check regarding such a position is to search.

- Eliminates obsolete provisions regarding existing employees in such positions but provides that the elimination does not preclude ODJFS from taking action against a person who failed to comply with the provisions.

- Revises the law governing criminal records checks of persons seeking or holding Medicaid provider agreements as independent providers under ODJFS-administered Medicaid waivers, including by revising the list of disqualifying offenses for which such a criminal records check is to search.

- Extends the date that certain aged, blind, or disabled individuals receiving services through the Bureau for Children with Medical Handicaps (BCMH) are excluded from being permitted or required to participate in the Medicaid care management system.

- Eliminates a provision that excludes the Medicaid managed care system in general from a requirement that ODJFS issue orders regarding Medicaid provider agreements and final fiscal audits pursuant to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.) and, instead, provides that the adjudication requirement does not apply to any action or decision by ODJFS regarding whether to contract with a managed care organization for purposes of the Medicaid managed care system.

- Requires the ODJFS Director to include quality factors and quality-based incentive payments in rules to be adopted under the Medicaid program that modify the

hospital inpatient capital reimbursement methodology, establish new diagnosis-related groups (DRGs), and implement other changes to hospital inpatient and outpatient reimbursement methodologies.

- Requires a Medicaid managed care organization, for purposes of making a payment for a hospital inpatient service, to use a new DRG that ODJFS establishes.

- Permits, rather than requires, ODJFS to designate the Department of Aging to perform assessments of whether Medicaid applicants and recipients need the level of care provided by nursing facilities.

- Requires the ODJFS to recalculate franchise permit fees charged nursing homes, hospital long-term care units, and intermediate care facilities for the mentally retarded (ICFs/MR) when conditions of existing law are met and 75% or more of the total number of nursing homes, hospital long-term care units, and ICFs/MR receive enhanced Medicaid payments or other state payments equal to 75% or more of their franchise permit fees.

- Requires ODJFS, if during the period beginning on May 1 and ending January 1 of the immediately following year an ICF/MR converts one or more of its beds to providing home and community-based services, to (1) terminate the ICF/MR's franchise permit fee if the ICF/MR's Medicaid certification is terminated because of the conversion or (2) redetermine the ICF/MR's franchise permit fee for the second half of a fiscal year if the ICF/MR's Medicaid-certified capacity is reduced because of the conversion.

- Provides for all of the ICF/MR franchise permit fees and associated penalties to be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund.

- Requires ODJFS to certify quarterly to the Director of the Office of Budget and Management (OBM) the amount in the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund as of the last day of each quarter and requires the OBM Director to transfer the amount so certified to the Department of Developmental Disabilities (ODODD) Operating and Services Fund.

- Makes a nursing facility's wheelchair and resident transportation costs reimbursable under Medicaid as part of direct care costs rather than ancillary and support costs.

- Clarifies that certain tax costs are a separate category for purposes of nursing facilities' Medicaid rates.

- Provides that all days for which payments are made under the Medicaid program to reserve ICF/MR beds during Medicaid recipients' temporary absences are considered inpatient days and Medicaid days for the purpose of the formulas used to determine Medicaid rates for ICFs/MR.

- Provides that 50% of the days for which payments are made under the Medicaid program to reserve nursing facility beds during Medicaid recipients' temporary absences are considered inpatient days and Medicaid days for the purpose of the formulas used to determine nursing facilities' Medicaid rates.

- Provides for qualifying nursing facilities to receive critical access incentive payments as part of their Medicaid rates.

- Modifies, for fiscal year 2013, (1) the requirements a nursing facility must meet to qualify for a quality bonus under Medicaid and (2) the amount of the quality bonus.

- Permits the ODJFS Director to seek federal approval for converting up to 500 beds from providing ICF/MR services to home and community-based services.

- Requires that such a conversion of beds be approved only by the ODODD Director rather than both that Director and the ODJFS Director.

- Requires ODJFS, subject to federal approval to increase the Medicaid rate paid to a provider under the Individual Options waiver by 52¢ for each 15 minutes of routine homemaker/personal care provided to an individual for up to a year if (1) the individual was a resident of an ICF/MR, or former ICF/MR, that converted some or all of its beds to providing services under the Individual Options waiver immediately before enrolling in the waiver, (2) the provider begins serving the individual on or after July 1, 2011, and (3) the ODODD Director determines that the increased rate is warranted by the individual's special circumstances and that serving the individual through the Individual Options waiver is fiscally prudent for the Medicaid program.

- Repeals an obsolete law that exempted a nursing facility or ICF/MR from laws regarding the collection of Medicaid debts if the facility underwent a change of operator, closed, or voluntarily ceased participating in Medicaid or on or before September 30, 2005, and provided written notice of the action not later than June 30, 2005.

- Provides that an individual participating in the Money Follows the Person demonstration project may potentially qualify for the Home First component of the Ohio Home Care Program by residing, at the time the individual applies for the program, in an institution for children certified by ODJFS.

- Expresses in statute the authority of the ODJFS Director to operate the existing HOME Choice demonstration component of the Medicaid program to the extent that funds are available under a federal Money Follows the Person demonstration project and authorizes the Director to adopt rules for administration and operation of the component.

- Permits a contract between ODJFS and an entity regarding Ohio Access Success Project fiscal management services to provide for the contract entity to receive a portion of a project participant's benefits.

- Renames the Medicaid Revenue and Collections Fund the Health Care/Medicaid Support and Recoveries Fund.

- Provides for both of the following to be credited to the Health Care/Medicaid Support and Recoveries Fund: (1) federal reimbursement received for disproportionate share hospital payment adjustments made under Medicaid to state mental health hospitals and (2) revenues ODJFS receives from another state agency for Medicaid services pursuant to an interagency agreement, other than such revenues required to be deposited into the Health Care Services Administration Fund.

- Provides for the first $750,000 that ODJFS receives in a fiscal year for performing eligibility verification services necessary for compliance with a federal regulation regarding independent, certified audits for disproportionate share hospital payments to be credited the Health Care/Medicaid Support and Recoveries Fund and for the remainder to be credited to the Health Care Compliance Fund.

- Permits ODJFS, for fiscal years 2012 and 2013, to deposit into the OHP Health Care Grants Fund federal grants for the administration of health care programs that ODJFS receives under the federal health care reform acts enacted in 2010 and requires ODJFS to use the money in the fund to pay for expenses incurred in carrying out duties that ODJFS assumes by accepting the federal grants.

I. General

Reports on ODJFS programs

(R.C. 5101.97 (repealed))

Current law requires the Ohio Department of Job and Family Services (ODJFS) to report twice a year on the characteristics of the individuals who participate in or receive

services through the programs operated by ODJFS and the outcomes of their participation in or receipt of services through the programs. The reports must include information on (1) work activities, developmental activities, and alternative work activities established under the Ohio Works First Program, (2) programs of publicly funded child care, (3) child support enforcement programs, and (4) births to Medicaid recipients. The bill eliminates these reports.

Additionally, whenever the federal government requires that ODJFS submit a report on a program it operates or which is otherwise under the ODJFS's jurisdiction, current law requires ODJFS to prepare and submit the report in accordance with the federal requirements applicable to that report. To the extent possible, ODJFS is permitted to coordinate the preparation and submission of a particular report with any other report, plan, or other document required to be submitted to the federal government, as well as with any report required to be submitted to the General Assembly. The reports required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 may be submitted as an annual summary. The bill eliminates these express requirements and authority from the Revised Code (although ODJFS would still be required by federal law to comply with any federal requirements regarding reports).

Title XX state plan and reporting

(R.C. 5101.46)

Current law requires ODJFS, the Ohio Department of Mental Health (ODMH), and the Ohio Department of Developmental Disabilities (ODODD), with their respective local agencies, to provide social services funded by Title XX of the Social Security Act, also known as the Social Services Block Grant. ODJFS is required to prepare a biennial comprehensive Title XX social services plan on the intended use of Title XX funds. For each state fiscal year, ODJFS must prepare a report on the actual use of Title XX funds.

The bill requires instead that ODJFS prepare an ***annual*** Title XX social services plan. Additionally, it requires that ODJFS's report on the actual use of Title XX funds be prepared for each ***federal*** fiscal year. The bill makes corresponding changes to the duties of ODMH, ODODD, and local agencies with respect to their portions of the annual plan and report.

II. Child Care

Publicly funded child care contracts suspended for improper payments or criminal activity

(R.C. 5104.37)

Purchases of publicly funded child care are made pursuant to contracts entered into between ODJFS and an eligible child care provider. Under current law, ODJFS may withhold any money due for providing publicly funded child care, and may recover any money erroneously paid, if evidence exists of less than full compliance with the child day-care statutes and rules.

The bill requires ODJFS to suspend immediately a contract to provide publicly funded child care when ODJFS initiates an investigation concerning the provider for either of the following reasons: (1) the provider receives an improper child care payment, or (2) ODJFS receives notice and a copy of an indictment, information, or complaint charging the provider or the owner or operator of the provider with committing either of the following:

(a) An act that is a felony or misdemeanor relating to providing or billing for publicly funded child care or providing management or administrative services relating to providing publicly funded child care;

(b) An act that would constitute one of the offenses that currently disqualify a person from being a child care provider: a violation of the laws prohibiting extortion, aggravated arson, arson, disrupting public services, vandalism, inciting to violence, aggravated riot, riot, inducing panic, intimidation, escape, or aiding escape or resistance to lawful authority, or two violations of the laws against operating a vehicle under the influence of alcohol or drugs if committed while providing child care.

The contract suspension continues until ODJFS completes its investigation or all criminal charges are disposed of through dismissal, a finding of not guilty, conviction, or a plea of guilty. If ODJFS initiates the termination of a contract that has been suspended, the suspension continues until the termination process is completed.

The bill prohibits a provider from providing publicly funded child care while the provider's contract is under suspension. Further, ODJFS must withhold payment to the provider for publicly funded child care as of the date the contract is suspended.

The bill requires ODJFS to notify the provider not later than five days after suspending the contract. The notice must include all of the following:

(1) A description of the investigation or indictment, information, or complaint that resulted in the suspension, which need not disclose specific information concerning any ongoing administrative or criminal investigation;

(2) A statement that the provider is prohibited from providing publicly funded child care while the contract is under suspension;

(3) A statement that the suspension will continue until ODJFS completes its investigation or all criminal charges are disposed of through dismissal, a finding of not guilty, conviction, or a plea of guilty, and that if ODJFS initiates the termination of the contract, the suspension will continue until the termination process is completed.

III. Child Welfare

Public children services agency appeals

(R.C. 2501.02 and 5153.18)

Existing law grants additional jurisdiction to courts of appeals beyond the original jurisdiction conferred by Section 3 of Article IV of the Ohio Constitution to have jurisdiction upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court. The bill specifies that this additional jurisdiction extends to any appeal brought by any party, including a public children services agency, in relation to a ruling on a motion to modify a prior dispositional order, for prejudicial error committed by the lower court.

Additionally, the bill specifies that a public children services agency has a "substantial right," as defined in R.C. 2505.02 (not in the bill), in protecting children alleged to be abused, neglected, or dependent children and in achieving permanency for a child committed to the agency's custody in any proceeding in a court of appeals. R.C. 2505.02 defines a "substantial right" as a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

IV. Temporary Assistance for Needy Families

Rules governing Ohio Works First erroneous payments

(R.C. 5107.05)

Current law authorizes ODJFS to adopt rules providing that a county department of job and family services (CDJFS) is not required to take action to recover an erroneous payment made under Ohio Works First that is below an amount ODJFS specifies. The bill provides instead that ODJFS may adopt rules providing that a CDJFS is not required to take action to recover an erroneous payment under circumstances the rules specify.

V. Health Programs (including Medicaid)

Medicaid cost containment reports

(R.C. 5111.091)

The ODJFS Director is required to submit quarterly reports to the President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, and chairpersons of the finance committees of the Senate and House of Representatives on the establishment and implementation of programs designed to control the increase of the cost of the Medicaid program, increase the efficiency of the program, and promote better health outcomes.

Rather than quarterly, the bill requires the Director to submit the reports semiannually – one not later than June 30 and the other not later than December 31 of each calendar year. The bill eliminates the requirement that each report include information regarding the following: provider network management, electronic claims submission and payment systems, limited provider contracts and payments based on performance, efforts to enforce third party liability, implementation of the Medicaid Information Technology System, expansion of the Medicaid Data Warehouse and Decision Support System, and development of infrastructure policies for electronic health records and e-prescribing.

Criminal records checks for Medicaid providers

(R.C. 5111.032 (primary), 109.57, 109.572, and 5111.031)

Under current law, ODJFS is permitted to require that any of the following submit to a criminal records check: Medicaid providers, applicants to be providers, employees and prospective employees of providers, owners and prospective owners of

providers, officers and prospective officers of providers, and board members and prospective board members of providers.

The bill revises this law. The following is a discussion of this law as it is to exist under the bill. Some of the provisions discussed below are included in, or are similar to, current law.

Inapplicability

The provisions discussed below do not apply to individuals who are subject to criminal records checks under other provisions of law regarding hospice care programs, nursing homes, residential care facilities, county and district homes, adult day-care programs, Medicaid waiver agencies and independent providers providing home and community-based services available under ODJFS-administered waivers, ODODD, county boards of developmental disabilities, providers and subcontractors of specialized services for individuals with mental retardation or developmental disabilities, chief executive officers of businesses that provide supported living, independent providers of supported living, and community-based long-term care agencies.

ODJFS authority to require criminal records checks and database reviews

ODJFS is permitted to do any of the following:

(1) Require that a Medicaid provider or applicant to be a provider submit to a criminal records check as a condition of having a Medicaid provider agreement;

(2) Require that a Medicaid provider or applicant to be a provider require an owner or prospective owner, officer or prospective officer, or board member or prospective board member of the provider or applicant submit to a criminal records check as a condition of being an owner, officer, or board member of the provider or applicant;

(3) Require that any Medicaid provider or applicant to be a provider (a) conduct, if so required by rules the ODJFS Director may adopt, a database review of any employee or prospective employee of the provider or applicant and (b) require the employee or prospective employee to submit to a criminal records check as a condition of being an employee of the provider or applicant unless the provider or applicant is prohibited from employing the employee or prospective employee because of the results of a database review.

Notice of criminal records check and database review requirements

ODJFS must inform each Medicaid provider and applicant for a Medicaid provider agreement whether the provider or applicant must undergo a criminal records check. The notice must specify which of the provider's or applicant's employees or prospective employees, owners or prospective owners, officers or prospective officers, or board members or prospective board members must undergo criminal records checks. A notice also must specify which of a provider's or applicant's employees are to undergo database reviews.

If ODJFS requires a person who is an owner or prospective owner, officer or prospective officer, or board member or prospective board member of a provider or applicant to undergo a criminal records check, the provider or applicant must inform the person of the requirement. If ODJFS requires an employee or prospective employee of a provider or applicant to undergo a database review or criminal records check, the provider or applicant must notify the employee or prospective employer of the requirement.

Termination or denial of Medicaid provider agreement

ODJFS or its designee must terminate a Medicaid provider's provider agreement or deny an applicant's application for a provider agreement if the provider or applicant is required to undergo a criminal records check and either of the following applies:

(1) The provider or applicant fails to obtain the criminal records check after being given information about accessing and completing the criminal records check form prescribed by the Bureau of Criminal Identification and Investigation (BCII) and the standard fingerprint impression sheet prescribed by BCII.

(2) Except as otherwise provided in rules to be adopted by the ODJFS Director, the provider or applicant is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the provider or applicant was found eligible for intervention in lieu of conviction.

Restrictions on being an owner, officer, or board member

A Medicaid provider or applicant for a Medicaid provider agreement may not permit a person to be an owner, officer, or board member of the provider or applicant if the person is required to undergo a criminal records check and either of the following applies:

(1) The person fails to obtain the criminal records check after being given information about accessing and completing the BCII criminal records check form and the BCII standard fingerprint impression sheet.

(2) Except as otherwise provided in rules to be adopted by the ODJFS Director, the person is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction.

Restrictions on being an employee

A Medicaid provider or applicant for a Medicaid provider agreement may not employ a person if any of the following apply:

(1) The person has been excluded from providing services or items under Medicaid, Medicare, or any other federal health care program.

(2) If the person is required to undergo a database review, the person is found by the review to be included in a database and rules the ODJFS Director is to adopt prohibit the provider or applicant from employing a person included in that database.

(3) If the person is required to undergo a criminal records check, either of the following apply:

(a) The person fails to obtain the criminal records check after being given information about accessing and completing the BCII criminal records check form and the BCII standard fingerprint impression sheet.

(b) Except as otherwise provided in rules to be adopted by the ODJFS Director, the person is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction.

Conditional employment

A Medicaid provider or applicant for a Medicaid provider agreement is permitted to employ conditionally a person required to undergo a criminal records check before the provider or applicant obtains the results of the criminal records check if both of the following apply:

(1) The provider or applicant is not prohibited from employing the person because of the results of a database review.

(2) The person submits a request for the criminal records check not later than five business days after the person begins conditional employment.

A provider or applicant that employs a person conditionally must terminate the person's employment if the results of the criminal records check are not obtained within the period ending 60 days after the date the request is made. Regardless of when the results are obtained, if the results indicate that the person has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the provider or applicant must terminate the person's employment unless rules to be adopted by the ODJFS Director permit the provider or applicant to employ the person and the provider or applicant chooses to employ the person.

Disqualifying offenses

The following is the list of disqualifying offenses:

(1) Cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of

credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); interference with custody (R.C. 2919.23); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) Felonious sexual penetration in violation of former law (former R.C. 2907.12);

(3) A violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(4) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (3) above;

(5) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (4) above.

Release of criminal records check report

The report of a criminal records check is not a public record and is not to be available to any person other than the following:

(1) The subject of the report;

(2) The ODJFS Director and the staff of ODJFS in the administration of Medicaid;

(3) ODJFS's designee;

(4) The Medicaid provider or applicant for a Medicaid provider agreement who required the subject of the report to undergo the criminal records check;

(5) A court, hearing officer, or other necessary individual involved in a case dealing with (a) the denial or termination of a Medicaid provider agreement, (b) a person's denial of employment, termination of employment, or employment or unemployment benefits, or (c) a civil or criminal action regarding Medicaid.

Rules

The ODJFS Director is permitted to adopt rules to implement the provisions discussed above. If the Director adopts such rules, the rules must designate the times at which a criminal records check must be conducted. The rules may do any of the following:

(1) Designate the categories of persons who are to undergo criminal records checks;

(2) Specify circumstances under which ODJFS or its designee may continue or issue a Medicaid provider agreement when the Medicaid provider or applicant for the Medicaid provider agreement is found by a criminal records check to have been

convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense;

(3) Specify circumstances under which a provider or applicant may permit a person to be an employee, owner, officer, or board member of the provider or applicant, when the person is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense;

(4) Specify all of the following:

(a) The circumstances under which a database review must be conducted to determine whether an employee or prospective employee of a provider or applicant is included in a database;

(b) The procedures for conducting the database review;

(c) The databases that are to be checked;

(d) The circumstances under which a provider or applicant is prohibited from employing a person who is found by the database review to be included in a database.

Medicaid waiver agency criminal records checks

(R.C. 5111.033 (primary), 109.57, and 109.572)

Under current law, the chief administrator of a waiver agency that provides home and community-based services under a Medicaid waiver administered by ODJFS must require employees and applicants to undergo a criminal records check conducted by BCII.

The bill revises this law. The following is a discussion of this law as it is to exist under the bill. Some of the provisions discussed below are included in, or are similar to, current law.

Inapplicability

The provisions discussed below do not apply to an agency certified under Medicare.

Database reviews

As a condition of employing an applicant in a position that involves providing home and community-based services available under an ODJFS-administered Medicaid waiver, the chief administrator of a waiver agency must conduct a database review of

the applicant in accordance with rules to be adopted by the ODJFS Director. If the rules so require, the waiver agency's chief administrator must conduct a database review of an employee in accordance with the rules as a condition of continuing to employ the employee in a position that involves providing home and community-based services under an ODJFS-administered Medicaid waiver. A database review must determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by ODODD;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by the Department of Health;

(7) Any other database, if any, the ODJFS Director is permitted to specify in rules.

A waiver agency may not employ an applicant or continue to employ an employee in a position that involves providing home and community-based services under an ODJFS-administered Medicaid waiver if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates.

(2) There is in the state nurse aide registry a statement detailing findings by the Director of Health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident.

(3) The applicant or employee is included in one or more of the other databases that the ODJFS Director may specify in rules and the rules prohibit the waiver agency from employing the applicant or employee.

Criminal records check

The chief administrator of a waiver agency must require an applicant to request that BCII conduct a criminal records check of the applicant. A chief administrator is to require an employee to request that BCII conduct a criminal records check of the employee if rules adopted by the ODJFS Director so require. However, neither an applicant nor an employee is to undergo a criminal records check if a waiver agency is prohibited from employing the applicant or employee as a result of a database review.

A waiver agency's chief administrator must provide each applicant and employee required to undergo a criminal records check information about accessing, completing, and forwarding the form that BCII has prescribed for requesting criminal records checks and BCII's standard fingerprint impression sheet. A chief administrator also must notify such applicants and employees that they must instruct BCII to submit the results of the criminal records check directly to the chief administrator. A waiver agency is prohibited from employing an applicant or employee who fails to access, complete, or forward the criminal records check form or impression sheet or to instruct BCII to submit the results directly to the chief administrator.

A waiver agency may require an applicant to pay to BCII the fee for conducting the criminal records check. Or, a waiver agency may charge the applicant a fee if the waiver agency pays the BCII fee and notifies the applicant at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the applicant will not be considered for employment. The amount a waiver agency charges an applicant may not exceed the amount of the BCII fee that the waiver agency pays. A waiver agency is not authorized to charge an employee for the BCII fee.

Notice to applicants

At the time of each applicant's initial application, the chief administrator or a waiver agency must inform the applicant of both of the following:

(1) That a database review will be conducted to determine whether the waiver agency is prohibited from employing the applicant;

(2) That, unless the database review reveals that the applicant may not be employed, a criminal records check will be conducted and the applicant must provide a set of the applicant's fingerprint impressions as part of the criminal records check.

Conditional employment

A waiver agency is permitted to employ conditionally an applicant required to undergo a criminal records check before obtaining the results of the criminal records check if both of the following apply:

(1) A database review does not reveal that the waiver agency is prohibited from employing the applicant.

(2) The waiver agency's chief administrator requires the applicant to request a criminal records check not later than five business days after the applicant begins the conditional employment.

A waiver agency that employs an applicant conditionally must terminate the employment if the results of the criminal records check, other than results of any request for information from the Federal Bureau of Investigation, are not obtained within the period ending 60 days after the date the request for the criminal records check is made. Regardless of when the results are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for a disqualifying offense, the waiver agency must terminate the applicant's employment unless circumstances specified in rules adopted by the ODJFS Director exist that permit the waiver agency to employ the applicant and the waiver agency chooses to employ the applicant.

Disqualifying offenses

Except as provided in rules adopted by the ODJFS Director, a waiver agency may not employ an applicant or continue to employ an employee in a position that involves providing home and community-based services available under an ODJFS-administered Medicaid waiver if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the applicant or employee was found eligible for intervention in lieu of conviction.

The following is the list of disqualifying offenses:

(1) Cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21);

menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); interference with custody (R.C. 2919.23); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C.

2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) Felonious sexual penetration in violation of former law (former R.C. 2907.12);

(3) A violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(4) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (3) above;

(5) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (4) above.

Release of criminal records check report

The report of a criminal records check is not a public record and is not to be available to any person other than the following:

(1) The applicant or employee who is the subject of the report or the representative of the applicant or employee;

(2) The waiver agency's chief administrator or the administrator's representative;

(3) The ODJFS Director and the staff of ODJFS in the administration of Medicaid;

(4) A court, hearing officer, or other necessary individual involved in a case dealing with (a) an applicant's or employee's denial of employment, (b) an applicant's or employee's employment or unemployment benefits, (c) a civil or criminal action regarding Medicaid.

Rules

The ODJFS Director is required to adopt rules to implement the provisions discussed above.

The rules may do the following:

(1) Require employees to undergo database reviews and criminal records checks;

(2) If the rules require employees to undergo database reviews and criminal records checks, exempt one or more classes of employees from the requirements;

(3) Specify additional databases that are to be checked as part of a database review.

The rules must specify all of the following:

(1) The procedures for conducting a database review;

(2) If the rules require employees to undergo database reviews and criminal records checks, the times at which the database reviews and criminal records checks are to be conducted;

(3) If the rules specify other databases to be checked as part of a database review, the circumstances under which a waiver agency is prohibited from employing an applicant or continuing to employ an employee who is found by the database review to be included in one or more of those databases;

(4) The circumstances under which a waiver agency may employ an applicant or employee who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

ODJFS not precluded from taking action authorized under former law

The bill eliminates an obsolete law that required a person who, on September 26, 2003, was employed by a waiver agency in a position that involved providing home and community-based services available under an ODJFS-administered Medicaid waiver to comply with the law governing criminal records checks for waiver agencies

unless the person previously underwent a criminal records check relating to that position. This is obsolete because the person was required to comply within 60 days after September 26, 2003.

Although the bill eliminates the obsolete provision, it provides that ODJFS is not precluded from taking action against a person who failed to comply with the provision.

Independent provider criminal records checks

(R.C. 5111.034 (primary), 109.57, and 109.572)

Under current law, ODJFS must require an individual applying for a Medicaid provider agreement to provide home and community-based services as an independent provider under an ODJFS-administered Medicaid waiver, and an independent provider holding such a Medicaid provider agreement, to undergo criminal records checks conducted by BCII.

The bill revises this law. The following is a discussion of this law as it is to exist under the bill. Some of the provisions discussed below are included in, or are similar to, current law.

Restriction on issuing or renewing Medicaid provider agreement

ODJFS or its designee must require an individual who applies for a Medicaid provider agreement as an independent provider to complete a criminal records check conducted by BCII before entering into the provider agreement with the applicant. ODJFS or its designee must require an individual holding a Medicaid provider agreement as an independent provider to complete a BCII-conducted criminal records check at least annually.

ODJFS or its designee must provide certain information to each applicant and independent provider required to undergo a criminal records check. They are to receive information about accessing, completing, and forwarding to BCII the form prescribed by BCII for requesting a criminal records check and BCII's standard fingerprint impression sheet. They are also to receive information about instructing BCII to submit the results of the criminal records check directly to ODJFS or its designee. ODJFS or its designee must deny an applicant's application for a Medicaid provider agreement and must terminate an independent provider's provider agreement if the applicant or independent provider fails to access, complete, or forward to BCII the form or impression sheet or fails to instruct BCII to submit the results directly to ODJFS or its designee.

Disqualifying offenses

Except as provided in rules adopted by the ODJFS Director, ODJFS or its designee must deny an applicant's application for a Medicaid provider agreement as an independent provider and must terminate an independent provider's provider agreement if the applicant or independent provider is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the applicant or employee was found eligible for intervention in lieu of conviction.

The following is the list of disqualifying offenses:

(1) Cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of

emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); interference with custody (R.C. 2919.23); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) Felonious sexual penetration in violation of former law (former R.C. 2907.12);

(3) A violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(4) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (3) above;

(5) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (4) above.

Release of criminal records check report

The report of a criminal records check is not a public record and is not to be available to any person other than the following:

(1) The person who is the subject of the report or the person's representative;

(2) The ODJFS Director and the staff of ODJFS in the administration of Medicaid;

(3) ODJFS's designee;

(4) An individual who receives home and community-based services from the person who is the subject of the report;

(5) A court, hearing officer, or other necessary individual involved in a case dealing with (a) a denial or termination of a Medicaid provider agreement related to the criminal records check or (b) a civil or criminal action regarding Medicaid.

Rules

The ODJFS Director is required to adopt rules to implement the provisions discussed above. The rules must specify circumstances under which ODJFS or its designee may approve an applicant's application for a Medicaid provider agreement as an independent provider or allow an independent provider to maintain an existing provider agreement even though the applicant or independent provider is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

Exclusion of BCMH participants from Medicaid managed care

(Section 309.30.53 of H.B. 153)

H.B. 153 (the biennial budget act) expands the group of individuals required or permitted to participate in the Medicaid care management system, including certain individuals in the Medicaid coverage group known as the "aged, blind, or disabled." However, H.B. 153 prohibits, in fiscal years 2012 and 2013, certain individuals receiving

services through the program for medically handicapped children, also known as the Bureau for Children with Medical Handicaps (BCMH), from being included in the Medicaid care management system. The excluded BCMH participants are those who were not already enrolled in the Medicaid care management system and have one or more of the following: (1) cystic fibrosis, (2) hemophilia, or (3) cancer.

The bill extends the exclusion period to provide that the BCMH participants described above are to be excluded from the Medicaid care management system until the later of the following: (1) January 1, 2014, or (2) one year after the date that ODJFS first designates any individual who receives Medicaid on the basis of being aged, blind, or disabled who is under age 21 as an individual who is permitted or required to participate in the care management system.

Medicaid managed care contract decisions excluded from administrative hearings

(R.C. 5111.06)

Current law generally requires ODJFS to do the following by issuing an order pursuant to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.): (1) enter into or refuse to enter into a Medicaid provider agreement with a provider, (2) suspend, terminate, renew, or refuse to renew an existing provider agreement, or (3) take any action based upon a final fiscal audit of a provider.[139] This process, however, does not apply to most actions taken by ODJFS regarding the Medicaid managed care system.

The bill eliminates the provision that excludes the Medicaid managed care system in general from the requirement that ODJFS issue orders regarding provider agreements and final fiscal audits pursuant to an adjudication under the Administrative Procedure Act. Instead, the bill provides that the adjudication requirement does not apply to any action taken or decision made by ODJFS with respect to entering into or refusing to enter into a contract with a managed care organization.

Hospital quality factors and incentive payments under Medicaid

(Sections 601.40 and 601.41)

The bill revises a provision enacted by Am. Sub. H.B. 153 of the 129th General Assembly regarding Medicaid payments to hospitals for fiscal years 2012 and 2013. H.B. 153 requires the ODJFS Director to implement purchasing strategies and rate

[139] A number of exemptions apply under which ODJFS may take these actions without having to comply with the requirement to issue an order pursuant to an adjudication.

reductions for hospital and other Medicaid-covered services that result in payment rates for those services being at least 2% less than the respective payment rates for fiscal year 2011. In implementing the purchasing strategies and rate reductions, the Director is required to modernize hospital inpatient and outpatient reimbursement methodologies by (1) modifying the hospital inpatient capital reimbursement methodology, (2) establishing new diagnosis-related groups (DRGs) in a cost-neutral manner, and (3) implementing other changes the Director considers appropriate. The Director is required to adopt rules as necessary to implement those three requirements as well as other requirements established by H.B. 153. The bill requires that the rules regarding the three provisions discussed above include quality factors and quality-based incentive payments.

The bill also requires a Medicaid managed care organization to use a new DRG for a hospital inpatient service that the ODJFS Director establishes under H.B. 153 for purposes of making payments under the Medicaid managed care system for hospital inpatient services that are provided during the period beginning on the later of the new DRG or the effective date of this provision of the bill and ending July 1, 2013.

Designation of agency to perform level of care assessments

(Section 209.20)

The bill provides that ODJFS is permitted rather than required to designate the Department of Aging to perform assessments of whether Medicaid applicants and recipients need the level of care provided by nursing facilities.

Franchise permit fees

Federal guarantee test

(R.C. 3721.51 and 5112.31)

Continuing law requires nursing homes and hospital long-term care units to pay franchise permit fees. Intermediate care facilities for the mentally retarded (ICFs/MR) must also pay franchise permit fees.

To avoid causing a reduction in federal funds for Medicaid, the franchise permit fees must meet certain federal requirements. One requirement is that there cannot be a hold harmless provision with respect to a fee, which means that a state cannot directly or indirectly reimburse nursing facilities, hospital long-term care units, or ICFs/MR for the fees they pay. However, the hold harmless prohibition does not apply if the fee passes a two-part guarantee test. The fee passes the first part of the test if it is applied at a rate that produces revenues not exceeding 6% of the net patient revenues received by

the nursing facilities, hospital long-term care units, and ICFs/MR. However, a fee that fails the first part still passes the guarantee test if it passes the second part. It passes the second part if less than 75% of nursing facilities, hospital long-term care units, and ICFs/MR receive no more in enhanced Medicaid payments or other state payments than an amount equal to 75% of the franchise permit fees they pay.[140]

Current state law requires ODJFS to recalculate the franchise permit fees using rates that differ from the rates otherwise required by state law if those rates cause the fees to fail the first part of the guarantee test. Under the bill, ODJFS is not required to make the recalculation unless that the fees fail to pass both parts of the guarantee test.

Redetermining a converted ICF/MR's franchise permit fee

(R.C. 5112.331 (primary), 5112.31, 5112.33, and 5112.341)

The bill revises the law governing the ICF/MR franchise permit fee to reflect current law that authorizes an ICF/MR to convert some or all of its beds from providing ICF/MR services to providing home and community-based services under a Medicaid waiver administered by ODODD.

Continuing law requires ODJFS to determine each ICF/MR's franchise permit fee for a fiscal year not later than August 15. The determination is based in part on the number of beds an ICF/MR has on May 1 of that year. If, during the period beginning on May 1 of a calendar year and ending on January 1 of the immediately following calendar year, an ICF/MR converts one or more of its beds, ODJFS is required by the bill either to terminate or redetermine the ICF/MR's franchise permit fee.

ODJFS is to terminate an ICF/MR's franchise permit fee if the ICF/MR's Medicaid certification is terminated because of the conversion. (Continuing law provides for an ICF/MR's Medicaid certification to be terminated if it converts all of its beds.) The franchise permit fee is to be terminated effective on the first day of the quarter immediately following the quarter in which ODJFS receives notice of the conversion from the Director of Health.

ODJFS is to redetermine an ICF/MR's franchise permit fee for the second half of the fiscal year for which the fee is assessed if the ICF/MR's Medicaid-certified capacity is reduced because of the conversion. (Continuing law provides for an ICF/MR's Medicaid certification to be reduced by the number of beds it converts if it does not convert all of its beds.) To redetermine the ICF/MR's franchise permit fee, ODJFS must multiply the franchise permit fee rate ($17.99 for fiscal year 2012 and $18.32 for each

[140] 42 C.F.R. 433.68(f).

fiscal year thereafter) by the product of (1) the number of the ICF/MR's beds that remain certified under Medicaid as of the date the conversion takes effect and (2) the number of days in the second half of the fiscal year for which the redetermination is made. The ICF/MR is required to pay its franchise permit fee as redetermined in installment payments not later than 45 days after the last day of March and June of the fiscal year for which the redetermination is made.

Use of money raised by ICF/MR franchise permit fee

(R.C. 5112.37 (primary), 5112.31, 5112.371, and 5112.39)

The bill revises the law governing the funds into which money raised by the ICF/MR franchise permit fee is deposited. Current law requires that 81.77% of the franchise permit fees and penalties associated with the fees that ICFs/MR pay for fiscal year 2012 be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund. 82.2% of all such fees and penalties paid for fiscal year 2013 and thereafter are to be deposited into that fund. The remaining amount of the fees and penalties paid for a fiscal year must be deposited into the Department of Developmental Disabilities Operating and Services Fund. The bill requires instead that all the fees and penalties be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund and that the ODJFS Director, as soon as possible after the end of each quarter, certify to the Director of the Office of Budget and Management (OBM) the amount of money in that fund as of the last day of that quarter. On receipt of the certification, the OBM Director must transfer the amount so certified to the Department of Developmental Disabilities Operating and Services Fund.

Because the bill provides for all of the money in the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund to be transferred to the Department of Developmental Disabilities Operating and Services Fund, the bill eliminates a requirement that ODJFS and ODODD use the money in the former fund for the Medicaid program and home and community-based services to persons with mental retardation or developmental disabilities. With all of the money being transferred to the Department of Developmental Disabilities Operating and Services Fund, the money is to be used in accordance with the law governing that fund. The bill does not change the purpose for which money in that fund is to be used. Money in that fund must be used for the expenses of the programs that ODODD administers and ODODD's administrative expenses.

Nursing facilities' wheelchair, resident transportation, and tax costs

(R.C. 5111.20, 5111.242, and 5111.254)

Continuing law establishes formulas that are used to calculate Medicaid rates for services provided by nursing facilities and ICFs/MR. There are different formulas for the various groups of costs that nursing facilities and ICFs/MR incur, such as ancillary and support costs, direct care costs, and tax costs.

The bill makes a nursing facility's wheelchair and resident transportation costs reimbursable under Medicaid as part of direct care costs rather than ancillary and support costs. This means that wheelchair and resident transportation costs are to be calculated in accordance with the formula governing direct care costs rather than the formula governing ancillary and support costs.

The bill also clarifies that certain tax costs are a separate category for purposes of nursing facilities' Medicaid rates. Current law defines "ancillary and support costs," in part, as all reasonable costs incurred by nursing facilities other than direct care and capital costs. The bill revises the definition by adding tax costs with direct care and capital costs as costs that are not ancillary and support costs. Continuing law establishes a formula for determining Medicaid rates for nursing facilities' tax costs that is separate from the formula used to determine Medicaid rates for nursing facilities' ancillary and support costs. "Tax costs" are defined as the commercial activity tax, real estate taxes, personal property taxes, and corporate franchise taxes.

Inpatient days and Medicaid days

(R.C. 5111.20 (primary), 3721.50, and 5111.23)

The bill revises the definitions of "inpatient days" and "Medicaid days" in the law governing the formulas used to determine Medicaid rates for nursing facilities and ICFs/MR. The amount Medicaid pays a nursing facility or ICF/MR is based in part on the number of the nursing facility's or ICF/MR's inpatient days and Medicaid days.

Current law defines "inpatient days" as all days during which a resident, regardless of payment source, occupies a bed in a nursing facility or ICF/MR that is included in the facility's Medicaid certified capacity. Therapeutic or hospital leave days for which payment is made to reserve a nursing facility or ICF/MR bed during a Medicaid recipient's temporary absence are considered inpatient days proportionate to the percentage of the nursing facility's or ICF/MR's per resident per day rate paid for those days.

Under the bill, the term "inpatient days" is defined separately for nursing facilities and ICFs/MR. In the context of nursing facilities, inpatient days are (1) all days during which a resident, regardless of payment source, occupies a bed in a nursing facility that is included in the nursing facility's Medicaid certified capacity and (2) 50% of the days for which payment is made to reserve a nursing facility bed during a Medicaid recipient's temporary absence. In the context of ICFs/MR, inpatient days are (1) all days during which a resident, regardless of payment source, occupies a bed in an ICF/MR that is included in the ICF/MR's Medicaid certified capacity and (2) all days for which payment is made to reserve an ICF/MR bed during a Medicaid recipient's temporary absence.

Medicaid days are similar to inpatient days but Medicaid days concern only days in which Medicaid recipients, rather than any individuals, occupy beds. Current law defines "Medicaid days" as all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's Medicaid certified capacity. Therapeutic or hospital leave days for which payment is made to reserve a bed during a Medicaid recipient's temporary absence are considered inpatient days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days. There is a problem with the definition in that it includes a reference to the section of law that authorizes Medicaid payments to reserve ICF/MR beds, as well as the section of law authorizing payments to reserve nursing facility beds, even though the definition otherwise only references nursing facilities.

The bill revises the definition of "Medicaid days" in a manner similar to the revision of the definition of "inpatient days." The bill also corrects the problem with the definition of "Medicaid days" regarding ICFs/MR. In the context of nursing facilities, Medicaid days are (1) all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's Medicaid certified capacity and (2) 50% of the days for which payment is made to reserve a nursing facility bed during a Medicaid recipient's temporary absence. Regarding ICFs/MR, Medicaid days are (1) all days during which a resident who is a Medicaid recipient eligible for ICF/MR services occupies a bed in an ICF/MR that is included in the ICF/MR's Medicaid certified capacity and (2) all days for which payment is made to reserve an ICF/MR bed during a Medicaid recipient's temporary absence.

The bill fixes an ambiguity in current law governing Medicaid rates for the direct care costs of ICFs/MR. The formula used to determine the rates uses the term "Medicaid inpatient day." For example, ODJFS is required to set the maximum cost per case-mix unit for each peer group of ICFs/MR with more than eight beds at a certain

percentage above the cost per case-mix unit of the ICF/MR in the group that has the group's median *Medicaid inpatient days* for the calendar year preceding the fiscal year in which the rate will be paid. This is ambiguous because the term "Medicaid inpatient day" is not defined and the terms "Medicaid days" and "inpatient days" have different meanings. The bill fixes the ambiguity by replacing the term "Medicaid inpatient days" with the term "Medicaid days."

Critical access incentive payments

(R.C. 5111.246 (primary) and 5111.222)

The bill requires ODJFS to pay, each fiscal year, a critical access incentive payment to each nursing facility that qualifies as a critical access nursing facility. A nursing facility qualifies as a critical access nursing facility for a fiscal year if it meets all of the following requirements:

(1) It must be located in an area that, on December 31, 2011, was designated as an empowerment zone under the federal Internal Revenue Code.

(2) It must have an occupancy rate of at least 85% as of the last day of the calendar year preceding the fiscal year.

(3) It must have a Medicaid utilization rate of at least 65% as of the last day of the calendar year preceding the fiscal year.

A critical access nursing facility's critical access incentive payment for a fiscal year is to equal 5% of the other parts of its Medicaid rate for the fiscal year. The following are the other parts of a nursing facility's Medicaid rate: (1) the direct care costs rate, (2) the ancillary and support costs rate, (3) the tax costs rate, (4) the capital costs rate, and (5) the quality incentive payment.

Fiscal year 2013 quality bonuses to nursing facilities

(Section 751.05)

Under the bill, a qualifying nursing facility is to receive a quality bonus for fiscal year 2013. Current law, in contrast, provides for a qualifying nursing facility to receive a quality bonus for a fiscal year only if the entire amount budgeted for quality incentive payments (a component of nursing facilities' Medicaid rates) for the fiscal year is not expended.

To qualify under current law for a quality bonus for a fiscal year for which quality bonuses are to be paid, a nursing facility must be awarded more than five points for meeting various accountability measures related to nursing facilities' quality

incentive payments. To qualify under the bill for a quality bonus for fiscal year 2013, a nursing facility must still be awarded more than five points for meeting accountability measures but at least one of the points must be awarded because of any of the following:

(1) Not more than a certain percentage of the nursing facility's long-stay residents report severe to moderate pain during the assessment process known as the minimum data set (MDS);

(2) Not more than a certain percentage of the nursing facility's long-stay, high-risk residents have been assessed as having one or more stage two, three, or four pressure ulcers during the MDS assessment process.

(3) Not more than a certain percentage of the nursing facility's long-stay residents were physically restrained as reported during the MDS assessment process.

(4) Less than a certain percentage of the nursing facility's long-stay residents had a urinary tract infection as reported during the MDS assessment process.

(5) The nursing facility uses a tool for tracking residents' admissions to hospitals.

The bill provides for a qualifying nursing facility's quality bonus for fiscal year 2013 to equal the product of (1) the quality bonus per Medicaid day for the fiscal year determined for the facility and (2) the number of the facility's Medicaid days in fiscal year 2012 (rather than in fiscal year 2013 as provided by current law). A qualifying nursing facility's quality bonus per Medicaid day for fiscal year 2013 is the product of (1) the facility's quality bonus points for the fiscal year 2013 (an amount determined by subtracting five from the number of points awarded to the facility for meeting accountability measures) and (2) the quality bonus per point for fiscal year 2013. The quality bonus per point is to be determined as follows:

(1) Determine the number of each qualifying nursing facility's point days for fiscal year 2013 (an amount determined by multiplying a facility's quality bonus points by the number of the facility's Medicaid days);

(2) Determine the sum of all qualifying nursing facility's point days for fiscal year 2013;

(3) Divide $30 million (rather than the unspent portion of the amount budgeted for quality incentive payments) by the sum determined under (2).

The following illustrates the calculations made in determining the amount of a qualifying nursing facility's quality bonus:

Total quality bonus: quality bonus per Medicaid day x number of Medicaid days
Quality bonus per Medicaid day: quality bonus points x quality bonus per point
Quality bonus points: number of quality incentive payment points - 5
Quality bonus per point: $30 million ÷ sum of all qualifying nursing facilities' point days
Point days: quality bonus points x number of Medicaid days

As under current law, the amount calculated for a nursing facility's quality bonus is not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.).

Conversion of ICF/MR beds

(R.C. 5111.874, 5111.877, and 5111.878)

To increase the number of slots available for home and community-based services provided under an ODODD-administered Medicaid waiver, current law authorizes the operator of an ICF/MR to convert some or all of its beds to providing those services. Currently, the maximum number of beds that can be converted by ICFs/MR is 100; however, the ODJFS Director is authorized to seek federal approval for up to 200 slots under the waiver. The bill increases to 500 both the total number of ICF/MR beds that may be converted and the maximum number of slots for which the ODJFS Director may seek federal approval.

When some or all of an ICF/MR's beds are to be converted, the operator must notify the directors of Health, ODJFS, and ODODD of the operator's intent to make the conversion. The bill eliminates the requirement to notify the ODJFS Director. Additionally, current law requires that the conversion be approved by both the ODODD Director and the ODJFS Director. The bill requires that the conversion be approved only by the ODODD Director.

Rates for waiver providers serving converted facility residents

(Section 263.20.70 of Am. Sub. H.B. 153 of the 129th General Assembly)

The main operating budget for fiscal years 2012 and 2013, Am. Sub. H.B. 153 of the 129th General Assembly, requires ODJFS to increase, subject to approval by the U.S. Centers for Medicare and Medicaid Services, the Medicaid rate paid to a provider under the Individual Options waiver program for up to a year if (1) the individual was a resident of a developmental center immediately before enrolling in the waiver, (2) the provider begins serving the individual on or after July 1, 2011, and (3) the ODODD Director determines that the increased rate is warranted by the individual's special circumstances and serving the individual through the Individual Options waiver is fiscally prudent for the Medicaid program. The rate is to be increased by 52¢ for each 15 minutes of routine homemaker/personal care provided to an individual.

The bill provides for the rate increase also to apply when an individual was a resident of a converted facility immediately before enrolling in the Individual Options waiver. A converted facility is an ICF/MR, or former ICF/MR, that converted some or all of its beds to providing home and community-based services under the Individual Options waiver pursuant to continuing law that authorizes such conversions.

Collection of long-term care facility Medicaid debts

(R.C. 5111.651 (repealed))

The bill repeals an obsolete law regarding the collection of Medicaid debts owed by nursing facilities and ICFs/MR. Continuing law establishes Medicaid debt collection procedures for nursing facilities and ICFs/MR that undergo a change of operator, close, or voluntarily cease to participate in Medicaid.

The obsolete law that the bill repeals provides that the Medicaid debt collection requirements did not apply to a nursing facility or ICF/MR that underwent a change of operator, closed, or voluntarily ceased to participate in Medicaid on or before September 30, 2005, and provided written notice of the action to ODJFS on or before June 30, 2005.

Ohio Home Care Program's Home First component

(R.C. 5111.862)

The bill revises the eligibility requirements for the Home First component of the Ohio Home Care Program. The program is authorized by a federal Medicaid waiver and offers home and community-based services to eligible, disabled individuals under

age 60 who require the level of care provided by nursing facilities or hospitals. The Home First component enables individuals meeting certain requirements to be enrolled in the program ahead of others.

To qualify for the Home First component, an individual must be eligible for the Ohio Home Care Program and meet one of various sets of requirements. One of the sets of requirements concerns individuals who participate in the Money Follows the Person demonstration project at the time they apply for the Ohio Home Care Program. Such an individual may qualify for the Home First component if the individual resides in a residential treatment facility or inpatient hospital setting. Current law defines "residential treatment facility" as a residential facility licensed by ODMH that serves children and either has more than 16 beds or is part of a campus of multiple facilities that, combined, have more than 16 beds. The bill provides that a residential treatment facility also is an institution for children that is certified by ODJFS and either has more than 16 beds or is part of a campus of multiple institutions that, combined, have more than 16 beds.

HOME Choice demonstration component of Medicaid

(R.C. 5111.96)

The bill codifies (i.e., places in the Revised Code) the existing Helping Ohioans Move, Expanding (HOME) Choice demonstration component of the Medicaid program. Under the bill, the ODJFS Director is permitted, to the extent funds are available under a Money Follows the Person (MFP) demonstration project, to operate the HOME Choice demonstration component to transition Medicaid recipients to community settings. Federal law authorizes the U.S. Secretary of Health and Human Services to award grants to states for MFP demonstration projects that are designed to achieve certain objectives with respect to institutional and home and community-based long-term care services provided under a state's Medicaid program.

The ODJFS Director is permitted to adopt rules for the administration and operation of the HOME Choice demonstration component. The Director is to follow the Administrative Procedure Act (R.C. Chapter 119.) in adopting the rules.

Ohio Access Success Project

(R.C. 5111.97)

The bill revises the law governing the Ohio Access Success Project. Continuing law permits the ODJFS Director to establish the project to help Medicaid recipients transition from residing in a nursing facility to residing in a community setting. The benefits provided under the project may include payment for the first month's rent in a

community setting, rental deposits, utility deposits, moving expenses, and other expenses not covered by the Medicaid program that facilitate a Medicaid recipient's move from a nursing facility to a community setting. If the project is established as a non-Medicaid program (as opposed to being integrated into a new or existing Medicaid waiver component that provides home and community-based services), no participant may receive more than $2,000 worth of benefits under the project.

The bill provides that if ODJFS enters into a contract with an entity to provide fiscal management services regarding the Ohio Access Success Project, the contact may provide for a portion of a participant's benefits under the project to be paid to the contracting entity. The contract must specify the portion to be paid to the contracting entity.

The bill revises terminology used in the law governing the Ohio Access Success Project to make the terminology more consistent with other Medicaid law. Specifically, the bill uses the term "home and community-based services Medicaid waiver component" instead of referring to a program of Medicaid-funded home and community-based services authorized by the United States Department of Health and Human Services. Continuing law defines "home and community-based services Medicaid waiver component" as a Medicaid waiver component under which home and community-based services are provided as an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded services. The bill also provides that if the project is integrated into a home and community-based services Medicaid waiver component, the rules the ODJFS Director adopts regarding the project are to be adopted under continuing law governing rules for Medicaid waiver components.

Health Care/Medicaid Support and Recoveries Fund and Health Care Compliance Fund

(R.C. 5111.941 (primary), 5111.171, and 5111.946; Sections 601.40, 601.41, and 512.50)

The bill renames the Medicaid Revenue and Collections Fund the Health Care/Medicaid Support and Recoveries Fund. Current law provides for the nonfederal share of all Medicaid-related revenues, collections, and recoveries to be deposited into the fund unless another statute or the Controlling Board provides otherwise. The bill provides for the following also to be credited to the fund:

(1) Federal reimbursement received for disproportionate share hospital payment adjustments made under Medicaid to state mental health hospitals maintained and operated by ODMH;

(2) Revenues ODJFS receives from another state agency for Medicaid services pursuant to an interagency agreement, other than such revenues required to be deposited into the Health Care Services Administration Fund;

(3) The first $750,000 that ODJFS receives in a fiscal year for performing eligibility verification services necessary for compliance with a federal regulation regarding independent, certified audits for disproportionate share hospital payments.

The remainder of the money that ODJFS receives in a fiscal year for performing those eligibility verification services is to be credited to the Health Care Compliance Fund. Continuing law provides for that fund also to receive (1) all fines imposed on and collected from Medicaid managed care organizations for failure to meet performance standards or other requirements specified in provider agreements or ODJFS's rules and (2) all of the fund's investment earnings.

OHP Health Care Grants Fund

(Section 506.10)

The bill authorizes ODJFS, for fiscal years 2012 and 2013, to deposit into the OHP Health Care Grants Fund federal grants for the administration of health care programs that ODJFS receives under the federal health care reform acts enacted in 2010. ODJFS is required to use the money in the fund to pay for expenses incurred in carrying out duties that ODJFS assumes by accepting the federal grants, including expenses for the administration of health care programs.

JUDICIARY, SUPREME COURT (JSC)

- Eliminates references to shorthand reporters, stenographers, and stenographic records and notes, replaces the procedure for paying for transcribed records with a procedure for providing copies of records and electronic records, and adds references to electronic records, reporters, assistant reporters, and electronically recording actions in statutes relating to court reporters.

Modernization of language in court reporter statutes

(R.C. 1509.36, 1571.14, 2301.03, 2301.18, 2301.19, 2301.20, 2301.21, 2301.22, 2301.23, 2301.24, 2301.25, 2301.26, 2319.27, 2501.16, 2501.17, 2743.09, 2746.03, 2746.04, 2939.11, and 3745.05)

The bill modernizes the language of Revised Code sections related to court reporting by eliminating references to shorthand reporters, stenographers, and stenographic records and notes, eliminating the payment procedure for transcribing copies of transcripts of testimony, adding a procedure for making copies of transcripts at cost or providing an electronic copy free, and adding references to electronic records, reporters, assistant reporters, and electronically recording actions. The bill repeals the section (R.C. 2301.19) that authorizes a court of common pleas to appoint assistant shorthand reporters.

LEGAL RIGHTS SERVICE (LRS)

- Continues as members of the Public Employees Retirement System (PERS) employees of the Legal Rights Service (LRS) on September 30, 2012 (the day before the LRS is abolished) who continue as employees of the nonprofit entity that will replace LRS on October 1.
- Specifies that employees of the nonprofit entity whose employment begins on or after October 1, are not members of PERS.

Legal Rights Service employees

(R.C. 145.01 and 145.012)

Effective October 1, 2012, Am. Sub. H.B. 153 of the 129th General Assembly (the current biennial budget bill) abolishes the Ohio Legal Rights Service (LRS) and replaces it with a nonprofit entity that has as its purpose providing advocacy services and client assistance for people with disabilities.

The bill provides that employees of LRS on September 30, 2012 (the day before LRS is abolished) who continue as employees of the new nonprofit entity continue as PERS members as long as they continue employment with the nonprofit entity. The bill further specifies that employees of the nonprofit entity whose employment begins on or after October 1, are not members of the Public Employees Retirement System.

- Eliminates the authority of the President of the Senate and the Speaker of the House to request the Legislative Service Commission to arrange for the performance of an independent healthcare actuarial review of any bill being considered in their respective houses that contains a mandated health insurance benefit.

Actuarial reviews of mandated health insurance benefits

(R.C. 103.144, 103.145, and 103.146 (all repealed))

The bill eliminates the current authority of the presiding officer of the Senate and of the House of Representatives to request the Director of the Legislative Service Commission to arrange for the performance of an independent healthcare actuarial review of any bill being considered in their respective chambers that includes a mandated benefit.

Background

For purposes of this provision, "mandated benefit" means the following, when considered in the context of a sickness and accident insurance policy or a health insuring corporation policy, contract, or agreement:

--Any required coverage for a specific medical or health-related service, treatment, medication, or practice or for the services of specific health care providers;

--Any requirement that an insurer or health insuring corporation offer coverage to specific individuals or groups or offer specific medical or health-related services, treatments, medications, or practices to existing insureds or enrollees;

--Any required expansion of, or addition to, existing coverage;

--Any mandated reimbursement amount to specific health care providers.

The independent actuaries are to determine the extent to which: (1) the mandated benefit will increase or decrease premiums, the number of insured individuals in the state, and the administrative expenses of insurance companies and health insuring corporations, (2) the mandated benefit will impact the total cost and quality of health care, including any potential cost savings that may be realized, and (3) small employers, medium-sized employers, large employers, the state, and the political subdivisions of the state will be financially impacted.

County home reserve fund

- Increases to $5,000 (from $400) the maximum amount that may be in a county home's reserve fund at one time.

Other provisions

- Increases the competitive bidding thresholds for specified political subdivisions.
- Authorizes the legislative authority of a municipal corporation in Stark County to conduct a pilot program whereby in fiscal years 2013 and 2014 the legislative authority may use up to 5% of the municipal corporation's water and sewer funds for sewerage or water system extensions, as applicable, if: (1) the system is being extended for economic development purposes, and (2) the areas to which the system is being extended are the subject of a cooperative economic development agreement.
- Provides that, beginning on July 1, 2013, the city of Cincinnati's fiscal year begins on July 1 of a calendar year and ends on June 30 of the following calendar year.

County home reserve fund

(R.C. 5155.14)

The bill increases the maximum amount that may be in a county home's reserve fund at one time. Continuing law requires a board of county commissioners or board of county hospital trustees, whichever is responsible for the operational control of a county home, to set a reserve fund apart from the county home fund at the request of the county home's administrator. The reserve fund is to be used for emergency supplies and expenses. Currently, $400 is the maximum amount that may be in a reserve fund. This amount was set by the General Assembly in 1980.[141] The bill raises the maximum amount to $5,000.[142]

[141] Am. H.B. 561 of the 113th General Assembly.

[142] According to the U.S. Bureau of Labor Statistics' consumer price index inflation calculator, $400 in 1980 has the same buying power as $1,105.16 in 2012 (http://www.bls.gov/data/inflation_calculator.htm).

Pilot program regarding municipal sewage and water extensions

(Section 707.10)

The bill authorizes a municipal corporation in Stark County to conduct a pilot project under which it may provide for water or sewer system extensions under certain circumstances. The bill provides that the pilot program applies only for fiscal years 2013 and 2014 and only to a municipal corporation in a county with a population between 375,000 and 400,000 according to the most recent federal decennial census; only Stark County meets that population requirement. Under the pilot program, the legislative authority of a municipal corporation may use up to 5% of the aggregate amount of money deposited in the municipal corporation's sewer fund and up to 5% of the aggregate amount of money deposited in a fund created by the municipal corporation for water-works for the purpose of extending the municipal corporation's water or sewerage system, as applicable, if both of the following apply:

(1) The water or sewerage system is being extended to areas for economic development purposes; and

(2) The areas into which the water or sewerage system is being extended are the subject of a cooperative economic development agreement entered into by the municipal corporation.

With regard to either fund, the legislative authority cannot exceed the 5% limit established by the bill.

Alternative fiscal year for the city of Cincinnati

(R.C. 9.34, 705.18, 5705.08, 5705.28, 5705.30, 5705.34, 5705.35, and 5705.38)

The bill provides that, beginning on July 1, 2013, the city of Cincinnati's fiscal year will begin on July 1 of a calendar year and end on June 30 of the following calendar year.[143] Under current law, only school districts and the state use a July 1-June 30 fiscal year. The fiscal years of all other local governments, including all other municipal corporations, begin on January 1 and end on December 31 of the same calendar year. Local governments currently are authorized to adopt alternative fiscal periods for specific funds.

[143] The Ohio Constitution requires that "[a]ll laws, of a general nature, shall have a uniform operation throughout the state." Art. II, Sec. 26. If laws governing the fiscal affairs of municipal corporations would be held to be general laws, the bill's provision may conflict with this constitutional uniformity requirement.

Under the bill, the city of Cincinnati's use of an alternative fiscal year will affect the timing of actions related to the city's budget process, including deadlines for the adoption and submission of a tax budget, the submission of a certificate of estimated resources, the adoption of an annual appropriation measure, and the certification of tax levies.

OHIO LOTTERY COMMISSION (LOT)

- Changes from the Director of Budget and Management to the Director of the State Lottery Commission, the person who judges whether there are excess proceeds or net proceeds in the State Lottery Fund that may be transferred to the Lottery Profits Education Fund.

Transfer of state lottery fund excesses or net proceeds

(R.C. 3770.06(B))

The bill changes from the Director of Budget and Management (OBM Director) to the Director of the State Lottery Commission, the person who judges whether there are amounts in the State Lottery Fund, not including amounts that represent proceeds from statewide joint lottery games, that are in excess of the amount needed to meet the maturing obligations and working capital of the Commission, and amounts in the State Lottery Fund that represent net proceeds from statewide joint lottery games, that are to be transferred to the Lottery Profits Education Fund. The Director of the State Lottery Commission is required to recommend the amounts to be transferred, but the OBM Director may, but is not required, to transfer the excess proceeds or net proceeds to the Lottery Profits Education Fund. Current law requires the OBM Director to transfer whatever excess proceeds or net proceeds the OBM Director judges should be transferred.

The bill eliminates the crediting to the Lottery Profits Education Fund of repayments of loans from the Educational Excellence Investment Fund. The Educational Excellence Investment Fund, according to the Office of Budget and Management, is defunct.

STATE MEDICAL BOARD (MED)

Physicians – certificates for clinical research or conceded eminence

- Replaces the State Medical Board's process for issuing nonrenewable visiting medical faculty certificates with a process for issuing renewable clinical research faculty certificates.

- Permits a physician holding a clinical research faculty certificate to practice medicine as incidental to the physician's research duties (in addition to the physician's teaching duties as currently permitted) at a medical school or an affiliated teaching hospital.

- Authorizes the Board to issue a certificate of conceded eminence to a physician licensed in another state or country who has been appointed to serve as a faculty member at a medical center in Ohio and demonstrates to the Board unique talents and extraordinary abilities.

- Permits a physician holding a certificate of conceded eminence to practice medicine as part of the physician's employment with the academic medical center or an affiliated physician group practice.

Physician assistants – prescriptive authority

- Eliminates the requirement that the State Medical Board adopt and modify through rulemaking procedures the formulary that identifies the drugs that a physician assistant may be authorized to prescribe.

- Authorizes the Board to make changes to the physician assistant formulary every six (as opposed to every 12) months.

- Repeals an obsolete provision specifying that the formulary established by the Board of Nursing for advanced practice nurses constitutes, with the exclusion of schedule II controlled substances, the initial formulary for physician assistants.

- Eliminates a prohibition on physician assistants prescribing to patients schedule II controlled substances, but limits the locations from which such substances may be prescribed without restrictions.

- Prohibits a physician assistant from prescribing any schedule II controlled substance to a patient in a convenience care clinic.

Clinical research faculty certificates

(R.C. 4731.293)

Current law permits the State Medical Board to issue a visiting medical faculty certificate to a physician licensed in another state or country who has been appointed to serve in Ohio on the academic staff of a medical school. The certificate entitles the holder to practice medicine and surgery or osteopathic medicine and surgery only as incidental to the certificate holder's teaching duties at the school or teaching hospital affiliated with the school. The fee for the certificate is $375. The Board may adopt any rules it considers necessary to implement the laws governing visiting medical faculty certificates. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

The bill changes the name of the visiting medical faculty certificate to clinical research faculty certificate. Under the bill, the certificate entitles the holder to practice medicine and surgery or osteopathic medicine and surgery only as incidental to the certificate holder's teaching ***and research*** duties at the school or teaching hospital affiliated with the school. In addition to the requirements that exist under current law with respect to visiting medical faculty certificates, the bill requires that an applicant for a clinical research faculty certificate provide evidence satisfactory to the Board that (1) the applicant is an international medical graduate who holds a medical degree from an educational institution listed in the International Medical Education Directory, and (2) the applicant will be permitted to work only under the authority of the department director or chairperson of a teaching hospital affiliated with the school where the applicant's teaching and research activities will occur.

An applicant also must provide (1) an affidavit and supporting documentation from the dean of the medical school or the department director or chairperson of a teaching hospital affiliated with the school that the applicant is qualified to person teaching and research activities, (2) a description from the school or teaching hospital of the scope of practice in which the applicant will be involved, including the types of teaching, research, and procedures in which the applicant will be engaged, and (3) a description of the type and amount of patient contact that will occur in connection with the applicant's teaching and research activities.

Certificate renewal

Under current law, a visiting medical faculty certificate is valid for the shorter of three years or the duration of the certificate holder's appointment. The certificate may not be renewed, and only one certificate may be granted to a particular person.

However, if a person was granted a certificate before January 6, 2009, the person may apply for a second certificate, unless the first certificate was revoked.

The bill provides that a clinical research faculty certificate may be renewed for an additional three-year period and that there is no limit on the number of times a certificate may be renewed. A person seeking renewal must apply to the Board and pay a renewal fee of $375. The person must provide an affidavit and supporting documentation from the dean of the medical school or the department director or chairperson of a teaching hospital affiliated with the school that the applicant is in compliance with the current certificate.[144] Finally, the person must provide evidence satisfactory to the Board of all of the following:

--That the applicant continues to maintain a current unrestricted license to practice medicine and surgery or osteopathic medicine and surgery issued by another state or country;

--That the applicant's initial appointment to the medical school faculty is still valid or has been renewed;

--That the applicant has satisfied the same continuing medical education requirements that other physicians in Ohio must fulfill.

Renewal provisions specific to visiting medical faculty certificate holders

Under the bill, if a person was granted a visiting medical faculty certificate, the person may apply for a clinical research faculty certificate as a renewal, regardless of whether the person's original certificate has expired. The Board is permitted to issue the clinical research faculty certificate if the applicant meets the requirements for renewing a clinical research faculty certificate, but may not do so if the person's visiting medical faculty certificate was revoked.

Certificate of conceded eminence

(R.C. 4731.297)

The bill requires the State Medical Board to issue, without examination, to an applicant who meets the bill's requirements, a certificate of conceded eminence authorizing the practice of medicine and surgery or osteopathic medicine and surgery as part of an applicant's employment with an academic medical center or affiliated physician group practice. The bill defines "academic medical center" as a medical school and its affiliated teaching hospitals and clinics partnering to (1) provide the

[144] R.C. 4731.293(E)(1) and (2).

highest quality of patient care from expert physicians, (2) conduct groundbreaking research leading to medical advancements for current and future patients, and (3) provide medical education and graduate medical education to educate and train physicians. An "affiliated physician group practice" is defined as a medical practice consisting of one or more physicians authorized to practice medicine and surgery or osteopathic medicine and surgery that is affiliated with an academic medical center.

Eligibility for certificate

To be eligible for a certificate of conceded eminence, an applicant must provide to the Board all of the following:

(1) A fee of $1,000;

(2) An affidavit from the applicant agreeing to practice only within the clinical setting of the academic medical center or for the affiliated physician group practice;

(3) Three letters of reference from distinguished experts in the applicant's specialty attesting to the unique capabilities of the applicant, at least one of which must be from outside the academic medical center or affiliated physician group practice;

(4) An affidavit from the dean of the medical school where the applicant has been appointed to serve as a faculty member stating that the applicant meets the eligibility requirements for the certificate and that the letters of reference are from distinguished experts in the applicant's specialty;

(5) Evidence satisfactory to the Board that the applicant meets all of the following requirements:

(a) Is an international medical graduate who holds a medical degree from an educational institution in the International Medical Education Directory;

(b) Has been appointed to serve in Ohio as a full-time faculty member of a medical school accredited by the Liaison Committee on Medical Education or an osteopathic medical school accredited by the American Osteopathic Association;

(c) Has accepted an offer of employment with an academic medical center in Ohio or an affiliated physician group practice in Ohio;

(d) Holds a medical license in good standing in another state or country;

(e) Has unique talents and extraordinary abilities not generally found within the applicant's specialty, as demonstrated by satisfying at least four of the following:

- Has achieved educational qualifications beyond those that are required for entry into the applicant's specialty, including advanced degrees, special certifications, or other academic credentials;

- Has written multiple articles in journals listed in the Index Medicus or an equivalent scholarly publication acceptable to the Board;

- Has a sustained record of excellence in original research, at least some of which involves serving as principal investigator or co-principal investigator for a research project;

- Has received nationally or internationally recognized prizes or awards for excellence;

- Has participated in peer review in a field of specialization that is the same as or similar to the applicant's specialty;

- Has developed new procedures or treatments for complex medical problems that are recognized by peers as a significant advancement in the applicable field of medicine;

- Has held previous academic appointments with or been employed by a health care organization that has a distinguished national or international reputation;

- Has been the recipient of a National Institutes of Health or other competitive grant award.

(f) Has received staff membership or professional privileges from the academic medical center on a basis that requires the applicant's medical education and graduate medical education to be at least equivalent to that of a physician educated and trained in the United States;

(g) Has sufficient written and oral English skills to communicate effectively and reliably with patients, their families, and other medical professionals;

(h) Will have professional liability insurance through the applicant's employment with the academic medical center or affiliated practice.

Duration of certificate

A certificate of conceded eminence is valid for the shorter of two years or the duration of the certificate holder's employment with the academic medical center or

affiliated physician group practice. The certificate ceases to be valid if the certificate holder resigns or is otherwise terminated from the center or practice.

A certificate may be renewed for an unlimited number of additional two-year periods. A person seeking renewal must apply to the Board and is eligible for renewal if the applicant does all of the following:

(1) Pays a renewal fee of $1,000;

(2) Provides to the Board an affidavit and supporting documentation from the academic medical center or affiliated physician group practice of all of the following:

- That the applicant's initial appointment to the medical faculty is still valid or has been renewed;
- That the applicant's clinical practice is consistent with the established standards in the field;
- That the applicant has demonstrated continued scholarly achievement;
- That the applicant has demonstrated continued professional achievement consistent with the academic medical center's requirements for physicians with staff membership or professional privileges.

(3) Satisfies the same continuing medical education requirements that other Ohio physicians must fulfill;

(4) Complies with any other requirements the Board establishes.

Scope of practice

The holder of a certificate of conceded eminence may practice medicine and surgery or osteopathic medicine and surgery only within the clinical setting of the academic medical center or for the affiliated physician group practice. A certificate holder is authorized to supervise medical students, physicians participating in graduate medical education, advanced practice nurses, and physician assistants when performing clinical services in the certificate holder's area of specialty.

Authority to revoke

The Board may revoke a certificate of conceded eminence on receiving proof that (1) the certificate holder has engaged in practice in Ohio outside the scope of the certificate, or (2) there are grounds for disciplinary action against the certificate holder for any of the reasons that an Ohio physician could be disciplined.

Physician assistants – prescriptive authority

Formulary

(R.C. 4730.06, 4730.38, 4730.39, and 4730.40; 4730.401 (repealed))

Administrative rulemaking – no longer required

The bill eliminates the requirement that the State Medical Board adopt and modify the physician assistant formulary through administrative rulemaking. This means that the Board may add or remove drugs and therapeutic devices from the formulary without giving public notice of its intention to make changes and without convening a public hearing.

Under current law, the Board must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) governing physician-delegated prescriptive authority for physician assistants who hold a certificate to prescribe. The rules must establish, among other things, a formulary listing drugs and therapeutic devices by class and specific generic nomenclature that a physician may include in the physician-delegated prescriptive authority granted to a physician assistant. The Board must review the formulary and make any necessary modifications to it through administrative rulemaking. Before doing so, the Board must consider recommendations made by the Board's Physician Assistant Policy Committee, which is required to submit recommendations regarding the formulary to the Board on an annual basis.

Frequency of changes to the formulary

The bill permits the Board to consider modifications to the formulary every six (as opposed to every 12) months. Pursuant to law unchanged by the bill, the Board must approve or disapprove a recommendation made by the Physician Assistant Policy Committee not later than 90 days after receiving it. The bill requires the Committee to review the formulary not less than every six months beginning on the first day of June following the bill's effective date (as opposed to annually) and, to the extent it determines to be necessary, submit recommendations to the Board proposing changes to the formulary.

Elimination of obsolete provisions

The bill repeals an obsolete provision requiring the Board, if it has adopted all rules necessary to issue certificates to prescribe to physician assistants other than the formulary, to begin issuing the certificates to prescribe. It also repeals a related provision specifying that the formulary established by the Board of Nursing for advanced practice nurses would constitute, with the exclusion of schedule II controlled

substances, the formulary for physician assistants. These provisions are no longer needed because the physician assistant formulary has been established.[145]

The bill repeals obsolete laws regarding the adoption of the initial formulary. Under those laws, with the exception of schedule II controlled substances, the initial formulary had to include all drugs and therapeutic devices that could be prescribed by advanced practice nurses.

Schedule II controlled substances

(R.C. 3719.06, 4730.40, and 4730.411)

The bill eliminates a prohibition on physician assistants prescribing to patients schedule II controlled substances. Related to this change, the bill permits the Board to include schedule II controlled substances on the physician assistant formulary.

A schedule II controlled substance is a drug or other substance the U.S. Attorney General has found to have a high potential for abuse, a currently accepted medical use in treatment or a currently accepted medical use with severe restrictions, and one that may lead to severe psychological or physical dependence. Examples of schedule II controlled substances include cocaine, methamphetamines, and opiates such as oxycodone and hydrocodone.[146]

The bill imposes three restrictions that generally apply to a physician assistant's ability to prescribe schedule II controlled substances. The three restrictions are that (1) the patient must have a terminal condition, (2) the physician assistant's supervising physician initially prescribed the substance for the patient, and (3) the prescription must be for an amount that does not exceed the amount necessary for the patient's use in a single, 24-hour period. The three restrictions do not apply when the physician assistant issues the prescription from the following locations:

(1) A hospital registered with the Department of Health;

(2) An entity owned or controlled, in whole or in part, by a hospital or by an entity that owns or controls, in whole or in part, one or more hospitals;

(3) A health care facility operated by the Department of Mental Health or the Department of Developmental Disabilities;

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[145] *See* Ohio Administrative Code 4730-2-6.

[146] U.S. Drug Enforcement Administration, *Drug Scheduling* (last visited April 27, 2012), available at <http://www.justice.gov/dea/pubs/scheduling.html>.

(4) A nursing home licensed by the Department of Health or a political subdivision;

(5) A county home or district home that is certified under the Medicare or Medicaid program;

(6) A hospice care program;

(7) A community mental health facility;

(8) An ambulatory surgical facility;

(9) A freestanding birthing center;

(10) A federally qualified health care center;

(11) A federally qualified health center look-alike;

(12) A health care office or facility operated by a board of health of a city or general health district or an authority having those duties;

(13) A site where a medical practice is operated, but only if the practice is comprised of one or more physicians who are also owners of the practice, the practice is organized to provide direct patient care, and the physician assistant has entered into a supervisory agreement with at least one of the physician owners who practices primarily at that site. (Entering into a supervisory agreement is a requirement of current law governing the practice of physician assistants who do not practice in a facility (such as a hospital).)

The practical effect of this change is that the bill, except as discussed below (see "**Convenience care clinics**"), authorizes a physician assistant to prescribe a schedule II controlled substance from the locations specified above as long as the physician assistant is (1) prescribing a schedule II controlled substance that is on the drug formulary for physician assistants, (2) acting in accordance with the physician assistant's supervisory plan or the policies of the health care facility in which the physician assistant practices, and (3) the physician assistant's prescriptive authority does not exceed the prescriptive authority of the physician assistant's supervising physician.

Immunity from liability for pharmacists

The bill provides that a pharmacist who acts in good faith reliance on a prescription issued by a physician assistant at a location specified above is not liable for or subject to any of the following for relying on the prescription:

--Damages in any civil action;

--Prosecution in any criminal proceeding;

--Professional disciplinary action by the State Board of Pharmacy.

Convenience care clinics

The bill prohibits a physician assistant from prescribing any schedule II controlled substance to a patient in a convenience care clinic. The bill specifies that this prohibition applies even if the convenience care clinic is owned or operated by an entity that is one of the locations from which a physician, under the bill, may prescribe schedule II controlled substances without being subject to the three restrictions that otherwise apply when a physician assistant prescribes a schedule II controlled substance.

MANUFACTURED HOMES COMMISSION (MHC)

- Transfers regulatory authority related to manufactured home parks from the Department of Health and the Public Health Council to the Manufactured Homes Commission.

- Replaces the member of the Commission who represents the Department of Health with a member who is a registered sanitarian.

- Requires the Board of Health to issue a report of the inspection of a flood event at a manufactured home park to the Commission.

- Creates the Manufactured Homes Commission Regulatory Fund and requires certain fees to be deposited into that fund.

- Diverts certain fees from the General Operations Fund to the Occupational Licensing and Regulatory Fund for the administration and enforcement of the Manufactured Home Park Law.

- Requires the Commission to develop a policy regarding the maintenance of records for any inspections and specifies that those records are public records.

- Removes the requirement that a manufactured home owner and park operator jointly obtain the permit required for alterations, repairs, or changes to a damaged manufactured home in a flood plain.

- Establishes adjudication procedures for violations of the Manufactured Home Park Law.

Licensing and inspection of manufactured home parks

Transfer of regulatory authority over manufactured home parks

(R.C. 4781.26 to 4781.54, numerous cross-reference changes; Section 747.10.10)[147]

The bill transfers the authority to do all of the following from the Department of Health and the Public Health Council to the Manufactured Homes Commission:

- Adopt rules governing the review of plans, issuance of flood plain management permits, and issuance of licenses for manufactured home parks, as well as the location, layout, density, construction, drainage, sanitation, safety, and operation of those parks, and notices of flood events concerning, and flood protection at, those parks;

- Inspect the installation, blocking, tiedown, foundation, and base support systems of manufactured housing in a park;

- License persons who operate a park;

- Inspect each park for compliance with the Manufactured Home Park Law;

- Approve any development in a park;

- Approve any park development in a 100-year flood plain;

- Receive notification of a flood event and notify the Director of Health (under the bill, the board of health will be responsible for causing a post-flood inspection to occur);

- Provide permits for the repair/alteration of homes damaged in a flood event;

- Compel a county prosecuting attorney, city director of law, or the Attorney General to prosecute to termination, or bring an action for

[147] R.C. 3733.01 to 3733.20 under current law are renumbered within the range of 4781.26 to 4781.52 by the bill.

injunction against a person, that has violated Manufactured Home Park Law.

The bill requires the Commission to adopt rules regulating manufactured home parks not later than December 1, 2012. After adopting the rules, the Commission immediately must notify the Director of Health. The rules governing manufactured home parks adopted by the Public Health Council under current law will remain in effect in a health district until the Commission adopts the required rules.

The bill prohibits a board of health of a city or general health district from invoicing or collecting manufactured home park licensing fees for calendar year 2013.

The bill also revises who may inspect the installation, blocking, tiedown, foundation, and base support systems of manufactured housing in a manufactured home park. Under the bill, the person must be certified by the Commission pursuant to rules the Commission adopts. Under current law, the person must have completed an installation training course approved by the Commission.

Commission membership

(R.C. 4781.02; Section 747.10.30)

The bill replaces the member of the Manufactured Homes Commission who represents the Department of Health with a member who is a registered sanitarian, has experience with the regulation of manufactured homes, and is an employee of a health district. The term of the Department of Health representative ends on the effective date of this provision. The initial term of the registered sanitarian ends on the date when the term of the Department of Health's representative would have expired.

Board of health responsibilities

(R.C. 4781.26(D), 4781.04(C), and 4781.33)

Under the bill, the Commission may enter into contracts to fulfill the Commission's annual inspection responsibilities for manufactured home parks. The bill provides boards of health of city or general health districts the right of first refusal for those contracts.

The bill also provides that the Manufactured Homes Commission's expanded authority does not limit the authority of a board of health to enforce plumbing, sewage treatment, and building standards law.

The board of health also is responsible, under current law and under the bill, for causing a post-flood inspection to occur. When a flood event affects a manufactured

home park, the bill requires the park operator to notify the Manufactured Homes Commission in addition to the board of health that has jurisdiction at that location as under current law. After receiving notification from the park operator, the bill requires the Commission to notify the board of health, and the board of health must cause a post-flood inspection to occur. The board of health then must issue a report of the inspection to the Commission within ten days after the inspection is completed.

The bill removes the requirements that a local board of health notify the Director of Health within 24 hours of being notified by a park operator and that the Director of Health cause the inspection to occur within 48 hours after receiving notification from the local board of health.

Manufactured Homes Commission Regulatory Fund

(R.C. 4743.05, 4781.121, 4781.28, and 4781.54; Section 747.10.20)

The bill establishes in the state treasury the Manufactured Homes Commission Regulatory Fund and requires that the annual manufactured home park licensing fee be credited to that fund and be used for the administration and enforcement of the Manufactured Home Park Law.

Under the bill, any manufactured home park license and inspection fees collected under current law by a board of health prior to the transition of the annual license and inspection program to the Commission as required under the bill in the amount of $2,000 or less may be transferred to the health fund of the city or general health district. Any of those funds in excess of $2,000 must be transferred to the Manufactured Homes Commission Regulatory Fund.

Occupational Licensing and Regulatory Fund

(R.C. 4743.05, 4781.31, 4781.32, and 4781.34)

Current law establishes the General Operations Fund and also the Occupational Licensing and Regulatory Fund in the state treasury. The former fund is used for various purposes, including administration and enforcement of the Manufactured Home Park Law. The latter fund is used to administer the regulatory provisions of various Revised Code chapters, including the chapters that currently contain the law governing manufactured homes. The bill diverts the deposit of the following fees from the General Operations Fund into the Occupational Licensing and Regulatory Fund and limits their use for administration and enforcement of the Manufactured Home Park Law: (1) fees for reviewing development plans for a manufactured home park and for inspecting plan compliance, (2) fees for the issuance of a permit for development of, or replacement of a mobile or manufactured home in, any portion of a manufactured home

park located in a 100-year flood plain, (3) fees for the issuance of a permit for the alteration, change, or repair of a substantially damaged mobile or manufactured home located in a 100-year flood plain or the manufactured home park lot on which the home sits, and (4) fees for inspection for compliance with the permits described in (2) and (3).

Maintenance of records

(R.C. 4781.04(A)(13))

The bill requires the Commission to develop a policy regarding the maintenance of records for any inspection authorized or conducted under the Manufactured Home Park Law. Under the bill, those records are public records.

Permits for alterations, repairs, or changes

(R.C. 4781.34)

The bill removes the current law requirement that a manufactured home owner and park operator jointly obtain the permit required for alterations, repairs, or changes to a damaged manufactured home in a flood plain. Under current law, each of the persons to whom a permit is jointly issued is responsible for compliance with the provisions of the approved permit. However, the bill maintains the requirement that the person making those alterations, repairs, or changes obtain a permit.

Investigation and adjudication regarding violations of manufactured home and mobile home laws

(R.C. 4781.121 and 4781.09)

The bill authorizes the Manufactured Homes Commission to investigate any person who allegedly has violated the following: (1) licensure requirements for the installation of manufactured housing, (2) licensure requirements for the display or sale of manufactured or mobile homes, (3) licensure requirements for the operation of manufactured home parks, or (4) any rule adopted by the Manufactured Homes Commission.

The bill sets forth the following adjudication procedures for when, after investigation, the Commission determines that reasonable evidence exists that a person has committed a violation. First, within seven days after the Commission makes such a determination, the Commission must send a written notice to that person. The notice must conform with the Administrative Procedure Act (APA), except that it must specify that a hearing will be held and specify the date, time, and place of the hearing.

If the Commission, after a hearing conducted as provided under the APA, determines that a violation has occurred, the Commission, upon an affirmative vote of five of its members, may impose a fine of up to $1,000 per violation per day. The Commission's determination is an order that the person may appeal pursuant to the APA.

If the person who allegedly committed a violation fails to appear for a hearing, the Commission may request the court of common pleas of the county where the alleged violation occurred to compel the person to appear before the Commission for a hearing.

If the Commission assesses a person a civil penalty for a violation and the person fails to pay that civil penalty within the time period prescribed by the Commission, the Commission must forward to the Attorney General the name of the person and the amount of the civil penalty for the purpose of collecting that civil penalty. In addition to the civil penalty assessed, the person also will be required to pay any fee assessed by the Attorney General for collection of the civil penalty. The bill stipulates that the authority provided to the Commission, and any fine imposed, will be in addition to, and not in lieu of, all penalties and other remedies provided in the Manufactured Home Park Law.

Any fines collected must be used solely to administer and enforce the Manufactured Home Park Law and the rules adopted under it. Any fees collected must be credited to the Manufactured Homes Commission Regulatory Fund created under the bill and must be used only for the purpose of administering and enforcing the Manufactured Home Park Law.

The civil penalty that the bill allows the Commission to assess replaces the authority of the Commission under existing law to impose a civil penalty of not less than $100 or more than $500 per violation of the laws governing manufactured housing installers as an alternative to suspending, revoking, or refusing to renew a manufactured housing installer's license.

DEPARTMENT OF MENTAL HEALTH (DMH)

Adult care facilities

- Eliminates separate licensing requirements for adult care facilities and residential facilities for persons with mental illness and instead makes adult care facilities a type of residential facility for purposes of licensure by the Ohio Department of Mental Health (ODMH).

- Requires ODMH licensure as a residential facility to serve the following individuals: (1) children with serious emotional disturbances or in need of mental health services and (2) adults who are recipients under the Residential State Supplement Program.

- Adds certain provisions to the law governing ODMH-licensed residential facilities that are based on existing provisions in the adult care facilities law.

- Requires the operator of a facility to be the applicant for an initial or renewed license to operate a residential facility and to pay a nonrefundable application fee specified in rules to be adopted by the ODMH Director.

- Permits, rather than requires, imposition of a monetary penalty against a person for violating any of the ODMH residential facility licensing laws; refers to the penalty as a fine, rather than a civil penalty; and increases the monetary penalty amount to $500 (from $100) for a first offense and to $1,000 (from $500) for each subsequent offense.

- Grants qualified immunity from civil liability and criminal prosecution to a person making a complaint regarding the licensing or operation of an ODMH-licensed residential facility.

- Requires the ODMH Director to adopt additional rules regarding residential facilities that establish: (1) procedures for conducting criminal records checks for residential facility operators and staff, (2) fees for initial and renewed licenses, and (3) standards and procedures under which the Director may waive any of the residential facility licensure rules.

Residential State Supplement Program

- Specifies that, if ODMH does not designate an entity to serve as an area's residential state supplement administrative agency, ODMH is responsible for administering the Residential State Supplement (RSS) Program in that area.

- Make clarifying changes regarding the process for approval of living arrangements under the RSS Program for persons with mental disabilities.

Exchange of confidential health information

- Authorizes ODMH to exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with boards of alcohol, drug addiction, and mental health services and community mental health agencies to ensure continuity of care for inmates or offenders who are receiving mental health

services in an Ohio Department of Rehabilitation and Correction (ODRC) institution and are scheduled for release within six months.

- Eliminates ODMH's duty to notify an inmate and receive consent before disclosing the inmate's psychiatric hospitalization records, other mental health treatment records, and other pertinent information to ODRC for purposes of ensuring the inmate's continuity of mental health care.

- Eliminates a requirement that the custodian of records in an ODMH hospital, institution, or facility, a community mental health agency, or an ODMH-licensed hospital attempt to obtain patient consent before disclosing the patient's records to a payer or health care provider if the purpose of the exchange is to facilitate continuity of care.

Contract dispute process

- Restores a law eliminated by Am. Sub. H.B. 153 of the 129th General Assembly regarding the involvement of ODMH in a contract dispute between a board of alcohol, drug addiction, and mental health services and a community mental health agency or facility.

Commitment for treatment of defendants

- Eliminates the requirement that an examiner who is appointed to evaluate the mental condition of a defendant and who believes that the defendant is mentally ill or retarded and incapable of understanding the criminal proceedings or assisting in the defense make a recommendation as to whether the defendant is amenable to engagement in mental health treatment or developmental disability services.

- Authorizes additional commitment options for certain criminal defendants who are found incompetent to stand trial or not guilty by reason of insanity.

- Eliminates the prosecutor's authority, in the case of a defendant who is charged with a misdemeanor that is not an offense of violence and who is incompetent to stand trial, to hold the charges in abeyance while the defendant engages in mental health treatment or developmental disability services.

- Requires the place of commitment to which certain persons found incompetent to stand trial or not guilty by reason of insanity are committed to provide to the board of alcohol, drug addiction, and mental health services or the local community mental health board information received from the prosecutor.

- Authorizes involvement of community mental health boards in the development of a plan to implement recommendations for a termination or change in conditions of commitment of certain persons found incompetent to stand trial or not guilty by reason of insanity and requires the Department of Mental Health to consult with the board of alcohol, drug addiction, and mental health services or the local community mental health board serving the area before the recommendation and plan are sent to the court.

- Makes changes to conform to the foregoing provisions, changes "developmental disability" to "mental retardation" in certain places, and makes changes to clarify existing references to the program to which a defendant is committed.

Inclusion of adult care facilities as ODMH-licensed residential facilities

(R.C. 5119.22 (primary), 5119.70 (repealed), 5119.701 (repealed), 5119.71 (repealed), 5119.711 (repealed), 5119.712 (repealed), 5119.72 (repealed), 5119.73 (repealed), 5119.731 (repealed), 5119.74 (repealed), 5119.75 (repealed), 5119.76 (repealed), 5119.77 (repealed), 5119.78 (repealed), 5119.79 (repealed), 5119.80 (repealed), 5119.81 (repealed), 5119.82 (repealed), 5119.83 (repealed), 5119.84 (repealed), 5119.85 (repealed), 5119.86 (repealed), 5119.87 (repealed), 5119.88 (repealed), 5119.99; Section 751.10.10; conforming changes in 109.57, 109.572, 140.01, 140.08, 173.14, 173.21, 173.26, 173.42, 173.45, 173.46, 340.03, 340.05 (repealed), 2317.02, 2317.422, 2903.33, 3313.65, 3701.07, 3701.74, 3721.01, 3721.02, 3737.83, 3737.841, 3781.183 (repealed), 3791.04, 3791.043 (repealed), 3794.01, 3794.03, 5101.60, 5101.61, 5111.113, 5119.61, 5119.614 (repealed), 5119.69, 5119.692, 5123.19, 5123.61, 5701.13, 5709.12, and 5731.39)

Background

The Ohio Department of Mental Health (ODMH) licenses both (1) residential facilities serving persons with mental illness and mental disabilities and (2) adult care facilities, which provide accommodations, supervision, and personal care services to three to 16 unrelated adults. Responsibility for licensing adult care facilities was recently transferred to ODMH from the Ohio Department of Health by the main operating budget act, Am. Sub. H.B. 153 of the 129th General Assembly.

Licensure as a residential facility – A publicly or privately operated home or facility that provides one of the following is required to be licensed by ODMH as a residential facility:

- Room and board, personal care services, and community mental health services to one or more persons with mental illness or persons with severe

mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

- Room and board and personal care services to one or two persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

- Room and board to five or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.

Licensure as an adult care facility – Any residence, facility, institution, hotel, congregate housing project, or similar facility that provides accommodations and supervision to three to 16 unrelated adults, at least three of whom require personal care services, is an adult care facility and must be licensed by ODMH, regardless of how the facility holds itself out to the public. Adult care facilities are identified as follows:

- An adult family home – a residence or facility that provides accommodations and supervision to three to five unrelated adults, at least three of whom require personal care services;

- An adult group home – a residence or facility that provides accommodations and supervision to six to 16 unrelated adults, at least three of whom require personal care services.

Licensure of residential facilities

The bill eliminates ODMH's separate licensing procedures for residential facilities and adult care facilities. With modifications and without being referred to as an adult care facility, such a facility is made a type of residential facility for purposes of ODMH licensure.

The bill modifies and expands the types of facilities that must be licensed as residential facilities by ODMH. Under the bill, a publicly or privately operated home or facility that provides one of the following is required to be licensed as a residential facility:

- Accommodations, supervision, personal care services, and community mental health services for one or more of the following unrelated persons

who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner:

--Adults with mental illness;

--Persons of any age with severe mental disabilities;

--Children with serious emotional disturbances or in need of mental health services.

- Accommodations, supervision, and personal care services for three to 16 unrelated adults or for one or two of the following unrelated persons:

--Persons of any age with mental illness who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

--Persons of any age with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

--Adults who are recipients under the Residential State Supplement Program.

- Accommodations for five or more of the following unrelated persons:

--Adults with mental illness who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

--Adults with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.

For all residential facilities, the licensing requirement applies when the residents are unrelated. The bill defines "unrelated" to mean that a resident is not related to the owner or operator of a residential facility or to the owner's or operator's spouse as a parent, grandparent, child, stepchild, grandchild, brother, sister, niece, nephew, aunt, or uncle, or as the child of an aunt or uncle.

The bill adds definitions of "child" and "adult." Under the bill, "child" is defined as a person who is under age 18 or a person with a mental disability who is under age 21. "Adult" is defined as a person who is age 18 or older, other than a person with a mental disability who is between the ages of 18 and 21.

In addition to current law provisions that exclude certain facilities from ODMH licensure as residential facilities, the bill specifies that the following are not residential facilities for this purpose: (1) a facility operated by a hospice care program used exclusively for care of hospice patients, (2) an alcohol or drug addiction program, (3) a facility licensed to provide methadone treatment, (4) any facility that receives funding from the Department of Development to provide emergency shelter housing or transitional housing for the homeless, (5) a terminal care facility for the homeless that has entered into an agreement with a hospice care program, and (6) a facility approved by the federal Veterans Administration and used exclusively for the placement and care of veterans.

Services provided by residential facilities

As described above, the bill modifies the services that are provided by a residential facility licensed by ODMH. Depending on the type of residential facility, the services that are provided under current law are room and board, personal care services, and community mental health services. The bill provides that accommodations (rather than room and board) are provided by a residential facility and adds supervision to the services to be provided by a facility.

Under the bill, "accommodations" means housing, daily meal preparation, laundry, housekeeping, arranging for transportation, social and recreational activities, maintenance, security, and other services that do not constitute personal care services or skilled nursing care. "Supervision" means (1) observing a resident to ensure the resident's health, safety, and welfare while the resident engages in activities of daily living or other activities, (2) reminding a resident to perform or complete an activity, and (3) assisting a resident in making or keeping an appointment.

Transition from adult care facility license to residential facility license

For purposes of the transition from being licensed as an adult care facility to licensure as a residential facility, the bill authorizes the ODMH Director to convert an adult care facility license that is in effect immediately before the bill's effective date to a residential facility license. Until the Director converts the license or issues an order denying the conversion, the adult care facility license is deemed to be a residential facility license. All rules, orders, and determinations pertaining to the adult care facility license continue in effect as rules, orders, and determinations pertaining to the residential facility license.

Provisions from adult care facilities law

The bill adds all of the following provisions to the law governing ODMH-licensed residential facilities that are based on the existing law governing adult care facilities:

--Prohibits the owner, operator, or manager of a residential facility whose license has been revoked or denied renewal (other than for nonpayment of fees) from applying for another license until two years have elapsed, and permanently prohibits such a person from applying if the revocation or refusal was based on abuse, neglect, or exploitation of a resident;

--Authorizes ODMH to issue an order suspending the admission of residents to a residential facility if the facility is in violation of ODMH's licensing requirements;

--Requires a court that grants injunctive relief concerning unlicensed operation of a residential facility to include an order suspending admission of new residents and requiring the facility to assist in relocating its residents;

--Authorizes the following to enter a residential facility at any time: (1) employees designated by the ODMH Director, (2) employees of a board of alcohol, drug addiction, and mental health services (ADAMHS board) when a resident of the facility is receiving mental health services provided by another ADAMHS board or a mental health agency under contract with another ADAMHS board, and (3) employees of a mental health agency in either of the following circumstances: (a) when a client is residing in the facility and (b) when the agency is acting as an agent of an ADAMHS board other than the board with which it is under contract;

--Authorizes ODMH employees to enter, for purposes of investigation, any institution, residence, facility, or other structure that ODMH has reasonable cause to believe is operating as a residential facility without a license;

--Adds provisions relative to residential facilities that pertain to matters of local zoning.

License to operate residential facility – application process

The bill requires the operator of a residential facility to be the applicant for an initial or renewed license to operate a facility. When applying for an initial or renewed license, a facility operator is required by the bill to pay to ODMH a nonrefundable application fee specified in rules to be adopted by the ODMH Director. Under the bill, "operator" means the person that is responsible for the administration and management of a residential facility.

ODMH is required by current law to send a copy of a licensure application to the ADAMHS board serving the county in which the person seeks to operate a residential facility. In place of current law's requirement that the ADAMHS board review the application and recommend to ODMH whether the application should be approved, the bill instead requires the ADAMHS board to review the application and provide to ODMH any information about the applicant or the facility that the ADAMHS board would like ODMH to consider in reviewing the application.

Fines

The bill permits, rather than requires, the imposition of monetary penalties for violating the residential facility licensing laws. It refers to the penalty as a fine, rather than a civil penalty. The bill increases the penalty amount to $500 (from $100) for a first offense and to $1,000 (from $500) for each subsequent offense. When imposing a fine, the ODMH Director must comply with procedures established under the Administrative Procedure Act (R.C. Chapter 119.). It eliminates a provision specifying that the Attorney General is to bring an action to collect unpaid penalties when requested by the ODMH Director and eliminates a provision requiring that amounts collected be deposited into the state treasury and credited to the Mental Health Sale of Goods and Services Fund.

Qualified immunity

The bill provides that any person who makes a complaint to ODMH regarding the licensing or operation of a residential facility or who participates in an administrative or judicial proceeding resulting from such a complaint is immune from civil or criminal liability, other than for perjury, unless the person acted in bad faith or with malicious purpose.

Rules

The bill adds all of the following to the rules that must currently be adopted by the ODMH Director regarding licensing and operation of residential facilities:

(1) Procedures for conducting criminal records checks for prospective operators, staff, and other individuals who, if employed by a residential facility, would have unsupervised access to facility residents;

(2) Procedures for residential facility operators to notify the appropriate ADAMHS board when the facility is serving residents with mental illness or severe mental disability, including the circumstances under which a facility operator is required to make such a notification;

(3) Procedures for issuing and terminating orders of suspension of admission of residents to a residential facility;

(4) Fees for new and renewed licenses;

(5) Standards and procedures under which the Director may waive the requirements of any of the residential facility licensure rules.

Access to facility records

The bill specifies that ODMH, in conducting an inspection of a residential facility, is to have access to copy (rather than only examine) all records, accounts, and other documents relating to the operation of the facility. The bill further specifies that the records that ODMH must be able to examine and copy include records pertaining to facility residents.

Self-administration of medication

The bill eliminates a provision prohibiting a person from being admitted to or retained by a residential facility unless the person is capable of taking the person's own medication and biologicals, as determined by the person's physician. Current law generally prohibits residential facility staff members from administering medication to facility residents but they may assist residents in self-administration of medication.

Residential State Supplement Program administrative agency

(R.C. 340.091, 5119.61, 5119.69, and 5119.691)

The bill specifies that ODMH is responsible for administering the Residential State Supplement (RSS) Program in any area where ODMH does not designate an entity to serve as that area's residential state supplement administrative agency. The RSS Program provides supplemental payments to eligible aged, blind, or disabled adults who receive benefits under the federal Supplemental Security Income (SSI) program. The RSS payments must be used for the provision of accommodations, supervision, and personal care services.

If ODMH serves as the RSS administrative agency for an area, the following existing law duties of an RSS administrative agency are applicable to ODMH:

(1) Determining whether the environment in which an individual will be living while receiving RSS payments is appropriate for the individual's needs;

(2) Referring individuals with a mental disability to a community mental health agency to determine whether a living environment is appropriate for the individual

while receiving RSS payments and making a determination based on the agency's recommendation;[148]

(3) Implementing the RSS Program's Home First provisions under which a person on the RSS waiting list who has been admitted to a nursing facility may be approved to participate in RSS ahead of others on the list.

Exchange of confidential health information by ODMH and ODRC or ADAMHS boards or community mental health facilities

(R.C. 5122.31(A)(14))

The bill authorizes ODMH to exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with boards of alcohol, drug addiction, and mental health services (ADAMHS boards) and community mental health agencies to ensure continuity of care for inmates or offenders who are receiving mental health services in an Ohio Department of Rehabilitation and Correction (ODRC) institution and are scheduled for release within six months. This authority mirrors ODMH's existing authority to exchange similar records and information with ODRC. The release of records is limited to records regarding an inmate's or offender's medication history, physical health status and history, summary of course of treatment, summary of treatment needs, and discharge summary.

The bill also eliminates a provision requiring ODMH to notify and receive consent from an inmate before disclosing the inmate's psychiatric hospitalization records, other mental health treatment records, and other pertinent information to ODRC for purposes of ensuring the inmate's continuity of mental health care.

Exchange of confidential health information by ODMH hospitals and community mental health facilities with payers and other providers

(R.C. 5122.31(B))

Under law unchanged by the bill, documents pertaining to the hospitalization of the mentally ill and criminal trials of persons alleged to be insane generally must be kept confidential and not be disclosed unless the patient consents to disclosure. There are several exceptions to this rule, one of which permits ODMH hospitals, institutions, and facilities, as well as community mental health agencies, to exchange psychiatric records and other pertinent information with payers and health care providers if the purpose of the exchange is to facilitate continuity of care.

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[148] The bill includes clarifying changes regarding the process for approval of RSS Program living arrangements for individuals with mental disabilities.

The bill eliminates a requirement that the custodian of records in an ODMH hospital, institution, or facility; a community mental health agency; or an ODMH-licensed hospital attempt to obtain patient consent before disclosing the patient's records to a payer or health care provider if the purpose of the exchange is to facilitate continuity of care.

Contract dispute process regarding ADAMHS boards and providers

(R.C. 340.03)

The bill restores a law eliminated by Am. Sub. H.B. 153 of the 129th General Assembly regarding the ODMH's involvement in a contract dispute between a board of alcohol, drug addiction, and mental health services (ADAMHS board) and a community mental health agency or facility. Under the law being restored, an ADAMHS board or community mental health agency or facility must provide notice if the board, agency, or facility proposes not to renew a contract or proposes substantial changes in contract terms. The notice must be given at least 120 days before the expiration of the current contract. During the first 60 days of the 120-day period, both parties are required to attempt to resolve any dispute through good faith collaboration and negotiation to continue to provide services to persons in need.

Before H.B. 153, either party was permitted to notify the ODMH if a contract dispute was not resolved 60 days before the contract's expiration. The ODMH Director was authorized to require both parties to submit the dispute to a third party with the cost to be shared by the ADAMHS board and agency or facility. The Director was required to adopt rules establishing the procedures of the dispute resolution process. H.B. 153 eliminated the ODMH's and Director's involvement in the contract disputes with the result that an ADAMHS board and agency or facility are to submit a dispute directly to a third party.

The bill restores the ODMH's and Director's involvement. Instead of submitting a dispute directly to a third party, an ADAMHS board and agency or facility are to notify ODMH. The Director is permitted to require the parties to submit the dispute to a third party. The bill also restores the Director's rule-making responsibility regarding the procedures for the dispute resolution process.

Commitment for treatment of defendants who are incompetent to stand trial or not guilty by reason of insanity

(R.C. 2945.371, 2945.38, 2945.39, 2945.40, and 2945.401)

Examination of defendant who may be incompetent to stand trial or who pleads not guilty by reason of insanity

If the issue of a defendant's competence to stand trial is raised or if a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or at the time the offense occurred. If the court orders an evaluation, it appoints an examiner to evaluate the defendant. The examiner must file a report with the court within 30 days after the court orders the evaluation. If the evaluation is ordered to determine the defendant's competence to stand trial, the examiner's report must include, among other things, a finding as to whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense. Under existing law, if the defendant is charged with a misdemeanor that is not an offense of violence and the examiner believes that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant is presently mentally ill or mentally retarded, the examiner must make a recommendation as to whether the defendant is amenable to engagement in mental health treatment or developmental disability services. The bill eliminates the requirement for such a recommendation.

Optional places of commitment

Under existing law, a court must commit criminal defendants who fall within one of the following three categories to ODMH for treatment, continuing evaluation and treatment, or placement at a hospital, facility, or agency that ODMH determines is clinically appropriate:

(1) A defendant whom the court finds to be incompetent to stand trial and for whom there is a substantial probability of becoming competent to stand trial within a year if provided with a course of treatment or a felony defendant whom the court finds to be incompetent to stand trial but who requires further evaluation before the likelihood of becoming competent to stand trial can be determined;

(2) A defendant who is charged with aggravated murder, murder, an offense of violence for which death or life imprisonment may be imposed, a first or second degree felony offense of violence, or a first or second degree felony attempt, complicity, or conspiracy to commit any such offense, is incompetent to stand trial, and, after the expiration of the maximum allowable time for treatment (one year) to become

competent or after the court finds that the defendant is not substantially likely to become competent, is found by clear and convincing evidence to have committed the charged offense and to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order;

(3) A defendant who is found not guilty by reason of insanity and is found, by clear and convincing evidence at a subsequent, statutorily required hearing, to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order.

In the above-described situations, the bill retains the possibility of commitment to ODMH but also gives the court other commitment options. A defendant in category (1) may be committed to a facility certified by ODMH as being qualified to treat mental illness, to a public or community mental health facility, or to a psychiatrist or another mental health professional for treatment or continuing evaluation and treatment. A defendant in category (2) or (3) may be committed to another medical or psychiatric facility. In each case, the bill requires that ODMH obtain court approval for the placement. In each case, the bill eliminates a requirement that the court, in ordering the commitment, specify the least restrictive alternatives on the defendant's freedom of movement that are necessary to protect public safety. However, the bill requires in each case that the court, in determining the place of commitment, consider the extent to which the person is a danger to the person or others, the need for security, and the type of crime involved and order the least restrictive available placement that is consistent with public safety and the person's welfare.

Prosecutor's authority to hold charges in abeyance

The bill eliminates the prosecutor's authority, in the case of a defendant who is charged with a misdemeanor that is not an offense of violence and who is incompetent to stand trial, to hold the charges in abeyance while the defendant engages in mental health treatment or developmental disability services.

Provision of information to ADAMHS or community mental health board

In the case of a defendant described above in category (2) or (3), existing law requires the prosecutor to provide the place of commitment with all reports of the defendant's current mental condition and other relevant information including, but not limited to, a transcript of the hearing held in the case, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the defendant. The bill additionally requires the place of commitment, upon the defendant's admission, to send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the

defendant were filed copies of reports of the defendant's current mental condition, relevant police reports, prior arrest and conviction records, and the other relevant information furnished by the prosecutor (including, if provided, a transcript of the hearing held to determine whether the defendant committed the offense charged and was subject to hospitalization or institutionalization).

Termination or change in conditions of commitment

In the case of a person described in category (2) or (3), the court retains jurisdiction over the person. Except with regard to certain mentally retarded persons being cared for by the Department of Developmental Disabilities, ODMH may recommend termination of the person's commitment or a change in the conditions of commitment. The statute establishes a procedure for an investigation and a hearing in connection with the recommendation, including involvement by the local forensic center. If the forensic center agrees with the recommendation, or if the forensic center disagrees but ODMH does not withdraw the recommendation, the designee must work with community mental health agencies, programs, facilities, or boards of alcohol, drug addiction, and mental health services to develop a plan to implement the recommendation. The bill additionally requires the designee to work with community mental health boards to develop that plan. When the plan has been developed, ODMH must send the recommendation and plan to the court, the prosecutor, and counsel for the committed person for a hearing and determination. The bill requires the ODMH designee to consult with the board of alcohol, drug addiction, and mental health services or the community mental health board serving the area before sending the recommendation and plan to the trial court, prosecutor, and counsel.

Conforming changes

The bill makes other changes to conform with the provisions described above and to refer to treatment for mental retardation rather than developmental disability. The bill adds "the director of the program" and "program" to several existing provisions dealing with the person in charge of the place to which a defendant is committed or dealing with the place to which a defendant is committed to be consistent with other existing provisions of law.

DEPARTMENT OF NATURAL RESOURCES (DNR)

- With respect to expenditures from the Oil and Gas Well Fund related to idle and orphaned wells, specifies that competitive bidding does not apply if the Chief of the Division of Oil and Gas Resources Management reasonably determines that an emergency situation exists requiring immediate action for the correction of the

applicable health or safety risk rather than if the Chief reasonably determines that correction of the health or safety risk requires immediate action as in current law.

- Exempts contracts and purchases of material related to such an emergency situation from certain competitive bidding requirements and Controlling Board approval.

- Specifies that a requirement in current law related to the inspection of projects by a licensed professional engineer or professional surveyor does not apply to expenditures from the Oil and Gas Well Fund under contracts for plugging idle and orphaned wells or addressing imminent health or safety risks at such wells.

- Allows the Chief to engage in cooperative projects involving idle and orphaned wells with any agency of Ohio, another state, or the United States; any other governmental agency; or any state university or college.

- Specifies that a contract entered into for purposes of such a cooperative project is not subject to certain competitive bidding requirements or Controlling Board approval.

- Authorizes the Director of Natural Resources to request the Director of Budget and Management to transfer money from the Forestry Mineral Royalties Fund to the Parks Mineral Royalties Fund, and requires the Director of Budget and Management to transfer the money if the Director consents to the request.

- Exempts maintenance of specified hiking and bridle trails in the Shawnee Wilderness Area from the existing prohibition against the operation of motorized vehicles or motorized equipment in the Area, and subjects the Twin Creek Fire Tower to the existing prohibitions against conducting specified activities in the Area.

- Requires a person operating an energy facility whose operation may result in the incidental taking of a wild animal to obtain a permit to do so from the Chief of the Division of Wildlife.

- Authorizes a resident of another state who owns real property in Ohio, and the spouse and children living with the property owner, to hunt on that property without a license if the person's state of residence allows Ohio residents who own real property in that state, and the spouse and children living with the property owner, to hunt without a license.

- Requires the Director of Natural Resources, in consultation with the Directors of Agriculture and Environmental Protection, to use money appropriated to the Healthy Lake Erie Fund for specified purposes, including encouraging farmers to adopt 4R nutrient stewardship practices.

Oil and Gas Well Fund – idle and orphaned wells

(R.C. 1509.071)

The bill exempts from competitive bidding requirements certain expenditures from the Oil and Gas Well Fund related to plugging orphaned oil and gas wells. Specifically, the bill declares that competitive bidding does not apply if the Chief of the Division of Oil and Gas Resources Management reasonably determines that an emergency situation exists requiring immediate action for the correction of the applicable health or safety risk. Current law instead states that the competitive bidding requirements do not apply if the Chief reasonably determines that correction of the applicable health or safety risk requires immediate action.

In addition, the bill declares that a contract or purchase of materials for purposes of addressing the emergency situation is not subject to provisions of current law that require such a purchase to be made by competitive bidding or to be approved by the Controlling Board. The bill also declares that contracts for plugging idle and orphaned wells or addressing imminent health or safety risks at such wells entered into by the Chief are not subject to a requirement in current law related to the inspection of projects by a licensed professional engineer or professional surveyor.

Finally, the bill authorizes the Chief, for purposes of the statute governing idle and orphaned wells, to engage in cooperative projects with any agency of Ohio, another state, or the United States; any other governmental agencies; or any state university or college. A contract entered into for purposes of a cooperative project is not subject to competitive bidding requirements or Controlling Board approval.

Transfers from Forestry Mineral Royalties Fund

(R.C. 1503.012 and 1541.26)

The bill authorizes the Director of Natural Resources to request the Director of Budget and Management to transfer money from the Forestry Mineral Royalties Fund to the Parks Mineral Royalties Fund. The Director of Budget and Management must transfer the money pursuant to the request if the Director consents to the request. Money that is transferred to the Parks Mineral Royalties Fund must be used for the stated statutory purposes of the Fund.

Under current law, both Funds consist of money derived from leases for oil and gas production on land under the control of the Division of Parks and Recreation or the Division of Forestry, as applicable. Money in the Parks Mineral Royalties Fund must be used by the Division of Parks and Recreation to acquire land and to pay capital costs, including equipment and repairs and renovations of facilities, that are owned by the

state and administered by the Division. Money in the Forestry Mineral Royalties Fund must be used by the Division of Forestry to acquire land and to pay capital costs, including equipment and repairs and renovations of facilities, that are owned by the state and administered by the Division of Forestry.

Shawnee Wilderness Area

(R.C. 1503.43)

Current law in part prohibits motorized vehicles and motorized equipment from being operated in the Shawnee Wilderness Area. The bill exempts from the prohibition the use of those vehicles and equipment for trail maintenance purposes on certain hiking and bridle trails in the Area. Specifically, the exemption applies to the hiking trail west of Upper Twin Creek Road known as the Wilderness Loop, the Buckhorn Ridge Bridle Trail, and the Cabbage Patch Bridle Trail. However, the bill specifies that the exemption will not apply if the Chief of the Division of Forestry makes a determination that the exemption is no longer necessary for the administration of the Shawnee State Forest or the state forest system.

The bill also subjects the Twin Creek Fire Tower to the existing prohibition against conducting specified activities in the Shawnee Wilderness Area. The prohibited activities include exploring for or extracting coal, oil, gas, or minerals or operating a commercial enterprise. Currently, the prohibited activities may be conducted at the Twin Creek Fire Tower.

Permit to take wild animals at energy facility

(R.C. 1533.081)

Under the bill, a person operating an energy facility whose operation may result in the incidental taking of a wild animal must obtain a permit to do so from the Chief of the Division of Wildlife. The bill requires the Chief to adopt rules that are necessary to administer the requirement.

Hunting by nonresidents

(R.C. 1533.10)

The bill authorizes a resident of any other state who owns real property in Ohio, and the spouse and children living with the property owner, to hunt on that property without a license, provided that the state of residence of the real property owner allows Ohio residents owning real property in that state, and the spouse and children living with the property owner, to hunt without a license. Current law requires an applicant

for a hunting license who is a nonresident of the state and who is at least 18 years old to obtain a nonresident hunting license or an apprentice nonresident hunting license for a fee that is higher than the fee for a resident hunting license unless the person's state of residence is a party to a reciprocal agreement with Ohio.

Healthy Lake Erie Fund

(Section 343.40)

The bill requires the appropriation for the Healthy Lake Erie Fund to be used by the Director of Natural Resources, in consultation with the Directors of Agriculture and Environmental Protection, to implement nonstatutory recommendations of the Agriculture Nutrients and Water Quality Working Group. The Director of Natural Resources must give priority to recommendations that encourage farmers to adopt agricultural production guidelines commonly known as 4R nutrient stewardship practices. Money in the Fund also may be used for enhanced soil testing in the Western Lake Erie Basin, monitoring the quality of Lake Erie and its tributaries, and establishing pilot projects that have the goal of reducing algae blooms in Lake Erie.

DEPARTMENT OF PUBLIC SAFETY (DPS)

- Changes the name of the State Board of Emergency Medical Services to the "State Board of Emergency Medical, Fire, and Transportation Services," eliminates the Ohio Medical Transportation Board, and assigns the duties of that Board to the renamed State Board of Emergency Medical, Fire, and Transportation Services.

- Provides that the renamed State Board of Emergency Medical, Fire, and Transportation Services be composed of 16 members of the former State Board of Emergency Medical Services and 4 former members of the Ohio Medical Transportation Board.

- Repeals laws that: (1) require the Director of Public Safety to prepare a "declaration of material assistance/nonassistance to a terrorist organization" document to be used for the licensing, business, and employment purposes described in clauses (2) to (5), (2) require the state to identify state-issued licenses for which a holder with terrorist connections presents a potential risk, (3) generally require the denial of a state-issued license to a person who discloses material assistance to a terrorist organization, (4) generally prohibit the state and political subdivisions from doing business with a person or entity unless it is certified as not providing material assistance to a terrorist organization, and (5) generally prohibit the state, state

instrumentalities, and political subdivisions from employing a person who discloses the provision of material assistance to a terrorist organization.

- Repeals a law that requires the Director of Public Safety to adopt rules that specify substances and agents used in the illegal manufacture of a chemical, biological, radiological, or nuclear weapon or an explosive device.

- In regard to money from the sale of property forfeited under federal law (1) codifies two existing funds for the deposit of money received by the Highway Patrol and (2) creates two new funds for the deposit of money received by the Investigative Unit of the Department of Public Safety; specifies that all such money, including any interest or other earnings, be used in accordance with any federal or other associated requirements.

- Transfers the driver's license examination function from the State Highway Patrol (a division of the Department of Public Safety) to the Department of Public Safety and makes the Director of Public Safety, rather than the Superintendent of the Highway Patrol, responsible for (1) appointing examiners and clerical personnel and (2) conducting training schools for prospective driver's license examiners.

- Allows the Director of Public Safety to approve a course of remedial driving instruction that permits students to take the entire course, rather than only 50% of the course, electronically.

- Eliminates the Elementary School Program Fund and the Trauma and Emergency Medical Services Grants Fund, and directs all state and local seatbelt violation fine money to the existing Trauma and Emergency Medical Services Fund.

- Directs all other money that currently is deposited into the Trauma and Emergency Medical Services Grants Fund to the Trauma and Emergency Medical Services Fund instead.

- Makes clear that the State Highway Patrol has discretionary authority to enforce criminal laws in prisons operated pursuant to an agreement with the Department of Rehabilitation and Correction pursuant to R.C. 9.06, to the same extent as if the prison were owned by this state.

- Requires the Department of Public Safety to conduct a study of the safety and security of the Ohio Statehouse complex.

State Board of Emergency Medical Services and the Ohio Medical Transportation Board

(R.C. 307.05, 307.051, 307.055, 505.37, 505.375, 505.44, 505.72, 4503.49, 4513.263, 4765.02, 4765.03, 4765.04, 4765.05, 4765.06, 4765.07, 4765.08, 4765.09, 4765.10, 4765.101, 4765.102, 4765.11, 4765.111, 4765.112, 4765.113, 4765.114, 4765.115, 4765.116, 4765.12, 4765.15, 4765.16, 4765.17, 4765.18, 4765.22, 4765.23, 4765.28, 4765.29, 4765.30, 4765.31, 4765.32, 4765.33, 4765.37, 4765.38, 4765.39, 4765.40, 4765.42, 4765.48, 4765.49, 4765.55, 4765.56, 4766.01, 4766.02, 4766.03, 4766.04, 4766.05, 4766.07, 4766.08, 4766.09, 4766.10, 4766.11, 4766.12, 4766.13, 4766.15, 4766.22, and 5502.01; Section 335.10 of Am. Sub. H.B. 153; Section 205.10 of Am. Sub. H.B. 114; Sections 747.20.10 and 747.20.20)

The bill changes the name of the State Board of Emergency Medical Services to the "State Board of Emergency Medical, Fire, and Transportation Services." It eliminates the Ohio Medical Transportation Board and assigns the duties of that board to the renamed State Board of Emergency Medical, Fire, and Transportation Services. The bill provides that the renamed State Board of Emergency Medical, Fire, and Transportation Services be composed of 16 members of the former State Board of Emergency Medical Services and four former members of the Ohio Medical Transportation Board, although the bill contains changes in the qualifications or nominating entities for some of the members.

Several of the positions on the former State Board of Emergency Medical Services continue unchanged on the renamed State Board of Emergency Medical, Fire, and Transportation Services. The bill makes the following modifications to positions on the former State Board of Emergency Medical Services that continue on the renamed State Board of Emergency Medical, Fire, and Transportation Services:

(1) One member is a physician certified by the American Academy of Pediatrics or American Osteopathic Board of Pediatrics who is active in the practice of pediatric emergency medicine and actively involved with an emergency medical service organization. The bill requires the Governor to appoint this member from among not only three persons nominated by the Ohio Chapter of the American Academy of Pediatrics, as specified in current law, but also from among three persons nominated by the Ohio Osteopathic Association.

(2) Under the bill, one member is the administrator of a hospital located in this state; current law specifies that this member must be the administrator of a hospital that is not a trauma center. Under the bill, the Governor must appoint this member from among three persons nominated by OHA: the Association for Hospitals and Health Systems, three persons nominated by the Ohio Osteopathic Association, and three persons nominated by the Association of Ohio Children's Hospitals; these nominating

entities are three of the four specified in current law. The bill provides that the Health Forum of Ohio no longer is to nominate three persons for this position, the fourth entity specified in current law.

(3) Under the bill, one member is a registered nurse with EMS certification who performs mobile intensive care or air medical transport; current law specifies that this member must be a registered nurse who is in the active practice of emergency nursing.

(4) Under the bill, one member must be a person who is certified to teach in this state in an emergency medical services training program or an emergency medical services continuing education program and holds a valid certificate to practice as an EMT, advanced EMT, or paramedic. The bill eliminates current language that provides that if the State Board has not yet certified persons to so teach in this state, the person must be qualified to be certified to so teach.

(5) and (6) Under the bill, one member must be an EMT, advanced EMT, or paramedic, and one member must be a paramedic.[149] The Governor must appoint these members from among three EMTs or advanced EMTs and three paramedics nominated by the Ohio Association of Professional Fire Fighters.

Current law specifies that one member must be an EMT-basic, one must be an EMT-I, and one must be a paramedic, and that the Governor must appoint these members from among three EMTs-basic, three EMTs-I, and three paramedics nominated by the Ohio Association of Professional Fire Fighters and three EMTs-basic, three EMTs-I, and three paramedics nominated by the Northern Ohio Fire Fighters.

(7) and (8) Under the bill, one member must be an EMT, advanced EMT, or paramedic, and one member must be a paramedic, and the Governor must appoint these members from among three EMTs or advanced EMTs and three paramedics nominated by the Ohio State Firefighter's Association.

Current law specifies that one member must be an EMT-basic, one member must be an EMT-I, and one must be a paramedic, and that the Governor must appoint these members from among three EMTs-basic, three EMTs-I, and three paramedics nominated by the Ohio State Firefighter's Association.

(9) Under the bill, one member must be a person whom the Governor must appoint from among an EMT, an advanced EMT, or a paramedic nominated by the Ohio Association of Emergency Medical Services or the Ohio Ambulance and Medical Transportation Association. Current law specifies that one member must be a person

[149] "EMT" is the new term for "EMT-basic" and "advanced EMT" is the new term for "EMT-I."

whom the Governor must appoint from among an EMT-basic, an EMT-I, and a paramedic nominated by the Ohio Association of Emergency Medical Services.

The bill also creates the following new positions on the renamed Board:

(1) One member must be an EMT, an advanced EMT, or a paramedic, whom the Governor must appoint from among three persons nominated by the Ohio Ambulance and Medical Transportation Association.

(2) One member must be a paramedic, whom the Governor must appoint from among three persons nominated by the Ohio Ambulance and Medical Transportation Association.

(3) One member must be the owner or operator of a private emergency medical service organization whom the Governor must appoint from among three persons nominated by the Ohio Ambulance and Medical Transportation Association.

(4) One member must be a provider of mobile intensive care unit transportation in this state whom the Governor must appoint from among three persons nominated by the Ohio Association of Critical Care Transport and three persons nominated by the Ohio Ambulance and Transportation Association.

(5) One member must be a provider of air-medical transportation in this state whom the Governor must appoint from among three persons nominated by the Ohio Association of Critical Care Transport and three persons nominated by the Ohio Ambulance and Medical Transportation Association.

(6) One member must be the owner or operator of a nonemergency medical service organization in this state that provides ambulette services whom the Governor must appoint from among three persons nominated by the Ohio Ambulance and Medical Transportation Association.

The bill provides that on the effective date of the amendments the bill makes to the Revised Code section that establishes the renamed State Board of Emergency Medical, Fire, and Transportation Services, the following members of the current State Board of Emergency Medical Services will cease to be members of the renamed Board:

(1) The member who is an administrator of an adult or pediatric trauma center;

(2) The member who is a member of the Ohio Ambulance Association;

(3) The member who is a physician certified by the American Board of Surgery, American Board of Osteopathic Surgery, American Osteopathic Board of Emergency

Medicine, or American Board of Emergency Medicine, is chief medical officer of an air medical agency, and is currently active in providing emergency medical services;

(4) Of the members of the renamed State Board of Emergency Medical, Fire, and Transportation Services who were EMTs, advanced EMTs, or paramedics and were appointed to the previous Board in those capacities, only the members who are designated by the Governor to continue to be members of the renamed Board will continue to be so; the other persons will cease to be members of the renamed Board.

In addition, on the effective date of the amendments the bill makes to the Revised Code section that establishes the renamed State Board of Emergency Medical and Transportation Services, the member who is a registered nurse and is in the active practice of emergency nursing will cease to be a member of the renamed Board. Not later than 60 days after the effective date of those amendments, the Governor must appoint to the renamed State Board of Emergency Medical and Transportation Services a registered nurse with EMS certification who is in the active practice of critical care nursing. The Governor must appoint this member from among three persons nominated by the Ohio Nurses Association and three persons nominated by the Ohio State Council of the Emergency Nurses Association.

In addition, on that same effective date, all members of the former State Board of Emergency Medical Services who do not cease to be members of the renamed State Board of Emergency Medical, Fire, and Transportation Services as specified in the bill will continue to be members of the renamed State Board of Emergency Medical, Fire, and Transportation Services, and the dates on which the terms of those continuing members expire remain unchanged.

On that same effective date, the bill provides that the following members of the former Ohio Medical Transportation Board become members of the State Board of Emergency Medical, Fire, and Transportation Services for the terms specified:

(1) The person who owns or operates a private emergency medical service organization operating in this state, as designated by the Governor, for a term that ends November 12, 2012;

(2) The person who owns or operates a nonemergency medical service organization in this state that provides only ambulette services, for a term that ends November 12, 2012;

(3) The person who is a member of the Ohio Association of Critical Care Transport and represents air-based services, for a term that ends November 12, 2013;

(4) The person who is a member of the Ohio Association of Critical Care Transport and represents a ground-based mobile intensive care unit organization, for a term that ends November 12, 2013.

All subsequent terms of office for these four positions on the State Board of Emergency Medical, Fire, and Transportation Services will be for three years as provided in current law governing the State Board.

In conducting investigations of alleged violations of laws and rules governing emergency medical service transportation entities and personnel and complaints alleging such violations, the bill eliminates an existing provision that permits the Ohio Medical Transportation Board to use any method of communication, including a telephone conference call, to receive descriptions of evidence for reviewing allegations and for voting on a suspension. The bill also requires the affirmative vote of a majority of the members of the State Board of Emergency Medical, Fire, and Transportation Services to suspend without a hearing a medical transportation-related license the State Board issues. Current law requires the affirmative vote of at least four members of the Ohio Medical Transportation Board to suspend such a license.

The bill requires the Department of Public Safety to administer the laws and rules relative to not only trauma and emergency medical services but also any laws and rules relative to commercial medical transportation services.

Licensing or employment of, or doing business with, an entity or person with ties to a terrorist organization

(R.C. 2909.21, 2909.32, 2909.33, 2909.34, and 5502.011)

The bill repeals the following provisions that pertain to the licensing or employment of, or doing business with, an entity or person with ties to a terrorist organization:

(1) Currently, the Director of Public Safety must prepare a document, in a specified form, to serve as a "declaration of material assistance/nonassistance" and that is used in determining whether a person or entity has provided material assistance to an organization listed on the Department of State Terrorist Exclusion List (the TEL), for the purposes described below in (2) to (4); currently, "material assistance" is defined for purposes of all of this provision and the provisions described below in (2) to (4).

(2) Currently, the Director of Public Safety must adopt rules identifying licenses, other than driver's licenses or two other specified exempt licenses, the state issues for which the holder would present a potential risk to Ohio residents if that person has a connection to a terrorist organization. Agencies that issue licenses the Director

identifies must include a copy of the declaration the Director prepares with the application form for a license or renewal, along with a copy of the TEL, and an applicant must complete the declaration. A person's answer of "yes" to any question, or failure to answer "no" to any question, serves as a disclosure of the provision of material assistance to an organization on the TEL, and a disclosure of material assistance requires denial of the license or renewal. The failure of an applicant to complete a declaration, the failure to disclose material assistance to an organization on the TEL, or making false statements regarding material assistance to an organization on the TEL results in the denial of the application and the revocation of any license and in some cases is a criminal offense. An agency may revoke a license, pursuant to specified hearing procedures, of a person who, after providing a declaration, takes an action that would result in an answer of "yes" to any question, had the declaration been readministered after taking that action.

(3) Currently, the state, an instrumentality of the state, or a political subdivision of the state generally are prohibited from conducting business with or providing funding to any person or entity, or any person with a controlling interest in an entity, unless the person or entity certifies that it does not provide material assistance to an organization on the TEL. Certain business transactions are excepted from the provision. The Director of Public Safety must post a copy of the declaration the Director prepares, along with a copy of the TEL, on the Department's Internet web site. A person or entity that wants to conduct business with or receive funding from a government entity must certify that it is not providing material assistance to an organization on the TEL by completing the declaration. The law provides procedures for pre-certification of a person or entity. A person's or entity's answer of "yes" to any question, or failure to answer "no" to any question, serves as a disclosure of the provision of material assistance to an organization on the TEL, and a disclosure of material assistance is a denial of certification. A person or entity that had not provided material assistance at the time a declaration was answered, but subsequently starts providing material assistance during the course of doing business or receiving funding from a government entity, is prohibited from entering into additional contracts to do business with or receive funding from any government entity for a specified period of time. A person or entity that provides a false certification is permanently banned from conducting business with or receiving funding from a government entity and is subject to criminal penalties.

(4) Currently, the state, an instrumentality of the state, or a political subdivision of the state is prohibited from employing any person who discloses the provision of material assistance to an organization on the TEL (the Director of Public Safety may establish categories of employment that are exempt from the provision). A government entity must provide a copy of the declaration the Director prepares and a copy of the

TEL to any person under final consideration for a category of employment for which disclosure is required, and the person must complete the declaration prior to employment. A person's answer of "yes" to any question, or failure to answer "no" to any question, serves as a disclosure of the provision of material assistance to an organization on the TEL. It is a criminal offense for an applicant for employment to fail to disclose the provision of material assistance to an organization on the List, or to make false statements regarding material assistance to an organization on that List. A government entity may terminate, pursuant to specified hearing and due process procedures, the employment of any person who, after providing a declaration, takes an action that would result in an answer of "yes" to any question, had the declaration been readministered after taking that action.

(5) Currently, an appeals process is provided that a person may use if denied a license, denied employment, or prohibited from doing business due to a disclosure of material assistance to an organization on the TEL under the provisions described above.

Identification of components of certain illegal dangerous devices

(R.C. 2909.28 and 5502.011)

The existing offense of "illegal assembly of possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device" prohibits a person, with intent to manufacture any such weapon or device, from knowingly assembling or possessing one or more toxins, toxic chemicals, precursors or toxic chemicals, vectors, biological agents, or hazardous radioactive substances, including, but not limited to, those listed in rules the Director of Public Safety adopts, that may be used to manufacture any such weapon or device.

The bill repeals the requirement that the Director of Public Safety adopt rules that specify the listed substances and agents used in the illegal manufacture of a chemical, biological, radiological, or nuclear weapon or an explosive device and removes the reference to the rules from the offense of "illegal assembly of possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device."

Law enforcement funds for property forfeitures under federal law

(R.C. 2981.14)

In order to fully segregate moneys received by the Highway Patrol and the Investigative Unit of the Department of Public Safety from the sale of property forfeited under federal law, the bill (1) codifies the existing Highway Patrol Treasury Contraband Fund and the Highway Patrol Justice Contraband Fund and (2) creates the Investigative

Unit Treasury Contraband Fund and the Investigative Unit Justice Contraband Fund. The bill specifies that moneys in the funds must be used in accordance with any federal or other requirements associated with the moneys received.

For purposes of money received from the sale of property forfeited under federal law only, the bill eliminates from existing codified law the reference to the Contraband, Forfeiture, and Other Fund of the Highway Patrol or the Department of Public Safety. Existing codified law requires all interest and other earnings of these two funds to be deposited into whichever of the two funds is appropriate; the bill continues this requirement for the funds it renames in codified law and the two funds of the Investigative Unit that it creates. The Contraband, Forfeiture, and Other Fund of the Highway Patrol and the Contraband, Forfeiture, and Other Fund of the Department are retained in law not affected by the bill to receive money from the sale of property forfeited under state law.[150]

Responsibility for driver examinations

(R.C. 4503.031, 4507.01, 4507.011, 4507.12, 5503.21 (5502.05), 5503.22 (5502.06), and 5503.23 (5502.07))

The bill generally transfers the driver's license examination function from the State Highway Patrol (a division of the Department of Public Safety) to the Department of Public Safety and makes the Director of Public Safety, rather than the Superintendent of the Highway Patrol, responsible for (1) appointing examiners and clerical personnel and (2) conducting training schools for prospective driver's license examiners.

As part of the transfer, the bill does the following:

- Creates a driver's license examination section in the Department of Public Safety, rather than as a division of the State Highway Patrol;
- Requires the Director and the Registrar of Motor Vehicles to determine when it is possible to locate a driver's examination station at or near a deputy registrar's office, rather than requiring the Registrar and the Superintendent to cooperate to the fullest extent possible in co-location of the offices;
- Requires the Director, rather than the Superintendent, to remit a proportionate share of rent plus a share of utility costs to a deputy

[150] R.C. 2981.13, not in the bill.

registrar when a driver's examination station is located in a deputy registrar's office;

- Requires a deputy registrar assigned to a driver's license examination station to remit a rental fee to the Director, rather than the Superintendent, and continues the requirement of existing law that any such rental fees be deposited into the Registrar Rental Fund and used only to pay rent and expenses of driver's license examination stations;

- Allows the Director, rather than the Superintendent with the Director's approval, to appoint driver's license examiners and clerical personnel and to set qualifications for examiners.

Electronic remedial driving courses

(R.C. 4510.037 and 4510.038)

The bill allows the Director of Public Safety to approve a course of remedial driving instruction that permits students to take the entire remedial course via video teleconferencing or the Internet. At present, not more than 50% of the course may be taken electronically; the rest of the course must be attended in person. Under receiving an application with a certificate or other proof of completion of an approved course, the person may apply to the Registrar of Motor Vehicles for a credit of two points on the person's driving record – unless taking the course was mandated by a court. Not more than one two-point credit may be granted during any one three-year period, and not more than five two-point credits may be granted during a person's lifetime.

(An inadvertent inconsistency exists between the two sections of the bill that allow the entire course to be taken electronically. One section allows the course to be taken via video teleconferencing; the other section allows the course to be taken via video teleconferencing or the Internet. The latter is correct.)

Distribution of fines for seatbelt violations

(R.C. 4511.191, 4513.263, 4765.07, and 5503.04)

The bill requires all state and local seatbelt violation fine money to be deposited into the existing Trauma and Emergency Medical Services Fund. The bill retains the existing grant program of the State Board of Emergency Medical Services, but it eliminates the Trauma and Emergency Medical Services Grants Fund and requires all money that currently is deposited into that fund to be deposited instead into the Trauma and Emergency Medical Services Fund, which now will be the source for grants made under the grant program. The bill also eliminates the Elementary School Program

Fund, which is used by the Department of Public Safety to establish and administer elementary school programs that encourage seatbelt use.

The current distribution of seatbelt violation fine money is as follows:

(A) 8% to the Elementary School Program Fund;

(B) 2% to the Occupational Licensing and Regulatory Fund;

(C) 36% to the Trauma and Emergency Medical Services Fund;

(D) 54% to the Trauma and Emergency Medical Services Grants Fund.

The other money that currently is deposited into the Trauma and Emergency Medical Services Grants Fund consists of portions of certain driver's license reinstatement fees, fees and fines collected by the State Board of Emergency Medical Services, and portions of certain bail forfeitures.

Highway Patrol authority in privately owned prisons

(R.C. 5503.02(A))

The bill makes it clear that the existing discretionary authority of the Superintendent and troopers of the State Highway Patrol to enforce the criminal laws in state institutions extends to any prison that houses state of Ohio inmates within the boundaries of this state and that is being operated pursuant to an agreement with the Department of Rehabilitation and Correction pursuant to R.C. 9.06, to the same extent as if the prison were owned by this state.

Ohio Statehouse Safety and Security Study

(Section 701.10.10)

The bill requires the Department of Public Safety to conduct a study of the safety and security of the Ohio Statehouse complex. The study is to include recommendations for improving the security protocols while providing for the health, safety, and convenience of those who work in, or visit, the Statehouse. The report must be submitted to the Capitol Square Review and Advisory Board for adoption not later than December 1, 2012.

PUBLIC UTILITIES COMMISSION (PUC)

Motor-carrier regulation

- Revises and reorganizes the laws governing motor-carrier regulation by the Public Utilities Commission (PUCO), effective immediately.
- Changes the term "motor transportation company" to "for-hire motor carrier."
- Makes changes to certain motor-carrier laws to bring the laws into compliance with requirements for federal funding, including:

  --removing certain regulatory exemptions;

  --restricting other exemptions to intrastate commerce;

  --clarifying that public-utility exemptions do not extend to for-hire motor carriers or private motor carriers; and

  --increasing the cap on forfeitures from $10,000 to $25,000.
- Exempts from regulation as a for-hire motor carrier an entity operating motor vehicles for contractors on public road work.
- Removes a provision defining private motor carriers as persons providing transportation "for hire."
- Repeals public highway operation permit requirements for private motor carriers, and requirements that private motor carriers a duty to pay annual taxes to the PUCO and file liability insurance.
- Repeals a provision that would require publication of notice of a for-hire motor carrier's application for a certificate of public convenience and necessity, and repeals a requirement that would subject those applications to hearings.
- Explicitly states the manner in which certain exemptions for public utilities, for-hire motor carriers, and private motor carriers are to be construed.
- Permits the PUCO to grant temporary, emergency, intrastate operation, regulatory exemptions, and exemptions additional to those specified in the bill, for for-hire motor carriers or private motor carriers, but not persons who do not qualify as one of those types of carriers.

- May broaden the scope of rules to be adopted by the PUCO, governing the transportation of persons or property and the transportation or offering for transportation of hazardous materials, by clarifying that the rules apply to interstate and intrastate commerce.

- Applies the rules governing the transportation of persons or property to for-hire motor carriers or private motor carriers, but likely applies the rules regarding hazardous materials more broadly, to those carriers and to persons engaged in the transportation or offering for transportation of hazardous materials.

- Requires various rules of the PUCO governing transportation, including general liability insurance requirements, to be "not incompatible with" requirements of the United States Department of Transportation.

- Requires inspectors and employees to conduct motor vehicle and driver inspections (and declare out-of-service violations) consistent with the North American Standard Inspection Procedure of the Commercial Vehicle Safety Alliance and the standards of the United States Department of Transportation.

- Eliminates caps on fees for roadside inspections and compliance reviews, of $1,000 and $10,000, respectively.

- Eliminates a provision that would require freight cargo insurance for the issuance of a certificate of public convenience and necessity to a for-hire motor carrier, but maintains the requirement for household goods carriers.

- Eliminates provisions governing the cancellation or lapse of freight cargo insurance.

- Limits the laws governing the transportation of household goods to intrastate commerce, but maintains the PUCO's authority to enforce federal consumer protection provisions related to the transportation of household goods in *interstate* commerce.

- Requires the PUCO to adopt rules governing the suspension and revocation of certificates of public convenience and necessity for for-hire motor carriers, and requires suspension upon request of a for-hire motor carrier.

- Requires unified carrier registration fees to be identical to those established by the Unified Carrier Registration Act Board.

- Expressly requires the PUCO to adopt rules applicable to the filing of annual update forms by for-hire motor carriers.

- Limits the payment of annual taxes by for-hire motor carriers to those operating solely in intrastate commerce.

- Removes requirements regarding the PUCO's determination of the amount of the apportioned per-truck registration fee for uniform registration for the transportation of hazardous materials.

- Abolishes and requires the transfer of balances from five funds, as well as $21 million from the Public Utilities Fund, into the Public Utilities Transportation Safety Fund, created by the bill.

- Requires most of the fees, taxes, fines, and forfeitures under the bill to be deposited into the Public Utilities Transportation Safety Fund, for the PUCO's nonrailroad transportation activities.

- Requires that certain excess fees, taxes, fines, and forfeitures, after a point of parity is reached between the Public Utilities Transportation Safety Fund and the appropriation from the fund, be deposited into the GRF, whereas some of those fees go to the Department of Public Safety under existing law.

- Removes the PUCO from the functions of regulating rates, routes, and territories of motor carriers, and eliminates the requirement that would apply to for-hire motor carriers, requiring them to file time and service schedules; also changes state policy accordingly.

- Removes references to the bill's provisions that govern motor carriers in sections dealing exclusively with railroads, since the bill provides that motor-carrier law no longer applies to railroads.

Natural gas investments in gathering and storage facilities

- Permits a regulatory exemption for natural gas companies' investments in gathering facilities placed into service before 2010, and any related service.

- Requires, for an exemption for pre-2010 gathering facilities, a true-up if the prior-rate-case value of the investments to be exempted exceeds the value of *nonexempt* investments placed into service after the date certain used in the last rate case, such that the company's gross-annual-revenue entitlement is reduced accordingly.

- Requires that a regulatory exemption for storage or gathering facilities placed into service at any time be sought as part of a rate case.

Revisions to motor-carrier regulations

(R.C. 4905.01, 4909.01, 4909.17, 4921.01, 4921.05, 4923.01; technical and conforming changes in various R.C. sections; R.C. 4511.01, 4766.01 (not in the bill))

Effective immediately, the bill revises and reorganizes the regulations governing motor carriers. Mainly, the revisions are accomplished by repealing Chapters 4919., 4921., and 4923., as well as other individual sections, and reenacting new Chapters 4921. and 4923., and enacting other new sections. But, much of the bill's new language consists of the repealed language that is recodified and reenacted. So, underlined text in the bill for these areas does not necessarily indicate change. This analysis endeavors to specify what actual changes are being made by the bill.[151]

Altering terminology

The motor-carrier revisions include changing the following terms and redefining them, resulting in the following differences:

Existing law	Bill
"Motor transportation company" or "common carrier by motor vehicle"[152]	**"For-hire motor carrier"**
Specifies that the transportation is "for the public in general."	No provision.
Specifies that the transportation is "for hire."	Specifies that the transportation is "for compensation."
Excludes an entity engaged or proposing to engage as a private motor carrier as defined in existing law.	No provision.
Excludes entities transporting property exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations.	No provision. This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**").

[151] Note that "existing" R.C. sections referred to in footnotes in this portion of the analysis are not designated in the bill by the number referenced. Resort must be made to published versions of the Revised Code to examine those sections.

[152] Existing R.C. 4921.02.

Existing law	Bill
"Motor transportation company" or "common carrier by motor vehicle"[152]	**"For-hire motor carrier"**
Excludes the transportation of persons in taxicabs, certain transportation of farm supplies or farm products, the distribution of newspapers, the transportation of crude petroleum from gathering wells, the transportation of compost or shredded bark mulch, and the transportation of persons in carpool vehicles.	Same, except restricts the exemptions to intrastate commerce (e.g., an interstate taxicab would still be subject to regulation as a for-hire motor carrier). This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**"). The bill defines "intrastate" commerce as any trade, traffic, or transportation in any state that is not "interstate commerce" (which itself is defined in the bill as trade, traffic, or transportation in the United States that is between a place in a state and a place outside of that state (including a place outside of the United States), between two places in a state through another state or a place outside of the United States, or between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States).
Excludes the transportation of the injured, ill, or deceased by hearse or ambulance.	Same, except restricts the exemption to intrastate commerce, and defines "ambulance" as any motor vehicle that is specifically designed, constructed, or modified and equipped and is intended to be used to provide basic life support, intermediate life support, advanced life support, or mobile intensive care unit services and transportation of persons on Ohio's streets or highways who are seriously ill, injured, wounded, or otherwise incapacitated or helpless. This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**").
No provision.	Excludes the operation of motor vehicles for contractors on public road work.
No provision.	Includes a vehicle that is designed and used solely for the transportation of nonstretcher-bound persons, whether hospitalized or handicapped or whether ambulatory or confined to a wheelchair, if the vehicle otherwise would qualify as a for-hire motor carrier.
Excludes transportation of pupils in school buses to or from school sessions or events.	Same, except restricts the exemption to intrastate commerce, and defines "school bus" as a bus designed for carrying more than nine passengers that is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school

Existing law	Bill
"Motor transportation company" or "common carrier by motor vehicle"[152]	**"For-hire motor carrier"**
	function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function, but excludes from the "school bus" definition all of the following if they are *not* devoted exclusively to the transportation of children to and from a school session or a school function (i.e., they could be subject to regulation as for-hire motor carriers): --a bus operated by a municipally owned transportation system; --a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within those limits and the territorial limits of immediately contiguous municipal corporations; --a "common passenger carrier." Also excludes from the "school bus" definition (i.e., this type could be subject to regulation as a for-hire motor carrier) a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care center or type A family day-care home to a school if the van or bus does not have more than 15 children in the van or bus at any time.
Specifies that the terms include every corporation, company, association, joint-stock association, person, firm, or copartnership, and their lessees, legal or personal representatives, trustees, and receivers or trustees appointed by any court.	Specifies that the term includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.
Specifies that the regulations apply whether the transportation is directly or by lease or other arrangement.	No provision.
Specifies that the transportation is "in or by motor-propelled vehicles," defined as any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks.	Specifies that the transportation is by "motor vehicle" (defined in the bill as any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of persons or property, except a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed

Existing law	Bill
"Motor transportation company" or "common carrier by motor vehicle"[152]	**"For-hire motor carrier"**
	overhead wire, furnishing local passenger transportation similar to street-railway service).
Specifies that all laws regulating the business of motor transportation, the context notwithstanding, apply to motor transportation companies or common carriers by motor vehicle.	No provision.

Existing law	Bill
"Private motor carrier" or "contract carrier by motor vehicle"[153]	**"Private motor carrier"**
Specifies that the transportation is "for hire."	No provision.
Specifies that the business is the "private carriage" of persons or property.	Specifies that the business is "transporting" persons or property.
Excludes an entity engaged or proposing to engage as a private owner or operator of motor vehicles employed or used by a private motor carrier.	No provision.
Excludes an entity engaged or proposing to engage as a private owner or operator of motor vehicles employed or used by a for-hire motor carrier.	No provision.
Excludes entities transporting property exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations.	No provision. This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**").

[153] Existing R.C. 4923.02.

Existing law	Bill
"Private motor carrier" or "contract carrier by motor vehicle"[153]	**"Private motor carrier"**
Excludes not-for-hire church buses if the transportation is exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations.	No provision.
Excludes the transportation of persons in taxicabs, the transportation of farm supplies to the farm or farm products from farm to market, the transportation of crude petroleum from gathering wells, the transportation of compost or shredded bark mulch, the operation of motor vehicles for contractors on public road work, and the transportation of persons in carpool vehicles.	Same, except restricts the exemptions to intrastate commerce (e.g., an interstate taxicab would be subject to regulation as a private motor carrier). This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**").
Excludes the towing of disabled or wrecked motor vehicles.	No provision.
No provision.	Excludes the intrastate transportation of farm supplies to food fabricating plants.
Excludes the transportation of newspapers.	Limits the exclusion to the "distribution" of newspapers, and limits the exclusion to intrastate commerce.
Excludes the transportation of the injured, ill, or deceased by hearse or ambulance.	Same, except restricts the exemption to intrastate commerce, and defines "ambulance" (as explained above for the "for-hire motor carrier" definition).
No provision.	Includes a vehicle that is designed and used solely for the transportation of nonstretcher-bound persons, whether hospitalized or handicapped or whether ambulatory or confined to a wheelchair, if the vehicle otherwise would qualify as a for-hire motor carrier.
Excludes the transportation of pupils in school buses to and from school sessions or events.	Same, except restricts the exemption to intrastate commerce, and defines "school bus" (as explained above for the "for-hire motor carrier" definition), which could subject the municipally owned buses, mass transit systems, and common passenger carriers to regulation as private motor carriers if they are *not* devoted exclusively to school transportation. Also as explained above, vans or buses of certain day care centers and homes could be subject to regulation as private motor carriers.

Existing law	Bill
"Private motor carrier" or "contract carrier by motor vehicle"[153]	**"Private motor carrier"**
Excludes certain motor carriers engaged in the carriage of persons in emergency or additional motor vehicles on charter party trips to or from any point within a county where the motor carrier provides regular route scheduled service, if the vehicle is reported and the applicable tax is paid.	No provision.
Specifies that the terms include every corporation, company, association, joint-stock association, person, firm, or copartnership, and their lessees, legal or personal representatives, trustees, and receivers or trustees appointed by any court.	Specifies that the term includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.
Defines the terms in part as a corporation, company, etc. "not included in the definition under section 4921.02 of the Revised Code," which defines motor transportation company, among other terms.	Defines the term in part as "a person who is not a for-hire motor carrier."
Specifies that the business is the "private carriage" of persons or property.	Specifies that the business is "transporting" persons or property.
Specifies that the transportation is "in or by motor-propelled vehicles," defined as any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks.	Specifies that the transportation is "by motor vehicle" (defined in the bill as any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of persons or property, except a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service).

Regulation as public utilities

For-hire motor carriers as public utilities

(R.C. 4905.01, 4905.02, 4905.03, and 4921.01)

The bill changes the term "motor transportation company" to "for-hire motor carrier," and redefines the term, within the definition of a "public utility." The effect is that for-hire motor carriers, as defined by the bill, would be subject to regulation as public utilities. Any resulting diversity between the two definitions would subject or exempt certain entities from regulation as public utilities. The following are the major differences between the two definitions:

- The bill includes as a public utility the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.

- The bill uses "for compensation" whereas existing law uses "for hire."

- The bill replaces "by motor-propelled vehicle," with "by motor vehicle," (definition discussed above in table).

- The bill strikes "for the public in general, over any public street, road, or highway in this state" but retains "upon the highways" in defining "motor vehicle."

- The bill strikes "carrying and" from "engaged in the business of carrying and transporting persons or property."

Also, the bill does not exclude from regulation as a public utility a for-hire motor carrier transporting property exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations. Existing law, though unclear, could be construed to permit an exclusion for this type of transportation. Finally, the bill *excludes* from regulation as a public utility a for-hire motor carrier operating motor vehicles for contractors on public road work. Existing law does not permit this exclusion.[154]

[154] Existing R.C. 4921.02.

Public-utility exemptions do not extend to for-hire motor carriers

(R.C. 4905.02(B)(1))

The bill clarifies that the following existing exemptions for certain entities from regulation as public utilities do not extend to for-hire motor carriers operated in connection with such entities:

- Nonprofit electric light companies;
- Nontelephone utilities owned and operated by and for the customers;
- Railroads;
- Providers, with respect to their provision of advanced telecommunications services, broadband service, information service, Internet protocol-enabled services, and newer telecommunication services.

This clarification would alleviate a compliance issue noted by the Federal Motor Carrier Safety Administration, under the Motor Carrier Assistance Program (MCSAP). Under MCSAP, states can receive funding to increase motor-carrier safety.[155] To qualify for funding, states must adopt certain federal motor carrier safety and hazardous materials regulations, and enforce them against certain motor carriers.[156]

Limitations to exemptions and exclusions

Public utility exemptions do not exempt private motor carriers

(R.C. 4905.02(B)(2))

The bill specifies that existing exemptions for certain entities from regulation as public utilities (specifically those listed in "**Regulation as public utilities**") must not be construed to exempt a private motor carrier operated in connection with any such entity from compliance with Chapter 4923. of the Revised Code, which applies in part to private motor carriers, the law governing uniform registration and permitting of persons engaged in the highway transportation of hazardous materials, or the law governing unified carrier registration.

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[155] U.S. Department of Transportation, Federal Motor Carrier Safety Administration, "Motor Carrier Safety Assistance Program," available at <http://www.fmcsa.dot.gov/safety-security/safety-initiatives/mcsap/mcsap.htm> (last visited March 16, 2012).

[156] 49 Code of Federal Regulations (C.F.R.) 350.201(a).

This provision is probably unnecessary. First, private motor carriers are not classified as public utilities. So a provision governing private motor carriers, such as those in Chapter 4923., would apply to those carriers regardless of any connection that a carrier might have to a nonpublic utility. Second, the law governing uniform registration and permitting and unified carrier registration apply broadly to "persons," not just private motor carriers. So those laws would also apply regardless of any connection that a "person" had with a non public utility.

For-hire motor carrier exclusions do not exempt persons

(R.C. 4921.01(B), 4923.01(B), and 4923.04(A)(1))

The bill specifies that the exclusions from the definition of "for-hire motor carrier" (such as taxicab transportation, school bus transportation, and the transportation of farm supplies; see the chart within "**Motor-carrier regulations**" for the full list) must not be construed to exempt persons from compliance with the law governing uniform registration and permitting, or the law governing unified carrier registration. The bill also specifies that the same exclusions must not be construed to exempt persons from compliance with the Public Utilities Commission's (PUCO's) rules applicable to the transportation and offering for transportation of hazardous materials, rules governing motor vehicle inspections, rules governing motor carrier or vehicle audits, rules governing the highway routing of hazardous materials, or rules regarding commercial driver's licenses.

The provisions limiting how the exclusions are to be construed are generally unnecessary because most laws and roles described in the previous paragraph apply broadly to "persons," not just for-hire motor carriers. So even if a person would not qualify as a for-hire motor carrier, that person would still be subject to laws that apply to "persons." But, the rules regarding commercial driver's licenses *are* limited to for-hire motor carriers and private motor carriers. Therefore, they would not apply to a "person" who would not qualify as a for-hire motor carrier. Thus, the bill's provision limiting how the exclusions are to be construed may contradict the PUCO's authority regarding rules for commercial driver's licenses.

Private-motor-carrier exclusions do not exempt persons

(R.C. 4923.02(D))

The bill specifies that the exclusions from the definition of "private motor carrier" (such as taxicab transportation, school bus transportation, and the transportation of farm supplies; see the chart within "**Motor-carrier regulations**" for the full list) must not be construed to exempt persons from compliance with the PUCO's rules applicable to the transportation and offering for transportation of hazardous materials, rules

governing motor vehicle inspections, rules governing motor carrier or vehicle audits, rules governing the highway routing of hazardous materials, or rules regarding commercial driver's licenses.

These provisions limiting how the exclusions are to be construed are generally unnecessary because most of the laws and rules described in the previous paragraph apply broadly to "persons," not just private motor carriers. So even if a person would not qualify as a private motor carrier, that person would still be subject to laws that apply to "persons." But, the rules regarding commercial driver's licenses *are* limited to for-hire motor carriers and private motor carriers. Therefore, they would not apply to a "person" who would not qualify as a private motor carrier. Thus, the bill's provision limiting how the exclusions are to be construed may contradict the PUCO's authority regarding rules for commercial driver's licenses.

Temporary and additional intrastate exemptions

Authority to grant the exemptions

(R.C. 4923.02(B) and (C))

The bill permits the PUCO to grant a for-hire motor carrier or a private motor carrier a temporary exemption for intrastate operations in an emergency. The temporary exemption may be from any of the following requirements under the bill:

- Rules applicable to the transportation of persons or property by for-hire motor carriers and private motor carriers;
- Rules applicable to the highway transportation and offering for transportation of hazardous materials (but not uniform registration and permitting);
- Motor vehicle and driver inspections;
- Premises and motor vehicle audits;
- Rules applicable to the highway routing of hazardous materials; or
- Forfeitures.

The bill requires that the emergency be declared by the Governor, or that the PUCO Chairperson (or designee) declares a transportation-specific emergency.

The bill also permits the PUCO to adopt rules, not incompatible with the requirements of the United States Department of Transportation (USDOT), to provide

exemptions, in addition to those granted by the bill, for for-hire motor carriers or private motor carriers in intrastate commerce.

Temporary and additional exemptions not available to persons

(R.C. 4923.02(B) and (C))

The bill does not permit emergency or additional exemptions to be granted to a person who is not a for-hire motor carrier or a private motor carrier. For example, a person engaged in the transportation of crude petroleum would not qualify as a for-hire motor carrier or private motor carrier. But the person would be subject to a motor vehicle inspection or audit, as a person engaged in the transportation of hazardous material. The person would not be eligible for an emergency or additional exemption from the inspection or audit.

Temporary and additional exemptions do not exempt persons

(R.C. 4923.02(D))

The bill also specifies that the temporary and additional exemptions must not be construed to exempt "persons" from compliance with the PUCO's rules applicable to the transportation and offering for transportation of hazardous materials, rules governing motor vehicle inspections, rules governing motor carrier or vehicle audits, rules governing the highway routing of hazardous materials, or rules regarding commercial driver's licenses.

The meaning of this provision is unclear in this context, but it appears to be unnecessary regardless of the meaning. Except, as discussed earlier (see, "**For-hire motor carrier exclusions do not exempt persons**" and "**Private-motor-carrier exclusions do not exempt persons**"), it may appear to contradict the PUCO's authority to adopt rules regarding commercial driver's licenses – as that authority is limited to for-hire motor carriers and private motor carriers, and the provision addresses "persons."

Repeal of requirement for consent of municipal corporation

(R.C. 4921.05, repealed)

The bill repeals a requirement that a for-hire motor carrier carrying persons whose complete ride is wholly within the territorial limits of a municipal corporation, or within those limits and the territorial limits of immediately contiguous municipal corporations, must obtain consent of the municipal corporations.

PUCO adoption of rules governing transportation

Rules for the transportation of persons or property

(R.C. 4905.81(C) and 4923.04(A)(1) and (C))

The bill requires the PUCO to adopt rules applicable to the transportation of persons or property. Existing law permits, but does not require this adoption.[157] The bill limits the rules to transportation by for-hire motor carriers and private motor carriers, whereas existing law may not be limited in this regard. One existing law provision is limited to private motor carriers,[158] while two other existing law provisions are not limited to any specific carrier.[159]

But the bill may broaden the scope of the rules to be adopted, by removing, in one provision of existing law, a description of the rules as "safety" rules.[160] But in another provision, the bill maintains the description as "safety" rules.[161] However, violations of rules adopted under this latter provision are not subject to forfeitures under the bill.

The bill also expands from existing law, in both of its nearly identical rulemaking provisions, the scope of the rules to interstate *and* intrastate commerce. The rules may be more limited in existing law: one of three similar provisions in existing law limits the rules to interstate commerce, another limits them to intrastate commerce, and a third does not appear to contain a limitation.[162]

The bill also modifies the scope of the rules by requiring them not to be incompatible with the requirements of the USDOT. A provision in existing law requires the rules to be consistent with, and equivalent in scope, coverage, and content to the federal Motor Carrier Safety Act of 1984, and regulations adopted under it.[163] Two other similar provisions in existing law do not require this equivalency.[164]

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[157] Existing R.C. 4919.79(B) and 4923.20(B).

[158] Existing R.C. 4923.20(B).

[159] Existing R.C. 4919.79(B) and 4921.04(D).

[160] R.C. 4923.04(A)(1).

[161] R.C. 4905.81(C).

[162] Existing R.C. 4919.79(B), 4921.04(D), and 4923.20(B).

[163] Existing R.C. 4919.79(C).

[164] Existing R.C. 4921.04(D) and 4923.20(B).

Finally, the bill removes a requirement, in the rulemaking provision limited to private motor carriers, that the rules must not affect any rights or duties granted to or imposed on the operator of a motor vehicle under Ohio law governing traffic laws for the operation of motor vehicles.[165]

Rules for the transportation of hazardous materials

(R.C. 4905.81(D) and 4923.04(A)(2))

In two provisions, the bill requires the PUCO to adopt rules applicable to the highway transportation and offering for transportation of hazardous materials. One of the provisions is limited to for-hire motor carriers and private motor carriers. The other provision also encompasses persons engaged in the highway transportation and offering for transportation of hazardous materials. The more limited provision would likely be out of compliance with requirements for federal funding under MCSAP. But that provision is located in a section specifying general requirements of the PUCO (R.C. Chapter 4905.); the bill does not impose forfeitures for violations of rules adopted under that specific section.

If the bill is interpreted to encompass persons engaged in the highway transportation and offering for transportation of hazardous materials for purposes of these rules, this is likely an expansion from existing law. There are four similar provisions in existing law permitting the adoption of these rules.[166] Only one of the four applies the adopted rules to everyone.[167]

The bill may broaden the scope of the rules to be adopted, by removing, in one provision, a description of the rules as "safety" rules.[168] But in the other provision, the bill maintains the description as "safety" rules.[169]

The bill also expands, in both of the provisions, the scope of the rules to interstate *and* intrastate commerce. The rules may be more limited in existing law: one of the four

[165] Existing R.C. 4923.20(B).

[166] Existing R.C. 4919.79(A) and (C), 4921.04(E), 4923.03(C), and 4923.20(C).

[167] Existing R.C. 4919.79(A).

[168] Compare R.C. 4923.04(A)(2) to existing R.C. 4919.79(A), 4921.04(E), 4923.03(C), and 4923.20(C).

[169] R.C. 4905.81(D).

provisions limits the rules to interstate commerce,[170] and the other three limit the rules to intrastate commerce.[171]

The bill may broaden the scope of the rules further by requiring them not to be incompatible with the requirements of the USDOT. Existing law requires them to be consistent with, and equivalent in scope, coverage, and content to the Hazardous Materials Transportation Act, as amended, and regulations adopted under it.[172]

Rules for the highway routing of hazardous materials

(R.C. 4923.11)

The bill modifies the existing law requirement that the rules for the highway routing of hazardous materials be consistent with, and equivalent in scope, coverage, and content to a portion of the federal Hazardous Materials Transportation Act, and regulations adopted under the portion. Instead, the bill requires that the rules not be incompatible with the requirements of the USDOT.[173]

Inspections

Authority of the PUCO

(R.C. 4905.06, 4923.06 and 4923.07)

The bill permits the PUCO, through the PUCO's inspectors or other authorized employees, to enter in or upon any motor vehicle of any for-hire motor carrier, private motor carrier, or person engaging in the transportation of hazardous material or hazardous waste, to inspect the motor vehicle or driver subject to rules adopted under the bill regarding the transportation of hazardous materials, persons, or property. The bill also permits the PUCO, through the inspectors or authorized employees, to enter in or upon the *premises* and motor vehicles of the same carriers and persons, to examine any records, documents, or property, for the purpose of assessing the safety, performance, and management controls associated with the carrier or person.

Given that there are four similar provisions in existing law, each containing some differences, the effect of these provisions of the bill on existing law is difficult to

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[170] Existing R.C. 4919.79(A).

[171] Existing R.C. 4921.04(E), 4923.03(C), and 4923.20(C).

[172] Compare R.C. 4905.81(D) and 4923.04(B) with existing R.C. 4919.79(A), 4921.04(E), 4923.03(C), and 4923.20(C).

[173] Compare R.C. 4923.11 with existing R.C. 4905.81(A).

determine.[174] But these provisions of the bill likely represent minimal change to the PUCO's inspection authority.

The bill also expressly permits inspectors and employees authorized to conduct inspections to, under the PUCO's direction, stop motor vehicles to inspect those vehicles and drivers to enforce compliance. The bill requires the inspectors and employees to conduct inspections consistent with the North American Standard Inspection Procedure (NASIP) of the Commercial Vehicle Safety Alliance and the USDOT's standards. The bill permits the inspectors and employees to declare drivers and motor vehicles out-of-service, consistent with the NASIP and the USDOT's standards. The Commercial Vehicle Safety Alliance is an international not-for-profit organization of local, state, provincial, territorial, and federal motor carrier safety officials and industry representatives. It promotes commercial motor vehicle safety and security by providing leadership to enforcement, industry, and policy makers.[175]

The bill permits the PUCO to adopt rules to carry out the inspection laws, but requires that the rules not be incompatible with the USDOT's requirements.

Authority of the Motor Carrier Enforcement Unit

(R.C. 4905.06 and 4923.06(B))

The bill may slightly expand the inspection authority under existing law of the Motor Carrier Enforcement Unit with regard to inspections of private motor carriers engaged in the intrastate transportation of persons. The bill permits them to enter in or upon "any property" of a private motor carrier engaged in the intrastate transportation of persons. Existing law limits the unit to "the premises" of not-for-hire private motor carriers.[176] Under existing law, the unit may enter in or upon any property of a motor transportation company engaged in the intrastate transportation of persons as well. The unit is within the Division of State Highway Patrol of the Department of Public Safety.

The bill also eliminates a provision in existing law that appears to permit "authorized employees" of the unit to enter in or upon any motor vehicle of a not-for-hire private motor carrier, for inspection purposes.[177] But the bill permits "authorized

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[174] Existing R.C. 4905.81(C), 4919.79(E), and 4923.20(D).

[175] Commercial Vehicle Safety Alliance, "Who We Are," available at <http://www.cvsa.org/about/index.php> (last visited March 16, 2012).

[176] Existing R.C. 4923.20(D).

[177] R.C. 4923.20(D).

employees" of the State Highway Patrol to conduct inspections, regardless of the type of transportation.

Repeal of permit requirements for private motor carriers

(R.C. 4923.04, 4923.05, 4923.06, 4923.07, 4923.08, 4923.09, 4923.11, 4923.13, and 4923.14, repealed)

The bill repeals a requirement that a private motor carrier obtain a permit to operate on any public highway in Ohio. Consequently, the bill repeals other provisions relating to permitting of private motor carriers, including application requirements, the requirement to give notice by newspaper publication, requirements for changes in operation, the requirements to file liability insurance with the PUCO, and provisions relating to death and dissolution of a private motor carrier.

The bill also eliminates the requirement that private motor carriers pay annual taxes.

Certificates of public convenience and necessity (CPCNs)

CPCN applications and requirements for issuance, including taxes

(R.C. 4921.03, 4921.05, 4921.13(A), and 4921.19(A))

The bill requires the PUCO to issue a certificate of public convenience and necessity (CPCN) to an applicant who does all of the following:

- Files a complete and accurate application ("filing a registration application" is required under existing law), which the bill requires to include a certification that the applicant understands and is in compliance with the applicable service, operation, and safety laws of Ohio, and that the applicant meets the general liability insurance requirements that apply to for-hire motor carriers under the bill. Existing law requires the filing of an application, and meeting the applicable insurance, service, and safety rules of the PUCO.[178]

- Agrees to maintain accurate and current business and insurance information with the PUCO, in accordance with the PUCO's rules.

- Pays all applicable registration fees for unified carrier registration, any forfeitures imposed under the penalty provisions in the bill, and the applicable tax due from a for-hire motor carrier under the bill, in the

[178] Existing R.C. 4921.08 and 4921.101(A).

following amounts: for each motor vehicle used for transporting persons and for each commercial tractor used for transporting property, $30, and for each other motor vehicle transporting property, $20. These tax amounts are the same as are due under existing law for the issuance of a CPCN.[179]

The bill requires the PUCO to adopt rules applicable to the payment of the taxes. The rules must not be incompatible with the requirements of the USDOT, and they must at least address the form and manner in which taxes may be paid. The bill also eliminates the following requirements regarding these taxes:

- That they be reckoned as from the beginning of a quarter in which the CPCN is issued, or from when the use of equipment under any existing CPCN began (but maintains this requirement for annual taxes (see "**Annual taxes on for-hire motor carriers**")); and

- That the PUCO must account for the taxes collected, and pay them to the Treasurer of State on or before the 15th of each month (for the taxes collected in each preceding month).[180]

The bill also eliminates a provision that permits any vehicle or tractor for which the CPCN tax has been paid to be used by another for-hire motor carrier without further payment of the tax.[181]

The bill eliminates a requirement that the CPCN application contain both of the following:

- The principal office or place of business of such motor transportation company; and

- Full information concerning the physical property used or to be used by the applicant.[182]

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[179] Existing R.C. 4921.18(A).

[180] Existing R.C. 4921.18(E) and (F).

[181] Existing R.C. 4921.18(D).

[182] Existing R.C. 4921.08(A) and (B).

Freight cargo insurance not required for CPCN

(R.C. 4921.09(B))

The bill does not require a for-hire motor carrier to obtain freight cargo insurance to receive a CPCN, but retains the existing law requirement for certificates for the transportation of household goods – see "**Freight cargo insurance**."[183]

General liability insurance requirements for CPCNs

(R.C. 4921.09(C))

The bill requires the PUCO to adopt rules regarding the general liability insurance requirements, which requirements are the same under the bill as they are under existing law.[184] The rules are not to be incompatible with the requirements of the USDOT, which requires very specific levels of financial responsibility for various types of motor carriers, based on the type of property or number of passengers transported, and the vehicle weight.[185] The bill requires the PUCO's rules to address, at minimum, all of the following:

- The minimum levels of financial responsibility for each type of for-hire motor carrier;
- The form and type of documents to be filed with the PUCO;
- The manner by which documents may be filed with the PUCO; and
- The timelines for filing documents with the PUCO.

Cancellation or lapses of insurance

(R.C. 4921.09(D))

The bill restricts existing law requirements governing insurance cancellation or lapses to just general liability insurance. In existing law, these requirements appear to apply to both freight cargo insurance and general liability insurance (see "**Freight cargo insurance**").[186] The bill also modifies these requirements to clarify that all operations under a CPCN must cease immediately when general liability insurance

[183] Compare R.C. 4921.09(B) with existing R.C. 4921.11(C).

[184] See R.C. 4921.09(A).

[185] 49 Code of Federal Regulations (C.F.R.) 387.9 and 387.303.

[186] Existing R.C. 4921.11(D).

lapses or is cancelled. The bill also clarifies that operations under the CPCN may not restart until a replacement general liability insurance certificate, policy, or bond is filed with the PUCO.

The bill also removes a requirement that an insurance certificate, policy, or bond "provide that" ten days' written notice must be given to the PUCO of the intent to cancel the insurance. This requirement may apply under existing law to both general liability insurance and freight cargo insurance (see "**Freight cargo insurance**").[187]

Repeal of notice provisions for CPCN applications

(R.C. 4921.09, repealed)

The bill repeals a requirement that a motor transportation company must give notice of the filing of a CPCN application, if intrastate operations are proposed, by newspaper publication once a week for three weeks. The bill also eliminates a requirement that the PUCO give written notice of the filing of the application to all like companies operating between fixed termini or over a regular route, street railways, interurban railroads, and railroads operating in Ohio. The bill also eliminates a requirement for a hearing on the application.

PUCO's authority to deny CPCNs

(R.C. 4921.03)

The bill expressly permits the PUCO to deny the issuance of a CPCN if an applicant fails to comply with the bill's requirements for CPCN issuances, or rules adopted regarding applications for CPCNs.

New applications or supplementing applications

(R.C. 4921.03(D))

The bill permits a for-hire motor carrier to file a new CPCN application or supplement a former application any time after a CPCN is granted or refused. Existing law permits this, but requires the new application or supplementation to be for the purpose of changing, extending, or shortening the route, or doing any other thing not otherwise specifically provided for that the applicant might be permitted to do under Ohio's general statutory laws and regulations.[188]

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[187] *Id.*

[188] Existing R.C. 4921.16.

CPCN suspension

(R.C. 4921.07(A) and 4921.19(B))

The bill requires the PUCO to adopt rules regarding procedures and timelines for CPCN suspension, and requires suspension if a for-hire motor carrier does at least any of the following:

- Fails to file a complete and accurate CPCN application (presumably this would require a determination after a CPCN had been granted that the application for that CPCN had not been complete and accurate);
- Fails to maintain accurate and current business and insurance information with the PUCO;
- Fails to maintain proper proof of insurance or proper levels of insurance under the bill's requirements; or
- Fails to pay all applicable unified carrier registration fees, any applicable annual taxes, which would apply under the bill to a for-hire motor carrier operating solely in intrastate commerce, on top of the initial CPCN tax, and any forfeitures imposed under the bill.

The bill also requires suspension upon request of the for-hire motor carrier.

Existing statutory law does not expressly permit or require suspension of a CPCN, though the PUCO's authority to order a suspension has been interpreted to be encompassed within the PUCO's authority to revoke, alter, or amend a CPCN under existing law.[189]

CPCN revocation

(R.C. 4921.07(B))

The bill extends, to some extent, the remedy period before revocation of a CPCN may occur. Existing law requires 15 days before a CPCN may be revoked "for good cause," and 60 days before a CPCN may be "cancelled" for failure to give convenient and necessary service.[190] The bill requires 60 days before a CPCN may be revoked, which period may be extended for good cause shown. During this time, the for-hire motor carrier may remedy the deficiency or refute the revocation. Existing law, but not

[189] *Dworkin, Inc. v. Public Utilities Com.*, 159 Ohio St. 174, 181 (1953).

[190] Existing R.C. 4921.10.

the bill, explicitly requires that the for-hire motor carrier receive an "opportunity to be heard" before revocation may occur.[191] The bill also requires that notice be written, and that the notice indicate the nature of the deficiency, a proposed revocation effective date, and the means by which the deficiency may be remedied. The bill requires the PUCO to adopt rules regarding procedures and timelines for CPCN revocation if the CPCN is already suspended and the deficiency is not remedied. The bill also requires that a CPCN first be suspended before it may be revoked.

Removal of provisions regarding CPCN transference, death, and dissolution

(R.C. 4921.13, repealed)

The bill repeals provisions governing what happens to a CPCN upon death or dissolution of a partnership, and related provisions governing transference of a CPCN.

Unified carrier registration and fees

(R.C. 4921.11 and 4921.19(G))

The bill clarifies and modifies the existing law requirement that the PUCO must adopt rules governing unified carrier registration. Existing law describes the requirement as "applicable to motor carrier registration."[192] The bill clarifies that the requirement pertains to the Unified Carrier Registration Plan. The bill also requires the PUCO's rules to be "applicable to" the rules, procedures, and fee schedules adopted under the plan. The bill eliminates an existing law requirement that the PUCO's rules must be equivalent in scope, coverage, and content to the USDOT's registration rules.[193] But the bill requires that the registration *fees* be identical to those established by the Unified Carrier Registration Act Board, as approved by the FMCSA for each year.

The Unified Carrier Registration Plan is the organization of state, federal, and industry representatives responsible for developing, implementing, and administering the payment of fees and the collection and distribution of registration and financial-responsibility information.[194] The bill does not restrict the PUCO's authority regarding unified carrier registration to for-hire motor carriers or private motor carriers. In fact, unified carrier registration applies to motor carriers, motor private carriers, brokers, and leasing companies, as those terms are used in federal law. Under the plan, these

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[191] *Id*.

[192] R.C. 4919.76.

[193] *Id*.

[194] 49 United States Code (U.S.C.) 14504a(a)(8) and (9).

entities must pay annual fees to a "base-state," designated by the entity usually as the state of its principal place of business. States that participate in the plan and that comply with plan requirements may retain a portion of the revenues generated under the plan.[195]

Annual update forms

(R.C. 4905.81(E) and 4921.13(A))

The bill expressly requires the PUCO to adopt rules applicable to the filing of annual update forms by for-hire motor carriers. The rules must not to be incompatible with the requirements of the USDOT and must address, at minimum:

- The information and certifications that must be provided on an annual update form, including a certification that the carrier continues to be in compliance with Ohio's applicable laws; and

- Documentation and information that must be provided regarding proof of financial responsibility.

The bill is not clear as to whether documentation and information regarding financial responsibility must be provided on an annual basis, or as part of the annual update form.

Existing law requires the PUCO to require "the filing of annual and other reports and of other data" by motor transportation companies. The bill modifies this requirement to read: "the filing of reports and other data" and applies it to for-hire motor carriers. Along the same lines, the bill repeals a provision permitting a motor transportation company owning two or more CPCNs to file a "combined report."[196]

Annual taxes on for-hire motor carriers

(R.C. 4921.13(A), (C), and (F) and 4921.19(A) to (C))

The bill limits the requirement of the payment of annual taxes by for-hire motor carriers to only those who operate solely in intrastate commerce. Existing law requires that the annual taxes be paid by motor transportation companies "operating in this state."[197] Under both the bill and existing law, the annual taxes are to be paid by for-hire

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[195] 49 U.S.C. 14504a(a)(2), (g), and (f).

[196] Existing R.C. 4921.04(F) and 4921.06.

[197] Existing R.C. 4921.18(A).

motor carriers or motor transportation companies, respectively, in addition to the taxes required for the issuance of a CPCN. The annual taxes are the same amounts as the CPCN taxes, which are also the same amounts as in existing law: for each motor vehicle used for transporting persons and for each commercial tractor used for transporting property, $30, and for each other motor vehicle transporting property, $20.

The bill also expands and makes slightly earlier the time period during which for-hire motor carriers must pay the annual taxes. Existing law requires payment between July 1 and July 15,[198] and the bill requires payment between May 1 and June 30.

The bill requires the PUCO to issue a tax receipt for payment of the annual taxes upon satisfaction of all of the following:

- The filing of a complete and accurate annual update form (see "**Annual update forms**");
- That proof of financial responsibility remains in effect;
- Payment of applicable unified carrier registration fees, "all applicable taxes" (which could be interpreted as the annual taxes and those required for the issuance of a CPCN), and any forfeitures imposed under the bill.

The bill requires the for-hire motor carrier to carry a copy of the tax receipt in each motor vehicle operated by the carrier, and to maintain the original copy at the carrier's primary place of business.

The bill limits and modifies the applicability of an existing law requirement that taxes be reckoned as from the beginning of a quarter.[199] The bill applies this requirement to the annual taxes, whereas existing law applies it to both the CPCN taxes and the annual taxes. Also, the bill requires that the taxes be reckoned from the beginning of the quarter in which the *tax receipt* is issued, or from when the use of equipment under "any existing tax receipt" began. Existing law requires that the taxes be reckoned from the beginning of the quarter in which the *CPCN* is issued, or from when the use of equipment under any existing CPCN began.

The bill also eliminates a provision requiring the PUCO to account for the annual taxes collected, and pay them to the Treasurer of State on or before the 15th of each

[198] Existing R.C. 4921.18(A).

[199] Existing R.C. 4921.18(F).

month (for the annual taxes collected in the preceding month, which would be only July under existing law).[200]

The bill also eliminates a provision that permits any vehicle or tractor for which the annual tax has been paid to be used by another for-hire motor carrier without further payment of the tax. The bill eliminates a similar exemption for a city transit company engaged principally in the transportation of persons within the territorial limits of a municipal corporation, or within contiguous municipal corporations to each other, that extends its operations outside of the municipal corporations.[201]

The bill requires the PUCO to adopt rules applicable to the payment of annual taxes by for-hire motor carriers. The rules must not be incompatible with the requirements of the USDOT. The rules must at least address the form and manner in which the taxes may be paid.

Uniform registration and permitting for transportation of hazardous materials

(R.C. 4921.15)

The bill clarifies that existing law governing the uniform registration and permitting for the highway transportation of hazardous materials applies broadly to persons (not just for-hire motor carriers or private motor carriers). Existing law uses both "persons" and "carriers."

The bill removes the requirement that PUCO consider certain factors in determining when the apportioned per-truck registration fee is to be levied and, if the fee is levied, the amount of the fee. With regard to whether or not the fee is to be levied, the bill removes the requirement that PUCO consider the difference between the appropriation for the Hazardous Materials Registration Fund and revenue from the operation of the laws governing uniform registration. With regard to the amount of the fee, the bill removes the requirement that the total revenue from the fee not exceed the appropriation for the Hazardous Materials Registration Fund (abolished by the bill). The bill also eliminates a provision that permits an interested party to appeal, to the Court of Appeals of Franklin County, an order establishing the apportioned per-truck registration fee.[202]

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[200] Existing R.C. 4921.18(E).

[201] Existing R.C. 4921.18(D) and 4921.20.

[202] Compare R.C. 4921.15 to existing R.C. 4905.80.

Transportation of household goods

General changes

(R.C. 4921.03(C), 4921.30, 4921.32, 4921.34, 4921.36, and 4921.38)

The bill names the certificate required for operation as a household goods carrier as a "certificate for the transportation of household goods." It also limits the laws governing household goods motor carriers to intrastate commerce. But the bill maintains the PUCO's authority to enforce federal consumer protection provisions related to the delivery and transportation of household goods in *interstate* commerce. The bill is not clear as to whether this enforcement authority would be limited to only those intrastate household goods carriers that also engage in interstate commerce.

The bill removes a provision limiting the laws governing household goods carriers to the transportation of household goods "over a public highway." The bill also permits the PUCO to accept the filing of tariffs establishing rates for the transportation of household goods, but it does not require household goods carriers to file these tariffs. Household goods carriers are required to file rate schedules with the PUCO under current law, but not the bill.[203]

Applications for the certificates for the transportation of household goods

(R.C. 4921.19(I) and 4921.34(A))

The bill clarifies that an application fee must be paid before a certificate for the transportation of household goods may be issued. The bill requires the fees to be set in amounts sufficient to carry out the purposes of the bill's provisions governing the transportation of household goods, and the bill's provisions regarding forfeitures. To the extent necessary, the PUCO is required by the bill to change the fee structure to ensure that neither over nor under collection of the fees occurs. The bill requires the fees to take into consideration the revenue generated from forfeitures "regarding the consumer protection provisions applicable to for-hire motor carriers engaged in the transportation of household goods."

Accordingly, the bill eliminates a requirement that the PUCO must consider, in determining fee amounts, the amount of fees collected versus the appropriations for the administration of household-goods-transportation requirements. Under existing law,

[203] Existing R.C. 4921.36, 4921.37, 4921.38, 4921.39, and 4921.40 were generally recodified by the bill as 4921.30, 4921.32, 4921.34, 4921.36, and 4921.38, respectively; compare R.C. 4921.03(C) to existing R.C. 4921.08 and 4921.23.

fees must then be reduced if the collected fees exceed the appropriations in a fiscal year.[204]

The bill may slightly expand the requirement that an applicant meet insurance requirements before a certificate for the transportation of household goods may be issued. The bill requires that the applicant's financial responsibility is in accordance with the PUCO's rules under the bill's provisions governing insurance. These provisions govern both freight cargo insurance requirements and requirements for general liability insurance, which is required for operation under a CPCN. Existing law requires only that the applicant's financial responsibility *relating to freight cargo insurance* is in accordance with the rules.[205]

Freight cargo insurance

(R.C. 4921.09(B), (D), and (E))

The bill requires a for-hire motor carrier to have adequate freight cargo insurance, only for the issuance of a certificate for the transportation of household goods. Under existing law, a motor transportation company must have freight cargo insurance in order to operate at all (under a CPCN).[206]

The bill requires that the PUCO's rules for cargo insurance (which the PUCO may adopt under existing law) must not be incompatible with the requirements of the USDOT. The USDOT requires household goods motor carriers to have $5,000 of security for loss or damage to goods on any one motor vehicle, and $10,000 for loss or damage occurring at any one time or place.[207] The bill removes an existing requirement that freight cargo insurance must insure the carrier against "all loss, in excess of [$1,000] and within the limits fixed in [the freight cargo insurance]."[208]

As discussed in "**Cancellation or lapses of insurance**," the bill eliminates requirements that may govern what happens when freight cargo insurance is cancelled or lapses. It also eliminates a provision that may require a freight cargo insurance certificate, policy, or bond to "provide that" ten days' written notice must be given to the PUCO of the intent to cancel the insurance. But existing law that is largely unchanged by the bill permits the PUCO to adopt rules governing cargo insurance. These rules

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[204] Existing R.C. 4921.38(C).

[205] Existing R.C. 4921.38(A).

[206] Existing R.C. 4921.11.

[207] 49 C.F.R. 387.301(b) and 387.303(c).

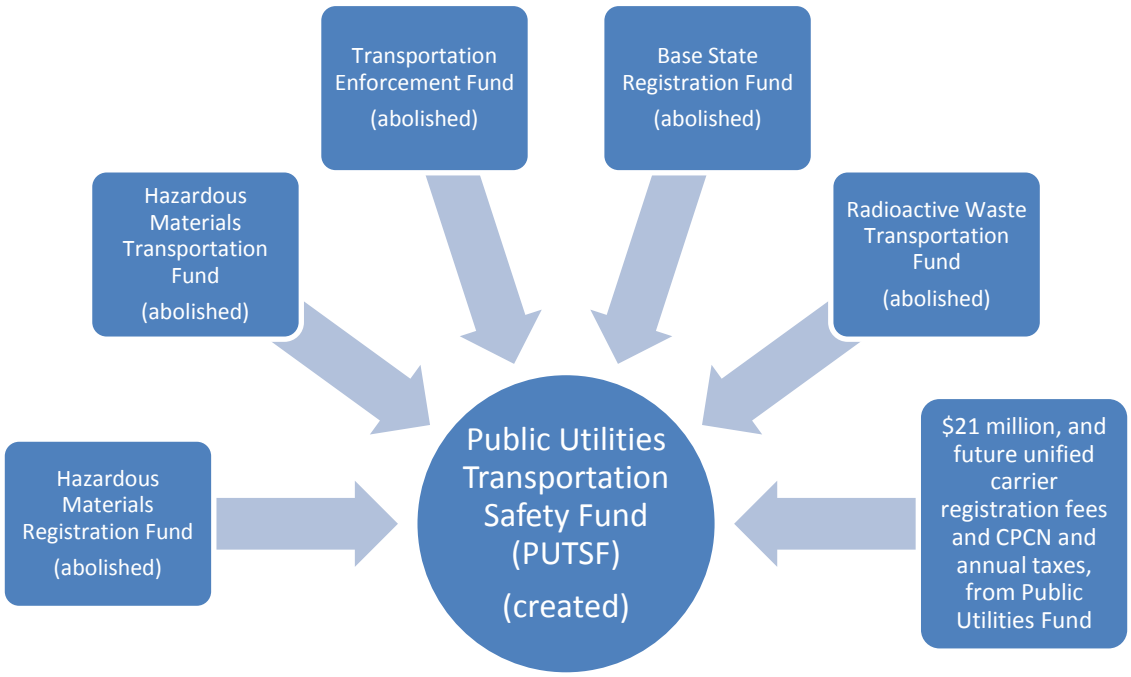
[208] Existing R.C. 4921.11(C).

could specify requirements regarding the cancellation or lapse of freight cargo insurance.[209]

Funds and disposition of fees, taxes, and forfeitures

Consolidation into the Public Utilities Transportation Safety Fund

(Section 601.40; R.C. 4905.57, 4163.07, 4921.21(B) and (C), and 4921.38(E))



The bill abolishes five funds (shown above), and requires their cash balances to be transferred to the Public Utilities Transportation Safety Fund (PUTSF), created by the bill. The bill also requires that $21 million be transferred from the Public Utilities Fund, and that the necessary encumbrances for motor-transportation regulation be reestablished. The bill redirects the deposit of all fines, fees, and forfeitures from the abolished funds into the PUTSF. In addition, the bill redirects forfeitures from enforcement of federal consumer protection provisions related to the delivery and transportation of household goods in interstate commerce from the GRF to the PUTSF.[210] Also, the bill appears to contain a conflicting provision requiring all

[209] R.C. 4921.09(E) and existing R.C. 4921.11(E).

[210] Existing R.C. 4921.40(E).

forfeitures under the bill to go to the GRF, rather than the PUTSF.[211] The bill also requires that unified carrier registration fees and the CPCN and annual taxes be deposited into the PUTSF. These generally go into the Public Utilities Fund under existing law.[212]

The bill specifies that the purpose of the PUTSF is for defraying all expenses incident to maintaining the nonrailroad transportation activities of the PUCO.

Disposition of excess funds to the GRF

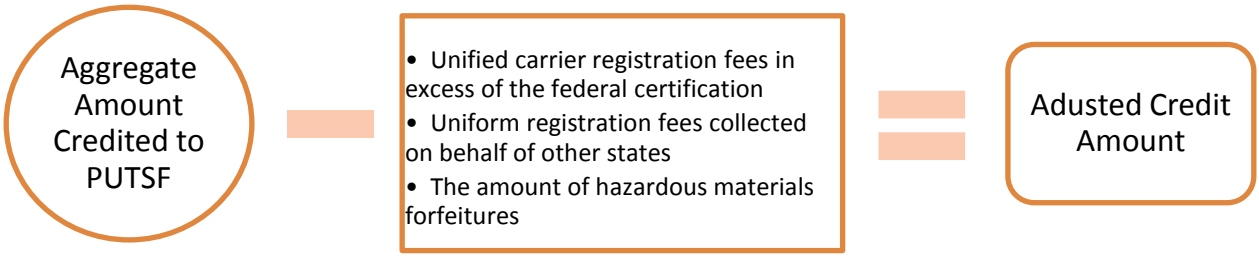
(R.C. 4921.21(B))

The bill requires many of the fines, fees, taxes, and forfeitures to go into the PUTSF only until the credit to the fund, minus certain fees and forfeitures, is sufficient to meet the appropriation. The fees and forfeitures that are subtracted from the total credit are either designated for specific purposes or they may be subject to federal requirements. After the point of parity, the bill requires additional receipts of certain fees, taxes, and forfeitures to go to the GRF. The graphics below explain the bill's requirements with more specificity.

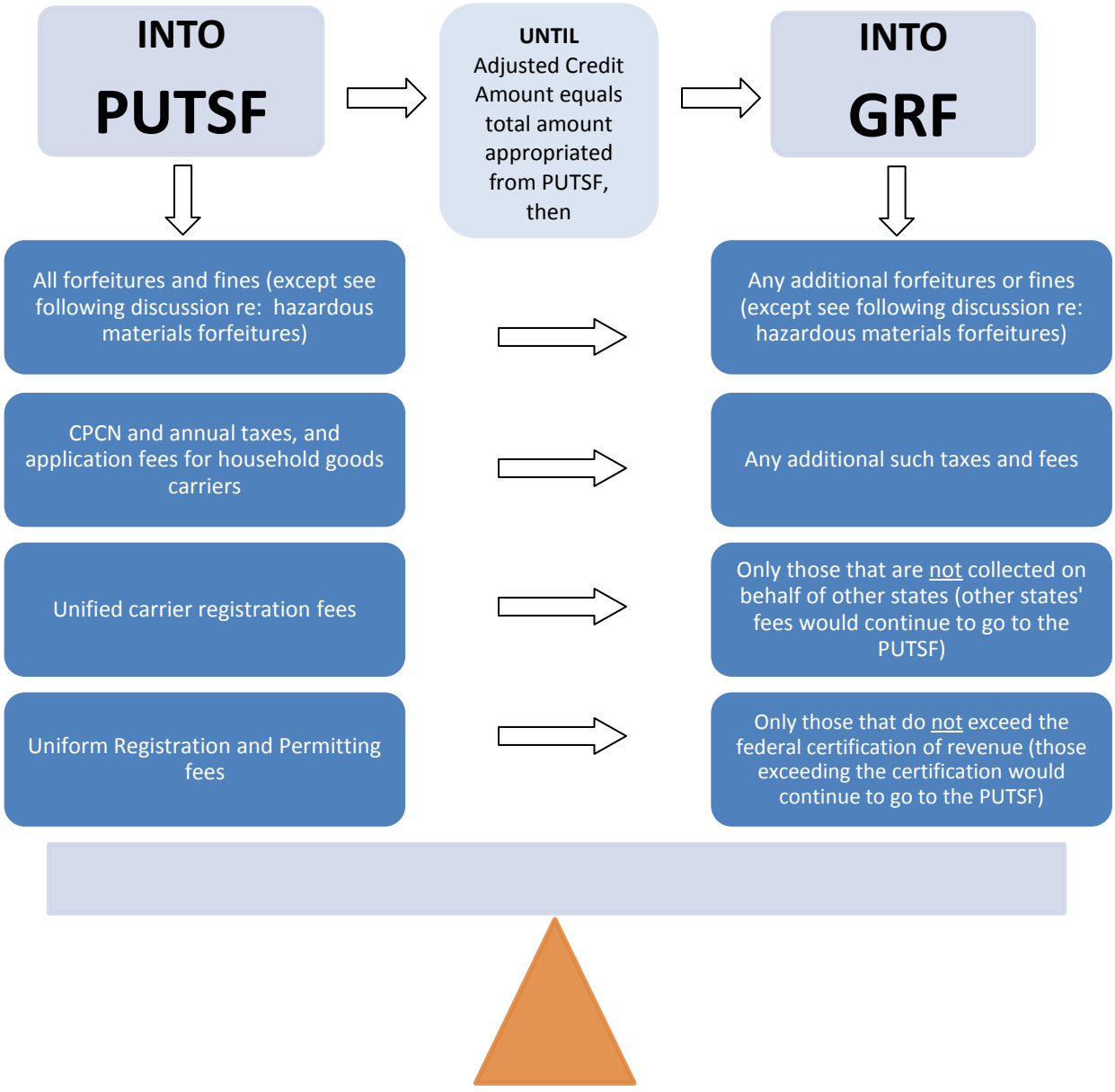
[211] R.C. 4905.57.

[212] Existing R.C. 4923.12(A) and (B).

Adjusted Credit Amount Calculation



Disposition Based on the Adjusted Credit Amount



The bill prescribes a different point at which deposits are to be redirected from the PUTSF to the GRF for forfeitures from violations of rules governing the highway transportation and offering for transportation of hazardous materials. That is, the first $800,000 of those forfeitures is required to be deposited into the PUTSF, and amounts over $800,000 go to the GRF. This requirement is similar to existing law repealed by the bill. That existing law requires the first $800,000 of forfeitures for violations of various current laws governing the transportation of hazardous materials to go to the Hazardous Materials Transportation Fund, abolished by the bill. After that point, under existing law, additional amounts are required to go to the GRF.[213]

Elimination of excess funds to the Department of Public Safety

(R.C. 4923.12(A) and (B), repealed)

The bill removes a provision in existing law that is similar to the bill's parity provision, explained above (see "**Disposition of excess funds to the GRF**"). But existing law requires that after the point of parity is reached, the additional amounts must go to the State Highway Safety Fund. This money must be used for the operation and maintenance of the Department of Public Safety. This provision in existing law is limited to the unified carrier registration fees, the CPCN and annual taxes, and fees for the filing of insurance information for certain carriers. (The insurance fees are not required under the bill.) Existing law requires them to be deposited to the Public Utilities Fund, until the aggregate credit from those fees and taxes in a fiscal year meets the appropriation from the Public Utilities Fund for the PUCO's nonrailroad transportation expenses.

Federal Commercial Vehicle Transportation Systems Fund

(R.C. 4921.21(D))

The bill modifies a requirement governing the purpose of the Federal Commercial Vehicle Transportation Systems Fund. Existing law requires the fund to be used in part to "improve safety of motor carrier operations through electronic exchange of data by means of on-highway electronic systems."[214] The bill removes the phrase "by means of on-highway electronic systems."

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[213] Existing R.C. 4905.80(E).

[214] Existing R.C. 4923.26.

Motor Carrier Safety Fund

(R.C. 4921.21(E) and 4923.09)

The bill modifies the description of the input to and the purpose of the Motor Carrier Safety Fund. The bill specifies that the fund is to consist of money received from the USDOT for motor carrier safety. Existing law, modified only slightly by the bill, also requires the following to go into the fund: grants-in-aid, cash, and reimbursements received under cooperative agreements with the USDOT, and any other federal agency or commission to enforce the federal and state economic and safety laws and rules concerning highway transportation by motor vehicles. The bill also removes the reference to enforcement of the "economic" laws.

The bill requires the fund to be used to administer the state's Motor Carrier Safety Assistance Program (MCSAP) and associated grants, or their equivalents. Existing law eliminated by the bill requires the fund to be used for the purpose of carrying out the law that permits the PUCO to adopt motor carrier safety rules, which is required for federal funding under MCSAP.[215]

Removal of rate regulation

(R.C. 4921.03(C) and 5503.34)

The bill effectively removes the PUCO from the business of regulating motor-carrier rates, and removes references to the economic regulation of motor carriers. The bill may expand the existing prohibition on the PUCO's regulation of motor-carrier rates, by stating that the PUCO has no power to fix, alter, or establish rates for the "transportation of persons or property" (except for the power to accept tariffs of household goods carriers), whereas existing law states that the PUCO has no power to regulate rates "for the transportation of passengers, for hire, within this state." The bill repeals or eliminates all other provisions relating to rate regulation of motor carriers.[216]

Removal of route regulation

(R.C. 4921.02, 4921.07, 4921.08, 4921.09, 4921.101, 4921.12, 4921.14, 4921.19, 4921.26, 4921.27, 4923.01, and 4923.02, repealed)

The bill repeals or removes all provisions governing the regulation of regular and irregular routes, including provisions that do the following:

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[215] Existing R.C. 4919.79(D).

[216] Existing R.C. 4921.101(B), 4921.23, and 4921.27.

- Permit a motor transportation company to use and operate, on its own routes, the authorized and tax-paid trailers for the transportation of property or motor vehicles for the transportation of persons, belonging to it or to any other motor transportation company, for the movement of traffic between any points on connecting routes, if there are joint rates;

- Contain requirements regarding notice and hearings of CPCN applications;

- Require notice for applications to abandon motor vehicle operation on a regular route;

- Permit cancellation of CPCNs for failure to provide convenient and necessary service over an irregular route; and

- Permit the PUCO to determine commercial zones for regular and irregular routes.

Removal of provisions requiring the filing of time and service schedules

(R.C. 4921.23 and 4921.24, repealed)

The bill repeals provisions requiring the filing of time and service schedules by motor transportation companies.

Removal of provisions regarding territory overlap

(R.C. 4921.10, repealed)

The bill removes a provision permitting the PUCO, after notice and hearing, to grant a CPCN to an applicant requesting to serve the territory of an existing motor transportation company, only when the existing company does not provide the service required or the particular kind of equipment necessary to furnish the service to the satisfaction of the PUCO. The removed provision also permits the PUCO to issue limited CPCNs.

Changes in seating or carrying capacity

(R.C. 4921.28, repealed)

The bill repeals a provision requiring a motor transportation company to pay additional taxes that may be due on any equipment because of a change in seating or carrying capacity of motor vehicles.

PUCO authority to examine persons under oath

(R.C. 4923.04(C)(2))

The bill expands the PUCO's authority to examine under oath certain officers, agents, or employees. Under the bill, this authority extends to an officer, agent, or employee of a person subject to the following requirements under the bill:

- Rules applicable to the transportation of persons or property by for-hire motor carriers or private motor carriers;
- Rules applicable to the highway transportation and offering for transportation of hazardous materials (but not uniform registration and permitting);
- Motor vehicle and driver inspections;
- Premises and motor vehicle audits;
- Rules applicable to the highway routing of hazardous materials; and
- Forfeitures.

Under existing law, the authority is limited to an officer, agent, or employee of a person who transports or offers for transportation hazardous materials subject to the safety rules adopted under existing law in relation to the transportation and offering for transportation of hazardous materials.[217]

Forfeitures

(R.C. 4923.99)

Increase of forfeiture cap

The bill increases the maximum forfeiture amount from $10,000[218] to $25,000 for each day of each violation. This alleviates a compliance issue with requirements for federal funding under MCSAP. The bill provides for forfeitures for every requirement of the bill on for-hire motor carriers, private motor carriers, or persons subject to the laws governing the transportation of persons or property. This applicability is essentially the same as existing law.

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[217] Existing R.C. 4905.81(D).

[218] Existing R.C. 4905.83, 4921.99, and 4923.99.

Forfeitures determined at roadside inspections and compliance reviews

The bill modifies the PUCO's duty under existing law to be "consistent with" federal and related guidelines in determining forfeitures for violations discovered at roadside inspections and compliance reviews, by adding the phrase "to the extent practicable." The bill also eliminates caps on the fees for roadside inspections and compliance reviews, of $1,000 and $10,000, respectively.[219]

Removal of $10,000 general forfeitures

(R.C. 4905.54)

The bill removes a provision that would have otherwise permitted the PUCO to assess a forfeiture of no more than $10,000 for a public utility's violation of the law governing for-hire motor carriers and private motor carriers. These forfeitures as imposed under existing law go into the GRF.

Referral to the Attorney General for hazardous waste forfeitures

(R.C. 4905.83(A), repealed)

The bill removes a provision permitting the PUCO to refer hazardous waste violations to the Attorney General for enforcement under law pertaining to environmental protection.

State policy

(R.C. 4905.80)

The bill replaces in state-policy language references to economic regulation[220] with references to safety regulation, as follows:

- Changes "foster sound economic conditions in [transportation by motor carriers]" to "foster *safe* conditions in . . .";
- Replaces "[p]romote adequate, economical, and efficient service" with "[p]romote *safe and secure* service"; and
- Removes a reference to the promotion of reasonable charges for motor-carrier service.

[219] Existing R.C. 4921.99 and 4923.99.

[220] Existing R.C. 4921.03.

Scope of PUCO authority

(R.C. 4905.81)

The bill generally expands provisions that describe the PUCO's regulatory authority to include private motor carriers and for-hire motor carriers, whereas existing law is limited to motor transportation companies in these descriptions. The bill expressly grants the PUCO rulemaking authority for administration and enforcement of all motor-carrier law within the PUCO's jurisdiction. The bill eliminates the PUCO's authority to designate stops for service and safety on established routes. The bill eliminates a requirement that the PUCO provide uniform accounting systems for motor transportation companies.[221] Finally, the bill expands to for-hire motor carriers the PUCO's authority to hear and determine complaints that a person is engaged as such a carrier. Existing law applies this complaint provision only to private motor carriers.[222]

Notification of radioactive waste transportation

(R.C. 4905.801, repealed)

The bill removes a provision permitting the PUCO, consistent with national security requirements, to notify any law enforcement agency or other state or local entity affected by the shipment of certain radioactive material.

Common carriers and discriminatory service

(R.C. 4907.37)

The bill removes a prohibition that a "common carrier" subject to the motor-carrier law may not provide discriminatory service. "Common carrier," in this context, could have been intended to refer only to railroad common carriers, as the provision is located in a chapter governing railroads. Under this interpretation, the bill merely removes an unnecessary reference to motor-carrier law, as railroads are not subject to that law under the bill.

[221] Existing R.C. 4921.04.

[222] Existing R.C. 4923.03.

Railroad references

(R.C. 4905.58, 4907.02, 4907.04, 4907.19, 4907.28, 4907.35, 4907.43, 4907.49, 4907.57, 4907.59, 4907.60, 4907.62, 4909.02, 4909.03, 4909.22, 4909.24, and 4909.28)

The bill removes references to the bill's provisions that govern for-hire motor carriers and private motor carriers in sections dealing exclusively with railroads.

References to the Interstate Commerce Commission

(R.C. 306.04, 306.36, and 4923.09)

The bill replaces references to the Interstate Commerce Commission with references to the Federal Motor Carrier Safety Administration, or removes the references.[223] The Interstate Commerce Commission no longer exists.

Transportation of liquor

(R.C. 4303.22)

The bill limits the issuance of Permit H by the PUCO for the transportation of beer, intoxicating liquor, or alcohol for delivery or use in Ohio to for-hire motor carriers, which the bill does not define for this purpose. Existing law allows issuance of the permit to a "carrier by motor vehicle." Additionally, the bill states that the law governing Permit H does not prevent the Division of Liquor Control from contracting with a for-hire motor carrier, and that any such carrier is eligible for Permit H. Existing law applies these provisions to "common or contract carriers."

Natural gas investments in gathering and storage facilities

(R.C. 4929.041)

General overview

The bill permits a natural gas company to apply for a regulatory exemption for investments in older gathering facilities (placed into service before 2010), and any related service. Current law allows the same exemption for investments in newer gathering lines and storage facilities. In a sense, this exemption may provide the natural gas company with the regulatory flexibility to facilitate a conversion of those older facilities, such as converting them from transmission lines to wet gas (shale) gathering lines. Though, notably, nothing in current law expressly addresses whether gathering facilities may be converted in the absence of a regulatory exemption. What is

[223] Existing R.C. 4919.77 and 4919.79(D).

clear is that without the regulatory exemption, if facilities were converted, the revenue earned from those facilities would be counted against the natural gas company in the company's next rate case.

If older facilities were converted before the company's next rate case, customers would continue to pay for those facilities until the next rate case, even though the facilities may not be in use for their service.[224] To this point, the bill requires a true-up comparison when an exemption is requested for investments in older facilities. The PUCO must compare the older facilities to newer investments that are not yet factored into rates and reduce rates if the previous-rate-case value of the older facilities is more than the newer investments.

Effect of the exemption in detail

Ratemaking treatment

If granted, the regulatory exemption would exempt investments from all ratemaking provisions. There are two major consequences, which would occur at the company's next rate case: (1) customers would stop paying for any exempt investments and (2) revenues that the company receives from the exempt investments would not be counted against the company for the determination of rates. This is because Ohio's current ratemaking formula, unchanged by the bill, permits utilities to earn a rate of return on their property (commonly referred to as the rate base). In other words, customers pay for this property, which includes investments in the property that contribute to its value. Also, the revenue earned by a utility during a 12-month test period (and, for a natural gas company, adjusted for changes reasonably expected to occur during the following 12-month period) is used to calculate the revenues to which the utility is entitled.[225] Exempt investments and the revenue from those investments would be excluded from these calculations.

Conversion of gathering facilities and rate implications

If a natural gas company were to convert older gathering facilities, there would be a period of time, beginning with the conversion and ending whenever new rates take effect and the regulatory exemption is granted, when customers would be paying for gathering facilities that are not being used for their service. The following hypothetical timeline illustrates this point:

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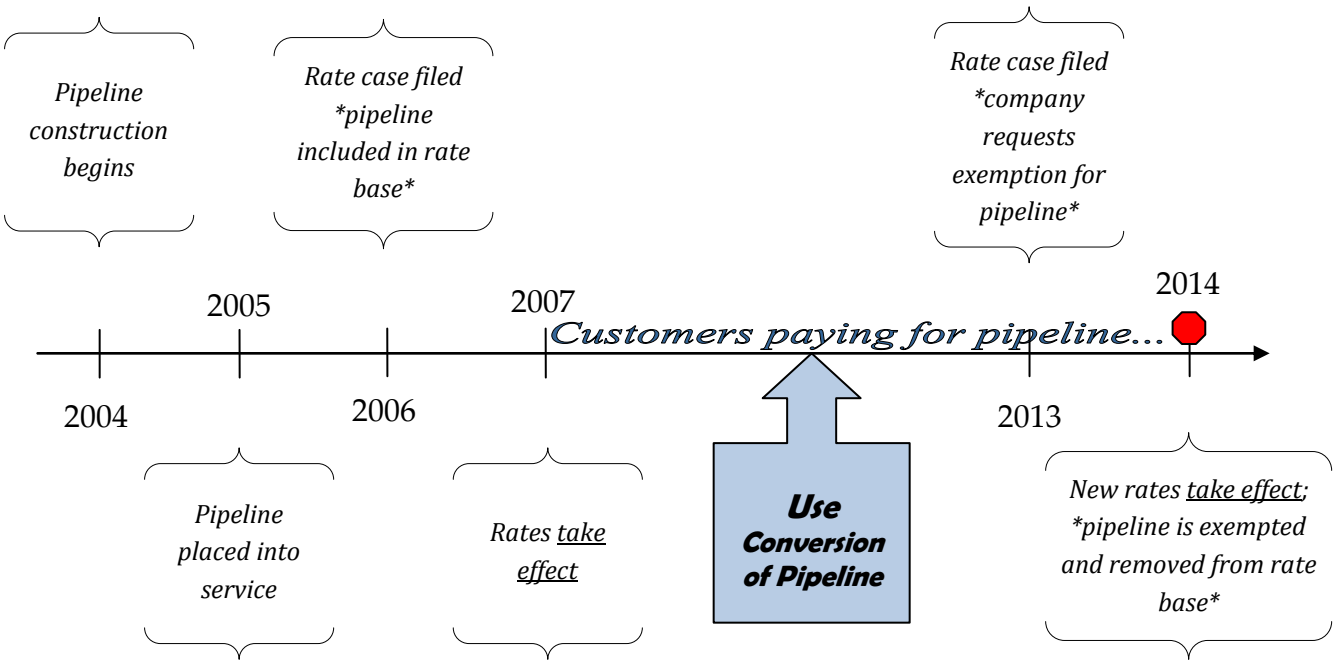
[224] R.C. 4909.15 (not in the bill).

[225] R.C. 4909.05 and 4909.15 (not in the bill).



True-up comparison

To respond to the situation described above, where customers could end up paying for facilities that are converted to another use, the bill requires a true-up comparison. The comparison is required only if a company requests an exemption for investments in gathering facilities placed into service before 2010. This provision requires the PUCO to compare the value of the investments to be exempted, as determined in the company's last rate case, which is the value as of the "date certain," to the value of all nonexempt investments placed into service *after that same date certain*. Investments placed into service after the date certain would not have been included in the rate base, and therefore customers would not have been paying for them.

If the date-certain value of the investments to be exempted is more than the value of the post-date-certain, nonexempt investments, the PUCO is required to reduce the gross-annual-revenue entitlement of the natural gas company by applying the rate of return to the difference. The rate of return is the rate of return established in the rate case in which the regulatory exemption is being sought. Because the bill requires the regulatory exemption to be sought as part of a rate case, the comparison and any reduction of gross annual revenue would likewise be done as part of the rate case. In other words, the true-up comparison would not result in any kind of customer refund, but rather a downward adjustment to the rates to be set in the rate case. If the comparison goes in the other direction (i.e., the post-date-certain, nonexempt

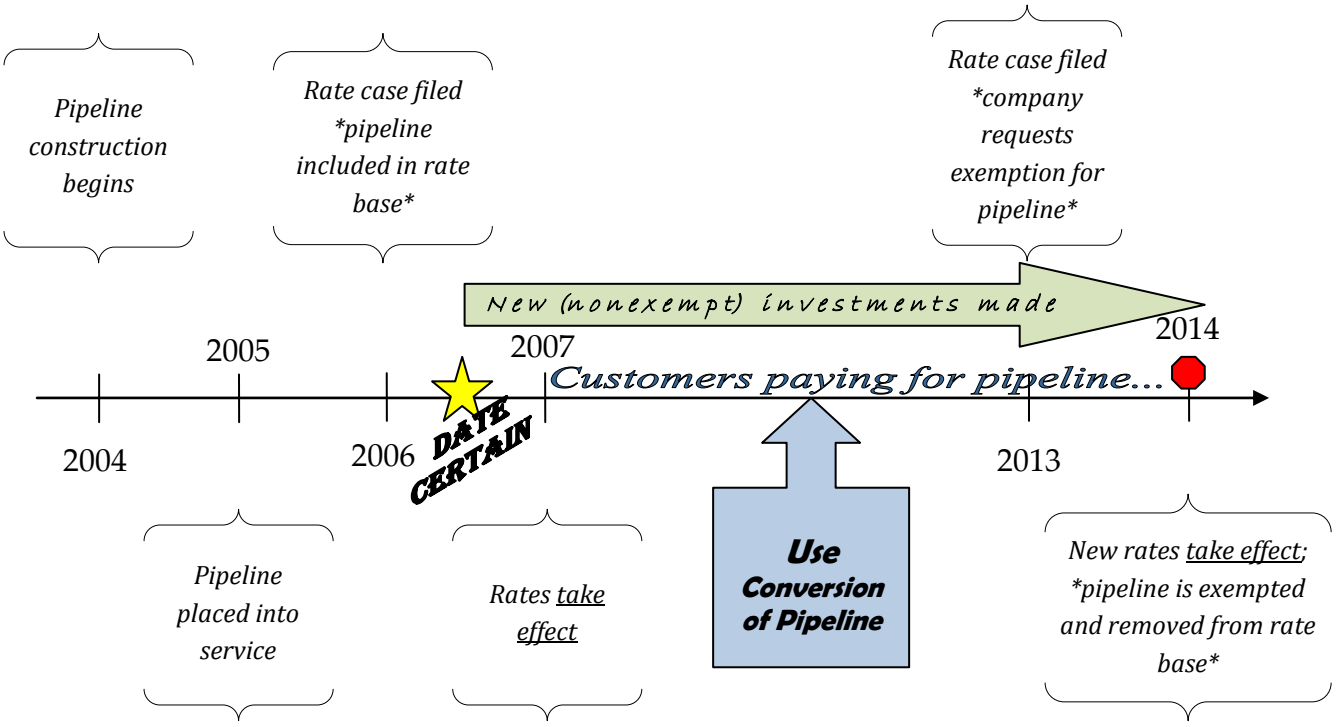
investments are more than the investments to be exempted), the bill requires no adjustments other than what would naturally result from the regulatory exemption.[226]

To make an illustrative example, the bill's provisions are comparable to a landlord-tenant situation, in which a landlord (the natural gas company) rents a house with a two-car garage to a tenant (the ratepayers) for a one-year lease. The rental amount (the gas company's rate) is determined at the time of the lease signing, and is based on the combined value of the house and garage (which would make up the rate base). The lease may be renewed and the rent renegotiated at the end of the year (the company's next rate case), but not before. Part way through the year, the landlord decides to rent out the garage to a local rock band called The Gas Producers (conversion of the pipeline). The rental amount for the tenant, who is no longer using the garage, stays the same. But, since the tenant moved in, the landlord also had been making improvements to the house, such as remodeling the kitchen and finishing the basement. Therefore, the landlord agrees that when it comes time to renegotiate the rent (the company's next rate case), there will be a comparison of (1) the value of the garage (converted pipeline), as determined when the original lease was signed (the date-certain value from the last rate case) to (2) the value of the improvements to the house (the nonexempt investments placed into service after the date certain). If the value of the garage is greater than the value of the new kitchen and the finished basement, the landlord agrees that rent (company rate) will be reduced accordingly. If the improvements to the house are worth more than the garage, no rent (company rate) increase would directly result because of that difference.

The following hypothetical timeline, borrowed from above, is modified to demonstrate the true-up comparison. Notably, the date certain for a natural gas company may be up to nine months after the date of filing of the rate-case application.[227]

[226] R.C. 4909.15 (not in the bill).

[227] R.C. 4909.15(C) (not in the bill).



Exemption must be sought in a rate case

The bill requires a regulatory exemption, for investments in older *or* newer facilities, to be sought as part of a rate case. Therefore, new rates would be determined and the regulatory exemption granted simultaneously. Under current law, there is no clear restriction on when a regulatory exemption may be sought.

Other laws covered by the regulatory exemption

The bill does not change the laws from which the subject investments would be exempt. These are general regulatory provisions, governing accounts and records,[228] annual reports,[229] long-term forecasts,[230] financial regulation,[231] property and plant of public utilities,[232] transactions between public utilities,[233] and other matters,[234] and, as stated above, all ratemaking provisions.[235]

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[228] R.C. 4905.13 (not in the bill).

[229] R.C. 4905.14 (not in the bill).

[230] R.C. Chapter 4935.

[231] R.C. 4905.40 to 4905.47 (not in the bill).

[232] R.C. Chapter 4933.

Terminology change for the exemption for newer investments

The bill modifies some terminology regarding the current regulatory exemption for newer investments. The current exemption may be sought for investments in "gathering lines" and "storage facilities" placed into service after 2009, and any service related to those lines and facilities. Neither "gathering lines" nor "storage facilities" is defined for this purpose. But in Ohio's pipeline-safety law, "gathering line" is given the federal definition: "a pipeline that transports gas from a current production facility to a transmission line or main."[236] The bill modifies the terminology by changing the description to investments in "storage or gathering *facilities*."[237] Neither term is defined.

Current provisions apply to the exemption for older facilities

Because the bill is *expanding* a current regulatory exemption to cover older facilities, provisions that apply to the current regulatory exemption apply equally to the regulatory exemption for older facilities. These include:

- a requirement for the separation of the company's operations, resources, employees, books, and records (for exempt investments versus nonexempt investments);

- a prohibition against using exempt facilities to provide an unregulated or exempt commodity sales service, which prohibition may be waived by the PUCO for good cause shown; and

- a grant of continuous jurisdiction to the PUCO, under which it may enforce terms of a regulatory exemption and alter, amend, or suspend the regulatory exemption in certain circumstances.

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[233] R.C. 4905.48 (not in the bill).

[234] R.C. Chapter 4905.

[235] R.C. Chapter 4909.

[236] R.C. 4905.90(C) and 49 C.F.R. 192.3 (not in the bill).

[237] (emphasis added).

- Eliminates several mandated reports by the Chancellor of the Board of Regents and consolidates requirements for other reports into one Revised Code section.

- For purposes of the current authority of a state institution of higher education to enter into an arrangement with a conduit entity and an independent funding source relative to the lease/leaseback of any of the institution's auxiliary facilities, expands the definition of "conduit entity" to include any appropriate legal entity selected by the institution.

Chancellor reports

Eliminated reports

(R.C. 3333.04, 3333.123, and 3333.21; repealed R.C. 3333.049 and 3354.23)

The bill eliminates the following reports required of the Chancellor of the Board of Regents:

(1) Goals and timetables for increased access to higher education, job training, adult literacy, research, excellence in higher education, and graduate program redundancy reduction (R.C. 3333.04(P));

(2) Quality of institutions that offer teacher preparation programs (R.C. 3333.049);

(3) Performance of current Ohio Academic Scholars and the effectiveness of the formula to select scholars for the Ohio Academic Scholarship (R.C. 3333.21); and

(4) Evaluation of the pilot program for displaced homemakers required to be conducted at Cuyahoga Community College (R.C. 3354.23).

Consolidation of statutes

(R.C. 3333.041, 3333.60, 3333.61, 3333.71, 3333.72, 3345.28, and 3345.692; repealed R.C. 3333.0411, 3333.33, 3333.70, 3333.80, and 3334.111)

The bill consolidates reporting requirements on the following topics, currently separate, into one Revised Code section (R.C. 3333.041), with the report or reports all due not later than December 31 each year to the Governor and the General Assembly:

(1) Aggregate academic growth data for students assigned to graduates of teacher preparation programs (R.C. 3333.0411);

(2) Use of minority and women investment managers in programs of the Ohio Tuition Trust Authority (R.C. 3334.111);

(3) Status of implementation of faculty improvement programs at state institutions of higher education, particularly regarding professional leave (R.C. 3345.28);

(4) The number and types of biobased products purchased by state institutions of higher education and the amount spent on such purchases (R.C. 3345.692);

(5) A description of dual enrollment programs offered by school districts, community schools, and chartered nonpublic high schools (R.C. 3333.33);

(6) The academic and economic impact of the Ohio Innovation Partnership (R.C. 3333.70); and

(7) The academic and economic impact of the Ohio Co-Op/Internship Program (R.C. 3333.80).

The bill also expands the dual enrollment report described in (5) to cover dual enrollment programs offered by STEM schools and the newly authorized college-preparatory boarding schools. The bill maintains the current law requirement that this dual enrollment report also must be posted on the Chancellor's web site.

Leasing campus auxiliary facilities

(R.C. 3345.54)

State institutions of higher education are currently authorized to enter into an arrangement with a conduit entity and an independent funding source relative to the lease/leaseback of any of the institution's auxiliary facilities. "Conduit entity" is defined as a nonprofit organization qualified as a public charity under the Internal Revenue Code.

The bill expands the definition of "conduit entity" to include any other appropriate legal entity selected by the state institution.

- Requires the Director of Rehabilitation and Correction to deposit all moneys received from commissions on specified services provided to prisoners and all moneys received from commissions on all telephone systems into the existing Prisoner Programs Fund.

- Makes every person serving a term in a community-based correctional facility or district community-based correctional facility responsible for medical treatment and services that the person requests and receives.

- Eliminates a limitation of the fee for medical treatment and services in a community-based correctional facility or district community-based correctional facility to actual cost.

- Eliminates a requirement that any fee paid by an offender in a community-based correctional facility or district community-based correctional facility for treatment or services requested and received be deducted from medical or dental costs that the person is ordered to reimburse under a court-imposed financial sanction or to repay under a county policy that requires repayment of the costs of confinement.

- Eliminates a requirement that the governing board of a community-based correctional facility or district community-based correctional facility establish a policy requiring non-indigent offenders to pay for any medical treatment or service requested by and provided to an offender.

- Requires that a Department of Rehabilitation and Correction (DRC) prisoner who is released from prison early under a risk reduction sentence be placed after release under post-release control sanctions (instead of on "supervised release") and specifies that the Felony Sentencing Law definition of "stated prison term" includes any period of time by which a felon's prison term is shortened under a risk reduction sentence.

- Requires a sentencing court to determine the days of credit an offender receives for time served in relation to the offense, provides for the correction of errors in the determination, and requires DRC to adjust a prisoner's stated prison term or parole eligibility in accordance with the court's determination.

- Specifies that DRC and the Adult Parole Authority are not liable for any claim for damages arising from the DRC's or Authority's issuance, denial, or revocation of a certificate of achievement and employability or for the DRC's or Authority's failure to revoke a certificate under required circumstances.

- Eliminates the Authority's power to recommend to the Governor the medical release of a prisoner.

- Eliminates the requirement that the Authority use the currently specified procedures for recommending a pardon, commutation, medical release, or reprieve prior to making a recommendation to the Governor regarding an inmate's release because the inmate is terminally ill, medically incapacitated, or in imminent danger of death, if the Authority is directed to investigate the inmate prior to the Governor ordering the release of the inmate.

- Requires the Director to adopt rules providing for the use of no more than 15% (10% under existing law) of appropriations for the Halfway House, Reentry Center, and Community Residential Center Program to pay for contracts *with licensed halfway houses* for specified nonresidential services for offenders supervised by the Adult Parole Authority.

- Revises the procedures for the possible release of certain DRC prisoners who serve 80% of their stated prison term and corrects erroneous cross-references in that mechanism to mandatory prison terms imposed under R.C. 2929.14.

- Specifies that DRC's Division of Parole and Community Services, instead of the Division's Adult Parole Authority, must notify the sentencing court of the pendency of a transfer to transitional control of a DRC prisoner and of the fact that the court may disapprove of the transfer.

- Makes probation departments that supervise offenders sentenced by municipal courts eligible for probation improvement grants and probation incentive grants.

- Excludes specified community-based correctional facility employee residential and familial information from the application of the Public Records Law.

Funding of the Prisoner Programs Fund

(R.C. 120.132)

The bill requires the Director of Rehabilitation and Correction to deposit all moneys received by the Department of Rehabilitation and Correction (DRC) from services provided to prisoners in relation to electronic mail, inmate trust fund deposits, and the purchase of music, digital music players, and other electronic devices into the existing Prisoner Programs Fund. Under existing law, the Director must deposit all moneys received by the Department from commissions on telephone systems *established*

for the use of prisoners into the Fund. The bill removes the italicized language so that the Director must deposit all such commissions on any telephone system. The bill does not change the purposes for which the Fund may be used.

Responsibility for medical expenses in a community-based correctional facility

(R.C. 2301.571)

The bill makes every person confined in a community-based correctional facility or district community-based correctional facility, rather than just a person who is not indigent, financially responsible for any medical treatment or service the person requests and receives. It eliminates a requirement that a facility's governing board establish a policy requiring non-indigent offenders to pay for such treatment or services and eliminates a limitation on the fee for the medical treatment or service to the actual cost of the treatment or service provided. The bill also eliminates a requirement that any fee paid by an offender for treatment or services requested and received be deducted from medical or dental costs that the offender is ordered to reimburse under a court-imposed financial sanction or to repay under a county policy that requires repayment of the costs of confinement.

The bill provides that nothing in this provision may cause a community-based correctional facility or a district community-based correctional facility to be responsible for the payment of any medical or other health-care expenses incurred in connection with an offender who is serving a term in the facility that is imposed as a community residential sanction for a felony.

Risk reduction sentencing

(R.C. 2929.01, 2929.19, 2967.28, and 5120.036)

Current law

Current law enacted in Am. Sub. H.B. 86 of the 129th General Assembly sets forth a mechanism for "risk reduction sentencing" pursuant to which a judge who sentences a convicted felon to a prison term may recommend risk reduction sentencing for the felon in specified circumstances, DRC assesses the recommended felon for appropriateness of that type of sentence, and, if the felon successfully completes treatment or programming required by the Department, the felon is granted release to "supervised release" after serving all mandatory prison terms and a minimum of 80% of all other prison terms.

Current law defines the term "stated prison term" for purposes of the Felony Sentencing Law as the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court under that Law, and specifies that the term includes any credit received by the felon for time spent in jail awaiting trial, sentencing, or transfer to prison for the offenses and any time spent under house arrest after earning credits under the existing Earned Credits Mechanism. The term is used in many contexts throughout the Felony Sentencing Law.

Operation of the bill

The bill modifies the law governing risk reduction sentencing to specify that, if a sentencing court recommends risk reduction sentencing for a convicted felon, if DRC determines that the felon is eligible for risk reduction and provides the felon treatment and programming, and if the felon successfully completes the required treatment or programming, the felon will be released to post-release control (instead of "supervised release") under one or more post-release control sanctions after serving all mandatory prison terms and a minimum of 80% of all other prison terms. The placement under post-release control sanctions will be under terms set by the Parole Board, under the procedures it currently follows in post-release control sanctions for felons who complete their prison term and are released under a period of post-release control, and it will be subject to the existing provisions that currently apply to violations of post-release control sanctions. The period of post-release control will be for the length of time specified under existing law for felons who are subjected to post-release control upon being released from prison upon completion of their prison term, determined by the felon's offense.

Related to the changes described in the preceding paragraph, the bill expands the following existing provisions so that they expressly apply to risk reduction sentences: (1) the existing provision that requires that sentences to prison for a felony include a requirement that the felon, upon being released from prison upon completion of the prison term, either be subject to mandatory post-release control or be subject to post-release control at the discretion of the Parole Board, depending upon the felony, (2) the existing provisions that, depending upon the felony, either require or authorize the imposition of one or more post-release control sanctions upon a felon released from prison upon the completion of the prison term, and (3) the existing provision that requires that a felon sentenced to prison be notified at the time of sentencing that the felon, depending upon the felony, either will be or may be subject to supervision under one or more post-release control sanctions upon being released from prison upon completion of the prison term.

The bill also expands that the Felony Sentencing Law's definition of "stated prison term" to specify that, in addition to the things the definition currently includes, if

an offender is serving a prison term as a risk reduction sentence, "stated prison term" includes any period of time by which the prison term imposed upon the offender is shortened by the offender's successful completion of all assessment and treatment or programming under the sentence.

Determination of credit for time served by offender

(R.C. 2929.19(B)(2)(h) and 2967.191)

The bill requires a court that determines at a sentencing hearing that a prison term is necessary or required to determine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which DRC must reduce the offender's stated prison term. The court's calculation may not include the number of days, if any, that the offender previously served in DRC custody arising out of the offense for which the prisoner was convicted and sentenced. In making the determination, the court must consider the arguments of the parties and conduct a hearing if one is requested. The court retains continuing jurisdiction to correct any error not previously raised at sentencing in making its determination. At any time after sentencing, the offender may file a motion in the sentencing court to correct any error in the determination, and the court has discretion to grant or deny the motion. If the court changes its determination, it must cause the entry granting the change to be delivered promptly to DRC. The bill provides that the Revised Code sections governing new trial motions and petitions for post-conviction relief do not apply to motions under R.C. 2929.19 for a redetermination of time served. The bill also states that an inaccurate determination is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable.

The bill requires DRC to reduce a prisoner's stated prison term or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner, in accordance with the court's determination.

Certificates of achievement and employability

(R.C. 2961.22)

Continuing law, unchanged by the bill, permits any prisoner serving a prison term in, or who has been released from, a state correctional institution who satisfies certain specified conditions to apply to the DRC or the Adult Parole Authority for a certificate of achievement and employability.

The bill specifies that DRC and the Authority are not liable for any claim for damages arising from the DRC's or Authority's issuance, denial, or revocation of a certificate of achievement and employability or for the DRC's or Authority's failure to revoke a certificate of achievement and employability if the person is convicted of or pleads guilty to any offense other than a minor misdemeanor or a traffic offense.

Recommendation for prisoner's medical release

(R.C. 2967.03 and 2967.05)

Eliminates the Adult Parole Authority's power to recommend to the Governor the medical release of a prisoner. The Authority currently may recommend to the Governor the medical release of a prisoner if in the Authority's judgment there is reasonable ground to believe that granting a medical release would further the interests of justice and be consistent with the welfare and security of society.

Under existing law, the Governor may order an inmate's release upon the recommendation of the Director of Rehabilitation and Correction, accompanied by a certificate of the inmate's attending physician that the inmate is terminally ill, medically incapacitated, or in imminent danger of death. Under the bill, if the Governor directs the Authority to investigate an inmate who is terminally ill, medically incapacitated, or in imminent danger of death prior to the Governor ordering the release of the inmate, the Authority would no longer be required to follow the procedures under current law (recommendation for pardon, commutation, medical release, or reprieve) prior to making a recommendation pertaining to the inmate's release to the Governor.

Halfway house nonresidential services

(R.C. 2967.14(B))

Under existing law, DRC may use no more than 10% of the amount appropriated each fiscal year for the Halfway House, Reentry Center, and Community Residential Center Program to pay for contracts for nonresidential services for offenders being supervised by the Adult Parole Authority. The nonresidential services may include, but are not limited to, treatment for substance abuse, mental health counseling, counseling for sex offenders, and electronic monitoring services. The bill increases the amount that DRC may spend for such contracts to 15% of appropriations; requires the Director of DRC to adopt rules governing the use of the funds; specifies that the contracts must be with licensed halfway houses; provides that the offenders being supervised may include offenders who are supervised under an agreement between the Authority and a court of common pleas of a county in which there is no county probation department; and expands the permissible uses of the funds to include aftercare and other nonresidential services that the Director identifies by rule.

80% early release mechanism for DRC prisoners

(R.C. 2967.19 and 5120.66)

Current law

Current law provides an "80% release mechanism" pursuant to which the DRC Director may petition the sentencing court for the release from prison of an inmate who is serving a stated prison term of one year or more, who is eligible under specified criteria, and who has served at least 80% of the stated prison term that remains to be served after becoming eligible for use of the mechanism. An inmate serving a stated prison term that includes a "disqualifying prison term" (a defined term) never is eligible for release under the mechanism. An inmate serving a stated prison term that includes one or more "restricting prison terms" (a defined term) is not eligible for release during the restricting prison terms but becomes eligible after having fully served each restricting prison term if the offender has an "eligible prison term" (a defined term) to serve after service of the restricting prison terms. An inmate serving a stated prison term that consists solely of one or more eligible prison terms becomes eligible upon commencement of service of the term. If a court grants a petition under the mechanism, it must order the release of the inmate and place the inmate under one or more appropriate community control sanctions under appropriate conditions and under the supervision of the court's department of probation, and reserve the right to reimpose the sentence that it reduced and from which the offender is released if the offender violates the sanctions. If the sentence from which the inmate is released was imposed for a first or second degree felony, a court that grants a petition under the mechanism also must consider ordering that the inmate be monitored by means of a GPS device.

Operation of the bill

The bill modifies the 80% release mechanism as follows:

(1) Instead of requiring the DRC Director to petition the sentencing court for the release of an inmate as the initiating act under the mechanism, it requires the Director to send a written notice to the sentencing court recommending that the court consider releasing an inmate under the mechanism.

(2) It provides that the time of making the recommendation described in (1) is not earlier than 90 days prior to the date on which the inmate becomes eligible and that only an inmate recommended by the Director may be considered for early release under the mechanism.

(3) It specifies that the mechanism applies to any inmate confined in a prison on or after September 30, 2011.

(4) It specifies that an inmate serving one or more "restricting prison terms" and one or more "eligible prison terms" becomes eligible for release under the mechanism after having fully served all restricting prison terms and having served 80% of the term that remains to be served after all restricting prison terms have been fully served. It also specifies that an inmate serving only one or more "eligible prison terms" becomes eligible for release under the mechanism after having served 80% of those terms.

(5) In existing provisions that require notification to the appropriate prosecutor and the victim and posting on DRC's database when the Director petitions a court for release of an inmate under the mechanism, it replaces the references to the Director petitioning the court with references to the Director submitting a notice to the court, as described above in (1).

(6) It requires the Director's notice to the court and the information provided to the prosecutor and victim to include contact information for a DRC employee who can answer questions about the inmate.

(7) It replaces the current procedure that governs a court in determining whether to grant an inmate a release under the mechanism – under the bill: (a) the court upon receipt of the notice from the Director either must hold a hearing to consider the inmate's release or inform DRC that it will not be conducting a hearing, (b) the court cannot grant an early release to an inmate without holding a hearing, (c) if the court declines to hold a hearing, it may later consider release of the inmate under the mechanism on its own motion and conduct a hearing, and (d) the court must notify DRC within 30 days of receipt of the notice from the Director whether it will hold a hearing for an inmate.

(8) It conforms language in other portions of the mechanism to the changes described above in (1) to (7).

(9) In the definition of "restricting prison term," it corrects erroneous cross-references to mandatory prison terms imposed under R.C. 2929.14.

DRC transitional control program

(R.C. 2967.26)

Current law

Current law authorizes DRC, by rule, to establish a transitional control program for closely monitoring a prisoner's adjustment to community supervision during the final 180 days of the prisoner's confinement. Under the program, the Adult Parole Authority of DRC's Division of Parole and Community Services may transfer eligible

prisoners to transitional control status during the final 180 days of their confinement and under terms and conditions established by DRC. DRC must define which prisoners are eligible for the program. DRC may adopt rules for the issuance of passes for specified limited purposes to prisoners who are transferred to transitional control. A prisoner who violates any rule established with respect to the transitional control program may be transferred to a prison, but the prisoner receives credit towards completing the prisoner's sentence for the time spent under transitional control.

At least three weeks prior to transferring a prisoner to transitional control under the program, the Authority must give notice of the pendency of the transfer to the common pleas court of the county in which the prisoner was indicted and of the fact that the court may disapprove the transfer of the prisoner and must include a report prepared by the head of the prison in which the prisoner is confined regarding the prisoner's activities and conduct in the prison. If the court disapproves of the transfer of the prisoner, it must notify the Authority of the disapproval within 30 days after receipt of the notice. If the court timely disapproves the transfer, the Authority cannot proceed with the transfer. If the court does not timely disapprove the transfer, the Authority may transfer the prisoner to transitional control.

Operation of the bill

The bill requires that DRC's Division of Parole and Community Services, instead of the Authority, give the notice to the court of common pleas of the pendency of the transfer of a prisoner to transitional control and of the court's authority to disapprove the transfer. The bill does not otherwise modify the program.

Probation department grant eligibility

(R.C. 5149.311)

DRC administers the Probation Improvement Grant and the Probation Incentive Grant for court of common pleas probation departments that supervise felony offenders. The bill extends eligibility for the two grants to any common pleas court or municipal court probation department that supervises any offenders.

Community-based correctional facility employees

(R.C. 149.43)

As used in the Public Records Law, except as described below, "public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for-

profit entity operating the alternative school. A provision of the Public Records Law, largely unchanged by the bill, excludes many types of records from the definition of "public record," including "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information."

As used in the Public Records Law under existing law, "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information" is defined as any information that discloses any of the following about a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau:

(1) The address of the actual personal residence of a person in any of the specified categories of persons, except for the state or political subdivision in which the person resides;

(2) Information compiled from referral to or participation in an employee assistance program;

(3) The Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a person in any of the specified categories of persons;

(4) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a person in any of the specified categories of persons by the person's employer;

(5) The identity and amount of any charitable or employment benefit deduction made by the employer of a person in any of the specified categories of persons from the person's compensation unless the amount of the deduction is required by state or federal law;

(6) The name, the residential address, the name of the employer, the address of the employer, the Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a person in any of the specified categories of persons;

(7) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

The bill does all of the following:

(1) Expands the definition of "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information" so that it also includes community-based correctional facility employees;

(2) Modifies the term itself so that it will refer to "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, *community-based correctional facility employee*, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information";

(3) Modifies the related exclusion from the definition of "public record" so that it now excludes from that definition "peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, *community-based correctional facility employee*, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information."

REHABILITATION SERVICES COMMISSION (RSC)

- Grants exclusive authority to administer the daily operation and provision of vocation rehabilitation services to the administrator of the Rehabilitation Services Commission (RSC).

- Requires the RSC administrator is to establish a fee schedule for vocational rehabilitation services.

- Authorizes, rather than requires, RSC to solicit funds from private or public entities for the purpose of receiving the maximum amount of federal funds possible to support the RSC's activities.

- Replaces current law permitting RSC to terminate a funding agreement with a third-party only with good cause and three months' notice with a provision permitting

RSC to terminate such an agreement as follows: (1) for just cause at any time or (2) for any other reason with 30 days' notice.

- Eliminates a requirement that the duration of each funding agreement be at least six months.

Rehabilitation Services Commission administrator

(R.C. 3304.14 and 3304.16)

The Rehabilitation Services Commission (RSC) administers programs providing vocational rehabilitation services. RSC's governing authority consists of a Commission of seven members appointed by the Governor with the advice and consent of the Senate. The RSC administrator is appointed by the Governor and serves at the pleasure of the Governor. Current law specifies the duties of the Commission but does not specify the duties of the RSC administrator.

The bill grants to the RSC administrator exclusive authority to administer the daily operation and provision of vocation rehabilitation services. The bill requires the RSC administrator to establish a fee schedule for vocational rehabilitation services in accordance with federal law.[238]

Solicitation of funds

(R.C. 3304.16 and 3304.181)

The bill authorizes, rather than requires, RSC to solicit funds from private or public entities for the purpose of receiving the maximum amount of federal funds possible to support the activities of RSC. Federal law establishes maintenance of effort requirements necessary for a state to receive the entire allotment of federal funds for vocational rehabilitation services.[239] Federal law also provides that a state may receive additional amounts as a reallotment from other states if a state is able to supply additional matching funds.[240]

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[238] 34 C.F.R. 361.50.

[239] 34 C.F.R. 361.62 and 361.65.

[240] 34 C.F.R. 361.65.

Funding agreements with third parties

(R.C. 3304.182)

RSC is authorized by current law to enter into agreements with private entities for the purpose of receiving the maximum amount of federal funds possible. The agreement must last at least six months and it cannot be discontinued by RSC without first providing three months' notice. Agreements may be terminated only for good cause under current law.

The bill eliminates the requirement that the duration of each agreement be at least six months. The bill also eliminates current law under which RSC is permitted to terminate a funding agreement only with good cause and with three months' notice. Instead, the bill provides that an agreement may be terminated as follows: (1) for just cause at any time or (2) for any other reason with 30 days' notice.

The bill preserves current law specifying that the maximum amount that RSC may receive under an agreement is 25% of the funds available.

SCHOOL FACILITIES COMMISSION (SFC)

- Revises the method of determining a school district's priority for assistance, and local share, under the Classroom Facilities Assistance Program, if it is participating in the Expedited Local Partnership Program its tangible personal property valuation (not including public utility personal property) made up 18% or more of its total taxable value for tax year 2005.

- Permits a school district segmenting its classroom facilities project or participating in the Exceptional Needs Program to prorate its maintenance obligation to cover only the facilities acquired under the segment or program, if the district can generate the amount to maintain those facilities by a means other than levying a maintenance tax.

Background to school facilities programs

The Ohio School Facilities Commission administers several programs that provide state funding to school districts and community schools for the construction of classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project

and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs administered by the Commission address the particular needs of certain types of districts. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of *district* money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. The Exceptional Needs Program provides funding for districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, in advance of their districtwide CFAP projects to construct single buildings in order to address acute health and safety issues.

CFAP priority and shares for Expedited Local Partnership districts with large tangible personal property valuation

(R.C. 3318.36)

The bill makes an exception to the general requirement that school districts participating in the Expedited Local Partnership Program "lock in" their priority and local share percentage for their eventual CFAP projects. Under the bill, if a district's tangible personal property valuation, not including public utility personal property, made up 18% or more of its total taxable value for tax year 2005 (the year the tax on that property began to phase out), the district's priority for CFAP funding will be based on the *smaller* of its percentile when it entered into the Expedited Local Partnership agreement or its current percentile. In addition, the district's share of its CFAP project cost will be the *lesser* of (1) the percentage locked in under the Expedited Local Partnership agreement or (2) the percentage computed using its current wealth percentile. Due to the loss of tangible personal property valuation, a district's total taxable value may be significantly lower now than it was when it entered into its Expedited Local Partnership agreement. That lower valuation could result in a higher priority for state funds and a lower share of the total cost of its state-assisted project. The bill permits an affected Expedited Local Partnership district to take advantage of that lower current valuation.

Background

The annual wealth percentile rankings of school districts for school facilities funding is based on the "total" taxable value of each district, *averaged* over three years. That total taxable value is the sum of both the district's real property tax valuation and its tangible personal property tax valuation. Beginning in 2005, however, the tax on tangible personal property that is not public utility personal property was phased down over several years, and is now fully phased out.[241] Thus, the value of that tangible personal property is no longer included in a district's *current* total taxable value. As each district's three-year average adjusted valuation is computed each year, the impact of the tangible personal property valuation will decrease. This decline in total valuation could eventually lower a district's wealth percentile and increase the amount of state funding available for its school facilities projects.

But districts participating in the Expedited Local Partnership Program "lock in" their percentiles when they enter into their Expedited Local Partnership agreements. It is that locked-in percentile on which a district's priority for CFAP funding and its share of the CFAP project cost will be based. Thus, subsequent changes in the district's valuation (up or down) do not affect its priority or share of the eventual CFAP project. Accordingly, districts that had a relatively higher amount of tangible personal property in their total taxable values when the tax was phased out may experience a negative effect from having locked in their percentiles that now could be lower due to lower taxable valuations. That is, their priority for funding may be higher and their CFAP shares may be lower, if computed using their current lower valuations, than they were when the districts entered into their Expedited Local Partnership agreements.

Prorating of maintenance obligation

(R.C. 3318.034 and 3318.37)

The bill allows a school district, under certain circumstances, to prorate the amount of its full maintenance obligation (see below) so that the district only has to generate enough funds to cover the maintenance costs of a portion of the district's entire classroom facilities project at one time. Under the bill, this option is available for districts that:

(1) Either (a) have elected to divide their CFAP project into segments and proceed with one or more separate segments of the total project at a time or (b) are addressing a single building through the Exceptional Needs Program (ENP); and

[241] R.C. 5711.22, not in the bill.

(2) Are able to generate the total prorated maintenance amount by an alternative means other than levying the one-half mill maintenance tax.

The prorated amount must be sufficient for the district to maintain the facilities completed under the CFAP segment or ENP project. It is calculated by multiplying the district's "full maintenance amount" by the percentage that the district's portion of the cost of the segment or project is of the district's portion of the cost of its entire facilities needs. For example, if the segment or project accounts for 25% of the district's portion of the cost of its entire facilities needs, the district must generate 25% of its full maintenance amount to maintain the facilities acquired under the segment or project. For this purpose, the "full maintenance amount" is the amount of total revenue that the district likely would generate by levying the one-half mill maintenance tax over the entire 23-year period typically required.

A school district may prorate its maintenance obligation for any number of CFAP segments or ENP projects, so long as the district can generate the entire prorated amount for each segment or project by an alternative means other than the maintenance tax. However, the sum of the prorated amounts for a district's segments or projects may not exceed the amount the district would have been required to raise for maintenance if the district had elected to address its entire facilities needs at one time.

If the district cannot generate the entire prorated amount for a segment or project through alternative means, it must levy the one-half mill maintenance tax in an amount necessary to generate the remainder of its full maintenance amount. In the case of a district segmenting its CFAP project, the tax must run for 23 years from the date the segment for which the tax is initially levied is undertaken. Current law requires the tax to run for 23 years from the date the first segment is undertaken.

If a school district is in the middle of a CFAP segment or ENP project on the provision's (90-day) effective date and the district has not levied a maintenance tax, the district may request approval from the School Facilities Commission to prorate its maintenance obligation in accordance with the bill.

Background – maintenance obligation

Continuing law generally requires school districts participating in a state classroom facilities program to levy a tax of one-half mill for 23 years to provide for the maintenance of the facilities acquired through the program.[242] However, a district may opt to generate all or part of the funds necessary to meet its maintenance obligation by alternative means other than levying the tax. These means include (1) using proceeds

[242] R.C. 3318.05, not in the bill.

from a property tax for permanent improvements or from a school district income tax,[243] (2) applying donations, credit issued to the district, or funds provided by a third party,[244] or (3) using any other available moneys.[245]

Maintenance plan

(R.C. 3318.08)

Current law requires that the contract between the School Facilities Commission and a school district for a state-assisted project include a provision for the district to maintain the project according to a plan approved by the Commission. The bill adds that the contract provision must require the district "to comply with the plan."

RETIREMENT (RET)

Alternative retirement plans

- Makes the Ohio Board of Regents (BOR), rather than the Department of Insurance (INS), responsible for designating vendors as eligible to provide investment options under alternative retirement plans (ARPs) for employees of public institutions of higher education.
- Adds several factors to those to be identified, considered, and evaluated when designating vendors
- Eliminates as factors to be considered when designating vendors the relationship between the rights and benefits under the investment options and amount of contributions made under those options and the suitability of those rights and benefits to the needs and interests of employees eligible to participate.
- Requires, rather than authorizes, BOR to rescind the designation of a vendor that does not comply with law authorizing establishment of ARPs.
- Requires that public institutions of higher education be given notice and an opportunity to comment whenever an entity applies for vendor designation or a designated vendor is scheduled for review by BOR.

[243] R.C. 3318.052, not in the bill.

[244] R.C. 3318.084, not in the bill.

[245] R.C. 3318.051, not in the bill.

Supplemental annuities

- Provides that supplemental annuities offered by institutions of higher education and school districts may be offered through the institution or district's choice of a competitively selected provider, a provider authorized under an alternative retirement plan, or, as provided under current law, providers designated by a participating employee.

- Permits the governing board of an institution of higher education or the board of a school district to require an employee who has designated a provider to select a new provider from vendors selected by the board, subject to any existing contract.

Alternative retirement plans

(R.C. 3305.01, 3305.02, 3305.03, 3305.031, 3305.032, 3305.04, 3305.05, 3305.053, and 3305.06; Section 733.05)

Under the bill, the designation of entities authorized to provide investment options under alternative retirement plans (ARPs) is transferred to the Ohio Board of Regents (BOR) from the Department of Insurance. ARPs are available under current law to full-time employees of public institutions of higher education who elect to participate in an ARP rather than the public retirement system to which the employment would normally apply.

Current law provides that investment options under ARPs must be offered to electing employees pursuant to group or individual contracts and certificates issued under group contracts. The bill provides that the options must be offered to electing employees pursuant to *trust or custodial accounts* or pursuant to group or individual *annuity* contracts and certificates issued under group contracts.

Designation of a vendor

Current law requires the Department of Insurance to designate at least three entities to provide ARP investment options. To be designated, an entity must be authorized to provide investment options and offer those options in at least ten other states.

The bill removes the requirement that at least three entities be designated and transfers designation responsibility to BOR. The bill refers to entities designated by BOR to provide investment options as "vendors." A "provider" is a vendor that has entered into an agreement to provide those investment options at a particular

institution (see "**Provider agreements**," below). BOR is given rulemaking authority to carry out its duties and responsibilities, including the authority to impose a fee on providers to cover any administrative or marketing expenses.

To be designated under the bill, an entity must meet current requirements and the following additional requirements: (1) that the investment options are offered as defined contribution plans that are qualified plans under the U.S. Internal Revenue Code,[246] (2) that the options provided in ten other states are offered through institutions of higher education, and (3) that the investment option plans are established as primary retirement plans that are alternatives to or a component of the applicable state retirement system. BOR is required to accept and review applications from entities seeking designation as vendors.

When designating an entity, current law requires consideration of a number of criteria. The bill modifies these requirements to require BOR to *identify*, consider, and *evaluate* all of the following when designating a vendor:

(1) Whether the entity intends to offer a broad range of investment options to electing employees;

(2) The suitability of the investment options to the needs and interests of the electing employees and their beneficiaries;

(3) The capability of the entity to offer sufficient information to the electing employees and their beneficiaries to make informed decisions with regard to investment options offered by the entity;

(4) The capability of the entity to perform in a manner that is in the best interests of the electing employees and their beneficiaries;

(5) The fees and expenses associated with the entity's investment options and the manner in which the entity intends to disclose those fees and expenses;

(6) Comments submitted by a public institution of higher education during a review of the entity.

In addition to adding the criteria detailed above, the bill modifies existing criteria as follows:

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[246] Defined contribution plans are those that provide for an individual account and benefits based solely on the amount contributed to the account and any earnings or loses on that amount. This is different from a defined benefit plan that provides a set benefit (such as a monthly pension) on retirement based typically an a formula including years of service, age, and salary.

(1) Provides that the experience of an entity in providing investment options under ARPs, *optional retirement plans, or similar types of plans* is to be identified, considered, and evaluated, rather than requiring only consideration of the entities' experience in ARPs;

(2) Removes a requirement that the relationship between the rights and benefits under the investment options and the amount of the contributions made under those options be considered;

(3) Removes a requirement that the suitability of the rights and benefits under the investment options to the needs and interests of employees be considered.

Current law requires that a periodic review be conducted to ensure that the requirements of the law authorizing the establishment of ARPs are met. A designated entity may lose its designation for failure to comply with these requirements. The bill requires the review to be conducted not less than once every three years and requires BOR to rescind the designation of a vendor that fails to satisfactorily meet the purposes of the ARP or comply with vendor requirements.

Review process

The bill establishes a process for public institutions of higher education to comment on the designation or review of a vendor. BOR is required to provide written notice to each public institution of higher education that an entity has applied to be designated as a vendor or that a vendor is scheduled for a review. BOR is also required to provide written notice to each institution of BOR's decision with respect to an application, review, or rescission of a vendor's designation no later than 14 days after that decision.

BOR must provide a 30-day period for a public institution of higher education to comment about an entity's application for designation or a vendor's review. The institution may request a meeting with BOR concerning the application or review. If the institution requests a meeting, BOR is required to do all of the following:

(1) Notify each institution of the meeting and its time and place;

(2) Hold the meeting not less than ten but not more than 30 days after the end of the comment period;

(3) Continue to accept comments concerning the application or review until five business days after the meeting is held.

Provider agreements

Current law requires each institution of higher education to enter into a contract with each designated entity that is willing to provide investment options under an ARP.

The bill modifies the arrangement between the institution and the entity providing investment options under an ARP. Each institution is to develop agreements to be entered into with vendors. Each agreement must include terms and conditions determined at the sole discretion of the institution. The institution is to enter into agreements with a minimum of four vendors or, if fewer than four vendors are available, the number of vendors that are available. An institution is not required to enter into an agreement with a vendor that is not willing to provide investment options or that is not willing to agree to the terms and conditions of the agreement. The agreement is to terminate if the entity ceases to be designated as a vendor or fails to comply with the terms and conditions of the agreement.

ARP provider selection

Current law requires each institution to notify, in writing, a state retirement system that the institution has hired an employee who is eligible to elect to participate in an ARP and whose employment is subject to that state retirement system. Current law requires that this notice be given within ten days of the person's employment. The bill provides that the notice is to be given no later than ten days after the first date the person is on the institution's payroll.

Each employee who elects to participate in an ARP rather than a state retirement system must select a provider. Current law provides that an employee may change providers once a year or at any time the provider loses its designation. The bill instead provides that, subject to the terms and conditions established by the institution, an employee may change providers at any time during the ARP plan year. When an employee changes a plan provider, current law requires the old provider to transfer to the new provider the employee's account balance, as directed by the employee. The bill permits an employee to direct the provider to transfer the account balance rather than requiring the transfer.

Supplemental annuities

(R.C. 9.90 and 9.91)

Current law authorizes the governing board of a public institution of higher education or the board of education of a school district to make payments to a custodial account for the purpose of providing employees a supplemental retirement benefit in the form of an annuity. The benefit is supplemental in the sense that it is separate from

any public state retirement system or ARP that applies to the employee's employment. If a board procures a tax-sheltered annuity, an employee has the right to designate the licensed agent, broker, or company through which the board is to arrange for the placement or purchase of the annuity.

The bill clarifies that if a board procures an annuity, the annuity must meet the requirements of the U.S. Internal Revenue Code for tax-sheltered annuities for employees of tax-exempt organizations (403(b)). The bill provides that a board is to arrange for placement or purchase of the annuity by doing one of the following:

(1) Selecting one or more authorized providers of annuities through a competitive bidding process;

(2) Selecting providers designated by BOR under the bill as entities authorized to provide ARP investment options;

(3) As under current law, require each participating employee to designate an agent, broker, or company as a provider.

When selecting vendors designated by BOR, the bill permits a board to require the provider to enter into agreements with the board that include such terms and conditions as are determined by the board in its sole discretion. The board may use a standardized plan document developed by BOR when entering into an agreement with a provider. BOR is authorized to develop a standardized plan document and may charge providers fees to cover any administrative and marketing expenses, as determined by BOR. An agreement with a vendor must be terminated if the vendor loses its BOR designation. A board is authorized to terminate an agreement if the vendor does not comply with the terms and conditions of the agreement with the board. Each board is required to select as annuity providers at least four vendors, or, if four vendors are not available, the vendors that are available, unless any of the follow apply:

(1) The vendor is not willing to provide annuity contracts to the educational institution or school district;

(2) The vendor is not willing to agree to the terms and conditions established under the agreement;

(3) The vendor does not offer an annuity contract that is a defined contribution plan qualified under the Internal Revenue Code and offered by the vendor in at least one other state.

Under current law and under the bill, an employee may designate an annuity provider if the board does not select providers under the bill's selection process. The

bill authorizes the board to require an employee who has made such a designation to designate a different provider selected by the board under the bill's selection process. The selection is to take effect at the earlier of the termination of the contract with the designated provider or the renewal of the contract.

DEPARTMENT OF TAXATION (TAX)

- Authorizes townships, under certain conditions, that have adopted tax increment financing (TIF) resolutions before 2011 to use unencumbered money in a TIF fund to pay for current public safety expenses.

- Allows townships to exempt property consisting of at least four residential units pursuant to a tax increment financing resolution if construction of the property begins between April 1, 2012, and December 31, 2013, and if the tax increment financing resolution was adopted before December 14, 2001.

- Requires county auditors to involve at least one "qualified project manager" in each county-wide reappraisal or triennial update that begins more than two years after the bill's effective date.

- Provides that a person qualifies as a "qualified project manager" if the person completes a 30-hour course in mass appraisal techniques approved by the Superintendent of Real Estate and Professional Licensing and meets continuing education requirements following completion of the course.

- Changes the time when a municipal corporation or township's withdrawal from a regional transit authority (RTA) takes effect, from six months after the withdrawal election to the last day of the year in which the election occurs.

- Specifies that RTA property taxes may not be levied in a subdivision for the year of an election that approves the question of the subdivision's withdrawal from the RTA.

- Authorizes a township or municipal corporation that withdraws from an RTA to place on the ballot the question of a property tax levy for the purpose of providing transportation services to the unincorporated area of the township or municipal corporation, respectively.

- Authorizes a township or municipal corporation to certify a single ballot question combining the questions of withdrawal from an RTA and a property tax levy to fund its own transportation services.

- Authorizes the abatement of unpaid property taxes, penalties, and interest owed on property that is owned by a church and that would have qualified for property tax exemption if not for a failure to comply with certain tax exemption procedures.

- Requires businesses that pay the dealers in intangibles tax to remit the tax to the Tax Commissioner instead of to the Treasurer of State.

- Provides that the Tax Commissioner, instead of the Treasurer, may bill taxpayers for underpaid taxes or issue refunds for overpayments.

- Provides that taxpayers may claim a refund of overpaid dealers in intangibles taxes by filing an application for final assessment, instead of applying for a certificate of abatement.

Loan from township TIF fund to pay public safety expenses

(R.C. 5709.75)

Under continuing law, a township may exempt a certain percentage of the value of improvements to parcels of property from taxation for a certain number of years under a tax increment financing arrangement (TIF). The township may exempt certain individual parcels or groups of parcels (parcel-by-parcel TIF) or a collection of parcels in an "incentive district" (incentive district TIF). In either situation, the township may require the owner of the exempted improvements to make payments to the township in lieu of taxes. Currently, such TIF funds generally must be used to pay debt charges on securities that townships typically issue to finance infrastructure. In addition, some townships also might use some TIF funds to compensate school districts or counties for some of the foregone property taxes. Any incidental surplus remaining in a TIF fund after the fund is dissolved must be deposited in the township's general fund.

Under current law, townships that adopted a parcel-by-parcel TIF resolution before January 1, 1995, are authorized to use unencumbered money in a TIF fund to pay for current public safety expenses, provided that (1) the transfer is repaid before the TIF tax exemption expires, and (2) the township has entered into a "hold harmless" agreement with the school district affected by the tax exemption. A hold harmless agreement requires the township to compensate the affected district for 100% of the tax revenue the district would have received if the township had not exempted the improvements.

The bill expands this existing authority by authorizing townships that, before January 1, 2011, have adopted a parcel-by-parcel or incentive district TIF resolution to

use unencumbered money in a TIF fund to pay for current public safety expenses, provided the same conditions are met as required under current law. However, instead of entering into a "hold harmless" agreement fully reimbursing the affected school district, the township may partially reimburse the district under a "service" agreement.

Township tax increment financing exemption for residential property

(R.C. 5709.73(L))

The bill allows townships to exempt improvements to certain types of residential property pursuant to a tax increment financing resolution. Under the bill, a township may authorize an exemption for improvements to property consisting of at least four residential units if construction of the property begins between April 1, 2012 and December 31, 2013 and if the resolution under which the improvements would be exempted was adopted before December 14, 2001.

Current law prohibits townships from exempting property used "for residential purposes" under such an arrangement, but does not define what constitutes "residential purposes."

Use of qualified project managers in county appraisals

(R.C. 5713.012)

Continuing law requires county auditors to periodically assess all of the real property in a county for the purposes of property taxation. The bill imposes new requirements relating to the involvement of outside entities in these county-wide "mass appraisal" projects and applies those new requirements to projects initiated two or more years after the bill's effective date.

Under existing law, a county auditor may contract with an outside entity to perform all or part of an appraisal, but only if the Tax Commissioner approves the arrangement. The bill instead requires auditors to contract with at least one "qualified project manager" to plan and manage each reappraisal, triennial update, or other county-wide property valuation undertaken by the auditor's office. Similarly, under the bill, the Tax Commissioner may not approve any contract between an auditor and an outside entity unless the entity designates an officer or employee to act as a qualified project manager. If the Tax Commissioner compiles a list of entities that may contract with county auditors to perform a mass appraisal or that may assist the Commissioner in reviewing and approving such contracts, the list may only include entities that have designated an officer or employee to act as a qualified project manager.

Qualified project manager qualifications

To qualify as a project manager, a person must attend a 30-hour course approved by the Superintendent of Real Estate and Professional Licensing and pass the final exam given at the end of the course. The person must also complete at least seven hours of continuing education courses in mass appraisal every two years, beginning with the two-year period after the year in which the person completes the 30-hour course.

The bill requires that each 30-hour course approved by the Superintendent of Real Estate and Professional Licensing address all of the following topics:

(1) Concepts and principles of mass appraisal as they relate to the assessment of real property;

(2) Methods of data collection and data management relative to real property parcels, including modern alternative data collection methods and current computer-assisted mass appraisal systems;

(3) Assessment sales-ratio studies, including measures of central tendency, the various measures of dispersion of data, and the advantages and disadvantages of various analysis techniques;

(4) Traditional approaches to property valuation, including the cost approach, sales comparison approach, and income approach;

(5) Methods and systems for model building and calibration in relation to the mass appraisal of real property.

Tax levy for subdivisions withdrawing from a regional transit authority

(R.C. 306.55, 505.59, 5705.19, 5705.25, 5705.252, and 5705.72; Section 757.10)

Effective date of withdrawal

Under continuing law, until November 5, 2013, the legislative authority of some municipal corporations or townships that have created or joined a regional transit authority (RTA), may propose to withdraw from the RTA by adopting a resolution to place the issue on the ballot. This option is available only if the RTA levies a property tax and includes in its membership political subdivisions that are located in a county having a population of at least 400,000 according to the most recent federal census. Under current law, if electors approve the withdrawal question, the withdrawal is effective six months after the election results are certified, and the power of the RTA to levy a tax on taxable property in the withdrawing subdivision terminates at the end of that six-month period.

The bill moves the effective date of a subdivision's withdrawal from six months after the election to December 31 of the year of the election. The bill additionally prohibits property tax from being assessed against property in a withdrawing subdivision for the tax year in which voters elect to withdraw from the RTA.

The bill also clarifies that, if a board of trustees of a township proposes to withdraw from an RTA, only the unincorporated area of the township is authorized to withdraw. The question of withdrawal thus is voted on only by the voters in the unincorporated area. The incorporated area of a township withdraws from an RTA only if the area's corresponding municipal corporation withdraws.

Municipal corporation and township transportation services levies

The bill authorizes the legislative authority of a municipal corporation or township that has withdrawn or proposes to withdraw from an RTA under R.C. 306.55 to propose a property tax levy at any rate of mills for the purpose of providing transportation services for the movement of persons within, to, or from the municipal corporation or the township's unincorporated territory. The maximum term of a municipal levy is five years; of a township levy, ten years. (The term discrepancy is unintentional and may be reconciled by future amendment.)

The township levy would apply only in unincorporated territory, and only voters in that territory would vote on the question.

Under current law, townships and municipal corporations are not authorized to levy property taxes specifically to fund township or municipal public transportation.

Combined property tax question

The bill authorizes a legislative authority of a municipal corporation or township to combine the questions of the municipal corporation's or township's withdrawal, respectively, from an RTA and for the corresponding transportation services levy described above. If a board of township trustees certifies a combined question, only voters of the unincorporated area of the township may vote on the combined question. Both questions must be approved or defeated together.

Effective date

The bill authorizes a board of trustees of a township or the legislative authority of a municipal corporation to certify the question of a property tax for transportation services or a combined question to the board of elections between the date the bill becomes law and the effective date as though the bill was in effect on the date the bill became law. In effect, the bill allows a board or legislative authority to certify a

question or combined question in time for the 2012 general election and directs the county board of elections to place the question on that election's ballot.

Property tax abatement for church-owned property

(Section 757.20; R.C. 5713.08(C) and 5713.081 (not in the bill))

The bill provides for the abatement of unpaid property taxes, penalties, and interest on property that is owned by a church and that would have been tax exempt if not for a failure to comply with the procedures for obtaining tax-exempt status. The current owner of the property may file an application with the Tax Commissioner requesting that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest be abated. Similarly, a prior owner of the property may file an application requesting exemption from prior taxes. The application must be filed within 12 months after the provision's effective date.

Under current law, the Tax Commissioner may abate only up to three years' worth of unpaid property taxes, interest, and penalties.

Procedures for receiving tax abatement

Certificate from county treasurer

Before filing an application for tax abatement, the property owner must request a certificate from the county treasurer stating that all taxes, penalties, and interest owed on the property before the property was used for a tax-exempt public purpose have been paid in full. This certificate must accompany the application filed with the Tax Commissioner.

Application filed with the Tax Commissioner

The application form must include the name of the county in which the property is located; a legal description of the property; its taxable value; the amount of unpaid taxes, penalties, and interest; the date of acquisition of the property; the use of the property during any time in which unpaid taxes accrued; and any other information required by the Tax Commissioner.

Tax Commissioner determination

Upon receipt of an application, the Tax Commissioner must determine whether the applicant meets all of the qualifications specified in the bill and, if so, order that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest from each year the property meets the qualifications be abated. If the Tax Commissioner finds that the property does not meet the qualifications, or is otherwise

being used for a purpose that would foreclose its right to exemption, the Tax Commissioner issues an order denying the application. For any year that the applicant is not entitled to tax abatement, the Tax Commissioner must order the county treasurer to collect any unpaid taxes, penalties, and interest on that property for those years.

In addition, the Tax Commissioner may consider whether property qualifies for tax abatement if that property is already subject to an application for exemption pending on the effective date of the bill without requiring the property owner to file another application. The Tax Commissioner may also allow for abatement of unpaid taxes on any qualified property that is subject to an application for exemption within 12 months after the effective date even if the application does not specifically request tax abatement.

Collection of the dealers in intangibles tax

(R.C. 5703.05, 5719.13, 5725.14, 5725.15, 5725.16, 5725.17, 5725.22, and 5725.221)

The bill amends the procedures for collection of the dealers in intangibles tax. Among other changes, the bill requires taxpayers to remit tax payments to the Tax Commissioner instead of to the Treasurer of State.

Background

Continuing law provides for the taxation of shares in and capital employed by dealers in intangibles. The tax applies to businesses that operate in Ohio and engage in certain financial and lending activities (e.g., stockbrokers, mortgage companies, nonbank loan companies). The tax also applies to "qualifying dealers," which are generally dealers in intangibles that are subsidiaries of a financial institution or insurance company. The tax is levied on the fair value of capital employed by, or the value of shares of, dealers of intangibles at a rate of .8% (8 mills).

Collection procedures

Currently, a dealer in intangibles must submit an annual report to the Tax Commissioner by the second Monday in March that details the dealer's resources and liabilities as of the end of the previous year. The Tax Commissioner makes an assessment based upon the taxable property described in the report and certifies the assessment to the Treasurer of State. Upon receipt of the certification, the Treasurer computes the amount of tax due and issues a tax bill. Payment of the tax is due to the Treasurer within 30 days after the tax bill is mailed.

The bill retains the current annual report requirement, but requires that dealers also submit payment of the tax with the report. Under the bill, the filing of the report

constitutes the preliminary assessment of the taxable property listed on the report. Taxpayers must pay the amount due, based on this preliminary assessment, to the Tax Commissioner instead of to the Treasurer. The Commissioner may prescribe the form of payment, but the payment must be made payable to the Treasurer.

Under the bill, the Commissioner, instead of the Treasurer, must collect the taxes due on all assessments, including amended and final assessments. Accordingly, the bill allows the Commissioner to charge penalties and interest on unpaid taxes and to certify delinquent claims to the Attorney General.

Amended or final assessments

Under current law, if an amended or final assessment is certified with respect to a taxpayer, the Treasurer of State must ascertain the difference in liability from the previous assessment and issue a tax bill for the deficiency or refund the overpayment. The bill requires that the Tax Commissioner take such actions with respect to amended and final assessments.

Refunds of overpayments

Existing law allows a dealer in intangibles to receive a refund of overpaid taxes by obtaining a certificate of abatement from the Tax Commissioner. The certificate of abatement may be used to pay taxes due in the county in which the claim for overpayment arose. The taxpayer must tender the certificate to the Treasurer of State.

The bill instead requires dealers to apply for a refund of overpaid taxes by filing an application for final assessment. In addition, the bill provides that a taxpayer that has received a certificate of abatement may use the certificate to pay any tax payable to the Treasurer and may tender the certificate to the Treasurer or to the Tax Commissioner.

DEPARTMENT OF TRANSPORTATION (DOT)

- Declares that materials or data provided to the Ohio Department of Transportation (ODOT) Director that are trade secrets or commercial or financial information are confidential and are not public records.

- Eliminates the statutory organization of ODOT into eight specified divisions and allows the Director to organize ODOT.

- Replaces the Office of Public Transportation of the Division of Multi-modal Planning and Programs with the Office of Transit, which has responsibility for public transportation grants.

Organizational divisions

(R.C. 5501.04 and 5501.07; 5501.09 (repealed))

The bill eliminates the existing statutory organization of ODOT into eight separate divisions (business services, engineering policy, finance, human resources, information technology, multi-modal planning and programs, project management, and equal opportunity). Under existing general authority, the bill allows the Director to organize ODOT and distribute the duties, powers, and functions among divisions. As part of the elimination of the eight specific divisions, the bill also does the following: (1) replaces the Office of Public Transportation of the Division of Multi-modal Planning and Programs with the Office of Transit, which will have the continuing responsibility for public transportation grants, (2) eliminates the Office of Maritime Transportation of the Division of Multi-modal Planning and Programs, (3) eliminates the specific requirement for the ODOT Director to supervise the work of each division, and (4) removes all statutory references to the existing eight divisions.

TREASURER OF STATE (TOS)

- Authorizes the Treasurer of State to select a designee to collect taxes levied on the gross premiums of "unauthorized" insurance companies (i.e., "surplus lines") and payable by the insured.

- Specifies that, unless otherwise authorized by the Tax Commissioner, the Treasurer may sell cigarette tax stamps only to licensed dealers, and authorizes the Treasurer to charge dealers for costs incurred in the sale of such stamps.

- Eliminates the Office of the Treasurer of State as one office in which money or a surety or government-issued bond may be deposited to cover the repair or removal of abandoned service stations for owners or lessees who own, lease, or construct two or more service stations in Ohio.

- Requires the Treasurer to refund the money or release the bond to the owner or lessee, who, in turn, must file a bond with the municipal corporation or county in which each service station is located.

Collection of insurance taxes

(R.C. 3905.36)

"Unauthorized insurance" (also called "surplus lines insurance") is insurance sold by an insurer that is not licensed to do business in the state. A "surplus lines broker" is a person who negotiates for and obtains insurance, other than life insurance, on property or persons in the state from unauthorized insurers. Existing law requires licensed surplus lines brokers to pay a 5% tax on gross premiums paid for unauthorized insurance after a deduction for return premiums. Furthermore, persons that independently procure unauthorized insurance (also called direct placement) must pay a 5% tax on gross premiums paid for unauthorized insurance after a deduction for return premiums.

Under current law, each of these taxes is collected by the Treasurer of State. The bill proposes to permit the Treasurer of State to name a designee to undertake the collection process.

Cigarette tax stamp sales and cost

(R.C. 5743.03)

The bill specifies that the Treasurer of State is authorized to sell cigarette tax stamps only to licensed dealers unless authorized to do otherwise by the Tax Commissioner. The bill further authorizes the Treasurer to charge dealers for any costs incurred in the sale of cigarette tax stamps. Money collected by the Treasurer from such charges are to be used to fund the operating costs of the Treasurer's office.

Abandoned service stations

(R.C. 3791.11 and 3791.12; Section 737.50)

The bill eliminates the Office of the Treasurer of State as one office wherein money or a surety or government-issued bond may be filed for the repair or removal of abandoned service stations and the restoration of property for property owners or lessees who own, lease, or construct two or more service stations in Ohio. Under current law, if an owner or lessee owns, leases, or is constructing two or more service stations in Ohio, the owner or lessee may deposit money or a surety or government-issued bond with the Treasurer of State covering all of the service stations, in lieu of filing a bond with the executive authority of the municipal corporation in which each service station is located, or with the clerk of the board of county commissioners, if the service station is not located in a municipal corporation. The bill eliminates this option

so that the owner or lessee must file a bond with the municipal corporation or county in which each service station is located.

The bill requires the Treasurer of State to refund the money or release the bond to the property owner or lessee who deposited it with the Treasurer. The owner or lessee, in turn, must file a bond with the municipal corporation or county in which each of the owner's or lessee's service stations is located, as required by continuing law. Not later than 30 days after the amendment takes effect, the Treasurer of State must give written notice to each property owner or lessee who had previously deposited money or a surety or government-issued bond with the Treasurer of State that the money will be refunded or the bond will be released within the following time period, and that the property owner or lessee must file a bond in the municipal corporation or county in which each service station is located, immediately after the refund or release:

(1) If money was deposited, the Treasurer of State will refund the money to the property owner or lessee within 180 days after the amendment's effective date;

(2) If a surety bond was deposited, the Treasurer of State will release the bond to the property owner or lessee upon the earlier of the expiration of the bond or within two years after the amendment's effective date;

(3) If a government-issued bond was deposited, the Treasurer of State will release the bond to the property owner or lessee within 180 days after the amendment's effective date.

BUREAU OF WORKERS' COMPENSATION (BWC)

- Permits the President of the Ohio Township Association, if presently unavailable to serve, to select a designee to serve on the Workers' Compensation Board of Directors Nominating Committee.

- Permits the President of the Ohio County Commissioners Association, if presently unavailable to serve, to select a designee to serve on the Committee.

- Requires the Administrator of Workers' Compensation to make available electronically the joint rules governing the operating procedures of the Bureau of Workers' Compensation (BWC) and the Industrial Commission and all rules adopted by BWC and the Commission rather than making those rules available in two separate printed publications as under current law.

- Requires the Administrator to make available electronically upon request the classifications, rates, rules, and rules of procedure of BWC rather than making those rules available in pamphlet form.

- Eliminates the requirement that the Administrator maintain a mailing list of persons who have requested copies of the BWC and Commission rules.

Workers' Compensation Board Nominating Committee

(R.C. 4121.123)

Both the President of the Ohio Township Association and the President of the Ohio County Commissioners Association serve as members of the Workers' Compensation Board of Directors Nominating Committee.

The bill permits the President of the Ohio Township Association, if presently unavailable to serve, to select a designee to serve on the Committee. The bill also permits the President of the Ohio County Commissioners Association, if presently unavailable to serve, to select a designee to serve on the Committee.

Under current law, no provision is made for what happens in the event that either president is presently unavailable to serve on the Committee. However, under current law, if either presidency is vacant, the governing body authorized to appoint the president has authority to appoint a designee who will serve until the vacancy is filled.

Publication of rules and orders by the Administrator

(R.C. 4123.20, 4121.30, and 4121.18)

The bill requires the Administrator of Workers' Compensation to make available electronically the joint rules governing the operating procedures of the Bureau of Workers' Compensation (BWC) and the Industrial Commission, all rules adopted by BWC and the Commission, and the BWC classifications, rates, and rules of procedure. The bill eliminates the requirements that the Administrator must publish the joint rules in a single printed publication, all rules adopted by BWC and the Commission in a single publication, and print BWC's classifications, rates, and rules of procedure in pamphlet form to be furnished on demand. Additionally, under the bill, BWC can no longer charge the cost of providing the publication of all the BWC and Commission rules. The bill also eliminates the current law requirement that the Administrator keep

a mailing list of all persons who have requested copies of the rules adopted by BWC and the Commission.

DEPARTMENT OF YOUTH SERVICES (DYS)

- Requires a criminal court that transfers jurisdiction of a specified type of case back to the juvenile court after a juvenile has been convicted of or pleaded guilty to an offense in the criminal court other than the offense that was the basis of the transfer, and all other agencies that have a record of the conviction or guilty plea, to expunge the criminal record and consider and treat the conviction or guilty plea as a delinquent child adjudication.

- Specifies that judicial release of a child after one year of an aggregate term of commitment to DYS for specifications and underlying delinquent act is a possible alternative to other types of judicial release.

- Specifies that the training standards established by the Adult Parole Authority are for adult probation officers rather than all probation officers.

- Requires DYS to attempt to verify a youth's identity with a birth certificate and social security number before the youth is released from a secure facility under the control of the Department and to issue the youth an identification card if able to so verify the youth's identity.

- Specifies that an identification card issued by DYS is sufficient documentary evidence for the Registrar of Motor Vehicles or a deputy registrar to issue an identification card.

- Requires the Registrar or a deputy registrar to destroy an identification card issued by DYS upon the issuance of an identification card by the Registrar or a deputy registrar.

- Method for determining the allocation of county juvenile program funds.

- Replaces a requirement that moneys in the Felony Delinquent Care and Custody Fund be prioritized to research-supported, outcome-based programs and services with a requirement that research-supported, outcome-based programs and services, to the extent they are available, must be encouraged.

Transfer of jurisdiction from a criminal court to a juvenile court

(R.C. 2152.121)

Under existing law, if a complaint alleges that a child is a delinquent child, if the child's case is transferred to adult court for prosecution pursuant to R.C. 2152.12(A)(1)(a)(i) or (b)(ii), and if the child subsequently is convicted of or pleads guilty to an offense other than the offense with which the child was originally charged, the court in which the child is convicted of or pleads guilty to that offense must determine whether the child would have been eligible for a mandatory or discretionary transfer to an adult court had a complaint been filed in juvenile court alleging that the child committed the offense of which the child was convicted in the adult court. Under R.C. 2152.12(A)(1)(a)(i), the juvenile court must transfer an alleged delinquent child's case to adult court if the child is alleged to have committed aggravated murder, murder, attempted aggravated murder, or attempted murder, if child was 16 or 17 at the time of the alleged act, and there is probable cause to believe that the child committed the alleged act. Under R.C. 2152.12(A)(1)(b)(ii), a juvenile court must transfer an alleged delinquent child's case to an adult court for prosecution if the child is alleged to have committed a category two offense, the child was 16 or 17 at the time of the act charged, the child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged, and there is probable cause to believe that the child committed the act charged.

If the adult court in which the child is convicted of the offense determines that the child would not have been subject to mandatory or discretionary transfer to an adult court if the child had been alleged to be a delinquent child for committing the offense of which the child was convicted in adult court, that court must transfer the case back to the juvenile court that initially transferred the case to adult court, and the juvenile court must impose one or more traditional juvenile dispositions upon the child under R.C. 2152.19 and 2152.20. Under the bill, when the case is transferred back to the juvenile court, the adult court and all other agencies that have any record of the conviction or guilty plea of the child must expunge the conviction or guilty plea and all records of it. In addition, the conviction or guilty plea must be considered and treated for all purposes other than for the purposes discussed above to have never have occurred, and the conviction or guilty plea must be considered and treated for all purposes other than for the purposes discussed above to have been a delinquent child adjudication of the child.

Judicial release of juvenile

(R.C. 2152.22(B)(1) and (C)(1))

Existing law authorizes the judicial release of a child who is in the custody of DYS. A child may be released *to court supervision* during the *first half* of the prescribed minimum term of commitment or, if the child was committed until the age of 21, during the *first half* of the period that begins on the first day of commitment and ends on the child's 21st birthday, provided that any commitment imposed for specified aggravating circumstances (for example, possession of a firearm) has ended. During the *second half* of the prescribed minimum term of commitment or *second half* of the period that begins on the first day of commitment and ends on the child's 21st birthday, a child may be released to *DYS supervision*, provided that any commitment imposed for specified aggravating circumstances has ended.

Also, under existing law and except as provided in the next sentence, if a child was committed for a prescribed minimum period and a maximum period running until the child's 21st birthday, the court may grant judicial release at any time after the prescribed minimum period. As an *exception* to the authority to grant judicial release as described in the prior sentence, if a child was committed for both (1) one or more definite periods for specified aggravated circumstances and (2) a prescribed minimum period and a maximum period running until the child's 21st birthday, all of the prescribed minimum periods under (1) and (2) are aggregated, and the court may grant judicial release at any time after the child serves one year of the aggregate period.

The bill specifies that judicial release under the exception described in the prior paragraph is an alternative to the two types of judicial release described in the first paragraph above. The authority to grant a judicial release during the first and second halves of a period of commitment described in the first paragraph above apply *unless judicial release is granted under the exception.*

Training standards for probation officers

(R.C. 2301.27 and 2301.271)

The bill specifies that the training standards established by the Adult Parole Authority for probation officers apply only to adult probation officers rather than to all probation officers.

Identification cards

(R.C. 4507.51 and 5139.511)

The bill requires DYS to attempt to verify each youth's identification and social security number before the youth is released from a secure facility under the control of DYS. If DYS is able to verify the youth's identity with a verified birth certificate and social security number, DYS must issue an identification card that the youth may present to the Registrar of Motor Vehicles or a deputy registrar. If DYS is not able to verify the youth's identity with both a verified birth certificate and social security number, the youth will not receive an identification card.

Additionally, the bill specifies that an identification card issued by DYS as described in the preceding paragraph is sufficient documentary evidence as required by the Registrar of the age and identity of a person applying to the Registrar for an identification card, upon verification of the applicant's social security number by the Registrar or a deputy registrar. Upon issuing an identification card for a person who has previously been issued an identification card by DYS, the Registrar or a deputy registrar must destroy the identification card issued by DYS.

Method of determining the allocation of county juvenile program funds

(R.C. 5139.41 and 5139.43)

The bill amends existing law governing DYS' division of county juvenile program allocations among county juvenile courts that administer programs and services for preventions, early intervention, diversion, treatment, and rehabilitation for alleged or adjudicated unruly or delinquent children or for potential unruly or delinquent children. Under existing law, funding is based on a county's previous year's ratio of DYS' institutional and community correctional facility commitments to the county's four-year average of felony adjudications. DYS must give each county a proportional allocation of commitment credits determined according to a statutory funding formula. Under that formula, DYS must determine for each county and for the state *a four-year average* of felony adjudications.

Under the bill, beginning July 1, 2012, DYS must determine an average instead of a four-year average of felony adjudications for each county and for the state to use in allocating commitment credits among counties. Beginning on that date, in determining the average felony adjudications for each county and for the state, DYS will be required to include felony adjudications for fiscal year 2007 and for each subsequent fiscal year through fiscal year 2016. Beginning July 1, 2017, DYS will be required to include the most recent felony adjudication data and to remove the oldest fiscal year data so that a ten-year average of felony adjudication data will be maintained.

The bill does not change the rest of the formula.

Felony delinquent care and custody fund

(R.C. 5139.43)

Current law, unchanged by the bill, requires a county treasurer to create a felony delinquent care and custody fund within the county treasury, and to deposit certain specified moneys into that fund. The county and the juvenile court that serves the county must use the moneys in its felony delinquent care and custody fund in accordance with rules promulgated by DYS and pursuant to several specified guidelines listed in R.C. 5139.43.

Under current law, one of the specified guidelines for the fund is that money in the fund must not be used to support programs or services that do not comply with federal juvenile justice and delinquency prevention core requirements or to support programs or services that research has shown to be ineffective, and that *moneys in the fund must be prioritized* to research-supported, outcome-based programs and services. The bill instead requires that research-supported, outcome-based programs and services, *to the extent they are available, must be encouraged*.

MISCELLANEOUS (MSC)

- Adds, as a condition under which the state or a political subdivision may use the abbreviated publication procedure for publishing notices or advertisements, that the second, abbreviated notice or advertisement must be published on the state public notice web site.

- Eliminates the requirement that the first publication of legal advertisements or notices be posted on the state public notice web site.

- Defines "state agency" and "political subdivision" for purposes of the abbreviated publication procedure.

- Requires the Legislative Task Force on Redistricting, Reapportionment, and Demographic Research to utilize election data, in addition to census data and other demographic and statistical data, for the purposes of policy analysis, program development, and program evaluation for the benefit of the General Assembly.

- Requires the departments of Aging, Alcohol and Drug Addiction Services, Development, Developmental Disabilities, Education, Health, Job and Family Services, and Mental Health and the Rehabilitation Services Commission to

collaborate to revise eligibility standards and eligibility determination procedures of programs they administer for the purpose of making the standards and procedures more uniform.

- Creates in the state treasury the SellOhio Global Initiative Fund.
- Repeals the statute authorizing the Legislative Committee on Education Oversight and the Legislative Office of Education Oversight, which ceased operations in 2005.
- Adds the State Fire Marshal, or the State Fire Marshal's designee, to the Multi-Agency Radio Communications System Steering Committee.

Publication of legal notices and advertisements

(R.C. 7.10 and 7.16)

R.C. 7.16 allows a state agency or political subdivision that is required by a statute or rule to publish a notice or advertisement two or more times in a newspaper of general circulation to first publish the notice or advertisement in its entirety in the newspaper, but to make the second publication in an abbreviated form in the newspaper and on the newspaper's Internet web site, *if* the statute or rule requiring publication refers to R.C. 7.16. Further publication is not required if the second, abbreviated notice or advertisement meets certain requirements established in ongoing law.

The bill adds to these requirements that the second, abbreviated notice or advertisement must be published on the state public notice web site established under continuing law.[247] The bill eliminates a provision prohibiting a state agency or political subdivision from using the abbreviated procedure if it does not operate and maintain a web site. A state agency or political subdivision that otherwise meets the requirements for using the abbreviated procedure would only be prohibited from using that procedure if the state public notice web site is not operational, as stated in continuing law.

The bill also eliminates the requirement that the first publication of legal advertisements or notices be posted on the state public notice web site.

The bill defines "state agency" and "political subdivision" for purposes of the abbreviated publication procedure, as follows:

[247] R.C. 125.182.

- A "state agency" is any organized body, office, agency, institution, or other entity established by Ohio law for the exercise of any function of state government, including state institutions of higher education, as defined in continuing law, which are any state university or college, community college, state community college, university branch, or technical college, and includes the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, and the Northeast Ohio Medical University and its board of trustees.[248]

- 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, and includes, but is not limited to, an appointed 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 created under ongoing law or in existence on December 16, 1964, regional council established by political subdivisions, emergency planning district and joint emergency planning district, joint emergency medical services district, fire and ambulance district, joint interstate emergency planning district established by an agreement, 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, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program.

[248] R.C. 3345.011 and 3345.12(A)(1).

Legislative Task Force on Redistricting, Reapportionment, and Demographic Research

(R.C. 103.51)

The bill requires the Legislative Task Force on Redistricting, Reapportionment, and Demographic Research to utilize election data for the purposes of policy analysis, program development, and program evaluation for the benefit of the General Assembly. Under continuing law, the Task Force utilizes census and other demographic and statistical data for those purposes.

Uniform eligibility standards and procedures

(R.C. 121.35)

The bill requires the Department of Aging, Department of Alcohol and Drug Addiction Services, Department of Development, Department of Developmental Disabilities, Department of Education, Department of Health, Department of Job and Family Services, Department of Mental Health, and the Rehabilitation Services Commission to collaborate to revise eligibility standards and eligibility determination procedures of programs they administer. The purpose of the revisions is to make the programs' eligibility standards and eligibility determination procedures more uniform. An agency is prohibited from making any program's eligibility standards and procedures inconsistent with state or federal law. To the extent authorized by state and federal law, the revisions may provide for the agencies to share administrative operations.

SellOhio Global Initiative Fund

(R.C. 122.862)

The bill establishes in the state treasury the SellOhio Global Initiative Fund.

Repeal of LOEO statute

(Repealed R.C. 3301.68)

The bill repeals the statute that authorized the establishment of the Legislative Committee on Education Oversight and the Legislative Office of Education Oversight (LOEO). LOEO ceased operations at the end of 2005, as required by H.B. 66 of the 126th General Assembly, which eliminated its funding and required it to complete its pending

studies and close by December 31, 2005.[249] However, H.B. 66 did not repeal the codified statute establishing LOEO and its oversight committee.

Multi-Agency Radio Communications System Steering Committee

(Section 701.50)

The bill adds the State Fire Marshal, or the State Fire Marshal's designee, to the existing Multi-Agency Radio Communications System Steering Committee. Current members of the Committee are the designees of the Directors of Administrative Services, Budget and Management, Natural Resources, Public Safety, Rehabilitation and Correction, and Transportation.

EFFECTIVE DATES

(Sections 812.10 to 812.30)

The bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section in the bill is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect. For example, appropriations for current expenses go into immediate effect.

HISTORY

ACTION	DATE
Introduced	03-16-12
Reported, H. Finance & Appropriations	04-25-12
Passed House (62-34)	04-25-12

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[249] Section 206.87 of Am. Sub. H.B. 66 of the 126th General Assembly.