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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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| <p><b>H.B. 110</b><br/><b>134<sup>th</sup> General Assembly</b></p> | <p><b>Bill Analysis</b></p> <p><a href="#">Click here for H.B. 110's Fiscal Note</a></p> |
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## SUMMARY

This analysis is arranged by state agency 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 concludes with chapters on Local Government and Miscellaneous provisions, as well as a note on effective dates, expiration, and other administrative matters.

Within each agency and category, a summary of the items appears first (in the form of dot points) followed by a discussion of their content and operation.

## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>DEPARTMENT OF ADMINISTRATIVE SERVICES.....</b> | <b>30</b> |
| Ohio preference scoring in state purchases .....  | 31        |
| Bulk purchasing program .....                     | 32        |
| Cooperative purchasing agreements.....            | 32        |
| Parental and caregiver leave .....                | 33        |
| Parental leave.....                               | 33        |
| Caregiver leave .....                             | 34        |
| Fleet management.....                             | 34        |
| Prescription drug advisory council.....           | 35        |
| DAS insurance program .....                       | 35        |
| Sovereign immunity .....                          | 35        |
| Judicial liability program.....                   | 35        |
| Bond requirements .....                           | 36        |

|  |    |
|--|----|
| Liability insurance program.....                                     | 36 |
| Claims against the state .....                                       | 36 |
| Compromising of claims .....   | 36 |
| Public office employee database.....                                 | 37 |
| Real estate and planning.....  | 37 |
| Land conveyance documents.....                                       | 37 |
| Land conveyance authority .....                                      | 37 |
| Office of Information Technology.....                                | 38 |
| Public assistance private sector tools.....                          | 38 |
| <b>DEPARTMENT OF AGING</b> .....                                     | 39 |
| Certification of providers .....                                     | 39 |
| Training programs.....   | 39 |
| Performance-based reimbursement .....                                | 40 |
| PACE program expansion.....  | 40 |
| <b>DEPARTMENT OF AGRICULTURE</b> .....                               | 42 |
| Wine tax diversion to Ohio Grape Industries Fund .....               | 42 |
| Farmers market registration.....                                     | 43 |
| Ohio Proud Program merchandise .....                                 | 43 |
| Liming material sampling and analyzing.....                          | 43 |
| Southern Ohio Agricultural and Community Development Foundation..... | 44 |
| <b>ATTORNEY GENERAL</b> .....  | 45 |
| Collecting debts from gambling winnings.....                         | 47 |
| Lottery winnings.....  | 47 |
| Casino winnings.....   | 47 |
| AG’s special counsel.....  | 48 |
| AG rules on collection of debt .....                                 | 48 |
| Settlements awarding money to the state .....                        | 49 |
| Raffles conducted by a 501(c)(6) nonprofit organization.....         | 49 |
| Charitable organizations .....                                       | 50 |
| Ohio Peace Officer Training Academy .....                            | 51 |
| Pilot program – funding peace officer and trooper training .....     | 51 |
| Creation of pilot program; background on training requirements.....  | 51 |
| Agency certification of salaries .....                               | 52 |
| Operation of pilot program and payments.....                         | 52 |
| Sole state funding for the training .....                            | 52 |
| Agency and AG reports.....   | 53 |

|   |           |
|---|-----------|
| Law Enforcement Training Funding Study Commission .....         | 53        |
| Federal Treasury Offset Program (TOP).....                      | 53        |
| Foreclosure sale reports to the AG .....                        | 54        |
| Public record exemption for certain telephone numbers .....     | 54        |
| Relevant definitions .....                                      | 55        |
| <b>AUDITOR OF STATE .....</b>                                   | <b>56</b> |
| Auditor of State authority.....                                 | 56        |
| Auditor responsibilities .....                                  | 56        |
| Employees .....   | 56        |
| Chief Deputy Auditor of State.....                              | 57        |
| State awards for economic development.....                      | 57        |
| <b>OFFICE OF BUDGET AND MANAGEMENT .....</b>                    | <b>59</b> |
| Oversight over fund allocations.....                            | 59        |
| <b>CAPITOL SQUARE REVIEW AND ADVISORY BOARD .....</b>           | <b>61</b> |
| Indefinite delivery indefinite quantity contract .....          | 61        |
| <b>DEPARTMENT OF COMMERCE.....</b>                              | <b>62</b> |
| I. Division of Securities .....                                 | 65        |
| Ohio Investor Recovery Fund.....                                | 65        |
| Obtaining a restitution assistance award.....                   | 65        |
| Violations.....   | 66        |
| Funding the OIRF .....  | 66        |
| Rules .....   | 67        |
| Elder financial exploitation .....                              | 67        |
| Ohio Revised Limited Liability Company Act effective date ..... | 68        |
| II. Division of Industrial Compliance .....                     | 68        |
| Plumbing inspector certification.....                           | 68        |
| Manufactured homes .....  | 69        |
| III. Division of Real Estate and Professional Licensing .....   | 69        |
| Real estate broker and salesperson contact information .....    | 69        |
| Ancillary trustees for brokers .....                            | 69        |
| Disposition of license fees .....                               | 70        |
| IV. State Fire Marshal.....                                     | 70        |
| Fire investigation.....   | 70        |
| Revolving loan program .....                                    | 70        |
| Self-service gas stations .....                                 | 70        |
| V. Division of Liquor Control .....                             | 70        |

|   |           |
|---|-----------|
| Direct beer and wine sales.....   | 70        |
| S-1 liquor permit eligibility changes.....                                    | 71        |
| S-2 liquor permit.....  | 71        |
| Ohio grape industries tax.....  | 71        |
| Beer tax exemption.....   | 72        |
| Wine fulfillment warehouse.....   | 72        |
| B-2a liquor permit changes.....   | 72        |
| Illegal shipment of beer and wine.....  | 73        |
| Retail permit holder prohibition.....   | 73        |
| Repackaging of alcohol.....   | 74        |
| Serving containers in DORAs.....  | 74        |
| D-4 liquor permit – club oaths.....   | 75        |
| Serving alcohol during bingo.....   | 75        |
| VI. Division of Financial Institutions.....                                   | 75        |
| Residential Mortgage Lending Act fee increase.....                            | 75        |
| Conversion of Banks Fund to custodial fund.....                               | 75        |
| VII. Division of Unclaimed Funds.....   | 76        |
| <b>COSMETOLOGY AND BARBER BOARD.....</b>                                      | <b>77</b> |
| Cosmetology or barber services at limited events.....                         | 77        |
| State Cosmetology and Barber Board membership.....                            | 78        |
| Barber teacher examinations.....  | 78        |
| <b>COUNSELOR, SOCIAL WORKER, AND MARRIAGE AND FAMILY THERAPIST BOARD.....</b> | <b>79</b> |
| Registration for master’s level trainee graduates.....                        | 79        |
| <b>DEPARTMENT OF DEVELOPMENT.....</b>   | <b>80</b> |
| Rename agency as Department of Development.....                               | 84        |
| Government-owned broadband networks.....                                      | 84        |
| Established networks.....   | 84        |
| Prerequisites to establish government-owned broadband networks.....           | 85        |
| Funding for government-owned broadband networks.....                          | 86        |
| Broadband Expansion Program Authority changes.....                            | 86        |
| Authority members’ stipend.....   | 86        |
| Attending meetings remotely.....  | 87        |
| Transfer of minority business enterprise and related programs.....            | 87        |
| Minority Development Financing Advisory Board.....                            | 89        |
| Job creation and retention tax credit.....                                    | 89        |
| Background.....   | 89        |

|   |            |
|---|------------|
| JCTC and work-from-home employees .....                       | 90         |
| Priority of JRTC applications.....                            | 90         |
| Rural Industrial Park Loan Program eligibility.....           | 91         |
| Rural growth investment credit.....                           | 91         |
| Background.....   | 91         |
| Credit cap .....  | 92         |
| Accepting applications .....                                  | 92         |
| Affiliate contributions .....                                 | 92         |
| Timing and duration of investments .....                      | 92         |
| Border county rural business concerns.....                    | 93         |
| Geographic location of rural business concerns .....          | 93         |
| Limit for investments in one business.....                    | 93         |
| Transformational mixed use development (TMUD) tax credit..... | 94         |
| Film and theater tax credit .....                             | 94         |
| Meat processing plant grants .....                            | 95         |
| Loan and grant information .....                              | 96         |
| <b>DEPARTMENT OF DEVELOPMENTAL DISABILITIES .....</b>         | <b>97</b>  |
| Technology First Task Force and technology first policy ..... | 99         |
| Medicaid rates for ICF/IID services .....                     | 100        |
| ICF/IID franchise permit fee.....                             | 101        |
| Medicaid rates for waiver services .....                      | 101        |
| Waiver slots.....   | 102        |
| Transfer of residential facility license .....                | 102        |
| Developmental centers services and cost recovery .....        | 102        |
| County DD board waiver allocation plan .....                  | 102        |
| County DD board business manager .....                        | 103        |
| County DD boards annual cost reports.....                     | 103        |
| Release of records and reports by county DD boards .....      | 103        |
| County share of nonfederal Medicaid expenditures .....        | 104        |
| County subsidies used in nonfederal share .....               | 104        |
| Medicaid rates for homemaker/personal care services.....      | 104        |
| Innovative pilot projects .....                               | 105        |
| Ohio Developmental Disabilities Council.....                  | 105        |
| <b>DEPARTMENT OF EDUCATION .....</b>                          | <b>106</b> |
| I. School finance .....                                       | 123        |
| School financing – overview .....                             | 123        |

|   |     |
|---|-----|
| Base cost per pupil .....   | 124 |
| Base cost per pupil calculation .....                                       | 124 |
| Overall formula .....   | 124 |
| Variables used in the base cost calculation .....                           | 126 |
| State share multiplier .....  | 126 |
| Other variables .....   | 126 |
| Methodology for calculation of the base cost per pupil .....                | 127 |
| Data analyses conducted by LSC .....  | 128 |
| State share index .....   | 128 |
| Direct funding for community and STEM schools and state scholarships .....  | 129 |
| Career awareness and exploration funds .....                                | 130 |
| Career-technical education lab program supplement .....                     | 130 |
| Gap aid .....   | 131 |
| Minimum state share opportunity grant supplement .....                      | 131 |
| Transportation funding .....  | 131 |
| Temporary payment mechanism for FY 2022 and FY 2023 .....                   | 131 |
| Funding for city, local, and exempted village school districts .....        | 132 |
| Recalculated foundation and transportation funding for FY 2019 .....        | 132 |
| Recalculated foundation and transportation funding for FY 2021 .....        | 133 |
| Guarantee and cap .....   | 133 |
| Funding for joint vocational school districts .....                         | 134 |
| Recalculated foundation funding for FY 2019 .....                           | 135 |
| Recalculated foundation funding for FY 2021 .....                           | 135 |
| Guarantee .....   | 135 |
| Funding adjustment for career-technical education .....                     | 136 |
| Funding for community and STEM schools and state scholarship programs ..... | 136 |
| Additional payments for FY 2022 and FY 2023 .....                           | 136 |
| Gap aid .....   | 136 |
| Formula transition supplement .....   | 137 |
| City, local, and exempted village school districts .....                    | 137 |
| Joint vocational school districts .....                                     | 137 |
| Community and STEM schools .....  | 137 |
| Cap relief payments .....   | 138 |
| First payment .....   | 138 |
| Second payment .....  | 138 |
| Student wellness and success funding .....                                  | 139 |

|  |     |
|--|-----|
| Student wellness and success funds .....                                   | 139 |
| City, local, and exempted village school districts.....                    | 139 |
| Joint vocational school districts and community and STEM schools .....     | 140 |
| Student wellness and success enhancement funds.....                        | 140 |
| City, local, and exempted village school districts.....                    | 140 |
| Joint vocational school districts and community and STEM schools .....     | 141 |
| Distribution of remaining appropriated amounts.....                        | 141 |
| Spending requirements .....  | 141 |
| Initiatives .....  | 141 |
| Community partners.....  | 142 |
| Formula amount for certain FY 2022 and FY 2023 payments .....              | 142 |
| Special education cost supplement pool.....                                | 142 |
| Disadvantaged pupil impact aid – terminology.....                          | 142 |
| Payment for districts with decreases in utility TPP value.....             | 142 |
| Eligibility determination .....  | 142 |
| Payment amount.....  | 143 |
| Payment deadline.....  | 143 |
| Payment for districts with nuclear plants in territory – repealed .....    | 143 |
| Recommendations for compensating valuation losses – repealed.....          | 144 |
| Auxiliary Services funds – direct payment.....                             | 144 |
| Designation of organization to receive funds on behalf of a school .....   | 144 |
| Use of directly paid Auxiliary Services funds.....                         | 145 |
| Auxiliary Services Reimbursement Fund .....                                | 145 |
| Chartered nonpublic school administrative cost reimbursement.....          | 146 |
| II. Graduation requirements and assessments.....                           | 146 |
| High school graduation requirements .....                                  | 146 |
| Background.....  | 146 |
| Industry-recognized credentials.....                                       | 147 |
| State-issued licenses .....  | 147 |
| Chartered nonpublic schools.....   | 147 |
| Transfer students and graduation requirements.....                         | 148 |
| Students who transfer between public and chartered nonpublic schools ..... | 148 |
| Students who transfer into public and chartered nonpublic schools .....    | 148 |
| Other demonstration of competency changes .....                            | 149 |
| Exemption for certain students with IEPs .....                             | 149 |
| ACT or SAT score as alternative demonstration of competency .....          | 149 |

|   |     |
|---|-----|
| “Foundational” options .....  | 149 |
| Diploma seal requirement changes .....  | 150 |
| Citizenship diploma seal .....  | 150 |
| Science diploma seal .....  | 150 |
| Nationally standardized college admission assessments .....                   | 150 |
| Dyslexia diagnostic assessments .....   | 151 |
| Kindergarten readiness and reading skills assessments.....                    | 151 |
| III. Educator licensure .....   | 151 |
| Teacher licensure disciplinary actions – human trafficking.....               | 151 |
| Release of information obtained during an investigation .....                 | 151 |
| Assisting individuals in obtaining school employment.....                     | 152 |
| Licensure consequences for cheating on assessments .....                      | 152 |
| Prohibited actions .....  | 152 |
| Consequences for teacher licensure and employment .....                       | 153 |
| Teach for America licenses .....  | 153 |
| Pre-employment applications and screening .....                               | 153 |
| Written notice on employment applications .....                               | 153 |
| Pre-employment screening process.....   | 154 |
| Career-technical educator licensure.....                                      | 154 |
| School counselor standards .....  | 154 |
| IV. Community schools .....   | 154 |
| Community schools in challenged school districts – eliminate requirement..... | 154 |
| Background.....   | 155 |
| Automatic closure of community schools .....                                  | 155 |
| Background.....   | 155 |
| Programs at community schools.....  | 156 |
| Background.....   | 156 |
| Disenrollment of e-school students – failure to participate.....              | 157 |
| Background.....   | 157 |
| Absence intervention by e-schools .....                                       | 157 |
| Automatic withdrawal of community school students .....                       | 157 |
| Community school sponsors.....  | 157 |
| Sponsor incentives – frequency of evaluations .....                           | 157 |
| Sponsor incentives – opening new DOPR e-schools .....                         | 158 |
| Background.....   | 158 |
| Low performing community school sponsor changes .....                         | 158 |



|   |     |
|---|-----|
| Background.....   | 158 |
| JCARR review of Department of Education changes .....                                     | 159 |
| Montessori preschool payments .....   | 159 |
| Community School Revolving Loan Fund.....   | 159 |
| Pilot funding for dropout recovery e-schools.....   | 159 |
| V. STEM schools .....   | 160 |
| STEM Committee membership.....  | 160 |
| Grades offered by STEM and STEAM schools.....   | 160 |
| STEM and STEAM school designations for JVsDs and ESCs.....                                | 161 |
| STEM and STEAM school equivalent designations for career-technical education providers... | 161 |
| Proposals for STEM and STEAM schools and equivalents .....                                | 161 |
| Distinctions as STEM programs of excellence .....   | 162 |
| Effective period for designations and distinctions .....                                  | 162 |
| Renewal of designations and distinctions .....  | 162 |
| Revocation of designations and distinctions .....   | 163 |
| Annual list of written assurances.....  | 163 |
| Repeal of miscellaneous provisions.....   | 163 |
| VI. College Credit Plus program .....   | 164 |
| Students in state-operated schools .....  | 164 |
| Academic eligibility for all students.....  | 164 |
| Nonpublic school participation.....   | 165 |
| Course subject matter disclaimer.....   | 165 |
| VII. State scholarship programs .....   | 166 |
| Scholarship amounts.....  | 166 |
| Maximum amounts for Ed Choice and Cleveland programs.....                                 | 166 |
| Autism scholarship maximum amount .....   | 167 |
| Jon Peterson Special Needs scholarship amount.....  | 167 |
| Performance-based Ed Choice scholarship eligibility .....                                 | 167 |
| Performance index score criteria .....  | 167 |
| Phase-out of public school enrollment requirement.....                                    | 168 |
| Former Autism or Jon Peterson scholarship recipient.....                                  | 169 |
| Siblings, foster families, and children placed with guardians,.....                       | 169 |
| custodians, or kinship caregivers .....   |     |
| Limit on number of performance-based scholarships – eliminated.....                       | 170 |
| Maintain eligibility even if building IRN changes .....                                   | 171 |
| Ed Choice eligibility for 2021-2022 .....   | 171 |
| Ed Choice operations .....  | 172 |

|  |     |
|--|-----|
| Monthly partial payments.....  | 172 |
| Single application period.....   | 172 |
| System to determine performance-based scholarship eligibility.....                 | 172 |
| Conditional approval of performance-based scholarships.....                        | 172 |
| Miscellaneous application changes.....   | 173 |
| Autism Scholarship Program.....  | 173 |
| Cleveland Scholarship Program.....   | 173 |
| ACE Educational Savings Account Program.....                                       | 174 |
| Purpose.....   | 174 |
| Operation.....   | 175 |
| Report.....  | 175 |
| Background.....  | 175 |
| VIII. Other.....   | 176 |
| Student transportation – pick up and drop off times for all students.....          | 176 |
| Background.....  | 176 |
| Transportation for community school and chartered nonpublic school students.....   | 176 |
| Transportation plans.....  | 176 |
| Limits on use of mass transit systems.....   | 177 |
| Transportation when schools are open for instruction.....                          | 177 |
| List of community and chartered nonpublic school students.....                     | 177 |
| transported by a school district.....  |     |
| Deadline for community schools to accept responsibility to transport students..... | 177 |
| Deduction of state funding for school district noncompliance.....                  | 178 |
| Payment in lieu of transportation.....   | 178 |
| Procedures.....  | 179 |
| Payment.....   | 179 |
| Transportation contracts.....  | 180 |
| Withdrawal of certain students for failure to take assessments.....                | 180 |
| Background.....  | 180 |
| Online learning.....   | 181 |
| District requirements to operate online learning.....                              | 181 |
| State Board standards for online learning.....                                     | 182 |
| Blended learning – school year hour requirement.....                               | 182 |
| Blended learning definition.....   | 182 |
| Information on academic standards and model curricula.....                         | 183 |
| FAFSA data system.....   | 183 |
| Computer science education.....  | 183 |

|   |            |
|---|------------|
| State plan for computer science education .....                   | 183        |
| Committee to develop plan.....                                    | 183        |
| Topics to consider.....   | 183        |
| Plan contents .....   | 184        |
| Computer science education licensure exemption.....               | 184        |
| Licenses and endorsements to teach computer science .....         | 185        |
| State Board’s standards and curriculum .....                      | 185        |
| Effects of vaping – school district health curriculum .....       | 185        |
| Venereal disease instruction.....                                 | 185        |
| Background.....   | 186        |
| Victim counseling.....  | 186        |
| Academic distress commissions.....                                | 186        |
| Moratorium .....  | 186        |
| Improvement plans .....   | 187        |
| District academic improvement plan development and approval ..... | 187        |
| Plan implementation.....  | 188        |
| Former CEO as district superintendent.....                        | 188        |
| Performance audit.....  | 189        |
| ESC governing board subdistricts .....                            | 189        |
| ESCs and competitive federal grants .....                         | 189        |
| Adult Diploma Program minimum age .....                           | 190        |
| Ohio Code-Scholar Pilot Program .....                             | 190        |
| Program curriculum by grade level .....                           | 191        |
| Reporting requirements.....                                       | 191        |
| Interscholastic athletics transfer rules.....                     | 191        |
| Nonpublic school administration of drugs.....                     | 191        |
| Sale or lease of school district property .....                   | 192        |
| Online school bus driver training program.....                    | 192        |
| Obsolete reports, plans, or recommendations.....                  | 193        |
| <b>BOARD OF EMBALMERS AND FUNERAL DIRECTORS .....</b>             | <b>195</b> |
| Preneed funeral contracts – public records exemption .....        | 195        |
| <b>ENVIRONMENTAL PROTECTION AGENCY.....</b>                       | <b>196</b> |
| Fees .....  | 198        |
| Scrap tires removed from “no fault” sites .....                   | 202        |
| Lead and copper notification rules .....                          | 202        |
| Certified and accredited laboratories under the VAP .....         | 203        |

|   |     |
|---|-----|
| Water pollution control: practical qualification level.....                               | 204 |
| Isolated wetland mitigation ratio table reference .....                                   | 205 |
| <b>FACILITIES CONSTRUCTION COMMISSION</b> .....   | 206 |
| Notification of district net indebtedness.....  | 206 |
| Background.....   | 206 |
| Community School Credit Enhancement Program.....  | 207 |
| Delay pending report and subsequent legislation .....                                     | 207 |
| Program’s operations if subsequently authorized.....                                      | 207 |
| Purpose.....  | 207 |
| Approval of financing .....   | 207 |
| Participation fee .....   | 208 |
| Guaranteed bonds not indebtedness of state .....  | 208 |
| Debt service reserve funds.....   | 208 |
| Procedure to determine whether to restore reserve fund amounts.....                       | 209 |
| Rights of bondholders .....   | 209 |
| Other Commission authority and responsibilities.....                                      | 209 |
| <b>GENERAL ASSEMBLY</b> .....   | 210 |
| General Assembly intervention in lawsuits .....   | 210 |
| Challenges to statutes.....   | 210 |
| Challenges to redistricting plans.....  | 211 |
| Other interventions prohibited.....   | 212 |
| Legislative privilege and immunity.....   | 212 |
| Protection and advocacy system and client assistance program.....                         | 212 |
| Evaluation of publicly funded child care and Step Up to Quality.....                      | 213 |
| Committee membership .....  | 213 |
| Meetings, hearings and report.....  | 214 |
| <b>GOVERNOR</b> .....   | 215 |
| TANF report.....  | 215 |
| <b>DEPARTMENT OF HEALTH</b> .....   | 216 |
| Inspections of assisted living facilities .....   | 219 |
| Hospital licensure.....   | 219 |
| Effective date of mandatory licensure and interim period.....                             | 219 |
| Definitions .....   | 220 |
| Entities not subject to hospital licensure.....   | 220 |
| Note on maternity units, newborn care nurseries, and ambulatory surgical facilities ..... | 221 |
| Penalties for operating without a license .....   | 221 |

|  |     |
|--|-----|
| Applications for licensure.....                        | 221 |
| Eligibility.....                                       | 221 |
| License issuance, validity, and renewals.....          | 222 |
| License transfer.....                                  | 222 |
| Hospital inspections.....                              | 222 |
| Process to avoid inspections.....                      | 222 |
| Confidentiality of on-site survey reports.....         | 222 |
| Unit inspections.....                                  | 223 |
| Other inspections.....                                 | 223 |
| Inspection fees.....                                   | 223 |
| Rulemaking.....  | 223 |
| Health, safety, welfare, and quality standards.....    | 223 |
| Standards and procedures for licensure.....            | 223 |
| Corrective action plans, penalties, and fees.....      | 224 |
| Other rules.....                                       | 224 |
| Administrative Procedure Act.....                      | 224 |
| Collaboration with hospital industry.....              | 225 |
| Federal law.....                                       | 225 |
| Violations.....  | 225 |
| Notice of proposed action.....                         | 225 |
| Inspections.....                                       | 225 |
| Order of suspension or revocation.....                 | 226 |
| Adjudications and final orders.....                    | 226 |
| Injunctive relief.....                                 | 226 |
| Imminent threat of harm.....                           | 226 |
| Notice of proposed action.....                         | 226 |
| Technical assistance.....                              | 227 |
| Hospital governing board.....                          | 227 |
| Admitting privileges.....                              | 227 |
| Opioid reporting.....                                  | 227 |
| Disease reporting.....                                 | 228 |
| General operations fund.....                           | 228 |
| Variances from written transfer agreements.....        | 228 |
| Home health service provider licensing.....            | 229 |
| License required.....                                  | 229 |
| Skilled home health services license requirements..... | 230 |

|  |     |
|--|-----|
| Nonmedical home health services license requirements .....           | 230 |
| ODH duties .....   | 231 |
| Licensing .....  | 231 |
| Rulemaking .....   | 231 |
| Criminal penalties .....   | 231 |
| Expedited licensing inspections .....                                | 231 |
| Obsolete procedures and terms .....                                  | 232 |
| Technological resources .....  | 232 |
| Newborn screening .....  | 232 |
| Smoking and tobacco .....  | 233 |
| Dispensing nicotine replacement therapy without a prescription ..... | 233 |
| Provider and protocol requirements .....                             | 233 |
| Documentation and notice .....                                       | 233 |
| Prohibition .....  | 234 |
| Rules .....  | 234 |
| Qualified immunity .....   | 234 |
| Moms Quit for Two grant program .....                                | 234 |
| Smoke-Free Workplace Law .....                                       | 234 |
| Retail vapor store .....   | 235 |
| Certificate of need capital expenditure threshold .....              | 235 |
| Nurse aide training and competency evaluation programs .....         | 235 |
| Background .....   | 236 |
| Children with Medical Handicaps Program eligibility .....            | 236 |
| Help Me Grow report .....  | 237 |
| Rare Disease Advisory Council membership .....                       | 237 |
| Drug overdose fatality review committees .....                       | 237 |
| Purpose .....  | 238 |
| Membership, chairperson, and meetings .....                          | 238 |
| Information to be collected .....                                    | 239 |
| Confidentiality .....  | 239 |
| Security of information collected .....                              | 239 |
| Annual reports .....   | 240 |
| Pending investigations or prosecutions .....                         | 240 |
| Immunity .....   | 240 |
| Suicide fatality review committees .....                             | 240 |
| Hybrid committee .....   | 241 |

|  |            |
|--|------------|
| Purpose.....   | 241        |
| Membership, chairperson, and meetings.....                       | 241        |
| Information to be collected.....                                 | 242        |
| Confidentiality.....   | 242        |
| Security of information collected.....                           | 242        |
| Annual reports.....  | 243        |
| Pending investigations or prosecutions.....                      | 243        |
| Immunity.....  | 243        |
| <b>DEPARTMENT OF HIGHER EDUCATION.....</b>                       | <b>244</b> |
| Restriction on instructional fee increases.....                  | 246        |
| In-state tuition for certain graduate students.....              | 247        |
| Textbook auto-adoption at state institutions.....                | 247        |
| Nursing bachelor’s degree programs.....                          | 247        |
| Ohio Innovative Partnership – Choose Ohio First Scholarship..... | 248        |
| Ohio Research Scholars Program.....                              | 248        |
| Academic fields for Choose Ohio First scholarships.....          | 248        |
| Criteria for scholarship proposals.....                          | 248        |
| Statewide participation.....                                     | 249        |
| Participation in work-based learning.....                        | 249        |
| Agreement governing use of scholarships.....                     | 250        |
| Recruitment initiatives.....                                     | 250        |
| Scholarship amounts.....   | 250        |
| Extension of awards.....   | 250        |
| Reserve Fund.....  | 250        |
| Ohio National Guard Scholarship eligibility.....                 | 250        |
| FAFSA data system.....   | 251        |
| Withholding student transcripts.....                             | 251        |
| OhioCorps Pilot Program – repealed.....                          | 252        |
| State university admissions and computer science education.....  | 252        |
| Educator preparation programs and computer science.....          | 253        |
| Farm Production, Policy, and Financial Management Institute..... | 253        |
| <b>OHIO HISTORY CONNECTION.....</b>                              | <b>254</b> |
| Poindexter Village.....  | 254        |
| <b>DEPARTMENT OF INSURANCE.....</b>                              | <b>255</b> |
| Drug data disclosure.....  | 255        |
| Furnishing data.....   | 255        |

|  |            |
|--|------------|
| Prohibitions .....   | 256        |
| Personal representatives.....                                      | 257        |
| Definitions .....  | 257        |
| Hospital admissions and notification to health plan issuers .....  | 258        |
| Insurance agent pre-licensing education.....                       | 258        |
| <b>DEPARTMENT OF JOB AND FAMILY SERVICES .....</b>                 | <b>259</b> |
| TANF spending plan .....   | 269        |
| Supplemental Nutrition Assistance Program (SNAP) eligibility ..... | 269        |
| Income and asset limits.....                                       | 269        |
| Change reporting.....  | 270        |
| SNAP debit card investigations .....                               | 270        |
| Rulemaking.....  | 270        |
| SNAP report.....   | 270        |
| Elderly Simplified Application Project.....                        | 271        |
| Data matching agreements.....                                      | 271        |
| Third-party commercial consumer reporting agency.....              | 272        |
| Public Assistance Benefits Accountability Task Force .....         | 272        |
| JFS subgrant .....   | 274        |
| Individual Development Account (IDA) reports.....                  | 275        |
| Ohio Family and Children First Cabinet Council .....               | 275        |
| Transfer of duties .....   | 275        |
| Flexible funding pool.....   | 276        |
| Case plans and family service plans.....                           | 276        |
| Permanency plans .....   | 276        |
| Family service plans.....  | 277        |
| Caseworker in-service training .....                               | 277        |
| Kinship caregiver placement efforts.....                           | 277        |
| Finding kinship caregivers .....                                   | 277        |
| Intensive efforts.....   | 277        |
| Summary of efforts .....   | 278        |
| Exemption .....  | 278        |
| Court review.....  | 278        |
| Court determination.....   | 279        |
| Kinship caregiver program .....                                    | 279        |
| CDJFS program incorporation .....                                  | 279        |
| Program funding.....   | 279        |



|   |     |
|---|-----|
| Kinship guardianship assistance (KGA) and Kinship Support Program (KSP) ..... | 280 |
| Provisions affecting KGA only.....  | 280 |
| Federal KGA .....   | 280 |
| On behalf of a KG young adult .....   | 281 |
| State plan amendment requirement.....   | 281 |
| Implementation and performance .....  | 281 |
| Extension or refusal of federal KGA.....                                      | 282 |
| Eligibility for foster care-related programs.....                             | 282 |
| On behalf of an eligible child .....  | 282 |
| State plan amendment requirement.....   | 282 |
| Implementation and performance .....  | 282 |
| County expenditure reports .....  | 282 |
| Distribution to PCSA.....   | 282 |
| Interstate compacts .....   | 283 |
| JFS rules for federal KGA.....  | 283 |
| State KGA.....  | 283 |
| Provisions affecting both KGA and KSP .....                                   | 284 |
| State hearing .....   | 284 |
| Kinship Permanency Incentive Program .....                                    | 284 |
| Ohio Works First .....  | 284 |
| Gross income and KGA for child support .....                                  | 284 |
| Inalienability of benefits.....   | 284 |
| PCSA duties regarding impossibility of adoption .....                         | 285 |
| Online training for foster caregivers.....                                    | 285 |
| PASSS program.....  | 285 |
| Bills of Rights for foster youth and resource families.....                   | 286 |
| Preemption.....   | 287 |
| Immunity .....  | 287 |
| Notification for sibling of adopted person .....                              | 287 |
| Criminal records check for individuals overseeing a child.....                | 287 |
| Background checks for institutions and associations .....                     | 288 |
| Requirement to obtain information.....  | 288 |
| Background information obtained .....   | 288 |
| Further action.....   | 289 |
| Background – current law .....  | 289 |

|   |     |
|---|-----|
| Federal foster care assistance for emancipated young adults .....         | 289 |
| Jurisdiction .....  | 289 |
| Voluntary participation agreements .....                                  | 290 |
| Best interest determination .....   | 290 |
| Reasonable efforts determination .....                                    | 290 |
| Payment suspension .....  | 290 |
| Foster caregiver certification extension .....                            | 291 |
| Home study assessor and professional treatment staff qualifications ..... | 291 |
| Foster care and adoption home assessor qualifications.....                | 291 |
| Professional treatment staff qualifications.....                          | 292 |
| Court order to interview and examine a child.....                         | 292 |
| PCSA request to juvenile court.....                                       | 292 |
| Affidavit requirements .....  | 293 |
| Court determination and order.....  | 293 |
| Reimbursement for federal juvenile court programs.....                    | 293 |
| Streamlining County Level-Information Access Task Force.....              | 294 |
| Task Force creation .....   | 294 |
| Membership .....  | 294 |
| Meetings.....   | 294 |
| Duties.....   | 295 |
| Publicly funded child care .....  | 295 |
| Income eligibility .....  | 295 |
| Step Up to Quality .....  | 295 |
| Federal coronavirus relief funds .....                                    | 296 |
| Type A family day-care homes.....   | 296 |
| Child care resource and referral services .....                           | 296 |
| Head Start program definition.....  | 297 |
| Elder Abuse Commission reporting .....                                    | 297 |
| Ohio Commission on Fatherhood .....                                       | 297 |
| Applications for unemployment benefits .....                              | 298 |
| Determination of benefit rights .....                                     | 298 |
| Employment checks .....   | 299 |
| Federal pandemic unemployment program termination .....                   | 300 |
| Pandemic unemployment assistance.....                                     | 300 |
| Other federal unemployment pandemic programs.....                         | 300 |
| Notice and future agreements.....   | 301 |

|  |     |
|--|-----|
| Unemployment compensation review commission .....              | 301 |
| Confidentiality .....  | 301 |
| Prohibitions .....   | 301 |
| SharedWork .....   | 302 |
| Employment connection incentive programs.....                  | 303 |
| <b>JUDICIARY/SUPREME COURT</b> .....                           | 304 |
| Party designation for judicial candidates.....                 | 304 |
| Lima Municipal Court clerk .....                               | 306 |
| Jefferson County County Court.....                             | 306 |
| Indigent drivers alcohol treatment fund .....                  | 306 |
| Probation Workload Study Committee .....                       | 307 |
| Clerks of court deputy appointments.....                       | 307 |
| <b>LEGISLATIVE SERVICE COMMISSION</b> .....                    | 308 |
| LSC chair, meetings .....                                      | 308 |
| <b>JOINT LEGISLATIVE ETHICS COMMITTEE</b> .....                | 309 |
| JLEC registrations .....                                       | 309 |
| <b>DEPARTMENT OF MEDICAID</b> .....                            | 310 |
| Medicaid managed care organizations (MCOs).....                | 315 |
| Requirements for contracting entities .....                    | 315 |
| Procurement.....   | 315 |
| Laboratory services .....                                      | 316 |
| Employment connection incentive programs.....                  | 316 |
| Duties of area agencies on aging .....                         | 317 |
| Medicaid coverage of women postpartum .....                    | 318 |
| Medicaid eligibility .....                                     | 318 |
| Post-COVID Medicaid redetermination .....                      | 319 |
| Medicaid waiver – Ohio Breast and Cervical Cancer Project..... | 320 |
| Breast and cervical cancer project .....                       | 320 |
| Medicaid waiver component definition .....                     | 320 |
| Voluntary community engagement program .....                   | 320 |
| Medicaid Cost Assurance Pilot Program.....                     | 321 |
| Care management entity.....                                    | 322 |
| Report and subcommittee .....                                  | 322 |
| Rules .....  | 322 |
| Care Innovation and Community Improvement Program.....         | 322 |
| Ohio Invests in Improvements for Priority Populations .....    | 323 |

|   |            |
|---|------------|
| Hospital Care Assurance Program, franchise permit fee.....      | 324        |
| Medicaid rates for community behavioral health services .....   | 324        |
| Home and community-based services provider payment rates .....  | 325        |
| Value-based purchasing supplemental rebate.....                 | 325        |
| Medicaid reports.....   | 326        |
| Payment rate increase report to JMOC.....                       | 326        |
| Franchise permit fees report to JMOC.....                       | 326        |
| Pharmacy supplemental dispensing fee .....                      | 326        |
| Additional payment for low-income assisted living .....         | 326        |
| Nursing facilities.....   | 327        |
| Critical access nursing facilities .....                        | 327        |
| Medicaid payment rate formula .....                             | 327        |
| Resident assessment data .....                                  | 327        |
| Special Focus Facility Program .....                            | 327        |
| Quality payments .....  | 328        |
| Quality incentive payments.....                                 | 329        |
| JMOC report on nursing facility payment formulas.....           | 331        |
| Nursing facility rebasing .....                                 | 331        |
| <b>JOINT MEDICAID OVERSIGHT COMMITTEE .....</b>                 | <b>333</b> |
| JMOC vice-chairperson .....                                     | 333        |
| <b>MEDICAL BOARD .....</b>                                      | <b>334</b> |
| Out-of-state physician consultation .....                       | 334        |
| Physician assistants personally furnishing drugs.....           | 335        |
| Impaired practitioners .....                                    | 335        |
| Types of practitioners.....                                     | 336        |
| Conscience clause .....   | 336        |
| Definitions .....   | 336        |
| Actions in case of a conflict.....                              | 336        |
| Liability .....   | 337        |
| Discrimination .....  | 337        |
| Violations.....   | 337        |
| EMTALA .....  | 338        |
| Exception to dietetics licensure.....                           | 338        |
| Massage Therapy Advisory Council .....                          | 338        |
| <b>DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES .....</b> | <b>339</b> |
| Suspending admissions and taking action against a license.....  | 341        |

|   |            |
|---|------------|
| Suspending admissions .....   | 341        |
| Procedures.....   | 342        |
| Certifiable services and supports.....                                    | 342        |
| Licensing boards and confidential treatment and monitoring programs ..... | 343        |
| Confidentiality of substance use disorder records.....                    | 343        |
| Opioid treatment programs.....  | 343        |
| License expiration.....   | 343        |
| Employees .....   | 344        |
| Substance use disorder stabilization centers.....                         | 344        |
| Substance use disorder treatment in drug courts.....                      | 344        |
| Selection of participants.....  | 344        |
| Treatment.....  | 345        |
| Planning.....   | 345        |
| County jails reimbursed for substance use treatment drugs .....           | 346        |
| Pilot to dispense controlled substances in lockable containers.....       | 346        |
| Pharmacy participation and reimbursement .....                            | 347        |
| Report.....   | 347        |
| Qualified immunity.....   | 347        |
| Rules .....   | 347        |
| ADAMHS boards.....  | 347        |
| Board size after withdrawing from a joint-county district.....            | 347        |
| Composition and appointment of members.....                               | 348        |
| Board size after joining a joint-county district.....                     | 348        |
| Mental health crisis stabilization centers.....                           | 349        |
| Pediatric behavioral health workforce support.....                        | 349        |
| <b>DEPARTMENT OF NATURAL RESOURCES .....</b>                              | <b>350</b> |
| Division of Wildlife .....  | 355        |
| Lake Erie Sport Fishing District permit .....                             | 355        |
| Wildlife Boater Angler Fund .....   | 356        |
| Senior deer and wild turkey fees .....                                    | 356        |
| Lifetime and multi-year hunting and fishing fees .....                    | 356        |
| Division of Mineral Resources Management.....                             | 357        |
| Performance security for coal mining operations.....                      | 357        |
| Deputy mine inspector eligibility requirements .....                      | 358        |
| Reciprocity for mine personnel.....                                       | 358        |
| Division of Oil and Gas Resources Management.....                         | 359        |

|   |            |
|---|------------|
| Oil and gas well plugging .....   | 359        |
| Defective well casing and plugging requirements .....                                 | 359        |
| Oil and Gas Leasing Commission .....  | 360        |
| Renaming and membership .....   | 360        |
| Funding .....   | 361        |
| Leasing procedures.....   | 362        |
| Standard lease agreement .....  | 362        |
| Standard surface use agreement .....  | 363        |
| Administrative procedures .....   | 363        |
| Nomination.....   | 363        |
| Notice of nomination decision .....   | 364        |
| Advertisement of bids .....   | 364        |
| Bidding procedures and requirements.....  | 365        |
| Division of Water Resources .....   | 365        |
| Dams and levees enforcement.....  | 365        |
| Division of Parks and Watercraft .....  | 367        |
| Fraudulent watercraft identification.....   | 367        |
| Boat accident reporting threshold .....   | 367        |
| Division of Forestry .....  | 368        |
| Forestry projects on federal land .....   | 368        |
| Wildfire reimbursement to firefighting agencies.....                                  | 368        |
| State employees aid in out-of-state wildfires.....                                    | 369        |
| Division of Geological Survey.....  | 369        |
| Other provisions.....   | 369        |
| Doris Duke Woods.....   | 369        |
| Agreements between DNR and Malabar Farm Foundation .....                              | 370        |
| Local payments for DNR land .....   | 370        |
| Geneva Lodge and Conference Center ownership transfer.....                            | 371        |
| <b>OPPORTUNITIES FOR OHIOANS WITH DISABILITIES AGENCY .....</b>                       | <b>372</b> |
| Employer inclusive workplace award .....  | 372        |
| <b>OHIO OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD .....</b> | <b>373</b> |
| Board vacancies .....   | 373        |
| Occupational therapist limited licenses.....  | 374        |
| Physical therapy license applications .....   | 374        |
| Orthotists, prosthetists, and pedorthists – enforcement.....                          | 374        |
| Authorized Board actions.....   | 374        |

|  |     |
|--|-----|
| Fee for administrative hearing costs.....  | 374 |
| Responsibility for investigations .....  | 375 |
| Sharing of investigatory information .....   | 375 |
| Discipline based on sexual interactions with patients.....   | 375 |
| <b>STATE PUBLIC DEFENDER</b> .....   | 376 |
| Appointed counsel in adoption proceedings.....   | 376 |
| <b>DEPARTMENT OF PUBLIC SAFETY</b> .....   | 377 |
| Certificate of title fee allocation .....  | 377 |
| Emergency Management Assistance Compact immunity .....   | 377 |
| U.S. Power Squadron license plate distribution .....   | 378 |
| <b>PUBLIC UTILITIES COMMISSION</b> .....   | 379 |
| Hours of operation.....  | 379 |
| PSB contract for expert or analyst.....  | 379 |
| Internet telephone directories .....   | 379 |
| <b>DEPARTMENT OF REHABILITATION AND CORRECTION</b> .....   | 381 |
| Local confinement for fourth and fifth degree felony prison terms .....                                | 383 |
| Voluntary local confinement.....   | 383 |
| Exceptions .....   | 384 |
| Voluntary memorandum of understanding .....  | 384 |
| Post-release control sanctions.....  | 384 |
| Background.....  | 384 |
| Mandatory PRC.....   | 385 |
| Discretionary PRC.....   | 385 |
| Consideration of delinquent child adjudications .....  | 385 |
| Use of active GPS monitoring.....  | 385 |
| Shortening or terminating PRC .....  | 386 |
| Termination of PRC, if maximum prison time available expires.....                                      | 386 |
| Simultaneous parole and PRC; ban on consecutive PRC periods .....                                      | 387 |
| Sacramental wine in specified governmental facility .....  | 387 |
| Notification of possible prison term for community control violation .....                             | 388 |
| Prison term penalty for certain conduct by a felony offender serving a community control sanction..... | 388 |
| Community-based substance use disorder treatment.....  | 390 |
| Subsidies for community-based corrections programs.....  | 390 |
| Administrative releases .....  | 390 |
| Certificate of qualification for employment (CQE).....   | 391 |
| Sealing CQE records.....   | 391 |

|  |     |
|--|-----|
| Consideration of sealed CQE records.....                         | 392 |
| Sealing of records related to unconditional pardon.....          | 392 |
| Internet access for prisoners .....                              | 393 |
| Removing outdated law about the Ohio River Valley Facility ..... | 393 |
| <b>SECRETARY OF STATE</b> .....                                  | 394 |
| Foreign nonprofit corporation certificate of authority .....     | 394 |
| Service of process fees.....                                     | 395 |
| Federal grants .....   | 395 |
| Secretary of State funding .....                                 | 395 |
| Abolishment of the Citizens Education Fund.....                  | 396 |
| Copies of laws .....   | 396 |
| <b>DEPARTMENT OF TAXATION</b> .....                              | 397 |
| Income tax.....  | 401 |
| Rate reduction.....  | 401 |
| Inflation indexing adjustment .....                              | 401 |
| Taxation of railroad retirement benefits .....                   | 401 |
| Deduction for certain nonresident income.....                    | 401 |
| Income tax credit for tax withholdings .....                     | 402 |
| Resident credit amended return period .....                      | 402 |
| Tax on fraudulent unemployment compensation .....                | 403 |
| Education tax credits.....                                       | 403 |
| Credit for donations to scholarship organizations .....          | 403 |
| Home school expense credit .....                                 | 404 |
| Nonchartered, nonpublic school tuition credit.....               | 404 |
| Unemployment compensation income tax withholding .....           | 404 |
| Business reporting requirement .....                             | 405 |
| Ohio opportunity zone investment tax credit.....                 | 405 |
| Opportunity zone background .....                                | 405 |
| Ohio income tax credit .....                                     | 405 |
| Award to nontaxpayers.....                                       | 406 |
| Individual credit limit.....                                     | 406 |
| Education savings plan income tax deduction .....                | 406 |
| Campaign contribution tax credit .....                           | 407 |
| Municipal income tax.....  | 407 |
| Municipal income taxation during the COVID-19 pandemic .....     | 407 |
| Temporary rule extension .....                                   | 407 |



|   |     |
|---|-----|
| Effect of temporary rule on tax withholding and tax liability ..... | 408 |
| Employer liability .....  | 409 |
| Preexisting law governing transitory employees .....                | 409 |
| JEDD notice and procedures .....                                    | 409 |
| Sales and use taxes .....   | 410 |
| Exempt employment services and employment placement services .....  | 410 |
| Investment bullion and coin exemption .....                         | 411 |
| Sales and use tax exemption: nonprofit gym memberships.....         | 411 |
| County sales and use taxes for jail operations.....                 | 411 |
| Remote sellers.....   | 412 |
| Commercial activity tax.....  | 412 |
| Minimum commercial activity tax computation.....                    | 412 |
| Exemption for workers' compensation dividends .....                 | 413 |
| Administrative expense earmark .....                                | 413 |
| Kilowatt-hour tax .....   | 413 |
| Exemptions.....   | 413 |
| Estate tax.....   | 414 |
| Newly discovered property and refunds.....                          | 414 |
| Administrative fees .....   | 414 |
| Property tax .....  | 415 |
| Combined health district property tax.....                          | 415 |
| Emergency and police services combined levy.....                    | 415 |
| Renewable energy facility exemption extension .....                 | 416 |
| Exemption for nonprofit arts institution property.....              | 416 |
| Parking garage property tax exemption.....                          | 416 |
| Special assessments exemption .....                                 | 417 |
| Tax year 2020 refunds .....   | 417 |
| Fraternal organization property tax exemption .....                 | 417 |
| Private wetlands exemption .....                                    | 418 |
| Improper homestead exemption recovery .....                         | 418 |
| Notice requirement for tax-exempt property.....                     | 419 |
| Recoupment charge .....   | 419 |
| Valuation of subsidized residential rental property .....           | 419 |
| Real property appraisal, generally.....                             | 420 |
| Subsidized residential rental property .....                        | 420 |
| The bill's modifications.....                                       | 421 |

|   |            |
|---|------------|
| Abatement for charitable use property .....                       | 422        |
| Tax increment financing and downtown redevelopment districts..... | 423        |
| TIF background .....  | 423        |
| DRD background.....   | 423        |
| The bill’s modifications.....                                     | 423        |
| Cross-reference corrections.....                                  | 424        |
| Tax Administration.....   | 424        |
| Local funds transfer approval period .....                        | 424        |
| Disclosing taxpayer information .....                             | 425        |
| State tax refund review process.....                              | 425        |
| Tax obligations of liquor permit holders.....                     | 426        |
| Wireless 9-1-1 Government Assistance Fund .....                   | 426        |
| Cigarette minimum pricing and offenses.....                       | 427        |
| Cigarette minimum pricing.....                                    | 427        |
| Minimum pricing modifications .....                               | 428        |
| Sales to other wholesalers .....                                  | 428        |
| Competitive sales adjustments .....                               | 429        |
| Minimum pricing exemptions .....                                  | 429        |
| Prohibitions .....  | 429        |
| Tax Expenditure Review Committee.....                             | 430        |
| Wishes for sick children eligibility change .....                 | 430        |
| <b>DEPARTMENT OF TRANSPORTATION.....</b>                          | <b>431</b> |
| Force account thresholds for road and bridge projects .....       | 431        |
| Traffic safety study.....   | 432        |
| <b>TREASURER OF STATE .....</b>                                   | <b>433</b> |
| Ohio State and Local Government Expenditure Database .....        | 434        |
| Creation and operation .....                                      | 434        |
| Participation .....   | 434        |
| Database expenditure information.....                             | 435        |
| Database features .....   | 435        |
| Public comment opportunity .....                                  | 436        |
| Exclusion from liability for disclosure .....                     | 436        |
| Treasurer’s investment in negotiable certificates of deposit..... | 436        |
| State Board of Deposit secretary.....                             | 437        |
| <b>LOCAL GOVERNMENT .....</b>                                     | <b>438</b> |
| City health districts .....                                       | 440        |

|  |     |
|--|-----|
| Exception for accredited health districts .....                  | 441 |
| Auxiliary containers .....                                       | 441 |
| Tourism development districts (TDDs) .....                       | 442 |
| Local workforce development board meetings.....                  | 442 |
| Elimination of drainage improvement virtual meetings.....        | 444 |
| Municipal fiscal officer continuing education .....              | 444 |
| Chief probation officers .....                                   | 444 |
| Unpaid municipal trash charges .....                             | 445 |
| Township fiscal officer assistant compensation .....             | 445 |
| New community authorities .....                                  | 445 |
| Medical marijuana businesses .....                               | 446 |
| Local tax prohibition.....                                       | 446 |
| Local fee prohibition .....                                      | 447 |
| Agreements with animal shelters .....                            | 447 |
| Shoreline improvement districts .....                            | 448 |
| Discriminatory restrictive covenants – void .....                | 448 |
| Free library photocopies of identification .....                 | 448 |
| <b>MISCELLANEOUS</b> .....                                       | 449 |
| COVID violations: expunge, refund fines, reinstate permits ..... | 451 |
| Vacate and expunge violations .....                              | 452 |
| Reinstate rights and privileges .....                            | 452 |
| Cease disciplinary action .....                                  | 452 |
| Refund civil and administrative fines .....                      | 452 |
| Venue for enforcement.....                                       | 453 |
| Buy Ohio preference for personal protective equipment .....      | 453 |
| Open Meetings Law violations.....                                | 454 |
| Action in the Court of Claims .....                              | 454 |
| Powers of Court of Claims .....                                  | 454 |
| Clerk of common pleas court acts for Court of Claims clerk.....  | 455 |
| Person aggrieved must choose route for relief.....               | 455 |
| Filing a complaint .....   | 455 |
| Special master referral to mediation .....                       | 455 |
| Special master’s report and recommendation .....                 | 456 |
| Dismissal of complaint .....                                     | 457 |
| Violation of the Open Meetings Law.....                          | 457 |
| Appeal from Court of Claims’ final order .....                   | 457 |

|   |     |
|---|-----|
| Court of appeals may award attorney’s fees .....                    | 458 |
| Filing fees.....  | 458 |
| State Auditor authority to audit public offices .....               | 458 |
| Civil actions in the Court of Claims and vexatious litigation ..... | 459 |
| Action in the court of common pleas .....                           | 459 |
| Vax-A-Million database not a public record .....                    | 460 |
| Use of medical marijuana in violation of employer’s policy.....     | 460 |
| Post-Traumatic Stress Fund actuarial study and report .....         | 461 |
| Court settlements that conflict with the Revised Code.....          | 461 |
| Land conveyances .....  | 462 |
| Purchaser and real estate agreement.....                            | 462 |
| Conditions.....   | 462 |
| Warren County easement .....  | 463 |
| Conveyance of whole or part .....                                   | 463 |
| Manner of conveyance.....   | 463 |
| Conveyance costs .....  | 463 |
| Proceeds .....  | 463 |
| Perpetual easement at Rhodes Tower complex.....                     | 463 |
| EEG Combined Transcranial Magnetic Stimulation pilot.....           | 464 |
| Background.....   | 464 |
| Under the bill.....   | 464 |
| Treatment and eligibility .....                                     | 464 |
| Program duration .....  | 465 |
| Program locations.....  | 465 |
| Clinical trial and clinical practice .....                          | 465 |
| Fund .....  | 466 |
| JobsOhio Chief Investment Officer’s annual report .....             | 466 |
| Postpartum Cardiomyopathy Awareness Week.....                       | 466 |
| Maternal Mortality Awareness Month .....                            | 466 |
| <b>NOTES</b> .....  | 467 |
| Effective dates.....  | 467 |
| Expiration .....  | 467 |

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## DEPARTMENT OF ADMINISTRATIVE SERVICES

### Ohio preference scoring in state purchases

- Expands the types of purchases under state purchasing law that are eligible for an Ohio preference in scoring.

### Bulk purchasing program

- Allows the Department of Administrative Services (DAS) to permit a political subdivision or special district of another state to participate in DAS contracts for the purchase of supplies and services.
- Allows a board of elections to participate in DAS purchase contracts if DAS has authorized the county to participate in those contracts, instead of requiring the board to apply to DAS separately.
- Clarifies that a board of elections may choose to purchase election supplies through DAS, through the Secretary of State's bulk purchasing program, or by other means.

### Cooperative purchasing agreements

- Clarifies that DAS can join existing procurement contracts of other state agencies with their own purchasing authority, other states, and the U.S. government.

### Parental and caregiver leave

- Allows certain state employees to be eligible, on the delivery of a stillborn child, for paid parental leave of absence and parental leave benefits established in continuing law.
- Includes, for paid parental leave eligibility purposes, persons employed in state positions for which the authority to determine compensation is given by law to another individual or entity.
- Increases, from \$2,000 to \$5,000, the adoption expenses benefit an employee may choose to receive in lieu of paid parental leave.
- Makes certain state employees who are foster caregivers and kinship caregivers eligible for up to five days of caregiver leave with full pay in a calendar year on placement of a child with the caregiver.

### Fleet management

- Modifies the definition of "operating cost," which is a factor in calculating the minimum number of business miles per year an employee of a state agency must drive in order to qualify for approval by the DAS to receive a motor vehicle for business use.
- Allows proceeds from the disposition of state vehicles to be transferred from the Investment Recovery Fund to the Fleet Management Fund.

## **Prescription drug advisory council**

- Abolishes the Prescription Drug Transparency and Affordability Advisory Council and instead permits the Joint Medicaid Oversight Committee to examine any of the topics described in the report previously prepared by the Advisory Council.

## **DAS insurance program**

- Declares the administration of the state's Risk Management Program to be a public duty for purposes of the Sovereign Immunity/Court of Claims Law.
- Authorizes the Office of Risk Management to administer a judicial liability program.
- Replaces the requirement that the state purchase fidelity bonds for state agents and employees with authority to self-insure itself and third parties against loss due to dishonest acts of state officers, employees, and agents.
- Requires public official bonds to be purchased when statutorily required.
- Expands the authority of the state and political subdivisions to insure against liability, from the losses attributable to the operation of specified vehicles during the course of official duties to any loss that occurs in the course of employment or official responsibilities.
- Specifies that recoveries against the state are to be reduced by other recoveries the claimant is entitled to, as opposed to just those other recoveries the claimant has received.
- Prohibits a claim against the state from being filed in the Court of Claims until the claimant has attempted to have the claim compromised by the Office of Risk Management or satisfied by the state's liability insurance.
- Specifies that the authority to commence an action against an officer or employee of the state does not affect the immunity provided to state officers or employees in law.
- Requires an instrumentality of the state to notify the Office of Risk Management of any settlement or compromise made in a claim against the instrumentality for the purpose of reserving funds.
- Requires a copy of a settlement instrument to be forwarded to the Office of Risk Management for payment from the Risk Management Reserve Fund.
- Specifies that DAS's authority to compromise claims does not extend to compromising claims on behalf of agency programs with direct settlement authority.
- Specifies that all compromises made by the Office of Risk Management are to be paid from the Risk Management Reserve Fund and the conditions of such payment.
- Specifies that information related to claims against the state is to be held in confidence, is not to be released, and is not subject to discovery or introduction in evidence in any federal or state civil action.

- Requires a copy of a judgement against the state to be forwarded to the Office of Risk Management for the judgement to be paid from the Risk Management Reserve Fund.

### **Public office employee database**

- Eliminates the requirement that a public office include birth dates on the required public office employee database.

### **Real estate and planning**

- Transfers from the Auditor of State to the DAS Director the responsibility to prepare deeds for the conveyance of state land.
- Transfers from the Auditor of State to the DAS Director the responsibility to keep documents showing the state's interest in real estate, other than public lands and highway rights-of-way, and to maintain a recording system open for public inspection.
- Authorizes DAS to:
  - Grant perpetual easements to public utilities regulated by the Public Utilities Commission of Ohio;
  - Dispose of state-owned real estate worth \$100,000 or less, with Controlling Board approval; and
  - Correct legal descriptions or title defects, or release fractional interests in real property, as necessary to cure clouds on title that are reflected in public records.

### **Office of Information Technology**

- Modifies the responsibility of the Office of Information Technology with respect to the acquisition of common information technology.

### **Public assistance private sector tools**

- Requires the Department of Administrative Services to work with ODJFS and the Department of Medicaid to deploy private sector tools for digital identity management, authentication, and verification for individuals receiving public assistance.

### **Ohio preference scoring in state purchases**

(R.C. 125.09)

The bill expands the types of purchases under state purchasing law that are eligible for an Ohio preference in scoring. Under current law, Ohio preference scoring is applied to purchases through the competitive sealed bid process. Under the bill, the scoring also must be applied to purchases through the competitive sealed proposal and reverse auction processes. Reverse

auction is a purchasing process in which offers submit bids in competing to sell services or supplies in an open environment via the internet.<sup>1</sup>

Generally, Ohio law requires the Director of Administrative Services to adopt rules to prescribe criteria and procedures for use by all state agencies in giving preference to Ohio products. These rules allow for granting waivers of the Buy Ohio requirements on a contract-by-contract basis when compliance would result in paying an excessive price or acquiring a disproportionately inferior product. If the Director determines that selection of the lowest Ohio bid will not result in an excessive price or a disproportionately inferior product or service, the Director must propose a contract award to the lowest responsive and responsible Ohio bid at the bid price quoted.<sup>2</sup>

## **Bulk purchasing program**

(R.C. 125.04 and 3501.302)

The bill makes changes to the law concerning which entities may participate in the Department of Administrative Services (DAS) bulk purchasing program for supplies and services.

First, the bill allows a political subdivision or special district in another state to participate in purchasing contracts in the same manner as an Ohio political subdivision or special district may do. Continuing law already allows federal agencies, other states, other purchasing consortia, and entities established under interstate compacts to participate, along with certain other entities in Ohio. DAS is permitted to charge each participating entity a reasonable fee to cover the costs DAS incurs in allowing the entity to participate.

Second, the bill allows a board of elections to participate in DAS purchasing contracts if the county in which the board is located is authorized to participate in those contracts. The board may participate under the same terms and conditions that apply to the county. Currently, a board of elections may participate but must separately apply to DAS and pay a fee for its own membership, instead of participating through the county's membership.

Finally, the bill clarifies that a board of elections may choose to purchase election supplies through DAS, through an existing bulk purchasing program administered by the Secretary of State, or by other means.

## **Cooperative purchasing agreements**

(R.C. 125.02)

The bill allows DAS to participate in cooperative purchasing by joining existing procurement contracts of other state agencies with their own purchasing authority, other states, and the U.S. government. Current law suggests that DAS must be an original party of a contract and cannot join after a contract is procured.

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<sup>1</sup> R.C. 125.071 and 125.072, not in the bill.

<sup>2</sup> R.C. 125.11, not in the bill.



Continuing law grants DAS the authority to establish contracts for supplies and services, including telephone, other telecommunication, and computer services for use by state agencies. Under the bill, the Director of DAS may participate in cooperative purchasing with several entities enumerated in continuing law.<sup>3</sup> The bill expands this list of entities to include the Capitol Square Review and Advisory Board.

## **Parental and caregiver leave**

(R.C. 124.136 and 124.1312)

### **Parental leave**

Continuing law allows certain state employees who work at least 30 hours per week to take up to six continuous weeks of paid parental leave on a child's birth or adoption. Under the bill, an employee is eligible for parental leave on a child's stillbirth beginning on the day of the stillborn child's delivery. To be eligible, the employee must be listed as a parent on the stillborn child's fetal death certificate. "Stillborn" means that an infant of at least 20 weeks of gestation suffered a fetal death. "Fetal death" means death before the complete extraction from its mother of a product of human conception, irrespective of the pregnancy duration, which after extraction does not breathe or show any other evidence of life.<sup>4</sup>

The bill increases, from \$2,000 to \$5,000, the continuing law adoption expenses benefit an employee may choose to receive in lieu of paid parental leave.

The bill also includes, for parental leave eligibility purposes, persons employed in a position for which the authority to determine compensation is given by law to another individual or entity (who is not the Director, who establishes the job classifications and pay ranges for most state employees under continuing law). Under continuing law, the following employees are eligible for parental leave: full- and part-time employees paid in accordance with the exempt employee salary schedule; legislative employees and Legislative Service Commission employees; employees in the Governor's office; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General; Supreme Court employees; and Bureau of Worker's Compensation employees whose compensation the Administrator of Workers' Compensation establishes.<sup>5</sup>

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<sup>3</sup> The Adjutant General for military supplies and services, the General Assembly, the judicial branch, state institutions of higher education, some state elected officials (R.C. 125.02 and 125.041, not in the bill); one or more other states, groups of states, the U.S. or any department, agency, or division of the U.S., other purchasing consortia, the Department of Transportation, or a political subdivision of Ohio (R.C. 125.02 and 125.04).

<sup>4</sup> R.C. 3705.01, not in the bill.

<sup>5</sup> R.C. 124.152, not in the bill.

## Caregiver leave

Under the bill, a state employee listed under “**Parental leave**,” above, who works at least 30 hours per week and who is a foster caregiver or kinship caregiver is eligible for up to five days of caregiver leave with full pay in a calendar year on a child’s placement with the employee. Caregiver leave begins on the day on which the child is placed with the employee. Continuing law defines a foster caregiver as a person holding a valid foster home certificate. A kinship caregiver is an adult caring for a related or unrelated child in place of the child’s parents.<sup>6</sup>

For part-time employees, the average number of regular hours worked, including all hours of holiday pay and other types of paid leave, during the three-month period immediately before the day caregiver leave begins is used to determine caregiver leave eligibility. If an employee has not worked for three months, the number of hours for which the employee has been scheduled to work per week during the employee’s employment period is used to determine caregiver leave eligibility.

Use of caregiver leave does not affect an employee’s eligibility for other forms of paid leave granted under Ohio’s Department of Administrative Services – Personnel Law. It also does not prohibit an employee from taking leave under the federal Family and Medical Leave Act of 1993, except that caregiver leave is included in any leave time provided under that act.

The Director may adopt rules under the Administrative Procedure Act governing caregiver leave.

## Fleet management

(R.C. 125.14 and 125.832)

The Office of Fleet Management within DAS is responsible for the acquisition, maintenance, management, analysis, and disposal of the state’s vehicle fleet. The bill makes two modifications related to fleet management.

First, it modifies the definition of “operating cost,” which is a factor in calculating the minimum number of business miles per year an employee of a state agency must drive in order to qualify for approval by DAS to receive a motor vehicle for business use. Instead of dividing annual maintenance cost by *vehicle lifetime* miles driven, as under current law, the bill divides annual maintenance cost by *annual* miles driven. This modification better calculates an annual operating cost.

Second, the bill allows proceeds from the disposition of state vehicles to be transferred from the Investment Recovery Fund to the Fleet Management Fund. Currently, when DAS disposes of a motor vehicle originally purchased with GRF dollars, DAS is required to deposit the proceeds into either the Investment Recovery Fund or the Fleet Management Fund.<sup>7</sup> The bill

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<sup>6</sup> R.C. 5103.02; also R.C. 5101.85, not in the bill.

<sup>7</sup> If a vehicle was purchased with non-GRF funds, the proceeds are deposited into the fund used for the purchase.

allows funds originally deposited into the Investment Recovery Fund to be transferred to the Fleet Management Fund.

## **Prescription drug advisory council**

(R.C. 125.95)

The bill abolishes the Prescription Drug Transparency and Affordability Advisory Council and instead permits the Joint Medicaid Oversight Committee (JMOC) to examine any of the topics described in the report that was previously prepared by the Council, if the examination is requested by any JMOC member.

The Council was established in 2019 by the main appropriations act of the 133<sup>rd</sup> General Assembly (H.B. 166), within DAS. H.B. 166 required the Council to have 14 members: five cabinet heads and nine individuals representing various constituencies. Not later than six months after initial appointments were made, the Council was to submit a report to the Governor, General Assembly, and the Joint Medicaid Oversight Commission's chairperson with various pieces of information, including on how Ohio could best achieve prescription drug price transparency. A copy of that report, and additional information on the Council, is available on the Council's website.

## **DAS insurance program**

(R.C. 9.821, 9.822, 9.83, 2743.01, 2743.02, 2743.15, 2743.16, and 2743.19)

The bill makes several changes in relation to state liability and the risk management program operated by the DAS.

### **Sovereign immunity**

The bill declares the administration of the state's Risk Management Program to be a public duty for purposes of the Sovereign Immunity/Court of Claims Law. State law specifies that the state is immune from civil liability in the performance of a public duty. Thus, under the bill, the state cannot be sued for losses incurred in relation to any action of the Risk Management Program.

The bill also amends the law related to immunity provided to state officers or employees. In several instances, state law provides immunity to certain state officers or employees in the carrying out their duties. The bill specifies that the authority to sue such an officer or employee in a specific circumstance does not affect the general immunity provided to that officer or employee under the law.

### **Judicial liability program**

The bill authorizes the Office of Risk Management to administer a judicial liability program. This is an already existing self-insurance program operated by DAS that provides insurance coverage to judges and courts for liabilities. Thus, the bill would be providing explicit authority to provide an already existing program.

## **Bond requirements**

The bill amends the law related to bonds purchased in relation to state agents and employees. The bill expressly requires that all necessary surety bonds, fidelity bonds, and public official bonds be purchased, as opposed to self-insured. DAS is expressly prohibited from issuing or underwriting any such bonds or providing performance bonds to any party.

## **Liability insurance program**

The bill amends the law related to the liability insurance programs administered by DAS and political subdivisions. Under current law, DAS and political subdivisions are authorized to insure against liability in relation to the operation of certain specified vehicles. Under the bill, this authority is expanded to general liability that occurs during the course of employment or official responsibilities.

Also, the bill expands the state's liability insurance program to cover agents of the state in addition to officers and employees of the state. The liability insurance program protects against liability resulting from lawsuits against the state.

## **Claims against the state**

The bill amends the law related to the settlement of claims against the state. Continuing law, unchanged by the bill, requires a person making a claim of liability against the state, to attempt to have that claim compromised by the state or satisfied by the state's insurance. The bill specifies that these actions must be taken prior to such a claim being filed with a court. Requires an instrumentality of the state to notify the Office of Risk Management of any settlement or compromise made in a claim against the instrumentality for the purpose of reserving funds.

The bill specifies that information related to claims against the state is to be held in confidence, is not to be released, and is not subject to discovery or introduction in evidence in any federal or state civil action.

Also, the bill specifies that recoveries against the state are to be reduced by other recoveries the claimant is entitled to, such as insurance proceeds, as opposed to just those other recoveries the claimant has received.

## **Compromising of claims**

The bill makes several miscellaneous changes in the law related to the compromising, or settling, of claims made against the state. These changes are as follows:

- Specifies that all settlements made by the Office of Risk Management are to be paid from the Risk Management Reserve Fund and the conditions of such payment;
- When a claim is settled, requires a copy of the settlement instrument to be forwarded to the Office of Risk Management for payment from the Risk Management Reserve Fund;
- Specifies that the authority of DAS to settle claims does not extend to settling claims on behalf of agency programs with direct settlement authority;

- Requires a copy of a judgement against the state to be forwarded to the Office of Risk Management for the judgement to be paid from the Risk Management Reserve Fund;
- Establishes that the compromising of claims is a public duty for the purposes of the Sovereign Immunity/Court of Claims Law.

## **Public office employee database**

(R.C. 149.434)

The bill eliminates the requirement that a public office include the date of birth of all public officials and employees on the database or list that is maintained by the public office. Under current law, each public office must maintain a database or list that includes the name and date of birth of all public officials and employees elected to or employed by that public office. The information in the database is a public record under the Public Records Law.

## **Real estate and planning**

### **Land conveyance documents**

(R.C. 123.02 and 5301.13; repealed R.C. 117.49 and 117.50; conforming changes in numerous other R.C. sections)

The bill transfers responsibility to prepare deeds for the conveyance of state land from the Auditor of State to the DAS Director. The bill also transfers from the Auditor to the DAS Director the related responsibility to keep records showing the state's interest in real estate (aside from public lands and highway rights-of-way), and to maintain a recording system for those records that is open for public inspection.

### **Land conveyance authority**

(R.C. 123.01)

The bill expands the DAS Director's authority to convey state-owned land in three ways.

First, it authorizes the DAS Director to grant perpetual easements over state-owned land to utilities regulated by the Public Utilities Commission of Ohio. Under existing law, the DAS Director is generally limited to granting easements for 15 years, though easements over university land can run to 25 years if approved by the university board of trustees.

Second, the bill allows the DAS Director to correct legal descriptions or title defects, or to release fractional interests in real property, as necessary to cure title clouds reflected in public records. The title clouds the bill allows the DAS Director to address include those arising from boundary disputes, ingress or egress issues, title transfers precipitated through retirement of bond requirements, and the retention of fractional interests in real estate otherwise disposed of in previous transfers.

Third, the bill authorizes the DAS Director to sell state-owned land with a fair market value of \$100,000 or less, with Controlling Board approval. Fair market value is to be determined by an independent appraiser. Funds from a sale under the bill's new provision are to be credited, at the direction of the OBM Director, to a fund or funds in the state treasury, or to accounts held by a state college or university.

## **Office of Information Technology**

(R.C. 125.18)

The bill eliminates the authority, in current law, for the State Chief Information Officer to establish policies and standards for the acquisition of common information technology by state agencies. Instead, the bill requires the State Chief Information Officer to coordinate with the Office of Procurement Services to establish policies and standards for state agency acquisition of information technology supplies and services.

The bill also clarifies that polices that the State Chief Information Officer must establish, for the reduction of printing, are to promote the increased use of electronic records by state agencies.

Under continuing law, the State Chief Information Officer supervises the Office of Information Technology, which is within the DAS.

## **Public assistance private sector tools**

(R.C. 125.70)

The bill requires DAS to work with the Department of Job and Family Services and the Department of Medicaid to deploy private sector tools for digital identity management, authentication, and verification for individuals receiving Supplemental Nutrition Assistance Program (SNAP) benefits, Medicaid, or benefits funded by the Temporary Assistance for Needy Families block grant. The private sector tools must include joining available multistate cooperatives to identify individuals enrolled in public assistance programs, including the National Accuracy Clearinghouse for SNAP, and other multi-state collaborative efforts to share public assistance enrollment information across state lines to avoid public assistance benefit duplication.

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## DEPARTMENT OF AGING

- Permits the Department of Aging to require non-Medicaid providers to be certified by the Department as a condition of payment for services provided under programs the Department administers.
- Applies existing certification and payment provisions to providers of any services, not just community-based long-term care services.
- Authorizes the Department to develop and offer training programs to area agencies on aging, long-term care facilities and providers, and other interested parties.
- Authorizes the Department, through administrative rules, to design a payment method for PASSPORT administrative agency operation that includes a pay-for-performance incentive component.
- Requires the Department to expand to the following cities the existing Medicaid component known as the Program of All-inclusive Care for the Elderly (PACE): Columbus, Cincinnati, Dayton, Lorain, and Toledo.

### Certification of providers

(R.C. 173.39, 173.391, 173.392, and 173.393)

The bill permits the Department of Aging to require non-Medicaid providers to be certified by the Department as a condition of payment for services provided under programs the Department administers. If the Department does not require certification, the provider must continue to comply with existing law that requires the provider to have a contract or grant agreement with the Department to provide the services. As under current law, providers of services under the PASSPORT program and Assisted Living program must be certified as a condition of payment.

The bill applies existing certification and payment provisions that apply to community-based long-term care services to any services provided under a program the Department administers. This extends existing criminal records check requirements to additional providers.<sup>8</sup>

### Training programs

(R.C. 173.012)

The bill authorizes the Department to develop and offer training programs to area agencies on aging, long-term care facilities, providers of long-term care services, and other interested parties. The Department may charge a fee for the training and use fees collected to

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<sup>8</sup> R.C. 173.38, not in the bill.

develop and offer additional training programs. The fees must be deposited into the Senior Community Outreach Fund, which the bill creates.

## **Performance-based reimbursement**

(Section 209.20)

In order to improve health outcomes among populations served by PASSPORT administrative agencies, the bill authorizes the Department to design a payment method for PASSPORT administrative agency operation that includes a pay-for-performance incentive component that is earned by a PASSPORT administrative agency when defined consumer and policy outcomes are achieved.

If the Department opts to implement the payment method, it must do so through rules adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119). However, prior to filing a proposed rule with a pay-for-performance incentive component with the Joint Committee on Agency Rule Review, the Department must submit a report to the Joint Medicaid Oversight Committee outlining the payment method.

## **PACE program expansion**

(R.C. 173.50)

The bill requires the Department to expand an existing Medicaid component known as the Program of All-inclusive Care for the Elderly (PACE). PACE is a managed care model that provides participants with needed health care, medical care, and ancillary services in acute, sub-acute, institutional, and community settings. Currently, Ohio's only PACE site is in Cleveland.<sup>9</sup>

Under the bill, not later than December 31, 2021, the Department must issue a request for proposals from organizations interested in serving PACE-eligible individuals in Columbus, Cincinnati, Dayton, Lorain, and Toledo. Proposals must be submitted within six months.

To be eligible for selection by the Department, a prospective PACE organization must meet all of the following:

- Be a nonprofit, tax-exempt entity;
- Have a current, valid Medicaid provider agreement or be eligible to enter into a provider agreement;
- Meet all federal requirements applicable to PACE program providers;
- Have experience providing health care to individuals 55 and older;
- Be located or offer services in one of the expansion cities.

Each organization selected to serve as a PACE program organization must begin providing services to eligible individuals within two years. So long as a PACE program organization is

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<sup>9</sup> Ohio Department of Aging, *PACE*, February 14, 2020, <https://aging.ohio.gov/wps/portal/gov/aging/care-and-living/get-help/home-and-community-care/pace-1>.



providing access to PACE program services for all eligible individuals in the area served by the PACE program organization, the Department may not authorize any other organization to serve as a PACE program organization for that area.

Funding for PACE program services is to be determined by the legislature in an amount and manner similar to that of other Medicaid managed care plans serving similarly eligible individuals. On an annual basis, the Department must adjust PACE program capitated payments to reflect cost increases associated with providing care to individuals enrolled in the PACE program.

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## DEPARTMENT OF AGRICULTURE

### Wine tax diversion to Ohio Grape Industries Fund

- Makes permanent the 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund, which is used to support and promote the Ohio grape and wine industry.

### Farmers market registration

- Eliminates the voluntary registration of farmers markets with the Department of Agriculture (ODA) and the corresponding inspection of registered farmers markets by ODA.

### Ohio Proud Program merchandise

- Requires all fees assessed for participation in the Ohio Proud Program to be credited to the existing Ohio Proud, International, and Domestic Market Development (Ohio Proud) Fund, rather than the GRF as under current law.
- Authorizes ODA to sell merchandise that promotes the Program, and requires the Director of Agriculture to deposit proceeds from the merchandise sales in the Ohio Proud Fund.

### Liming material sampling and analyzing

- Allows the Director of Agriculture to enter into an agreement with a person to perform inspections, sampling, and analysis of liming material on behalf of ODA.
- Allows the person to enter on public or private property at any reasonable time to conduct the authorized inspections.
- Requires the Director to annually audit the records of the inspections performed.

### Southern Ohio Agricultural and Community Development Foundation

- Abolishes, effective December 30, 2021, the Southern Ohio Agricultural and Community Development Foundation, which is tasked with assisting southern Ohio farmers in replacing their tobacco production with other agricultural products and mitigating the economic impact of reduced tobacco production in the region.
- Eliminates the Foundation's board of trustees and provides for the winding down of the Foundation's affairs by ODA.

### Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

The bill makes permanent the 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund, which is used to support and promote the Ohio grape and wine industry. The earmark expires on June 30, 2021.

Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to \$1.48 per gallon. From the taxes paid, a portion is credited to the Ohio Grape Industries Fund for the encouragement of the state's grape and wine industry. The remainder is credited to the GRF.

## **Farmers market registration**

(R.C. 3717.221 and 3717.22)

The bill eliminates the option to voluntarily register a farmers market with the Department of Agriculture (ODA). It also eliminates the corresponding inspection of registered farmers markets by ODA. As a result, local boards of health must inspect farmers markets under the law governing retail food establishments and food service operations. Under current law, a farmers market that is registered with ODA is exempt from inspection by a local board of health under those laws.

A farmers market is a location where producers congregate to offer fruits, vegetables, and other items for sale.

## **Ohio Proud Program merchandise**

(R.C. 901.171)

The bill requires all fees assessed for participation in the Ohio Proud Program to be credited to the existing Ohio Proud, International, and Domestic Market Development (Ohio Proud) Fund. Current law requires those fees to be deposited in the GRF. The Ohio Proud Program promotes food and agricultural products made and grown in Ohio.

The bill authorizes ODA to sell merchandise that promotes the Ohio Proud Program. It also requires the Director of Agriculture to deposit proceeds from the merchandise sales in the Ohio Proud Fund.

## **Liming material sampling and analyzing**

(R.C. 905.59)

The bill allows the Director of Agriculture to enter into an agreement with a person that authorizes the person to perform inspections, sampling, and analysis of liming material on behalf of ODA. The person may enter on public or private property at any reasonable time to conduct the authorized inspections. The Director must annually audit the records relating to the inspections, sampling, and analysis performed by the person.

Liming material is used for fertilizer purposes and has a calcium and magnesium content used to neutralize soil acidity. Under current law, ODA is solely responsible for conducting inspections of liming material. ODA officials may enter public or private property to conduct inspections.

## **Southern Ohio Agricultural and Community Development Foundation**

(R.C. 183.12 through 183.17, repealed; R.C. 102.02, 183.021, and 183.33; Section 518.30)

The bill abolishes the Southern Ohio Agricultural and Community Development Foundation on December 30, 2021. As a result of that elimination, it does the following:

1. Eliminates the Foundation's board of trustees;
2. Provides for the winding down of the Foundation's affairs by ODA;
3. Eliminates the Southern Ohio Agricultural and Community Development Foundation Endowment Fund and requires the Treasurer of State to transfer the cash balance in the fund to the Ohio Proud Marketing Fund; and
4. Eliminates the Southern Ohio Agricultural and Community Development Operating Expenses Fund and requires the Director of the Office of Budget and Management to transfer the cash balance in the fund to the existing Ohio Proud Marketing Fund.

The Foundation was created in 2000 by S.B. 192 of the 123<sup>rd</sup> General Assembly as an outgrowth of the 1998 Tobacco Master Settlement Agreement reached between Ohio and other states and major tobacco manufacturers. Generally, the Foundation is tasked with assisting southern Ohio farmers in replacing their tobacco production with other agricultural products and mitigating the adverse economic impact of reduced tobacco production in the region by:

1. Increasing the variety, quantity, and value of agricultural products other than tobacco that are produced in southern Ohio (where tobacco has traditionally been grown);
2. Preserving agricultural land and soils in southern Ohio;
3. Making strategic investments in communities that will be affected by the reduction in the demand for tobacco; and
4. Providing education and training assistance to tobacco growers to help them make the transition out of tobacco production.

The Southern Ohio Agricultural and Community Development Foundation Endowment Fund originally consisted of money derived from the Tobacco Master Settlement Agreement. It also consists of grants and donations made to the Foundation and investment earnings of the fund. The Foundation uses money in the fund to award grants in assisting farmers according to the Foundation's mission.

The Southern Ohio Agricultural and Community Development Operating Expenses Fund consists of money transferred to it from the Southern Ohio Agricultural and Community Development Foundation Endowment Fund. The Foundation uses money in the Southern Ohio Agricultural and Community Development Operating Expenses Fund solely to pay the Foundation's employees.

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## **ATTORNEY GENERAL**

### **Collecting debts from gambling winnings**

- Reduces from \$5,000 to \$600 the threshold at which the State Lottery Commission must withhold from lottery winnings any amounts a lottery winner owes to the state or a political subdivision.
- Requires a casino operator to use a data match program created by the Attorney General (AG) to withhold any amounts a patron owes to the state or a political subdivision from the amount of any casino winnings that exceed \$600.
- Requires the casino operator to remit payment to the Department of Job and Family Services for any past due child or spousal support, as required under current law, before giving the remainder to the AG to pay other government debts.

### **AG's special counsel; collection of debts**

- Authorizes the AG to adopt rules as necessary to implement the law governing the AG's special counsel to collect claims.
- Authorizes the AG to adopt rules to aid the implementation of the law governing the collection of debts, and specifically to adopt a rule shortening the time when the AG may cancel a debt deemed uncollectible.

### **Settlements awarding money to the state**

- Requires, with certain exceptions, that the AG or any appointed special counsel obtain the approval of the Governor, the President of the Senate, and the Speaker of the House before entering into a settlement agreement in a state or federal court case that authorizes the expenditure, transfer, or award of money to the state.
- Requires the AG, upon receiving money under a settlement or court order, to notify the chairpersons of the House and Senate Finance committees, along with the Director of Budget and Management.
- Requires the Controlling Board to approve the transfer of the money from the Attorney General Court Order Fund to the appropriate fund or funds in the state treasury.
- Exempts from those requirements any amounts under \$10,000 and any debts the AG is collecting.

### **Raffles**

- Allows a nonprofit organization that is tax-exempt under subsection 501(c)(6) of the Internal Revenue Code (a business league, chamber of commerce, real estate board, board of trade, or professional football league) to conduct a raffle that is not for profit.
- Requires such an organization to distribute at least 50% of the net profit from the raffle to a charitable purpose or to a government agency.

## **Charitable organizations**

- Prohibits state agencies, with certain exemptions, from imposing reporting or filing requirements on charitable organizations that are more stringent than those found in the Revised Code or that are already in existence as of the prohibition's effective date.

## **Ohio Peace Officer Training Academy**

- Modifies law with respect to various funds associated with the Ohio Peace Officer Training Academy.

## **Pilot program – funding peace officer and trooper training**

- Requires the AG to create and administer a one-year pilot program for state funding of the training of peace officers and troopers, and specifies that the pilot program is the only state funding that will be provided in calendar year 2022 for the training of such peace officers and troopers.

## **Law Enforcement Training Funding Study Commission**

- Creates the 12-member Law Enforcement Training Funding Study Commission to study possible long-term methods for the provision of state funding to law enforcement agencies for the training of their peace officers and troopers and evaluate the plans for the pilot program described above as part of the study.
- Requires the Commission to prepare a report of its findings, and recommendations for a method, to be used after the completion of the pilot program, for the provision of state funding to those law enforcement agencies for the training of their peace officers and troopers.
- Requires the Commission, not later than March 1, 2022, to submit the report to the Governor, the General Assembly, the Attorney General, and the Legislative Service Commission.
- Provides that upon submission of the report, the Commission will cease to exist.

## **Delinquent municipal income tax collection**

- Requires the AG to participate in the federal Treasury Offset Program for the collection of past due municipal income taxes to the extent that such taxes qualify for the program.

## **Foreclosure sale reports to the AG**

- Specifies that the reports submitted to the AG by officers conducting residential property foreclosure sales must contain information of whether the officer met certain deadlines related to sale procedures.
- Replaces the requirement that the AG establish and maintain a public database of information included in foreclosure sale reports with a requirement that the information be made publicly available.

## Public record exemption for certain telephone numbers

- Modifies the current exemption for telephone numbers of victims, crime witnesses, and parties to motor vehicle accidents from the Public Records Law.

## Collecting debts from gambling winnings

### Lottery winnings

(R.C. 3770.073 and conforming change in R.C. 5701.11)

The bill lowers to \$600 the winnings threshold that triggers a requirement that the State Lottery Commission withhold the amount of any debt a lottery winner owes to the state or a political subdivision from the person's winnings. Currently, if a person wins \$5,000 or more in the lottery, the Commission must deduct the amount of those debts from the winnings and pay it to the Attorney General (the AG) to satisfy the debts. The bill changes that threshold to match the federal threshold that determines whether the Commission must report the person's lottery winnings to the Internal Revenue Service (IRS) – currently, \$600.<sup>10</sup>

Under continuing law, lottery winnings that exceed the IRS threshold also may be intercepted to satisfy any past due child or spousal support. If the amount of the winnings is not enough to cover both the past due support and any debts to the state or a political subdivision, the support debts are paid first.<sup>11</sup>

### Casino winnings

(R.C. 3772.37 and conforming change in R.C. 5701.11)

The bill requires a casino operator to withhold the amount of any debt a patron owes to the state or a political subdivision from the patron's casino winnings, if the winnings exceed the IRS reporting threshold (currently, \$600). Under continuing law, a casino operator also must withhold the amount of any past due child or spousal support the patron owes from any winnings that exceed that threshold.<sup>12</sup>

Under the bill, the AG must develop and implement a real time data match program for casino operators to use to determine whether patrons owe any debts to the state or a political subdivision that have become final. If a patron wins \$600 or more and the program indicates that the patron owes any such amounts, the casino operator must withhold the amount of the debt from the winnings, up to the total amount of the winnings, and transmit it to AG within seven days.

If the casino operator learns through the data match program operated by the Department of Job and Family Services under continuing law that the patron also is in default

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<sup>10</sup> 26 United States Code (U.S.C.) 6041.

<sup>11</sup> R.C. 3770.071, not in the bill.

<sup>12</sup> R.C. 3123.90, not in the bill.

under a child or spousal support order, the casino operator must withhold the past due amount and transmit it to the Department before transmitting any remaining amount to the AG.

After receiving the money from the casino operator, the AG must apply it toward the patron's debt to the state or a political subdivision. If the patron has multiple debts of that kind, the money must be applied against the debts in the following order of priority, which is the same order of priority that applies under continuing law concerning debts to be satisfied from lottery winnings:

- Personal liabilities for corporate tax debts;
- Amounts owed to the state;
- Amounts owed to political subdivisions.

The AG may adopt rules under the Administrative Procedure Act (R.C. Chapter 119) to implement the bill's requirements.

### **AG's special counsel**

(R.C. 109.08)

The bill authorizes the AG to adopt rules under the Administrative Procedure Act (R.C. Chapter 119) as necessary to implement the law governing the AG's special counsel to collect claims. Continuing law authorizes the AG to appoint and authorize special counsel to represent the state and any political subdivision in connection with all claims the AG is authorized to collect.

### **AG rules on collection of debt**

(R.C. 131.02)

The bill authorizes the AG to adopt rules to aid the implementation of the law governing the collection of debts, and specifically, to adopt a rule shortening the time when the AG may cancel a debt deemed uncollectible. Under current law, the AG must cancel an unsatisfied claim 40 years after the date the claim is certified for collection.

Statutory law provides that whenever any amount is payable to the state, the officer responsible for administering the law under which the amount is payable immediately must proceed to collect. Generally, if the amount is not paid within 45 days after payment is due, the officer must certify the amount due to the AG, who must give immediate notice to the party indebted of the nature and amount of the indebtedness. Also, the AG and the officer administering the law under which the amount is payable must agree on the time a payment is due, which may be an appropriate time determined by the AG and the officer based on statutory requirements or ordinary business processes.

Existing law requires the AG to follow this process on behalf of state agencies, and also on behalf of state institutions of higher education and of political subdivisions. The bill clarifies that the time the payment is due may be based on the statutory requirements or ordinary business practices of an institution or a political subdivision, as well as of a state agency.



## **Settlements awarding money to the state**

(R.C. 109.111 and 109.112)

The bill generally requires the AG or any appointed special counsel to obtain the approval of the Governor, the President of the Senate, and the Speaker of the House before entering into a settlement agreement in a state or federal court case that authorizes the expenditure, transfer, or award of money to the state. However, that requirement does not apply if the total amount of the money does not exceed \$10,000, or if the money is an amount due to the state or a political subdivision and is being collected as part of the AG's debt collection duties.

For example, if the AG sued a company for monetary damages the company allegedly caused the state, and the company offered to settle the case by paying an amount over \$10,000 to be used in certain ways, the bill would require the AG to obtain the approval of the Governor, the President, and the Speaker before accepting the terms of the settlement.

Under continuing law, any money the AG receives through a court order is deposited in the Attorney General Court Order Fund. The bill clarifies that money the AG receives as a result of a settlement or compromise in a case also must be deposited in the fund.

With certain exceptions, the bill requires that when the AG receives money in the fund, the AG must notify the chairpersons of the House and Senate Finance committees, along with the Director of Budget and Management, of the amount. The AG and the Director then must obtain the approval of the Controlling Board before transferring the money to the appropriate fund or funds in the state treasury.

If the total amount does not exceed \$10,000, or if the money is part of a debt collection as described above, the money must be treated the same as under existing law. The AG must notify the Director of Budget and Management of the amount and the terms of the court order. Then, the Director, in consultation with the AG, must determine the appropriate distribution of the money, consistent with the terms of the order, and transfer it to the appropriate fund or funds as determined by the Director.

## **Raffles conducted by a 501(c)(6) nonprofit organization**

(R.C. 2915.092)

The bill allows a nonprofit organization that is tax exempt under subsection 501(c)(6) of the Internal Revenue Code (a business league, chamber of commerce, real estate board, board of trade, or professional football league) to conduct a raffle that is not for profit.

The bill also requires such an organization to distribute at least 50% of the net profit from the raffle to a charitable purpose or to a government agency.

Under current law, certain schools and nonprofit organizations, including 501(c)(3) (charitable organizations), 501(c)(4) (nonprofit organizations designed to promote social welfare causes), 501(c)(7) (social clubs organized for pleasure, recreation, and other non-profitable purposes), 501(c)(8) or 501(c)(10) (certain fraternal societies operating under the lodge system), or 501(c)(19) (certain veterans' posts or organizations) organizations, may conduct a raffle that is not for profit to raise money for the organization without a license to conduct bingo. A

nonprofit organization other than a 501(c)(3) must donate at least half of the net profits of a raffle to a charitable purpose<sup>13</sup> or to a department or agency of the federal government, the state, or any political subdivision.

The Ohio Constitution generally prohibits lotteries and the sale of lottery tickets, but allows bingo to be conducted by a charitable organization for a charitable purpose. A raffle qualifies as a type of bingo under statutory law.<sup>14</sup> It is unclear whether a court would consider a 501(c)(6) organization a charitable organization within the meaning of the Ohio Constitution, given that the organization is required to donate half of the net profits to a charitable purpose or the government, and may retain the remaining half.

## **Charitable organizations**

(R.C. 1716.21)

The bill prohibits a state agency or official from imposing any filing or reporting requirements on a charitable organization that is more stringent, restrictive, or expansive than the requirements explicitly authorized by the Revised Code. This prohibition is not to be construed as repealing or otherwise negating any rule or requirement already in existence. It is also not to be construed as negating or limiting any of the following:

- Any civil or criminal right, claim, or defense that the AG may assert under the Revised Code or common law;
- The authority of the AG to institute and prosecute an action to enforce any provision of the Revised Code the AG is authorized to enforce;
- The independent authority of the AG to protect charitable assets in Ohio.

All of the following are exempt from this prohibition:

- State grants and contracts;
- Fraud investigations;
- Any enforcement action taken against a specific charitable organization;
- Settlement agreements;
- Assurances of discontinuance;
- Court judgments;
- Entities operating under the Ohio Gambling laws.

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<sup>13</sup> R.C. 2915.01(V), not in the bill.

<sup>14</sup> Ohio Constitution, Article XV, Section 6; R.C. 2915.01(CC), not in the bill.

## Ohio Peace Officer Training Academy

(R.C. 109.79, 109.802, repealed; R.C. 2981.13, and 3772.01)

The bill makes the following changes to funds associated with the Ohio Peace Officer Training Academy:

1. Eliminates the Law Enforcement Assistance Fund;
2. Codifies the Peace Officer Training Academy Fee Fund into permanent law, and specifies all of the following:
  - a. The fund is in the state treasury;
  - b. Tuition paid by a political subdivision or by the State Public Defenders Office must be deposited into the fund;
  - c. The AG must use money in the fund to pay costs associated with operation of the Academy.
3. Eliminates the Peace Officer Training Commission Fund and transfers its functions and purposes to the Ohio Law Enforcement Training Fund;

Under current law, if a court other than a juvenile court orders a forfeiture, a portion of the forfeiture must be distributed to various law enforcement related funds, including the Peace Officer Training Commission Fund. Under the bill, the forfeiture amount that would be deposited into the Peace Officer Training Commission Fund instead must be deposited into the Ohio Law Enforcement Training Fund. A provision of current law, retained by the bill, requires these funds to be used by the Ohio Peace Officer Commission only to pay the cost of peace officer training.

The Ohio Law Enforcement Training Fund is the fund described in the Ohio Constitution, which must receive 2% of the proceeds of the gross casino revenue tax collected by the state, to enhance public safety by providing additional training opportunities to the law enforcement community.<sup>15</sup>

4. Authorizes the use of money in the Ohio Law Enforcement Training Fund for all training opportunities for the law enforcement community rather than for additional training only.

### **Pilot program – funding peace officer and trooper training**

(Section 701.70(A))

#### **Creation of pilot program; background on training requirements**

The bill requires the AG, not later than December 1, 2021, to create a pilot program for state funding of the training of peace officers and troopers that is required under R.C. 109.803. The program must be administered by the AG's office. As used in these provisions, a "peace officer" is a person under the definition of that term set forth in R.C. 109.71 and a "trooper" is an individual appointed as a State Highway Patrol Trooper. The pilot program will be a one-year

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<sup>15</sup> Ohio Const. art. XV, sec. 6(C)(3)(f).

program, operating in calendar year 2022. The R.C. 109.803 training requirements specify that, with limited exceptions, every appointing authority must require its appointed peace officers and troopers to complete up to 24 hours of continuing professional training each calendar year, as directed by the Ohio Peace Officer Training Commission.

Note that, as described above in “**Ohio Peace Officer Training Academy**,” the bill repeals an existing statutory mechanism (R.C. 109.802) that, along with a related Administrative Code mechanism ([Ohio Administrative Code rule 109:2-18-04](#)), provides for state funding of the training of peace officers and troopers that is required under R.C. 109.803.

### **Agency certification of salaries**

Not later than December 2, 2021, each law enforcement agency with peace officers or troopers who are subject to the R.C. 109.803 training requirement must certify to the AG the total of all salaries to be paid in calendar year 2022 to officers or troopers of the agency who will receive that training in calendar year 2022 and their hourly rates of pay.

### **Operation of pilot program and payments**

Not later than January 1, 2022, the AG must begin the program’s operation. Prior to that date, the AG must establish rules, under R.C. 111.15, for the program’s operation and administration, for determining eligibility for funding and payments, and for providing the funding and payments.

From money appropriated for the pilot program, the AG must pay each law enforcement agency with peace officers or troopers who are subject to the R.C. 109.803 training requirement an amount to cover up to 50% of the cost of the salaries of the officers or troopers who will receive that training in calendar year 2022, during the period of the training. The amount paid must cover only the period when the officers or troopers are receiving that training, and may not exceed an amount covering 24 hours of the training.

If the amount appropriated for the pilot program is insufficient to pay 50% of the salaries of the peace officers or troopers of all law enforcement agencies to be paid in calendar year 2022, the amount paid to each agency must be reduced so that each agency is paid an equal percentage of its cost in 2022 for the training. No payment may be made under the pilot program after January 1, 2023. If a law enforcement agency does not use all of the money for the salaries it certified, it must return the unused money to the AG.

A law enforcement agency that receives payments under the pilot program will be responsible for paying the cost of training that exceeds the amount of the payment.

### **Sole state funding for the training**

The bill specifies that state funding for the training of peace officers or troopers that is required under R.C. 109.803 will be provided in calendar year 2022 only in accordance with the pilot program, notwithstanding any other provision of law that addresses any alternative method of state funding for such training. However, this limitation does not apply with respect to direct appropriations made to a state law enforcement agency.

## **Agency and AG reports**

Each law enforcement agency that receives money under the pilot program must submit to the AG, by the date the AG specifies, a report that states the amount of money the agency received, how and when that money was used, and any other information the AG requires with respect to the use of the money. The AG must prepare a report that compiles the information in the agency reports and submit it to the General Assembly and the Legislative Service Commission.

## **Law Enforcement Training Funding Study Commission**

(Section 701.70(B))

The bill creates the 12-member Law Enforcement Training Funding Study Commission. The members are: (1) the AG or a designee of the AG with experience in law enforcement funding issues, (2) the Director of Public Safety or a designee of the Director with experience in law enforcement funding issues, (3) three members of the House appointed by the Speaker, with not more than two from the same political party, (4) three members of the Senate appointed by the Senate President, with not more than two from the same political party, and (5) four members of the public appointed by the Governor, each having a law enforcement background. The Speaker, the President, and the Governor must make their initial appointments not later than 30 days after the effective date of this provision.

The Commission must study possible long-term methods for providing state funding to law enforcement agencies for training their peace officers and troopers as are required under R.C. 109.803. The Commission must evaluate as part of the study the plans for the pilot program described above. Upon completing the study, the Commission must prepare a report of its findings and recommendations for a long-term method for state funding. The Commission must submit the report by March 1, 2022, to the Governor, the General Assembly, the AG, and the Legislative Service Commission. The Commission ceases to exist when it submits the report.

The bill includes provisions regarding the Commission's initial and subsequent meetings, selection of officers, adoption of procedures for its proceedings, establishment of a quorum and making recommendations, disqualification of appointed members and appointment of replacements, and member serving without compensation. Commission meetings must be open to the public under the state's Open Meetings Law, and the Commission must keep minutes of its meetings as public records under the state's Public Records Law.

## **Federal Treasury Offset Program (TOP)**

(R.C. 131.025)

Continuing law requires the AG to participate in the federal Treasury Offset Program (TOP) for collecting past due state income taxes and covered unemployment compensation debts. The bill further requires the AG to participate in the TOP for delinquent municipal income taxes to the extent that such taxes qualify for the program.

The TOP assists in the collection of certain debts owed to federal agencies and states by deducting delinquent amounts from federal tax refunds and other payments by the federal government to the indebted person. Federal law permits collection of local income tax

delinquencies through the TOP only if the taxes are “administered by the chief tax administration agency of the State.”<sup>16</sup> The bill declares that the AG is the tax administrator with respect to past due municipal income taxes that are certified to the AG for collection. It expressly provides that the title is conferred only for the purpose of qualifying for the TOP.

Under continuing law, municipal income taxes are generally administered by a local tax administrator designated by the taxing municipality. Only municipal utility net profits taxes and taxes of certain businesses that opt for centralized collection and administration are administered by a state agency – in both cases, the Tax Commissioner.<sup>17</sup>

## **Foreclosure sale reports to the AG**

(R.C. 2329.312)

Existing law, revised in part by the bill, requires sheriffs and private selling officers that conduct foreclosure sales of residential property to submit quarterly reports to the AG for the purpose of assessing the extent to which deadlines under the Foreclosure Law are met. The report must include data on each sale conducted by the officer. The bill adds a requirement that the reports contain the specific data that shows whether or not the appraisal, the buyers payment for the property sold at an auction, and the confirmation of sale deadlines were met. The reports must also include the information as to whether or not the statutory deadline was met for the sale of vacant and abandoned property.

The bill maintains the requirement under existing law that the AG make the information submitted in the reports publicly available. However, the bill removes language requiring the AG to establish and maintain a database with the information submitted in the reports.

## **Public record exemption for certain telephone numbers**

(R.C. 149.43)

The bill revises the current law that exempts from public records release the telephone numbers of crime victims and witnesses to a crime, and of parties to a motor vehicle accident subject to R.C. 5502.11, that are listed in a law enforcement record or report, unless the telephone numbers are requested by an insurer or insurance agent investigating an insurance claim resulting from a motor vehicle accident.

The bill’s revisions specify that:

1. The telephone numbers of crime victims and witnesses to a crime are exempt unless the bill’s provisions with respect to parties to a motor vehicle accident apply;
2. The telephone numbers of parties to a motor vehicle accident subject to R.C. 5502.11 (see below) are exempt until the 30<sup>th</sup> day after the accident’s occurrence; and

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<sup>16</sup> 26 U.S.C. 6402(e)(5).

<sup>17</sup> R.C. Chapters 718 and 5745.

3. The existing requirement that the request for the telephone numbers be made as part of an insurance investigation is repealed.

### **Relevant definitions**

Unchanged by the bill:

1. Under the Crime Victims' Rights Law (R.C. 2930.01, not in the bill), "victim" means: (a) a person identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings to which that law makes reference, or (b) a person who receives injuries as a result of a vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident proximately caused by a violation of a specified nature or a motor vehicle accident proximately caused by a violation of a specified nature and who receives medical treatment of a specified nature.

2. R.C. 5502.11, not in the bill, requires every law enforcement agency representing any other political subdivision investigating a motor vehicle accident involving a fatality, personal injury, or property damage in an amount greater than \$1,000, within five days, to forward a written report of the accident to the Director of Public Safety.

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## AUDITOR OF STATE

### Auditor of State authority

- Modifies the statutory description of the Auditor of State's authority to specify that the Auditor is the lead public official responsible for the examination, analysis, inspection, and audits of all public offices, as opposed to the chief inspector and supervisor of all public offices, under current law.

### Employees

- Eliminates certain statutory titles within the office of the Auditor of State.
- Eliminates the entitlement, of Auditor of State employees, to compensation when called to testify in legal proceedings.
- Renames the statutory office, Deputy Auditor of State, to Chief Deputy Auditor of State, and requires that the person appointed to that office be a certified public accountant with an active Ohio permit.

### State awards for economic development

- Requires the Auditor of State, rather than the Attorney General, to review state awards for economic development and determine if an entity is in compliance with the terms and conditions of an award it received, and publish a report of the reviews and determinations.
- Requires the Department of Development annually to send the Auditor a list of state awards for economic development.
- Authorizes, rather than requires, the Attorney General to pursue against and from an entity that is not in compliance with the terms and conditions of a state award for economic development remedies and recoveries available under law.

### Auditor of State authority

(R.C. 117.09, 117.13, and 117.22)

#### Auditor responsibilities

The bill modifies the authority of the Auditor of State to specify the Auditor is the lead public official responsible for the examination, analysis, inspection, and audits of all public offices. Current law, modified by the bill, specifies that the Auditor is the chief inspector and supervisor of public offices.

#### Employees

Further, the bill eliminates the statutory titles of assistant auditors of state, deputy inspector, and deputy supervisor and the qualifications necessary for appointment as an assistant auditor of state. Current law, modified by the bill, requires the Auditor of State to appoint not



more than six deputy inspectors and supervisors and a clerk. The bill also removes the requirement that not more than three deputy inspectors and supervisors may belong to the same political party. Finally, the bill eliminates the requirement that the Auditor appoint state examiners to be known as assistant auditors of state. Instead, the bill authorizes the Auditor generally to hire, appoint, and fix the compensation of auditors, investigators, and other staff necessary to carry out the statutory responsibilities of the office.

The bill eliminates the entitlement, of Auditor of State employees, to compensation when called to testify in legal proceedings. Under current law, any employee called to testify in any legal proceedings in regard to any official matter is entitled to compensation and expenses, including reimbursement for travel, including meals, hotels, and other actual and necessary expenses when traveling on official business, under order of the Auditor, away from the employee's headquarters or place of principal assignment.

### **Chief Deputy Auditor of State**

(R.C. 117.04, 117.05, 117.06, and 117.22)

The bill renames the statutory office, Deputy Auditor of State, to Chief Deputy Auditor of State. Continuing law requires that the Auditor of State appoint a person to that office. The bill additionally requires that the person appointed be a certified public accountant with an active Ohio permit.

Continuing law specifies that, during the absence or disability of the Auditor of State, or when so directed by the Auditor of State, the Deputy Auditor of State (Chief Deputy Auditor of State under the bill), may perform all the duties of Auditor of State.

### **State awards for economic development**

(R.C. 117.55 and 125.112)

The bill requires the Auditor of State, rather than the Attorney General as under current law, to determine if an entity is in compliance with the terms and conditions of a state award for economic development that the entity received. Under the bill, the Department of Development (DEV), no later than 30 days after the end of the state fiscal year, must send the Auditor a list of state awards for economic development. The Auditor then must review each award and determine if the entity is in compliance with the terms and conditions, including performance metrics, of a state award for economic development received by that entity.

Under the bill, the Auditor of State must publish a report of its reviews and determinations no later than 90 days after receipt of the list of state awards from DEV. Current law requires the Attorney General annually to submit a report regarding the level of compliance to the General Assembly.

The bill requires the Auditor, when the Auditor determines that an entity is not in compliance with a performance metric that is specified in the terms and conditions of an award, to report that information to the Attorney General. The Attorney General is authorized, but not required, to pursue against and from that entity remedies and recoveries available under law.

Currently, when the Attorney General determines appropriate, and to the extent the entity has not complied, the Attorney General must pursue remedies.

The bill also specifies that, if the Auditor is authorized to conduct an audit of an entity that receives or has received a state award for economic development, the audit be conducted in accordance with Auditor of State law.

## OFFICE OF BUDGET AND MANAGEMENT

- Eliminates the OBM Director’s oversight regarding internal agency fund assessments and allocations for certain funds.

### Oversight over fund allocations

(R.C. 121.08, 121.084, 169.05, 901.91, 1121.30, 1181.06, 1321.21, 1707.37, 1733.321, 3701.831, 3737.71, 3745.014, 4735.211, and 4763.15)

The bill eliminates the Director of Budget and Management’s oversight regarding internal agency fund assessments and allocations. In most cases, the funds modified by the bill are assessed an amount to be used by the affected agency for administration purposes. The bill permits the affected agency director or superintendent to determine the assessment amount without OBM Director approval. The funds and the entity administering the funds are listed in the table below.

| Funds modified by the bill                |                 |  |
|---|-----------------|--|
| Fund name                                 | Citation (R.C.) | Administering agency personnel           |
| Division of Administration Fund           | 121.08          | Director of Commerce                     |
| Unclaimed Funds Trust Fund                | 169.05          | Director of Commerce                     |
| Division of Securities Fund               | 1707.37         | Director of Commerce                     |
| Industrial Compliance Operating Fund      | 121.084         | Director of Commerce                     |
| Division of Real Estate Operating Fund    | 4735.211        | Director of Commerce                     |
| Real Estate Appraiser Operating Fund      | 4763.15         | Director of Commerce                     |
| State Fire Marshal’s Fund                 | 3737.71         | Director of Commerce                     |
| Department of Agriculture operating funds | 901.91          | Director of Agriculture                  |
| Banks Fund                                | 1121.30         | Superintendent of Financial Institutions |
| Consumer Finance Fund                     | 1321.21         | Superintendent of Financial Institutions |
| Credit Unions Fund                        | 1733.321        | Superintendent of Financial Institutions |
| Financial Institutions Fund               | 1181.06         | Superintendent of Financial Institutions |
| Department of Health operating funds      | 3701.831        | Director of Health                       |

| <b>Funds modified by the bill</b> |                        |                                       |
|-----------------------------------|------------------------|---------------------------------------|
| <b>Fund name</b>                  | <b>Citation (R.C.)</b> | <b>Administering agency personnel</b> |
| Central Support Indirect Fund     | 3745.014               | Director of Environmental Protection  |

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## CAPITOL SQUARE REVIEW AND ADVISORY BOARD

- Authorizes the Capitol Square Review and Advisory Board (CSRAB) to enter into an indefinite delivery indefinite quantity contract for the services of an architect or engineer on an on-call, multi-project basis, to advise and consult with CSRAB for a defined contract period, not to exceed two years.

### **Indefinite delivery indefinite quantity contract**

(R.C. 105.41 and 153.013)

The bill authorizes the Capitol Square Review and Advisory Board (CSRAB) to enter into an indefinite delivery indefinite quantity contract for the services of an architect or engineer. An indefinite delivery indefinite quantity contract is a contract for an indefinite quantity, within stated limits, of supplies or services that will be delivered by the awarded bidder over a defined contract period.

The bill authorizes the executive director of CSRAB, with the Board's approval, to advertise and seek bids for, and award, an indefinite delivery indefinite quantity contract for an architect or engineer on an on-call, multi-project basis, to advise and consult with CSRAB for a defined contract period not to exceed two years. The executive director must do all of the following to enter into an indefinite delivery indefinite quantity contract:

- Prepare bidding documents;
- Establish contract forms;
- Determine contract terms and conditions, including the maximum overall value of the contract, which may include an allowable increase of 5% of the advertised contract value and the duration of the contract; and
- Take any other action necessary to fulfill the duties and obligations of the executive director.

The bill specifies that the requirements set forth in the bill prevail in the event of any conflict with any other provision of the Public Improvements Law.

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## DEPARTMENT OF COMMERCE

### I. Division of Securities

- Creates the Ohio Investor Recovery Fund for victims of securities fraud that have not received restitution from the person that committed the violation.
- Allows a dealer or investment adviser to place a hold on a transaction when the dealer, investment adviser, or an employee believes the account holder is age 60 or older or eligible for adult protective services and may be the victim of financial exploitation.
- Pushes back, from January 1, 2022, to February 11, 2022, the transition date of regulation of limited liability companies from the existing Limited Liability Company Act (R.C. Chapter 1705) to the new Ohio Revised Limited Liability Company Act (R.C. Chapter 1706).

### II. Division of Industrial Compliance

#### Plumbing inspector certification

- Removes certification of plumbing inspectors from the Division of Industrial Compliance's responsibility and authority but retains the Board of Building Standard's plumbing inspector certification.
- Requires a board of health to employ a Board of Building Standards certified plumbing inspector, as opposed to a Division of Industrial Compliance certified plumbing inspector as under current law, or to contract with another health district or building department in order for a prohibition on Division inspections in the board's district to apply.
- Adds a requirement that a board of health notify the Division of Industrial Compliance of the board's intent to inspect plumbing in its district before the continuing prohibition against duplicative Division plumbing authority will apply.
- Eliminates prohibitions on boards of health that do not employ certified plumbing inspectors from inspecting plumbing, collecting fees for inspecting plumbing, and contracting with other boards of health to inspect plumbing on the other board's behalf.

#### Manufactured homes

- Makes several technical changes to replace references to the former Manufactured Homes Commission with references to the Division of Industrial Compliance.

### III. Division of Real Estate and Professional Licensing

- Specifies that each licensed real estate broker and salesperson must notify the Superintendent of Real Estate and Professional Licensing of a change in personal residence address within 30 days after the change.
- Requires each licensee to maintain a valid email address on file with the Division of Real Estate and Professional Licensing and notify the Superintendent of any changes in email address within 30 days of the change.

- Expands the Superintendent's authority to recommend ancillary trustees for brokers.
- Reduces the portion of triennial real estate broker's and salesperson's license fees to be credited to the Real Estate Education and Research Fund from \$3 to \$1.50 per fee.

#### **IV. State Fire Marshal**

- Specifies that when authorized fire investigators are investigating a fire that has caused more than \$5,000 of property damage, to determine whether or not arson was involved, they must do so to the extent practicable and in a manner consistent with accepted standards of investigation.
- Permits the OBM Director, after certification of the Director of Commerce, to transfer funds from the State Fire Marshal's Fund to the Small Government Fire Department Services Revolving Loan Fund, if additional resources are needed.
- Requires a self-service gas station to comply with the most recent version of National Fire Protection Association Standard Number 30A, as incorporated into the State Fire Code, instead of the outdated version 30A-1990, as required under current law.

#### **V. Division of Liquor Control**

##### **Direct beer and wine sales**

###### **S-1 liquor permit eligibility changes**

- Renames the S liquor permit the S-1 permit.
- Revises the eligibility for the S-1 permit, including:
  - Eliminating from eligibility a brand owner or U.S. importer of beer or wine and its designated agent; and
  - Expanding eligibility to a person (inside or outside Ohio) that manufactures beer.

###### **S-2 liquor permit**

- Creates the S-2 liquor permit to be issued to a person (inside or outside Ohio) that manufactures 250,000 gallons or more of wine annually.
- Authorizes an S-2 permit holder to sell and ship its wine directly to personal consumers.
- Establishes similar provisions as the S-1 permit regarding payment of wine taxes, shipment of wine, and keeping sales records.
- Establishes an initial permit fee of \$250 and renewal fee of \$100.

##### **Taxes**

- Requires S-1 and S-2 liquor permit holders to pay the 30¢ per-gallon tax, and the additional 2¢ per-gallon tax, on wine used to support the Ohio Grape Industries Fund, but exempts permit holders that manufacture 500,000 gallons of wine or less per year from the 30¢ per-gallon tax.

- Replaces the tax credit for A-1c liquor permit holders (small breweries) for purposes of the state beer tax, which applies to the first 9.3 million gallons of annual production, with an exemption A-1c liquor permit holders that only produce up to 9.3 million gallons, and applies the exemption to S-1 permit holders.

### **Fulfillment warehouse**

- Authorizes a fulfillment warehouse to send an S-2 permit holder's wine to a personal consumer under specified conditions, including when the warehouse is located outside Ohio and has entered into a written agreement with an S-2 permit holder to fulfill orders on behalf of the permit holder.

### **B-2a liquor permit changes**

- Revises the eligibility for the B-2a liquor permit, including eliminating from B-2a permit eligibility the brand owner or U.S. importer of wine and its designated agent.
- Prohibits a B-2a permit holder from selling wine to a retail permit holder that has been assigned an Ohio distribution territory.

### **Illegal shipment of beer or wine**

- Generally prohibits a person from knowingly sending or transporting a shipment of wine to a personal consumer unless the person holds an S-1 or S-2 permit or is a fulfillment warehouse.
- Generally prohibits a person from knowingly sending or transporting a shipment of beer to a personal consumer without an S-1 permit.
- Specifies that a violator may be fined between \$500 and \$5,000, depending on the number of violations.

### **Retail permit holder prohibition**

- Prohibits a person that is not a beer or wine manufacturer, including the holder of any retail permit inside or outside Ohio, from obtaining or attempting to obtain a B-2a, S-1, or S-2 permit.

### **Repackaging of alcohol**

- Authorizes the repackaging of beer, wine, or mixed beverages, which is the rebundling of containers of those products into new configurations.
- Authorizes the Division of Liquor Control to issue an R permit to specified entities to conduct repackaging.
- Establishes a \$750 permit fee for each R permit location.

### **Serving containers in DORAs**

- Requires qualified liquor permit holders in designated outdoor refreshment areas (DORAs) to serve beer or intoxicating liquor in plastic bottles or other "nonglass" containers, rather than in plastic bottles or other plastic containers as in current law.



## Other liquor provisions

- Eliminates the requirement that the following submissions required of a club applying for a D-4 liquor permit be done under oath:
  - A statement of the organization controlling the club certifying that the club is operated in the interests of a reputable organization; and
  - The roster of the club's membership.
- Allows sales, service, and consumption of beer or intoxicating liquor on a D-4 liquor permit premises while bingo is being conducted.

## VI. Division of Financial Institutions

- Increases initial registration, renewal, and late fees for mortgage brokers, lenders, and servicers, and increases original license, renewal, and late fees for mortgage loan originators.
- Authorizes the Superintendent of Financial Institutions to charge an additional assessment for renewal fees for mortgage brokers, lenders, servicers, and mortgage loan originators if the amount billed under the statute are less than the estimated expenditures for the following fiscal year.
- Converts the Banks Fund from a state treasury fund to a custodial fund.

## VII. Division of Unclaimed Funds

- Revises the law holding a holder of unclaimed funds harmless after delivering funds to the state in terms of (1) the notice the holder is required to send to the Director of Commerce of pending proceedings, (2) the Director's ability to intervene in proceedings against a holder, and (3) the nature of each party's liability.

## I. Division of Securities

### Ohio Investor Recovery Fund

(R.C. 1707.47 and 1707.471)

The bill creates the Ohio Investor Recovery Fund (OIRF) for a victim of securities fraud (a purchaser identified in a final order that has suffered a pecuniary loss as the result of an Ohio Securities Law violation or the surviving spouse or dependent children of such a purchaser who is deceased) that has not received restitution from the person that committed the violation pursuant to a final order (a final administrative order issued by the Division of Securities or a final court order in a civil or criminal proceeding initiated by the Division).

#### Obtaining a restitution assistance award

Under the bill, the following victims are eligible for restitution assistance from the OIRF, with the maximum award limited to the lesser of \$25,000 or 25% of the monetary injury suffered by the victim in the final order:

- A natural person who is an Ohio resident;
- A person, other than a natural person, that domiciled in Ohio.

To receive a restitution assistance award, a claimant must submit an application to the Division on a form prescribed by the Division within 180 days after the date of the final order. The Division may grant an extension for good cause shown, but in no case may the Division accept an application received more than two years following the date of the final order.

The bill prohibits the Division from awarding restitution assistance as follows:

- To more than one claimant per victim;
- To a claimant on behalf of a victim that has received the full amount of restitution owed from the person ordered to pay restitution to the victim in the final order before the application for restitution assistance from the OIRF is filed;
- To a claimant if the final order identifies no pecuniary loss to the victim on whose behalf the application is made;
- To a claimant on behalf of a victim that assisted in the commission of the violation of the Securities Law;
- If the portion of the final order giving rise to a restitution order or otherwise establishing a pecuniary loss to the victim is overturned on appeal.

If, after the Division has made a restitution assistance award from the OIRF, the restitution award in the final order is overturned on appeal and all legal remedies have been exhausted, the claimant must forfeit the restitution assistance award.

## **Violations**

A claimant may not knowingly file or cause to be filed an application or documents supporting an application that contain false, incomplete, or misleading information in any material respect. A claimant that violates this prohibition forfeits all restitution assistance and will be fined not more than \$10,000 by the Division. The Division must commence a proceeding relating to a violation not later than two years after the Division discovered, or through reasonable diligence should have discovered, the violation, whichever is earlier.

## **Funding the OIRF**

The OIRF consists of all cash transfers from the Division of Securities Fund, which may not exceed \$2.5 million in any fiscal year. The OIRF may only be used for paying awards of restitution assistance and any expenses incurred in administering the OIRF.

If the OIRF is reduced below \$250,000 due to payment in full of awards that become final during a month, the Division must suspend payment of further claims that become final during that month and the following two months. At the end of this suspension period, the Division must pay the suspended claims. If the OIRF would be exhausted by payment in full, the Division must prorate the amount paid to each claimant according to the amount remaining in the OIRF at the end of the suspension period.

Under the bill, the state is liable for a determination made by the Division only to the extent that money is available in the OIRF on the date the award is calculated. The bill subrogates the state to the rights of the person awarded restitution assistance to the extent of the award. The subrogation rights are against the person that committed the securities violation or a person liable for the pecuniary loss. The bill also permits the state to obtain a lien on the award in a separation action brought by the state or through state intervention in an action brought by or on behalf of the victim.

## Rules

The Division must adopt rules as necessary to implement these provisions, including rules governing the processes for both:

- Reviewing applications for restitution assistance awards; and
- Suspending awards or making a prorated payment of awards when the OIRF balance approaches or reaches a balance below \$250,000.

## Elder financial exploitation

(R.C. 1707.49)

The bill lays out procedures for dealers, investment advisers, and their employees to follow when they believe that an account holder who is an eligible adult may be the victim of financial exploitation.

An “eligible adult” is a person aged 60 or older or a person who is eligible to receive adult protective services (a person aged 60 or older who is handicapped by the infirmities of aging or who has a physical or mental impairment that prevents the person from providing for the person’s own care or protection, and who resides in an independent living arrangement).

The term “financial exploitation” means either:

- The wrongful or unauthorized taking, withholding, directing, appropriation, or use of an eligible adult’s money, assets, or property (assets); or
- Any act or omission by a person, including through the use of a power of attorney or guardianship, to do either of the following:
  - Through deception, intimidation, or undue influence, obtain control of an eligible adult’s assets and thereby deprive the eligible adult of the ownership, use, benefit, or possession of the assets;
  - Convert (a civil tort) an eligible adult’s assets and thereby deprive the eligible adult of the ownership, use, benefit, or possession of the assets.

Under the bill, if an employee of a dealer or investment adviser has reasonable cause to believe that an eligible adult who is an account holder may be subject to past, current, or attempted financial exploitation, the employee must follow the employing dealer’s or investment advisor’s internal procedures for reporting past, current, or attempted financial exploitation.

In addition, the dealer or investment adviser may place a hold on any transaction impacted by the suspected exploitation for up to 15 business days. The dealer or investment adviser must report the transactional hold, along with a summary of the facts and circumstances leading up to the hold, in writing immediately to the Division of Securities and to the county department of job and family services for the county where the eligible adult resides. The dealer or investment adviser may continue the hold for up to another 15 business days (1) at the request of an investigating federal or state agency or (2) if the dealer or investment adviser has not heard from either the Division or the county department within the initial 15-day hold period.

The bill specifies that these provisions are not to be construed as limiting a dealer's or investment adviser's ability to seek injunctive relief from a court of competent jurisdiction at any time for any past, current, or attempted financial exploitation. It further provides that any person participating in good faith in making a report or placing a transactional hold is immune from any civil or administrative liability arising from the report or hold.

Any record made available to a state agency under these provisions is considered an investigative record and must therefore be retained by the Division and may not be available to inspection by persons other than those having a direct economic interest in the information or the transaction under investigation, or by law enforcement agencies, state agencies, federal agencies, and other entities as set forth by rules adopted by the Division. The dealer or investment adviser must maintain, for not less than five years, any record of a transactional hold, any report relating to the hold, and any notification of the hold.

## **Ohio Revised Limited Liability Company Act effective date**

(R.C. 1706.83; Sections 610.1165 and 610.1166)

The bill pushes back from January 1, 2022, to February 11, 2022, the transition date of regulation of limited liability companies from the existing Limited Liability Company Act to the new Ohio Revised Limited Liability Company Act. Limited liability companies are currently regulated under R.C. Chapter 1705. The new Revised Act was enacted by S.B. 276 of the 133<sup>rd</sup> General Assembly.

## **II. Division of Industrial Compliance**

### **Plumbing inspector certification**

(R.C. 3703.01; conforming change in R.C. 3703.03)

Under current law, boards of health in city and general health districts are authorized to inspect plumbing in nonresidential buildings, provided they employ a plumbing inspector certified by the Division of Industrial Compliance. Health districts may also contract with other health districts or county building departments to inspect plumbing on their behalf, so long as the other health district or county building department employs a Division of Industrial Compliance certified inspector. If a board of health employs a plumbing inspector or contracts for plumbing inspections, the Division of Industrial Compliance is barred from conducting plumbing inspections in that board's territory.

The bill eliminates the Division of Industrial Compliance's authority and responsibility to certify plumbing inspectors. In its place, it relies on the existing plumbing inspector certification offered by the Board of Building Standards. The bill also eliminates previous prohibitions on health districts inspecting plumbing, collecting fees for inspecting plumbing, or contracting with other health districts to inspect plumbing on the other health district's behalf, without employing a Division of Industrial Compliance certified inspector. It does not put in place a similar requirement mandating a Board of Building Standards certified inspector.

The bill also changes the prohibition on the Division of Industrial Compliance inspecting plumbing in health districts where the board of health employs, or has contracted for the services of, a plumbing inspector. Under the bill, the board of health must notify the Division of its intent to inspect plumbing in the district, in writing, and either employ a plumbing inspector or contract for the services of one. Under current law, the prohibition applies so long as the board of health employs, or contracts for the services of, a plumbing inspector.

### **Manufactured homes**

(R.C. 4781.07, 4781.281, 4781.56, and 4781.57)

The bill makes several technical changes by replacing outdated references to the former Manufactured Homes Commission with the reference to the Division of Industrial Compliance, the agency currently holding the responsibility for manufactured homes (other than their sale). The Commission was abolished in 2018 by H.B. 49 of the 132<sup>nd</sup> General Assembly, the main budget act for the FY 2018-FY 2019 biennium.

## **III. Division of Real Estate and Professional Licensing**

### **Real estate broker and salesperson contact information**

(R.C. 4735.14)

The bill sets a deadline for a licensed real estate broker and salesperson to notify the Superintendent of Real Estate and Professional Licensing of a change in personal residence address: 30 days after the change. Existing law requires the notification, but does not specify a deadline.

The bill also requires each licensee to maintain a valid email address on file with the Division and to notify the Superintendent of any changes in email address within 30 days after the change.

### **Ancillary trustees for brokers**

(R.C. 4735.05)

The bill expands the Superintendent's authority to recommend an ancillary trustee when there has been an incapacitation or incarceration of a licensed broker, if there is no other licensed broker within the brokerage, to continue the business transactions of the brokerage for a period of time not to exceed the period of incapacitation or incarceration. Under existing law, the Superintendent may recommend an ancillary trustee upon the death of a licensed broker or the revocation or suspension of the broker's license.

## **Disposition of license fees**

(R.C. 4735.15)

The bill reduces the portion of triennial real estate broker's and salesperson's license fees to be credited to the Real Estate Education and Research Fund from \$3 per fee to \$1.50 per fee.

## **IV. State Fire Marshal**

### **Fire investigation**

(R.C. 3929.87)

Under existing law, 90 days after a fire that has caused a loss of more than \$5,000 of property damage, the State Fire Marshal or another authorized person must investigate the fire to determine whether the property loss was caused by arson. The bill specifies that the State Fire Marshal or the authorized person must investigate to the extent practicable and in a manner consistent with accepted standards of investigation.

### **Revolving loan program**

(R.C. 3737.17)

Under the bill, if the Director of Commerce determines that the balance in the Small Government Fire Department Services Revolving Loan Fund is insufficient to implement the Small Government Fire Department Services Revolving Loan Program, the Director may certify the amount needed to the OBM Director. This amount cannot exceed the amount appropriated to the program for the biennium. Once certified, the OBM Director may transfer from the State Fire Marshal's Fund to the Revolving Loan Fund any amount up to, but not exceeding, the amount certified by the Director of Commerce.

The State Fire Marshal administers the Revolving Loan Program and the fund to make loans to qualifying small governments to expedite major equipment purchases and the construction or renovation of fire department buildings.

### **Self-service gas stations**

(R.C. 3741.14)

The bill requires a self-service gas station to comply with the most recent version of National Fire Protection Association Standard Number 30A, as incorporated into the State Fire Code. Existing law requires a self-service gas station to comply with the National Fire Protection Association standard number 30A-1990, which is not the most recent edition.

## **V. Division of Liquor Control**

### **Direct beer and wine sales**

Under current law, small in-state and out-of-state wineries that manufacture less than 250,000 gallons of wine annually are eligible for an S liquor permit. This permit allows these wineries to sell and ship their wine directly to consumers. Wineries that are not eligible for or that do not have an S permit must first sell their wine to a wholesale distributor. The distributor

then sells the wine to a retailer, who then sells to consumers. A brand owner and U.S. importer of beer or wine is also eligible for an S permit and may sell the beer or wine directly to consumers.

The bill changes the name of the S permit to the S-1 permit and changes the eligibility parameters for that permit. It also creates the S-2 permit that allows wineries that manufacture 250,000 gallons of wine or more annually to sell directly to consumers or to use a fulfillment warehouse to sell their wine directly to consumers. The bill also makes changes to the law governing the B-2a liquor permit (wine manufacturers that self-distribute) and makes other conforming changes.

### **S-1 liquor permit eligibility changes**

(R.C. 4301.10, 4301.12, 4301.30, 4301.42, 4301.62, 4303.03, 4303.031, 4303.2010, 4303.232, 4303.234 (renumbered 4303.235), 4303.33, 4303.332, 4303.333, and 4303.99)

The bill renames the S liquor permit the S-1 liquor permit and revises the eligibility for it as follows:

1. It eliminates from eligibility a brand owner or U.S. importer of beer or wine and its designated agent;
2. It expands eligibility to a person (inside or outside Ohio) that manufactures beer; and
3. It retains eligibility for the S-1 permit for a person (inside or outside Ohio) that manufactures less than 250,000 gallons of wine annually, but eliminates the requirement that the wine manufacturer must be eligible for a specified federal tax credit in order to qualify for the S-1 permit.

### **S-2 liquor permit**

(R.C. 4303.233)

As indicated above, the bill creates the S-2 liquor permit, which may be issued to a person (inside or outside Ohio) that manufactures 250,000 gallons or more of wine annually. An S-2 permit holder may sell and ship the wine it manufactures to a personal consumer or use a fulfillment warehouse (see below) to send a shipment of wine to a personal consumer. A fulfillment warehouse operates as an agent of an S-2 permit holder. An S-2 permit holder is liable for violations of the liquor control laws that are committed by the fulfillment warehouse regarding wine shipped on behalf of the S-2 permit holder.

The bill establishes similar provisions as the S-1 permit regarding payment of wine taxes, shipment of wine, and keeping of sales records. The initial S-2 permit fee is \$250 and the renewal fee is \$100 per year.

### **Ohio grape industries tax**

(R.C. 4303.333)

The bill requires an S-1 and S-2 liquor permit holder to pay the current 30¢ per-gallon tax (subject to the exemption below) and the additional 2¢ per-gallon tax on wine that is used to support the Ohio Grape Industries Fund. Under current law, an S liquor permit holder must pay the 2¢ per-gallon tax, but is not required to pay the 30¢ per-gallon tax.

The bill exempts S-1 and S-2 permit holders that manufacture 500,000 gallons of wine or less per year from the 30¢ per-gallon tax. Currently, the exemption applies only to Ohio-based wine manufacturers that manufacture 500,000 gallons of wine or less per year.

### **Beer tax exemption**

(R.C. 4303.332)

The bill eliminates the tax credit for small breweries (A-1c liquor permit holders) for purposes of the state beer tax. The tax credit applies to the first 9.3 million gallons of beer sold or distributed in Ohio by an A-1c permit holder (which is permitted to produce up to 31 million gallons of beer annually). Instead, the bill establishes a tax exemption from the beer tax for A-1c permit holders that produce up to 9.3 million gallons per calendar year. Thus, the tax exemption does not apply to all A-1c permit holders as does the current tax credit. Finally, it also applies the exemption to an S-1 permit holder that produces up to 9.3 million gallons of beer annually.

### **Wine fulfillment warehouse**

(R.C. 4303.234)

The bill authorizes a fulfillment warehouse to send a shipment of an S-2 permit holder's wine to a personal consumer via an H liquor permit holder (alcohol transporter). A fulfillment warehouse is a person that operates a warehouse that is located outside Ohio and has entered into a written agreement with an S-2 permit holder to fulfill orders of the S-2 permit holder's wine to personal consumers.

A fulfillment warehouse must provide a report annually, by March 1, in electronic format by electronic means to the Division of Liquor Control that includes the following:

1. The name and address of the fulfillment warehouse, including satellite warehouses operated by the fulfillment warehouse that are used to ship wine to personal consumers in Ohio;
2. The name and address of each S-2 liquor permit holder with which the fulfillment warehouse has entered into an agreement;
3. The name and address of each personal consumer that the fulfillment warehouse sends wine to and the quantity of wine purchased by the personal consumer; and
4. The shipping tracking number provided by the H permit holder for each shipment of wine delivered to a personal consumer.

The Division must prescribe and provide an electronic form for the report and must determine the specific electronic means that the fulfillment warehouse must use to submit the report. Finally, the Division may adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) that are necessary to administer and enforce these provisions.

### **B-2a liquor permit changes**

(R.C. 4303.071)

The bill revises the eligibility for the B-2a liquor permit as follows:



1. It eliminates from eligibility the brand owner or U.S. importer of wine and its designated agent;
2. It expands eligibility to a person that manufactures any amount of wine by eliminating both of the following:
  - a. A requirement that a manufacturer may only produce under 250,000 gallons annually; and
  - b. A requirement that a manufacturer must be eligible for a specified federal tax credit.

Finally, the bill prohibits a B-2a permit holder from selling wine that has been assigned an Ohio distribution territory. Current law establishes sales territories for wholesale distributors of specific brands of wine. Generally, a wholesale distributor cannot sell outside its sales territory.

Under current law, a B-2a permit allows a manufacturer to sell its wine directly to retailers without first selling to a wholesale distributor.

### **Illegal shipment of beer and wine**

(R.C. 4303.233 (renumbered 4303.236) and 4303.99)

The bill establishes both of the following prohibitions regarding the illegal shipment of beer or wine:

1. It prohibits a person from knowingly sending or transporting a shipment of wine to a personal consumer unless:
  - a. The wine is a to-go serving of wine delivered by a retail liquor permit holder;
  - b. The wine is delivered by certain specified permit holders as authorized under current law;
  - c. The person holds an S-1 or S-2 permit; or
  - d. The person is a fulfillment warehouse.
2. It prohibits a person from knowingly sending or transporting a shipment of beer to a personal consumer without an S-1 permit unless:
  - a. The wine is a to-go serving of wine delivered by a retail liquor permit holder;
  - b. The wine is delivered by certain specified permit holders under current law.

A violator may be fined between \$500 and \$5,000, depending on the number of violations.

### **Retail permit holder prohibition**

(R.C. 4303.236)

The bill prohibits a person that is not a beer or wine manufacturer, including the holder of any retail permit inside or outside Ohio, from obtaining or attempting to obtain a B-2a, S-1, or S-2 permit. The bill does not establish a penalty for violators of this prohibition.

## Repackaging of alcohol

(R.C. 4303.237)

The bill authorizes the repackaging of beer, wine, or mixed beverages, which is the rebundling of containers of those products into new container configurations or with other promotional merchandise. Either of the following may engage in repackaging, provided an R liquor permit, created by the bill, is obtained from the Division of Liquor Control:

1. A manufacturer or supplier of beer, wine, or mixed beverages; or
2. An entity operating under a written authorization from the manufacturer or supplier to operate a repackaging facility.

The bill allows an R permit holder to deliver repackaged products only to the following:

1. The manufacturer or supplier that supplied the beer, wine, or mixed beverages to the R permit holder for repackaging purposes;
2. A wholesale distributor (B permit holder) that is authorized by the beer, wine, or mixed beverages manufacturer or supplier to sell or distribute the repackaged products in Ohio; or
3. An entity outside Ohio if so authorized by the beer, wine, or mixed beverages manufacturer or supplier.

An R permit holder must ensure all of the following:

1. That repackaged products delivered to a B permit holder have been registered with the Division;
2. It does not deliver more repackaged products to a B permit holder than the B permit holder specifically ordered; and
3. That a territory designation form has been filed with the Division for the products.

The bill provides that title to repackaged products in the possession of an R permit holder remains with the manufacturer or supplier for whom repackaging is being conducted. Further, the Liquor Control Commission must revoke an R permit if the R permit holder possesses or delivers beer, wine, or mixed beverages in violation of the bill. An R permit holder cannot have any financial interest in any other permit authorized under the liquor control laws, except that a manufacturer may hold a manufacturing liquor permit. Finally, the fee for the R permit is \$750 for each location.

## Serving containers in DORAs

(R.C. 4301.82)

The bill requires qualified liquor permit holders in designated outdoor refreshment areas (DORAs) to serve beer or intoxicating liquor in plastic bottles or other “nonglass” containers. Current law requires the use of plastic bottles or other plastic containers.

## D-4 liquor permit – club oaths

(R.C. 4303.17)

The bill eliminates the requirement that the following submissions required of a club applying for a D-4 liquor permit be done under oath:

- A statement of the organization controlling the club certifying that the club is operated in the interests of a reputable organization; and
- The roster of the club’s membership.

The D-4 permit allows a club to sell beer and intoxicating liquor to its members for on-premises consumption.

## Serving alcohol during bingo

(R.C. 4301.03 and 4303.17)

The bill allows sales, service, and consumption of beer or intoxicating liquor on a D-4 permit premises while bingo is being conducted. It does so by eliminating the current prohibition against these activities. The D-4 permit allows a club to sell beer and intoxicating liquor to its members for on-premises consumption.

## VI. Division of Financial Institutions

### Residential Mortgage Lending Act fee increase

(R.C. 1322.09, 1322.10, 1322.20, and 1322.21)

The bill increases the licensing and registration fees under the Residential Mortgage Lending Act paid to the Superintendent of Financial Institutions as follows:

| Type of fee  | Current fee | New fee |
|--|-------------|---------|
| Initial registration and renewal fee for mortgage brokers, lenders, and servicers for each office maintained by the registrant | \$500       | \$700   |
| Late fee for renewal for each registered office maintained by a mortgage broker, lender, and servicer                          | \$100       | \$150   |
| Initial license and renewal fee for mortgage loan originators  | \$150       | \$200   |
| Late renewal fee for mortgage loan originators   | \$100       | \$150   |

### Conversion of Banks Fund to custodial fund

(R.C. 1121.29 and 1121.30)

The bill converts the Banks Fund from a state treasury fund to a custodial fund. Under continuing law, the fund consists of bank assessments and fees collected by the Superintendent of Financial Institutions and is used to cover the Superintendent’s administrative expenses.

The Treasurer of State has custody of money kept in custodial funds. Whereas money in a state treasury fund requires an appropriation before its expenditure, money in a custodial fund does not, but rather can only be disbursed by order of the Treasurer. Accordingly, in lieu of the Superintendent directly expending money appropriated to the Banks Fund, the bill requires that the Treasurer disburse money in the fund to the Superintendent at the Superintendent's request.

## **VII. Division of Unclaimed Funds**

(R.C. 169.07; Section 803.110)

Under current law, upon the payment of unclaimed funds to the Director of Commerce, the holder is relieved of further responsibility for the funds and is held harmless by the state from any liability arising out of the transfer of the funds to the state. The bill requires the holder to act in good faith and in compliance with the Unclaimed Funds Law to receive this protection from liability. It also specifies that the holder is held harmless to the extent of the value of the funds determined as of the time of payment to the state.

Current law provides that if legal proceedings are instituted against a holder that has paid unclaimed funds to the state or has entered into an agreement with the state to retain the funds for investment, the holder must notify the Director in writing. Failure to give this notice absolves the state from any liability it may have with regard to these funds. The bill imposes a 14-day deadline for this notice and, if the holder fails to give timely notice, absolves the state from any liability it may otherwise have with regard to the funds beyond the value of the property paid or delivered to the state.

Also under current law, the Director is required to intervene and assume the defense of the proceedings against the holder. The bill instead permits the Director, upon notice of the proceedings, to take any action the Director considers necessary or expedient to protect the interests of the state. Under the bill, if the Director elects not to intervene, and judgment is entered against the holder, the Director must reimburse the holder for the amount paid under the judgment or, if the holder retained any funds, enter into an agreement modified to reflect the satisfaction of the judgment to the extent of the value of the funds paid to the state.

Under the bill, no person has a claim against the state, the holder, or a transfer agent, registrar, or other person acting for or on behalf of a holder for any change in the market value of unclaimed funds occurring after delivery by the holder to the Division of Unclaimed Funds, or after sale of the property by the Division.

Lastly, the bill states that the amendments described above are intended to clarify that the Director is not required to hold the holder harmless or intervene on behalf of a holder if the holder failed to act in good faith or in compliance with the Unclaimed Funds Law. It is not meant to insure or indemnify the holder against the holder's own acts or omissions, bad faith, or breach of a duty owed the unclaimed funds owner or the Director.

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## COSMETOLOGY AND BARBER BOARD

- Allows an individual who is licensed to provide services under the Cosmetology Law or Barber Law to provide those services on premises other than a licensed salon or a licensed barber shop for limited events, only if the services provided are incidental to the licensee's practice in a salon or barber shop.
- Prohibits the State Cosmetology and Barber Board from requiring an individual who provides incidental services as described above to obtain an additional license or permit to provide those services (an administrative rule currently requires a cosmetologist to obtain a license for each limited event).
- Changes the requirement that the Board member who is required to be employed as a barber under current law instead hold a current, valid barber or barber teacher license at the time of appointment, and specifies that a Board member's term is not affected if the member is serving on the provision's effective date.
- Eliminates a requirement that an individual who does not pass the barber teacher license examination must wait one year and remain employed as an assistant barber teacher before applying to retake the examination.

### **Cosmetology or barber services at limited events**

(R.C. 4713.351)

The bill allows, notwithstanding any provision of the Cosmetology Law<sup>18</sup> or Barber Law,<sup>19</sup> or the rules adopted under either law, to the contrary, an individual who is licensed to provide services under the Cosmetology Law or Barber Law to provide those services on premises other than a licensed salon or a licensed barber shop for limited events, only if the services provided are incidental to the licensee's practice in a salon or barber shop. A "limited event" includes, but is not limited to, the following:

1. A charity event;
2. On-location wedding or event preparation;
3. A bridal or hair show;
4. An on-location spa event;
5. An on-location event at a location such as a nursing home, hospital, or other care facility that lacks an on-site salon or barber shop;

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<sup>18</sup> R.C. Chapter 4713.

<sup>19</sup> R.C. Chapter 4709.

6. An on-location event at the private residence of an individual who is unable to visit a fixed location salon or barber shop.

The bill prohibits the State Cosmetology and Barber Board from requiring an individual who provides incidental services as described above to obtain an additional license or permit to provide those services.

Current law generally requires individuals licensed by the Board to perform services in a licensed facility. An administrative rule allows the Board to issue a temporary event salon license to a licensee who wishes to provide services on premises other than a fixed location. The rule requires an applicant for this license to complete an application for each temporary event, pay an application fee of \$10, and affirm that the salon premise for the temporary event will meet the conditions for a salon license under current law.<sup>20</sup>

## **State Cosmetology and Barber Board membership**

(R.C. 4713.02; Section 747.10)

The bill alters the qualifications for Board membership by changing the requirement that the barber member of the Board who is required to be employed as a barber under current law instead be required to (1) hold a current, valid barber or barber teacher license at the time of appointment and (2) have been licensed as a barber or barber teacher in Ohio for at least five years immediately before appointment. It maintains the requirement that the other barber member of the Board be an employer barber and have been licensed as a barber in Ohio for at least the past five years. The bill states that this change in membership does not affect the terms of the Board's members who are serving on the provision's effective date.

Under continuing law, the other Board members include one licensed cosmetologist or cosmetology instructor, two licensed cosmetologists who have actively managed salons for at least five years, one licensed independent contractor practicing a branch of cosmetology, one individual representing cosmetology instructors at vocational and technical schools, one owner or executive actively engaged in daily operations of a licensed cosmetology school, one owner of at least five salons, one nurse or physician, one member representing the general public, one individual holding a valid tanning permit who has owned or managed a tanning facility for at least the last five years, and one licensed esthetician who has been actively practicing esthetics for at least the past five years.

## **Barber teacher examinations**

(R.C. 4709.10)

The bill eliminates the requirement that an individual who does not pass the barber teacher license examination must wait one year and remain employed as an assistant barber teacher before applying to retake the examination.

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<sup>20</sup> R.C. 4709.02, 4709.05, 4713.14, and 4713.35, not in the bill; Ohio Administrative Code (O.A.C.) 4713-8-09.

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## **COUNSELOR, SOCIAL WORKER, AND MARRIAGE AND FAMILY THERAPIST BOARD**

- Provides a six-month registration extension for master’s level counselor, social worker, and marriage and family therapist trainees who have graduated but not yet completed all requirements for licensure.

### **Registration for master’s level trainee graduates**

(R.C. 4757.10)

Current law requires the Counselor, Social Worker, and Marriage and Family Therapist Board to adopt rules providing for voluntary registration of master’s level counselor, social worker, and marriage and family therapist trainees. The bill provides a six-month registration extension for those registered trainees who have graduated but not yet completed all requirements for licensure.

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## DEPARTMENT OF DEVELOPMENT

### Rename agency as Department of Development

- Changes the name of the Development Services Agency and the Director of Development Services back to the Department of Development (DEV) and Director of Development, respectively.

### Government-owned broadband networks

- Permits a political subdivision that has established a government-owned network to provide broadband service in an unserved area.
- Provides the following regarding such an established network:
  - Prohibits the political subdivision from providing broadband service in any part of the state outside of an unserved area of that political subdivision;
  - Permits the broadband service to be provided only to subscribers residing within unserved areas of the network.
- Defines “unserved areas” as areas within the geographic boundaries of the political subdivision with a government-owned network that are without access to tier one broadband service or tier two broadband service and:
  - Limited to an unserved area located within the geographic boundaries of a political subdivision that has established a government-owned network; and
  - Excludes any area where construction of a tier one or tier two service network is in progress and scheduled to be completed within two years.

### Prerequisites for government-owned broadband network

- Requires a political subdivision to do all of the following prior to creating a network or beginning broadband service:
  - Provide notice in a newspaper of general circulation in the political subdivision of its intent to provide broadband service in an unserved area;
  - Obtain the same approvals and authorizations that private entities must obtain to construct and deploy broadband facilities in public rights-of-way;
  - Establish measures to protect residents from any increase in taxes or fees to offset any losses if the network performance is poor or demand for the service is insufficient;
  - Conduct annual independent audits of the network’s operation and the broadband service provided and provide a mechanism for making the audit results available for review by the public;
  - Establish a mechanism to refund any profits to taxpayers if the provision of broadband service through the operation of the network generates a net profit.



- Requires a political subdivision to provide the following to the legislative authority of the political subdivision:
  - A formal business plan;
  - Information demonstrating that the network and provision of broadband service does not adversely affect the political subdivision's credit rating;
  - Information demonstrating that the operation of the network in partnership with a private entity will not adversely affect the finances of the political subdivision if the private entity fails to meet obligations.

### **Funding for government-owned broadband networks**

- Requires a government-owned network to be funded by capital funds allocated by the legislative authority of the political subdivision in a resolution adopted by the legislative authority after it reviews and approves the business plan submitted by the political subdivision.
- Prohibits a political subdivision from aggregating federal funds received at different times or using revenues and other public moneys allocated for other residential or business services to fund or subsidize broadband facilities, or the provision of broadband service to subscribers.

### **Broadband Expansion Program Authority changes**

- Repeals the requirement that members appointed to the Broadband Expansion Program Authority receive a monthly stipend that qualifies each member for one year of retirement service credit under the Ohio Public Employees Retirement System (OPERS) for each year of the member's term.
- Repeals related provisions that (1) prohibit the service credit from being considered for determining health care coverage, if offered by OPERS, (2) make appointed members who serve as state administrative department heads ineligible for a stipend, and (3) make the DEV responsible for paying all stipends.
- Repeals the law regarding Authority meetings that allows up to two Authority members at a time to attend meetings electronically and specifies the conditions under which electronic attendance may occur.

### **Transfer of minority business enterprise and related programs**

- Transfers the administration of the minority business enterprise program, the encouraging diversity, growth, and equity program, the women-owned business enterprise program, the veteran-friendly business procurement program, and the contractor compliance program from the Department of Administrative Services (DAS) to DEV.
- Removes the Equal Opportunity Employment Coordinator from being the head of a division, who instead reports to a position determined by the DAS Director.

## Minority Development Financing Advisory Board

- Corrects erroneous cross-references to clarify that the Minority Development Financing Advisory Board is not responsible for administering certain tax credit and grant programs administered by DEV.

## Job creation and retention tax credits

- Allows any employer that receives the job creation tax credit (JCTC) to count work-from-home employees when computing the employer's credit amount and when verifying its compliance with the JCTC agreement.
- Requires that the state give priority to job retention tax credit (JRTC) applications that meet certain criteria.

## Rural Industrial Park Loan Program eligibility

- Expands eligibility for loans under the Rural Industrial Park Loan Program to include projects located in any rural area (rather than only economically distressed or labor surplus areas).
- Specifies that a rural area is any Ohio county that is not designated as part of a Metropolitan Statistical Area by the U.S. Office of Budget and Management.

## Rural growth investment credit

- Authorizes an additional \$45 million in tax credits for insurance companies that make loans to or investments in special purpose rural business growth funds which, under continuing law, must loan or invest the funds in certain businesses located in less-populated counties.
- Requires DEV to begin accepting applications from prospective rural business growth funds beginning 30 days after the bill's 90-day effective date.
- Modifies the investment criteria for the new ("program two") credit allocation as follows:
  - Allows for investment in businesses with fewer Ohio employees or less Ohio payroll if the business is headquartered in a county bordering another state.
  - Increases by one year the time within which a rural business growth fund must fully loan or invest its eligible investment authority and, consequently, decreases by one year the time for which the fund must maintain those loans or investments.
  - Requires 25% of a rural business growth fund's loans or investments to be in businesses principally located in a county having a population no greater than 75,000, and 75% in businesses principally located in a county having a population no greater than 150,000.
  - Adjusts the amount a rural business growth fund may invest in a single business.
- Stipulates the following for all rural business growth funds, including those certified as part of the original ("program one") credit allocation:

- The 10% portion of a rural business growth fund’s eligible investment authority that must consist of contributions of the fund’s affiliates may be derived from either direct or indirect loans or investments.
- Amounts returned to a rural business growth fund and then reinvested in the same business are considered investments in a new business for the purposes of the investment requirements associated with the tax credit.
- The aggregate amount invested by all rural business growth funds in the same business, including amounts reinvested following return or repayment, must not exceed \$15 million.

### **Transformational mixed use development (TMUD) tax credit**

- Extends by two years the sunset date after which the Tax Credit Authority (TCA) is prohibited from certifying new transformational mixed use development (TMUD) projects, until June 30, 2025.
- Authorizes the TCA to preliminarily approve up to \$100 million in tax credits to property owners and investors in TMUD projects in each of FY 2024 and 2025 (the same annual cap that applies under current law to FY 2020 to 2022).

### **Film and theater tax credit**

- Revokes the eligibility of production contractors (i.e., persons other than a production company that are involved in the production of a motion picture) for the film and theater tax credit.

### **Meat processing plant grants**

- Requires the DEV Director to establish a grant program for meat processing plants, including prescribing the grant application form.
- Specifies that a meat processing plant is a facility that is located in Ohio, is in operation as of July 1, 2021, and provides processing services for livestock and poultry producers.
- Authorizes the owner or operator of a meat processing plant to apply to the Director for a grant and, after receipt of the grant application, requires the Director to review the application and score it based on specified criteria, including project readiness.
- Prohibits the Director from considering certain expenditures for a grant, including improvements to personal residences, nonfarm commercial property, and any other nonfarm structures.
- Prohibits the Director from awarding a grant of more than \$250,000.

### **Loan and grant information**

- Requires DEV to provide on its website information on all loans and grants offered by it.

## Rename agency as Department of Development

(R.C. 121.02, 121.03, 122.01, 122.011, 122.60, 122.601, 122.603, 122.86, 122.89, 123.01, 149.311, 166.01, 166.03, 174.01, 174.02, 184.01, 1551.01, 1551.33, 1551.35, 5119.34, 5703.21; Repealed R.C. 184.011, 3735.01, and 5701.15; R.C. 140.01, as amended in Section 130.10; Section 518.20)

The bill renames the Development Services Agency (DSA) as the Department of Development (DEV). Similarly, the Director of Development Services is renamed the Director of Development. The change reverses the name change in 2012 by [S.B. 314 of the 129<sup>th</sup> General Assembly](#). The bill does not make the change uniformly throughout the Revised Code. Instead, the change is reflected in several sections addressing the Department's operations, and the bill directs that references to DSA and its Director throughout the Revised Code mean the renamed Department and its Director.

Ongoing DSA operations are to be continued by the Department, including the following:

- All DSA rules, orders, and determinations are to continue as though made by the Department;
- DSA employees continue as employees of the Department;
- The Department must be substituted for DSA in any pending court or agency proceedings to which DSA is a party.

## Government-owned broadband networks

### Established networks

(R.C. 122.4090, 122.4091, and 122.4095)

Under the bill, a political subdivision that has established a government-owned broadband network may provide broadband service within an unserved area. The bill provides the following regarding such an established network:

- Prohibits the political subdivision from providing broadband service in any part of the state outside of an unserved area of that political subdivision;
- Permits the broadband service to be provided only to subscribers residing within unserved areas of the network.<sup>21</sup>

The bill defines a "government-owned network" as a network owned or controlled by, or operated in partnership with, any political subdivision in Ohio that is constructed, operated, or used for the provision of broadband service on a wholesale or retail basis. A "political subdivision"

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<sup>21</sup> These limitations regarding where service may be provided and to whom it may be provided literally apply to government-owned networks that have already been established. There may be a constitutional issue regarding retroactive legislation emanating from Article II, Section 28, Ohio Constitution. Also, if the limitations apply only to established networks, they, might, as a result, not apply to networks established in the future.

means a county, township, municipal corporation, school district, conservancy district, township park district, county park district, regional transit authority, regional airport authority, regional water and sewer district, port authority, or any other subdivision approved by the Department of Administrative Services (DAS) to participate in DAS contracts for supplies and service. “Broadband service” means a retail wireline or wireless broadband service capable of internet speeds of at least 25 megabits (Mbps) downstream and at least 3 Mbps upstream (which is also the definition of “tier two broadband service” under Ohio’s Broadband Expansion Law recently enacted in [H.B. 2 of the 134<sup>th</sup> General Assembly](#)).

The bill also defines an “unserved area” as an area without access to “tier one broadband service” or “tier two broadband service,” but is limited to an unserved area located within the geographic boundaries of a political subdivision that has established a government-owned network and excludes any area where construction of a tier one or tier two service network is in progress and scheduled to be completed within two years. “Tier one broadband service is a retail wireline or wireless broadband service capable of internet speeds of at least 10, but less than 25, Mbps downstream and at least one, but less than three, Mbps upstream.”

### **Prerequisites to establish government-owned broadband networks**

(R.C. 122.4092 and 122.4093)

The bill requires a political subdivision, prior to establishing a government-owned network, to do the following:

- Provide formal public notice of its intent to provide broadband service in an unserved area in a newspaper of general circulation in the political subdivision at least once a week for two consecutive weeks;
- Obtain the same approvals and authorizations for the construction and deployment of broadband facilities in the public rights-of-way that are required for broadband service networks operated by private entities.

Before proceeding with the construction or deployment of broadband facilities or the operation of broadband service, the political subdivision must do the following:

- Establish adequate measures to protect the residents of the political subdivision from increases in any taxes or fees imposed by the political subdivision to offset losses in case of poor network performance of, or insufficient demand for, the network’s broadband service;
- Conduct annual independent audits of the network’s operation and the broadband service provided and provide a mechanism for making the audit results available for review by the public;
- Establish a mechanism to equitably refund any profits to taxpayers of the political subdivision if the provision of broadband service through the operation of the network generates a net profit;
- Submit the following to the legislative authority of the political subdivision:

- A formal business plan that includes, at a minimum, the following:
  - ❖ A cost-benefit analysis for the network;
  - ❖ Financially sound projections for the construction and operating costs for the network, and the number of broadband subscribers that will use the network;
  - ❖ Criteria measuring the continued viability and sustainability of the network;
  - ❖ Deployment deadlines and performance metrics established for the network.
- Information demonstrating that the proposed operation of the network and provision of broadband service do not adversely affect the political subdivision's credit rating;
- Information demonstrating that the operation of the network and provision of broadband service in partnership with a private entity will not adversely affect the finances of the political subdivision, if the private entity breaches the partnership contract or fails to meet capital or operating cost obligations.

### **Funding for government-owned broadband networks**

(R.C. 122.4098)

The bill requires a political subdivision to only fund a government-owned network with capital funds allocated specifically for the construction, deployment, purchase, lease, or operation of broadband facilities in the network. The funds must be allocated through a formal resolution adopted by the legislative authority of the political subdivision, but only after the legislative authority has reviewed the business plan and other information provided to it and approved the plan.

The bill prohibits a political subdivision from using any revenues obtained from, or money allocated for, the provision of other services and from aggregating federal funds received at different times, to fund or subsidize a government-owned broadband network.

### **Broadband Expansion Program Authority changes**

(R.C. 122.403 and 122.404)

#### **Authority members' stipend**

The bill amends the Broadband Expansion Program Authority law established under [H.B. 2 of the 134<sup>th</sup> General Assembly](#) by repealing the provision allowing appointed members of the Authority to receive Ohio Public Employees Retirement System (OPERS) service credit. Currently, the law allows these members to receive a monthly stipend as calculated under OPERS law in an amount that will qualify each member for one year of OPERS retirement service credit for each year of the member's term.<sup>22</sup>

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<sup>22</sup> R.C. 145.016, not in the bill.

The bill also repeals related provisions specifying that (1) the service credit earned for service as a member of the authority may not be considered for purposes of determining eligibility for health care coverage, if such coverage is offered by OPERS,<sup>23</sup> (2) appointed members who serve as a state administrative department head are ineligible for a stipend, and (3) DEV is responsible for paying all stipends.

As established in H.B. 2, the Authority has five members: the DEV Director or designee, the Director of the Office of InnovateOhio or designee, one member appointed by the Speaker of the House, one member appointed by the Senate President, and one member appointed by the Governor. Members receive reimbursement for their necessary and actual expenses incurred in performing Authority business, and DEV is responsible for paying all reimbursements.

In addition to establishing the Authority, H.B. 2 created the Ohio Residential Broadband Expansion Grant Program. Under that program, DEV must receive and review applications for program grants and send them to the Authority for the final review and awarding of program grants. The Authority must consider each application sent to it, score each application based on the program's scoring system, and award program grants based on that system.

### **Attending meetings remotely**

The bill also repeals the provision that allows members of the Authority to attend Authority meetings by electronic communication if (1) at least three members attend the meeting in person at the place where the meeting is conducted, (2) the electronic communication for the meeting permits simultaneous communication among all Authority members attending electronically and all Authority members and members of the public attending in person, and (3) all votes are taken by roll call vote.

## **Transfer of minority business enterprise and related programs**

(R.C. 9.47, 121.07, 122.92 125.111, 126.021, and 153.59; with conforming changes in numerous other R.C. sections; Sections 518.10 to 518.16)

On July 1, 2021, the bill transfers the responsibility for the administration of certain programs currently under the Department of Administrative Services (DAS) and the Equal Opportunity Employment Coordinator to DEV. These programs are the minority business enterprise (MBE) program, the encouraging diversity, growth, and equity (EDGE) program, the women-owned business enterprise program, the veteran-friendly business procurement program, and the contractor compliance program. The first four of these programs require state agencies to set aside a certain amount of their contracts each year to award to business enterprises owned by certain eligible individuals and certified under the program. These individuals, respectively, are certain racial minorities, economically and socially disadvantaged individuals, women, and veteran-friendly businesses.

The contractor compliance program refers to the programs under which a person desiring to bid on a public improvements contract under R.C. Chapter 153 (public improvements) or 5525

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<sup>23</sup> R.C. 145.58, not in the bill.

(ODOT construction contracts) may apply to certify that the person is compliant with state and federal affirmative action programs in order to be eligible for the contract, and under which all contractors from whom the state makes purchases are required to have an affirmative action plan on file with the state. These affirmative action programs under continuing law include the state's requirement that purchase agreements only be made with contractors with written affirmative action policies. A similar requirement exists for capital improvement projects.

The bill also changes the role of the Equal Opportunity Employment Coordinator, an office within DAS.<sup>24</sup> Under current law, each office created under this current law provision is the head of a division within the department in which it is created. The bill specifies that the Coordinator is no longer the head of a division, instead reporting to a position to be determined by the DAS Director.

The bill contains numerous general transfer of authority provisions. All records, documents, files, equipment, assets, and other materials of the programs are transferred from DAS to DEV. Business related to the programs begun but not completed by DAS on July 1, 2021, must be completed by DEV. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer. The rules, orders, and determinations of DAS pertaining to the programs continue in effect under DEV until modified or rescinded. Further, no judicial or administrative action or proceeding pending on July 1, 2021, is affected by the transfer, and those actions must be prosecuted or defended in the name of the DEV Director or DEV, as appropriate. When the Equal Employment Coordinator, the DAS Director, or DAS is referred to in any rule, contract, grant, or other document related to the administration of these programs, the reference is deemed to refer to the DEV Director or DEV, as appropriate.

The bill exempts the transfer of employees from Ohio's public employees' collective bargaining law. And, subject to general layoff provisions, DAS employees are transferred to DEV. Between July 1, 2021, and June 30, 2022, the DEV Director may establish, change, and abolish positions of DEV and assign, reassign, classify, reclassify, transfer, reduce, promote, or demote DEV employees who are not subject to Ohio's public employees' collective bargaining law. This authority includes assigning or reassigning an exempt employee to a bargaining unit classification, but includes provisions if the new position is in a lower classification. These actions are not subject to appeal to the State Personnel Board of Review.

The bill also provides that the DEV Director may enter into one or more contracts with private or government entities for staff training and development to facilitate the transfer, and that the contracts are not subject to competitive bidding thresholds.

The bill permits the Controlling Board, upon the request of the DEV Director, to increase appropriations for any fund, as necessary, to assist in paying for increases in compensation and salaries as a result of the transfer. The bill requires the OBM Director to make budget and accounting changes made necessary by the transfer.

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<sup>24</sup> R.C. 121.04, not in the bill.



The bill also requires DEV, on or before September 1, 2023, to submit a report to the General Assembly and the Governor regarding the effects of the transfer, of the MBE, EDGE, Women-owned Business Enterprise program, and Veteran-friendly Business Procurement program, including data comparing the efficiency of the program under DAS versus DEV. The report must include, to the extent the data is available, data on the number of businesses certified, the length of time required to process certifications, and the number of complaints received from applicants regarding the process. DAS must cooperate with DEV to provide any data it might have, dating back to two years before the effective date of the transfer. The data from DEV must cover the period between July 1, 2021, and July 1, 2023. The data from DAS must cover the period from July 1, 2019, to July 1, 2021. The report also must include information regarding the number of employees transferred and the number of employees laid off pursuant to the transfer under the bill.

Finally, the bill requires the Director of the Legislative Service Commission to renumber related DAS rules to the appropriate Ohio Administrative Code Section for DEV. Any new rules or amendments to the rules implementing the transfer that are proposed before June 30, 2023, are not subject to the two-for-one requirement, which prohibits certain state agencies from adopting a new regulatory restriction unless it eliminates two or more restrictions.

## **Minority Development Financing Advisory Board**

(R.C. 122.72, 122.73, 122.74, 122.78, 122.79, and 122.82)

The bill clarifies that the responsibility for oversight of the diesel emissions reduction grant program and several tax credits, including the motion picture and theatre credit, the small business investment credit, and the opportunity zone fund investment credit, rests with DEV, not the Minority Development Financing Advisory Board. These programs and credits, under continuing law, are administered by DEV, but certain erroneous cross references in current law suggest that the Board has that responsibility.

Under continuing law, the Board assists DEV in the administration of several minority business financing programs primarily designed to encourage the establishment and expansion of minority business enterprises.

## **Job creation and retention tax credit**

(R.C. 122.17 and 122.171)

The bill makes two changes to the job creation and retention tax credits. With respect to the job creation tax credit (JCTC), the bill allows employers, even those currently in a tax credit agreement, to count work-from-home employees in computing the JCTC credit amount and verifying its compliance with the agreement. With respect to the job retention tax credit (JRTC), the bill requires that the Tax Credit Authority (TCA) and the Director of Development give priority to credit applications that meet certain criteria.

## **Background**

Under continuing law, the TCA is authorized to enter into JCTC and JRTC agreements with employers to foster job creation or retention and capital investment in the state. The amount of

the credit equals an agreed-upon percentage of the amount by which the employer's "Ohio employee payroll" (i.e., the compensation paid by the employer and used in computing the employer's tax withholding obligations) exceeds the employer's "baseline payroll" (i.e., Ohio employee payroll for the 12 months preceding the tax credit agreement). The credits may be claimed against the commercial activity tax (CAT), financial institutions tax (FIT), petroleum activity tax (PAT), domestic or foreign insurance company premiums taxes, or personal income tax. If the amount of the credit exceeds the tax otherwise due, the excess is refundable. Each employer must file an annual report in which it reports its number of employees and payroll, among other metrics.

### **JCTC and work-from-home employees**

Continuing law authorizes employers whose JCTC application was approved after September 28, 2017, to treat work-from-home employees the same as employees who work at the employer's project location, as long as the work-from-home employees reside in Ohio and are supervised from the project location. (This is the effective date of the provision in H.B. 49 of the 132<sup>nd</sup> General Assembly that authorized the inclusion of such employees.) Consequently, the payroll of such work-from-home employees is included in the computation of the credit, and such employees are counted towards any employment and payroll metrics required in the JCTC agreement.

The bill extends this authorization to employers whose application was approved before September 28, 2017, beginning with JCTC reporting periods ending in 2020, allowing those employers to also count those work-from-home employees when computing the employer's credit amount and when verifying its compliance with the JCTC agreement.

### **Priority of JRTC applications**

The bill requires the TCA and DEV Director, when recommending and approving JRTC applications, to give priority to applications that meet one or more of the following criteria:

1. The applicant has not received a JRTC or JCTC for a project at the same location within the preceding five years;
2. The applicant is not currently receiving a JRTC or JCTC for any other project;
3. The applicant's facility has been operating at the proposed project site for the preceding ten years;
4. The project will involve significant upgrades, rather than only routine maintenance, such as an increase in capacity of a facility, new product development, or technology upgrades or other facility modernization;
5. The applicant intends to use materials and equipment sourced from Ohio businesses in the project when possible.

The TCA and DEV Director must give greater priority to applications that meet more of the criteria.

Under continuing law, a JRTC application is submitted to the TCA, which forwards the application to the DEV Director, OBM Director, and Tax Commissioner, and the Superintendent

of Insurance if the applicant is an insurance company, to make a determination on the economic impact of the proposed project. The DEV Director submits recommendations to the TCA, which then makes the final determination of which projects to award a JRTC. The bill's criteria must be considered in both the Director's recommendations and the TCA's final decision.

## **Rural Industrial Park Loan Program eligibility**

(R.C. 122.23)

The bill expands eligibility for loans under the Rural Industrial Park Loan Program to include projects located in any rural area, meaning any Ohio county that is not designated as part of a metropolitan statistical area by the U.S. Office of Management and Budget.

Current law establishes the Rural Industrial Park Loan Program, under which the DEV Director may make loans and loan guarantees for the development and improvement of industrial parks economically distressed areas or areas with a labor surplus as designated by the Director. The Director must use the Rural Industrial Park Loan Fund to support the program.

Generally, an applicant, as a condition of receiving assistance under the program, must agree, for a period of five years, not to relocate jobs from inside Ohio to a site that is developed or improved with assistance from the program.

## **Rural growth investment credit**

(R.C. 122.15, 122.151, 122.153, 122.154, and 122.156; Section 757.60)

The bill authorizes an additional \$45 million in tax credits for insurance companies that make loans to or investments in special purpose "rural business growth funds," which are investment funds that meet certain eligibility criteria and are certified by DEV to provide capital for businesses with substantial operations in rural areas (referred to, under continuing law, as "rural business concerns"). It also modifies the investment benchmarks and other requirements upon which the credit is contingent. Some of the bill's changes apply only to rural business growth funds certified after the bill's 90-day effective date ("program two" funds). Other changes apply to all funds, including those certified before the bill's 90-day effective date ("program one" funds).

### **Background**

Under continuing law, rural growth investment credits may be claimed against the state's taxes on foreign and domestic insurance companies. The amount of the credit equals 100% of the insurance company's credit-eligible capital contribution to a rural business growth fund. A "credit-eligible capital contribution" is an investment of cash that either (1) purchases an equity interest in the fund or (2) provides a loan with a maturity of at least five years, level principal repayment, and repayment terms that are independent of the fund's profitability. The sum of the credit-eligible contributions collected by the rural business growth fund must comprise exactly 60% of the fund's "eligible investment authority" – which is the amount of capital it agrees to invest in or lend to rural business concerns.

A participating insurance company must claim the credit in four annual installments, each equal to 25% of its credit-eligible capital contribution. The first installment is not available until

the expiration of a three-year holding period, which begins tolling after the credit-eligible contribution is approved by DEV and after all amounts comprising the fund's eligible investment authority have been collected (referred to under continuing law as the "closing date"). After the holding period, the Department must issue tax credit certificates to the insurance company on the fourth, fifth, sixth, and seventh anniversaries of the closing date. The credit is nonrefundable but, if it is not fully claimed in one year, the excess may be carried forward for up to four years.

### **Credit cap**

Current law prohibits DEV from certifying more than \$45 million in credit eligible contributions over the lifetime of the rural business growth program. That initial credit allocation was fully awarded shortly after the credit's enactment in 2018. The bill increases the overall credit cap by \$45 million. Due to the three year holding period, the new credit allocation can be claimed no sooner than FY 2025.

### **Accepting applications**

Under continuing law, the process for awarding rural growth investment tax credits is initiated by application of an investment fund that has developed a business plan to invest in rural business concerns (see below). If the application is approved, DEV must certify the applicant as a rural business growth fund and specify the amount of the applicant's eligible investment authority. The bill requires DEV to begin accepting applications for certification of program two funds beginning 30 days after the bill's 90-day effective date.

### **Affiliate contributions**

Within 60 days of certification, the rural business growth fund must collect the appropriate amount of credit-eligible capital contributions and the investments of cash that will make up the remainder of the fund's eligible investment authority. Current law requires at least 10% of the fund's eligible investment authority to be contributed by affiliates of the fund. The bill specifies that, for both program one and program two funds, the 10% affiliate contribution threshold may be met through either direct or indirect contributions.

### **Timing and duration of investments**

Under continuing law, tax credits awarded to the investors of a rural business growth fund are contingent upon the fund making and maintaining a series of loans to or investments in rural business concerns (see below). Currently, a rural business growth fund must invest at least 50% of its eligible investment authority within one year of the closing date, and 100% within two years of the closing date. DEV is prohibited from awarding tax credit certificates to the investors of a fund that fails to meet either or both of these benchmarks.

The bill relaxes the investment benchmarks for program two rural business growth funds. A program two fund need only invest 25% of its eligible investment authority within one year of the closing date, 50% within two years of the closing date, and 100% within three years of the closing date. Like program one funds, a program two fund must maintain its investments until the sixth anniversary of the closing date. Therefore, the bill decreases by one year the time for which a program two fund must invest its full eligible investment authority. (Under continuing

law, if a loan or investment is sold or repaid, it is considered to be “maintained” so long as the fund reinvests or re-loans the returned capital, minus any profits, within one year.)

### **Border county rural business concerns**

A “rural business concern” is a business that has its principal operations in a rural area of Ohio (i.e., a county having a population less than 200,000), has fewer than 250 employees, and had not more than \$15 million in net income (i.e., federal gross income minus federal and state taxes) for the preceding taxable year. Under current law, changed in part by the bill, a business has its “principal operations” in Ohio if at least 80% of its employees are Ohio residents or at least 80% of its payroll goes to Ohio residents. A business that does not meet either criterion can still qualify as a rural business concern if it agrees to relocate or restructure in such a way that at least 80% of its employees or 80% of its payroll are in Ohio.

The bill allows program two rural business growth funds to make loans to or investments in businesses that have fewer Ohio employees or less Ohio payroll, so long as the business is headquartered in a county that borders another state. Under the bill, a business headquartered in a border county has its principal operations in Ohio if at least 65% of its employees are Ohio residents or at least 65% of its payroll goes to Ohio residents. As with the general thresholds, a business that does not meet either criterion can still qualify as a rural business concern if it agrees to relocate or restructure in such a way that at least 65% of its employees or 65% of its payroll are in Ohio. The bill’s border county employment and payroll thresholds do not apply to loans or investments by program one rural business growth funds.

### **Geographic location of rural business concerns**

The bill requires a program two rural business growth fund to invest 25% of its eligible investment authority in rural business concerns having their principal business operations in a county with a population no greater than 75,000 (referred to by the bill as “tier three rural areas”), and at least 75% of its eligible investment authority in rural business concerns having their principal business operations in counties with a population no greater than 150,000 (“tier two” and “tier three rural areas”). Investments in rural business concerns having their principal business operations in counties with a population greater than 150,000, but no greater than 200,000 (“tier one rural areas”) do not count towards the investment requirements associated with the tax credit to the extent those investments exceed 25% of the fund’s eligible investment authority. If a program two fund fails to meet and maintain the investment thresholds prescribed by the bill, the credits awarded to the fund’s investors are subject to recapture.

Under continuing law, a program one rural business concern must have its principal operations in a county having a population no greater than 200,000.

### **Limit for investments in one business**

Under continuing law, the amount by which a program one rural business growth fund’s loans or investments in one rural business concern (or its affiliates) exceeds 20% of the fund’s eligible investment authority is not counted for the purposes of compliance with the investment requirements. The bill retains that standard for program one funds, but for program two funds

instead specifies that investments exceeding \$5 million in the same rural business concern are not counted for the purpose of the investment requirements.

The bill also specifies that, for both program one and program two funds, if a loan or investment in a rural business concern is returned or repaid and then reinvested by the fund in the same rural business concern, that reinvestment counts as an investment in a new rural business concern for the purpose of the investment requirements. The bill specifies that the aggregate amount of loans or investments by all program one and program two rural business growth funds in the same rural business concern, including amounts reinvested following a return or repayment, must not exceed \$15 million.

## **Transformational mixed use development (TMUD) tax credit**

(R.C. 122.09)

The bill modifies an insurance premium tax credit, enacted by [S.B. 39 of the 133<sup>rd</sup> General Assembly](#), for capital contributions to the construction of a transformational mixed use development (TMUD). Under continuing law, TMUDs are multi-purpose construction projects that meet certain minimum building height, square footage, or payroll criteria and that are expected to have a transformational economic impact on the surrounding area. Credits are awarded by the Tax Credit Authority (TCA) through an application process initiated either by the property owner or an insurance company that contributes capital to the project. The amount of the credit depends, in part, on the development costs associated with the TMUD if the applicant is the property owner, or the amount of the capital contribution if the applicant is an insurance company and, in part, on the increase in tax collections at the project site and the surrounding area. More than one person may apply for, and receive a tax credit for the same project, but the total amount of tax credits awarded for a TMUD project must not exceed 10% of the development costs incurred by the property owner.

The bill extends by two years the sunset date after which the TCA is prohibited from certifying new TMUD projects, from June 30, 2023, to June 30, 2025. Under the bill, the TCA may preliminarily approve up to \$100 million in tax credits in each of FYs 2024 and 2025. The same cap applies, under current law, to FY 2020 to 2022. However, due to the timing of the enactment of S.B. 39, the TCA did not preliminarily approve any credits in either FY 2020 or 2021. The bill revokes the authority of the TCA to preliminarily approve credits for those years and, in effect, carries forward the associated credit allotments to FY 2024 and 2025.

## **Film and theater tax credit**

(R.C. 122.85)

The bill revokes the eligibility of production contractors for the film and theater tax credit. Continuing law allows a refundable tax credit for companies that produce all or part of a motion picture or Broadway theatrical production in Ohio and incur at least \$300,000 in Ohio-sourced production expenditures. The credit equals 30% of the company's Ohio-sourced expenditures for goods, services, and payroll involved in the production. A company can claim the credit against the commercial activity tax (CAT), the financial institutions tax (FIT), or the personal income tax.

H.B. 166 of the 133<sup>rd</sup> General Assembly, the FY 2020-FY2021 budget act, extended eligibility for the credit to production contractors – persons other than the production company that are involved in the production of a motion picture. Production contractors are included in the same credit application and evaluation process as the production company producing the picture. The credit awarded to the production contractor equals 30% of the contractor’s actual or estimated Ohio-sourced expenditures incurred in performing services related to the motion picture such as editing, postproduction, photography, lighting, cinematography, sound design, catering, special effects, production coordination, hair styling or makeup, art design, or distribution. Under the bill, only the production company is eligible for the credit.

## **Meat processing plant grants**

(Section 701.90)

The bill requires the DEV Director to establish a grant program for meat processing plants, including prescribing the grant application form. A meat processing plant is a facility that is located in Ohio, is in operation as of July 1, 2021, and provides processing services for livestock and poultry producers.

The owner or operator of a meat processing plant may apply to the Director for a grant. After receiving a grant application, the Director must review the application and score it based on the following criteria:

1. Whether the grant will improve the applicant’s processing efficiencies for livestock and poultry by allowing for the following:

- New equipment, including upgrades to existing equipment;
- New technology, including upgrades to existing technology; and
- Training of personnel.

2. Whether the grant will be used for expansion or new construction for the processing of livestock and poultry, including:

- Areas to confine livestock and poultry;
- Areas for the processing of livestock and poultry; and
- Refrigeration or freezers.

3. Whether the grant will be used for food safety certification or to assist in obtaining cooperative interstate shipment status;

4. Whether the grant will improve harvest services for livestock and poultry producers; and

5. Project readiness.

The Director may not consider the following as eligible for grant funding:

1. Improvements to personal residences, nonfarm commercial property, and any other nonfarm structures;

2. Agricultural tractors, motorized vehicles, and other mobile equipment with an internal combustion engine; and

3. Land purchases.

Meat processing plants awarded a grant must maintain the equipment, technology, plant expansion, or new construction in working and serviceable order for five years after the awarding of the grant. The Director may not award a grant to an applicant in an amount exceeding \$250,000.

## **Loan and grant information**

(R.C. 122.013)

The bill requires DEV to provide on its website information, including eligibility and application requirements, on all loans and grants offered by it. DEV currently provides information on some loans and grants on its website, but it is not required to do so under current law.<sup>25</sup>

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<sup>25</sup> Ohio Department of Development, [https://development.ohio.gov/bs/bs\\_busgrantsloans.htm](https://development.ohio.gov/bs/bs_busgrantsloans.htm).



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## **DEPARTMENT OF DEVELOPMENTAL DISABILITIES**

### **Technology First Task Force and technology first policy**

- Declares that it is the policy of the state to provide individuals with developmental disabilities with access to innovative technology solutions.
- Requires the Department of Developmental Disabilities to coordinate with other state agencies to implement the policy.
- Requires the Director of Developmental Disabilities to establish, in coordination with other state agencies, the Technology First Task Force.

### **Medicaid rates for ICF/IID services**

- Eliminates a formula for determining an ICF/IID's Medicaid payment rate that expires on July 1, 2021.
- For FY 2022, establishes varying Medicaid rates for ICFs/IID depending on whether an ICF/IID meets certain criteria.
- Provides that the mean FY 2023 Medicaid rates for all ICFs/IID after certain modifications are made cannot exceed \$350.87.
- Requires the Department to reduce the FY 2022 and FY 2023 Medicaid rates for ICFs/IID if the federal government requires that the ICF/IID franchise permit fee be reduced or eliminated.

### **ICF/IID franchise permit fee**

- Requires the Department to adjust the franchise permit fee rate and associated ICF/IID invoices so as not to exceed the indirect guarantee percentage if that percentage is adjusted by the U.S. Secretary of Health and Human Services at any time during a fiscal year.

### **Medicaid rates for waiver services**

- For FY 2022, specifies that the Medicaid payment rate for adult day services and residential services provided under a Department-administered waiver equals the rates for the services in effect on June 30, 2021, increased by 2%.
- For FY 2023, specifies that the Medicaid payment rate for adult day services and residential services provided under a Department-administered waiver equals the rates for the services in effect on June 30, 2022, increased by 2%.

### **Waiver slots**

- Prohibits the Department from using funds to reserve a portion of the total number of Department-administered Medicaid waivers to give preference to individuals living in ICFs/IID and authorizes the funds to be used for any type of Department-administered Medicaid waiver.

## **Transfer of residential facility license**

- Requires the Director of Developmental Disabilities to issue a residential facility license to an ICF/IID that meets enumerated conditions.
- Prohibits the Director from issuing more than five such licenses.

## **Developmental centers services and cost recovery**

- Permits a Department developmental center to provide services to (1) individuals with developmental disabilities who reside in the community and (2) providers who provide services to such individuals.
- Permits the Department to establish a method for recovering the costs associated with providing these services.

## **County DD board waiver allocation plan**

- Eliminates a requirement that each county DD board submit an annual plan to DD for approval.
- Instead, requires county DD boards to annually submit to the Department (1) a waiver allocation projection and (2) assurances that the board employs or contracts with both a business manager and a Medicaid services manager, or has an agreement with another county DD board that employs or contracts with those individuals.

## **County DD board business manager**

- Eliminates the ability of a county DD board to receive a subsidy from the Department for employing a business manager.

## **County DD boards annual cost reports**

- Permits, rather than requires, the Department, or an entity designated by it, to audit annual cost reports submitted by a regional council or county DD board.
- Specifies that any audit conducted must utilize methodology approved by the U.S. Centers for Medicare and Medicaid Services.
- Eliminates a duplicative provision of law requiring county DD boards to submit annual cost reports to the Department.

## **Release of records and reports by county DD boards**

- Permits disclosure of a certificate, application, record, or report that identifies a resident of an institution for persons with intellectual disabilities when needed for a guardianship proceeding.
- Permits the release of a record or report maintained by a county DD board or an entity under contract with a board when requested by a probate court for a guardianship proceeding or by the Department for certain purposes.

## **County share of nonfederal Medicaid expenditures**

- Requires the Director to establish a methodology to estimate in FY 2022 and FY 2023 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

## **County subsidies used in nonfederal share**

- Requires, under certain circumstances, that the Director pay the nonfederal share of a claim for ICF/IID services using subsidies otherwise allocated to county boards.

## **Medicaid rates for homemaker/personal care services**

- Provides for the Medicaid rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee in the Individual Options Medicaid waiver program to be, for 12 months, 52¢ higher than the rate for services to an enrollee who is not a qualifying enrollee.

## **Innovative pilot projects**

- Permits the Director to authorize, in FY 2022 and FY 2023, innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards.

## **Ohio Developmental Disabilities Council**

- Updates citations to federal law regarding the creation and operation of the Ohio Developmental Disabilities Council.

## **Technology First Task Force and technology first policy**

(R.C. 5123.025 and 5123.026)

The bill declares that it is the policy of the state that individuals with developmental disabilities have access to innovative technology solutions. As part of the policy, it provides that technology can ensure that individuals with developmental disabilities have increased opportunities to live, work, and thrive in their homes, communities, and places of employment through the use of state of the art planning, innovative technology, and supports that focus on these individuals' talents, skills, and interests.

The bill requires the following entities to implement the technology first policy: the Departments of Developmental Disabilities, Education, Medicaid, Job and Family Services, Mental Health and Addiction Services, and Transportation, the Opportunities for Ohioans with Disabilities Agency, and any other state agency that provides technology services to individuals with developmental disabilities.

As the primary agency responsible for implementing this policy, the bill requires the Department of Developmental Disabilities to partner with the Office of InnovateOhio to coordinate the actions taken by other state agencies to implement the policy. The Department and other state agencies may adopt rules to implement this policy. The Department must ensure

that other agencies fully implement the policy and, in coordination with the Technology First Task Force established under the bill, must compile and annually submit data to the Governor and Lieutenant Governor regarding the policy's implementation.

The bill requires the Director of Developmental Disabilities to establish the Technology First Task Force, which is tasked with (1) expanding innovative technology solutions within the operation and delivery of services to individuals with developmental disabilities, (2) using technology to reduce the barriers individuals with developmental disabilities experience, and (3) aligning policies for all state agencies that are members of the task force.

The Technology First Task Force consists of representatives from the Office of InnovateOhio, the Departments of Developmental Disabilities, Education, Medicaid, Job and Family Services, Mental Health and Addiction Services, and Transportation, and the Opportunities for Ohioans with Disabilities Agency. The bill permits the Department of Developmental Disabilities to enter into interagency agreements with any of the agencies that are members of the task force. These agreements may specify the roles and responsibilities of the members of the task force, including any financial contributions for which each member is responsible, and the projects and activities the task force will undertake.

### **Medicaid rates for ICF/IID services**

(Repealed R.C. 5124.171, 5124.195, 5124.196, 5125.197, 5124.198, 5124.199, 5124.211, 5124.231, and 5124.28; conforming changes in R.C. 5124.01, 5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5124.191, 5124.21, 5124.23, 5124.29, 5124.30, 5124.38, 5124.39, 5125.40, 5124.41, and 5124.46; Section 261.150)

Under current law, an ICF/IID's Medicaid payment rate is the higher of the two rates determined under two different formulas. The older formula predates H.B. 24 of the 132<sup>nd</sup> General Assembly, which enacted the newer one in 2018. The older formula expires beginning with FY 2022, at which time an ICF/IID's rate is to be determined under the newer formula. The bill eliminates language regarding the older formula which becomes obsolete on July 1, 2021, and makes corresponding changes to existing law to reflect the elimination.

The bill requires the Department of Developmental Disabilities to make certain modifications to the new formula. For FY 2022, the bill establishes three different categories of ICFs/IID and sets varying Medicaid day rates for those categories. For an ICF/IID that has a valid Medicaid provider agreement in effect on June 30, 2021, the bill specifies that the Medicaid day rate for FY 2022 equal the rate in effect for the ICF/IID on June 30, 2021, increased by two per cent. For an ICF/IID that undergoes a change of operator during FY 2022, and both the existing operator and entering operator have valid Medicaid provider agreements, the Medicaid day rate for FY 2022 equals the rate in effect for the ICF/IID on the day immediately preceding the effective date of the change of operator. For an ICF/IID that obtains an initial provider agreement during FY 2022, the Medicaid day rate equals \$357.89.

For FY 2023, the bill requires the Department to adjust the per Medicaid day rate for all ICFs/IID if the mean total per Medicaid day rate for ICFs/IID exceeds \$365.05. If the mean total per Medicaid day rate is greater than \$365.05, the Department must adjust the rate by the percentage by which the mean total per Medicaid day rate exceeds \$365.05.

Finally, regarding the franchise permit fee that continuing law requires ICFs/IID to pay (see below), the bill provides that if the U.S. Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated, the Department must reduce the Medicaid payment rate for ICFs/IID. The reduction must reflect the loss to the state of the revenue and federal Medicaid funds generated from the franchise permit fee.

## **ICF/IID franchise permit fee**

(R.C. 5168.60 and 5168.61)

Continuing law imposes a franchise permit fee on ICFs/IID, which is assessed quarterly. The franchise permit fee is a healthcare related tax imposed on ICFs/IID, which is used to help fund the state share of the Medicaid program for Medicaid services utilized by ICFs/IID. Any healthcare related tax must comply with federal requirements to be considered a permissible source of revenue to pay for a portion of the state share for Medicaid, including that it must (1) be broad-based, (2) be uniformly imposed throughout the state, and (3) not hold the taxpayer harmless.

Under federal law, a healthcare related tax is considered to hold a taxpayer harmless if the state provides for a payment, offset, or waiver that guarantees to hold taxpayers harmless for greater than 6% of the cost of the tax imposed. This 6% threshold is known as the indirect guarantee percentage.<sup>26</sup>

The bill provides that in the event that the U.S. Secretary of Health and Human Services adjusts the indirect guarantee percentage (to a percentage other than 6%) at any time during a fiscal year, the Department must adjust the franchise permit fee rate and any associated ICF/IID invoices so as not to exceed the new percentage.

## **Medicaid rates for waiver services**

(Section 261.170)

The bill specifies that the Medicaid payment rates for adult day services and residential services provided under a Medicaid waiver administered by the Department for FY 2022 and FY 2023 equal the rates for those services in effect on June 30, 2021 (for FY 2022), and June 30, 2022 (for FY 2023), increased by 2%. These rates apply to the following adult day services: (1) adult day support services, (2) career planning services, (3) group employment support, (4) individual employment support, (5) nonmedical transportation services, and (6) vocational habilitation services. These rates also apply to the following residential services: (1) homemaker/personal care services, (2) informal, community, or residential respite services, (3) on-site/on-call services, (4) shared living services, and (5) transportation services.

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<sup>26</sup> 42 U.S.C. 1396b(w)(4)(C).

## **Waiver slots**

(Section 261.180)

During FY 2022 and FY 2023, the bill prohibits the Department from using appropriated funds to reserve a portion of the total number of Department-administered Medicaid waivers in a fiscal year to give preference to individuals living in ICFs/IID. Instead, the bill permits these funds to be used for any Department-administered Medicaid waiver.

## **Transfer of residential facility license**

(R.C. 5123.19)

The bill requires the Director of Developmental Disabilities to issue a residential facility license to a facility that meets the following conditions:

- The facility will be certified as an ICF/IID;
- The building where the facility will be located was operated as a residential facility under a lease for at least 20 years before the date of the new license application;
- The former operator of the facility relocated beds from the facility to another site that will be licensed as a residential facility;
- The facility will be located in Preble, Claremont, or Warren County;
- The facility will contain eight beds;
- The licensee will make a good faith effort to serve multi-system youth or adults with severe behavioral challenges at the facility, or at one or more other licensed residential facilities.

The bill prohibits the Director from issuing more than five of these new residential facility licenses.

## **Developmental centers services and cost recovery**

(R.C. 5123.034)

The bill permits a Department developmental center to provide services to individuals with developmental disabilities who reside in the community in which the center is located. Additionally, a developmental center may provide services to providers who provide services to these individuals in the community. The bill allows the Department to establish a method for recovering the costs associated with providing these services through a developmental center. There are eight developmental centers in Ohio, each of which is Medicaid-certified and licensed as an ICF/IID.

## **County DD board waiver allocation plan**

(R.C. 5126.054, 5126.055, and 5126.056; repealed R.C. 5123.046)

The bill eliminates a requirement that each county DD board submit an annual plan to the Department for approval that includes, among other things, the number of individuals with

developmental disabilities in the county the board serves who are on the board's waitlist, the service needs of each individual on the waitlist, and the projected annual cost for their services.

Instead, the bill requires each county DD board to submit to the Department an annual projection of the number of individuals to whom the board intends to provide home and community-based services based on available funding. Available funding must be based on the board's projected funding as indicated in its annual five-year projection report submitted to the Department.

Additionally, county DD boards are required to provide annual assurances to the Department that the board employs or contracts with a business manager, or has entered an agreement with another county board that employs or contracts with a business manager to have the business manager serve both county boards. The bill also requires county boards to assure the Department that the board employs or contracts with a Medicaid services manager, or has entered an agreement with another county board that employs or contracts with a Medicaid services manager to have the Medicaid services manager serve both. The bill prohibits the superintendent of a county DD board from serving as the board's business manager or Medicaid services manager.

### **County DD board business manager**

(R.C. 5126.121, repealed)

The bill eliminates law that allows county DD boards to receive a subsidy from the Department to employ a business manager. To be eligible for the subsidy under current law, a county board must employ a business manager who satisfies education and experience requirements specified in rules adopted by the Department.

### **County DD boards annual cost reports**

(R.C. 5126.05 and 5126.131; repealed R.C. 5126.12)

The bill makes it discretionary, instead of mandatory, for the Department to perform an audit of the annual cost report submitted by a county DD board or regional council. It adds that any audit that is performed must utilize methodology approved by the U.S. Centers for Medicare and Medicaid Services. Finally, it repeals a section containing a duplicative requirement that county DD boards submit annual cost reports to the Department.

### **Release of records and reports by county DD boards**

(R.C. 5123.89 and 5126.044)

Current law generally requires that all certificates, applications, records, and reports that directly or indirectly identify a resident or former resident of an institution for persons with intellectual disabilities be kept confidential, except under specified circumstances. The bill adds an exception to this general requirement permitting disclosure if the certificate, application, record, or report is needed for a guardianship proceeding.

Current law also generally prohibits disclosure of the identity of an individual or a record or report regarding an eligible individual that is maintained by a county DD board or an entity under contract with a board, except under specified circumstances. The bill adds two exceptions

to the general prohibition. The first permits a county DD board or an entity under contract with a board to release a record or report if requested by a probate court for a guardianship proceeding. Any record or report that is released may, in the court's discretion, be released to the parties of the proceeding. The second exception permits the release of a record or report if requested by the Department for the purpose of a proceeding for admission to an institution for persons with intellectual disabilities or to comply with a court order regarding a person's competence in a criminal case.

## **County share of nonfederal Medicaid expenditures**

(Section 261.100)

The bill requires the Director of Developmental Disabilities to establish a methodology to estimate in FY 2022 and FY 2023 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, current law requires the board to pay this share for waiver services provided to an individual whom it determines is eligible for its services. Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

## **County subsidies used in nonfederal share**

(Section 261.130)

The bill requires the Director of Developmental Disabilities to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to county DD boards if (1) Medicaid covers the services, (2) the services are provided to a Medicaid recipient who is eligible for them and the recipient does not occupy a bed that use to be included in the Medicaid-certified capacity of another ICF/IID certified before June 1, 2003, (3) the services are provided by an ICF/IID whose Medicaid certification was initiated or supported by a county DD board, and (4) the provider of the services has a valid Medicaid provider agreement for the services for the time that they are provided.

## **Medicaid rates for homemaker/personal care services**

(Section 261.140)

The bill requires that the total Medicaid payment rate for each 15 minutes of routine homemaker/personal care services that a Medicaid provider provides to a qualifying enrollee of the Individual Options Medicaid waiver program be 52¢ higher than the rate for services that are provided to an enrollee who is not a qualifying enrollee. The higher rate is to be paid only for the first 12 months, consecutive or otherwise, that the services are provided during the period beginning July 1, 2021, and ending July 1, 2023.

An Individual Options enrollee is a qualified enrollee if all of the following apply:



- The enrollee resided in a developmental center, converted ICF/IID,<sup>27</sup> or public hospital immediately before enrolling in the Individual Options Medicaid waiver program.
- The enrollee did not receive before July 1, 2011, routine homemaker/personal care services from the Medicaid provider that is to receive the higher Medicaid rate.
- The Director of Developmental Disabilities has determined that the enrollee's special circumstances (including diagnosis, services needed, or length of stay at the developmental center, converted ICF/IID, or public hospital) warrant paying the higher Medicaid rate.

## **Innovative pilot projects**

(Section 261.120)

For FY 2022 and FY 2023, the bill permits the Director of Developmental Disabilities to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards. Under the bill, a pilot project may be implemented in a manner inconsistent with the laws or rules governing the Department and county DD boards; however, the Director cannot authorize a pilot project to be implemented in a manner that would cause Ohio to be out of compliance with any requirements for a program funded in whole or in part with federal funds. Before authorizing a pilot project, the Director must consult with entities interested in the issue of developmental disabilities, including the Ohio Provider Resource Association, Ohio Association of County Boards of Developmental Disabilities, Ohio Health Care Association/Ohio Centers for Intellectual Disabilities, the Values and Faith Alliance, and ARC of Ohio.

## **Ohio Developmental Disabilities Council**

(R.C. 5123.35)

The bill updates the federal law citations in existing law regarding the creation and the operation of the Ohio Developmental Disabilities Council, which is tasked with serving as an advocate for all persons with developmental disabilities.

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<sup>27</sup> A converted ICF/IID is an ICF/IID, or former ICF/IID, that converted some or all of its beds to providing services under the Individual Options Medicaid waiver program.

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## DEPARTMENT OF EDUCATION

### I. School finance

#### Base cost per pupil

- Creates a new process for calculating the base cost per pupil (“formula amount”) for the school financing system, and uses that process to calculate a base cost per pupil of \$6,110 for FY 2022 and FY 2023.
- States the methodology by which the General Assembly established this process.
- Specifies that it is the General Assembly’s intent that, following the initial base cost per pupil calculation for FY 2022 and FY 2023, (1) certain variables be reexamined by the General Assembly as part of the deliberations for each biennial budget act and (2) the base cost per pupil may be recalculated based on that reexamination.
- Specifies that it is the General Assembly’s intent that, following the initial base cost per pupil calculation for FY 2022 and FY 2023, the base cost per pupil be updated as part of the biennial budget act enacted for FY 2024 and FY 2025 and every third biennial budget thereafter.
- Requires the Legislative Service Commission to conduct analyses of the data required for the model of the calculation of the base cost per pupil and to present these analyses to the General Assembly by November 30 prior to a calendar year in which the General Assembly intends for an update of the base cost per pupil to occur.
- Specifies that it is the General Assembly’s intent that, for those fiscal years for which the General Assembly does not intend for an update to occur, the General Assembly may adjust the average classroom teacher salary used in the base cost per pupil calculation.

#### State share index

- Changes the calculation of the state share index in current law by changing the manner in which a district’s wealth index is used to compute its state share index.

#### Direct funding for community and STEM schools and state scholarships

- Requires direct payment of state funding to community and STEM schools and for state scholarship programs.

#### Career awareness and exploration funds

- Requires the Department of Education to pay school districts, community schools, and STEM schools career awareness and exploration funds for FY 2022 and each fiscal year thereafter.

## **Career-technical education lab program supplement**

- Requires the Department of Education to pay school districts, community schools, and STEM schools a career-technical education lab program supplement for FY 2022 and each fiscal year thereafter.

## **Gap aid**

- Requires the Department to pay gap aid to city, local, and exempted village school districts for FY 2022 and each fiscal year thereafter.

## **Minimum state share opportunity grant supplement**

- Requires the Department to pay a minimum state share opportunity grant supplement to city, local, and exempted village school districts for FY 2022 and each fiscal year thereafter.

## **Transportation funding**

- Specifies that a city, local, or exempted village school district's "qualifying ridership" is determined during the first full week of October "that the district is in session with students in attendance" (this number is used for calculating a district's base transportation funding).

## **Temporary payment mechanism for FY 2022 and FY 2023**

- Enacts a temporary payment mechanism for school districts, community and STEM schools, and state scholarship programs for FY 2022 and FY 2023 that incorporates the changes to the permanent law formula described above.
- Requires that the formula amount, when used to calculate community and STEM school payments and scholarships for the Jon Peterson Special Needs Scholarship Program, equals \$6,065 for FY 2022 and \$6,110 for FY 2023.

## **Additional payments for FY 2022 and FY 2023**

- Requires the Department to pay gap aid to city, local, and exempted village school districts for FY 2022 and FY 2023 in accordance with the permanent law provision described above but with certain changes to the calculation to account for the bill's temporary payment mechanism.
- Requires the Department to pay a formula transition supplement to school districts, community schools, and STEM schools for FY 2022 and FY 2023.
- Requires the Department to make cap relief payments to certain city, local, and exempted village school districts for FY 2022 and FY 2023.

## **Student wellness and success funding**

- Requires student wellness and success funds and enhancement funds to be paid to city, local, exempted village, and joint vocational school districts, community schools, and

STEM schools for FY 2022 and FY 2023 in a manner similar to how they were paid for in FY 2020 and FY 2021.

- Requires the Department to calculate a district's or school's student wellness and success funds and enhancement funds for both FY 2022 and FY 2023 using the number of students enrolled in the district or school for FY 2022.
- Requires the Department to use the five-year estimates published by the U.S. Census Bureau in the 2015-2019 American Community Survey (rather than the most recent American Community Survey as under current law) for calculating student wellness and success funds and enhancement funds.
- Decreases the per-pupil amounts used to calculate student wellness and success funds for city, local, and exempted village school districts.
- Increases the per-pupil amount used to calculate student wellness and success enhancement funds for city, local, and exempted village school districts.
- Decreases the minimum payment of student wellness and success funds that each school district, community school that is not an e-school, and STEM school must receive to \$30,404 for FY 2022 and \$24,149 for FY 2023 (from \$36,000 for FY 2021).
- Decreases the amount of student wellness and success funds that must be paid to each e-school to \$30,404 for FY 2022 and \$24,149 for FY 2023 (from \$36,000 for FY 2021).
- Requires the Department, after all student wellness and success payments for FY 2022 and FY 2023 have been made to public schools, to distribute any appropriated amounts remaining for these payments through a methodology determined by the Department in consultation with the Office of Budget and Management (OBM).
- Adds to the initiatives for spending student wellness and success funds and enhancement funds: telehealth services (as part of mental and physical health services); culturally appropriate, evidence-based or evidence-informed prevention education; and programs that connect students to community resources.
- Removes the authority for districts and schools to spend student wellness and success funds and enhancement funds for mentoring programs, professional development regarding the provision of trauma-informed care, and professional development regarding cultural competencies.
- Specifies that a district or school may coordinate with a community-based mental health treatment or prevention provider (rather than a community-based mental health treatment provider) in order to satisfy the requirement to coordinate with a community partner for spending student wellness and success funds.
- Requires districts and schools to satisfy the bill's requirements for all student wellness and success funds and enhancement funds spent after the bill's changes take effect, including funds paid to districts or schools for FY 2020 and FY 2021 that are spent after that date.

## **Formula amount for certain FY 2022 and FY 2023 payments**

- Specifies that, for payments for open enrollment, children with disabilities who are served by county boards of development disabilities, and the College Credit Plus program, the “formula amount” is \$6,065 for FY 2022 and \$6,110 for FY 2023.

## **Special education cost supplement pool**

- Sets aside 10% of a district’s, community school’s, or STEM school’s aggregate special education funds as a “special education cost supplement pool” for threshold costs for special education students.

## **Disadvantaged pupil impact aid – terminology**

- Changes the term “economically disadvantaged funds” to “disadvantaged pupil impact aid” throughout the school financing provisions in existing law.

## **Payment for districts with decreases in utility TPP value**

- Requires the Department to make a payment, for FY 2022 and FY 2023, to each city, local, exempted village, or joint vocational school district with more than a 10% decrease in the taxable value of utility tangible personal property (TPP) that has at least one power plant located within its territory.

## **Payments for districts with nuclear plant in territory – repealed**

- Repeals the requirement that the Department, for each of FYs 2019, 2020, and 2021, make an additional payment to a city, local, or exempted village school district with (1) a nuclear power plant in its territory and (2) a total taxable value of public utility personal property for tax year 2017 that is at least 50% less than that value for tax year 2016.

## **Recommendations for compensating valuation losses – repealed**

- Eliminates the requirement that the Department annually recommend to the General Assembly a structure to compensate each school district that experiences at least a 50% decrease in public utility personal property valuation from one year to the next for a percentage of the effect that decrease has on the district’s state funding.

## **Auxiliary Services funds**

- Permits a religiously affiliated chartered nonpublic school to receive Auxiliary Services funds directly in the same manner as offered to nonreligious chartered nonpublic schools under continuing law.
- Permits any chartered nonpublic school (secular or religiously affiliated) that elects to receive Auxiliary Services funds directly to designate an organization to receive and distribute those funds on its behalf.
- Clarifies that directly paid Auxiliary Services funds may be used to acquire goods and services under contract with school districts, educational service centers, the Department of Health, city or general health districts or private entities.

## **Auxiliary Services Reimbursement Fund**

- Permits the Department to deposit into the Auxiliary Services Reimbursement Fund, rather than the Auxiliary Services Personnel Unemployment Fund as in current law, any unexpended or returned Auxiliary Services funds.
- Requires a district or school to remit to the Department any Auxiliary Services funds or interest on them that are not required to cover expenses within 90 days after the end of the biennium for which the funds were appropriated, rather than 30 days as under current law.
- Eliminates a requirement that, by January 30 of each odd-numbered year, the Director of Job and Family Services and the Superintendent of Public Instruction determine an amount of excess funds in the Auxiliary Services Personnel Unemployment Compensation Fund and certify that amount to the Director of Budget and Management for transfer to the Auxiliary Services Reimbursement Fund.
- Permits educational service centers to apply to the Department of Education for moneys from the Auxiliary Service Reimbursement Fund.

## **Chartered nonpublic school administrative cost reimbursement**

- Removes the maximum annual per-pupil amount for administrative cost reimbursement for chartered nonpublic schools specified in current codified law, which is \$360 and, instead, specifies that cost reimbursement payments may not exceed the per-pupil amount prescribed by the General Assembly for each particular school year.
- Prescribes in uncodified law, for each of FY 2022 and FY 2023, a maximum annual per-pupil amount for administrative cost reimbursement of \$475.

## **II. Graduation requirements and assessment**

### **High school graduation requirements**

- Requires the Superintendent of Public Instruction's industry-recognized credentials and licenses committee to assign a point value for each credential and to establish the total number of points necessary to satisfy certain high school graduation requirements.
- Permits a student who obtains a state-issued license for practice in a vocation that requires an exam to use that license as a "foundational option" when using an alternative demonstration of competency and to qualify for an industry-recognized credential diploma seal.
- Exempts students enrolled in chartered nonpublic schools from certain graduation requirements if, instead of the end-of-course exams, their schools administer a nationally standardized assessment (ACT or SAT) or an alternative assessment to meet state testing requirements.

- Specifies how a public or chartered nonpublic school must address a locally defined diploma seal earned by a transfer student, or any progress the student made toward earning one, at another public or chartered nonpublic school in Ohio.
- Requires transfer students who, in the prior school year, were homeschooled or attended an out-of-state or nonchartered, nonpublic school to generally comply with the high school graduation requirements prescribed under continuing law, but prescribes certain exemptions for them.
- Exempts a student with an individualized education program (IEP) from the requirement to demonstrate competency in math and English language arts if the student’s IEP expressly exempts them from that requirement and the student satisfies certain additional conditions.
- Permits a student to use a remediation-free score on a nationally standardized assessment (ACT or SAT) as an alternative demonstration of competency.
- Clarifies and modifies the “foundational” options a student may use as part of an alternative demonstration of competency.
- Permits a student with an IEP and significant cognitive disabilities who is administered alternate assessments to qualify for a Citizenship or a Science state diploma seal by attaining scores established by the State Board on the alternate assessments in social studies or science.

### **Nationally standardized college admission assessments**

- Permits the parent or guardian of a student beginning with the class of 2026 to choose not to have the nationally standardized assessment administered to that student.

### **Dyslexia diagnostic assessments**

- Except for the kindergarten readiness assessment, requires that diagnostic assessments for grades K-3 and any comparable reading skills assessment for the Third Grade Reading Guarantee include items related to the identification of students with dyslexia.
- Requires test vendors to share student performance data on comparable tools with public schools, chartered nonpublic schools, and the Department.
- Specifies that any assessment that incorporates comparable tools may be used to meet current law requirements related to the administration of a tier one dyslexia screening.

### **Kindergarten readiness and reading skills assessments**

- Adjusts the period of time in which a school must administer the Kindergarten Readiness Assessment and the kindergarten reading skills assessment to July 1 through the 20<sup>th</sup> day of instruction.

### **III. Educator licensure**

#### **Teacher licensure disciplinary actions – human trafficking**

- Adds trafficking in persons to the list of offenses for which the State Board of Education must revoke or deny an educator license.

#### **Release of information obtained during an investigation**

- Permits a school district or school located in Ohio or another state to request that the Department provide any report of misconduct that it has received regarding an individual who is under consideration for employment, and requires the Department to provide the contents of the report to the district or school.

#### **Assisting individuals in obtaining school employment**

- Generally prohibits a school representative from knowingly engaging in any activity intended to assist another individual in obtaining school employment if the representative knows or has reasonable cause to believe that the individual has committed a sex offense involving a student.

#### **Licensure consequences for cheating on assessments**

- Prohibits a person from obtaining prior knowledge of a state achievement assessment, using prior knowledge of the contents of an assessment to assist students in preparing for the assessment, and failing to comply with any rule adopted by the Department regarding security protocols for an assessment.

#### **Teach for America licenses**

- Requires the state Superintendent (rather than the State Board) to inactivate (rather than revoke) a resident educator license issued to a participant in the Teach for American (TFA) Program if the participant resigns or is dismissed from TFA prior to completion of TFA's two-year support program.
- Provides that (1) the inactivation of a resident educator license issued to a TFA participant does not constitute a suspension or revocation of the license by the State Board and (2) the State Board and the state Superintendent need not provide the person with an opportunity for a hearing with respect to the inactivation.

#### **Pre-employment applications and screening process**

- Requires each public and chartered nonpublic school to include a written notice on all employment applications explaining that any person knowingly making a false statement on the application is guilty of falsification, which is a first degree misdemeanor.
- Requires each public and chartered nonpublic school to consult the Department's "educator profile" database before making hiring decisions.
- Permits each public or nonpublic school to require an applicant or volunteer to undergo additional criminal records checks.



## **Career-technical educator licensure**

- Qualifies an individual holding a certificate of high school equivalence for a two-year initial career-technical workforce development educator license or a five-year advanced career-technical workforce development educator license.

## **School counselor standards**

- Requires the Educator Standards Board to include knowledge of the “Career-Technical Assurance Guide” (CTAG) in the Board’s standards for school counselors.

## **IV. Community schools**

### **Community schools in challenged school districts – eliminate requirement**

- Removes the requirement that new start-up community schools must be in a “challenged school district.”
- Removes the requirement that the Department of Education annually publish a list of challenged school districts.

### **Automatic closure of community schools**

- Prohibits the automatic closure of community schools and dropout prevention and recovery schools on the basis of any report card rating issued prior to the 2022-2023 school year.

### **Programs at community schools**

- Removes a requirement that the contract between a community school sponsor and governing authority state the school will be nonsectarian.

### **Disenrollment of e-school students – failure to participate**

- Prohibits a student who is disenrolled from an e-school for failure to participate from re-enrolling in that school for the remainder of the year, rather than one year from the date of disenrollment.
- Permits a disenrolled student to enroll in a different e-school during that same year.

### **Community school sponsors**

- Specifies that a sponsor rated “exemplary” for the two most recent years the sponsor was evaluated may take advantage of certain sponsor incentives.
- Specifies that a sponsor rated “exemplary” or “effective” for the three most recent years the sponsor was evaluated must be evaluated only once every three years.
- Permits an “exemplary” sponsor to open up two new internet- or computer-based community schools that will serve students enrolled in a dropout prevention and recovery program (not to exceed six in a five-year period) without approval by the state Superintendent.

## **Low performing community school sponsor changes**

- Permits community schools in which a majority of the enrolled students are children with disabilities receiving special services to contract with a new sponsor without approval from the Department, notwithstanding the school's low performance.

## **JCARR review of Department of Education changes**

- Subjects to Joint Committee on Agency Rule Review-approval any proposed changes to the Education Management Information System (EMIS) or the Department of Education's business rules and policies that may affect community schools.

## **Montessori preschool payments**

- Specifies that a Montessori preschool operated by a community school will no longer receive community school funds for students under age five.

## **Community School Revolving Loan Fund**

- Eliminates the Community School Revolving Loan Fund.

## **Pilot funding for dropout recovery e-schools**

- Extends to FY 2022 and FY 2023 the pilot program established for FY 2021 to provide additional funding for certain internet- or computer-based community schools (e-schools) operating dropout prevention and recovery programs on a per-pupil basis for students in grades 8-12.
- Specifies that an e-school must have participated in the program for FY 2021 to participate in FY 2022 and FY 2023.
- Specifies that the formula amount for these payments is \$6,065 for FY 2022 and \$6,110 for FY 2023.
- Delays the deadline for the Department to issue a report upon completion of the pilot program to December 31, 2022 (rather than December 31, 2021, as under current law).

## **V. STEM schools**

- Permits the Superintendent of Public Instruction, the Chancellor of Higher Education, and the Director of Development to appoint designees to participate in STEM Committee business on their behalf.
- Permits a STEM or STEAM school to submit an amended proposal to the STEM Committee to offer additional grade levels.
- Eliminates the authority for a joint vocational school district (JVSD) or an educational service center (ESC) to apply for designation as a STEM or STEAM school.
- Instead of "career centers," permits JVSDs and comprehensive and compact career-technical education providers to receive a STEM or STEAM school equivalent designation.

- Revises the required content of the proposal for designation as a STEM or STEAM school or equivalent.
- Repeals the authority for city, local, and exempted village school districts, community schools, and chartered nonpublic schools to apply for grants to support the operation of STEM programs of excellence.
- Permits a JVSD, comprehensive and compact career-technical education provider, or ESC to apply for distinction as a STEM program of excellence.
- Specifies that STEM and STEAM school designations, STEM and STEAM school equivalent designations, and distinctions as STEM programs of excellence are effective for five years unless revoked and may be renewed upon reapplication.
- Specifies that, if the STEM Committee finds that a school is not in compliance as part of the reapplication process or as part of a review during the five-year effective period, it must require the school to develop a corrective action plan, implement the plan, and demonstrate exemplary STEM pedagogy and practices within one year.
- Makes other changes regarding STEM and STEAM school or equivalent oversight and operations.

## **VI. College Credit Plus**

### **Students in state-operated schools**

- Permits students enrolled in the State School for the Deaf, State School for the Blind, or in a school operated by the Department of Youth Services (DYS) to participate in the College Credit Plus (CCP) program in the same manner as students in other public schools.
- Subjects those schools to all CCP program requirements that apply to other public schools.
- Requires payments made to an institution of higher education for courses taken by a student enrolled in those schools to be deducted from the operating funds appropriated to the schools.

### **Academic eligibility for all students**

- Requires a student, as a condition of eligibility for CCP, to (1) be “remediation-free” by meeting established standards, (2) meet an alternative remediation-free eligibility option, or (3) have qualified for and participated in the program prior to the bill’s effective date.

### **Nonpublic school participation**

- Specifically prohibits any requirement of the CCP program to apply to a nonpublic school that chooses not to participate in the program.

## Course subject matter disclaimer

- Requires the Departments of Education and Higher Education jointly to develop a permission slip regarding the potential for mature subject matter in courses taken through the CCP program and to post it on their CCP websites.
- Requires each student and each student's parent, as a condition of participating in the CCP program, to sign the permission slip and include it in the student's application to participating institutions of higher education.
- Requires the Departments and each participating institution to post on their CCP websites a disclaimer about the potential for mature subject matter in courses taken under CCP.

## VII. State scholarship programs

### Scholarship amounts

- Revises the scholarship amounts as follows:
  - For the Educational Choice (Ed Choice), and Cleveland Scholarship Programs, \$5,500 for students in any of grades K-8 and \$7,500 for students in any of grades 9-12.
  - For the Autism Scholarship Program, \$31,500 for FY 2022 and \$32,445 for FY 2023 and each fiscal year thereafter.
  - For the Jon Peterson Special Needs Scholarships Program, specifies that the "formula amount" used in the computation of scholarship amounts is \$6,065 for FY 2022 and \$6,110 for FY 2023.

### Performance-based Ed Choice scholarship eligibility

- Changes the performance index rankings used to determine whether a student is eligible for a performance-based Ed Choice scholarship sought for the 2023-2024 or 2024-2025 school year under the performance index score eligibility criteria.
- Expands qualifications for a performance-based Ed Choice scholarship including qualifying high school students not enrolled in public school, siblings, students in foster or kinship care or other placement, and students who received but no longer qualify for the autism or Jon Peterson scholarship.
- Phases out the requirement that to qualify for a performance-based Ed Choice scholarship, students generally must be enrolled in either a school operated by their resident district or a community school.
- Eliminates the 60,000 cap on the number of performance-based Ed Choice scholarships the Department of Education may award in a school year.
- Maintains a student's eligibility for a performance-based scholarship if, after the first day of the application period, the Department changes the internal retrieval number (IRN) of the school in which the student is enrolled or otherwise would be assigned.

## **Ed Choice eligibility for 2021-2022**

- Expands qualifications for a performance-based Ed Choice scholarship sought for the 2021-2022 school year based on the Ed Choice designation list for the 2019-2020 or 2021-2022 school year.
- Requires the Department, by July 15, 2021, to develop eligibility guidance and provide it to chartered nonpublic schools enrolling Ed Choice scholarship students and to begin accepting and processing applications for students eligible under the provision.
- Requires that applications submitted by August 1, 2021, must receive notice of award and details of any additional information to process the application or denial by September 15, 2021.

## **Ed Choice operations**

- Requires the Department to make monthly partial payments for Ed Choice scholarships, rather than periodic partial payments as under current law.
- Establishes a single application period that opens the February 1 prior to the school year for which a scholarship is sought, and prorates the scholarship amount for applications submitted after the start of the school year.
- By February 1, 2022, requires the Department to establish a system under which an applicant may enter a student's address, and within 10 days, receive notification of whether the student is eligible for a performance-based scholarship.
- Prohibits a school district from objecting to a student's scholarship eligibility if the Department's system determines the student is eligible.
- Requires each school district with an Ed Choice designated building to provide the Department with the attendance zone of such a building by January 1 of each year.
- Requires the Department to accept applications for conditional approval and to award a scholarship to a student who has been conditionally approved if the student meets certain requirements.
- Requires the Department, if it determines an Ed Choice scholarship application contains an error or deficiency, to notify the applicant within 14 days of the application's submission.
- Requires the departments of Education, Jobs and Family Services, and Taxation to enter into a data sharing agreement to assist the Department of Education in determining student eligibility for Ed Choice scholarships.

## **Autism Scholarship Program**

- Subjects registered private providers approved for the Autism Scholarship Program and any of its employees to certain criminal records check requirements.

- Requires the Department of Education to use the submitted information to enroll individuals in the Retained Applicant Fingerprint Database in the same manner as licensed educators.
- Includes “registered behavior technician” and “certified Ohio behavior analyst” in the list of qualified, credentialed providers that may offer intervention services under the program.

### **Cleveland Scholarship Program**

- Establishes a single application period that opens February 1 prior to the school year for which a scholarship is sought, including prorating the scholarship amount for applications submitted after the start of the school year.
- Qualifies a private school located outside the boundaries of the Cleveland School District that offers any of grades K-12 (instead of only grades 9-12 as under current law), if it is located within five miles of the district border and in a municipal corporation with a population of at least 15,000, to accept Cleveland scholarship students.

### **ACE Educational Savings Account Program**

- Establishes the Afterschool Child Enrichment (ACE) Educational Savings Account Program to provide students with an educational savings account for FY 2022 or FY 2023 containing \$500 to be used for prescribed secular or nonsecular purposes.
- Qualifies a student for an account if the student is at least 6 years old and under 18 years old, has a family income at or below 300% of the federal poverty level, and is enrolled in a public or nonpublic school or is being homeschooled.
- Requires the Department to prescribe emergency rules for the establishment of accounts within 30 days of the bill’s effective date, create an online form for parents or guardians to request an account within 120 days of the bill’s effective date, and select a vendor that meets prescribed criteria to administer the program.
- Requires the Department, by December 31, 2022, to submit a report to the General Assembly regarding the administration of the program.

## **VIII. Other**

### **Student transportation – pick up and drop off times for all students**

- Requires school districts, educational service centers, and private school transportation contractors to “deliver” students to their respective public and nonpublic schools no sooner than 30 minutes prior to the beginning of school and to be available to pick them up no later than 30 minutes after the close of the day.

## **Transportation for community school and chartered nonpublic school students**

- Prescribes procedures for school district transportation plans for community and chartered nonpublic school students whom a district is required to transport.
- Prohibits a school district from transporting community or chartered nonpublic school students in grades K-8 using vehicles operated by a mass transit system, unless the district enters into an agreement with the students' school to do so.
- Requires a school district that transports community or chartered nonpublic school students in grades 9-12 using vehicles operated by a mass transit system to ensure that a student's route does not require more than one transfer.
- Permits a community or chartered nonpublic school governing authority to request, from a school district, a list of students enrolled in the school for whom the district provides transportation and their addresses, and requires a district to provide the list if requested.
- Adjusts the deadline for an existing community school to unilaterally accept responsibility to provide transportation for its students to August 1, rather than January 1 of the prior school year as under current law.

## **Deduction of state funding for school district noncompliance**

- Requires the Department to deduct a prescribed portion of a school district's state transportation funding if the Department determines the district has consistently, or for a prolonged period, been noncompliant with its obligations regarding student transportation.

## **Payment in lieu of transportation**

- Requires school districts, and community schools that accept responsibility to transport students, to make a determination regarding providing payment in lieu of transportation not later than 30 calendar days prior to the first day of instruction, or within 14 calendar days if the student is enrolled subsequent to that deadline.
- Authorizes a district superintendent (or the equivalent of a community school) to make a payment in lieu determination, but requires it to be formalized by the district board or the community school governing authority.
- Requires a district or school to issue to a student's parent or guardian and the State Board a detailed letter explaining why a payment in lieu determination was made.
- Permits the parent, guardian, or other person in charge of a student, at any time after requesting transportation for that student, to authorize the student's community or chartered nonpublic school to act on the parent's, guardian's, or other person's behalf for purposes of determining payment in lieu and related mediation proceedings.

- Requires that the annual payment in lieu amount be not less than 50% but not more than the average cost of pupil transportation for the previous school year, as determined by the Department.
- Requires the payment if a district or school has failed or is failing to provide transportation (under the payment in lieu provision) be equal to 50% of the cost of providing transportation as determined by the district board or school governing authority but not more than \$2,500.

### **Transportation contracts**

- Authorizes a school district to contract with federal or state agencies, municipal corporations, political subdivisions, and other public and private groups and organizations to assist those entities in the fulfillment of their legitimate activities and in times of emergency.

### **Withdrawal of certain students for failure to take assessments**

- Beginning with the 2020-2021 school year, creates a new starting point for automatic withdrawal of students enrolled in district-operated internet- or computer-based schools or internet- or computer-based community schools (e-schools) who fail to take the required state assessments for two consecutive school years.

### **Online learning**

- Permits school districts, with the approval of the Superintendent of Public Instruction, to operate a school using an online learning model and prescribes requirements for such districts.
- Requires the State Board to revise operating standards for school districts to include prescribed standards for the operation of online learning models.

### **Blended learning**

- Requires districts and schools using a blended learning model operate an annual calendar of at least 910 hours.
- Changes the definition of “blended learning” by specifying that the delivery of instruction primarily should be in a supervised physical location away from home.

### **Information on academic standards and model curricula**

- Requires the Department to include information on the use of online learning in the delivery of standards or curricula to students, whenever the State Board adopts standards or model curricula.

### **FAFSA data system**

- Requires each public and chartered nonpublic high school to enter into a data sharing agreement with the Chancellor to operate the data system to track the FAFSA completion rate of state public and chartered nonpublic school students.



## **Computer science education**

- Requires the Department, in consultation with the Chancellor, to establish a committee to develop a state plan for primary and secondary computer science education.
- Requires the committee to complete the state plan within one year after the bill's effective date and the Department to post it in a prominent location on its website.
- Extends through the 2022-2023 school year an exemption that generally permits school districts, community schools, and STEM schools to have an individual who does not hold a license or endorsement to teach computer science, to teach computer science courses, so long as that individual meets other prescribed requirements.
- Specifies that, for computer science licensure or endorsements purposes, "computer science course" means any course that is reported in EMIS as a computer science course and aligned with standards adopted by the State Board.
- Requires the State Board to update its standards and curriculum for computer science education within one year after the bill's effective date.

## **Effects of vaping – school district health curriculum**

- Requires school districts to include instruction on the harmful effects and legal restrictions against the use of electronic smoking devices (vaping) in its health education curriculum.

## **Venereal disease instruction**

- Requires a school district or school to notify all parents and guardians if the district or school chooses to offer additional instruction in venereal disease or sexual education not specified under continuing law, including the name of instructors, vendor, and the name of the curriculum being used.
- Prohibits a district or school from offering such instruction to a student unless a parent or guardian has submitted written permission for that student to receive that instruction.
- Requires the Department to conduct and publish on its website an annual audit at the beginning of each school year of school districts to ensure compliance with continuing law requirements regarding venereal disease education.
- Requires audits to be prominently posted on the Department's website.

## **Victim counseling**

- Permits public and chartered nonpublic schools to provide counseling to victims of sexual harassment or sexually related conduct.

## **Academic distress commissions**

- Prohibits the state Superintendent from establishing any new academic distress commissions for the 2021-2022 and 2022-2023 school years.

- Establishes a process by which school districts currently subject to an academic distress commission (ADC) may be relieved from the oversight of its ADC prior to meeting the conditions prescribed by continuing law.
- Requires the Auditor of State, one time between July 1, 2022, and June 30, 2025, to complete a performance audit of school districts to which the bill applies and submit the results of the audit to the district.
- Exempts the provision regarding the process to relieve districts from the oversight of an ADC from the 90-day referendum.

### **Educational service centers**

- Permits an educational service center (ESC) governing board to delay reorganizing its subdistricts, if its territory is divided into subdistricts, until July 1, 2022.
- Specifies that an ESC must be considered a “local education agency,” for the purposes of eligibility in applying for *competitive* federal grants, rather than *all* federal grants as in current law.

### **Adult Diploma Program minimum age**

- Expands eligibility to participate in the Adult Diploma Program by lowering the minimum age from 22 to 20 years old.

### **Ohio Code-Scholar Pilot Program**

- Requires Southern State Community College to establish and maintain the Ohio Code-Scholar Pilot Program and appoint a program coordinator.
- Establishes responsibilities for the program coordinator as well as program requirements.
- Requires Southern State Community College, in collaboration with the program coordinator, to submit a report to the General Assembly at the end of the five-year pilot program.

### **Interscholastic athletics transfer rules**

- Repeals the requirement that school districts, interscholastic conferences, and interscholastic athletic regulating organizations have uniform transfer rules for public and nonpublic schools.

### **Nonpublic school administration of drugs**

- Requires chartered nonpublic schools to adopt a policy addressing the administration of prescription drugs to students.

### **Sale or lease of school district property**

- For purposes of the involuntary sale or lease of “unused” school district real property, adds to the definition of an “unused school facility” any school building that has been

used for direct academic instruction but less than 60% of the building was used for that purpose in the preceding school year.

## **Online school bus driver training program**

- Requires the Department to develop an online training program to satisfy the classroom portion of pre-service and annual in-service training for school bus driver certification.

## **Obsolete reports, plans, or recommendations**

- Eliminates various education-related reports, plans, and recommendations that are out-of-date, expired, or no longer have data available.

# **I. School finance**

## **School financing – overview**

(R.C. 2151.362, 3301.0714, 3302.04, 3302.20, 3307.31, 3309.51, 3310.02, 3310.032, 3310.10, 3310.13, 3310.41, 3310.51, 3310.52, 3310.54, 3310.57, 3310.62, 3313.842, 3313.974, 3313.975, 3313.976, 3313.978, 3313.979, 3314.06, 3314.08, 3314.083, 3314.084, 3314.086, 3314.087, 3314.091, 3314.11, 3314.191, 3314.20, 3314.24, 3317.011, 3317.017, 3317.02, 3317.022, 3317.023, 3317.024, 3317.029, 3317.0212, 3317.0214, 3317.0215, 3317.0216, 3317.0217, 3317.0218, 3317.0219, 3317.0220, 3317.0221, 3317.0222, 3317.0223, 3317.03, 3317.051, 3317.071, 3317.072, 3317.16, 3317.161, 3317.162, 3317.163, 3317.25, 3317.26, 3326.31, 3326.34, 3326.35, 3326.36, 3326.39, 3326.40, 3326.51, 3327.01, 3327.018, 3365.01; repealed R.C. 3310.08, 3310.09, 3310.55, 3310.56, 3314.085, 3314.088, 3314.53, 3326.33, 3326.41, and 3326.42; Sections 265.215, 265.220, 265.223, 265.225, 265.226, 265.227, 265.229, 265.231, 265.233, 265.235, and 265.323)

The school financing system in existing law specifies a per-pupil formula amount and then uses that amount, along with a district's "state share index" (which depends on valuation and, for some districts, also on median income), to calculate a district's base payment (called the "opportunity grant"). The system also includes payments for targeted assistance (based on a district's property value and income) and supplemental targeted assistance (based on a district's percentage of agricultural property), categorical payments, a capacity aid payment, and payments for a graduation bonus, a third-grade reading bonus, and student transportation.

H.B. 166 of the 133<sup>rd</sup> General Assembly (the main operating budget act for FY 2020 and FY 2021) retained the school financing system in existing law, but it suspended use of that formula for school districts for FY 2020 and FY 2021. Instead, it provided for payments to be made based on FY 2019 funding. It also provided for deductions and transfers for community school and STEM school students as prescribed under continuing law.

The bill changes the formula in existing law by creating a new process for calculating the base cost per pupil ("formula amount") for the school financing system and uses that process to calculate a base cost per pupil of \$6,110 for FY 2022 and FY 2023. It also modifies the calculation of the state share index by changing the manner in which a district's wealth index is used to compute its state share index. Additionally, the bill requires state operating funding to be paid

directly to school districts, community schools, and STEM schools for the students they are educating. This direct funding concept differs from current law where community and STEM school students are included in the student count of their resident school districts, and the funds attributable to those students are deducted from their resident districts and then paid to the schools in which they are enrolled. Similarly, it requires direct payment of state scholarships, rather than deducting the amounts of those scholarships from students' resident districts. Finally, it requires (1) the payment of career awareness and exploration funds and a career-technical education lab program supplement for school districts, community schools, and STEM schools and (2) the payment of gap aid and a minimum state share opportunity grant supplement to city, local, and exempted village school districts.

For FY 2022 and FY 2023, the bill enacts a temporary payment mechanism for school districts, community and STEM schools, and state scholarship programs that incorporates the permanent law changes described above. For districts, this temporary payment mechanism recalculates a district's foundation funding for FY 2019 and, if applicable, transportation funding for FY 2019 in accordance with the bill's changes. For community and STEM school payments and scholarships for the Jon Peterson Special Needs Scholarship Program, it requires that the formula amount, when used for that purpose, equals \$6,065 for FY 2022 and \$6,110 for FY 2023. This temporary payment mechanism also requires the payment of (1) gap aid in accordance with the permanent law provision described above but with certain changes to the calculation to account for the bill's temporary payment mechanism, (2) a formula transition supplement, and (3) cap relief payments for certain districts.

For a more detailed description of the bill's school financing provisions, see the LSC Comparison Document for the bill. From the LSC home page, [www.lsc.ohio.gov](http://www.lsc.ohio.gov), click on "Budget Central," then on "Main Operating – H.B. 110," and then on "EDU" under "Comparison Document."

## **Base cost per pupil**

(R.C. 3317.011)

The bill creates a new process for calculating the base cost per pupil ("formula amount") for the school financing system and uses that process to calculate a base cost per pupil of \$6,110 for FY 2022 and FY 2023. In doing so, it states the methodology by which the General Assembly established this process and details the components of the calculation.

### **Base cost per pupil calculation**

#### **Overall formula**

The bill specifies that the base cost per pupil equals the sum of five components and calculates the sum of these components as \$6,110 for FY 2022 and FY 2023, as detailed below:

| Base cost per pupil                                     |   |   |
|---|---|---|
|   | Formula   | Amount calculated for FY 2022 and FY 2023   |
| Per-pupil classroom teacher compensation                | (The state share multiplier X the average classroom teacher salary X the teacher-to-student ratio determined by the General Assembly)<br><br><i>plus</i><br>(The state share multiplier X the average classroom teacher salary X the teacher-to-student ratio determined by the General Assembly X the average benefits percentage) | \$3,622<br><br>(For purposes of this calculation, the teacher-to-student ratio was 1 to 20.)  |
| Per-pupil building administration and operations costs  | (The building administration and operations cost divided by the classroom teacher salaries and benefits) X the amount for per-pupil teacher compensation  | \$1,357   |
| Per-pupil district administration salaries and benefits | (The district administration salaries and benefits divided by the classroom teacher salaries and benefits) X the amount for per-pupil classroom teacher compensation  | \$344   |
| Per-pupil district student support                      | (The student support cost divided by the classroom teacher salaries and benefits) X the amount for per-pupil classroom teacher compensation   | \$625   |
| Teacher professional development                        | (The number of funded professional development days for a school year as determined by the General Assembly divided by the number of teacher contract days for a school year as determined by the General Assembly) X the amount for per-pupil teacher compensation   | \$161<br><br>(For purposes of this calculation, the number of funded professional development days for a school year was 8, and the number of teacher contract days for a school year was 180.) |
| <b>TOTAL</b>  | <b>Sum of the five components described above</b>   | <b>\$6,110</b>  |

## Variables used in the base cost calculation

### *State share multiplier*

The “state share multiplier” is the sum of the “required state share multiplier” and the “supplemental state share multiplier.” For FY 2022 and FY 2023, this multiplier is 80.84%. These two multipliers, and the percentages calculated for them for FY 2022 and FY 2023, are detailed below:

| State share multiplier calculation  |   |  |
|---|---|--|
|   | Formula   | Percentage calculated for FY 2022 and FY 2023  |
| Required state share multiplier   | (The amount of school district operating funding that is attributable to the state and local share of foundation funding) / (the amount of school district operating funding)<br><br>(“School district operating funding” is the operating funding of all city, local, and exempted village school districts, excluding federal funding and operating funding for student transportation, that is attributable to state and local shares of foundation funding and local property tax revenue and school district income tax revenue in excess of the local share required for foundation funding.) | 78.82%<br><br>(For purposes of this calculation, “school district operating funding” was determined using FY 2019 data.) |
| Supplemental state share multiplier (if the General Assembly chooses to include it) | (A percentage determined by the General Assembly) X (the amount of school district operating funding that is attributable to local property tax revenue and school district income tax revenue in excess of the local share required for foundation funding / the amount of school district operating funding)  | 2.12%<br><br>(For purposes of this calculation, the percentage determined by the General Assembly was 10%.)              |
| <b>TOTAL</b>  | <b>Sum of the two percentages described above</b>   | <b>80.94%</b>  |

### *Other variables*

The bill also defines the variables used in the base cost calculation, which are calculated based on expenditure codes of the Education Management Information System (EMIS) and, except in the case of the “student support cost,” staff employment records. For purposes of the

initial implementation of this model for FY 2022 and FY 2023, all of these variables were calculated using FY 2019 data.

The variables are defined as follows:

- “Average benefits percentage” – the difference between the average classroom teacher compensation (the average salary and benefits paid to regular classroom teachers employed by city, local, and exempted village school districts), divided by the average classroom teacher salary.
- “Average classroom teacher salary” – the average salary paid to regular classroom teachers employed by city, local, and exempted village school districts.
- “Building administration and operations cost” – the amount spent by city, local, and exempted village school districts for building administration and operations.
- “Classroom teacher salaries and benefits” – the amount spent by city, local, and exempted village school districts for regular classroom teacher salaries and benefits.
- “District administration salaries and benefits” – the amount spent by city, local, and exempted village school districts for district administration salaries and benefits.
- “Student support cost” – the amount spent by city, local, and exempted village school districts for student support.

### **Methodology for calculation of the base cost per pupil**

The bill states that the model for the calculation of the base cost per pupil for FY 2022 and each fiscal year thereafter has been established as the result of deliberations by the General Assembly. It further states that, in order to guide its deliberations, the General Assembly adopted the following principles, which it incorporated into the model as part of the calculation of the “state share multiplier”:

- The average classroom teacher salary used in the model must include the portion that is funded by state and local shares of foundation funding; and
- The average classroom teacher salary used in the model may include the portion of the average classroom teacher salary that is funded by local property tax revenue and school district income tax revenue in excess of the local share required for foundation funding, if the General Assembly chooses to include it, in order to enhance the model’s funding for teacher salaries.

The bill also states that it is the intent of the General Assembly that, following the initial calculation of the base cost per pupil for FY 2022 and FY 2023, each of the following variables in the base cost per pupil calculation must be reexamined by the General Assembly as part of the deliberations for each biennial budget act and that the base cost per pupil may be recalculated in each of those biennial budget acts using different numbers for the variables based on the General Assembly’s reexamination of them:

1. The percentages determined by the General Assembly for purposes of calculating the “supplemental state share multiplier”;

2. The teacher-to-student ratio that is used in the calculation of the per-pupil classroom teacher compensation component;

3. The number of funded professional development days for a school year that is used in the calculation of the teacher professional development component; and

4. The number of teacher contract days for a school year that is used in the calculation of the teacher professional development component.

Finally, it specifies that it is the intent of the General Assembly that, following the initial calculation of the base cost per pupil for FY 2022 and FY 2023, the base cost per pupil be updated as part of the biennial budget act enacted for FY 2024 and FY 2025 and as part of every third biennial budget enacted by the General Assembly thereafter by recalculating the base cost per pupil using both of the following:

- Any different number for the variables specified above; and
- Data based on analyses conducted by the Legislative Service Commission and presented to the General Assembly in accordance with the bill's provisions.

However, the bill specifies that it is the intent of the General Assembly that, for those fiscal years for which the General Assembly does not intend for an update to occur, the General Assembly may adjust the average classroom teacher salary used in the base cost per pupil calculation and that, in doing so, it may consider the annual changes to the average classroom teacher salary, the consumer price index (all items), or any other factors it considers to be appropriate.

### **Data analyses conducted by LSC**

The bill requires the Legislative Service Commission to conduct analyses of the data required for the model of the calculation of the base cost per pupil and to present these analyses to the General Assembly by November 30 prior to a calendar year in which the General Assembly intends for an update of the base cost per pupil to occur. The Commission must submit to the Department of Education a written request itemizing all the information that is needed for purposes of conducting its analyses by October 1 of any calendar year in which the Commission is required to conduct analyses. The Department must provide that information by October 31 of the year in which the request is made.

The Commission, when conducting its analyses, may use the variables most recently determined by the General Assembly for the (1) supplemental state share multiplier, (2) teacher-to-student ratio, (3) number of funded professional development days for a school year, and (4) number of teacher contract days for a school year.

### **State share index**

(R.C. 3317.017)

The bill changes the current calculation of the state share index to require that the index is calculated by changing the manner in which a district's wealth index (which compares its income index and property value index) is used to compute its state share index as follows:



- If the district's wealth index is less than or equal to 0.425 (rather than 0.35 as under current law), the district's state share index equals 90%;
- If the district's wealth index is greater than 0.425 (rather than 0.35 as under current law) but less than or equal to 0.895 (rather than 0.90 as under current law), the district's state share index equals a scaled amount between 50% and 90%;
- If the district's wealth index is greater than 0.895 (rather than 0.90 as under current law) but less than 1.575 (rather than 1.8 as under current law), then the district's state share index equals a scaled amount between 5% and 50%;
- If the district's wealth index is greater than or equal to 1.575 (rather than 1.8 as under current law), then the district's state share index equals 5%.

The "state share index" is an index that depends on valuation and, for districts with relatively low median income, on median income. Continuing law adjusts the index for school districts where 30% or more of the potential taxable valuation is exempted from taxation, which reduces the qualifying districts' three-year property valuation in the formula, and, thereby, increases their calculated core funding. It also adjusts the "valuation index" used in the index calculation for districts that satisfy specified criteria related to total taxable value of public utility personal property and total taxable value of power plants.

The "state share index" is a factor in the calculation of the opportunity grant, special education funds, threshold cost for special education students, kindergarten through third grade literacy funds, limited English proficiency funds, career-technical education and associated services funds, the graduation bonus, the third-grade reading bonus, and transportation funds for city, local, and exempted village school districts.

## **Direct funding for community and STEM schools and state scholarships**

(R.C. 3310.41, 3313.979, 3314.08, 3317.02, 3317.022, 3317.03; repealed R.C. 3310.08, 3310.09, 3310.55, 3310.56, 3314.085, 3326.33, and 3326.41; conforming changes in numerous R.C. sections)

The bill provides for the direct payment of state funding to community schools and STEM schools and for state scholarship programs. Funding for these schools and programs is paid to "funding units" and then distributed to each school or on behalf of each scholarship recipient in an amount that equals what that school or scholarship recipient would otherwise receive if funding were calculated for the school or scholarship recipient on an individual basis.

The funding units established by the bill are the "community and STEM school funding unit," the "Educational Choice Scholarship funding unit," the "Pilot Project Scholarship funding unit," the "Autism Scholarship funding unit," and the "Jon Peterson Special Needs Scholarship funding unit."

This direct funding concept differs from current law under which community and STEM school students are included in the student count of their resident school districts, and the funds attributable to those students are deducted from their resident districts and then paid to the

schools in which they are enrolled. Similarly, current law requires the deduction of the amounts of state scholarships from students' resident districts.

## **Career awareness and exploration funds**

(R.C. 3317.022(A)(10), 3317.023, 3317.16(A)(7), and 3317.162)

The bill requires the Department to pay career awareness and exploration funds to school districts, community schools, and STEM schools in an amount equal to a district's "enrolled ADM" times \$2.50, for FY 2022, \$5, for FY 2023, \$7.50, for FY 2024, or \$10, for FY 2025 and each fiscal year thereafter. These funds must be transferred to the lead district of the career-technical planning district (CTPD) to which the district belongs. The CTPD must then disperse the funds to school districts and schools receiving services from the CTPD that provide plans for the use of those funds that are consistent with the CTPD's plan that is on file with the Department of Education.

Career awareness and exploration funds must be spent only for the following purposes:

- Delivery of career awareness programs to students enrolled in grades kindergarten through 12;
- Provision of a common, consistent curriculum to students throughout their primary and secondary education;
- Assistance to teachers in providing a career development curriculum to students;
- Developments of a career development plan for each student that stays with that student for the duration of the student's primary and secondary education; and
- Provision of opportunities for students to engage in activities, such as career fairs, hands-on experiences, and job shadowing, across all career pathways at each grade level.

The bill permits the Department to deny payment of these funds to any district that the Department determines is using the funds for other purposes.

## **Career-technical education lab program supplement**

(R.C. 3317.022(A)(11) and 3317.16(A)(8))

The bill requires the Department to pay a career-technical education lab program supplement to school districts, community schools, and STEM schools. This supplement is equal to the product of the following:

1. \$225, for FY 2022, or \$1,050, for FY 2023 and each fiscal year thereafter; and
2. The full-time equivalency of the district's or school's career-technical education students that is equivalent to the amount of time those students participate in lab programs, as determined by the Department.

This supplement must be spent in the same manner as other funds received for career-technical education under current law.

## Gap aid

(R.C. 3317.0222)

The bill requires the Department to pay gap aid to each city, local, and exempted village school district for each fiscal year in an amount equal to the difference between (1) the district's local share of foundation funding and transportation funding and (2) the district's "local tax revenue."

For this purpose, the bill defines a district's "local tax revenue" as the sum of the following:

- The district's taxes charged and payable that are not attributable to a joint vocational school district; and
- The district's tax distribution for the preceding fiscal year under any school district income tax levied by the district, to the extent the revenue from the income tax is allocated or apportioned to current expenses.

## Minimum state share opportunity grant supplement

(R.C. 3317.022(A)(20))

The bill requires the Department to pay a minimum state share opportunity grant supplement to each city, local, or exempted village school district for each fiscal year that is calculated as follows:

- Determine the product of the formula amount, the district's "enrolled ADM," and 7.5%;
- Subtract from that amount the district's opportunity grant (which is the base payment a district receives for all of its students).

If the amount calculated for this supplement is less than zero, the district's supplement equals zero.

## Transportation funding

(R.C. 3317.0212)

The bill specifies that a city, local, or exempted village school district's "qualifying ridership" is determined during the first full week of October "that the district is in session with students in attendance." This number is used for calculating a district's base transportation funding.

## Temporary payment mechanism for FY 2022 and FY 2023

(Sections 265.215, 265.220, 265.223, 265.225, 265.226, 265.227, and 265.229; conforming changes in Section 265.237)

The bill establishes a temporary payment mechanism for school districts, community and STEM schools, and state scholarship programs for FY 2022 and FY 2023, rather than the payment mechanism prescribed in permanent law as amended by the bill as described above. This temporary mechanism functions in the manner described below.

## **Funding for city, local, and exempted village school districts**

For FY 2022 and FY 2023, the bill requires the Department to pay each city, local, and exempted village school district an amount of funding equal to the sum of the following, subject to the funding adjustment for career-technical education described below:

1. For FY 2022, both of the following:

a. The sum of (i) 50% of the district's "recalculated foundation funding for FY 2019" as further adjusted by the bill's cap and guarantee provisions and (ii) 50% of the district's "recalculated foundation funding for FY 2021";

b. The sum of (i) 50% of the district's "recalculated transportation funding for FY 2019" as further adjusted by the bill's cap and guarantee provisions and (ii) 50% of the district's "recalculated transportation funding for FY 2021."

2. For FY 2023, both of the following:

a. 100% of the district's "recalculated foundation funding for FY 2019" as further adjusted by the bill's cap and guarantee provisions;

b. 100% of the district's "recalculated transportation funding for FY 2019."

3. For FY 2022 and FY 2023, career awareness and exploration funds calculated in accordance with the bill's permanent law formula for this payment but using the district's "enrolled ADM" for FY 2020 (its student count for FY 2020 determined in accordance with the bill's direct funding mechanism);

4. For FY 2022 and FY 2023, a career-technical education lab program supplement calculated in accordance with the bill's permanent law formula for this payment but using the district's "enrolled ADM" for FY 2020 (its student count for FY 2020 determined in accordance with the bill's direct funding mechanism).

### **Recalculated foundation and transportation funding for FY 2019**

The bill requires the Department to calculate each district's "recalculated foundation funding for FY 2019" and "recalculated transportation funding for FY 2019" as follows:

1. Recalculate its state share index for FY 2019 in accordance with the bill's changes to the permanent law calculation of the state share index, including using the district's "enrolled ADM" for FY 2019 (its student count for FY 2019 determines in accordance with the bill's direct funding mechanism);

2. Recalculate the district's foundation funding or transportation funding payments for FY 2019 using the district's "enrolled ADM" for FY 2019, its recalculated state share index for FY 2019, and the base cost per pupil calculated under the bill's permanent law provisions (\$6,110); and

3. In the case of a district's "recalculated foundation funding for FY 2019," add the district's minimum state share opportunity grant supplement calculated in accordance with the bill's permanent law provisions using a district's "enrolled ADM" for FY 2019.

## **Recalculated foundation and transportation funding for FY 2021**

The bill requires the Department to calculate each district's "recalculated foundation funding for FY 2021" by determining the amount of foundation funding calculated for the district for FY 2021, prior to any funding reductions ordered by the Governor, and subtracting from that amount any payments deducted from the district and paid to a community or STEM school (other than transportation payments to community schools) or deducted from the district for a state scholarship program for FY 2021.

The bill also requires the Department to calculate each district's "recalculated transportation funding for FY 2021" by determining the amount of transportation funding calculated for the district for FY 2019 prior to any funding reductions ordered by the Governor and subtracting from that amount any transportation payments deducted from the district and paid to a community school for FY 2021.

## **Guarantee and cap**

The bill guarantees that each district's sum of "recalculated foundation funding for FY 2019" and "recalculated transportation funding for FY 2019" (excluding its recalculated amount for career-technical education and for associated services) is at least equal to the state aid the district received for FY 2019 (minus the district's career-technical education and associated services funding and the amount that was deducted for community and STEM school payments and state scholarships for FY 2019), except as follows:

- If the district's percentage change in total ADM (adjusted for the bill's new student counting mechanism) between FY 2016 and FY 2018 is a decrease of 10% or more, it is guaranteed, for each fiscal year of the biennium, 95% of its state aid for FY 2019 (after subtracting the amount that was deducted for community and STEM school payments and state scholarships for FY 2019);
- If the district's percentage change in total ADM (adjusted for the bill's new student counting mechanism) between FY 2016 and FY 2018 is a decrease between 5% and 10%, it is guaranteed, for each fiscal year of the biennium, a scaled amount between 95% and 100% of its state aid for FY 2019 (after subtracting the amount that was deducted for community and STEM school payments and state scholarships for FY 2019).

The bill also separately guarantees that a district receives at least 100% of its career-technical education and associated services funding for FY 2019, minus the amount that was deducted for community and STEM school payments for career-technical education funding for FY 2019.

Additionally, the bill adjusts a district's sum of "recalculated foundation funding for FY 2019" and "recalculated transportation funding for FY 2019" (excluding its recalculated amount for career-technical education, associated services, the third-grade reading bonus, and the graduation bonus) by imposing a cap that restricts the increase in this funding over the funding the district received for FY 2019 (minus the district's funding for career-technical education, associated services, the third-grade reading bonus, and the graduation bonus, and the

amount that was deducted for community and STEM school payments and state scholarship for FY 2019), as follows:

| Criteria that a district must satisfy   | Cap                             |
|---|---------------------------------|
| The district's total ADM for FY 2019 calculated under the bill's new student counting mechanism is less than 90% of the district's total ADM as it was calculated for FY 2019                                       | An increase of no more than 15% |
| The district's total ADM for FY 2020 calculated under the bill's new student counting mechanism is at least 102% of the district's total ADM for FY 2019 calculated under the bill's new student counting mechanism | An increase of no more than 15% |
| All other districts   | An increase of no more than 10% |

The bill also modifies the cap for an “eligible school district” (a district which is eligible for an adjustment to its state share index due to satisfying specified criteria related to total taxable value of public utility personal property and total taxable value of power plants) so that the district receives the greater of the following:

- The amount calculated for the district under the cap described above; or
- The lesser of (1) the district's aggregate core foundation funding and transportation funding for the current fiscal year or (2) the district's previous year's state aid plus the district's taxes charged and payable on all real and public utility property for tax year 2016 minus the district's taxes charged and payable on all real and public utility property for tax year 2017.

Finally, the bill requires the Department to adjust, as necessary, the guarantee and cap bases of school districts that participate in the establishment of a joint vocational school district in FY 2022 or FY 2023.

### **Funding for joint vocational school districts**

For FY 2022 and FY 2023, the bill requires the Department to pay each joint vocational school district (JVSD) an amount of funding equal to the sum of the following, subject to the funding adjustment for career-technical education described below:

1. For FY 2022, the sum of (a) 50% of the district's "recalculated foundation funding for FY 2019" as further adjusted by the bill's guarantee provisions and (b) 50% of the district's "recalculated foundation funding for FY 2021";

2. For FY 2023, 100% of the district's "recalculated foundation funding for FY 2019" as further adjusted by the bill's guarantee provisions;

3. For FY 2022 and FY 2023, career awareness and exploration funds calculated in accordance with the bill's permanent law formula for this payment but using the district's "formula ADM" for FY 2020;

4. For FY 2022 and FY 2023, a career-technical education lab program supplement calculated in accordance with the bill's permanent law formula for this payment but using the district's career-technical education student count for FY 2020 determined in accordance with the bill's direct funding mechanism.

### **Recalculated foundation funding for FY 2019**

The bill requires the Department to calculate each JVSD's "recalculated foundation funding for FY 2019" as follows:

1. Recalculate its state share percentage for FY 2019 in accordance with the bill's changes to the permanent law, with the formula amount used in that calculation equal to the base cost per pupil calculated under the bill's permanent law provisions (\$6,110);

2. Recalculate the district's foundation funding payments for FY 2019 using the district's recalculated state share percentage for FY 2019 and the base cost per pupil calculated under the bill's permanent law provisions (\$6,110).

### **Recalculated foundation funding for FY 2021**

The bill requires the Department to calculate each JVSD's "recalculated foundation funding for FY 2021" by determining the amount of foundation funding calculated for the district for FY 2021 prior to any funding reductions ordered by the Governor.

### **Guarantee**

The bill guarantees that each JVSD's "recalculated foundation funding for FY 2019" (excluding its amount of recalculated foundation funding for career-technical education and for associated services) is at least equal to the state aid it received for FY 2019 (minus its career-technical education and associated services funding) in substantially the same manner as it does for city, local, and exempted village school districts. However, it does not separately guarantee a JVSD's career-technical and associated services funding.

The bill also requires the Department to adjust, as necessary, the guarantee base of a JVSD that begins receiving payments for FY 2022 or FY 2023 but does not receive payments for the prior fiscal year in an amount equal to the absolute value of the sum of the associated adjustments for the participant school districts.

## **Funding adjustment for career-technical education**

For FY 2022 and FY 2023, the bill requires the Department to adjust the amounts paid to certain school districts to account for the decrease in career-technical education students served by a city, local, or exempted village school district and the corresponding increase in students served by a JVSD.

The bill provides that a city, local, or exempted village school district qualifies for this adjustment if it provided a career-technical education program in FY 2019 on its own but, beginning in FY 2020, was a member of a JVSD that provided the program instead.

The bill also specifies that the adjustment equals the aggregate amount of career-technical education funds and associated services funds paid to the city, local, or exempted village school district for FY 2019 (after subtracting the amount that was deducted for community and STEM school payments for FY 2019).

## **Funding for community and STEM schools and state scholarship programs**

For FY 2022 and FY 2023, the bill requires the direct payment of state funding to community and STEM schools and for state scholarship programs in accordance with the bill's changes to permanent law, except that the "formula amount," when used to calculate community and STEM school payments and scholarships for the Jon Peterson Special Needs Scholarship Program, equals \$6,065 for FY 2022 and \$6,110 for FY 2023.

## **Additional payments for FY 2022 and FY 2023**

### **Gap aid**

(Section 265.231)

For FY 2022 and FY 2023, the bill requires the Department to pay each city, local, and exempted village school district an amount of gap aid calculated in accordance with the bill's permanent law formula using all of the following:

1. The district's recalculated state share index for FY 2019 (which is determined when recalculating the district's foundation funding for FY 2019);
2. The district's local share of its "recalculated foundation funding for FY 2019" and "recalculated transportation funding for FY 2019";
3. The district's taxes charged and payable that are not attributable to a JVSD for tax year 2017; and
4. The district's tax distribution for FY 2018 under any school district income tax levied by the district to the extent the revenue from the income tax is allocated or apportioned to current expenses.



## **Formula transition supplement**

(Section 265.233)

### **City, local, and exempted village school districts**

For FY 2022 and FY 2023, the bill requires the Department of Education to pay a formula transition supplement to each city, local, and exempted village school district calculated as follows:

- Determine the district's funding base for FY 2021, which equals (1) the district's FY 2021 foundation funding and transportation funding after any state budget reductions ordered by the Governor, after adjusting for transfers for (a) students attending community and STEM schools and (b) students receiving state scholarships, (2) the district's FY 2021 enrollment growth supplement, and (3) the district's student wellness and success funds and enhancement funds for FY 2021;
- Subtract from that amount the sum of the district's foundation funding, transportation funding, gap aid, and student wellness and success funds and enhancement funds for the fiscal year for which the supplement is calculated to determine the district's formula transition supplement (if this difference is less than zero, the district's supplement is zero).

### **Joint vocational school districts**

For FY 2022 and FY 2023, the bill requires the Department to pay a formula transition supplement to JVSDs calculated as follows:

- Determine the district's funding base for FY 2021, which equals (1) the district's FY 2021 foundation funding and (2) the district's student wellness and success funds and enhancement funds for FY 2021;
- Subtract from that amount the sum of the district's foundation funding and student wellness and success funds and enhancement funds for the fiscal year for which the supplement is calculated to determine the district's formula transition supplement (if this difference is less than zero, the district's supplement is zero).

### **Community and STEM schools**

For FY 2022 and FY 2023, the bill requires the Department to pay a formula transition supplement to each community school and STEM school calculated as follows:

- Determine the school's funding base for FY 2021, which equals (1) the school's FY 2021 funding after any state budget reductions ordered by the Governor, (2) the school's student wellness and success funds and enhancement funds for FY 2021, and (3) in the case of a community school, its transportation payments for FY 2021;
- Divide the school's funding base for FY 2021 by the number of students enrolled in the school for FY 2021 to determine the school's per-pupil funding for FY 2021;
- Determine the sum of the school's foundation funding, student wellness and success funds and enhancement funds, and, in the case of a community school, transportation

funding for the fiscal year for which the supplement is calculated, and divide that amount by the number of students enrolled in the school for the fiscal year for which the supplement is calculated;

- Subtract that amount from the school's per-pupil funding for FY 2021, then multiply that difference by the number of students enrolled in the school for the fiscal year for which the supplement is calculated to determine the school's formula transition supplement (if this amount is less than zero, the school's supplement equals zero).

## **Cap relief payments**

(Section 265.235)

The bill requires the Department to make two cap relief payments for FY 2022 and FY 2023, as outlined below. The sum of these payments cannot exceed the portion of the district's "recalculated foundation funding for FY 2019" and "recalculated transportation funding for FY 2019" that is subject to the cap that the district is not paid after application of the cap under the bill's provisions.

### **First payment**

For the first payment, a district is eligible if it satisfies both of the following conditions:

- Its "recalculated foundation funding for FY 2019" and "recalculated transportation funding for FY 2019" is subject to the cap; and
- Its total ADM for FY 2020 calculated under the bill's new student counting mechanism is greater than 100% of its total ADM for FY 2019 calculated under the bill's new student counting mechanism.

The payment equals the product of (1) \$225, for FY 2022, or \$425, for FY 2023, (2) the district's "enrolled ADM" for FY 2019, and (3) the percent that represents the portion of the district's "recalculated foundation funding for FY 2019" and "recalculated transportation funding for FY 2019" that is subject to the cap that the district is not paid after application of the cap under the bill's provisions.

### **Second payment**

For the second payment, a district is eligible if it satisfies all of the following conditions:

- Its "recalculated foundation funding for FY 2019 and "recalculated transportation funding for FY 2019" is subject to the cap;
- The portion of its recalculated foundation funding for FY 2019 and recalculated transportation funding for FY 2019 that is subject to the cap that it is not paid after application of the cap is greater than or equal to 50% of the sum of its recalculated foundation funding for FY 2019 and recalculated transportation funding for FY 2019 that is subject to the cap; and
- Its recalculated state share index for FY 2019 is greater than or equal to 50%.

The payment equals the product of (1) \$225, for FY 2022, or \$425, for FY 2023, and (2) the district's enrolled ADM for FY 2019.

## Student wellness and success funding

(R.C. 3317.0219, 3317.0220, 3317.0221, 3317.163, and 3317.26; repealed R.C. 3314.088 and 3326.42; Section 265.323)

The bill requires the Department to make payments for student wellness and success to all school districts, community schools, and STEM schools for FY 2022 and FY 2023 in a manner similar to how they were paid for FY 2020 and FY 2021. These funds must be spent for specified purposes that are outlined below. The Department must pay half of these funds by October 31 of the fiscal year for which the payment is calculated and the other half by February 28. The Department is prohibited from later reconciling or adjusting the payment.

For purposes of calculating a district's or school's student wellness and success funds and enhancement funds for both FY 2022 and FY 2023, the Department must use the number of students enrolled in the district or school for FY 2022. In other words, the Department must use the current year's student count for FY 2022 payments and the preceding year's student count for FY 2023 payments. For the previous biennium, the number of students enrolled in a district for the preceding fiscal year was used for both the FY 2020 and the FY 2021 payments.

### Student wellness and success funds

#### City, local, and exempted village school districts

(R.C. 3317.0219; Section 265.323(A)(2))

The Department must pay student wellness and success funds to city, local, and exempted village school districts on a per pupil basis. The following table lists the ranges of the per pupil payments, and the minimum aggregate amounts for a district, for the current biennium and the bill's amounts for the next biennium:

| Student Wellness and Success Funds –<br>City, Local, and Exempted Village School Districts |             |                           |                               |
|--|-------------|---------------------------|-------------------------------|
|  | Fiscal Year | Per Pupil<br>Amount Range | Minimum<br>Aggregate Payment* |
| Currently  | FY 2020     | \$20 to \$250             | \$25,000                      |
|  | FY 2021     | \$30 to \$360             | \$36,000                      |
| The Bill   | FY 2022     | \$25 to \$304             | \$30,404                      |
|  | FY 2023     | \$20 to \$242             | \$24,149                      |

\*Minimum payment does not apply if the district has fewer than five enrolled students.

To determine each district's per pupil amount, the Department groups the districts into quintiles each fiscal year based on the percentages of children with family incomes below 185% of the federal poverty guidelines.<sup>28</sup> The bill changes the data source for the grouping to the five-year estimates published by the U.S. Census Bureau in the 2015-2019 American Community Survey, rather than the most recently published survey as under current law. Districts in the highest quintile are paid the highest per-pupil amount. Those in the other four quintiles are paid smaller per pupil amounts based on a sliding scale calculation.

### **Joint vocational school districts and community and STEM schools**

(R.C. 3317.0220, 3317.0221, and 3317.163; Section 265.323(A)(2))

The Department must pay student wellness and success funds, on a full-time equivalency basis, to joint vocational school districts, community schools that are not internet- or computer-based community schools (e-schools), and STEM schools. This payment is calculated by determining, for each student enrolled in the district or school, the per-pupil amount of student wellness and success funds paid to the student's district of residence and multiplying that amount by the student's full-time equivalency. The bill specifies that each district or school must receive a total minimum aggregate payment of \$30,404 for FY 2022, and \$24,149 for FY 2023.

E-schools do not receive a per-pupil payment. Instead, the bill requires the Department to pay each e-school \$30,404 for FY 2022, and \$24,149 for FY 2023.

In the previous biennium, the minimum payment amounts for joint vocational school districts, community schools that are not e-schools, and STEM schools, as well as the payment amount for e-schools, equaled \$25,000 for FY 2020 and \$36,000 for FY 2021.

### **Student wellness and success enhancement funds**

#### **City, local, and exempted village school districts**

(R.C. 3317.0219; Section 265.323(A)(2))

The Department must pay student wellness and success enhancement funds to city, local, and exempted village school districts that received supplemental targeted assistance funding for FY 2019. Under the bill, this payment equals the product of:

- \$100, for FY 2022, and \$125, for FY 2023 (this multiplier equaled \$50 for FY 2020 and \$75 for FY 2021); times
- The square of the quotient of the district's percentage of resident children with family incomes below 185% of the federal poverty guidelines divided by 36%; times
- The district's total student count.

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<sup>28</sup> The 2021 federal poverty guideline for a family of four is \$26,500. 185% of that is \$49,025.

## **Joint vocational school districts and community and STEM schools**

(R.C. 3317.0220, 3317.0221, and 3317.163; Section 265.323(A)(2))

The enhancement funds for joint vocational school districts, community schools that are not e-schools, and STEM schools are calculated by determining, for each student enrolled in the district or school, the per-pupil amount of student wellness and success enhancement funds paid to each student's district of residence (provided that district is eligible for enhancement funding) and multiplying that amount by the student's full-time equivalency.

### **Distribution of remaining appropriated amounts**

(Section 265.323(A)(4))

For FY 2022 and FY 2023, the bill requires the Department, after all student wellness and success payments for that fiscal year have been made to public schools, to distribute any amounts remaining in appropriation item 200604, Foundation Funding – All Students, through a methodology determined by the Department in consultation with the Office of Budget and Management. This payment must be made by February 28 of that fiscal year.

### **Spending requirements**

(R.C. 3317.26; Section 265.323(A)(3))

The bill makes several changes to the spending requirements for student wellness and success funds and enhancement funds that are explained in greater detail below. Districts and schools must satisfy these requirements for all funds spent after the bill's changes take effect, including any student wellness and success funds and enhancement funds paid for FY 2020 and FY 2021 that are spent after that date.

#### **Initiatives**

Districts and schools must spend student wellness and success funds and enhancement funds for certain initiatives listed in current law. The bill changes the list of initiatives as follows:

- Specifies that mental health services and physical health services, which are already part of the list, may include telehealth services;
- Adds culturally appropriate, evidence-based or evidence-informed prevention education, including youth-led programming and social and emotional learning curricula to promote mental health and prevent substance abuse and suicide;
- Adds programs that connect students to community resources, including City Connects, Communities in Schools, and other similar programs (current law permits funds to be used for City Connects programming but does not mention other types of community programs); and
- Removes provisions that permit funds to be used for mentoring programs, professional development regarding the provision of trauma-informed care, and professional development regarding cultural competencies.

## **Community partners**

The bill maintains the existing requirement that districts and schools spend student wellness and success funding and enhancement funding in coordination with one community partner, but it specifies that a district or school may coordinate with a community-based mental health treatment or prevention provider, rather than community-based mental health *treatment* provider as under current law.

## **Formula amount for certain FY 2022 and FY 2023 payments**

(Section 265.215)

The bill specifies that, for payments for open enrollment, children with disabilities who are served by county boards of developmental disabilities, and the College Credit Plus program, the “formula amount” is \$6,065 for FY 2022 and \$6,110 for FY 2023.

## **Special education cost supplement pool**

(R.C. 3314.08, 3317.0214, 3317.0215, 3317.16, and 3326.34; Section 265.215)

The bill sets aside 10% of a district’s, community school’s, or STEM school’s aggregate special education funds as a “special education cost supplement pool” for threshold costs for special education students. (Existing law refers to these costs as “threshold catastrophic costs.”)

## **Disadvantaged pupil impact aid – terminology**

(R.C. 3317.022, 3317.16, and 3317.25)

The bill changes the term “economically disadvantaged funds” to “disadvantaged pupil impact aid” throughout the school financing provisions in continuing law.

## **Payment for districts with decreases in utility TPP value**

(Section 265.237)

The act requires the Department to make a payment, for FY 2022 and FY 2023, to each city, local, exempted village, or joint vocational school district with more than a 10% decrease in the taxable value of utility tangible personal property (TPP) that has at least one power plant located within its territory. To qualify for the FY 2022 payment, a district must have experienced this decrease between tax years 2017 and 2021 or tax years 2020 and 2021. To qualify for the FY 2023 payment, a district must have experienced this decrease between tax years 2017 and 2022 or tax years 2021 and 2022.

## **Eligibility determination**

The Tax Commissioner must determine which districts are eligible for this payment no later than May 15, 2022 (for the FY 2022 payment) or May 15, 2023 (for the FY 2023 payment). For each eligible district, the Commissioner must certify the following information to the Department:

1. If the district is eligible for the FY 2022 payment, its total taxable value for tax year 2021 and the change in taxes charged and payable on the district’s total taxable value for tax years 2017 and 2021; and

2. If the district is eligible for the FY 2023 payment, its total taxable value for tax year 2022 and the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2022; and

3. If the district is eligible for either payment, the taxable value of the utility TPP decrease and the change in taxes charged and payable on the change in taxable value.

### **Payment amount**

The act requires the Department, for purposes of computing the payment, to replace the three-year average valuations used in computing a district's "recalculated foundation funding for FY 2019" and, if applicable, "recalculated transportation funding for FY 2019" with the district's total taxable value for tax year 2021 (for the FY 2022 payment) or tax year 2022 (for the FY 2023 payment). It then must recompute the district's "recalculated foundation funding for FY 2019" and, if applicable, "recalculated transportation funding for FY 2019" without applying any funding limitations enacted by the General Assembly.

The amount of a district's payment is equal to the *greater* of 1 or 2 as described below:

1. The lesser of either:

a. The positive difference between the district's recalculated foundation funding and, if applicable, recalculated transportation funding for FY 2019 prior to the recomputation and the district's recomputed recalculated foundation funding and, if applicable, recalculated transportation funding for FY 2019; or

b. The absolute value of the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2021 (for the FY 2022 payment) or for tax years 2017 and 2022 (for the FY 2023 payment).

2. 0.50 times the absolute value of the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2021 (for the FY 2022 payment) or for tax years 2017 and 2022 (for the FY 2023 payment).

### **Payment deadline**

The Department must make FY 2022 payments between June 1 and June 30, 2022, and must make FY 2023 payments between June 1 and June 30, 2023.

### **Payment for districts with nuclear plants in territory – repealed**

(R.C. 3317.029, repealed)

The bill repeals the requirement that the Department, for each of FYs 2019, 2020, and 2021, make an additional payment to a city, local, or exempted village school district with (1) a nuclear power plant in its territory and (2) a total taxable value of public utility personal property for tax year 2017 that is at least 50% less than that value for tax year 2016.

## **Recommendations for compensating valuation losses – repealed**

(R.C. 3317.27, repealed)

The bill eliminates the requirement that the Department annually recommend to the General Assembly a structure to compensate each city, local, exempted village, and joint vocational school district that experiences at least a 50% decrease in public utility personal property valuation from one year to the next for a percentage of the effect that decrease has on the district's state funding.

## **Auxiliary Services funds – direct payment**

(R.C. 3317.024; Section 265.170)

Auxiliary Services funds are used to purchase goods and services for students who attend chartered nonpublic schools, such as textbooks, digital texts, workbooks, instructional equipment, library materials, or tutoring and other special services.<sup>29</sup> The bill permits all chartered nonpublic schools, instead of only nonreligious affiliated schools as under current law, to choose whether to (1) receive Auxiliary Services funds directly from the Department or (2) receive those funds through the school districts in which they are located. For any year in which a religious chartered nonpublic school chooses direct payment, the bill requires submission of an affidavit to the Department certifying that funds will be spent in a lawful manner and for a permissible purpose under continuing law. Currently, a chartered nonpublic school that is not religiously affiliated must notify the Department by April 1 of each odd-numbered year to receive Auxiliary Services funding directly for the biennium that begins the following July 1. However, the bill temporarily permits any chartered nonpublic school (regardless of religious affiliation) to choose direct payment for the 2021-2022 and 2022-2023 school years by notifying the Department by July 31, 2021, rather than April 1.

### **Designation of organization to receive funds on behalf of a school**

The bill also permits a chartered nonpublic school that elects to receive Auxiliary Services funds to designate an organization that oversees one or more nonpublic schools to receive and distribute those funds on its behalf. A school that designates an organization to receive funds on its behalf must notify the Department of the organization's name by April 1 of each odd-numbered year. However, for the 2021-2022 and 2022-2023 school years, a chartered nonpublic school that elects to designate an organization to receive those funds on its behalf must do so by July 31, 2021.

The bill also permits a school to rescind its decision to designate an organization to receive auxiliary services funds but may only do so in each odd-numbered year by notifying the Department of that rescission, also by April 1.

Organizations designated to manage a school's auxiliary services funds may charge the school up to 4% of the total amount of payments for auxiliary services that the school receives from the state, which the school may pay from the school's Auxiliary Services funds. An

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<sup>29</sup> See R.C. 3317.06 and 3317.062.



organization designated to receive funds of multiple chartered nonpublic schools may use one or more accounts to manage the funds but must ensure that each school receives the funds to which it is entitled.

The bill requires each chartered nonpublic school that elects to receive funds directly or an organization designated to receive and disburse Auxiliary Services funds on behalf of a school to maintain records of receipt and expenditures of the funds in a manner that conforms with generally accepted accounting principles.

Finally, the Department must create and disseminate a standardized reporting form that may be used to record receipt and expenditure of Auxiliary Services funds but is prohibited from requiring use of the form.

### **Use of directly paid Auxiliary Services funds**

(R.C. 3317.062)

The bill clarifies that directly paid Auxiliary Services funds may be used to acquire good and services under contract with school districts, educational service centers, the Department of Health, city or general health districts, or private entities.

It also permits chartered nonpublic schools to sell, donate, trade, or otherwise dispose of materials and equipment, including textbooks, purchased with Auxiliary Services funds that are no longer needed, obsolete, or unfit for use or that have been in the school's possession at least four years. But the school must return the proceeds from a sale to the state.

### **Auxiliary Services Reimbursement Fund**

(R.C. 3317.06, 3317.062, and 3317.064; Section 265.175)

The bill permits the Department to deposit into the Auxiliary Services Reimbursement Fund, rather than the Auxiliary Services Personnel Unemployment Compensation Fund as in current law, any unexpended or returned Auxiliary Services balances appropriated by the General Assembly. Further, the Department may deposit into the fund any directly paid Auxiliary Services funds that are returned to the state.

Under the bill, a district or school must remit to the Department any Auxiliary Services funds or interest on them that are not required to cover expenses within 90 days after the end of each biennium rather than 30 days as in current law. If such a remittal leaves a district or school with insufficient funds to cover lawful expenses, the Department must issue a refund from the Auxiliary Services Reimbursement Fund, rather than the Auxiliary Services Personnel Unemployment Compensation Fund as in current law.

The bill also eliminates a statutory requirement that, by January 30 of each odd-numbered year, the Director of Job and Family Services and the Superintendent of Public Instruction determine an amount of excess funds in the Auxiliary Services Personnel Unemployment Compensation Fund and certify that amount to the Director of Budget and Management for transfer to the Auxiliary Services Reimbursement Fund. However, it does not

affect the Auxiliary Services Personnel Unemployment Compensation Fund established under continuing law.<sup>30</sup>

Finally, the bill permits educational service centers (in addition to school districts as under current law) to apply to the Department for moneys from the Auxiliary Services Reimbursement Fund for payment of incentives for early retirement and severance for personnel assigned to provide services at chartered nonpublic schools.

## **Chartered nonpublic school administrative cost reimbursement**

(R.C. 3317.063; Section 265.180)

The bill removes the \$360 maximum annual per-pupil amount for administrative cost reimbursement for chartered nonpublic schools specified in current codified law. Instead, the bill prohibits cost reimbursement payments from exceeding the maximum annual per-pupil amount specified by the General Assembly for each particular school year. The bill further prescribes in uncodified law, for each of FY 2022 and FY 2023, a maximum annual per-pupil maximum amount of \$475.

Continuing law requires the Superintendent of Public Instruction to annually reimburse each chartered nonpublic school for the actual mandated service, administrative, and clerical costs incurred during the preceding school year in preparing, maintaining, and filing reports, forms, and records and providing such other administrative and clerical services that are not an integral part of the teaching process.

## **II. Graduation requirements and assessments**

### **High school graduation requirements**

(R.C. 3313.61, 3313.618, 3313.619, 3313.6113, and 3313.6114; conforming in R.C. 3301.0714)

The bill makes a series of changes to the high school graduations requirements that a student who entered ninth grade for the first time on or after July 1, 2019 (the Classes of 2023 and on) generally must meet to qualify for a high school diploma.

#### **Background**

In addition to meeting the state's minimum curriculum requirements, continuing law generally requires these students to demonstrate competency in math and English language arts and earn at least two diploma seals to qualify for a high school diploma.

Continuing law also permits students who entered ninth grade for the first time on or after July 1, 2014, but prior to July 1, 2019, (the Classes of 2018 through 2022) to meet those requirements to qualify for a high school diploma.

A student must demonstrate competency by attaining a "competency score" on each of the Algebra I and English Language Arts II end-of-course exams. However, if a student does not attain a competency score on one or both of those exams after two administrations of them, the

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<sup>30</sup> R.C. 4141.47, not in the bill.

student may use an alternative demonstration of competency. There are several alternative demonstrations of competency: (1) earning credit through the College Credit Plus Program in the failed subject area, (2) providing evidence of military enlistment, or (3) completing one “foundational” option and either another “foundational” option or a “supporting” option.

Continuing law prescribes a system of 12 diploma seals for which a student may qualify. There are two categories of diploma seals: state-defined diploma seals and locally defined diploma seals. Both types of diploma seals have requirements prescribed in statute, but a state actor, usually the Department, is often involved in implementing the requirements for state-defined seals, while the requirements for locally defined seals are solely implemented by the student’s school. There are nine state-defined seals and three locally defined seals; a district or school must adopt guidelines for at least one locally defined seal. A student must earn at least two diploma seals, and at least one of them must be a state-defined seal.<sup>31</sup>

### **Industry-recognized credentials**

The bill requires the Superintendent of Public Instruction’s industry-recognized credentials and licenses committee to assign a point value for each credential and establish the total number of points that a student must earn to satisfy certain high school graduation criteria prescribed under continuing law. Specifically, the bill requires a student to earn the total number of points to qualify for an industry-recognized credential diploma seal or to use industry-recognized credentials as a “foundational” option when using an alternative demonstration of competency. Current law specifies only that a student must earn an industry-recognized credential for either of those purposes.

In addition, the bill requires the Department, when calculating the number of students who earned an industry-recognized credential in the state report card’s Prepared for Success Component, to include only students who earned a credential, or group of credentials, at least equal to that total number of points.

### **State-issued licenses**

The bill permits students who obtain a state-issued license for practice in a vocation that requires an exam to use that license to qualify for an industry-recognized credential diploma seal or as a “foundational” option when using an alternative demonstration of competency. Under current law, the only way a student may qualify for an industry-recognized credential diploma seal is by earning an industry-recognized credential.

### **Chartered nonpublic schools**

The bill changes how students enrolled in chartered nonpublic schools that do not administer the end-of-course exams meet the requirements to demonstrate competency and earn diploma seals. First, it specifies that students who are enrolled in chartered nonpublic schools that administer only the nationally standardized assessment (ACT or SAT) must be

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<sup>31</sup> For more information, the Department of Education’s guidance about graduation requirements is available [here](#).

considered to have demonstrated competency if they score a remediation-free score on that assessment. If so, they are exempt from having to take the Algebra I or English Language Arts II end-of-course exams.

Similarly, students enrolled in chartered nonpublic schools that administer only an alternative assessment approved by the Department are exempt from demonstrating competency or earning diploma seals. However, the bill clarifies that those students are exempt only from the assessment requirements.

In addition to those changes, the bill also generally requires chartered nonpublic schools to offer remedial support to any student who fails to attain a competency score on one or both of the Algebra I or English Language Arts II end-of-course exams. Public schools already have to offer such support.

### **Transfer students and graduation requirements**

The bill addresses how transfer students must comply with the state's high school graduation requirements in several ways. It addresses two types of transfer students:

1. Students who transfer between public and chartered nonpublic schools; and
2. Students who transfer into a public or chartered nonpublic school after, in the prior school year, being homeschooled, attending an out-of-state school, or attending a nonchartered, nonpublic school in Ohio.

#### **Students who transfer between public and chartered nonpublic schools**

The bill changes how public and chartered nonpublic schools must address any progress a transfer student made toward completing a locally defined diploma seal at the student's prior public or chartered nonpublic school. It requires a student's new school to recognize a locally defined diploma seal that the student earned at the prior school, regardless of whether the new school has adopted guidelines for that diploma seal. In addition, it requires each school to include in its adopted guidelines for a locally defined seal a method to give, to the extent feasible, a proportional amount of credit for any progress a student made toward earning that diploma seal at the student's prior school.

#### **Students who transfer into public and chartered nonpublic schools**

The bill generally requires transfer students who, in the prior school year, were homeschooled or attended an out-of-state or nonchartered, nonpublic school to generally comply with continuing law's requirements to demonstrate competency and earn diploma seals. However, the bill exempts such students who transfer in 12<sup>th</sup> grade and fail to attain a competency score on the Algebra I or English language arts II end-of-course exam from having to retake that exam prior to using an alternative demonstration of competency.

For diploma seals, the bill permits such students to use a final course grade equivalent to a "B" or higher in courses completed prior to enrolling in their new school to meet diploma seal requirements, as follows:

1. A student may use a grade from courses that correspond to the American history and American government end-of-course exams to earn a Citizenship diploma seal;

2. A student may use a grade from a course that corresponds to the science end-of-course exam to earn a science diploma seal; and

3. A student may use a grade in an “appropriate” course, as determined by the student’s new school, to earn the Technology diploma seal.

It also prohibits those students from using a grade for an American history, American government, or science course complete prior to enrolling in their new school if, subsequent to that enrollment, those students take a course associated with the American history, American government, or science end-of-course exam.

## **Other demonstration of competency changes**

### **Exemption for certain students with IEPs**

The bill exempts a student with a disability who has an individualized education program (IEP) from demonstrating competency in math and English language arts if the student’s IEP expressly exempts the student from that requirement and the student satisfies certain conditions regarding state testing.

Specifically, the student must take the Algebra I and English language arts II end-of-course exams or, if the student qualifies for alternate assessments, the alternate assessments in math and English language arts. If the student does not attain a competency score on an end-of-course exam or a score established by the State Board of Education on the alternate assessment, the student must be offered and receive remedial support from the student’s district or school and retake the exam or assessment. If the student still does not attain a competency score or an established score, the student is then exempt from the requirement to demonstrate competency.

### **ACT or SAT score as alternative demonstration of competency**

The bill specifies that a student may use a remediation-free score on a nationally standardized assessment (ACT or SAT) as an alternative demonstration of competency in a subject area in which a student did not attain a competency score. For English language arts, the student must be remediation-free on both English and reading on the assessment.

### **“Foundational” options**

The bill requires a student to earn *cumulative* score of proficient or higher on three or more state technical assessments in order to use those assessments as a “foundational” option when using alternative demonstrations of competency. Under current law, a student must earn a score of proficient or higher on three state technical assessments.

In addition, the bill clarifies that an apprenticeship used as a “foundational” option must be registered with the Ohio State Apprenticeship Council. It further clarifies that a pre-apprenticeship used as a “foundational” option must align with standards established by the Departments of Education and Job and Family Services, in consultation with the Governor’s Office of Workforce Transformation, under continuing law.

## Diploma seal requirement changes

### Citizenship diploma seal

The bill qualifies a student with significant cognitive disabilities for a Citizenship diploma seal if that student attains a score established by the State Board on the alternate assessment in social studies. (The bill also qualifies certain transfer students for the seal, see “**Students who transfer into public and chartered nonpublic schools,**” above.) Under current law, a student may only qualify for the Citizenship diploma seal by attaining:

1. A score of proficient or higher on both the American history and American government end-of-course exams;
2. A score equivalent to a proficient on appropriate advanced placement (AP) or international baccalaureate (IB) exams; or
3. A final course grade of a “B” or higher in appropriate CCP courses.

### Science diploma seal

Under the bill, a student with significant cognitive disabilities may earn a science diploma seal by attaining a score set by the State Board on the alternate assessment in science. (The bill also qualifies certain transfer students for the seal, see “**Students who transfer into public and chartered nonpublic schools,**” above.)

Specifically, a student may complete:

1. A chemistry, physics, or other physical science course;
2. An advanced biology or other life science course; or
3. An astronomy, physical geology, or other earth or space science course.

Under current law, a student may only qualify for the science diploma seal by attaining a score of proficient or higher on the science end-of-course exam, a score equivalent to a proficient on an appropriate AP or IB exam, or a final course grade of a “B” or higher in an appropriate CCP course.

## Nationally standardized college admission assessments

(R.C. 3301.0712)

Beginning with students who enter the 9<sup>th</sup> grade for the first time in the next school year that starts immediately after the provision’s effective date (i.e., the class of 2026), the bill permits the parent or guardian of a student to choose not to have a nationally standardized assessment administered to that student. In that case, the student’s school district, other public school, or chartered nonpublic school must not administer that assessment to that student.

A nationally standardized assessment, as jointly selected by the Superintendent of Public Instruction and the Chancellor of Higher Education under continuing law, is either the ACT or SAT. Under current law, each district or school must administer a nationally standardized assessment to all 11<sup>th</sup> grade students in the spring of each school year.

## **Dyslexia diagnostic assessments**

(R.C. 3301.079 and 3313.608)

Except for the kindergarten readiness assessment, the bill requires that the diagnostic assessments for grades K-3 in reading and comparable reading skill assessment tools for the Third Grade Reading Guarantee include items related to dyslexia identification. Those assessments and comparable tools must include a sufficient number of items to test phonological awareness, phonemic awareness, rapid naming skills, nonsense word fluency, and correspondence between sounds and letters to identify students who may need further measures to determine if the student has dyslexia.

The bill additionally requires the test vendors to share student performance data on comparable tools related to dyslexia as described above with each district and community, STEM, and chartered nonpublic school and the Department.

Finally, it specifies that any diagnostic assessment adopted by the State Board or any comparable reading tool approved by the Department, as described above, may be used to meet the current law requirement to administer a tier one dyslexia screening. Beginning in the 2022-2023 school year school districts and other public schools are required to administer annual dyslexia screenings.<sup>32</sup>

## **Kindergarten readiness and reading skills assessments**

(R.C. 3301.0715 and 3313.608)

The bill adjusts the period of time in which a school must administer the Kindergarten readiness assessment and the kindergarten reading skills assessment (for the Third Grade Reading Guarantee), from the first day of the school year (July 1) through November 1 as under current law, to July 1 through the 20<sup>th</sup> day of instruction of the school year.

### **III. Educator licensure**

#### **Teacher licensure disciplinary actions – human trafficking**

(R.C. 3319.31(C))

The bill adds trafficking in persons<sup>33</sup> to the list of specific criminal offenses for which the State Board of Education is required to revoke an individual's educator license or deny issuance or renewal of a license, without an administrative hearing.

#### **Release of information obtained during an investigation**

(R.C. 3319.319)

The bill permits the appointing or hiring officer of a school district or school located in Ohio or another state to request that the Department provide any report of misconduct that the

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<sup>32</sup> R.C. 3323.251, not in the bill.

<sup>33</sup> R.C. 2905.32, not in the bill.

Department has received regarding an individual whom the district or school is considering for employment. Upon receiving a request, the Department must provide the contents of any report of misconduct it has received to the requesting officer and must notify the officer that the information provided is confidential and may not be disseminated to another person or entity.

If the Department provides the contents of a report under this provision, the Department must document the information provided in the record of any investigation undertaken based on the report. The documentation must include a list of the information provided, the date the information was provided, and the name and contact information of the appointing or hiring officer to whom it was provided.

## **Assisting individuals in obtaining school employment**

(R.C. 3319.318, 3314.03, 3326.11, and 3328.24)

The bill prohibits a “school representative” from knowingly engaging in any activity intended to assist another individual in obtaining school employment to teach school age children, if the representative knows or has reasonable cause to believe that the individual has committed a sex offense involving a student.

This prohibition does not apply if either:

1. The school representative is transmitting administrative and personnel files to the prospective employer; or
2. The information has been reported to law enforcement or the public children services agency and one of the following applies: (a) law enforcement has determined there is insufficient information to indict the individual for the alleged offense, (b) the individual has not been indicted within four years after the date of the report, or (c) the individual has been acquitted or otherwise exonerated of the offense.

## **Licensure consequences for cheating on assessments**

(R.C. 3319.151 and 3319.99)

### **Prohibited actions**

Current law prohibits a person from revealing to any student any specific question that the person knows is part of a state achievement assessment or in any other way assisting a student to cheat on that assessment. If a person violates this provision, the person is guilty of a minor misdemeanor.

The bill prohibits a person from taking several other actions regarding state achievement assessments, but it does not establish any type of criminal penalty for violations of these additional provisions. The additional prohibited actions are:

1. Obtaining prior knowledge of the contents of a state achievement assessment;
2. Using prior knowledge of the content of a state achievement assessment to assist students in preparing for the assessment; and



3. Failing to comply with any rule adopted by the Department regarding security protocols for a state achievement assessment.

### **Consequences for teacher licensure and employment**

The bill requires the State Board, after conducting an investigation, to take any action (license suspension, revocation, or limitation) that it considers appropriate against the license of a school employee who takes any of the prohibited actions described above, based on the nature and extent of the violation. Current law, however, requires the State Board to suspend a school employee's license for one year for revealing test content.

The bill also specifies that the State Board must give the employee notice of an allegation regarding cheating on assessments *upon beginning an investigation* and an opportunity to respond *prior to taking any disciplinary action* (current law does not specify the timing by which these actions must occur).

Finally, the bill specifies that those actions regarding state achievement assessments that are prohibited by the bill, in addition to what is prohibited under current law, are grounds for termination of a teacher contract and for termination of a nonteaching employee.

### **Teach for America licenses**

(R.C. 3319.227 and future R.C. 3319.227 amended in Section 110.10)

The bill requires the state Superintendent, on behalf of the State Board, to inactivate a resident educator license issued to a participant in the Teach for American (TFA) Program if the participant resigns or is dismissed from TFA prior to completion of TFA's two-year support program. Currently, the State Board is required to revoke a TFA participant's resident educator license when the participant resigns or is dismissed. Additionally, the bill states that (1) the inactivation of a resident educator license issued to a TFA participant does not constitute a suspension or revocation of the license by the State Board and (2) the State Board and the state Superintendent need not provide the person with an opportunity for a hearing with respect to the inactivation.

### **Pre-employment applications and screening**

(R.C. 3319.393, 3314.03, 3326.11, and 3328.24)

#### **Written notice on employment applications**

The bill requires each school district, other public school (community school, STEM school, and college-preparatory boarding school), and chartered nonpublic school to include on all employment applications the following notice:

ANY PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT IS GUILTY OF FALSIFICATION UNDER SECTION 2921.13 OF THE REVISED CODE, WHICH IS A MISDEMEANOR OF THE FIRST DEGREE.

## **Pre-employment screening process**

Before making hiring decisions, the bill requires each school district, other public school, and chartered nonpublic school to consult the Department's "Educator Profile" database, currently on the website as "CORE" – Connected Ohio Records for Educators. After consulting the database, a district or school may consult with the Department's Office of Professional Conduct to determine if an applicant has been the subject of a disciplinary report by a school official to the state Superintendent or had any disciplinary actions taken by the Department. A district or school also may consult any of the applicant's prior education-related employers.

The bill also permits a district or school to offer conditional employment to an individual pending the completion of the screening process, and permits the district or school to release the individual from employment if the screening process uncovers misconduct for which an individual may not be employed in a school.

Finally, the bill permits a district or school to require an applicant or volunteer to undergo background checks in addition to the criminal records checks already required under continuing law.

## **Career-technical educator licensure**

(R.C. 3319.229)

The bill qualifies an individual holding a certificate of high school equivalence for a two-year initial career-technical workforce development educator license or a five-year advanced career-technical workforce development educator license. Current law requires a high school diploma for these licenses.

## **School counselor standards**

(R.C. 3319.61)

The bill requires the Educator Standards Board to include knowledge of the career-technical credit transfer program ("Career-Technical Assurance Guide" (CTAG)) into the Board's standards for school counselors.

CTAG is a result of criteria, policies, and procedures established by the Chancellor of Higher Education to ensure transfer of credit for career-technical courses "without unnecessary duplication or institutional barriers."<sup>34</sup>

## **IV. Community schools**

### **Community schools in challenged school districts – eliminate requirement**

(R.C. 3302.036, 3314.02, 3314.021, 3314.05, and 3314.353)

The bill removes the requirement that new start-up community schools may be established only in a "challenged school district." In keeping with this change, the bill permits a

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<sup>34</sup> See R.C. 3333.162, not in the bill.

community school governing authority to designate and modify the primary location of a community school established in two school districts under the same contract regardless of when the school was established or where the school's primary location was prior to the bill's effective date.

The bill also (1) prohibits the Department from restricting new start-up schools on the basis of prospective location and (2) removes the requirement that the Department annually publish a list of challenged school districts.

## **Background**

Under current law, a new start-up community school may be established only in a "challenged school district." A "challenged school district" is any of the following: (1) a Big-Eight school district (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, or Youngstown), (2) a low-performing school district as determined by the school's performance index score, value-added progress dimension, or overall ratings on the state report card, or (3) a school district in the original community school pilot project area (Lucas County).<sup>35</sup>

## **Automatic closure of community schools**

(R.C. 3314.355)

The bill prohibits the automatic closure of community schools on the basis of any report card ratings issued prior to the 2022-2023 school year. The 2022-2023 school year is a new starting point for automatic closure.

## **Background**

Together, [H.B. 197](#) and [H.B. 409](#), both of the 133<sup>rd</sup> General Assembly, prohibit the Department of Education from publishing and issuing ratings for overall grades, components, and individual measures on the state report cards for both the 2019-2020 and 2020-2021 school years. Those acts also establish a safe harbor from penalties and sanctions for districts and schools based on the absence of report card grades for those years.<sup>36</sup>

Under current law, not changed by the bill, a community school that is not a dropout prevention and recovery school is subject to automatic closure, if it receives the following grades on three consecutive state report cards:

1. For a school that does not offer a grade level higher than 3, a grade of "F" in improving K-3 literacy or an overall grade of "F";
2. For a school that offers any of grades 4 to 8:
  - a. A grade of "F" for performance index score and overall value-added progress dimension; or

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<sup>35</sup> R.C. 3314.02(A)(3).

<sup>36</sup> Section 17(B) of H.B. 197 and Section 6 of H.B. 409 of the 133<sup>rd</sup> General Assembly.

b. An overall grade of “F” and a grade of “F” for overall value-added progress dimension.

3. For a school that offers any of grades 10 to 12:

a. A grade of “F” for performance index score and did not meet its annual measurable objectives; or

b. An overall grade of “F” and a grade of “F” for the value-added progress dimension.<sup>37</sup>

A dropout prevention and recovery community school, which receives a different type of state report card, is subject to automatic closure, if it receives a designation of “Does Not Meet Standards” for the three most recent school years.<sup>38</sup>

## Programs at community schools

(R.C. 3314.029 and 3314.03 (conforming changes in R.C. 3314.037, 3314.38, 3314.271, and 5502.262)

Each contract entered into between a community school sponsor and governing authority must contain statutorily prescribed statements, descriptions, or assurances. The bill removes a requirement that the contract state that the school will be nonsectarian in its programs, admissions policies, employment practices, and all other operations and will not be operated by a sectarian school or religious institution. The bill does not modify a community school’s classification as a public school subject to the restrictions and requirements related to the Establishment Clause of the First Amendment of the U.S. Constitution.

## Background

The Establishment Clause of the First Amendment of the U.S. Constitution prohibits government from establishing or endorsing any religion. The Establishment Clause is made applicable to the states and their political subdivisions through the Due Process Clause of the Fourteenth Amendment.<sup>39</sup> The Ohio Constitution also provides that the “General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; *but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.* (Emphasis added.)”<sup>40</sup>

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<sup>37</sup> R.C. 3314.35(A)(3), not in the bill.

<sup>38</sup> R.C. 3314.351, not in the bill.

<sup>39</sup> U.S. Constitution, Amendment I; Ohio Constitution, Article I, Section 7. See also *Fiske v. Kansas*, 274 U.S. 380 (1927).

<sup>40</sup> Ohio Const., art. VI, sec. 2.

## Disenrollment of e-school students – failure to participate

(R.C. 3314.261)

The bill modifies the disenrollment procedures of internet- or computer-based community schools (e-school) in which a majority of the students *are not* enrolled in a dropout prevention and recovery (DOPR) program. Under the bill, a student who is disenrolled for failure to participate in instructional activities is prohibited from re-enrolling in that school for the remainder of the school year, rather than for one year from the date of disenrollment as under current law. The bill also permits a disenrolled student to enroll in another e-school during that same school year, whereas current law prohibits this unless the school is a DOPR school.

### Background

#### Absence intervention by e-schools

Law enacted by [H.B. 409](#) of the 133<sup>rd</sup> General Assembly, effective April 12, 2021, subjects a student who attends an internet- or computer-based community school (e-school) that is not a DOPR school to attendance requirements different from those who attend brick-and-mortar community schools.

These schools must have a policy specifying that a student is in attendance when the student (1) participates in at least 90% of the hours of instructional activities offered by the school that year or (2) is on pace for on-time completion of any course in which the student is enrolled. The policy must provide for certain consequences, including disenrollment, if, after the student has at least 30 hours of unexcused absences in a semester and the parent has been notified, the student fails to comply with the policy within a reasonable time specified by the school and other intervention strategies contained in the policy have been undertaken and have not resulted in the student's compliance.

#### *Automatic withdrawal of community school students*

Notwithstanding the exemption from standard absence intervention requirements for e-schools that are not DOPR schools, the attendance policy of *all* community schools must include a procedure for automatically withdrawing a student from the school if the student fails to participate in 72 consecutive hours of the learning opportunities without a legitimate excuse.<sup>41</sup>

## Community school sponsors

(R.C. 3314.016 and 3314.013)

### Sponsor incentives – frequency of evaluations

The bill directs the Department to evaluate once every three years any sponsor rated “exemplary” or “effective” for the three most *recent* years the entity was evaluated, instead of for at least three *consecutive* years as under current law. The bill also specifies that certain sponsor incentives are available to any sponsor rated “exemplary” for the two most *recent* years the sponsor was evaluated, instead of for at least two *consecutive* years as under current law.

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<sup>41</sup> R.C. 3314.03(A)(6)(b) and 3314.08(H)(2).

Those incentives, unchanged by the bill, include: (1) automatic renewal of the written agreement with the Department, (2) the ability to extend the term of the sponsorship contract, (3) an exemption from certain deadline and expiration requirements, (4) no limit on the number of community schools the entity may sponsor, and (5) no territorial restrictions on sponsorship.

### **Sponsor incentives – opening new DOPR e-schools**

Finally, the bill makes available a new incentive for sponsors rated “exemplary” during the most recent sponsor evaluation. These sponsors may open up to two new e-schools that will serve students enrolled in a dropout prevention and recovery program each year, not to exceed six new schools in a five-year period. Subject to approval by the state Superintendent, current law restricts the opening of *any* new e-schools to a total of five per year.

### **Background**

Generally, the Department must rate all community school sponsors as either “exemplary,” “effective,” “ineffective,” or “poor,” on an annual basis, based on the following components: (1) student academic performance, (2) adherence to the quality practices prescribed by the Department; and compliance with all applicable laws and administrative rules. However, as discussed above, an exception to annual evaluations exists for certain higher performing sponsors.

### **Low performing community school sponsor changes**

(R.C. 3314.034)

The bill exempts community schools in which a majority of the enrolled students are children with disabilities receiving special education and related services from the restrictions on a low-performing community school from entering into a contract with a new sponsor without approval from the Department.

### **Background**

Current law places restrictions on how lower-performing community schools may change sponsors. Those restrictions apply to any community school for which either of the following conditions is true: (1) the community school has received a grade of “D” or “F” for the performance index score and an overall grade of “D” or “F” for the value-added progress dimension on the most recent state report card issued for the school, or (2) The community school primarily operates a dropout prevention and recovery program, and it has received a rating of “does not meet standards” for the annual student growth measure and combined graduation rates on the most recent state report card issued for the school.

If either of those conditions applies, the school may enter into a contract with a new sponsor only if all of the following conditions are also satisfied:

1. The proposed sponsor received a rating of “effective” or higher on its most recent evaluation or is the Office of School Sponsorship;
2. The school submits a request to enter into a new contract to the Department;
3. The school has not submitted a prior request to change sponsors that was granted; and

4. The Department grants the school's request.

## **JCARR review of Department of Education changes**

(R.C. 3301.85)

The bill requires the Department of Education to submit to the Joint Committee on Agency Rule Review (JCARR) any proposed changes to the Education Management Information System (EMIS) or the Department's "business rules and policies" that may affect community schools. Once submitted, JCARR must hold public hearings regarding the changes, consider testimony, and vote to determine whether community schools can reasonably comply with those changes.

The bill also prohibits the Department from implementing any changes to EMIS or its business rules and policies that may affect community schools unless and until JCARR issues a determination that community schools can reasonably comply with the proposed changes.

## **Montessori preschool payments**

(R.C. 3314.06)

The bill removes a provision that requires the Department to pay an amount equal to the formula amount for each student under age four admitted to a Montessori preschool operated by a community school. Instead, the bill specifies such a school will receive no community school funds for students under age five.

## **Community School Revolving Loan Fund**

(R.C. 3314.30 and 3314.31, both repealed)

The bill eliminates the Community School Revolving Loan Fund and the Community School Security Fund, the latter of which was created to accept payment of funds borrowed from the Revolving Loan Fund.

Under current law, a community school may borrow from the Community School Revolving Loan Fund, which consists of federal moneys for the development and operation of community schools, to pay the costs associated with any provision of the community school's contract. The maximum borrowable amount is \$250,000. According to the Office of Budget and Management, the fund, established in 2003, has never been accessed by a community school.

## **Pilot funding for dropout recovery e-schools**

(Sections 610.04 and 610.05, amending Section 5 of H.B. 123 of the 133<sup>rd</sup> General Assembly)

The bill extends to FY 2022 and FY 2023 the pilot program established for FY 2021 to provide additional funding for certain internet- or computer-based community schools (e-schools) operating dropout prevention and recovery programs on a per-pupil basis for students in grades 8-12. It specifies that an e-school must have participated in the program for FY 2021 to participate in the upcoming biennium.

The bill also specifies that the formula amount for these payments is \$6,065 for FY 2022 and \$6,110 for FY 2023 (rather than \$6,020 as under existing law).

An e-school was eligible to participate in FY 2021 if it notified the Department by December 31, 2020, and if it (1) was designated for the 2019-2020 school year as an e-school in which a majority of the students were enrolled in a dropout prevention and recovery program, (2) did not have a for-profit operator, and (3) received a rating of “exceeds standards” on the combined graduation component of the most recent report card issued for the e-school.

The bill also delays the deadline for the Department to issue its report upon completion of the pilot program to December 31, 2022 (rather than December 31, 2021, as under current law).

For more information regarding this pilot program, see pp. 10-13 of LSC’s [final analysis of H.B. 123 of the 133<sup>rd</sup> General Assembly](#).

## **V. STEM schools**

The bill makes numerous changes to the law governing STEM and STEAM schools and equivalents.

A STEM school is an independent, public school for any of grades K-12 established through a collaborative endeavor of both public and private entities, including at least one school district. As the name suggests, STEM schools emphasize study in the disciplines of science, technology, engineering, and math, but they also offer all courses required for graduation and are authorized to award their graduates high school diplomas. A STEAM school is a type of STEM school where the “A” denotes “arts.” Each school, whether a STEM school or a STEAM school, is approved for operation by the Department of Education’s STEM Committee.

A STEM or STEAM school equivalent meets the curriculum requirements of a STEM or STEAM school but is governed under its own laws or articles of incorporation and does not receive funding as a STEM or STEAM school. It is a designation that may be granted to a community school, a career center, or chartered nonpublic school.

### **STEM Committee membership**

(R.C. 3326.02)

The bill permits the Superintendent of Public Instruction, the Chancellor of Higher Education, and the Director of Development to appoint designees to participate in STEM Committee business on their behalf. It also specifies that a designee must be the same person for the time period the designation is effective.

### **Grades offered by STEM and STEAM schools**

(R.C. 3326.03)

The bill permits a STEM or STEAM school to submit an amendment proposal to the STEM Committee in order to offer additional grade levels. Under continuing law, STEM and STEAM schools may offer any of grades kindergarten through 12.



## **STEM and STEAM school designations for JVSDs and ESCs**

(R.C. 3326.03 and 3326.51)

The bill eliminates the authority for a joint vocational school district (JVSD) or an educational service center (ESC) to apply for designation as a STEM or STEAM school. However, it permits a school operated by a JVSD that was designated as a STEM or STEAM school prior to the bill's effective date to maintain that designation if the school continues to comply with all STEM school law and its proposal for designation as a STEM or STEAM school. However, a JVSD also may elect to apply for a designation as a STEM school equivalent or distinction as a STEM program of excellence.

## **STEM and STEAM school equivalent designations for career-technical education providers**

(R.C. 3326.032)

Current law permits a community school, chartered nonpublic school, and a career center to receive a designation of STEM school equivalent. Instead of using the term "career center," the bill refers to a school operated by a JVSD, compact career-technical education provider, or comprehensive career-technical education provider that may receive designation of STEM school equivalent.

The bill defines a "compact career-technical education provider" as two or more city, exempted village, or local school districts that are not members of a JVSD and that have entered into a compact under which students enrolled in any of the participating districts may access career-technical education programs provided by a participating district. It defines a "comprehensive career-technical education provider" as a city, exempted village, or local school district that is not a member of a JVSD and that provides a comprehensive career-technical education program to all high schools operated by the district. (A "career center" is defined in current law as a school that enrolls students in any of grades 9-12 and in which a career-technical planning district (CTPD) provides career-technical education services that meets the State Board's standards. A CTPD may be a JVSD, a comprehensive career-technical program offered by a city, exempted village, or local school district, or career-technical program offered to other districts under contract.)

## **Proposals for STEM and STEAM schools and equivalents**

(R.C. 3326.03, 3326.032, and 3326.07)

The bill requires the proposal for a STEM or STEAM school or equivalent to include evidence that the school will:

1. Exhibit school-wide cultural strategies reflecting innovation, an entrepreneurial spirit, inquiry, and collaboration with individual accountability;
2. Offer a rigorous, diverse, integrated, and problem-based or project-based curriculum (rather than only project-based as under current law) with the goal to prepare students for post-secondary learning experiences (rather than with the goal to prepare students for college as under current law);

3. Have a curriculum that emphasizes the use of design-thinking as a school-wide approach and provides opportunities for students to engage in personalized learning (rather than emphasizes personalized learning and teamwork skills as under current law);

4. Participate in regular STEM-focused professional development and share knowledge of best practices (rather than utilize an established capacity to capture and share knowledge for best practices and innovative professional development with the Ohio STEM Learning Network or its successor as under current law); and

5. In the case of a STEM or STEAM school equivalent, has established partnerships with institutions of higher education and businesses, as well as arts organizations if the proposal is for a STEAM school equivalent (existing law already requires this for STEM and STEAM schools).

It also eliminates the existing requirement for the proposal to include evidence that the school's curriculum incorporates scientific inquiry and technological design.

## **Distinctions as STEM programs of excellence**

(R.C. 3326.03 and 3326.04)

The bill repeals the authority for city, local, and exempted village school districts, community schools, and chartered nonpublic schools to apply for grants to support the operation of STEM programs of excellence. Instead, it specifies that a JVSD, comprehensive career-technical education provider, compact career-technical education provider, or ESC may apply for a distinction as a STEM program of excellence. Additionally, it specifies that nothing prohibits a school operated by a JVSD that was designated as a STEM or STEAM school prior to the bill's effective date from electing to apply for distinction as a STEM program of excellence.

The bill requires a proposal for distinction as a STEM program of excellence to satisfy requirements that are substantially similar to the requirements for proposals for STEM and STEAM schools and equivalents.

## **Effective period for designations and distinctions**

(R.C. 3326.03, 3326.032, and 3326.04)

The bill specifies that STEM and STEAM school designations, STEM and STEAM school equivalent designations, and distinctions as STEM programs of excellence are effective for five years unless revoked (see below). However, prior to the end of the five-year period, the STEM committee may review a school's designation or distinction if it has reason to believe that a school is not in compliance with the law and its proposal.

Correspondingly, the bill requires the Department to maintain records of the application status and renewal deadlines for each designation and distinction.

## **Renewal of designations and distinctions**

(R.C. 3326.03, 3326.032, and 3326.04)

The bill requires STEM and STEAM schools and equivalents and JVSDs, comprehensive career-technical providers, compact career-technical education providers, and ESCs granted distinctions as STEM programs of excellence to reapply for designation or distinction every five

years. The STEM Committee must authorize the continuation of a school's designation or distinction if it finds that the school is in compliance with all laws and its proposal.

## **Revocation of designations and distinctions**

(R.C. 3326.03, 3326.032, 3326.04, and 3326.08)

The bill specifies that, if the STEM Committee finds that a school is not in compliance as part of the reapplication process or as part of a review during the five-year effective period, it must require the school to:

1. Develop a corrective action plan in collaboration with the Department and the Ohio STEM Learning Network; and
2. Implement the plan and demonstrate exemplary STEM pedagogy and practices within one year of the plan's development.

The bill requires the Committee to revoke a school's designation or distinction if the school fails to implement the corrective action plan within one year.

Additionally, the Committee must order a STEM or STEAM school that is not operated by a city, local, or exempted village school district to close after its designation is revoked. Currently, the Committee may, but is not required to, order any STEM or STEAM school to close if the Department finds it is not in compliance with laws and its proposal for designation.

## **Annual list of written assurances**

(R.C. 3326.23)

The bill exempts a STEM or STEAM school that is governed and controlled by a city, local, or exempted village school district from the annual requirement to provide to the Department written assurances of compliance with various requirements.

## **Repeal of miscellaneous provisions**

(R.C. 3326.03, repealed R.C. 3326.05, repealed R.C. 3326.11, and R.C. 3326.14)

The bill repeals all of the following:

- The requirement that the STEM Committee award grants to STEM and STEAM schools;
- The authority for the STEM Committee to make recommendations to the General Assembly and the Governor for the training of STEM educators;
- The requirement that, if a STEM or STEAM school receives a grant under the federal Race to the Top Program, the governing body of that school must pay teachers based on performance as if it was a school district board of education; and
- The authority for any student enrolled in the 9<sup>th</sup> grade or lower in a STEM or STEAM school to take one or more of the five Ohio Graduation Tests (OGT) at any of the times those tests are administered. (The last class for which the OGT was required for graduation was the class of 2018.) However, the bill retains the existing requirement that a STEM or

STEAM school must administer the state achievement assessments as if it were a school district.

## **VI. College Credit Plus program**

The College Credit Plus (CCP) program allows high school students and 7<sup>th</sup> and 8<sup>th</sup> grade students who are enrolled in public or nonpublic high schools or who are home-instructed to enroll in nonsectarian college courses to receive high school and college credit. Generally, the program governs arrangements in which the student, upon successful completion of a course, receives transcribed credit from the college. CCP courses may be taken at any state institution of higher education (except the Northeast Ohio Medical University) or any participating private or out-of-state college or university.

Each student may choose to participate under “Option A” (the student is responsible for all costs related to participation) or “Option B” (the state, through the Department of Education, pays the college on the student’s behalf). If participating under “Option B,” the amount of state payments depends upon several factors, including the type of high school and college in which the participant is enrolled, how the participant receives instruction, and whether the high school and college are operating under the default payment structure or an agreement specifying an alternative payment structure. Generally, however, payments on behalf of a public school student are deducted from the state funds computed for that school, and payments for a nonpublic school or a homeschooled student are made out of funds appropriated specifically for that purpose.

All public high schools must participate in the program and any nonpublic high school may participate in the program.

### **Students in state-operated schools**

(R.C. 3365.01, 3365.032, and 3365.07)

The bill permits students enrolled in the State School for the Deaf, the State School for the Blind, or in a school operated by the Department of Youth Services (DYS) to participate in the CCP program in the same manner as students in other public schools. Consequently, under the bill, those students and the state-operated schools are subject to all existing program laws and requirements that apply to CCP participants and other public schools. The bill, however, does not address where students in the custody of DHS will attend college courses under the CCP program and the transportation or security for such students.

The bill requires payments made to institutions of higher education for CCP courses taken by students enrolled at the State School for the Deaf or the State School for the Blind or a school operated by DHS to be deducted from the amount appropriated by the General Assembly for support of those schools.

### **Academic eligibility for all students**

(R.C. 3365.03)

The bill removes the prescribed condition for students who are not “remediation-free” and instead creates an alternative remediation-free eligibility option, which must be defined by

the Chancellor of Higher Education, in consultation with the Superintendent of Public Instruction. Current law requires a student, as a condition of eligibility for the CCP program, to be “remediation free.” But a student who scores within one standard error of measurement below the threshold on a standard assessment determining remediation-free status may fulfill eligibility requirements, if the student also (1) has at least a 3.0 cumulative high school grade point average (GPA) or (2) receives a recommendation from a school counselor, principal, or career-technical program advisor. The bill removes the eligibility for a student within one standard error of measurement. Nevertheless, it grandfathers in students who qualified under that condition prior to the bill’s effective date.

## **Nonpublic school participation**

(R.C. 3365.02)

The bill specifically prohibits any requirement of the CCP program, and any rule adopted by the Chancellor of Higher Education or the State Board of Education for administering the program, to apply to a nonpublic school that chooses not to participate in the program.

Current statutory law states only that a nonpublic school that “chooses to participate in the program” is subject to the CCP requirements. However, an administrative rule of the Chancellor defines a participating nonpublic school as a school that does *any* of the following: (1) enters into an agreement with a college to offer CCP courses to its students, (2) promotes to its students the option to participate in CCP, *or* (3) enrolls a student who is receiving or is approved to receive CCP funding.<sup>42</sup> Thus, under this rule, it appears that a nonpublic school is considered to be “participating” if a student who is enrolled in that school chooses to participate and receives state funding under Option B, regardless of whether the school itself chooses to participate. The bill would negate that part of the Chancellor’s rule.

## **Course subject matter disclaimer**

(R.C. 3365.035 and 3365.04)

The bill requires the Departments of Education and Higher Education jointly to develop a permission slip regarding the potential for a student to be exposed to mature subject matter in a course taken through the CCP program. Both Departments must post the permission slip in a prominent place on their CCP websites. The permission slip also must be included in the counseling information that each public and participating chartered nonpublic school must provide to its students.

The bill requires each student desiring to participate in the CCP program, and the student’s parent, to sign the permission slip. The permission slip must be included in the student’s application to a participating institution of higher education in which the student wishes to enroll.

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<sup>42</sup> O.A.C. 3333-1-65(A)(3).

When admitting a student under the CCP program, each participating institution of higher education must include the following in the institution's enrollment materials:

1. A questionnaire for students, developed by the institution, that acknowledges that the student possesses the necessary social and emotional maturity and is ready to accept the responsibility and independence that a college classroom demands that must be resubmitted to the institution;
2. Guidance on reviewing any available course materials prior to enrolling in a course;
3. Information about the institution's and the program's policies on withdrawing from or dropping a course; and
4. Information about the student's right to speak with the student's high school counselor or with the academic advisor assigned to the student under continuing law.

Each participating college also must include a discussion at student orientation about the potential for mature subject matter in courses taken through the program.

Finally, both Departments and each participating college must post the following disclaimer in a prominent place on their CCP program websites:

The subject matter of a course enrolled in under the College Credit Plus program may include mature subject matter or materials, including those of a graphic, explicit, violent, or sexual nature, that will not be modified based upon College Credit Plus enrollee participation regardless of where course instruction occurs.

## VII. State scholarship programs

The bill makes revisions to the following state scholarship programs for students enrolled in grades K through 12: the Educational Choice (Ed Choice) Scholarship Program, the Pilot Project (Cleveland) Scholarship Program, the Jon Peterson Special Needs Scholarship Program, and the Autism Scholarship Program.

In addition, the bill also establishes the Afterschool Child Enrichment (ACE) Educational Savings Account Program.

### Scholarship amounts

In addition to directly funding state scholarships as part of the changes to the school funding formula (see "**Direct funding of state scholarships**" under "**I. School finance**," above), the bill revises the scholarship amounts for the Ed Choice, Cleveland, Autism, and Jon Peterson Special Needs scholarships.

#### Maximum amounts for Ed Choice and Cleveland programs

(R.C. 3317.022(A)(16) and (17))

The bill increases the maximum scholarship amount a student may receive under an Ed Choice or Cleveland Scholarship. Specifically, for a student enrolled in any of grades K-8, the bill increases the maximum scholarship amount to \$5,500. For a student enrolled in any of

grades 9-12, it increases the maximum scholarship amount to \$7,500. The bill further requires those scholarship amounts to increase in future fiscal years by the same percentage that the base cost per pupil increases in those years, as prescribed under the bill's per pupil base cost calculation.

Under current law, students receiving Ed Choice or Cleveland scholarships qualify for a maximum scholarship amount of \$4,650 if they are enrolled in grades K-8 or \$6,000 if they are enrolled in grades 9-12. The bill maintains the requirement that a student must receive the lesser of either the base tuition of the student's chartered nonpublic school, minus applicable tuition discounts, or the maximum scholarship amount.<sup>43</sup>

### **Autism scholarship maximum amount**

(R.C. 3317.022(A)(18))

The bill increases the maximum scholarship amount a student may receive under the Autism Scholarship to \$31,500 for FY 2022 and \$32,445 for FY 2023 and each fiscal year thereafter. Under current law, the maximum amount is \$27,000.<sup>44</sup>

The bill maintains the requirement that a student's scholarship amount must equal the lesser of (1) the tuition charged by the student's special education program or (2) the maximum scholarship amount.

### **Jon Peterson Special Needs scholarship amount**

(R.C. 3317.022(A)(19); Section 265.220(H))

Under current law and the bill, the amount of a scholarship under the Jon Peterson Special Needs program is the lesser of (1) the amount charged by the student's alternative provider, (2) the formula amount plus the dollar amount assigned to the child's category of disability, or (3) \$27,000.<sup>45</sup> The bill sets the formula amount for these scholarships under its temporary funding formulas for FY 2022 and FY 2023 at \$6,065 and \$6,110, respectively.

See also "**Funding for community and STEM schools and state scholarship programs**" under "**Temporary payment mechanism for FY 2022 and FY 2023**" under "**I. School finance**," above.

## **Performance-based Ed Choice scholarship eligibility**

### **Performance index score criteria**

(R.C. 3310.03)

The bill changes the performance index score eligibility criteria prescribed for performance-based Ed Choice scholarships in a few ways.

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<sup>43</sup> See R.C. 3310.09, repealed by the bill, and 3313.978(C).

<sup>44</sup> See R.C. 3310.41.

<sup>45</sup> See R.C. 3310.56, repealed by the bill.

First, it changes that criteria for a scholarship sought for the 2023-2024 school year by requiring a district building to be ranked in the lowest 20% for the 2018-2019 and 2021-2022 school years. Under current law, for a scholarship sought for that year, a district building must be ranked in the lowest 20% for the 2020-2021 and 2021-2022 school years.

Similarly, the bill changes the criteria for a scholarship sought for the 2024-2025 school year by requiring a district building to be ranked in the lowest 20% for the 2021-2022 and 2022-2023 school years. Current law requires a district building to be ranked in the lowest 20% for at least two of the last three school years.

Beginning with the 2025-2026 school year, and each school year thereafter, the criteria reverts to current law, under which a student qualifies for a first-time, performance-based scholarship if the student is enrolled in, or in some cases would be assigned to, a school building operated by the student's resident school district that ranked in the lowest 20% of district buildings statewide according to a performance index score (excluding buildings operated by the Cleveland Municipal School District) for a certain number of years.

In all cases, the district building must have an average of 20% or more of the school aged residents of the student's resident district, for three consecutive years prior to the school year for which the scholarship is sought, qualified to be included in the formula to distribute federal Title I funds, as under continuing law.

Finally, the bill qualifies high school students (including entering 9<sup>th</sup> graders) who were enrolled in a public or nonpublic school or were homeschooled in the year prior to which the scholarship is sought. Specifically, it qualifies a student who meets the eligibility criteria described above for a performance-based scholarship if, in the school year prior to the year for which a scholarship is sought, the student was enrolled in a public or nonpublic school, or was homeschooled, and completed any of grades eight through eleven. Generally, to qualify for a performance-based scholarship under current law, a student must be enrolled in a building operated by the student's resident school district or a community school.

### **Phase-out of public school enrollment requirement**

(R.C. 3310.03)

The bill expands eligibility for performance-based Ed Choice scholarships by phasing out the requirement prescribed under current law that, to qualify for a performance-based scholarship, a student generally must be enrolled in either a school building operated by the student's resident school district or a community school. Specifically, the bill exempts students seeking scholarships for a particular school year from that requirement, as follows:

| School year for which a scholarship is sought | Grades exempt from public school enrollment requirement |
|---|---|
| 2021-2022                                     | K-2   |
| 2022-2023                                     | K-4   |



| School year for which a scholarship is sought | Grades exempt from public school enrollment requirement |
|---|---|
| 2023-2024                                     | K-6   |
| 2024-2025                                     | K-8   |
| 2025-2026 and after                           | K-12  |

### **Former Autism or Jon Peterson scholarship recipient**

(R.C. 3310.034)

The bill qualifies for a performance-based Ed Choice scholarship a student who received an Autism scholarship or a Jon Peterson Special Needs scholarship, but who is no longer in need of special education services and, therefore, is no longer eligible for either of those scholarships. The bill specifies that a student is eligible for a performance-based scholarship regardless of whether the student is enrolled in an Ed Choice designated school building.

In addition, the bill specifies that a student who qualifies under the former Autism or Jon Peterson scholarship recipient criteria remains eligible to renew that scholarship until the student completes grade 12 so long as the student meets the state testing and absence criteria prescribed under continuing law.

### **Siblings, foster families, and children placed with guardians, custodians, or kinship caregivers**

(R.C. 3310.033)

The bill qualifies a student who is not a resident of the Cleveland Municipal School District for a performance-based Ed Choice scholarship, regardless of whether that a student who is enrolled in an Ed Choice designated school building, if that student satisfies any of the following conditions:

1. The student's "sibling" received a performance-based scholarship in the school year immediately prior to the year for which the student is seeking scholarship;
2. The student is a foster child;
3. The student is a child placed with a guardian, legal custodian, or kinship caregiver;
4. The student is not placed with a guardian, legal custodian, or kinship caregiver, but has resided in the same household as such a child for at least 45 consecutive days within the last calendar year;
5. The student is not a foster child, but resides in a certified foster home;
6. The student:

- a. Is not placed with a foster child or with a guardian, legal custodian, or kinship caregiver;
- b. Has a parent or guardian who resides in Ohio; and
- c. Resides in the household of an individual who is not the student's parent or guardian for at least 45 consecutive days within the last calendar year and, if not for residing in that household, would have been homeless; or

7. The student is not a child at risk of homelessness who resides in the household of an individual other than the child's parent or guardian (as described above), but resides in the same household as such a child for at least 45 consecutive days within the last calendar year.

The bill permits the Department to request that any individual applying for a scholarship under the provision provide appropriate documentation, as defined by the Department, that the student meets the eligibility qualifications prescribed under the provision. For a student residing in the household of an individual who is not the student's parent or guardian and who otherwise would have been homeless, the documentation must be provided by the student's parent, guardian, or caretaker.

For the provision's purposes, a "sibling" is any of the following:

1. A brother, half-brother, sister, or half-sister by birth, marriage, or adoption;
2. A cousin by birth, marriage, or adoption residing in the same household;
3. A foster child residing in the same household, including a child who is subsequently adopted by the child's foster family;
4. A child residing in the same household who is placed with a guardian or legal custodian;
5. A child residing in the same household who is being cared for by a kinship caregiver; or
6. Any other child under 18 years old who has resided in the same household for at least 45 consecutive days within the last calendar year.

The bill specifies that a student who qualifies under this provision remains eligible to renew that scholarship until the student completes grade 12 so long as the student meets the state testing and absence criteria prescribed under continuing law.

### **Limit on number of performance-based scholarships – eliminated**

(R.C. 3310.02; conforming change in R.C. 5703.21)

The bill eliminates a provision of current law that restrains the maximum number of performance-based Ed Choice scholarships that the Department may award each school year.

That provision limits the number of performance-based scholarships for a school year to a maximum number prescribed by statute (currently 60,000), unless the number of applicants for a school year exceeds 90% of the maximum number. In that event, the Department must increase the maximum number for the next year by 5%. That new maximum number then serves as the limit on performance-based scholarships until another, similar adjustment upward is triggered by the number of applicants exceeding 90% of the new maximum number.

## **Maintain eligibility even if building IRN changes**

(R.C. 3310.036)

The bill specifies that a student who is eligible for a performance-based Ed Choice scholarship as of the first day of the application period prescribed under continuing law remains eligible for a scholarship even if, after the first day of that application period, the Department changes the internal retrieval number (IRN) of the school building in which the student is enrolled or would otherwise be assigned.

## **Ed Choice eligibility for 2021-2022**

(Sections 733.70 and 812.23)

The bill enacts an uncodified provision, and makes it immediately effective, to qualify for an Ed Choice scholarship for the 2021-2022 school year any student who is:

1. Enrolled in a public school, homeschooled, or new to Ohio during the 2020-2021 school year and who is or would be assigned to a school included on the “Ed Choice Scholarship Program 2019-2020 List of Designated Public Schools” or “Ed Choice Scholarship Program 2021-2022 List of Designated Public Schools” issued by the Department of Education;

2. Enrolling in kindergarten for the 2021-2022 school year who would be assigned to a school included on the “Ed Choice Scholarship Program 2019-2020 List of Designated Public Schools” or “Ed Choice Scholarship Program 2021-2022 List of Designated Public Schools” issued by the Department;

3. Enrolled in a public or nonpublic school, homeschooled, or new to Ohio during the 2020-2021 school year and who:

a. Was or would have been assigned to a school during the 2019-2020 school year that was included on the “Ed Choice Scholarship Program 2019-2020 List of Designated Public Schools” issued by the Department; and

b. Subsequently relocated and was or would have been assigned to a school building on the “Ed Choice Scholarship Program 2020-2021 List of Designated Public Schools” during the 2020-2021 school year.

4. Enrolled in a public or nonpublic school, homeschooled, or new to Ohio during the 2020-2021 school year and who is entering ninth grade for the 2021-2022 school year, and is enrolled in or would otherwise be assigned to a school building operated by the student’s resident district for the 2021-2022 school year that appeared on the 2019-2020 or 2021-2022 “Ed Choice Scholarship Program List of Designated Public Schools” issued by the Department.

5. The sibling of any student determined to be eligible under the conditions described above or who received a scholarship during the 2020-2021 school year.

The bill requires the Department to develop eligibility guidance consistent with this provision, post it on the Department’s website in a prominent, easy-to-find location, and provide it to every nonpublic school that accepts Ed Choice scholarships by July 15, 2021. By that date, the Department also must begin accepting and processing applications for the 2021-2022 school

year for students eligible under the provision. Finally, the bill specifies that applications submitted by August 1, 2021, must receive notice of award and details of any additional information necessary to process the application or denial by September 15, 2021.

## **Ed Choice operations**

### **Monthly partial payments**

(R.C. 3317.022)

The bill requires the Department of Education to make monthly partial payments for Ed Choice scholarships, rather than periodic partial payments as under current law.

### **Single application period**

(R.C. 3310.16)

The bill eliminates the priority application period and rolling application periods prescribed under current law and, instead, prescribes a single application period for Ed Choice scholarships. The Department must open that application period February 1 prior to the school year for which a scholarship is sought. It also must, within 45 days of receiving a completed application, determine whether an applicant is eligible and notify the applicant. Finally, the Department must award a scholarship to each approved applicant. However, the bill provides that an applicant who submitted an application after the start of the school year must receive a prorated scholarship amount based on how much of the school year remains.

### **System to determine performance-based scholarship eligibility**

(R.C. 3310.07)

The bill requires the Department, by February 1, 2022, to establish a system under which an Ed Choice applicant may provide the Department with the student's address and, within ten days of receiving that address, the Department notifies the applicant, using regular or electronic mail, whether the student is eligible for a performance-based Ed Choice scholarship. The bill prohibits the student's resident school district from objecting to a student's scholarship eligibility if the Department's system determines the student is eligible.

To implement this provision, each school district that has an Ed Choice designated school building must, by January 1 of each year, submit to the Department, in the manner prescribed by the Department, the attendance zone for students assigned to that building.

### **Conditional approval of performance-based scholarships**

(R.C. 3310.16)

The bill requires the Department, in each school year, to accept scholarship applications for conditional approval for that year or the next school year. Within five days of receiving an application for conditional approval, the Department must grant conditional approval to a student who is eligible for a scholarship and notify the applicant whether or not the approval is granted. The Department must award a scholarship to a student with an application that has been conditionally approved if the student:

1. Enrolls in a chartered nonpublic school that enrolls Ed Choice scholarship students within one year of receiving the conditional approval; and
2. Does not change addresses after receiving conditional approval and prior to enrolling in a chartered nonpublic school that enrolls Ed Choice scholarship students.

### **Miscellaneous application changes**

(R.C. 3310.16)

The bill requires the Department, if it determines an Ed Choice scholarship application contains an error or deficiency, to notify the applicant within 14 days of the application's submission. It also prohibits a school district from having access to any Ed Choice scholarship application.

Finally, the bill requires the departments of Education, Job and Family Services, and Taxation to enter into a data sharing agreement so that, in administering Ed Choice scholarship applications, the Department of Education is able to determine, based on the address provided in a student's application, whether the student is eligible for a performance-based scholarship and whether the student meets the residency requirement for an income-based Ed Choice scholarship (that is, the student is not a resident of the Cleveland Municipal School District).

### **Autism Scholarship Program**

(R.C. 3310.41 and 3310.411)

The bill subjects any registered private provider approved for the Autism Scholarship Program and any of its employees to criminal records check requirements prescribed under continuing law. It further requires a registered private provider to submit the results of criminal records checks to the Department of Education.

The Department must use the submitted records checks to enroll individuals employed by registered private providers in the Retained Applicant Fingerprint Database ("rapback") in the same manner as licensed educators.

Additionally, the bill adds a "registered behavior technician"<sup>46</sup> and "certified Ohio behavior analyst"<sup>47</sup> to the list of qualified, credentialed providers that may offer intervention services under the program.

### **Cleveland Scholarship Program**

(R.C. 3313.976 and 3313.978)

The bill revises the operations of the Cleveland Scholarship Program in two ways. First, it eliminates the application periods prescribed under current law for that program and, instead, prescribes a single application period similar to the one prescribed for the Ed Choice Scholarship Program (see above).

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<sup>46</sup> O.A.C. 5123-9-41.

<sup>47</sup> R.C. Chapter 4783, not in the bill.

Under the bill, the Department must open the application period for the Cleveland Scholarship Program on February 1 prior to the school year for which a scholarship is sought. It also must, within 45 days of receiving a completed application, determine whether an applicant is eligible and notify the applicant. Finally, the Department must award a scholarship to each approved applicant. However, the bill provides that an applicant who submitted an application after the start of the school year must receive a prorated scholarship amount based on how much of the school year remains.

The bill also expands the number of chartered nonpublic schools that may register to participate in the Cleveland Scholarship Program. Specifically, the bill permits a chartered nonpublic school to register if it offers any of grades K-12 and is located in a school district that is located within five miles of Cleveland and in a municipality of at least 15,000. Under current law, chartered nonpublic schools located in such neighboring municipalities may participate only if they offer any grades of 9-12. Continuing law permits any chartered nonpublic school to participate if it offers any of grades K-12 and is located in the Cleveland Municipal School District.

## **ACE Educational Savings Account Program**

(R.C. 3310.70; Sections 265.355 and 733.60)

### **Purpose**

The bill establishes the Afterschool Child Enrichment (ACE) Educational Savings Account Program to provide eligible students, upon the request of their parents or guardians, with an educational savings account containing \$500 for each of FY 2022 or FY 2023. The bill qualifies a student for an account if (1) the student is at least 6 years old and under 18 years old, (2) the student's family income is at or below 300% of the federal poverty level, and (3) the student is enrolled in a public or nonpublic school or is being homeschooled. The parent or guardian of an eligible student may use funds in the account for any of the following purposes, whether secular or nonsecular:

1. Before- or after-school educational programs;
2. Day camps, including camps for academics, music, and arts;
3. Tuition at learning extension centers;
4. Tuition for learning pods;
5. If the student is homeschooled, purchase of curriculum and materials;
6. Educational, learning, or study skills services;
7. Field trips to historical landmarks, museums, science centers, and theaters, including admission, exhibit, and program fees;
8. Language classes;
9. Instrument lessons; or
10. Tutoring.

However, the bill specifies that funds in an account may not be used to purchase electronic devices. The Department must make available to parents and guardians a list of the purposes for which funds in an account may be spent.

## **Operation**

The bill requires the Department, within 30 days after the bill's effective date, to adopt emergency rules to prescribe procedures for the establishment of ACE educational savings accounts for FY 2022 and FY 2023. Within 120 days of the bill's effective date, the Department must create an online form for parents and guardians to request the establishment of an account. If a parent or guardian request an account for FY 2022 or FY 2023, \$500 must be credited to that account within 14 days of the request and the amount must be disbursed by June 30 of that fiscal year. Accounts must be established on a first-come, first-served basis according to available of funds appropriated for the program.

Under the bill, the Department must contract with a vendor to administer the program. The Department also may contract with the Treasurer of State for technical assistance. In selecting a vendor, the Department must give preference to vendors that use a smart phone application that is free for parents and guardians, is capable of scanning receipts, allows users to provide program feedback, and includes customer service contact information for parents and guardians who experience technical issues with the application. For FY 2022 or FY 2023, the Department is prohibited from paying the vendor more than 3% of the amount appropriated for the program for that fiscal year.

The bill requires the selected vendor to monitor how accounts are used by parents or guardians and recoup funds that are used for purposes that the vendor determines are not authorized under the provision. It also requires the vendor to provide the Department with a comprehensive list of purchases made with accounts. The bill prohibits the vendor from authorizing parents or guardians to use funds for purposes that the vendor determines are not authorized by the provision. If the vendor authorizes parents or guardians to use funds for specified purposes and later determines the purpose is not authorized, the vendor may recoup those funds.

## **Report**

The bill requires the Department, by December 31, 2022, to submit to the General Assembly a report regarding the administration of the ACE Educational Savings Account Program, including feedback from a random sampling of participating parents or guardians.

## **Background**

The Ed Choice Scholarship Program operates statewide in every school district except Cleveland to provide scholarships for students who (1) are assigned or would be assigned to district school buildings that have persistently low academic achievement (known as "traditional" or "performance-based" Ed Choice) or (2) are from low-income families (known as "income-based" Ed Choice Expansion). Students may use their scholarships to enroll in participating chartered nonpublic schools.

The Pilot Project (Cleveland) Scholarship Program allows students who are residents of the Cleveland Municipal School District to obtain scholarships to attend participating nonpublic schools or public schools in adjacent districts.

The Autism Scholarship Program provides scholarships to autistic students in any of grades pre-K-12 whose parents choose to enroll the student in an approved special education program other than the one offered by the student's school district.

The Jon Peterson Special Needs Scholarship Program is similar to the Autism Scholarship Program except that it is available to students with any category of disability in grades K-12. It is not available to pre-K students.

## **VIII. Other**

### **Student transportation – pick up and drop off times for all students**

(R.C. 3327.01)

The bill requires school districts, educational service centers, and private school transportation contractors to “deliver” students enrolled in grades preschool through 12 to their respective public and nonpublic schools no sooner than 30 minutes prior to the beginning of school and to be available to pick them up no later than 30 minutes after the close of the day.

#### **Background**

A school district must provide transportation for students in grades K-8 who live more than two miles from school, whether they attend district schools; public community schools; STEM schools; or private schools that hold a state charter. There are exceptions, however, such as when transportation to a community or STEM school or private school exceeds 30 minutes, or when the district board determines transportation to be impractical and offers to pay a parent instead. Also, there are mechanisms for community schools to take over the responsibility to transport their students. For a detailed discussion of the law on student transportation see the LSC Members Brief, [Transportation of Students](#).

### **Transportation for community school and chartered nonpublic school students**

#### **Transportation plans**

(R.C. 3327.016; conforming change in R.C. 3313.48)

Under the bill, community schools and chartered nonpublic schools must establish school start and end times for a school year by April 1 of the prior school year. Each school then must provide those times to the city, local, or exempted village school districts that the school expects will provide transportation services to its students.

A school district must use those start and end times to develop a transportation plan for community and chartered nonpublic school students whom the district is required to transport within 60 days after receiving the information from those schools. If a community or chartered nonpublic school provides those times after April 1 but before July 1, the district must attempt



to provide a transportation plan to the school by August 1 of that school year. For any student who enrolls in a community or chartered nonpublic school after July 1, the district must develop a transportation plan within 14 business days after receiving a request for transportation services from the student's parent or guardian.

### **Limits on use of mass transit systems**

(R.C. 3327.017)

The bill prescribes limits on the use of vehicles operated by mass transit systems by school districts to provide or arrange for transportation of community school and chartered nonpublic school students.

For students enrolled in grades K-8, the bill prohibits a district from transporting them using mass transit vehicles unless the district enters into an agreement with the students' community or chartered nonpublic school authorizing that transportation. The bill expressly requires both the district and school to approve the agreement in order for it to be effective.

For students enrolled in grades 9-12, the bill specifies that, if a school district elects to transport them using vehicles operated by a mass transit system, the district must ensure that a student's route does not require more than one transfer.

### **Transportation when schools are open for instruction**

(R.C. 3327.01)

The bill requires a school district to transport community or chartered nonpublic school students to and from school on each day that their school is open for instruction, regardless of whether the district's school buildings are similarly open. However, the bill also maintains a provision of continuing law that exempts school districts from transporting community school and chartered nonpublic school students on Saturday or Sunday, unless the district and school have an agreement in place to provide such transportation.

### **List of community and chartered nonpublic school students transported by a school district**

(R.C. 3327.01)

The bill permits a community or chartered nonpublic school governing authority to request, from a school district, a list of students enrolled in the school for whom the district provides transportation and their addresses. A district must provide a list, if requested, that includes only the names and addresses of the students enrolled in the school making the request.

### **Deadline for community schools to accept responsibility to transport students**

(R.C. 3314.091)

A school district and community school may enter into a bilateral agreement under which the community school will transport its students. Or, a community school may take over the transportation responsibility unilaterally without entering into an agreement with the students' resident school district by notifying the school district by January 1 of the previous school year.

The bill adjusts that deadline to August 1 of the school year for which the community school will be providing or arranging transportation.

A newly opening community school must notify the district by April 15 prior to its first year of operation if it wishes to unilaterally accept transportation responsibility. The bill does not change this deadline nor does it affect the provision for bilateral agreements between districts and community schools.

## **Deduction of state funding for school district noncompliance**

(R.C. 3327.021)

The bill requires the Department to deduct a portion of city, local, or exempted village school district's state transportation funding if the Department determines that the district has consistently, or for a prolonged period, been noncompliant with certain statutory obligations regarding student transportation.

Specifically, the bill requires the Department to monitor each city, local, or exempted village school district's compliance with:

1. Its general obligations under the law to transport students;
2. Its new obligation under the bill to generally transport community school and chartered nonpublic school students on days that the schools are open (see above);
3. Its new obligation under the bill regarding transportation plans for community schools and chartered nonpublic schools (see above); and
4. The bill's new prohibition against transporting community school and chartered nonpublic school students in grades K-8 using mass transit, unless the district has an agreement to do so with the students' school (see above).

If the Department determines a consistent or prolonged period of noncompliance on the part of the school district to meet those obligations, the Department must deduct from the district's state transportation funding an amount equal to the total daily amount of that funding for each day the district is noncompliant.

However, the bill expressly states that the requirement to monitor district compliance and deduct state transportation funding does not affect a school district's authority to provide payment in lieu of transportation.

## **Payment in lieu of transportation**

(R.C. 3327.02; Section 265.150)

Under continuing law, a city, local, or exempted village school district, or a community school that has accepted responsibility to provide transportation, may offer a parent payment instead of transportation, if it determines that transporting a particular student is impractical. The law prescribes factors that districts and schools must consider in making that determination on a student-by-student basis. They are:

1. Time and distance involved in the transport;

2. Number of students to be transported;
3. Cost of equipment, maintenance, personnel, and administration;
4. Whether similar or equivalent service is provided to other students;
5. Whether and to what extent the additional service unavoidably disrupts current transportation schedules; and
6. Whether other reimbursable types of transportation are available.

## **Procedures**

The bill requires a district or school to make a determination regarding whether to provide payment in lieu of transportation for a student not later than 30 calendar days prior to the district's or school's first day of instruction. For students who enroll within that 30-day period or later, the district or school must make the determination within 14 calendar days of a student's enrollment. It also authorizes a superintendent to make that determination, but requires that it be formalized at the next meeting of the school district board of education or community school governing authority. In addition, the district or school must issue to a student's parent or guardian and the State Board a letter with a detailed description of the reasons why the payment in lieu determination was made.

In the case of a community or nonpublic school student eligible for district transportation, the bill permits the student's parent, guardian, or custodian, at any time after requesting transportation for that student, to authorize the community or chartered nonpublic school to act on the student's behalf for purposes of determining payment in lieu of transportation and any related mediation proceedings.

## **Payment**

Under current law, the annual amount of a payment in lieu of transportation must be at least as high as the amount determined by the General Assembly as the minimum for each school year, and not more than the amount determined by the Department as the average cost of pupil transportation for the previous school year. For FY 2020 and FY 2021, the minimum amount was \$250,<sup>48</sup> and the maximum amount for the 2019-2020 school year (FY 2020) was \$1,077.09.

Under the bill, the annual payment in lieu amount must not be less than 50% but not more than the average cost of pupil transportation for the previous school year, as determined by the Department. The bill maintains current law providing that the payment may be prorated if the time period involved is only a part of a school year.

Also, if the Department must order a district board or school governing authority that has failed or is failing to provide transportation to a student to pay to the student's parent, guardian, or custodian, the amount of that payment must be equal to 50% of the cost of providing transportation as determined by the district board or school governing authority but not more than \$2,500.

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<sup>48</sup> Section 265.150 of H.B. 166 of the 133<sup>rd</sup> General Assembly.

## **Transportation contracts**

(R.C. 3327.018)

The bill expressly authorizes a school district to contract, in writing, with a public or private not-for-profit agency, group, or organization, with a municipal corporation or other political subdivision or agency of the state, or with an agency of the federal government to assist the agency, group, organization, or political subdivision in the fulfillment of its legitimate activities and in times of emergency, subject to the following conditions:

- These contracts must be entered into under the authority of the school district as a political subdivision;
- These contracts are not considered commerce;
- The buses must be operated by individuals holding certificates issued by either the ESC governing board that has entered into an agreement with the district or the district's superintendent that certify that the individuals satisfy specified requirements for bus drivers;
- All State Board of Education regulations governing the operation of school buses when transporting students apply when buses are used under this provision;
- Any district that makes one or more of its vehicles available under this provision must procure liability and property damage insurance covering all vehicle used and passengers transported; and
- The board of education may recover expenses from contracting entities, not to exceed the costs of operation and insurance coverage.

## **Withdrawal of certain students for failure to take assessments**

(R.C. 3313.6412 and 3314.262)

Beginning with the 2020-2021 school year, the bill creates a new starting point for withdrawal determinations made by internet- or computer-based schools (e-schools and district-operated internet- or computer-based schools) based upon a student's failure to complete the spring administration of any required state assessment for two consecutive school years.

### **Background**

Under continuing law, internet- or computer-based schools (e-schools and district-operated internet- or computer-based schools) are required to automatically withdraw any student who has not participated in the spring administration of any required state assessment for two consecutive years and who was not otherwise excused from taking that assessment. A school may not receive any state funds for any student who is subject to automatic withdrawal

under this provision but may permit the student to continue to attend the school's program only if the student's parent pays tuition.<sup>49</sup>

## **Online learning**

(R.C. 3302.42, 3302.41, 3301.079)

The bill permits school districts, with the approval of the Superintendent of Public Instruction, to operate a school using an online learning model. The bill defines "online learning" as a model in which students work primarily from their residences on assignments delivered via an internet- or other computer-based instructional method.

Under the bill, the district superintendent must notify the Department, not later than July 1 of the school year for which the change is effective, that a school in the district is operated or is ceasing to operate using an online learning model. If any school district is using an online learning model on the provision's effective date, the district superintendent must notify the Department within 60 days of that fact and request that the school be classified as an online learning school. In other words, the bill requires the district superintendent to notify the Department within 60 days of the provision's effective date if it operates a school using an online learning model on the effective date, and, for changes in the use of online learning models, no later than July 1 of the school year for which the change is effective.

### **District requirements to operate online learning**

Districts that operate a school using an online learning model must do all of the following:

1. Assign all students engaged in online learning to a single school which the Department will designate as a district online school;
2. Provide all students engaged in online learning a computer, at no cost, for instructional use. Districts also must provide a filtering device or install filtering software that protects against internet access to materials that are obscene or harmful to juveniles on each computer provided to students for instructional use;
3. Provide all students engaged in online learning access to the internet, at no cost, for instructional use;
4. Provide a comprehensive orientation for students and their parent or guardian prior to enrollment or within 30 days for students enrolled as of the provision's effective date; and
5. Implement a learning management system that tracks the time students participate in online learning activities. The bill specifies that all student learning activities completed while off-line must be documented with all participation records checked and approved by the teacher of record.

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<sup>49</sup> R.C. 3313.6410 and 3314.26, neither in the bill. Section 17(A)(4) of H.B. 197 of the 133<sup>rd</sup> General Assembly prohibited these schools from withdrawing students who were unable to complete assessments for the 2019-2020 school year.

## **State Board standards for online learning**

The bill requires the State Board to revise operating standards for school districts to include standards for the operation of online learning models to provide for all of the following:

1. Student-to-teacher ratios of not greater than one teacher for every 125 students in online learning classrooms;
2. The ability of all students, at any grade level, to earn credits or advance grade levels upon demonstrating mastery of knowledge or skills through competency-based learning models. The bill also prohibits that credits or grade level advancement be based on a minimum number of days or hours in a classroom;
3. Require online schools operated by a school district to have an annual calendar of not less than 910 hours;
4. Require the Department to review and adjust state funding payments to districts based upon student participation in online learning; and
5. Adequate provisions for: the licensing of teachers, administrators, and other professional personnel and their assignment according to training and qualifications; efficient and effective instructional materials and equipment; the proper organization, administration, and supervision of each school; admission of pupils; requirements for graduation; and other factors the State Board finds necessary.

## **Blended learning – school year hour requirement**

The bill requires that districts and schools using a blended learning model operate an annual calendar of not less than 910 hours. Under current law, schools operating on a blended learning model are exempt from minimum school year and school day requirements otherwise prescribed under continuing law. Separate state law requires school districts, STEM schools, and chartered nonpublic schools to be open for instruction each school year for a minimum of 910 hours for grades 1-6 or all-day kindergarten, 1,001 hours for grades 7-12, and 455 hours for kindergarten that is less than all day. Community schools must provide at least 920 hours of learning opportunities.<sup>50</sup>

## **Blended learning definition**

The bill modifies the definition of “blended learning” by specifying that the delivery of instruction primarily should be in a supervised physical location away from home. Under current law, the definition only requires that the delivery of instruction be a combination of time in a supervised physical location away from home and online delivery.

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<sup>50</sup> R.C. 3313.48(A), 3314.03(A)(11)(a), and 3326.11, those parts unchanged in the bill.

## **Information on academic standards and model curricula**

The bill requires the Department to include information on the use of online learning (in addition to blended and digital learning as under current law) in the delivery of standards or curricula to students, whenever the State Board adopts standards or model curricula.

### **FAFSA data system**

(R.C. 3313.6026; conforming changes in R.C. 3314.03, 3326.11, and 3328.24)

The bill requires each school district and each other public and chartered nonpublic high school to enter a data sharing agreement with the Chancellor of Higher Education to operate a data system, created by the bill, to track the Free Application for Federal Student Aid (FAFSA) completion rate of Ohio's public and chartered nonpublic school students. (See "**FAFSA data system**" under "**DEPARTMENT OF HIGHER EDUCATION**," below.) Each district or school must provide principals and school counselors with access to the data system to assist with efforts to support and encourage students to complete the FAFSA form.

## **Computer science education**

### **State plan for computer science education**

(R.C. 3301.23)

#### **Committee to develop plan**

The bill requires the Department, in consultation with the Chancellor of Higher Education, to establish a committee to develop a state plan for primary and secondary computer science education in Ohio. The committee must be established within 30 days after the bill's effective date. It must consist of:

1. The Superintendent of Public Instruction, or designee;
2. The Chancellor, or designee;
3. Computer science stakeholders appointed by the state Superintendent, in consultation with the Chancellor that include representatives of:
  - a. Teachers;
  - b. Career-technical education;
  - c. Institutions of higher education;
  - d. Businesses; and
  - e. State and national computer science organizations.

The bill requires the committee to complete the state plan within one year after the bill's effective date. The Department must post the completed state plan in a prominent location on its website.

#### **Topics to consider**

In developing the state plan, the committee must consider:

1. Best practices and challenges associated with implementing primary and secondary computer science curriculum in Ohio;
2. Demographic data for students who receive computer science education;
3. Benchmarks to create a sustainable supply of teachers certified to provide computer science education;
4. Best practices to form public and private partnerships for funding, mentoring, and internships for teachers providing computer science instruction;
5. A requirement for all students to complete a computer science course prior to high school graduation;
6. The establishment of a work-based learning pilot program that:
  - a. Includes high schools, universities, and local industry;
  - b. Permits the Department and the Chancellor to develop pathways to align computer science education with the state's workforce needs; and
7. Any other topics determined appropriate by the committee.

### **Plan contents**

The state plan must include:

1. Any examination of the challenges that prevent school districts from offering computer science courses;
2. A requirement that the Department collect data regarding computer science courses offered by school districts and school buildings operated by districts, including the names of courses and whether the courses were developed using the standards and model curriculum adopted by the State Board, and post that data on its website;
3. A requirement that the committee determine the best ways to compile data on computer science courses, teachers, and undergraduate students studying computer science in universities; and
4. Any findings the committee determines appropriate based on its consideration of the topics described above.

### **Computer science education licensure exemption**

(Sections 610.10 and 610.11, amending Section 733.61 of H.B. 166 of the 133<sup>rd</sup> General Assembly)

The bill extends through the 2022-2023 school year an exemption that permits a school district, community school, or STEM school to allow an individual with a valid educator license in any of grades 7-12 to teach a computer science course if, prior to teaching the course, the individual completes a professional development program approved by the district superintendent or school principal. That program must provide content knowledge specific to the course the individual will teach. The superintendent or principal must approve any professional development program endorsed by the College Board, the organization that creates



and administers the national Advanced Placement examinations, as appropriate for the course the individual will teach.

The individual may not teach a computer science course elsewhere than the school district or school that employed the individual when the individual completed the professional development program.

Beginning July 1, 2023, a district or school may allow an individual to teach a computer science course only if the individual satisfies the requirements of permanent law, unchanged by the act. That law requires an individual who teaches computer science either to (1) hold an educator license in computer science, (2) hold a license endorsement in computer technology and pass a computer science context examination, or (3) hold a supplemental teaching license for computer science.

### **Licenses and endorsements to teach computer science**

(R.C. 3319.236 and Sections 610.10 and 610.11, amending Section 733.61 of H.B. 166 of the 133<sup>rd</sup> General Assembly)

The bill specifies that, for the purposes of computer science licensure or endorsements, “computer science courses” means courses that are reported in the Education Management Information System (EMIS) as computer science courses and are aligned with standards adopted by the State Board.

### **State Board’s standards and curriculum**

(R.C. 3301.079)

The bill requires the State Board to update its standards and curriculum for computer science education within one year after the bill’s effective date.

### **Effects of vaping – school district health curriculum**

(R.C. 3313.60(A)(5))

The bill requires school districts to include instruction on the harmful effects and legal restrictions against the use of electronic smoking devices (vaping) in its health education curriculum. This is in addition to the requirement to provide instruction on the harmful effects of and legal restrictions against the use of drugs of abuse, alcoholic beverages, and tobacco, as required by continuing law.

### **Venereal disease instruction**

(R.C. 3313.6011)

The bill requires a school district or school to notify all parents and guardians if it chooses to offer additional instruction in venereal disease or sexual education not specified under continuing law. Specifically, it requires this notification to include the name of any instructors, vendor name if applicable, and the name of the curriculum being used.

The bill also prohibits a district or school from offering such instruction to a student unless a parent or guardian has submitted written permission for that student to receive that

instruction. Upon request, it requires a district or school to provide any instructional materials associated with venereal disease or sexual education to a parent or guardian.

Additionally, the Department must:

1. Conduct an annual audit at the beginning of each school year of school districts to ensure compliance with continuing law requirements regarding venereal disease instruction;
2. Publish the findings of the audits not later than 120 days after the start of each school year; and
3. Prominently post the results of the audits on the Department's website.

## **Background**

Continuing law requires each school district to include venereal disease education as part of its health curriculum. However, a student must be excused from the instruction upon request of the student's parent. The instruction must emphasize that abstinence from sexual activity is the only 100% effective protection against unwanted pregnancy, sexually transmitted disease, and the sexual transmission of the AIDS virus. Furthermore, course materials and instruction must (1) stress that students should abstain from sexual activity until after marriage, (2) teach the potential physical, psychological, emotional, and social side effects of sexual activity outside of marriage, (3) teach that conceiving children out of wedlock is likely to have harmful consequences for the child, the child's parents, and society, (4) stress that sexually transmitted diseases are serious possible hazards of sexual activity, (5) advise students of the child support laws, (6) advise students of the circumstances in which sexual contact with a minor is a crime, and (7) emphasize adoption as an option for unintended pregnancies.

## **Victim counseling**

(R.C. 3319.47)

The bill permits school districts, other public schools, and chartered nonpublic schools to provide counseling to victims of sexual harassment or sexually related conduct.

## **Academic distress commissions**

### **Moratorium**

(Section 265.520)

The bill prohibits the state Superintendent from establishing any new academic distress commissions (ADCs) for the 2021-2022 and 2022-2023 school years. Under continuing law, the state Superintendent must establish an ADC for any school district that receives three consecutive overall grades of "F" on the district's state report card. The bill does not affect the previously established ADCs for Youngstown, Lorain, and East Cleveland school districts.

H.B. 166 of the 133<sup>rd</sup> General Assembly placed a one-year moratorium on the establishment of new ADCs, which expired on October 1, 2020.<sup>51</sup>

Additionally, in 2020 due to the COVID-19 pandemic, the Department of Education was prohibited under H.B. 197 and, later, H.B. 409 from issuing ratings for overall grades on the state report cards for any school districts or schools for the 2019-2020 and 2020-2021 school years, respectively. And, due to absence of report card grades, a safe harbor was enacted for districts and schools from various provisions of law reliant on report card grades, including the establishment of new ADCs and additional progressive consequences for existing ADCs for those school years. On the other hand, the powers authorized prior to those school years were retained by the CEO of the ADC.<sup>52</sup>

For a detailed description of current statutory law on ADCs, see pp. 10-23 of the LSC Final Analysis of H.B. 70 of the 131<sup>st</sup> General Assembly at: <https://www.legislature.ohio.gov/download?key=2653&format=pdf>.

### **Improvement plans**

(R.C. 3302.103; Section 812.20)

The bill establishes a process by which school districts currently subject to an ADC may be relieved from the oversight of its ADC prior to meeting the conditions prescribed by continuing law. The school districts currently subject to an ADC are the Youngstown, Lorain, and East Cleveland city school districts.

This process does not impact the bill's moratorium on the establishment of new ADCs.

### **District academic improvement plan development and approval**

Under the bill, the board of education of a school district to which the bill applies, not later than 90 days after the provision's effective date, in consultation with the appropriate stakeholders and the district's ADC and chief executive officer (CEO), must develop and submit a three-year academic improvement plan to the Superintendent of Public Instruction. The plan must include annual and overall academic improvement benchmarks and strategies for achieving those benchmarks.

Within 30 days after receiving the improvement plan, the state Superintendent must review the district's plan and either suggest modifications to the plan or approve it. If the state Superintendent suggests modifications, the district board must revise the plan and resubmit it for approval within 15 days after receiving the suggestions. Not later than 30 days after the modified plan is resubmitted, the state Superintendent must approve it.

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<sup>51</sup> Section 265.520 of H.B. 166 of the 133<sup>rd</sup> General Assembly.

<sup>52</sup> Section 17(B) of H.B. 197 of the 133<sup>rd</sup> General Assembly, as subsequently amended by H.B. 409 of the 133<sup>rd</sup> General Assembly.

Upon approval by the state Superintendent, the district board may begin to prepare to implement the plan, which is in effect from July 1, 2022, to June 30, 2025. The district's ADC and CEO must work with the district in preparing to implement the plan.

Additionally, the district board may submit a request to the state Superintendent to modify the district's improvement plan while it is being implemented. No modifications to the plan can be made without the state Superintendent's approval.

### **Plan implementation**

Under the bill, while the school district is implementing the approved academic improvement plan, the district board reassumes all power granted to it under statutory law. Additionally, the district's ADC continues to exist and provide assistance to the district, but has no operational or managerial control of the district. The CEO for the district is removed from the position, and the district is not subject to the ADC for the duration of the academic improvement plan. Finally, the district board must provide annual reports to the State Board of Education on the district's progress toward achieving the academic benchmarks in the plan.

At the end of three school years under the improvement plan, the State Board must evaluate the district's performance. If the district improves but does not meet at least a majority of the academic improvement benchmarks, the district board may apply to the state Superintendent for a one-school-year extension to continue implementing the plan. If the district does not meet at least a majority of the established benchmarks at the end of the extension, the district board again may apply for a one-school-year extension. The bill prohibits more than two extensions.

If the district either (1) does not meet at least a majority of the academic improvement benchmarks at the end of five school years under the improvement plan or (2) if the district's application for an extension is not approved by the state Superintendent, the district once again becomes subject to continuing ADC statutory law. The district must hire a new CEO, who then reassumes the powers that were being exercised under ADC law prior to July 1, 2022.

If the district meets at least a majority of the academic improvement benchmarks at the end of the initial evaluation or after an extension granted by the State Board, the ADC is dissolved, and the district continues exercising all powers granted under statutory law.

### **Former CEO as district superintendent**

The bill permits a district to which the bill applies to employ the former CEO as the district superintendent once that individual is removed from the CEO position. If the district enters into a contract with that individual for the district superintendent position, the Department must provide compensation to the individual under the terms of the former CEO contract while the district is implementing its improvement plan. Once the district either becomes subject to an ADC again or its ADC is dissolved, the district board must begin compensating the individual under the terms of the district board's employment contract with the individual for district superintendent.

## Performance audit

The bill requires the Auditor of State to complete a one-time performance audit of a school district to which the bill applies between July 1, 2022, and June 30, 2025, and submit the audit results to the district board.

The performance audit must be conducted in the same manner as a performance audit for a school district in fiscal distress. Such an audit may review any programs or operations where greater operational efficiencies or enhanced program results can be achieved.

## ESC governing board subdistricts

(Section 733.50)

Educational service centers (ESCs) are regional public entities that offer a broad spectrum of services, including curriculum development, professional development, purchasing, publishing, human resources, special education services, and counseling services, to school districts and other schools in their regions. They receive both state payments and district or school payments for their services. Each ESC is under the oversight of its own elected governing board. The territory from which the members of an ESC's governing board are elected is the combined territory of the "local" school districts in the county or counties of the ESC's service area. It does not include the territory of other districts the ESC might serve; however, an ESC board might appoint members representing its other clients.<sup>53</sup>

When an ESC is formed by the merger of two or more smaller ESCs, the governing board of the new ESC may divide its electoral territory into subdistricts with each member elected from one of those subdistricts, instead of being elected at large from the ESC's entire territory. However, in order to comply with the constitutional one-person, one-vote principle for popular elections, continuing law requires each ESC that has subdistricts to reconfigure them every ten years so that each member fairly represents about the same number of people. Generally, this redistricting must be completed within 90 days after the official announcement of the results of each federal decennial census. If a governing board fails to redistrict its territory by that date, the state Superintendent must redistrict it within 30 days thereafter.<sup>54</sup>

The bill temporarily permits an ESC board to delay its next redistricting until July 1, 2022. The state Superintendent, then, has until August 1, 2022, to redistrict an ESC, if a board fails to do so. This provision also delays the first election for board members under the new organization until November 2023.

## ESCs and competitive federal grants

(R.C. 3312.01)

The bill specifies that an ESC must be considered a "local education agency" for the purposes of eligibility in applying for *competitive* federal grants. Under current law, ESCs may

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<sup>53</sup> R.C. 3311.05, 3311.56, and 3313.843 to 3314.849, none in the bill.

<sup>54</sup> R.C. 3311.054, not in the bill.

apply for state or federal grants on behalf of a school district as a service it may provide to school districts and community schools by way of a service agreement. Current law does not specify which type of federal grant an ESC may apply for under the provision.

## **Adult Diploma Program minimum age**

(R.C. 3319.902)

The bill expands eligibility for the Adult Diploma Program to include any student who is at least 20 years old and has not received a high school diploma or a certificate of high school equivalence. Under current law, only individuals age 22 or older are eligible to participate.

The Adult Diploma Program provides job training and an alternate pathway for adults to earn an industry-recognized credential aligned to one of Ohio's in-demand jobs and earn a state-issued high school diploma.

## **Ohio Code-Scholar Pilot Program**

(R.C. 3313.905)

The bill requires Southern State Community College (SSCC) to establish and maintain the five-year Ohio Code-Scholar Pilot Program to support technical workforce needs. By July 31, 2021, SSCC must appoint a program coordinator to oversee the pilot program. Full administration of the program must be implemented by the fall of 2022. The program coordinator shall do all of the following:

1. Form a coalition consisting of members of the Department of Education, educators in grades K-12, career-technical education staff, educational service center staff, representatives of post-secondary institutions, federally and state-funded research organizations, and local area businesses in the areas in which the pilot program is operating;
2. Act as the liaison between SSCC and the coalition to develop the pilot program;
3. Collaborate with the coalition to develop a curriculum for grades 7-12 for the pilot program that focuses on industry standards in the field of computer sciences, including coding (see "**Program curriculum by grade level**," below);
4. Submit an annual report to SSCC regarding the progress and implementation of the pilot program;
5. Determine the manner in which the pilot program must recruit school districts and other participants from eligible counties for the fall of 2021 (those counties include Fayette, Clinton, Adams, Highland, Brown, and Pike);
6. Develop a structured timeline by which the pilot program must operate over the five-year period, with full administration beginning in the fall of 2022;
7. Determine the manner in which to incorporate the College Credit Plus Program within the pilot program;

8. Collaborate with the designated department, advisor, and instructor, as appointed by SSCC to develop an articulation system for credits earned under the pilot program and align them into a for-credit program at SSCC; and

9. Act as fiscal operator of the pilot program and oversee the use of any funds appropriated by the General Assembly.

### **Program curriculum by grade level**

The program curriculum for grades 7 and 8 must focus on career exploration, career readiness initiatives, and an introduction to coding and computer sciences. For grades 9-12, the focus must be in intermediate and advance coding, computer sciences, and the potential for industry-level credentialing.

### **Reporting requirements**

At the end of the five-year period, the bill requires SSCC, in collaboration with the program coordinator, to submit a full report and any legislative recommendations to the General Assembly regarding the outcomes of the pilot program.

### **Interscholastic athletics transfer rules**

(Repealed R.C. 3313.5316)

The bill repeals the requirement, enacted in 2019, that school districts, interscholastic conferences, and organizations that regulate interscholastic athletics have uniform transfer rules for public and nonpublic schools.

### **Nonpublic school administration of drugs**

(R.C. 3313.713)

The bill subjects chartered nonpublic schools to the same requirements and procedures as school districts related to the administration of prescription drugs to students. First, each chartered nonpublic school must adopt a policy regarding whether school employees may administer prescription drugs to students. Just like school districts, that policy must either (1) prohibit the district's employees from administering prescription drugs or (2) authorize designated employees to do so. If the school permits administration of prescription drugs it must adopt a policy designating the employees authorized to administer them. Those employees must be licensed health professionals or individuals who have completed a drug administration training program conducted by a licensed health professional and considered appropriate by the chartered nonpublic school's governing authority. Conversely, a chartered nonpublic school that does not permit administration of prescription drugs must adopt a policy stating that no employee may do so, except as required by federal special education law.

A chartered nonpublic school that opts to administer prescription medication may do so only after all of the following occur:

1. The school receives a written request to administer medication to the student signed by a parent or guardian;

2. The school receives a statement signed by the prescriber that includes the student's name, address, school and class in which the student is enrolled, name of drug and dosage, the times at which each dose is to be administered, the date administration begins and ends, any potentially severe adverse reactions, and instructions for administration;

3. The parent or guardian agrees to submit a revised statement signed by the prescriber if any of the information changes;

4. The person authorized to administer medications receives a copy of the statement;

5. The person authorized to administer medications receives the medication in the container in which it was dispensed by the prescriber or pharmacist;

6. All other procedures required by the school are followed.

Currently, employees of chartered nonpublic schools are expressly permitted to administer only specified medications, including glucagon, insulin, epinephrine, and metered dose or dry powder inhalers.<sup>55</sup>

## **Sale or lease of school district property**

(R.C. 3313.411; Section 812.10)

The bill adds to the definition of an "unused school facility" any school building that has been used for direct academic instruction but less than 60% of the building was used for that purpose. Under the bill, the addition to the definition of an "unused school facility" becomes effective July 1, 2022.

Continuing law defines "unused school facility" also as real property that has been used by a school district for school operations, including, but not limited to, academic instruction or administration, since July 1, 1998, but has not been used in that capacity for one year.

Continuing law requires a school district to offer to lease or sell "unused" real property to community schools, college-preparatory boarding schools, and STEM schools located within the district. Community schools that meet the statutory definition of "high-performing" must be given priority in such transactions. Districts also may offer the property to existing community schools located outside the district, if those schools have plans, stipulated in their contracts with their sponsors, to relocate to the district.

## **Online school bus driver training program**

(R.C. 3327.101)

The bill requires the Department of Education to develop an online bus driver training program to satisfy the classroom portion of pre-service and annual in-service training for school bus driver certification. On-the-bus training for drivers must continue to be completed in person.<sup>56</sup>

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<sup>55</sup> R.C. 3313.7111, 3313.7112, 3313.7114, and 3313.7116, none in the bill.

<sup>56</sup> H.B. 164 of the 133<sup>rd</sup> General Assembly enacted this provision for the 2020-2021 school year only.



## Obsolete reports, plans, or recommendations

(R.C. 3311.741, 3313.488, 3313.603, 3314.013, and 3314.017; Repealed R.C. 3301.0724, 3301.122, 3301.46, 3301.922, 3313.901, 3314.033, and 3314.37)

The bill eliminates the following education-related reports, plans, and recommendations that are out-of-date, expired, or no longer have data available:

| Section number                       | Description   |
|--------------------------------------|---|
| <b>R.C. 3301.0724<br/>(Repealed)</b> | An annual report by the Department of Education to the General Assembly regarding aggregate spending on specified compensation components for the previous school year for teachers and other school employees employed by each school district.  |
| <b>R.C. 3301.122<br/>(Repealed)</b>  | A ten-year strategic plan developed by the Superintendent of Public Instruction that is aligned with the strategic plan developed for higher education to be submitted to the General Assembly (due December 1, 2009).  |
| <b>R.C. 3301.46<br/>(Repealed)</b>   | A joint plan proposing a standard method and form for documenting high school transcripts, credit transfer and articulation, and any electronic clearing house for student transcript transfer developed jointly by the Department and the Chancellor of Higher Education (due April 30, 2009).   |
| <b>R.C. 3301.922<br/>(Repealed)</b>  | An annual report regarding participation by public and chartered nonpublic schools to screen students for body mass index and weight status to be submitted by the Department to the Governor and the General Assembly.   |
| <b>R.C. 3311.741(E)</b>              | A report evaluating a municipal school district's performance to be submitted by the state Superintendent to the Governor and the General Assembly (due November 15, 2017).   |
| <b>R.C. 3313.488(E)</b>              | A monthly report by the state Superintendent to the Speaker of the House and the President of the Senate for each month that a school district is unable to meet its expenses.  |
| <b>R.C. 3313.603(D)</b>              | A report that analyzes student performance data to determine if there are mitigating factors that warrant extending graduation qualification exemptions for students who entered 9 <sup>th</sup> grade between July 1, 2010 and July 1, 2016, by the Department, in collaboration with the Chancellor of Higher Education (due December 1, 2015). |
| <b>R.C. 3313.901<br/>(Repealed)</b>  | A plan for accelerating the modernization of the career-technical education curriculum by the State Board of Education (to be presented July 1, 1990, with annual progress reports issued through FY 2000).   |
| <b>R.C. 3314.013(D)</b>              | Standards for operation of internet- or computer-based community schools (e-schools) by the Director of the Governor's Office 21 <sup>st</sup> Century Education to the Speaker of the House and the President of the Senate (due July 1, 2012).  |

| Section number                      | Description  |
|-------------------------------------|--|
| <b>R.C. 3314.017(J)</b>             | Study committee recommendations regarding community schools that primarily serve students enrolled in dropout prevention and recovery programs that offer blended learning, portfolio learning, and credit flexibility to the General Assembly (due April 17, 2020). |
| <b>R.C. 3314.033<br/>(Repealed)</b> | Recommendations by the State Board to the General Assembly regarding the standards governing the operation of e-schools and other educational courses delivered by electronic media (due September 30, 2003).  |
| <b>R.C. 3314.37<br/>(Repealed)</b>  | A five-year research and development initiative to collect and analyze data with which to improve community school dropout prevention and recovery programs, known as the ISUS Institutes (initiative ended on June 30, 2013).                                       |

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## **BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

### **Preneed funeral contracts – public records exemption**

- Exempts, from disclosure under Ohio Public Records Law, preneed funeral contracts, and contract terms and personally identifiable information of a preneed funeral contract, contained in mandatory reports submitted to the Board of Embalmers and Funeral Directors.

### **Preneed funeral contracts – public records exemption**

(R.C. 149.43)

The bill exempts, from disclosure under Ohio Public Records Law, preneed funeral contracts, and contract terms and personally identifying information from a preneed funeral contract, that may be contained in a report submitted by or for a funeral home to the Board of Embalmers and Funeral Directors. For purposes of this law, preneed funeral contract is defined as follows:

a written agreement, contract, or series of contracts to sell or otherwise provide any funeral services, funeral goods, or any combination thereof to be used in connection with the funeral or final disposition of a dead human body, where payment for the goods or services is made either outright or on an installment basis, prior to the death of the person purchasing the goods or services or for whom the goods or services are purchased.<sup>57</sup>

Several current provisions of law require information about preneed funeral contracts to be submitted to the Board. First, a person who holds a funeral home license for a funeral business, before a change of ownership, must submit to the board a clearly enumerated account of certain moneys owed to the business including moneys from preneed funeral contracts.<sup>58</sup> Second, every seller of preneed funeral contracts must provide an annual report of such sales to the Board.<sup>59</sup> Finally, to help the Board administer the preneed recovery fund, each licensee who sells a preneed funeral contract must submit to the board certain information about each contract.<sup>60</sup>

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<sup>57</sup> R.C. 4717.01, not in the bill.

<sup>58</sup> R.C. 4717.13, not in the bill.

<sup>59</sup> R.C. 4717.31, not in the bill.

<sup>60</sup> R.C. 4717.41, not in the bill; O.A.C. 4717-14-07.

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## ENVIRONMENTAL PROTECTION AGENCY

### Fees

- Extends all of the following for two years:
  - The sunset of the annual emissions fees for synthetic minor facilities;
  - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works;
  - The sunset of the annual discharge fees for holders of National Pollutant Discharge Elimination System (NPDES) permits under the Water Pollution Control Law;
  - The sunset of license fees for public water system licenses;
  - A higher cap on the total fee due for plan approval for a public water supply system and the decrease of that cap at the end of the two years;
  - The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;
  - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications to take examinations for certification as operators of water supply systems or wastewater systems;
  - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control and Safe Drinking Water Laws;
  - The sunset of the fees levied on the transfer or disposal of solid wastes; and
  - The sunset of the fees levied on the sale of tires.
- Eliminates the following fees:
  - A \$15 application fee for registration certificate necessary for certain scrap tire collection facilities;
  - A \$15 application fee for a permit, or variance, or plan approval under the Solid and Hazardous Waste Law; and
  - The \$100 fee for renewal of coverage under an NPDES general permit for a household sewage treatment system.
- Eliminates a non-Title V air contaminant source fee schedule that only applied from January 1, 1994, to December 31, 2003.
- Reduces, from \$1,800 to \$500, the additional survey fee that laboratories must pay to the OEPA to add analysts or additional accepted analytical techniques between triennial renewal surveys.

- Corrects the definition of “MF” that is associated with lab fees by changing it from “microfiltration” to “membrane filtration.”

### **Scrap tires removed from “no fault” sites**

- Increases, from 5,000 to 10,000, the number of scrap tires that can be removed from a person’s property by the Ohio Environmental Protection Agency (OEPA) at no cost to the property owner if certain conditions apply (i.e., placement of scrap tires was not the fault of the property owner).
- Allows the OEPA Director to increase the 10,000 scrap tire threshold.

### **Lead and copper notification rules**

- Eliminates a requirement that the OEPA Director adopt rules setting specific administrative penalties that apply to community or nontransient noncommunity water systems for violations of notice requirements regarding lead and copper laboratory results.
- Authorizes the Director instead to assess the administrative penalties under existing statutory guidelines that apply to other violations of the Safe Drinking Water Law.
- Generally shifts reporting and other requirements regarding lead and copper contamination from statute to a rules-based system administered by the Director.
- Increases the timeframe (from two business days to not more than 30 business days after the receipt of lab results) within which the owner or operator of a community or nontransient noncommunity water system must notify residents when a tap sample does not exceed the applicable lead threshold.
- Requires the owner or operator of those systems to update and resubmit maps according to a schedule determined by the Director but no less frequently than required under the Safe Drinking Water Act, rather than every five years as in current law.
- Eliminates a requirement that the Director provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the notice and mapping requirements.

### **Certified and accredited laboratories under the VAP**

- Eliminates the OEPA Director’s authority to certify laboratories for purposes of performing analyses under the Voluntary Action Program (VAP).
- Instead, specifies that a laboratory must hold a valid accreditation from a specified outside accreditation body to perform analyses under the VAP.
- Generally requires a person participating in the VAP to use the services of an accredited laboratory to perform analyses, but specifies that data analyzed by a certified laboratory before the bill’s effective date may still be utilized.

- Retains the Director’s authority to enter the property of a certified laboratory and conduct audits for purposes of investigation and extends this authority to accredited laboratories.
- Prohibits the Director from contracting with an accredited laboratory to perform an audit if the laboratory performed any analyses that formed the basis for the issuance of a no further action letter in connection with the audit.
- Eliminates outdated provisions governing the VAP.

### **Water pollution control: practical qualification level**

- Specifies that, for purposes of determining compliance with a pollutant discharge limit set below the practical quantification level (PQL), any reported value below PQL constitutes compliance (instead of any level “at or below”).

### **Isolated wetland mitigation ratio table reference**

- Corrects an incorrect division reference to the Ohio Administrative Code.

## **Fees**

(R.C. 3745.11, 3734.57, and 3734.901)

The bill extends the time period for charging various OEPA fees under the laws governing air pollution control, water pollution control, safe drinking water, and solid waste. The following table sets forth each fee, its purposes, and the time period OEPA is authorized to charge the fee under current law and the bill:

| Type of fee                            | Description   | Sunset under current law                              | Sunset under the bill                           |
|--|---|---|---|
| Synthetic minor facility: emission fee | Each person who owns or operates a synthetic minor facility must pay an annual fee in accordance with a fee schedule that is based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant source at the facility that include terms and conditions that lower the facility’s potential to emit air contaminants below the major source thresholds | The fee is required to be paid through June 30, 2022. | The bill extends the fee through June 30, 2024. |

| Type of fee   | Description  | Sunset under current law  | Sunset under the bill  |
|---|--|---|--|
|   | established in rules adopted under continuing law.   |   |  |
| Wastewater treatment works: plan approval application fee | <p>A person applying for a plan approval for a wastewater treatment works is required to pay one of the following fees depending on the date:</p> <p>--A tier one fee of \$100 plus 0.65% of the estimated project cost, up to a maximum of \$15,000; or</p> <p>--A tier two fee of \$100 plus 0.2% of the estimated project cost, up to a maximum of \$5,000.</p> | An applicant is required to pay the tier one fee through June 30, 2022, and the tier two fee on and after July 1, 2022. | The bill extends the tier one fee through June 30, 2024; the tier two fee begins on or after July 1, 2024. |
| Discharge fees for holders of NPDES permits               | Each NPDES permit holder that is a public discharger or an industrial discharger with an average daily discharge flow of 5,000 or more gallons per day must pay an annual discharge fee based on the average daily discharge flow. There is a separate fee schedule for public and industrial dischargers.   | The fees were due by January 30, 2020, and January 30, 2021.  | The bill extends the fees and the fee schedules to January 30, 2022, and January 30, 2023.                 |
| Surcharge for major industrial dischargers                | A holder of an NPDES permit that is a major industrial discharger must pay an annual surcharge of \$7,500.   | The surcharge was required to be paid by January 30, 2020, and January 30, 2021.  | The bill extends the fee to January 30, 2022, and January 30, 2023.  |
| Discharge fee for specified exempt dischargers            | One category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180.   | The fee was due by January 30, 2020, and January 30, 2021.  | The bill extends the fee to January 30, 2022, and January 30, 2023.  |
| License fee for public water system license               | A person is prohibited from operating or maintaining a public water system without an annual license from OEPA. Applications for initial licenses or license renewals must be  | The fee for an initial license or a license renewal applies through June 30, 2022, and                                  | The bill extends the initial license and license renewal fee   |

| Type of fee  | Description  | Sunset under current law  | Sunset under the bill   |
|--|--|---|---|
|  | accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems.  | is required to be paid annually in January.   | through June 30, 2024.  |
| Fee for plan approval to construct, install, or modify a public water system                       | Anyone who intends to construct, install, or modify a public water supply system must obtain approval of the plans from OEPA. The fee for the plan approval is \$150 plus 0.35% of the estimated project cost. However, current law sets a cap on the fee.   | The cap on the fee is \$20,000 through June 30, 2022, and \$15,000 on and after July 1, 2022.   | The bill extends the cap of \$20,000 through June 30, 2024; the cap of \$15,000 applies on and after July 1, 2024.  |
| Fee on state certification of laboratories and laboratory personnel                                | In accordance with two schedules, OEPA charges a fee for evaluating certain laboratories and laboratory personnel.<br><br>An additional provision states that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$1,800 for each additional survey requested. | The schedule with higher fees applies through June 30, 2022, and the schedule with lower fees applies on and after July 1, 2022.<br><br>The \$1,800 additional fee applies through June 30, 2022. | The bill extends the higher fee schedule through June 30, 2024; the lower fee schedule applies on and after July 1, 2024.<br><br>The bill extends the additional fee through June 30, 2024. |
| Fee for examination for certification as an operator of a water supply system or wastewater system | A person applying to OEPA to take an examination for certification as an operator of a water supply system or a wastewater system (class A and classes I-IV) must pay a fee, at the time an application is submitted, in accordance with a statutory schedule.   | A schedule with higher fees applies through November 30, 2022, and a schedule with lower fees applies on and after December 1, 2022.  | The bill extends the higher fee schedule through November 30, 2024; the lower fee schedule applies on and after December 1, 2024.   |
| Application fee for a permit (other than an NPDES permit), variance, or plan approval              | A person applying for a permit (other than an NPDES permit), a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law must pay a nonrefundable fee.   | If the application is submitted through June 30, 2022, the fee is \$100. If the application is submitted on or  | The bill extends the \$100 fee through June 30, 2024; the \$15 fee applies on and after July 1, 2024.   |



| Type of fee                                      | Description  | Sunset under current law  | Sunset under the bill   |
|--|--|---|---|
|  |  | after July 1, 2022, the fee is \$15.  |   |
| Application fee for an NPDES permit              | A person applying for an NPDES permit must pay a nonrefundable application fee.  | If the application is submitted through June 30, 2022, the fee is \$200. If the application is submitted on or after July 1, 2022, the fee is \$15. | The bill extends the \$200 fee through June 30, 2024; the \$15 fee applies on and after July 1, 2024. |
| Fees on the transfer or disposal of solid wastes | A total of \$4.75 in state fees is levied on each ton of solid waste disposed of or transferred in Ohio.<br><br>The fees are used for administering the hazardous waste (90¢), solid waste (75¢), and other OEPA programs (\$2.85), and for soil and water conservation districts (25¢). | The fees apply through June 30, 2022.   | The bill extends the fees through June 30, 2024.  |
| Fees on the sale of tires                        | A base fee of 50¢ per tire is levied on the sale of tires to assist in the cleanup of scrap tires.<br><br>An additional fee of 50¢ per tire is levied to assist soil and water conservation districts.   | Both fees are scheduled to sunset on June 30, 2022.   | The bill extends the fees through June 30, 2024.  |

The bill also eliminates all of the following:

1. A \$15 application fee for registration certificate necessary for certain scrap tire collection;
2. A \$15 application fee for a permit, or variance, or plan approval under the Solid and Hazardous Waste Law;
3. An obsolete non-Title V air contaminant source fee schedule that applied from 1994 to 2003; and
4. The \$100 fee for renewal of coverage under an NPDES general permit for a household sewage treatment system.

Additionally, it reduces, from \$1,800 to \$500, the additional survey fee that laboratories must pay to the OEPA to add analysts or additional accepted analytical techniques between triennial renewal surveys.

Finally, the bill corrects the definition of “MF” that is associated with lab fees by changing it from “microfiltration” to “membrane filtration.

## **Scrap tires removed from “no fault” sites**

(R.C. 3734.85)

The bill increases, from 5,000 to 10,000 (or more if the OEPA Director approves a larger amount), the number of scrap tires that can be removed from a person’s property by OEPA at no cost to the property owner. The bill maintains the stipulation that all of the following conditions apply:

1. The tires were placed on the property *after* the property owner acquired title to the property, or the tires were placed on the property *before* the owner acquired title to the property by bequest or devise;
2. The property owner did not have knowledge that the tires were being placed on the property, or the property owner posted the property signs prohibiting dumping or took other action to prevent the placing of tires on the property;
3. The property owner did not participate in or consent to the placing of the tires on the property;
4. The property owner received no financial benefit from the placing of the tires on the property or otherwise having the tires on the property;
5. Title to the property was not transferred to the property owner for evading scrap tire abatement liability; and
6. The person responsible for placing the tires on the property, in doing so, was not acting as an agent for the property owner.

## **Lead and copper notification rules**

(R.C. 6109.121; R.C. 6109.01 and 6109.23, not in the bill)

The bill eliminates a requirement that the OEPA Director adopt rules setting specific administrative penalties that apply to community or nontransient noncommunity water systems for violations of notice requirements regarding lead and copper laboratory results. Instead, it authorizes the Director to establish the administrative penalties under existing statutory guidelines that apply to other violations of the Safe Drinking Water Law.

In general, the bill shifts reporting and other requirements that the owner or operator of such water systems must follow regarding lead and copper contamination from statute to rule. This shift includes requirements concerning the following subjects:

1. Administrative penalties, as discussed above;
2. Laboratory sampling and reporting requirements;
3. Notification requirements that the owner or operator of a community or nontransient noncommunity water system must follow regarding laboratory results;
4. Certification requirements concerning the notification requirements;

5. OEPA Director notifications where a system fails to make required notices; and
6. System mapping requirements that show areas of a system that are known or likely to contain lead service lines and lead fixtures.

Specifically, the bill requires the rules to include requirements that the owner or operator of a community or nontransient noncommunity water system do both of the following:

1. When a tap sample for lead or copper is *below* the applicable lead threshold, provide notice of the results to residents within a time period specified in rules that is not more than 30 days after the receipt of lab results, rather than within two business days as in current law;
2. Under rules concerning mapping requirements, update and resubmit the maps according to a schedule determined by the Director, but no less frequently than required under the Safe Drinking Water Act, rather than every five years as in current law.

The bill eliminates a requirement that the Director provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the notice and mapping requirements.

Under current law, a community water system is a public water system that has at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. A nontransient noncommunity water system is a public water system that regularly serves at least 25 of the same persons over six months per year and is not a community water system.

## **Certified and accredited laboratories under the VAP**

(R.C. 3746.01, 3746.04, 122.65, 3746.07, repealed; R.C. 3746.071 (3746.07), 3746.09, 3746.10, 3746.11, 3746.12, 3746.13, 3746.17, 3746.18, 3746.19, 3746.20, 3746.21, 3746.31, and 3746.35)

Current law establishes the Voluntary Action Program (VAP) administered by OEPA. Under the VAP, a person may undertake cleanup of a contaminated property to specific standards. When those standards are met, a certified professional (a person certified by OEPA to assess the cleanup) may issue a “no further action letter.” This letter verifies that the property, in the view of the certified professional and based on an analysis performed by a certified laboratory, has been remediated and meets appropriate standards. After the issuance of a no further action letter, the OEPA Director may issue a covenant not to sue. This covenant releases the person who undertook a voluntary action from all civil liability to the state to:

1. Perform investigational activities at the property that was the subject of the voluntary action; and
2. Perform remedial activities to address a release of hazardous substances or petroleum at the property (with certain conditions).

The bill eliminates a requirement that OEPA certify laboratories for purposes of assessing whether cleanup standards have been met under the VAP. Instead, it requires each laboratory to hold a valid accreditation from an outside accreditation body, as follows:

1. For analysis of asbestos:

- a. The American Industrial Hygiene Association, Asbestos Analysts Registry;
  - b. The National Institute of Standards Technology, National Voluntary Laboratory Accreditation Program (NELAP) for asbestos fiber analysis; or
  - c. An accreditation body recognized by the National Environmental Laboratory Accreditation Conference (NELAC).
2. For analysis of any constituents other than asbestos:
    - a. An accreditation body recognized by NELAC;
    - b. A NELAP accreditation from an accreditation body recognized by NELAC.

The bill generally requires a person participating in a voluntary action to use the services of an accredited laboratory to perform analyses. But, it specifies that data analyzed by a laboratory certified by OEPA before the bill's effective date may still be used for a voluntary action. Because this data may still be utilized, the bill retains the Director's authority to audit any work performed by a certified laboratory before the bill's effective date. For these purposes, the Director may do any of the following:

1. Enter the property of a certified laboratory for purposes of investigation;
2. Conduct a special audit when a no further action letter was issued under the VAP but the analyses were performed by a certified laboratory for which certification was suspended or revoked before the bill's effective date; and
3. Audit work performed by a certified laboratory to determine if the laboratory's performance of its duties has resulted in the issuance of a no further action letter that is not consistent with cleanup standards.

The bill expands the Director's investigation and auditing authority so that it also applies to accredited laboratories. It also prohibits the Director from contracting with an accredited laboratory to perform an audit if the laboratory performed any analyses that formed the basis for the issuance of a no further action letter in connection with the audit. This prohibition is a continuation of a prohibition that applies to certified laboratories. Finally, the bill eliminates outdated provisions governing the VAP that applied before the Director adopted the rules governing the VAP.

## **Water pollution control: practical qualification level**

(R.C. 6111.13)

The bill specifies that, for purposes of determining compliance with a water pollutant discharge limit set below the practical quantification level (PQL), any reported value below PQL (instead of any level "at or below" PQL) constitutes compliance. A PQL is the minimum concentration of an analyte (substance whose chemical constituents are being measured) that can be measured with a high degree of confidence that the analyte is present at the reported concentration.

## **Isolated wetland mitigation ratio table reference**

(R.C. 6111.027)

The bill corrects an incorrect division reference to the Ohio Administrative Code in the law governing isolated wetlands. Current law references mitigation ratios established under division (F) of rule 3745-1-54 of the Administrative Code. However, after the most recent revision to that rule, that reference is no longer accurate. The bill corrects this by instead only referring to rule 3745-1-54.

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## FACILITIES CONSTRUCTION COMMISSION

### Notification of district indebtedness

- Requires a school district, instead of the Facilities Construction Commission as in current law, to notify the Superintendent of Public Instruction if the district will exceed the limit on net indebtedness specified in continuing law.

### Community School Credit Enhancement Program

- Prescribes the Community School Credit Enhancement Program, but delays the program's establishment and operation until the General Assembly enacts subsequent legislation authorizing it.
- Requires the Commission to conduct a study regarding the program's feasibility and submit to the General Assembly, by July 1, 2022, a report regarding its findings and recommendations.
- Requires the program, if authorized, to assist community schools in obtaining more favorable financing by guaranteeing the payment of principal and interest on loans, bonds, or other financing used to acquire, improve, or replace classroom facilities.
- Specifies that bonds guaranteed for a community school under the program would not be an indebtedness of the state, but instead would be a special obligation payable from the revenue or other funds of the school or an appropriation made by the General Assembly for the program.
- Prescribes an annual procedure under which the General Assembly would determine whether to appropriate funds to restore community school debt service reserve funds to their respective funding requirements.

### Notification of district net indebtedness

(R.C. 133.06)

The bill requires a school district, instead of the Facilities Construction Commission, as in current law, to notify the Superintendent of Public Instruction if the district will exceed the limit on net indebtedness specified in continuing law.

#### Background

Continuing law generally prohibits a school district from incurring net indebtedness exceeding 9% of its tax valuation. A district also may not submit to its voters the question of incurring new debt that will make the district's net indebtedness exceed 4% of its tax valuation, unless the state Superintendent consents to the submission. (Except for limited debt to purchase energy conservation improvements in its buildings, or alternative fuel vehicles, a district may not issue debt in excess of 0.1% of its tax valuation without voter approval.)

School districts, however, may exceed those limits when necessary to raise the district share to participate in a school facilities project. The district must notify the state Superintendent whenever a district will exceed either limit.

## **Community School Credit Enhancement Program**

(R.C. 3318.51)

### **Delay pending report and subsequent legislation**

The bill prescribes the Community School Credit Enhancement Program to assist community schools in obtaining more favorable financing by guaranteeing the payment of principal and interest on loans, bonds, or other financing. However, bill prohibits the Facilities Construction Commission from establishing or operating the program until the General Assembly enacts subsequent legislation authorizing it.

Rather, the bill requires the Commission, by July 1, 2022, to conduct a study regarding the program's feasibility and to submit a report to the General Assembly with the Commission's findings and recommendations. The report must include a recommendation regarding the financial obligations, costs, or guarantees the state would make under the program.

The bill's provisions for the new credit enhancement program does not affect the current Community School Classroom Facilities Loan Guarantee Program.<sup>61</sup>

### **Program's operations if subsequently authorized**

#### **Purpose**

If the program is subsequently authorized by the General Assembly, the Commission may guarantee 100% of the principal and interest on the financing made to a community school governing authority to assist it in acquiring, improving, or replacing "classroom facilities" for the school by lease, purchase, remodeling of existing facilities, or any other means including new construction. The bill defines "classroom facilities" as buildings, land, grounds, equipment, and furnishings used by a community school in furtherance of its mission and contract with its sponsor.

#### **Approval of financing**

To be considered for guaranteed financing under the program, a community school would have to submit to the Commission, in a form and manner prescribed by the Commission, an application that includes at least evidence that:

1. The school is in good standing with its sponsor;
2. The school is creditworthy, with substantial weight given to academic outcomes as evidenced by whether the school is designated a Community School of Quality under the Quality Community School Support Program established for FY 2022 and FY 2023 under the bill;<sup>62</sup> and

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<sup>61</sup> See R.C. 3318.50 and 3318.52, neither in the bill.

<sup>62</sup> See Section 265.335. Similar temporary provisions have been enacted in past budget acts.

3. The classroom facilities that have been acquired, improved, or replaced under the financing meet applicable health and safety standards under the law for school buildings or those facilities.

Under the program, the Commission meets regularly to evaluate applications and either approve or disapprove each application within ten business days of the decision. The Commission would prescribe the terms and conditions in approving guaranteed financing under the program in a written agreement with the community school.

The Commission would be prohibited from approving an application if it will cause the total financing under the program to exceed \$200 million, except that, if the total financing exceeds 90% of that amount in a school year, for subsequent school years the new amount would be \$300 million.

### **Participation fee**

Each community school that is approved to participate in the program would be required to pay an annual program participation fee equal up to 0.25% of the outstanding principal of the school's guaranteed financing in any year for as long as there is an outstanding balance. Such fees must be paid to the Treasurer of State and deposited in a Community School Classroom Facility Guaranteed Financing Fund. That fund will consist of moneys deposited by community schools under the program or other funds appropriated by the General Assembly, federal grants, and private donations. Investment earnings on moneys in the fund must be credited to the fund.

### **Guaranteed bonds not indebtedness of state**

The bill specifies that bonds guaranteed under the program are not to be an indebtedness of the state or the Commission. Instead, they are special obligations payable solely from revenue or other funds pledged by the community school or amounts appropriated by the General Assembly for the program's purposes.

### **Debt service reserve funds**

The bill would require one or more debt service reserve funds to be established for a community school with respect to bonds issued under the program. Money in a reserve fund generally may not be withdrawn from it if the withdrawal amount would reduce the level of money in the fund to less than a debt service reserve fund requirement. However, the bill specifies that, as long as bonds guaranteed under the program are outstanding, money in a reserve fund may be withdrawn to less than that requirement if it would be used to pay:

1. The principal of, redemption price of, or interest on a bond when it is due and if no other money of the community school is available to make the payment, as determined by the Commission; or

2. Any redemption premium required to be paid when the bonds are redeemed prior to their maturity if no other bonds will remain outstanding upon payment from money in the reserve fund.

The bill specifies that any money in a reserve fund that exceeds the requirement may be withdrawn by a community school.



### **Procedure to determine whether to restore reserve fund amounts**

The bill would prescribe an annual procedure under which the General Assembly would determine whether to appropriate funds to restore community school debt service reserve funds to their respective debt service reserve fund requirements.

Under the procedure, the Commission, by December 1 of each year, must certify to the Governor the amount, if any, required to restore the reserve funds to their respective requirements. The Governor would have to request from the General Assembly an appropriation of the certified amount. Finally, the General Assembly would be permitted to appropriate money to the reserve funds to meet their requirements. A community school that receives money from such an appropriation would be required to repay the state in a time and manner determined by the Commission.

### **Rights of bondholders**

The bill prohibits the state from alternating, impairing, or limiting the rights of bondholders or persons contracting with a community school until the bonds, including interest and other contractual obligations, are fully met and discharged. It also states that the provision does not preclude an alternation, impairment, or limitation if provision is made by law for the protection of bondholders or persons entering into contracts with a community school.

### **Other Commission authority and responsibilities**

Under the program, the Commission may require a community school to vest in the Commission the right to enforce any covenant made to secure bond under the program by making appropriate provisions in the indenture related to the school's bonds. It also may require a community school to make covenants and agreements in indentures or in a reimbursement agreement to protect the interests of the state and to secure repayments to the state of any moneys received by the school from an appropriation to restore amounts deposited in the school's debt service reserve fund to the debt service reserve fund requirement.

Finally, the bill would require the Commission to adopt rules that prescribe financing standards and procedures consistent with the provision that are designed to protect the state's interest in any financing guaranteed under the program and to ensure the state has a reasonable chance of recovering any payments made by the state in the event of a default on any financing.

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## GENERAL ASSEMBLY

### General Assembly intervention in lawsuits

- Allows the Speaker of the House and the President of the Senate to intervene to defend a statute in any court case in which the statute is challenged as unconstitutional or invalid under federal law, or in which the statute's construction or validity is otherwise challenged.
- Permits those leaders similarly to intervene in court to defend a General Assembly or congressional district plan, or any such districts, adopted by the Ohio Redistricting Commission.
- Allows the leaders to obtain legal counsel independent of the Attorney General and to use public funds appropriated for that purpose.
- Prohibits any other individual member, or group of members, of the General Assembly or the Ohio Redistricting Commission from intervening in such a case in an official capacity or obtaining independent legal counsel at public expense.
- Specifies that the participation of the Speaker or the President in a case, as described above, does not waive the legislative privilege or immunity of any member, officer, or staff of the General Assembly.

### Protection and advocacy system and client assistance program

- Requires the Senate President and Speaker of the House to establish every two years a joint committee to examine the activities of the state's protection and advocacy system and client assistance program.
- Requires the joint committee every two years to submit to the Senate President, Speaker, Governor, and members of the Joint Committee on Medicaid Oversight (JMOC) a report containing any recommendations.

### Evaluation of publicly funded child care and Step Up to Quality

- Establishes a study committee to evaluate publicly funded child care and the Step Up to Quality Program and authorizes the committee to issue a report of its findings.

### General Assembly intervention in lawsuits

(R.C. 101.55 and 109.02)

#### Challenges to statutes

The bill allows the General Assembly's majority leadership to intervene at any time to defend a statute in any state or federal court case in which the statute is challenged as unconstitutional or invalid under federal law, or in which the statute's construction or validity is otherwise challenged, either as part of a claim or an affirmative defense. The leaders must serve motion on the parties as provided in the Rules of Civil Procedure.

Specifically, the bill allows the Speaker of the House and the President of the Senate to intervene in a case as follows:

- The Speaker may intervene on behalf of the House;
- The President may intervene on behalf of the Senate;
- The Speaker and the President, acting jointly, may intervene on behalf of the General Assembly.

The bill also permits the Speaker or the President, or the Speaker and the President acting jointly, as applicable, to obtain legal counsel independent of the Attorney General and to use public funds appropriated for that purpose. Under existing law, the Attorney General is the chief law officer for the state and generally represents the state in any case challenging the constitutionality of statutes.

### **Challenges to redistricting plans**

Similarly, the bill allows legislative leaders to intervene at any time in state or federal court to defend a General Assembly or congressional district plan, or any such districts, adopted by the Ohio Redistricting Commission under the Ohio Constitution. (A congressional district plan adopted by the General Assembly is in the form of a bill, and thus would be covered under the provisions above concerning challenges to statutes.) The leaders must serve motion on the parties as provided in the Rules of Civil Procedure.

The bill allows the Speaker and the President to intervene as follows:

- The Speaker may intervene on behalf of the House;
- The President may intervene on behalf of the Senate;
- The Speaker and the President, acting jointly, may intervene on behalf of the Ohio Redistricting Commission.

The Speaker or the President, or the Speaker and the President acting jointly, as applicable, also may obtain legal counsel independent of the Attorney General and use public funds appropriated for that purpose.

Under the Ohio Constitution, the Ohio Redistricting Commission consists of the Governor, the Auditor of State, the Secretary of State, one person appointed by the Speaker, one person appointed by the House Minority Leader, one person appointed by the President, and one person appointed by the Senate Minority Leader. The Speaker and the President each appoint a co-chairperson of the Commission.<sup>63</sup>

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<sup>63</sup> Ohio Const., art. XI, sec. 1(A).

## **Other interventions prohibited**

The bill prohibits any other individual member, or group of members, of the General Assembly or the Ohio Redistricting Commission from intervening in a case described above in an official capacity or obtaining independent legal counsel at public expense.

## **Legislative privilege and immunity**

The bill specifies that the participation of the Speaker or the President in a case, as described above, does not waive the legislative privilege or immunity of any member, officer, or staff of the General Assembly.

The concepts of legislative privilege and immunity come from the Speech and Debate Clause of the Ohio Constitution, which provides that, “for any speech, or debate, in either House, . . . [Senators and Representatives] shall not be questioned elsewhere.” The courts have interpreted this clause to mean that members of the General Assembly, and to some extent their staff, may not be prosecuted or sued for their legitimate legislative activities and that members of the General Assembly and sometimes their staff enjoy an evidentiary privilege that prevents certain legislative activities from being used in court as evidence against them.<sup>64</sup>

## **Protection and advocacy system and client assistance program**

(R.C. 5123.603; Section 261.190)

The bill requires the Senate President and Speaker of the House to establish every two years a joint committee to examine the activities of the state’s protection and advocacy system and client assistance program for individuals with disabilities. The joint committee is to consist of three members of the Senate, two members of the majority party and one member of the minority party, appointed by the Senate President and three members of the House, two members of the majority party and one member of the minority party, appointed by the Speaker. The Senate President and Speaker are to determine the dates on which members’ terms are to begin and end. Vacancies are to be filled in the manner of the original appointments. In odd-numbered years, the Senate President is required to designate a committee member from the Senate as the chairperson and in even-numbered years, the Speaker is required to designate a committee member from the House to serve as chairperson.

The bill authorizes the current entity serving as the state’s protection and advocacy system and client assistance program, in its sole discretion, to appear before and offer testimony to the joint committee. At present, that entity is Disability Rights Ohio.

Every two years, the Senate President and Speaker must specify a deadline for the joint committee to complete a new report containing any recommendations the joint committee may have. The joint committee is to submit the report to the Senate President, Speaker, Governor, and members of JMOC by the deadline.

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<sup>64</sup> Ohio Const., art. II, sec. 12. See also *Hicksville v. Blakeslee*, 103 Ohio St. 508 (1921) and *Dublin v. State of Ohio*, 138 Ohio App.3d 753 (10<sup>th</sup> Dist. Ct. App. 2000).

Federal law authorizes allotments of federal funds to states to support protection and advocacy systems for individuals with developmental disabilities. A state must satisfy a number of requirements to be eligible for its allotment, including certain requirements regarding the state protection and advocacy system.<sup>65</sup> The federal requirements generally describe the types of entities that may serve as the state protection and advocacy system and the criteria for redesignation.

The bill designates this provision as the “Protection and Advocacy Transparency Amendment.”

## **Evaluation of publicly funded child care and Step Up to Quality**

(Section 307.250)

The bill establishes a study committee to evaluate all of the following regarding both publicly funded child care and the Step Up to Quality Program:

- The number of children and families receiving publicly funded child care;
- The number of early learning and development programs participating in ODJFS’s Step Up to Quality Program and providing publicly funded child care;
- Funding sources for both publicly funded child care and the Step Up to Quality Program;
- The long-term sustainability of those funding sources;
- Eligibility levels for publicly funded child care, including the levels at which families may lose their eligibility;
- Issues regarding access to publicly funded child care and quality-rated early learning and development programs;
- The impact and feasibility of requiring that all early learning and development programs providing publicly funded child care be rated in Step Up to Quality’s third highest tier or above by a certain date;
- The manner in which ODJFS establishes reimbursement ceilings for publicly funded child care, including through the use of market rate surveys.

### **Committee membership**

The committee is to be comprised of the following 16 members:

- Three members of the Senate, two from the majority caucus and one from the minority caucus, each appointed by the Senate President;
- Three members of the House, two from the majority caucus and one from the minority caucus, each appointed by the Speaker;

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<sup>65</sup> 42 U.S.C. 15041 to 15045.

- The ODJFS Director or the Director’s designee;
- The Superintendent of Public Instruction or the Superintendent’s designee;
- The director of a county department of job and family services, appointed by the Senate President;
- A home-based child care provider who provides publicly funded child care, appointed by the Senate President;
- A center-based child care provider who provides publicly funded child care, appointed by the Speaker of the House;
- A private pay child care provider, appointed by the Senate President;
- A representative of the Ohio Society of Certified Public Accountants, appointed by the Speaker of the House;
- Two representatives, each from a child care advocacy organization, one appointed by the Senate President and the other by the Speaker of the House;
- A representative of the business community appointed by the Speaker of the House.

All appointments are to be made not later than 30 days after the bill’s effective date. The Senate President must select as the committee’s chairperson one of the members of the committee from the Senate, and the Speaker of the House must select as the committee’s vice-chairperson one of the committee members from the House.

### **Meetings, hearings and report**

Under the bill, the committee meets at the call of the chairperson and, as part of its evaluation, must hold hearings to receive testimony from the public. The committee also may issue a report of its findings. The staff of the Legislative Service Commission is to provide services to the committee as it performs its duties under the bill. The duty to evaluate publicly funded child care and the Step Up to Quality Program expires on the adjournment of the 134<sup>th</sup> General Assembly.

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## GOVERNOR

- Requires the Governor's Office of Faith-Based and Community Initiatives to submit an annual report detailing its spending and distribution of Temporary Assistance for Needy Families block grant funds.

### **TANF report**

(R.C. 107.121)

The bill requires the Governor's Office of Faith-Based and Community Initiatives to prepare and submit, not later than July 30 each year, a report that details the following:

1. A breakdown of how the office spent funds from the Temporary Assistance for Needy Families (TANF) block grant;
2. A breakdown of all grants awarded by the office using TANF block grant funds; and
3. A breakdown of each entity that was awarded a grant, including the services the entity provided, the number of individuals served, and the total amount of grant money spent by the entity.

The office must submit this report to the Speaker of the House, the President of the Senate, and the Director of the Legislative Service Commission.

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## DEPARTMENT OF HEALTH

### Inspections of assisted living facilities

- Authorizes the Director of Health (ODH Director) to inspect a residential care (assisted living) facility every 30 months, instead of every 15 months as in current law, once the facility has had two consecutive 15-month inspections without any substantiated violations and other related conditions are met.

### Hospital licensure

- Within three years of the bill's effective date, requires a hospital operating in Ohio to be licensed by the ODH Director rather than registered as under current law.
- Specifies that any existing law reference to a hospital that is not included in the bill is to be construed as a reference to a hospital licensed under the bill's licensure requirements.

### Variations from written transfer agreements

- Adds the following to existing law governing variations from the written transfer agreement requirement that applies to ambulatory surgical facilities (ASFs):
  - The local hospital at which the consulting physician has admitting privileges must be within a 25-mile radius of the ASF;
  - The consulting physician cannot teach or provide instruction at a medical school, osteopathic medical school, any state hospital, or other public institution;
  - The consulting physician cannot be employed by, compensated pursuant to a contract with, or otherwise provide instruction or consultation to, a medical school, osteopathic medical school, any state hospital, or other public institution;
  - The consulting physician must actively practice clinical medicine within a 25-mile radius of the ASF.
- Requires an ASF with an existing variance to demonstrate compliance with the bill's requirements within 90 days or the variance must be rescinded.

### Home health service provider licensing

- Requires home health agencies and independent (nonagency) providers of skilled home health services and nonmedical home health services to be licensed by the Department of Health (ODH).

### Expedited licensing inspections

- Specifies that an existing home, such as a nursing home or residential care (assisted living) facility may request an expedited licensing inspection from the ODH Director when seeking approval to increase or decrease its licensed capacity or make any other change for which the Director requires a licensing inspection to be conducted.



## **Technological resources**

- Removes a requirement that providers conducting home visits under the Help Me Grow Program, WIC clinics, and Medicaid managed care organizations promote the use of technological resources that provide information on having a healthy pregnancy and healthy baby.

## **Newborn screening**

- Requires newborns to be screened for X-linked adrenoleukodystrophy and spinal muscular atrophy, with the screenings to begin 240 days after the bill's effective date.
- Requires the state's Newborn Screening Advisory Council, not later than six months after a disorder has been added to the federal Recommended Uniform Screening Panel, to determine whether or not to recommend to the ODH Director that Ohio newborns be screened for the same disorder.
- Requires the Director, not later than six months after receiving the recommendation, to specify the disorder for screening in rule, with screening to begin within one year.

## **Smoking and tobacco**

### **Dispensing nicotine replacement therapy without a prescription**

- Authorizes pharmacists to dispense nicotine replacement therapy without a prescription in accordance with physician-established protocols.

### **Moms Quit for Two grant program**

- Continues the Moms Quit for Two grant program for the delivery of tobacco cessation interventions to women who are pregnant or living with children and reside in communities with the highest incidence of infant mortality.

### **Smoke-Free Workplace Law**

- Expands the Smoke-Free Workplace Law to include electronic smoking devices and vapor products.
- Exempts retail vapor establishments from the smoking ban with regard to smoking via vapor products and electronic smoking devices.
- Specifies that the smoking ban applies to retail vapor establishments with regard to all other forms of smoking.
- Requires entities to certify that they are eligible for the retail vapor store smoking ban exemption.
- Defines "retail vapor store" as being a retail establishment that derives more than 80% of its gross revenue from the sale of vapor products, electronic smoking devices, or other electronic smoking product accessories and for which the sale of other products is merely incidental.

### **Retail tobacco store definition**

- Revises the definition of “retail tobacco store” to apply to stores that sell “lighted or heated tobacco products,” conforming the definition to the bill’s revised definition of “smoking.”

### **Certificate of need capital expenditure threshold**

- Increases to \$6 million (from the current \$2 million) the maximum amount of a capital expenditure that may be made in renovating or adding to a long-term care facility without being subject to review under the Certificate of Need Law.

### **Nurse aide training and competency evaluation programs**

- Adds a new pathway for nurse aides to satisfy the requirement to complete a training and competency evaluation program.

### **Children with Medical Handicaps Program eligibility**

- Extends the Children with Medical Handicaps Program age limit from 21 to 23 by July 1, 2022, by increasing the age limit by one year in 2021 and 2022.

### **Help Me Grow report**

- Requires the ODH Director to submit a report regarding the Help Me Grow program that includes recommendations for using funds associated with Medicaid and TANF to provide services through Help Me Grow.

### **Rare Disease Advisory Council membership**

- Increases to 31 (from 25) the number of members on the Rare Disease Advisory Council by permitting the appointment of public members to the Council by the President of the Senate, the Speaker of the House, and the Minority Leader of each chamber.

### **Drug overdose fatality review committees**

- Authorizes the establishment of county or regional drug overdose fatality review committees.
- Requires each committee to submit to the Ohio Department of Health (ODH) an annual report containing specified information related to the drug overdose or opioid-involved deaths reviewed by the committee.

### **Suicide fatality review committees**

- Authorizes the establishment of county or regional suicide fatality review committees.
- Requires each committee to submit to ODH an annual report containing specified information related to the suicide deaths reviewed by the committee.

## Inspections of assisted living facilities

(R.C. 3721.02)

Under current law, before a nursing home or residential care (assisted living) facility may be licensed, it must be inspected by the Director of Health (ODH Director) and the State Fire Marshal, or a fire department approved by the Fire Marshal. A home must be inspected every 15 months thereafter.

The bill extends the period for inspections by the ODH Director from 15 months to 30 months if all of the following apply:

- The facility has had at least two consecutive 15-month inspections with no substantiated violations;
- During that same time period, there were no substantiated violations from any other inspections or from any investigations of complaints;
- There are no outstanding violations from any previous inspections or investigations during any other time period.

An assisted living facility still must be inspected by the State Fire Marshal or an approved fire department once every 15 months.

## Hospital licensure

(R.C. 3722.02 (primary), 3722.01 to 3722.14, and 3722.99; conforming changes in numerous other R.C. sections)

Beginning three years after its effective date, the bill requires each hospital operating within Ohio to hold a license from the ODH Director, rather than be registered as under current law. Should a hospital fail to obtain the license by the required date, it will be subject to civil and criminal penalties.

Because the bill does not amend all of the references to registered hospitals in the Revised Code, it also specifies that, beginning three years after its effective date, any existing law reference to a hospital is to be construed as a reference to a hospital licensed under the bill's licensure requirements.

### Effective date of mandatory licensure and interim period

For three years after the bill's effective date, existing law requirements are maintained, and the bill's new requirements apply only to hospitals that have obtained licenses. As described in more detail below, the Ohio Department of Health (ODH) may begin to consider applications for licensure one year after the bill's effective date. Hospitals will then have two years to become licensed. During that period, some facilities may be both licensed under the new hospital licensing plan and subject to existing law requirements. Once the bill's license mandate becomes effective, each hospital within the state must be licensed by the ODH Director in order to operate.

## Definitions

The bill defines “**hospital**” to mean an institution or facility that provides inpatient medical or surgical services for a continuous period longer than 24 hours. Note that a **hospital** includes a “**children’s hospital**,” defined to mean either of the following:

- A hospital that provides general pediatric medical and surgical care in which at least 75% of annual inpatient discharges for the preceding two calendar years were individuals younger than 18; or
- A distinct portion of a hospital that provides general pediatric medical and surgical care, has a total of at least 150 pediatric special care and pediatric acute care beds, and in which at least 75% of annual inpatient discharges for the preceding two calendar years were individuals younger than 18.

## Entities not subject to hospital licensure

The bill specifies that its licensure requirements do not apply to the following:

- A hospital operated by the federal government;
- An ambulatory surgical facility or other health care facility licensed by the ODH Director;
- A nursing home or residential care (assisted living) facility licensed by the ODH Director;
- A hospital or inpatient unit licensed by the Department of Mental Health and Addiction Services (OhioMHAS);
- A residential facility licensed by OhioMHAS or the Department of Developmental Disabilities;
- A community addiction services provider certified by OhioMHAS;
- A facility providing services under a contract with the Department of Developmental Disabilities;
- A facility operated by a licensed hospice care program and that is used exclusively for the care of hospice patients;
- A facility operated by a licensed pediatric respite care program and that is used exclusively for the care of pediatric respite care patients;
- The site where a health care practice is operated, regardless of whether the practice is organized as an individual or group practice;
- A clinic providing ambulatory patient services where patients are not regularly admitted as inpatients;
- An institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation, and providing 24-hour nursing care pursuant to an exemption from certain Ohio Board of Nursing licensing requirements.

## **Note on maternity units, newborn care nurseries, and ambulatory surgical facilities**

Ohio law requires hospital maternity units and newborn care nurseries to be licensed by the ODH Director. The bill maintains this licensure – but only for the period during which a hospital is not required to be licensed. After hospital licensure is mandatory, the bill repeals the law governing maternity unit and newborn care nursery licensure because they will be covered by the hospital's license.

The bill also specifies that an ambulatory surgical facility does not include a hospital provider-based department that is otherwise licensed under the bill's provisions.

### **Penalties for operating without a license**

Should a hospital operate without a license, the bill requires the ODH Director to do the following:

- Notify the hospital that it is operating without a license and provide it with an opportunity to apply for licensure;
- Direct the hospital to cease operations;
- Impose a civil penalty of not more than \$250,000 as well as a penalty of not less than \$1,000 and not more than \$10,000 for each day the hospital operates without a license.

The bill also authorizes the Director to petition the court of common pleas of the county in which the hospital is located for an order enjoining the hospital from operating.

Moreover, a hospital can be subject to criminal penalties for operating without a license. Violations are first degree misdemeanors, punishable by a fine of not more than \$1,000 and a jail term of not more than 180 days.<sup>66</sup> In addition, the bill imposes an additional penalty of \$1,000 for each day the hospital operates without a license.

### **Applications for licensure**

Each private or public entity, including a state university, seeking to operate a hospital must apply to the ODH Director for a license. The Director cannot consider any application until one year from the bill's effective date. Applications must be submitted in the form and manner prescribed by the Director in rules.

#### **Eligibility**

To be eligible for licensure, an applicant must satisfy the following:

- Have submitted a complete application, which includes identifying the main hospital location and any location operated by the hospital and paying the fee specified in rules adopted by the Director;

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<sup>66</sup> R.C. 2929.24 and 2929.28, not in the bill.

- Be certified under Title XVIII of the Social Security Act (Medicare), accredited by a national accrediting organization approved by the federal Centers for Medicare and Medicaid Services, or, in the case of a new hospital, eligible under rules adopted by the Director;
- Demonstrate the ability to comply with standards established in rules adopted by the Director;
- Specify the number of beds for the hospital, including skilled nursing beds, long-term care beds, and special skilled nursing beds.

### **License issuance, validity, and renewals**

If an applicant meets the eligibility requirements, the Director must issue to the applicant a license to operate a hospital. The bill does not prohibit the Director from issuing a license to a hospital that either (1) occupies space in a building that is also used by another hospital or hospitals or (2) occupies one or more buildings located on the same campus as buildings used by another hospital or hospitals.

The bill further provides that a license is valid only for the hospital identified in the application. It also requires the license holder to post a copy of the license in a conspicuous place in the hospital.

### **License transfer**

If a hospital is assigned, sold, or transferred to a new owner, the new owner must apply for a license transfer within 30 days of the assignment, sale, or transfer.

The new owner is responsible for complying with any action taken or proposed by the Director (see “**Violations**” and “**Imminent threat of harm**” below). If a notice has been issued under the Administrative Procedure Act, the new owner becomes party to the notice.

### **Hospital inspections**

On the filing of a license application, the ODH Director may inspect the hospital prior to issuing or denying the license. The bill also appears to allow for inspections as part of the license renewal process.

### **Process to avoid inspections**

An applicant may avoid an inspection by submitting to the Director a copy of the hospital’s most recent final on-site survey report from the federal Centers for Medicare and Medicaid Services or an accrediting organization demonstrating that the hospital is certified or accredited.

### **Confidentiality of on-site survey reports**

The bill specifies that a final on-site survey report from the federal Centers for Medicare and Medicaid Services or an accrediting organization that is submitted in accordance with the bill’s provisions is confidential and not a public record.

## **Unit inspections**

At least once every 36 months, the bill requires the Director to inspect each licensed hospital's maternity unit, newborn care nursery, and any unit providing health care services, defined under the bill to include the following:

- Pediatric intensive care;
- Solid organ and bone marrow transplantation;
- Stem cell harvesting and reinfusion;
- Cardiac catheterization;
- Open heart surgery;
- Operation of linear accelerators;
- Operation of cobalt radiation therapy units;
- Operation of gamma knives.

## **Other inspections**

The Director may at any time inspect a licensed hospital in order to address an incident that may impact public health, respond to a complaint submitted to the Director, or otherwise ensure the safety of patients cared for by the hospital.

## **Inspection fees**

Any inspection conducted under the bill's provisions is subject to a fee. Upon conducting the inspection, the Director must provide the applicant or license holder with a fee statement. Not later than 15 days after receiving the fee statement, the applicant or license holder must submit the total amount of the fee.

## **Rulemaking**

### **Health, safety, welfare, and quality standards**

Not later than one year after the bill's effective date, the bill requires the ODH Director to adopt rules establishing health, safety, welfare, and quality standards for licensed hospitals, including standards for the following:

- Maternity units;
- Newborn care nurseries;
- Health care services, including pediatric intensive care, solid organ and bone marrow transplantation, stem cell harvesting and reinfusion, cardiac catheterization, open heart surgery, operation of linear accelerators, operation of cobalt radiation therapy units, and operation of gamma knives.

### **Standards and procedures for licensure**

Not later than one year after the bill's effective date, the ODH Director must adopt rules establishing standards and procedures for the licensure of hospitals, including all of the following:

- Procedures for applying and renewing licenses;
- Procedures for transferring licenses;
- Procedures for inspections following complaints;
- Fees for initial applications, license renewals, and license transfers, as well as inspections;
- Standards and procedures for imposing civil penalties;
- Standards and procedures for correcting violations, including through the submission of correction plans;
- Standards and procedures for identifying, monitoring, managing, reporting, and reducing exposures to risk conditions, such as Legionella, including through the use of environmental facility assessments, the development of water management plans, and the use of disinfection measures;
- Standards and procedures for data reporting;
- Standards and procedures for emergency preparedness;
- Standards and procedures for the provision of technical assistance;
- Standards and procedures for new hospitals to demonstrate eligibility for licensure;
- Standards and procedures to address changes to a hospital's license, including adding or removing a location of the hospital.

### **Corrective action plans, penalties, and fees**

In the case of rules regarding the correction of violations, the Director must accept a corrective action plan that also was accepted by the federal Centers for Medicare and Medicaid Services or an accrediting organization, provided that the plan was submitted in response to the same deficiencies identified by the Director.

With respect to the rules governing the imposition of civil penalties, the Director must establish a scale for determining the amount of a civil penalty that may be imposed. The scale must include per day amounts for ongoing violations. The total amount of a civil penalty must not exceed \$250,000 for each violation.

In the case of inspection fees, the Director must establish an amount to cover only the costs of inspections. All other fees established in rule are limited to the amount necessary to support the hospital licensure program.

### **Other rules**

The bill authorizes the Director to adopt any other rules as necessary to implement the bill's provisions.

### **Administrative Procedure Act**

Rules adopted under the bill's provisions must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).



## **Collaboration with hospital industry**

When adopting rules, the Director must collaborate with representatives of Ohio's hospital industry to maximize their public health utility and to limit the administrative burden and costs of compliance.

### **Federal law**

The bill prohibits the Director from adopting rules that conflict with requirements under federal statutory or administrative law.

### **Violations**

The bill specifically requires each licensed hospital to comply with its provisions and the rules adopted under it. If the ODH Director finds that a license holder has violated any of the bill's requirement or the rules adopted under it, the bill authorizes the Director to take any of the following actions:

- Impose a civil penalty of not less than \$1,000 and not more than \$250,000;
- Require the license holder to submit a plan to correct or mitigate the violation;
- Suspend a health care service or revoke a license if the Director determines the license holder is not in substantial compliance with the bill or rules adopted under it.

Any decision or determination to take any of the foregoing actions is subject to the Administrative Procedure Act.

### **Notice of proposed action**

If the Director seeks to suspend a health care service or revoke a license, the Director must give the hospital written notice of the proposed action. The notice is required to specify all of the following:

- The nature of the conditions giving rise to the Director's judgment;
- The measures that the Director determines the hospital must take to respond to the conditions; and
- The date, which must not be later than 30 days after the notice is delivered, on which the Director intends to suspend the health care service or revoke the license if the conditions are not corrected and the Director determines that the license holder has not come into substantial compliance with the bill or rules adopted under it.

### **Inspections**

After receiving the notice of proposed action, if the hospital notifies the Director, by the time specified in the notice, that the conditions giving rise to the Director's determination have been corrected and that the hospital is in substantial compliance, the bill requires the Director to inspect the hospital. If, on the basis of the inspection, the Director determines that the conditions have not been corrected or the hospital has not come into substantial compliance, the Director may suspend the service or revoke the license.

The bill also authorizes the Director to suspend a health care service or revoke a license if a hospital fails to notify the Director.

### **Order of suspension or revocation**

When suspending a service or revoking a license, the Director must issue a written order of suspension or revocation and cause it to be delivered to the hospital.

### **Adjudications and final orders**

The bill grants a hospital subject to suspension or revocation the opportunity to request an adjudication. If requested, it must be held within seven days after making the request, unless another date is agreed to by the hospital and ODH Director. The suspension or revocation remains in effect, unless reversed by the Director, until a final adjudication order becomes effective.

The bill requires the Director to issue a final adjudication order not later than 14 days after the adjudication's completion. If the Director does not issue a final order within the 14-day period, the suspension or revocation is void, but any final adjudication order issued after the 14-day period is not to be affected.

### **Injunctive relief**

If the Director issues a final adjudication order suspending a health care service or revoking a license and the license holder continues to operate a hospital, the Director may ask the Attorney General to apply to the common pleas court of the county where the hospital is located for an order enjoining the license holder from continuing to operate the hospital.

### **Imminent threat of harm**

The bill authorizes the ODH Director to take certain actions if the Director determines that an imminent threat of harm exists at a hospital. "Imminent threat of harm" is defined to mean imminent danger or serious physical or life-threatening harm to one or more occupants of a hospital.

The actions that the Director may take include:

- Petitioning a court for injunctive relief, which may include closing the hospital, suspending a service within the hospital, or transferring its occupants to other hospitals or appropriate settings;
- If the Director opts not to pursue injunctive relief, providing written notice of proposed action;
- If the hospital notifies the Director that it has corrected the conditions giving rise to a real and present danger, conducting inspections to determine if the danger remains.

### **Notice of proposed action**

When providing notice of proposed action, the Director must deliver that notice to the hospital's administrator, governing board, and statutory agent. This may be done either by hand or certified mail.

## **Technical assistance**

The bill authorizes the ODH Director to provide each hospital with technical assistance in all of the following areas:

- Infectious diseases, including measures to prevent and control their spread;
- Quality improvement projects, including health equity and disparities;
- Population health initiatives;
- Data analytics;
- Workforce recruitment and development.

The bill also allows the Director to engage with one or more quality improvement organizations to assist in providing technical assistance. The Director may terminate the assistance of a quality improvement organization at any time.

The Director may use any fees or civil penalties collected in accordance with the bill's provisions to fund the provision of technical assistance to licensed hospitals, including contracting with entities to provide training or technical assistance determined necessary by the Director.

## **Hospital governing board**

Each licensed hospital is required by the bill to have a governing board to oversee its management, operation, and control. The governing board is specifically responsible for overseeing the appointment, reappointment, and assignment of privileges to medical staff.

## **Admitting privileges**

The bill repeals the law governing the admission and medical supervision of hospital patients, including admissions initiated by advanced practice registered nurses and physician assistants.<sup>67</sup>

## **Opioid reporting**

The bill revises the law governing reports of the number of babies diagnosed as opioid dependent at birth. Under current law, each licensed maternity unit, newborn care nursery, and maternity home must report those numbers to the ODH Director quarterly. Beginning three years after the bill's effective date, the duty to report will fall instead on hospitals operating maternity units or newborn care nurseries. However, until the three years have run, maternity units, newborn care nurseries, and maternity homes must continue to report to the Director. Note that after the three years have elapsed, maternity homes will continue to be required to report.

The bill permits a third-party organization to report opioid dependent births on a hospital's behalf. It also requires the Director to adopt rules establishing standards and procedures for the required reporting, including when submitted by third-party organizations.

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<sup>67</sup> R.C. 3727.06.

## Disease reporting

Beginning three years after the bill's effective date, each hospital, or a third-party organization on the hospital's behalf, must report to the ODH Director the contagious, environmental, or infectious diseases, illnesses, or health conditions or unusual infectious agents or biological toxins for which it provides treatment to patients.

The bill requires the Director to adopt rules that:

- Specify the diseases, illnesses, conditions, infectious agents, and biological toxins to be reported;
- Specify the frequency with which a hospital must report; and
- Prescribe the manner in which reports are to be made, including by third-party organizations.

Any information reported is protected health information as described under continuing law and may be released only in accordance with that law. Under the bill, information that does not identify an individual may be released in summary, statistical, or aggregate form.

Under continuing law not amended by the bill, hospitals are among a list of health care providers required to report to local boards of health the existence of certain diseases.<sup>68</sup> Health providers may do this by submitting an electronic report to the Ohio Disease Reporting System.

## General operations fund

The bill specifies that any fees and civil penalties collected under it must be deposited in the state treasury and used solely for purposes of administering and enforcing the bill's provisions.

## Variations from written transfer agreements

(R.C. 3702.304; Section 291.80)

The bill adds several new requirements and limitations to existing law governing variations from the written transfer agreement requirement that applies to ambulatory surgical facilities (ASFs). Existing law requires an ASF to have a written transfer agreement with a local hospital specifying a transfer procedure for patients when medical care beyond the care that can be provided at the ASF is necessary. Existing law also authorizes an ASF to apply to the ODH Director for a variance if that requirement will cause the facility undue hardship. A variance application must include a letter, contract, or memorandum of understanding signed by the ASF and one or more consulting physicians who have admitting privileges at a local hospital, memorializing the physician's agreement to provide back-up coverage when medical care beyond the level the ASF can provide is necessary.

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<sup>68</sup> R.C. 3701.17 and 3701.23, not in the bill, and O.A.C. 3701-3-03 and 3701-3-05.

Regarding transfer agreement variances, the bill requires that the local hospital where the consulting physician has admitting privileges must be within a 25-mile radius of the ASF. Regarding consulting physicians, the bill specifies:

- The physician is prohibited from teaching or providing instruction at a medical school, osteopathic medical school, any state hospital, or other public institution;
- The physician cannot be employed by, or under contract for compensation with, or otherwise provide instruction or consultation to, a medical school, osteopathic medical school, any state hospital, or other public institution;
- The physician must actively practice clinical medicine within a 25-mile radius of the ASF.

An ASF with an existing variance must demonstrate compliance with the bill's provisions within 90 days, or the ODH Director must rescind the variance.

## **Home health service provider licensing**

(R.C. 3740.01, 3740.02, 3740.03, 3740.04, 3740.05, 3740.07, 3740.10, 3740.11, and 3740.99; conforming changes in other R.C. sections)

### **License required**

Starting one year after its effective date, the bill requires a license for any home health agency or nonagency (independent) provider offering skilled home health services or nonmedical home health services. Skilled home health services include skilled nursing care, physical therapy, occupational therapy, speech-language pathology, medical social services, home health aide services, and any other services the ODH Director specifies by rule. Nonmedical home health services include bathing or bathing assistance; assistance with dressing, walking, and toileting; catheter care (but not insertion), meal preparation and feeding; personal care services, such as assistance with activities of daily living and other services identified in the bill; and any other services the Director specifies by rule.

A home health agency is any business or government entity, other than a nursing home, residential care facility, hospice care program, pediatric respite care program, informal respite care provider, Department of Developmental Disabilities-certified provider, residential facility, shared living provider, or immediate family member, that provides skilled home health services or nonmedical home health services at a patient's place of residence. The licensure requirement is for the agency and not individual employees of an agency. Current law specifies criminal records check and database review requirements for employees of home health agencies.

Nonagency providers are people who provide care to individuals on a self-employed basis and do not directly or contractually employ other people to provide services. Nonagency provider does not include:

- A caregiver who is an immediate family member of the individual receiving care;
- A person who provides direct care to no more than two individuals who are not immediate family members of the care provider;
- A volunteer;

- A person certified under current law to provide publicly funded child care as an in-home aide;
- A person who provides privately funded child care;
- A caregiver who is certified by the Department of Developmental Disabilities, such as a supported living provider.

Skilled home health services licenses and nonmedical home health services licenses are valid for three years.

### **Skilled home health services license requirements**

An applicant for a skilled home health services license must submit an application including evidence that the agency or nonagency provider is one of the following: (1) certified for participation in the Medicare program, (2) accredited by an approved national accreditation agency, (3) certified by the Department of Aging to provide community-based long-term care, or (4) otherwise meets Medicare conditions of participation but is not certified for participation in the Medicare program.

The application fee and renewal fee for a skilled home health services license is \$250. An applicant for a new license who was not providing direct care immediately prior to the effective date of the bill must provide evidence of a \$50,000 surety bond issued by a company licensed to do business in Ohio.

Skilled home health services licenses are inclusive of nonmedical home health services. A home health agency or nonagency provider who holds a skilled home health services license may provide nonmedical home health services without obtaining a nonmedical home health services license.

### **Nonmedical home health services license requirements**

An application for a nonmedical home health services license must include: (1) fingerprints from the primary owner of the home health agency or of the nonagency provider, (2) copies of any documents filed and recorded with the Secretary of State, (3) a notarized affidavit verifying the identity of the applicant, (4) a copy of the home health agency's criminal records check policy (not applicable to nonagency providers), (5) a statement identifying the applicant's days and hours of operation, (6) a description of the nonmedical home health services to be provided and any relevant policies or procedures, and (7) identification of the applicant's primary place of business and geographic area served. However, the ODH Director is required to waive the requirements if the home health agency or nonagency provider is certified by the Department of Aging to provide community-based long-term care.

The application fee and renewal fee for a nonmedical home health services license is \$250. An applicant for a new license who was not providing direct care immediately prior to the effective date of this bill must provide evidence of a \$20,000 surety bond issued by a company licensed to do business in Ohio.

## **ODH duties**

### **Licensing**

Under the bill, ODH is responsible for reviewing all applications for skilled home health services licenses and nonmedical home health services licenses. For skilled home health services applicants, if the applicant has not had a site visit in the five years prior to submitting an application, the review must include a site visit to verify that Medicare conditions of participation are met.

ODH is responsible for issuing licenses if the applicant has paid the application fee and meets other licensing requirements. ODH has the power to refuse to issue a license or refuse to renew or reinstate a license holder's license for reasons it establishes by rule. It may also impose limitations on a license, revoke or suspend a license, place a license holder on probation, or otherwise reprimand the license holder.

The bill allows ODH to adjust an initial license renewal date to align renewal of a license with the renewal of a certification or accreditation that is a condition of licensure.

### **Rulemaking**

The ODH Director is responsible for adopting rules to implement the new licensing requirements. These rules must address the following:

- Initial license application forms and procedures;
- License renewal application forms and procedures;
- The documentation that must be provided to demonstrate that Medicare conditions of participation are met if the applicant is not certified for participation in the Medicare program;
- Reasons ODH may take disciplinary action on a license;
- Processes for dispute resolution and appeals related to licensing disputes.

When adopting rules, the ODH Director must consult with the Director of Aging and the Medicaid Director.

### **Criminal penalties**

The bill establishes that if a person or agency provides skilled home health services or nonmedical home health services without a license issued by ODH, that person or agency is guilty of a misdemeanor of the second degree on the first offense. For each subsequent offense, the penalty increases to a misdemeanor of the first degree.

### **Expedited licensing inspections**

(R.C. 3721.02)

Nursing homes, residential care (assisted living) facilities, homes for the aging, and veterans' homes (collectively referred to as homes) must be inspected at least once by the ODH Director before the Director issues the home a license. Current law permits an applicant for

licensure to request an expedited licensing inspection from the Director. If, before receiving a license, a home requests an expedited licensing inspection, the Director is required to conduct the inspection not later than ten days after receiving the request.

With respect to existing homes, the bill permits a request of an expedited licensing inspection from the ODH Director when a home is seeking approval to increase or decrease its licensed capacity or to make any other change for which the Director requires a licensing inspection to be conducted. Under current rules adopted by the Director, the expedited licensing inspection process is not available to existing homes requiring an inspection for these types of changes.

The bill provides that any rules adopted by the ODH Director to implement the bill's requirements for existing homes seeking an expedited licensing inspection are not subject to the law that requires a state agency to remove two or more existing rules when simultaneously adopting a new rule.

## **Obsolete procedures and terms**

The bill eliminates provisions of law describing (1) a process by which a home may request that the ODH Director review plans for a building that is to be used as a home to determine compliance with applicable state and local building and safety codes and (2) authority to collect fees for reviewing the plans. According to representatives of ODH, this process for reviewing plans is not currently used by the Department.

The bill also replaces the following terms that are no longer used to refer to certain types of long-term care facilities: rest home and adult care facility.

## **Technological resources**

(R.C. 3701.132 and 3701.61; repealed R.C. 5167.172)

The bill repeals the law that requires the Help Me Grow Program, WIC clinics, and Medicaid managed care organizations to promote the use of technological resources, such as text messaging applications, that provide information on having a healthy pregnancy and healthy baby.

## **Newborn screening**

(R.C. 3701.501)

The bill revises the law governing the screening of newborns for genetic, endocrine, and metabolic disorders. Under existing law, each newborn is to be screened for the disorders specified in rules adopted by the ODH Director. At present, statutory law requires the rules to specify Krabbe disease for screening. The bill adds X-linked adrenoleukodystrophy and spinal muscular atrophy, with the screenings to begin 240 days after the bill's effective date.

To assist the Director in determining other disorders for which a newborn must be screened, Ohio law has established the Newborn Screening Advisory Council (NSAC). As part of this law, the NSAC is to evaluate disorders and make recommendations to the Director. In doing so, it must consider certain factors, including a disorder's incidence and the potential for successful treatment. To this list of factors, the bill adds whether the U.S. Secretary of Health and



Human Services has included the disorder in the federal Recommended Uniform Screening Panel (RUSP).

In the case of a disorder included within the RUSP, the bill requires the NSAC to do the following:

- Not later than six months after the disorder's inclusion, determine whether or not to recommend to the Director that each newborn be screened for the disorder;
- If the screening is recommended, submit the recommendation as soon as practicable to the Director.

The bill further requires the Director, not later than six months after receiving NSAC's recommendation, to specify the disorder for screening in rules. The screening must begin no later than one year after the rule becomes effective.

## **Smoking and tobacco**

### **Dispensing nicotine replacement therapy without a prescription**

(R.C. 4729.284 and 4731.90)

#### **Provider and protocol requirements**

The bill authorizes a pharmacist to dispense nicotine replacement therapy without a prescription in accordance with a physician-developed protocol to individuals who are 18 years old or older and seeking to quit using tobacco-containing products. The following requirements must be met in order for the authorization to apply:

- The pharmacist must successfully complete an accredited or approved course on nicotine replacement therapy, which is a type of medication that delivers small doses of nicotine;
- The pharmacist must practice in accordance with a physician-established protocol that specifies a definitive set of treatment guidelines and the locations where the nicotine replacement therapy may be dispensed.

The bill requires the protocol to include provisions to implement the following requirements:

- Use by the pharmacist of a screening procedure to determine if an individual is a good candidate to receive nicotine replacement therapy dispensed by a pharmacist;
- Referral by the pharmacist of high-risk individuals or individuals with contraindications to a primary care or other provider;
- Development and implementation of a follow-up care plan in accordance with guidelines adopted in rules.

#### **Documentation and notice**

The bill requires documentation related to screening, dispensing, and follow-up care plans to be maintained in the pharmacy's records for three years. Not later than 72 hours after a

screening is conducted, the pharmacist must provide notice to the individual's primary care provider, or to the individual if the primary care provider is unknown.

### **Prohibition**

The bill prohibits a pharmacist from dispensing nicotine replacement therapy without a prescription unless the bill's requirements are met. It also prohibits a pharmacist from delegating the pharmacist's authority to dispense or supervise the dispensing of nicotine replacement therapy.

### **Rules**

The bill requires the Pharmacy Board to adopt rules in accordance with the Administrative Procedure Act to implement its provisions. The rules must specify which nicotine replacement therapies may be included in a protocol. Regarding rules related to requirements for protocols, the Pharmacy Board must consult with the State Medical Board and ODH.

### **Qualified immunity**

The bill provides that a physician who in good faith authorizes a pharmacist to dispense nicotine replacement therapy under the bill is not liable for or subject to damages in a civil action, criminal prosecution, or professional disciplinary action related to an act or omission of the individual to whom nicotine replacement therapy is dispensed.

### **Moms Quit for Two grant program**

(Section 291.30)

The bill continues Moms Quit for Two. Authorized in each biennium since 2015, it is a grant program administered by ODH that awards funds to government or private, nonprofit entities demonstrating the ability to deliver evidence-based tobacco cessation interventions to women who are pregnant or living with children and reside in communities that have the highest incidence of infant mortality, as determined by the ODH Director.

Program funds cannot be used to provide tobacco cessation interventions to Medicaid-eligible women.

### **Smoke-Free Workplace Law**

(R.C. 3794.01)

The bill expands the Smoke-Free Workplace Law to include electronic smoking devices and vapor products. Current law prohibits smoking in a public place or a place of employment. For a first violation of this prohibition, ODH issues a warning letter to the offending individual or proprietor. Subsequent fines are set in accordance with the following:

| Violation #     | Proprietor Violation | Individual Violation |
|-----------------|----------------------|----------------------|
| 2 <sup>nd</sup> | \$100                | \$100                |
| 3 <sup>rd</sup> | \$500                | \$100                |

| Violation #                    | Proprietor Violation | Individual Violation |
|--------------------------------|----------------------|----------------------|
| 2 <sup>nd</sup>                | \$100                | \$100                |
| 4 <sup>th</sup>                | \$1,000              | \$100                |
| 5 <sup>th</sup> and subsequent | \$2,500              | \$100                |

ODH may also sue repeat offenders seeking a court requiring the offender to stop the offending behavior.<sup>69</sup>

The bill also revises the definition of “retail tobacco store” to apply to stores that sell “lighted or heated tobacco products” as opposed to “cigars, cigarettes, pipes, or other smoking devices for burning tobacco,” conforming it to the bill’s revised definition of “smoking.”

### **Retail vapor store**

(R.C. 3794.01 and 3794.03)

The bill exempts retail vapor stores from the Smoke-Free Workplace Law, in so far as it applies to vapor products and electronic smoking devices. Retail vapor stores would still be prohibited from allowing all other forms of smoking. A retail vapor store must annually certify its status as such with ODH to qualify for the exemption. The bill defines a retail vapor store as being a store that derives more than 80% of its gross revenue from the sale of vapor products, electronic smoking devices, or other electronic smoking accessories.

### **Certificate of need capital expenditure threshold**

(R.C. 3702.511)

Under Ohio’s existing Certificate of Need (CON) program, certain activities involving long-term care facilities can be conducted only if a CON has been issued by the ODH Director. One activity that requires a review under the CON program is the renovation of, or addition to, a long-term care facility involving capital expenditures over a set amount. The bill increases to \$6 million (from the current \$2 million) the capital expenditure threshold that results in a CON review and the requirement that a CON be obtained to conduct the activity.

### **Nurse aide training and competency evaluation programs**

(R.C. 3721.28, 3721.31, and 3721.32)

The bill adds another way for a nurse aide to satisfy the existing requirement of having successfully completed a training and competency evaluation program. To do so, a nurse aide must complete – during the COVID-19 public health emergency – a minimum of 75 hours of training that meets all of the following conditions:

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<sup>69</sup> R.C. 3794.02 and 3794.09, not in the bill; O.A.C. 3701-52-09.

- Occurs in a long-term care facility setting;
- Includes on-site observation and work as a nurse aide under a COVID-19 pandemic waiver issued by the federal Centers for Medicare and Medicaid Services; and
- Addresses all of the required areas specified in federal law, including through supplemental training if gaps in on-site training are identified.

The nurse aide also must successfully complete the competency evaluation conducted by the ODH Director.

## **Background**

Currently, each long-term care facility must comply with certain federal requirements in order to receive Medicare or Medicaid reimbursement for care provided to residents enrolled in the Medicare or Medicaid program. Some of that care is rendered by nurse aides employed by the facility. A facility participating in Medicare or Medicaid cannot employ an individual as a nurse aide for more than four months, unless the individual has completed a state-approved nurse aide training program.<sup>70</sup>

Existing federal law requires each state to approve nurse aide training programs and sets minimum competency standards for nurse aides.<sup>71</sup> By completing a nurse aide training and competency evaluation program approved by the Ohio Department of Health (ODH), a nurse aide trainee becomes eligible to register for the nurse aide state examination. A trainee who passes the examination will then have his or her name added to the Ohio Nurse Aide Registry maintained by ODH. In order to be employed in a long-term care setting, a nurse aide must be listed in the registry.

## **Children with Medical Handicaps Program eligibility**

(R.C. 3701.021 and 3701.022; Section 291.10)

Ohio's Children with Medical Handicaps Program (CMH) is administered by the Department of Health and serves families of children and young adults with special health care needs, including AIDS, hearing loss, cancer, juvenile arthritis, cerebral palsy, metabolic disorders, cleft lip/palate, severe vision disorders, cystic fibrosis, sickle cell disease, diabetes, spina bifida, scoliosis, congenital heart disease, hemophilia, and chronic lung disease. The CMH Program has three core components:

- Diagnostic – An individual under age 21 who meets medical criteria, regardless of income, may receive services from CMH-approved providers for up to six months to diagnose or rule out a special health care need or establish a plan of care;

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<sup>70</sup> Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, 101 Stat. 1330. See also R.C. 3721.28.

<sup>71</sup> Sections 1819 and 1919 of the Social Security Act, 42 U.S.C. 1395i-3 and 42 U.S.C. 1396r. See also 42 C.F.R. 483.150 to 483.160.

- Treatment – An individual under age 21 who meets both medical and financial criteria may receive treatment from CMH-approved providers for an eligible condition;
- Service coordination – The family of an individual under age 21 who meets medical criteria, regardless of income, may receive assistance locating and coordinating services for the individual with the medical diagnosis.

The bill requires the ODH Director to increase the maximum age of CMH participants by establishing eligibility requirements that progressively increase the maximum age of an individual that can be served by the program. In 2021 and 2022 on the first day of July, the Director’s rules must increase the age limit by one year. The final increase, on July 1, 2022, allows individuals under the age of 23 to participate. This annual increase does not apply to the diagnostic component of the CMH Program. The bill appropriates an additional \$500,000 to the CMH Program in each fiscal year.

## **Help Me Grow report**

(Section 291.70)

The ODH Director is required to submit a report by January 15, 2022, to the chairperson and ranking minority member of the standing health committee and finance committee of each house of the General Assembly. The report must include the number of families being served by the program who are eligible for Medicaid and the number of families who are eligible for programs funded by the TANF block grant. The report also must include recommendations for incorporating a Medicaid component funded in part with state matching funds, and recommendations for using TANF dollars to provide services for TANF eligible families in the Help Me Grow program.

## **Rare Disease Advisory Council membership**

(R.C. 103.60)

The bill adds two public members appointed by the President of the Senate and two appointed by the Speaker of the House to serve on the Rare Disease Advisory Council. Additionally, the bill adds an additional member appointed by the Minority Leader of the House and one by the Minority Leader of the Senate. To reflect the addition of these members, the bill increases to 31 (from 25) the total number of members that serve on the Council.

The Rare Disease Advisory Council was established by [H.B. 412 of the 133<sup>rd</sup> General Assembly](#). The Council is tasked with advising the General Assembly regarding research, diagnosis, and treatment efforts related to rare diseases across the state.

## **Drug overdose fatality review committees**

(R.C. 121.22, 307.631, 307.632, 307.633, 307.634, 307.635, 307.636, 307.637, 307.638, 307.639, 3701.0410, 4729.80, 4729.86, and 4731.22)

The bill authorizes the board of county of commissioners of a single county or the boards of two or more counties jointly to establish a county or regional committee to review drug overdose and opioid-involved deaths occurring in that county or region. To formally establish a

drug overdose fatality review committee, the board or boards must appoint a health commissioner of a board of health located in the county or counties to do so.

The bill also recognizes a body acting as a drug overdose fatality review committee on the bill's 90-day effective date and requires the body to continue to function as the county's review committee, with the same duties, obligations, and protections as a review committee established under the bill.

### **Purpose**

The purpose of a drug overdose fatality review committee is to decrease the incidence of preventable overdose deaths by doing all of the following:

- Promoting cooperation, collaboration, and communication between all groups, professions, agencies, or entities engaged in drug abuse prevention, education, or treatment efforts;
- Maintaining a comprehensive database of all overdose deaths occurring in the county or region to develop an understanding of the causes and incidence of those deaths;
- Recommending and developing plans for implementing local service and program changes that might prevent overdose deaths; and
- Providing the Ohio Department of Health (ODH) with aggregate data, trends, and patterns concerning overdose deaths.

### **Membership, chairperson, and meetings**

If established, a review committee must consist of the health commissioner and the following four members:

1. The chief of police or sheriff or designee of the chief or sheriff;
2. A public health official or designee;
3. The executive director of the county's ADAMHS board or designee; and
4. An Ohio-licensed physician.

In the case of a review committee serving two or more counties, the members must be representatives from the most populous county.

The review committee is required by the bill to invite the county coroner or, in the case of a review committee serving two or more counties, the county coroner from the most populous county, to serve on the committee.

The health commissioner convenes committee meetings and serves as the committee's chairperson. Committee meetings are not subject to Ohio's Open Meetings Law. Any vacancy on the committee must be filled in the same manner as original appointments. Members are neither compensated for serving on the committee nor reimbursed for expenses incurred, unless compensation or reimbursement is received as part of the member's regular employment. A majority of the members may invite additional members to serve on the committee. Each

additional member serves for the period of time determined by the majority and has the same authority, duties, and responsibilities as an original member.

### **Information to be collected**

For each drug overdose or opioid-involved death reviewed by a committee, the committee must collect all of the following:

1. Demographic information of the deceased, including age, sex, race, and ethnicity;
2. The year in which the death occurred;
3. The geographic location of the death;
4. The cause of death;
5. Any factors contributing to the death; and
6. Any other information the committee considers relevant.

On the request of a review committee, any individual, law enforcement agency, or other public or private entity that provided services to a person whose death is reviewed by the committee must submit to the committee a summary sheet of information. In the case of a request made to a health care entity, the summary sheet must contain only information available and reasonably drawn from a medical record created by the entity. With respect to a request made to any other individual or entity, the sheet must contain only information available and reasonably drawn from any record involving the person to which the individual or entity has access.

Also on the request of a review committee, a county coroner must make available to the committee the coroner's full and complete record that relates to the person whose death is being reviewed.

### **Confidentiality**

Any information, document, or report presented to a review committee, all statements made by committee members during meetings, all work products of the committee, and data submitted to ODH, other than the annual report, are confidential and may be used by the review committee, its members, and ODH only in the exercise of proper committee or departmental functions.

### **Security of information collected**

Each review committee must establish a system for collecting and maintaining information necessary for the review of drug overdose or opioid-involved deaths in the county or region. In an effort to ensure confidentiality, each committee must maintain all records in a secure location; develop security measures to prevent unauthorized access to records containing information that could reasonably identify any person; and develop a system for storing, processing, indexing, retrieving, and destroying information obtained in the course of reviewing a drug overdose or opioid-involved death.

## **Annual reports**

By April 1 of each year, a committee must prepare and submit to ODH a report that includes the following information for the previous calendar year:

1. The total number of drug overdose or opioid-involved deaths in the county or region;
2. The total number of drug overdose or opioid-involved deaths reviewed by the committee along with the total number not reviewed by the committee;
3. A summary of demographic information for the deaths reviewed, including age, sex, race, and ethnicity; and
4. A summary of any trends or patterns identified by the committee.

The report also must include recommendations for actions that might prevent other deaths and may include any other information the review committee determines should be included. The report is a public record for the purposes of Ohio's Public Records Law.

## **Pending investigations or prosecutions**

A review committee may not conduct a review of a death while an investigation of the death or prosecution of a person for causing the death is pending, unless the prosecuting attorney agrees to allow the review. On the conclusion of an investigation or prosecution, the law enforcement agency conducting the criminal investigation or prosecuting attorney prosecuting the case must notify the committee's chairperson of the conclusion.

In addition, an individual, law enforcement agency, prosecuting attorney, or entity cannot provide to a review committee any information regarding the death of a person while an investigation or prosecution is pending, unless the prosecuting attorney has agreed to allow the review.

## **Immunity**

Any individual or entity providing information to a review committee is immune from civil liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing the information. Each member of a review committee is also immune from civil liability as a result of the member's participation on the committee.

## **Suicide fatality review committees**

(R.C. 121.22, 307.641, 307.642, 307.643, 307.644, 307.645, 307.646, 307.647, 307.648, 307.649, 307.6410, 2151.421, 3701.0411, 4729.80, 4729.86, and 4731.22)

The bill authorizes the board of county of commissioners of a single county or the boards of two or more counties jointly to establish a county or regional committee to review suicide deaths occurring in that county or region. To formally establish a suicide fatality review committee, the board or boards must appoint a health commissioner of a board of health located in the county or counties to do so.



The bill also recognizes a body acting as a suicide fatality review committee on the bill's effective date and requires it to continue to function as the county's review committee, with the same duties, obligations, and protections as a review committee established under the bill.

### **Hybrid committee**

The bill authorizes a board of county commissioners to establish a hybrid drug overdose fatality and suicide fatality review committee to review drug overdose, opioid-involved, and suicide deaths occurring in the county. A hybrid committee must follow the same procedures as a drug overdose fatality and suicide fatality review committee.

### **Purpose**

The purpose of a suicide fatality review committee is to decrease the incidence of preventable suicide deaths by doing all of the following:

- Promoting cooperation, collaboration, and communication between all groups, professions, agencies, or entities engaged in suicide prevention, education, or mental health treatment efforts;
- Maintaining a comprehensive database of all suicide deaths occurring in the county or region to develop an understanding of the causes and incidence of those deaths;
- Recommending and developing plans for implementing local service and program changes and changes to the groups, professions, agencies, or entities that serve local residents that might prevent suicide deaths; and
- Advising ODH of aggregate data, trends, and patterns concerning suicide deaths.

### **Membership, chairperson, and meetings**

If established, a review committee must consist of the health commissioner and the following four members:

1. The chief of police or sheriff or designee of the chief or sheriff;
2. A public health official or designee;
3. The executive director of the county's ADAMHS board or designee; and
4. An Ohio-licensed physician.

In the case of a review committee serving two or more counties, the members must be representatives from the most populous county.

The review committee is required by the bill to invite the county coroner or, in the case of review committee serving two or more counties, the county coroner from the most populous county, to serve on the committee.

The health commissioner convenes committee meetings and serves as the committee's chairperson. Committee meetings are not subject to Ohio's Open Meetings Law. Any vacancy on the committee must be filled in the same manner as original appointments. Members are neither compensated for serving on the committee nor reimbursed for expenses incurred, unless

compensation or reimbursement is received as part of the member's regular employment. A majority of the members may invite additional members to serve on the committee. Each additional member serves for the period of time determined by the majority and has the same authority, duties, and responsibilities as an original member.

### **Information to be collected**

For each suicide death reviewed by a committee, the committee must collect all of the following:

1. Demographic information of the deceased, including age, sex, race, and ethnicity;
2. The year in which the death occurred;
3. The geographic location of the death;
4. The cause of death;
5. Any factors contributing to the death; and
6. Any other information the committee considers relevant.

On the request of a review committee, any individual, law enforcement agency, or other public or private entity that provided services to a person whose death is reviewed by the committee must submit to the committee a summary sheet of information. In the case of a request made to a health care entity, the summary sheet must contain only information available and reasonably drawn from a medical record created by the entity. With respect to a request made to any other individual or entity, the sheet must contain only information available and reasonably drawn from any record involving the person to which the individual or entity has access.

Also on the request of a review committee, a county coroner must make available to the committee the coroner's full and complete record that relates to the person whose death is being reviewed.

### **Confidentiality**

Any information, document, or report presented to a review committee, all statements made by committee members during meetings, all work products of the committee, and data submitted to ODH, other than the annual report, are confidential and may be used by the review committee, its members, and ODH only in the exercise of proper committee or departmental functions.

### **Security of information collected**

Each review committee must establish a system for collecting and maintaining information necessary for the review of suicide deaths in the county or region. In an effort to ensure confidentiality, each committee must maintain all records in a secure location; develop security measures to prevent unauthorized access to records containing information that could reasonably identify any person; and develop a system for storing, processing, indexing, retrieving, and destroying information obtained in the course of reviewing a suicide death.

## **Annual reports**

By April 1 of each year, a committee must prepare and submit to ODH a report that includes the following information for the previous calendar year:

1. The total number of suicide deaths in the county or region;
2. The total number of suicide deaths reviewed by the committee along with the total number not reviewed by the committee;
3. A summary of demographic information for the deaths reviewed, including age, sex, race, and ethnicity; and
4. A summary of any trends or patterns identified by the committee.

The report also must include recommendations for actions that might prevent other suicide deaths and may include any other information the review committee determines should be included. The report is a public record for the purposes of Ohio's Public Records Law.

## **Pending investigations or prosecutions**

A review committee may not conduct a review of a death while an investigation of the death or prosecution of a person for causing the death is pending, unless the prosecuting attorney agrees to allow the review. On the conclusion of an investigation or prosecution, the law enforcement agency conducting the criminal investigation or prosecuting attorney prosecuting the case must notify the committee's chairperson of the conclusion.

In addition, an individual, law enforcement agency, prosecuting attorney, or entity cannot provide to a review committee any information regarding the death of a person while an investigation or prosecution is pending, unless the prosecuting attorney has agreed to allow the review.

## **Immunity**

Any individual or entity providing information to a review committee is immune from civil liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing the information. Each member of a review committee is also immune from civil liability as a result of the member's participation on the committee.

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## DEPARTMENT OF HIGHER EDUCATION

### Restriction on instructional fee increases

- For the 2021-2022 and 2022-2023 academic years, permits state universities, the Northeast Ohio Medical University, and university branch campuses to increase instructional and general fees by not more than 2% over the previous academic year.
- For the 2021-2022 and 2022-2023 academic years, permits community colleges, state community colleges, and technical colleges to increase instructional and general fees by not more than \$5 per credit hour over the previous academic year.
- Excludes from the fee restrictions: auxiliary goods or services fees provided to students at cost, pass-through fees for licensure and certification exams, study abroad fees, elective service charges, fines, and voluntary sales transactions.

### In-state tuition for certain graduate students

- Qualifies for in-state tuition a nonresident who, after completing a bachelor's degree at an institution of higher education in Ohio, lives in Ohio, and immediately enrolls in an eligible graduate program, as determined appropriate by the Chancellor of Higher Education, offered at any state institution of higher education.

### Textbook auto-adoption at state institutions

- Requires each state institution of higher education to consider a textbook auto-adoption policy prior to academic year 2022-2023.

### Nursing bachelor's degree programs

- Requires the Chancellor to approve any nursing bachelor's degree program proposed by community colleges, state community colleges, and technical colleges if those programs meet certain requirements under continuing law.

### Ohio Innovative Partnership – Choose Ohio First Scholarship

- Eliminates the Ohio Research Scholars Program part of the Ohio Innovative Partnership, but retains the Choose Ohio First Scholarship Program.
- Removes medicine, dentistry, and medical and dental education from the list of academic fields in which students may receive Choose Ohio First scholarships.
- Repeals the primary care medical student, primary care nursing student, and primary care dental student components of the Choose Ohio First Scholarship Program.
- Specifically includes “health professions” in the scholarship program's purpose statement.
- Requires the Chancellor of Higher Education to determine which proposals will receive Choose Ohio First Scholarship Program awards based on the extent to which a proposal recruits underrepresented populations in certain academic fields.

- Requires the Chancellor to “endeavor to provide,” rather than guarantee, that students from all regions of the state are able to participate in the Choose Ohio First Scholarship Program.
- Requires all students receiving a Choose Ohio First scholarship (rather than half) to be involved in work-based learning through a co-op, internship, experience in a university, college, or private laboratory, or other work-based learning experience.
- Repeals a provision that permits the Chancellor to authorize an institution of higher education to award a scholarship amount exceeding the amount permitted under current law in certain circumstances.
- Specifies that the Choose Ohio First Scholarship Program Reserve Fund must consist of amounts designated for the purposes of the fund by the General Assembly or the federal government.
- Makes other changes regarding the administration of the Choose Ohio First Scholarship Program.

### **Ohio National Guard Scholarship eligibility**

- Extends eligibility for the Ohio National Guard Scholarship to full-time and part-time students who are enrolled for at least three credit hours of coursework in prescribed programs for an in-demand occupation.

### **FAFSA data system**

- Requires the Chancellor and the Management Council of the Ohio Education Computer Network to establish a data system to track the Free Application for Federal Student Aid (FAFSA) complete rate of Ohio’s public and chartered nonpublic school students.
- Permits the Chancellor to publish and share aggregate FAFSA data, including completion counts and rates for Ohio and each district or school.

### **Withholding student transcripts**

- Permits the Chancellor to adopt rules regarding when a state institution of higher education may withhold official transcripts from a student.

### **OhioCorps Pilot Program – repealed**

- Repeals the OhioCorps Pilot Program.

### **Computer science**

- Requires that, beginning in the 2022-2023 academic year, each state university must recognize a student’s successful completion of certain advanced computer science courses as meeting general admissions requirements to the university.
- Requires each educator preparation program to require each candidate for an educator license who enters the program in the 2022-2023 academic year, or any academic year thereafter, to receive instruction in computer science and computational thinking.

## Ohio Farm Financial Management Institute

- Expands content and priority enrollment specifications for the Ohio State University's Farm Financial Management Institute.
- Renames the "Farm Financial Management Institute" to the "Farm Production, Policy, and Financial Management Institute."

As used in this chapter of the analysis:

A **state institution of higher education** means any of the 13 state universities, the Northeast Ohio Medical University, and each community college, state community college, technical college, and university branch campus. The state universities are 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, and Youngstown State University.

## Restriction on instructional fee increases

(Section 381.160)

For FY 2022 and FY 2023 (the 2021-2022 and 2022-2023 academic years), the bill limits each state university, the Northeast Ohio Medical University, and each university branch campus to not more than a 2% increase in its in-state undergraduate instructional and general fees over what the institution charged in the prior academic year.

For those same years, each community college, state community college, and technical college may not increase its instructional and general fees more than \$5 per credit hour over what it charged in the previous academic year.

Increases for all other special fees, including newly created ones, are subject to the approval of the Chancellor of Higher Education.

However, the bill's limits on fee increases explicitly *exclude*:

- Fees for auxiliary goods or services provided to students at the cost incurred to the institution;
- Fees assessed to students as a pass-through for licensure and certification exams;
- Fees in elective courses associated with travel experiences;
- Elective service charges;
- Fines; and
- Voluntary sales transactions.

As in previous biennia when the General Assembly capped tuition increases, the bill's provisions do not apply to increases required to comply with institutional covenants related to the institution's obligations or to meet unfunded legal mandates or legally binding prior

obligations or commitments. Further, the Chancellor, with Controlling Board approval, may approve an increase to respond to exceptional circumstances identified by the Chancellor.

Additionally, institutions with an undergraduate tuition guarantee program may increase fees in accordance with that separate provision. Under that program, each entering cohort of undergraduate students of a state university pays an immediate increased rate for instructional and general fees, but that rate is guaranteed not to increase again for that particular cohort for the next four years.<sup>72</sup>

## **In-state tuition for certain graduate students**

(R.C. 3333.31)

The bill requires the Chancellor to grant resident tuition status to a qualifying nonresident individual entering an eligible graduate program offered at an institution of higher education. To qualify, that individual must live in Ohio and immediately enroll in a graduate degree program, as determined appropriate by the Chancellor of Higher Education, offered at any state institution of higher education.

Current law requires the Chancellor to define resident tuition status for individuals enrolled at state institutions. Generally, the Chancellor must deny residency status to any individual living in Ohio primarily to attend a state institution.

## **Textbook auto-adoption at state institutions**

(Section 733.20)

The bill requires state institutions of higher education, prior to the 2022-2023 academic year, to evaluate their respective implementation of textbook affordability initiatives, by working collaboratively with the institution's faculty senate, to consider adopting a textbook auto-adoption policy.

By August 15, 2022, the board of trustees of each state institution must adopt a resolution or otherwise vote to affirm or decline adoption of the policy crafted by the administration and faculty senate. If the board adopts that policy, the bill requires transmission of a copy of the resolution to the Chancellor of Higher Education.

## **Nursing bachelor's degree programs**

(R.C. 3333.051; conforming changes in R.C. 3354.01, 3357.09, and 3358.01)

The bill modifies a program established under continuing law to require the Chancellor to approve *any* nursing bachelor's degree program proposed by community colleges, state community colleges, and technical colleges if those programs meet certain requirements under continuing law and the standards and procedures for academic program approval under continuing law.

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<sup>72</sup> R.C. 3345.48, not in the bill.

Under current law, this program permits the Chancellor to authorize only “applied” bachelor’s degrees at community colleges, state community colleges, and technical colleges.

## **Ohio Innovative Partnership – Choose Ohio First Scholarship**

(R.C. 3333.61, 3333.613, 3333.615, 3333.62, 3333.63, 3333.64, 3333.65, 3333.66, 3333.68, and 3333.69; repealed R.C. 3333.611, 3333.612, 3333.614, and 3333.67)

### **Ohio Research Scholars Program**

The bill eliminates the Ohio Research Scholars Program, which is part of the Ohio Innovative Partnership, but retains the Choose Ohio First Scholarship Program. In doing so, it also replaces all references to the Ohio Innovative Partnership with references to the Choose Ohio First Scholarship Program.

Under existing law, the Ohio Research Scholars Program awards grants to state colleges and universities to use in recruiting scientists as faculty members, and the Choose Ohio First Scholarship Program assigns scholarships to state colleges and universities to recruit Ohio residents in certain academic fields.

The Choose Ohio First Scholarship Program assigns a number of scholarships to state universities and the Northeast Ohio Medical University (NEOMED) to recruit Ohio residents as undergraduate students. They may do so in collaboration with other state institutions of higher education and private colleges and universities in Ohio.

### **Academic fields for Choose Ohio First scholarships**

The bill removes medicine, dentistry, and medical and dental education from the list of academic fields in which students may receive Choose Ohio First scholarships. It retains, however, existing law that permits students in the fields of science, technology, engineering, and mathematics and science, technology, engineering, and mathematics education to receive scholarships.

The bill also repeals the primary care medical student, primary care nursing student, and primary care dental student components of the scholarship program.

Finally, the bill specifically includes “health professions” in the scholarship program’s purpose statement.

### **Criteria for scholarship proposals**

The bill requires the Chancellor to determine which proposals will receive Choose Ohio First Scholarship awards based on the extent to which a proposal recruits underrepresented populations in certain academic fields.

It also changes the existing list of criteria, at least one of which must be satisfied, that the Chancellor must use to determine which proposals will receive awards. Specifically, it adds:

1. The extent to which the state university or NEOMED has committed to, or demonstrated, an increase in total graduates in the academic fields specified above; and



2. An associate's degree to the criteria concerning the extent to which the proposal facilitates the completion of a degree in a cost-effective manner.

It also removes the following criteria:

1. The amount of other monetary or nonmonetary resources that the proposal will use;
2. The demonstrated productivity or future capacity of the students or scientists to be recruited;
3. The extent to which other resources will be used to supplement students' scholarships;  
and
4. The extent to which the proposal:
  - a. Is integrated with the Centers of Research Excellence;
  - b. Is collaborative with other institutions of higher education;
  - c. Facilitates a more efficient use of existing facilities and programs;
  - d. Will create additional capacity in educational or economic areas of need;
  - e. Will encourage graduates of two-year institutions in certain academic fields to transfer to state colleges or universities;
  - f. Encourages students to transfer into certain academic programs;
  - g. Permits students to attend a state university or NEOMED who otherwise could not afford it;
  - h. Increases the likelihood that students will successfully complete their degree programs;
  - i. Ensures that a student awarded a scholarship is prepared to complete a degree program; and
  - j. Increases the number of women participating in the program.

### **Statewide participation**

The bill requires the Chancellor to "endeavor to provide," rather than guarantee, that students from all regions of the state are able to participate in the Choose Ohio First Scholarship Program. It also repeals a provision that requires the Chancellor to endeavor to distribute scholarships so that all regions of the state benefit from the economic impact development of the program.

### **Participation in work-based learning**

The bill expands to all students receiving a Choose Ohio First scholarship (rather than half of those students) the requirement to be involved in work-based learning through a co-op, internship, experience in a university, college, or private laboratory, or other work-based learning.

But it also permits state and private institutions to appeal to the Chancellor for a waiver in cases where exceptional circumstances make placement of all students impractical or

significantly unachievable. (Existing law permits private four-year Ohio institutions to submit a proposal for Choose Ohio First scholarships and requires them to comply with all program requirements that apply to state institutions.)

### **Agreement governing use of scholarships**

The bill repeals the law that requires the agreement that each state and private institution must enter, regarding the use of Choose Ohio First scholarships, to include performance measures, reporting requirements, and an obligation to fulfill pledges of other resources for the proposal.

It also repeals a provision that permits the Chancellor, if making awards to a program or initiative that will be in collaboration with other state or private institutions, to enter into an agreement to grant the award directly to the collaborating institution.

### **Recruitment initiatives**

The bill repeals the requirement that the Chancellor encourage state institutions to submit Choose Ohio First proposals for initiatives that recruit either:

1. Residents who enrolled in colleges and universities in other states or countries to enroll in state universities or colleges as graduate students in certain academic fields; or
2. Graduate students from an Ohio college or university who received, or will receive, a degree in certain academic fields to participate in a graduate-level teacher education master's program in a field that satisfies certain criteria.

### **Scholarship amounts**

The bill repeals a provision permitting the Chancellor to authorize an institution to award a scholarship in an amount exceeding the amount permitted under current law to (1) undergraduate students enrolled in a program leading to a teaching profession in certain academic fields and (2) graduate students who qualify for scholarships under the recruitment initiatives described above.

### **Extension of awards**

The bill permits the Chancellor, with Controlling Board approval, to grant a one-time extension of a Choose Ohio First Scholarship award for up to four years. Currently, state universities or NEOMED must reapply each time an award expires in order to renew.

### **Reserve Fund**

The bill specifies that the Choose Ohio First Scholarship Program Reserve Fund must consist of amounts designated for the purposes of the fund by the General Assembly or the federal government.

### **Ohio National Guard Scholarship eligibility**

(R.C. 5919.34)

The bill expands eligibility for the Ohio National Guard Scholarship Program. Specifically, it qualifies for a scholarship any individual who, in addition to meeting other criteria prescribed

under continuing law, is actively enrolled as a full-time or part-time student for at least three credit hours a week in coursework in a credential-certifying program, licensing program, trade certification program, or apprenticeship program for an in-demand occupation, as identified by the Adjutant General and the Chancellor, in consultation with the Governor's Office of Workforce Transformation.

Under current law, the program provides eligible Ohio National Guard members with undergraduate or nursing diploma tuition scholarships for attendance at public and private nonprofit colleges and universities and private for-profit career colleges and schools.

## **FAFSA data system**

(R.C. 3333.301)

The bill requires the Chancellor and the Management Council of the Ohio Education Computer Network to establish a data system to track the Free Application for Federal Student Aid (FAFSA) completion rate of Ohio's public and chartered nonpublic school students. The Chancellor and the Council must develop guidelines and procedures to operate the system.

The bill also authorizes the Chancellor to publish and share aggregate FAFSA data, including completion counts and rates for Ohio and each school district, community school, STEM school, college-preparatory boarding school, and chartered nonpublic school. The bill states that the data may be used for the benefit of schools, to increase public understanding regarding FAFSA, and to assist in encouraging student completion of the FAFSA form.

Finally, the bill requires each school district and each other public and chartered nonpublic high school to enter into a data sharing agreement with the Chancellor to operate the data system. (See "**FAFSA data system**" under "**DEPARTMENT OF EDUCATION,**" above.)

The Chancellor and the Council appear already to operate a FAFSA data system, the FAFSA Data Service. However, it appears that currently only school districts, community schools, and STEM Schools are eligible to participate and that participation is voluntary.<sup>73</sup>

## **Withholding student transcripts**

(R.C. 3333.0417)

The bill permits the Chancellor to adopt rules regarding when a state institution of higher education may withhold official transcripts from a student, including when a student owes money to the institution. In adopting those rules, the bill requires the Chancellor to consider (1) promoting the state's postsecondary education attainment goals, (2) workforce goals, and (3) helping adult students complete their education.

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<sup>73</sup> For more information, see the FAFSA Data Service's [website](#) and the Management Council's [website](#).

## OhioCorps Pilot Program – repealed

(Repealed R.C. 3333.80, 3333.801, and 3333.802)

The bill repeals the “OhioCorps Pilot Program.” OhioCorps is a program to guide at-risk high school and qualifying middle students toward a pathway to higher education through mentorship programs operated by state institutions of higher education. Students who participate in the mentorship programs, enroll in a state institution, and meet other eligibility criteria later may qualify for OhioCorps scholarships.

## State university admissions and computer science education

(R.C. 3345.063)

Beginning with the 2022-2023 academic year, the bill requires each state university to recognize a student’s successful completion of an advanced computer science course in high school as a unit for admission to the university under certain circumstances. Specifically, a state university must do so if the course is aligned with the State Board of Education’s computer science standards and if the student completed the course to meet one of several requirements contained in the minimum high school curriculum requirements. The state university must apply the completed course to a general university admissions requirement similar to the high school curriculum requirement the student met with the course.

The following table indicates how, under the bill, a student could use a computer science course to meet a high school curriculum requirement, and how a state university must recognize the course as meeting a general admissions requirement.

| Completed Course   | Minimum high school curriculum requirement | State university general admissions requirement        |
|--|--|--|
| An advanced computer science course equal to one unit of instruction | One unit of math instruction               | One unit toward a general math requirement             |
| An advanced computer science course equal to one unit of instruction | One unit of science instruction            | One unit toward a general science requirement          |
| An advanced computer science course equal to one unit of instruction | One general elective unit                  | One unit toward a general elective requirement         |
| A computer coding course equal to one unit of instruction            | One unit of foreign language instruction   | One unit toward a general foreign language requirement |

In addition, the bill requires each state university to post a description of its recognition of advanced computer science as a core unit for admission to the university in a prominent location on the university's website.

## **Educator preparation programs and computer science**

(R.C. 3333.049)

The bill specifies that each educator preparation program must require each candidate for an educator license who enters the program in the 2022-2023 academic year and after to receive instruction in computer science and computational thinking, as applied to student learning and classroom instruction and as appropriate for the grade level and subject area of the candidate's prospective educator license.

## **Farm Production, Policy, and Financial Management Institute**

The bill expands content and priority enrollment specifications for the Ohio State University's Farm Financial Management Institute, which trains individuals related to the agriculture field to help farmers deal with financial management problems.

First, it changes the name of the program to the "Farm Production, Policy, and Financial Management Institute." Further, it expands the role of the Institute to assist farmers in addressing integration of farm production practices, agricultural marketing, farm policy, and financial management in addition to assistance with farm financial management problems, as under current law. Finally, the bill adds "farm owners and managers" to the list of individuals considered for priority enrollment in the program. Individuals who receive priority enrollment in the program currently include employees or representatives of banks and other farm credit agencies, agricultural teachers, and faculty and employees of the Ohio State University and OSU extension who agree to assist Ohio farmers in completing and understanding the coordinated financial statement and other subjects.<sup>74</sup>

For more information on the Institute see the following from the Ohio State University's website: <https://aede.osu.edu/research/osu-farm-management>.

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<sup>74</sup> R.C. 3335.38.

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## OHIO HISTORY CONNECTION

- Requires the Ohio History Connection to designate Poindexter Village as a state historic site.

### Poindexter Village

(Section 701.80)

The bill requires the Ohio History Connection to designate Poindexter Village, the buildings located at 290 North Champion Avenue, Columbus, as a state historic site. As one of the first public housing projects in the U.S., Poindexter Village represents the birth and history of public housing in this country and reflects Ohio's place in the national story of the Great Migration.

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## DEPARTMENT OF INSURANCE

### Drug data disclosure

- Effective January 1, 2022, requires health plan issuers, including pharmacy benefit managers, to release specified cost-sharing and other information related to drugs covered under a health benefit plan.
- Specifies the format in which such information must be provided.

### Hospital admissions and notification to health plan issuers

- Requires, when a patient covered by a health benefit plan is admitted to a hospital, the hospital to notify the health plan issuer of the admission within 24 hours.

### Insurance agent pre-licensing education

- Authorizes the Superintendent of Insurance, when determining the criteria for pre-licensing education for insurance agents, to include classroom, online, and self-study options.

### Drug data disclosure

(R.C. 3902.50, 3902.60, 3902.70, and 3902.72)

#### Furnishing data

Effective January 1, 2022, the bill requires a health plan issuer, including a pharmacy benefit manager, to furnish the following data for any and all drugs covered under a related health benefit plan upon request of a covered person, their health care provider, or the third-party representative:

- The covered person's eligibility information for any and all covered drugs;
- Cost-sharing information for any and all covered drugs, including a description of any variance in cost-sharing based on pharmacy, whether retail or mail order, or health care provider dispensing or administering the drugs;
- Any applicable utilization management requirements for any and all covered drugs, including prior authorization requirements, step therapy, quantity limits, and site-of-service restrictions.

The data must be furnished regardless of whether the request is made using the drug's unique billing code, such as a national drug code or health care common procedure coding system code, or a descriptive term, such as the brand or generic name of the drug. In addition, a health plan issuer, including a pharmacy benefit manager, may not deny or delay a request as a method of blocking the data from being shared based on how the drug was requested.

Under the bill, a health plan issuer, including a pharmacy benefit manager, must ensure that the above data meets all of the following:

- It is current not later than one business day after any change is made;
- It is provided in real time;
- It is provided in the same format that the request is made by the covered person, their health care provider, or their third-party representative.

The bill requires the format in which a health plan issuer, including a pharmacy benefit manager, replies to a request to use established industry content and transport standards published by either of the following:

- A standards developing organization accredited by the American National Standards Institute, including the National Council for Prescription Drug Programs, ASC X12, health level 7;
- A relevant federal or state governing body, including the Centers for Medicare and Medicaid Services or the Office of the National Coordinator for Health Information Technology.

## **Prohibitions**

Under the bill, a health plan issuer, including a pharmacy benefit manager, furnishing the required data may not do any of the following:

- Restrict, prohibit, or otherwise hinder, in any way, a health care provider from communicating or sharing any of the following:
  - Any of the required data;
  - Additional information on any lower-cost or clinically appropriate alternatives, whether or not they are covered under the covered person's health benefit plan;
  - Additional payment or cost-sharing information that may reduce the covered person's out-of-pocket costs, such as cash price or patient assistance and support programs whether sponsored by a manufacturer, foundation, or other entity.
- Except as may be required by law, interfere with, prevent, or materially discourage access to, exchange of, or use of the required data by doing any of the following:
  - Charging fees;
  - Not responding to a request at the time the request is made, if such a response is reasonably possible;
  - Implementing technology in nonstandard ways;
  - Instituting covered person consent requirements, processes, policies, procedures, or renewals that are likely to substantially increase the complexity or burden of accessing, exchanging, or using such data.
- Penalize a health care provider for disclosing such data to a covered person or for prescribing, administering, or ordering a clinically appropriate or lower-cost alternative.



## Personal representatives

The bill requires a health plan issuer, including a pharmacy benefit manager, to treat a personal representative of a covered person as the covered person for purposes of the above provisions. In addition, if a person has authority to act on behalf of a covered person in making decisions related to health care, a health plan issuer, including a pharmacy benefit manager, or its affiliates or entities acting on its behalf, must treat that person as a personal representative.

## Definitions

**“Covered”** means the provision of benefits related to health care services to a covered person in accordance with a health benefit plan.

**“Covered person”** means a person covered under a health benefit plan.

**“Drug”** means the following:

- Any article recognized in the U.S. Pharmacopoeia and National Formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- Any article, other than food, intended to affect the structure or any function of the body of humans or animals;
- Any article intended for use as a component of any article specified above, but does not include devices or their components, parts, or accessories.

**“Health benefit plan”** means an agreement offered by a health plan issuer to provide or pay for the cost of health care services. “Health benefit plan” includes limited benefit plans, but does not include vision-only, dental-only, specified disease, disability, supplemental, or certain other specified types of limited plans. “Health benefit plan” does not include Medicare or Medicaid plans or any supplement to those plans.

**“Health care provider”** means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner (a physician, physician assistant, registered or licensed practical nurse, dentist, dental hygienist, optometrist, optician, pharmacist, psychologist, chiropractor, hearing aid dealer or fitter; speech-language pathologist, audiologist, specified type of therapist or counselor, dietitian, respiratory care professional, or EMT).

**“Health plan issuer”** means an entity subject to Ohio’s insurance laws that contracts to provide, pay for, or reimburse any of the costs of health care services. The term includes a sickness and accident insurer, a health insuring corporation, a fraternal benefit society, a self-funded multiple employer welfare arrangement, and a nonfederal, government health plan. The term also includes a third-party administrator, such as a pharmacy benefit manager, to the extent that the benefits the administrator is contracted to administer are subject to Ohio insurance laws or to the Superintendent’s jurisdiction.

**“Pharmacy benefit manager”** means an entity that contracts with pharmacies on behalf of an employer, a multiple employer welfare arrangement, public employee benefit plan, state agency, insurer, managed care organization, or other third-party payer to provide pharmacy health benefit services or administration.

**“Prior authorization requirement”** means any practice implemented by a health plan issuer in which coverage of a health care service, device, or drug is dependent upon a covered person or a provider obtaining approval from the health plan issuer prior to the service, device, or drug being performed, received, or prescribed, as applicable. “Prior authorization requirement” includes prospective or utilization review procedures conducted prior to providing a health care service, device, or drug.

## **Hospital admissions and notification to health plan issuers**

(R.C. 3727.80)

The bill requires a hospital, when a patient is admitted to that hospital and informs the hospital that the patient is covered by a health benefit plan, to notify the health plan issuer in question of the admission within 24 hours. If the hospital is *not* informed that a patient is covered by a health benefit plan when the patient is admitted, then the hospital is required to notify the health plan issuer of the patient’s admission within 24 hours of being informed. A hospital is considered to have been informed that a patient is covered under a health benefit plan when the patient provides the hospital the patient’s health benefit plan identification card. The hospital must make the required notification to the health plan issuer either in writing or through a secure electronic transmission. If written notice is not possible, then the notice is to be made via telephonic communication.

## **Insurance agent pre-licensing education**

(R.C. 3905.04)

In order to qualify to sit for the insurance agent license exam, continuing law requires an insurance agent applicant to meet one of several specified education criteria, one of which is the completion of 20 hours of study in a program of insurance education approved and established by the Superintendent of Insurance. The bill explicitly authorizes the Superintendent, when determining the criteria for pre-licensing education for insurance agents, to include classroom, online, and self-study options.

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## **DEPARTMENT OF JOB AND FAMILY SERVICES**

### **TANF spending plan**

- Requires the Department of Job and Family Services (JFS) to submit a TANF spending plan to the Governor describing anticipated TANF spending for the upcoming fiscal biennium.
- Requires the Governor to submit the TANF spending plan to the General Assembly as an appendix to the Governor's budget.
- Requires JFS to submit an updated TANF spending plan to the chairpersons of certain standing committees of the House and Senate at the conclusion of each fiscal year, and permits those chairpersons to call the JFS Director to testify about the plan.

### **Supplemental Nutrition Assistance Program (SNAP) eligibility**

- Prohibits SNAP income and asset limits from exceeding the types and allowable amounts permitted by the Secretary of the U.S. Department of Agriculture.
- Requires JFS to conduct an asset test for each SNAP recipient.
- Requires JFS to prepare and submit baseline and subsequent quarterly reports to the General Assembly detailing certain information regarding SNAP.
- Requires JFS to collect information on suspicious electronic benefit transfer card transactions and provide the information to each impacted county department of job and family services for analysis and investigation.

### **Elderly Simplified Application Project**

- Requires the JFS Director to submit an application to the U.S. Department of Agriculture for participation in the Elderly Simplified Application Project within SNAP.

### **JFS data matching agreements**

- Requires the JFS Director to enter into several data matching agreements for the purpose of determining eligibility for certain public assistance recipients.

### **Third-party commercial consumer reporting agency**

- Permits JFS to contract with a third-party commercial consumer reporting agency to assist with improving the timeliness of benefit deliveries, maximizing operational efficiencies, increasing cost savings, and minimizing fraud within public assistance programs.
- Requires county departments of job and family services to participate in a no-cost, 90-day pilot program under which the county departments must contract with a third-party commercial consumer reporting agency.
- Following the conclusion of the pilot program, permits JFS to contract with a vendor to provide the services described above.

- Requires both JFS and county departments to undertake efforts to incorporate real-time employment and income information into existing verification and eligibility determination procedures.

### **Public Assistance Benefits Accountability Task Force**

- Establishes the Public Assistance Benefits Accountability Task Force, and requires it to study various aspects of Ohio's public assistance programs.
- Requires the task force to prepare and submit a report to the General Assembly.

### **JFS subgrant**

- Requires JFS to enter into a subgrant agreement with the Ohio Association of Foodbanks to do the following:
  - Provide food distribution via the statewide charitable emergency food provider network;
  - Support transportation of meals for the Governor's Office of Faith-Based and Community Initiatives Innovative Summer Meals programs;
  - Provide capacity building equipment for food pantries and soup kitchens.
- Requires the Association to do all of the following:
  - Purchase food for the Agriculture Clearance and Ohio Food Programs;
  - Provide the cost of transportation of food already purchased in FY 2021 to the Governor's Office of Faith-Based and Community Initiatives Summer and Rural Meals program sites;
  - Support the Capacity Building Grant program and purchase equipment for partner agencies that is needed to increase their capacity to serve more families eligible under the Temporary Assistance for Needy Families program;
  - Submit a quarterly report to JFS not later than 60 days from the close of the quarter to which the report pertains that includes certain performance details;
  - Submit an annual report to the JFS Agreement Manager not later than 120 days from the end of the fiscal year that includes certain performance details.

### **Individual Development Account reports**

- Eliminates a requirement that a county department of job and family services prepare and file a semi-annual report with JFS regarding the Individual Development Account Program it operates.
- Eliminates a requirement that JFS prepare an annual report regarding these programs.

### **Ohio Family and Children First Cabinet Council**

- Transfers fiscal and administrative agent duties for the Ohio Family and Children First Cabinet Council, created under existing law, from the Department of Mental Health and

Addiction Services to JFS, including transferring the Council's office location and employees.

- Permits a county family and children first council to create a flexible funding pool to assure access to services by families, children, and seniors in need of protective services.

### **Case plans and family service plans**

- Beginning January 1, 2023, makes it mandatory for a public children services agency (PCSA) or private child placing agency (PCPA) to include in its case plan for a child in temporary custody (unless it is not in the child's best interest) a permanency plan that describes agency-provided services to achieve permanency for the child if reasonable efforts at family reunification are unsuccessful.
- Requires permanency plan services to be provided concurrently with efforts at family reunification.
- Requires the JFS Director to adopt, according to R.C. Chapter 119, case plan rules for the concurrent provision of permanency plan services for a child in temporary custody.
- Repeals the family service plan option from the requirement that a PCSA maintain a case plan or a family service plan for any child for whom the PCSA provides in-home services under an alternative response to a child abuse or neglect report.

### **Caseworker in-service training**

- Requires the JFS Director to adopt rules to establish circumstances under which a PCSA executive director may waive portions of caseworker in-service training requirements.

### **Kinship caregiver placement efforts**

- Requires a PCSA or PCPA with temporary custody of a child or a child placed in a planned permanent living arrangement (TC/PPLA child) to make intensive efforts to identify potential kinship caregivers using certain search technology.
- Requires a court to review a PCSA's or PCPA's efforts to locate appropriate and willing kinship caregivers for a TC/PPLA child in the agency's custody at every hearing concerning that child.
- Requires a PCSA or PCPA to include a summary of its efforts to find an appropriate and willing kinship caregiver for a TC/PPLA child as part of the semiannual administrative review of the child's case plan, unless a court has deemed such efforts unnecessary.
- Allows a court to issue, under certain circumstances, an order determining that a TC/PPLA child's current placement is in the child's best interest and that further intensive efforts at finding kinship caregivers are unnecessary.
- Provides that a TC/PPLA child's current caregivers are to be considered to be the child's kin with equal standing with relatives regarding permanency if the court determines the current placement is in the child's best interest and intensive efforts to find kinship caregivers are unnecessary.

- Excuses a PCSA or PCPA from considering a TC/PPLA child's relative as a permanent placement option if the relative has failed to show interest within six months of receiving notice of the child's placement in the temporary care of the PCSA or PCPA.
- Provides that nothing in the kinship caregiver placement efforts provisions of the bill prevents a PCSA or PCPA from search for an appropriate kinship caregiver.

### **Kinship caregiver program**

- Requires each county department of job and family services (CDJFS) to incorporate a kinship caregiver program, which includes a family stabilization service and caregiving service, into its prevention, retention, and contingency plan.
- Earmarks \$10 million in each of FYs 2022 and 2023 for the program, and requires the JFS Director to allocate funds to CDJFSs via formula.
- Requires each PCSA to use the allocated funds to provide reasonable and necessary relief of child caring functions so kinship caregivers can provide and maintain a home for the child in place of the child's parents.
- Requires the CDJFS to enter into a memorandum of understanding with the PCSA for authorization of the expenditure up to the amount of the allocation.
- Specifies that the program will end if funding is no longer available and any CDJFS or PCSA cannot be held responsible for payment of services.

### **Kinship guardianship assistance (KGA) and Kinship Support Program (KSP)**

- Requires the JFS Director, not later than nine months after the bill's effective date, to submit amendments to the state Title IV-E plan in order to implement Title IV-E kinship guardianship assistance (federal KGA) available (1) on behalf of an eligible child to relatives, and (2) to any relative on behalf of a kinship guardianship (KG) young adult.
- Requires implementation of the state plan amendments to begin 15 months after the bill's effective date if the Secretary of Health and Human Services approves the plan and the General Assembly has appropriated funds sufficient to operate the program required by the amended plan.
- Allows a PCSA to enter into an agreement with a child's relative to provide state kinship guardianship assistance (state KGA), if state funds are available and certain conditions are met.
- Requires implementation of state KGA no later than 15 months after the bill's effective date if the amended state plan for federal KGA (described above) is approved.
- Provides that any JFS decision terminating federal KGA for a KG young adult or kinship support program (KSP) payments is subject to a state hearing under continuing law.

- Allows kinship caregivers to participate in the kinship permanency incentive program if they are not receiving federal assistance payments for KGA or for adopted or emancipated young adults or state adoption maintenance subsidy payments.
- Allows for specified relatives receiving federal KGA, State KGA, or KSP payments to participate in Ohio Works First if other conditions are also met.
- Excludes federal KGA, state KGA, and KSP payments from the definition of gross income for child support purposes.
- Provides that benefits and services provided under the following are inalienable and therefore not subject to attachment or garnishment:
  - Kinship guardianship assistance program;
  - Extended kinship guardianship assistance program;
  - Kinship support program;
  - Kinship permanency incentive program;
  - State adoption maintenance subsidy.
- Repeals requirements governing PCSA placement of children with special needs determined impossible to adopt and the duty to periodically redetermine and report the child's status to JFS.

### **Online training for foster caregivers**

- Repeals the law permitting up to 20% of a prospective foster caregiver's preplacement training to be provided online.
- Requires JFS to adopt rules, in accordance with R.C. Chapter 119, regarding the amount of preplacement and continuing training hours that may be completed online for prospective and existing foster caregivers.

### **PASSS program**

- Codifies and transfers, from PCSAs to JFS, complete administration of the post adoption special services subsidy (PASSS) program, under which payments are made on behalf of an adopted child with a physical or developmental disability or mental or emotional condition.
- Permits JFS to contract with any person to carry out PASSS duties.
- Prohibits PASSS payments to any person:
  - 18 years or older beyond the end of the school year during which the person attains that age; or
  - A mentally or physically disabled person who is 21 or older.
- Requires JFS to adopt rules necessary to implement, and to actually implement, the recodified PASSS by July 1, 2022.

## **Bills of Rights for foster youth and resource families**

- Requires JFS to adopt by rule, in accordance with R.C. Chapter 119, a Foster Youth Bill of Rights and a Resource Family Bill of Rights.
- Provides that if a right in the Foster Youth Bill of Rights conflicts with a right in the Resource Family Bill of Rights, the Foster Youth Bill of Rights prevails.
- Defines a “resource caregiver” as a foster caregiver or a kinship caregiver and a “resource family” as a foster home or the kinship caregiver family.
- Provides that the rights created for foster youth and resource families do not create grounds for a civil action against JFS, the recommending agency, or the custodial agency.

## **Notification for sibling of adopted person**

- Provides that an adopted person’s legal parents may be notified that an adopted person’s sibling has been placed into out-of-home care after an adoption has been finalized.
- Defines “sibling,” for notification purposes only, as a former biological sibling, former legal sibling, or any person who would have been considered a sibling if not for a termination or other disruption of parental rights.

## **Criminal records check for individuals overseeing a child**

- Adds certain crimes to the Bureau of Criminal Identification and Investigation criminal background check for persons responsible for out-of-home child care and members of a household for a host family hosting a child under a host family agreement.

## **Background checks for institutions and associations**

- Requires an institution or association to obtain certain background information before employing a person or engaging a subcontractor, intern, or volunteer if:
  - The institution or association is a residential facility; or
  - The institution or association is not a residential facility and the person, subcontractor, intern, or volunteer will have contact with children.
- Requires the institution or association, regarding the background information, to:
  - Obtain a search (instead of *conduct* a search as current law requires) of the U.S. Department of Justice National Sex Offender Public Website; and
  - Obtain a summary report (instead of *request* a summary report as current law requires) of a search of the uniform statewide automated child welfare information system.
- Allows an institution or association to refuse to employ a person or engage a subcontractor, intern, or volunteer based solely on the search and summary report obtained.



- Requires an institution or association to obtain the search and summary report for a person, subcontractor, intern, or volunteer if that information has not been obtained by the effective date of this provision.

### **Federal foster care assistance for emancipated young adults**

- Expands the juvenile courts that may exercise jurisdiction over an emancipated young adult (EYA) receiving federal foster care payments to include the court of the county where the EYA resided when his or her custody, planned permanent living arrangement, or care and placement terminated.
- Revises the timing for JFS or its representative to petition for a judicial determination that the EYA's best interest is served by continuing care and placement with JFS or its representative after the EYA enters a voluntary participation agreement for placement and care.
- Explicitly associates seeking and obtaining the determination with maintaining the EYA's eligibility for Title IV-E assistance.
- Eliminates the remedy that an EYA loses eligibility for continued care and placement with JFS or its representative under a voluntary participation agreement (VPA) if a court, 180 days after the VPA becomes effective, determines the continued care and placement does not serve the EYA's best interest.
- Requires a court to make a permanency plan determination regarding an EYA:
  - 12 months after the VPA's effective date (instead of 12 months after the date it is signed, as current law requires);
  - At least once every 12 months after the first determination (instead of simply "annually" as current law requires); and
  - That JFS or its representative made reasonable efforts (instead of just that reasonable efforts were made, as current law requires) to finalize a permanency plan to prepare the EYA for independence.
- Requires federal payments for foster care to be suspended if the best interest and reasonable efforts determinations (described above) are not timely made.

### **Foster caregiver certification extension**

- Requires JFS to extend the certification deadline to December 31, 2021, for foster caregivers and prospective foster caregivers who began continuing training or preplacement training between 2019 and 2021, unless their certification deadline is after December 31, 2021.
- Prohibits JFS from requiring foster caregivers and prospective foster caregivers from repeating training or certification requirements that have been previously completed, except JFS may require a new background check and home inspection.

## **Home study assessor and professional treatment staff qualifications**

- Expands the individuals who may perform foster care and adoption home studies to include a person who holds at least a bachelor's degree in certain human services fields.
- Requires professional treatment staff employed by PCSAs, private child placing agencies, and private noncustodial agencies to meet the same educational qualifications and training requirements as required of PCSA caseworkers in current law.

## **Court order to interview and examine a child**

- Allows a juvenile court, if it determines probable cause exists, to issue an order, without a hearing, authorizing a PCSA to interview or examine a child who may be abused, neglected, or dependent if the child's parent, guardian, custodian, or caretaker refuses the PCSA reasonable access to the child.
- Requires that a PCSA request the order and to submit a sworn affidavit detailing the facts that would support the order.
- Specifies that the order is not a final, appealable order, which means that the order may not be reviewed, affirmed, modified, or reversed, with or without trial.

## **Reimbursement for federal juvenile court programs**

- Adds prevention services costs under the federal Family First Prevention Services Act to the list of expenses for which a juvenile court may receive reimbursement upon agreement with JFS on behalf of a child in certain circumstances.
- Adds a child who is at imminent risk of removal from the home and is a sibling of a child in the temporary or permanent custody of the court to the list of circumstances of a child on whose behalf reimbursement may be sought.

## **Streamlining County Level-Information Access Task Force**

- Creates the Task Force on Streamlining County Level-Information Access to make recommendations on streamlining information access across information technology systems for (1) county departments of job and family services, (2) child support enforcement agencies, (3) public children services agencies, and (4) county OhioMeansJobs centers.
- Requires the Task Force to do all of the following:
  - Identify barriers to efficient operations between information technology systems that affect both department and agency operations and client services;
  - For each identified barrier, explore the feasibility of allowing county employees access to more than one information technology system;
  - Prioritize which barriers should be addressed first; and
  - Submit a report to the General Assembly by February 1, 2022.

## **Publicly funded child care**

- Revises the law governing income eligibility for publicly funded child care, specifying that the maximum amount of family income for initial eligibility cannot exceed 142% of the federal poverty line, but only for the period beginning on the bill's effective date and ending June 30, 2023.
- Repeals the law requiring a licensed child care program to be rated through the Step Up to Quality Program in order to be eligible to provide publicly funded child care.
- Repeals the law requiring JFS to ensure that specified percentages of publicly funded child care providers are rated in the Step Up to Quality Program's third highest tier or above by specified dates, including the provision requiring all of these providers to be rated in the third highest tier or above by June 30, 2025.

## **Type A family day-care homes**

- Eliminates the requirement that JFS include in the rules governing Type A family day-care homes standards for preparing and distributing parent rosters.

## **Child care resource and referral services**

- Eliminates the requirement that the JFS Director adopt rules for funding child care resource and referral service organizations.

## **Head Start program definition**

- Revises the definition of "head start program" for purposes of the law governing the licensure and regulation of child care providers, including by specifying that it is a school-readiness program.

## **Elder Abuse Commission reporting**

- Removes a requirement that the Elder Abuse Commission review current funding of adult protective services and submit a separate report on the cost of implementing its recommendations.
- Requires instead that the biennial report submitted by the Commission include estimates of the funding necessary to implement its specific recommendations.

## **Ohio Commission on Fatherhood**

- Extends the timeline of appointing the chairperson of the Ohio Commission on Fatherhood from every year to every other year, occurring in odd-numbered years.

## **Unemployment compensation**

### **Applications for unemployment benefits**

- For benefit years beginning on or after July 1, 2022, eliminates from consideration in the first phase of the unemployment eligibility process whether a claimant is disqualified from unemployment benefits for reasons relating to why the claimant is unemployed (this

phase examines whether the claimant worked enough and earned enough to qualify for benefits).

- Requires the JFS Director to check the Ohio New Hire Reporting Center, the National Directory of New Hires, and the Integrity Data Hub when determining whether an initial application is valid or whether a first claim or additional claim qualifies an individual for benefits.

### **Federal pandemic unemployment program termination**

- Requires the JFS Director to terminate pandemic unemployment assistance, federal pandemic unemployment compensation, mixed earner unemployment compensation, and pandemic emergency unemployment compensation. (Federal law currently requires the programs to end on September 4, 2021.)
- Prohibits the Director from entering new agreements with the U.S. Secretary of Labor for the purpose of providing those forms of assistance and compensation.

### **Other provisions**

- Makes information maintained by or furnished to the Unemployment Compensation Review Commission confidential and, with one exception, inadmissible in cases unrelated to the Unemployment Compensation Law (similar to current law regarding information maintained by, or furnished to, JFS).
- Prohibits disclosure of information maintained by the Commission unless an exception applies.
- Reduces from 30 days to ten days the time for the JFS Director to approve or deny a shared work plan and notify the employer of the determination.
- Increases the maximum percentage an individual's workweek can be reduced for purposes of participating in the SharedWork Ohio Program from 50% to 60%.
- Requires, if permitted by federal law, any portion of compensation paid under the SharedWork Ohio Program to be charged to the mutualized account and not to a participating employer's experience during any period the compensation is being reimbursed under federal law.

### **Employment connection incentive programs**

- Permits county departments of job and family services and county workforce development agencies, in conjunction with the local workforce development board, to establish an employment connection incentive program to assist public employment assistance recipients in obtaining and maintaining employment.
- Makes participation in the program voluntary for public assistance recipients.
- Provides county departments and county workforce development agencies to earn incentive payments based on their successes with their programs.

## **TANF spending plan**

(R.C. 107.03 and 5101.806)

The bill requires the Department of Job and Family Services (JFS), not later than November 1 of each even-numbered year, to submit a TANF spending plan to the Governor. The plan must describe the anticipated spending of Temporary Assistance for Needy Families (TANF) block grant funds for the upcoming fiscal biennium. The plan must be prepared in such a manner as to facilitate the inclusion of the information in the Governor's budget. It must be submitted to the General Assembly as an appendix to the Governor's budget.

By July 30 of each even-numbered year, JFS must prepare and submit an updated TANF spending plan. This updated plan, at a minimum, must include information detailing the total amount of TANF block grant funds that were distributed during the first fiscal year of the biennium and an updated estimate of total TANF block grant funds that will be distributed during the second fiscal year of the biennium. The report must be submitted to the chairperson of a standing committee of the House designated by the Speaker and the chairperson of a standing committee of the Senate designated by the Senate President.

The bill authorizes the chairpersons of the designated standing committees to call the JFS Director to testify before the committees regarding the TANF spending plan.

## **Supplemental Nutrition Assistance Program (SNAP) eligibility**

(R.C. 5101.54, 5101.546, 5101.547, and 5101.548)

### **Income and asset limits**

SNAP eligibility and benefits are calculated on a household basis. To be eligible for SNAP, household gross monthly income must be at or below 130% of the federal poverty level, and household net monthly income (after specified deductions) must be at or below 100% of the federal poverty level. Income from all sources is generally counted, including all of the following:

- Earned income;
- Unearned income (such as cash assistance);
- Social Security;
- Unemployment;
- Child support.

Additionally, a household's assets must be below \$2,250 for most households, and below \$3,500 if the household has an elderly or disabled member. Generally, assets are resources that are available to the household to purchase food, such as funds in bank accounts. Assets that are not accessible, such as retirement savings or real estate, are not counted. The U.S. Secretary of Agriculture is tasked with prescribing the types and allowable amounts of financial resources an eligible household may own and sell.

The bill prohibits the allowable financial resources included and excluded when determining a household's eligibility for SNAP from exceeding the standards specified under

federal law. Additionally, JFS is prohibited from exempting any noncash, in-kind, or other similar benefits from this determination. Similarly, the bill prohibits JFS from granting exemptions from the gross income limits established under federal law for a household participating in SNAP, unless required to do so under federal law.

When determining eligibility for SNAP benefits, the bill requires JFS to conduct an asset test for all members of a household. At a minimum, JFS must access information for each member of the household from a nationwide, public records data source of physical asset ownership. The information accessed by JFS must include records of ownership of real property, automobiles, watercraft, aircraft, luxury vehicles, or any other vehicle owned by a member of the household. Additionally, the search must include a review of national and state financial institutions to determine whether any member of the household has undisclosed depository accounts and to confirm and verify account balances reported by the household.

The bill requires JFS to enter into a memorandum of understanding with any department, division, bureau, section, unit, or any other subunit of a department to obtain this information.

### **Change reporting**

The bill requires households participating in SNAP to report to JFS a change in income of more than \$500, or other changes in circumstances required under federal law,<sup>75</sup> within 30 days of the change in income or circumstances becoming known to the household.

### **SNAP debit card investigations**

The bill requires JFS to collect information regarding suspicious electronic benefit transfer (EBT) card transactions and provide the information to each impacted county department of job and family services for analysis and investigation. The information collected is required to include the following: (1) transactions of even dollar amounts, (2) transactions of full monthly benefit amounts, (3) multiple same-day transactions, (4) out-of-state transactions, and (5) other suspicious trends.

### **Rulemaking**

Continuing law authorizes JFS to adopt rules to administer the SNAP program. The bill requires the rules to be consistent with its provisions, and to require cooperation with the child support enforcement program, which is to be verified as part of the requirement to fulfill individual employment and training programs.

### **SNAP report**

The bill requires JFS to compile a report detailing the implementation and enforcement of SNAP policies in the state. The report must include all of the following information:

- The number of households investigated for fraud or an intentional program violation;
- The number of investigations referred to the Attorney General for prosecution;

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<sup>75</sup> 7 Code of Federal Regulations (C.F.R.) 273.12(a)(1).

- Any improper program payments or expenditures and the total amount of money recovered from those payments or expenditures;
- Aggregate data concerning improper program payments and ineligible recipients, reported as a percentage of cases investigated and reviewed; and
- The aggregate amount of funds spent by Ohio SNAP recipients through EBT transactions in each state other than Ohio.

Not later than 120 days after the bill's effective date, JFS must submit a baseline report to the Speaker of the House, the Senate President, and the members of the standing legislative committees that have jurisdiction over SNAP. Thereafter, JFS must submit updated reports on a quarterly basis beginning one year after the bill's effective date.

## **Elderly Simplified Application Project**

(R.C. 5101.545)

The bill requires the JFS Director to submit an application to the U.S. Department of Agriculture for participation in the Elderly Simplified Application Project within SNAP. The Elderly Simplified Application Project is a demonstration project, under which participating states may waive the recertification interview requirement and extend the certification period for certain eligible elderly households to 36 months.

## **Data matching agreements**

(R.C. 5101.041 and 5120.212)

The bill requires the JFS Director to enter into three separate data matching agreements. The first, with the Department of Rehabilitation and Correction, requires the Director of Rehabilitation and Correction to provide the JFS Director with a searchable list of all individuals committed to the institutions governed by the Department.

The JFS Director also must enter into a data matching agreement with the Director of the State Lottery Commission and the Executive Director of the Ohio Casino Control Commission, requiring that the commissions provide the JFS Director with a searchable list of all individuals with substantial lottery or gambling winnings. The JFS Director is required to check this list at least monthly to determine if the information affects any public assistance recipient's eligibility.

Next, the JFS Director must enter into a data matching agreement with the Director of Health. Under this agreement, the Director of Health must provide the JFS Director with a searchable list of vital statistics records, including death records. The JFS Director must check this list at least monthly to determine whether any of the vital statistics records affect a public assistance recipient's eligibility.

## **Third-party commercial consumer reporting agency**

(R.C. 5104.04; Section 307.290)

The bill permits JFS to contract with a third-party commercial consumer reporting agency, in accordance with federal law,<sup>76</sup> for the purpose of assisting the Department with determining an individual's eligibility for SNAP, benefits funded by the TANF block grant, or unemployment compensation. The purpose of the contract is to improve the timeliness of public assistance benefit deliveries, to maximize operational efficiencies, increase cost savings, and minimize fraud.

Likewise, the bill requires county departments of job and family services (CDJFSs) to participate in a 90-day pilot program, at no cost to them, under which county departments are required to obtain real-time employment and income information from a third-party commercial consumer reporting agency for the purposes described above. At the conclusion of the pilot program, the bill permits JFS to contract with a vendor to provide the same or similar services provided to each CDJFS by a third-party commercial consumer reporting agency.

The bill requires both JFS and CDJFSs to undertake efforts to incorporate real-time employment and income information into existing verification and eligibility determination procedures.

## **Public Assistance Benefits Accountability Task Force**

(Section 307.300)

The bill establishes the Public Assistance Benefits Accountability Task Force consisting of the following 13 members:

- The Medicaid Director, or the Director's designee, serving as an ex-officio, nonvoting member;
- The JFS Director, or the Director's designee, serving as an ex-officio, nonvoting member;
- The Director of the Office of InnovateOhio, or the Director's designee, serving as an ex-officio, nonvoting member;
- A director of a country department of job and family services, appointed by the Senate President;
- A business owner who employs fewer than 100 people, appointed by the Senate President;
- Three members of the Senate, two from the majority party and one from the minority party, all appointed by the Senate President;
- A business owner who employs fewer than 500 people, appointed by the House Speaker;

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<sup>76</sup> 15 U.S.C. 1681 *et seq.*



- A representative of the Ohio Job and Family Services Directors' Association, appointed by the House Speaker;
- Three members of the House, two from the majority party and one from the minority party, all appointed by the Speaker.

Not later than 90 days after the bill's effective date, the Senate President and House Speaker are required to appoint co-chairpersons of the task force from the members of the task force that they appointed. Thereafter, the task force will meet at the call of the co-chairpersons. Members of the task force serve without compensation.

Under the bill, the task force has the power to do all of the following:

- Review the [November 9, 2020, report](#) published by the Auditor of State regarding Medicaid eligibility and determine to what extent the Auditor's recommendations have been adopted. Within 90 days of conducting the review, the task force must report to the Senate President and House Speaker regarding the status of implementation of these recommendations;
- Review past and present welfare to work county programs and their effectiveness on assisting individuals in achieving employment;
- Review existing fraud prevention efforts at both the state and county levels and determine best practices for fraud prevention in SNAP, the Medicaid program, Ohio Works First, and the publicly funded child care program;
- Review and establish best practices regarding overpayment of benefits in SNAP, the Medicaid program, and the publicly funded child care program, and determine how these overpayments can be prevented at the state and county levels;
- Review and recommend best practices for processing public assistance cases to create efficiencies and reduce errors through the use of technology;
- Review and evaluate the length of time that individuals receive public assistance in the state and recommend ways to return individuals to the workforce;
- Review existing efforts to ensure compliance with child support enforcement across public assistance benefit programs and recommend additional ways compliance could be improved;
- Review the costs and benefits associated with implementing a requirement that each SNAP debit card include a color photograph of at least one adult member of the household.

Not later than 18 months after first convening, the task force is required to prepare and submit a report to the General Assembly detailing its recommendations regarding the topics listed above. After submitting its report to the General Assembly, the task force will cease to exist.

## JFS subgrant

(Section 307.43)

The bill requires JFS to enter into a subgrant agreement with the Ohio Association of Foodbanks to enable the Association to: (1) provide food distribution to low-income families and individuals through the statewide charitable emergency food provider network, (2) support the transportation of meals for the Governor's Office of Faith-Based and Community Initiatives Innovative Summer Meals programs for children, and (3) provide capacity building equipment for food pantries and soup kitchens.

Under the agreement, the Ohio Association of Foodbanks must do all of the following:

- Purchase food for the Agriculture Clearance and Ohio Food Programs. Information regarding the food purchase must be reflected in a plan for statewide distribution of food products to local food distribution agencies;
- Provide the cost of transportation of food already purchased in FY 2021 to the Governor's Office of Faith-Based and Community Initiatives Summer and Rural Meals program sites;
- Support the Capacity Building Grant program and purchase equipment for partner agencies needed to increase their capacity to serve more families eligible under the Temporary Assistance for Needy Families (TANF) program with perishable foods, fruits, and vegetables. Equipment purchases must include shelving, pallet jacks, commercial refrigerators, and commercial freezers.
- Submit a quarterly report to JFS not later than 60 days after the close of the quarter to which the report pertains. The report must include:
  - A summary of the allocation and expenditure of grant funds;
  - Product type and pounds distributed by foodbank service region and county; and
  - The number of households and households with children; a breakdown of individuals served by age, including those over 60, those between 19 and 59, and those up to 18; and the number of meals served.
- Submit an annual report to the Agreement Manager at JFS not later than 120 days after the end of the fiscal year. The report must include:
  - A summary of the allocation and expenditure of grant funds;
  - The number of households and households with children; a breakdown of individuals served by age, including those over 60, those between 19 and 59, and those up to 18; and the number of meals served;
  - The quantity and type of food distributed and the total per pound cost of the food purchased;
  - Information on the cost of storage, transportation, and processing; and
  - An evaluation of the success in achieving expected performance outcomes.

## Individual Development Account (IDA) reports

(R.C. 329.12 and 5101.971)

The bill eliminates a requirement that a county department of job and family services prepare and file with JFS a semi-annual report regarding its IDA Program. The IDA Program allows lower income individuals to deposit funds into an account, which are then matched by the county department. The funds may be used by an individual to purchase a home, start a business, or for post-secondary education expenses.<sup>77</sup>

The bill also eliminates the requirement that JFS publish an annual report regarding the counties' IDA programs.

## Ohio Family and Children First Cabinet Council

### Transfer of duties

(Section 307.109)

The bill transfers fiscal and administrative duties for the existing Ohio Family and Children First Cabinet Council to JFS (from the Ohio Department of Mental Health and Addiction Services). The transfer does not affect the Council's purpose, powers, or duties.<sup>78</sup> Related to the transfer, the bill specifies the following:

- The location of the Council's office will move to JFS;
- No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer;
- Any rules, orders, or determinations pertaining to the Council continue in effect as rules, orders, and determinations of the Council until modified or rescinded;
- All employees of the Council are transferred to JFS and retain current positions and benefits;
- No judicial or administrative action or proceeding to which the Council or an authorized officer is a party that is pending on the effective date of the transfer is affected by the transfer;
- The Director of Budget and Management must make budget and accounting changes necessitated by the transfer;
- All records, documents, files, equipment, assets, and other property of the Council remain in the possession of the Council and are not affected by the transfer.

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<sup>77</sup> O.A.C. 5101:1-3-18(D)(1).

<sup>78</sup> See R.C. 121.37, not in the bill.

## **Flexible funding pool**

(Section 307.110)

The bill permits a county family and children first council to establish and operate a flexible funding pool to assure access to needed services by families, children, and older adults who need protective services. A county council that desires such a pool must abide by all of the following:

- The pool must be created and operate according to formal guidance issued by the state Family and Children First Cabinet Council;
- The county council must produce an annual report on its use of the pooled funds. The report must conform to guidance issued by the state council;
- Unless otherwise restricted, the pool may receive transfers of state general revenue funds allocated to local entities to support services to families and children;
- The pool may receive only transfers of amounts that can be redirected without hindering the objective for which the initial allocation is designated.

The director of the local agency that originally received the allocation must approve the transfer to the pool.

## **Case plans and family service plans**

(R.C. 2151.412)

### **Permanency plans**

Beginning January 1, 2023, the bill makes it mandatory, instead of discretionary, for a public children services agency (PCSA) or a private child placing agency (PCPA) to include, within its case plan for a child in temporary custody, a permanency plan for the child, unless the permanency plan would not be in the child's best interest. The bill requires that the permanency plan describe the services the PCSA or PCPA must provide to achieve permanency for the child if reasonable efforts to return the child to the child's home, or eliminate the child's continued removal from home, are unsuccessful. The services must be provided concurrently with reasonable efforts to return the child home or eliminate the child's continued removal from home.

Current law requires each PCSA and PCPA to prepare and maintain a case plan for a child to whom the PCSA or PCPA is providing services if (1) it filed a complaint alleging that the child is an abused, neglected, or dependent child, (2) it has temporary or permanent custody of the child, (3) the child is living at home subject to an order for protective supervision by JFS, or (4) the child is in a planned permanent living arrangement. The PCSA or PCPA has discretion to add, as a supplement to the plan, a plan for permanent family placement for the child.

The JFS Director must adopt rules, according to the Administrative Procedure Act (R.C. Chapter 119), necessary to carry out the purposes described above regarding supplement plans and concurrent permanency plans.

## Family service plans

The bill changes the requirement that a case plan *or* a family service plan must be maintained for any child for whom the PCSA provides in-home services under an alternative response to a report of child abuse or neglect, by repealing the option that allows a PCSA to maintain a family service plan. In addition, the bill removes the requirement that the Director adopt rules for family service plans.

Under ongoing law, an alternate response is a PCSA's response to a report of child abuse or neglect that engages the family in a comprehensive evaluation of child safety, risk of subsequent harm, and family strengths and needs that does not include a determination as to whether abuse or neglect occurred.<sup>79</sup>

## Caseworker in-service training

(R.C. 5153.122 and 5153.124)

The bill requires the JFS Director, no later than nine months after the effective date of this requirement, to adopt rules in accordance with R.C. Chapter 119 to establish circumstances under which an executive director of a PCSA may waive portions of in-service training for PCSA caseworkers. This waiver requirement is in addition to the current law in-service training waiver for PCSA caseworkers in their first year.

Under current law, each PCSA caseworker must complete at least 102 hours of in-service training during the first year of continuous employment as a caseworker, and 36 hours annually afterward. However, a PCSA executive director may waive the first-year requirement for a school of social work graduate who participated in the University Partnership Program, an in-school training program designed to prepare social work students to enter the field of child welfare.

## Kinship caregiver placement efforts

(R.C. 2151.4115, 2151.4116, 2151.4117, 2151.4118, 2151.4119, 2151.4120, 2151.4121, 2151.4122, and 2151.416)

### Finding kinship caregivers

#### Intensive efforts

The bill requires each PCSA and PCPA to make intensive efforts to identify potential kinship caregivers whenever the agency has temporary custody of, or is party to a planned permanent living arrangement (PPLA) regarding, a child (TC/PPLA child).

A "kinship caregiver" is any of the following who is 18 or older and is caring for a child in place of the child's parents:

- The following individuals related by blood or adoption to the child:

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<sup>79</sup> R.C. 2151.011(B)(4).

- Grandparents, including grandparents with the prefix “great,” “great-great,” or “great-great-great”;
- Siblings;
- Aunts, uncles, nephews, and nieces, including such relatives with the prefix “great,” “great-great,” “grand,” or “great-grand”;
- First cousins and first cousins once removed.
- Stepparents and stepsiblings of the child;
- Spouses and former spouses of individuals named in the dot points above;
- A legal guardian of the child;
- A legal custodian of the child;
- Any nonrelative adult who has a familiar and long-standing relationship or bond with the child or the family, which relationship or bond will ensure the child’s social ties.

### **Summary of efforts**

The bill requires a PCSA or PCPA to include a summary of its intensive effort, to secure an appropriate and willing kinship caregiver for a TC/PPLA child as part of the semiannual administrative review of the child’s case plan (which is required under continuing law), unless a court has deemed such efforts unnecessary. The efforts must include the use of search technology, which the bill defines as any locate-and-research tool, search engine, electronic database, or social media search tool available to the PCSA or PCPA.

### **Exemption**

The bill excuses a PCSA or PCPA from considering a TC/PPLA child’s relative as a permanent placement option if the relative has failed to show interest within six months of receiving a notice from the PCSA or PCPA that it has temporary custody of the child. Under continuing law, that notice is sent to all grandparents and other adult relatives of a child within 30 days of the child’s removal from the custody of the child’s parents.<sup>80</sup>

The bill provides, however, that nothing in its provisions prevents a PCSA or PCPA from continuing to search or consider kinship caregivers.

### **Court review**

The bill requires that at every court hearing regarding a TC/PPLA child, the court determine whether the PCSA or PCPA has continued intensive efforts to identify and engage appropriate and willing kinship caregivers. This determination requires the court’s review of the following:

- Whether the child is receiving care from a kinship caregiver;

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<sup>80</sup> R.C. 2151.33, not in the bill.

- The PCSA or PCPA efforts since the previous hearing to place the child with a kinship caregiver, including efforts to use search technology to find biological family members;
- Whether any previous court order (described under “**Court determination,**” below) should continue.

### **Court determination**

The bill allows a court to issue an order that determines (1) the TC/PPLA child’s current, nonkinship-caregiver placement is in the child’s best interest and (2) that further intensive efforts to identify and engage an appropriate and willing kinship caregiver are unnecessary, if:

- The child has been in a stable home environment with the child’s current caregivers for the past 12 months;
- The current caregivers are interested in providing permanency for the child; and
- Removal from the current caregivers would be detrimental to the child’s emotional well-being.

The bill provides that the current caregiver of the child will be considered to have a kin relationship with the child and will have equal standing with other kin regarding permanency if a court makes the determination described above.

### **Kinship caregiver program**

(Section 307.81)

#### **CDJFS program incorporation**

Under the bill, each county department of job and family services (CDJFS) must incorporate a kinship caregiver program into its prevention, retention, and contingency (PRC) plan. The program must include a family stabilization service and a caregiving service. The stabilization service must be designed to transition the child into and maintain the child in the home of the kinship caregiver. For the purpose of the stabilization service, each child living with a kinship caregiver must constitute a PRC assistance group of one. For the purpose of the caregiving services, each assistance group must include at least a child living with a kinship caregiver and also the kinship caregiver. JFS may adopt rules under R.C. Chapter 119 as necessary to carry out the program.

#### **Program funding**

The bill earmarks \$10 million in each of FY 2022 and FY 2023 for the program. The JFS Director must allocate funds to CDJFSs by providing 12% divided equally among all counties, 48% in the ratio that the number of residents per county under age 18 bears to the total number of such persons residing in Ohio, and 40% in the ratio that the number of residents in the county with incomes under 100% of the federal poverty guideline bears to the total number of such persons in Ohio.

Each PCSA must use the funds to provide reasonable and necessary relief of child caring functions so kinship caregivers can provide and maintain a home for a child in place of the child’s

parents. When a county's children services board is designated as the PCSA (but not when the CDJFS or a private or government entity is designated), the CDJFS must enter into a memorandum of understanding with the PCSA authorizing the expenditure up to the amount of the allocation.

If funding is no longer available, the program will end and any CDJFS or PCSA cannot be held responsible for payment of services.

## **Kinship guardianship assistance (KGA) and Kinship Support Program (KSP)**

(R.C. 3119.01, 5101.141, 5101.1411, 5101.1415, 5101.1416, 5101.1417, 5101.802, 5101.8812, 5107.10, and 5153.163)

### **Provisions affecting KGA only**

#### **Federal KGA**

The bill seeks to obtain federal kinship guardianship assistance (federal KGA) under Title IV-E of the Social Security Act to assist any relative who meets certain requirements (described below) with regard to the care of a kinship guardianship young adult (KGA young adult) or an eligible child.

The bill defines a "**relative**," with respect to a child, as any of the following who is age 18 or older:

- The following individuals related by blood or adoption to the child:
  - Grandparents, including grandparents with the prefix "great," "great-great," or "great-great-great";
  - Siblings;
  - Aunts, uncles, nephews, and nieces, including such relatives with the prefix "great," "great-great," "grand," or "great-grand";
  - First cousins and first cousins once removed;
  - Stepparents and stepsiblings of the child.
- Spouses and former spouses of individuals described above;
- A legal guardian of the child;
- A legal custodian of the child;
- Any nonrelative adult that has a familiar and long-standing relationship or bond with the child or the family, which relationship or bond will ensure the child's social ties.

A "**KG young adult**" is an individual who:

- Was in the temporary or permanent custody of a PCSA or a planned permanent living arrangement prior to being committed to the legal custody or legal guardianship of a kinship caregiver at 16 or 17 years old, and attained age 16 before a federal KGA agreement became effective;



- Has attained age 18, but not 21.

A child is an “**eligible child**” for federal KGA if the child meets the following requirements:

- The child has been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child;
- The child has been eligible for foster care maintenance payments under existing law while residing for at least six consecutive months in the home of a relative;
- Returning the child home or adoption of the child are not appropriate permanency options;
- The child demonstrates a strong attachment to the child’s relative who has legal custody or guardianship of the child and the relative has a strong commitment to caring permanently for the child;
- With respect to a child who is 14 years old, the child has been consulted regarding the federal KGA agreement.

### ***On behalf of a KG young adult***

#### ***State plan amendment requirement***

The bill requires the JFS Director, not later than nine months after the bill’s effective date, to submit an amendment to the state plan required by federal law to the U.S. Secretary of Health and Human Services to provide federal KGA to any relative meeting the following criteria:

- A juvenile court issued an order granting legal custody of a KG young adult to the relative, or a probate court issued a nontemporary order granting the relative legal guardianship of a KG young adult;
- The relative entered into a federal KGA agreement while the KG young adult was 16 or 17;
- The relative maintains parental responsibility for the KG young adult;
- The KG young adult meets at least one of the following requirements:
  - Is completing secondary education or a program leading to an equivalent credential;
  - Is enrolled in an institution that provides post-secondary or vocational education;
  - Is participating in a program or activity designed to promote, or remove barriers to, employment;
  - Is employed for at least 80 hours a month;
  - Is incapable of doing the activities described above due to a physical or mental condition.

#### ***Implementation and performance***

The bill requires implementation of the state plan amendments to begin 15 months after the bill’s effective date if (1) the plan as amended is approved by the Secretary of Health and

Human Services, and (2) the General Assembly has appropriated sufficient funds to operate the KGA Program. It further requires JFS to perform all new duties required by the amended plan, but JFS may contract with others to carry out those duties to the extent permitted under Title IV-E.

### ***Extension or refusal of federal KGA***

The bill allows relatives meeting the federal KGA criteria (above) to request an extension of federal KGA at any time before the KG young adult reaches 21 years old.

It allows any relative receiving federal KGA for a KG young adult to refuse payments at any time.

### ***Eligibility for foster care-related programs***

A KG young adult eligible to receive federal KGA is not considered an emancipated young adult and is not eligible for foster care payments under Title IV-E. Any relative receiving federal KGA and the KG young adult are eligible for the federal “Fostering Connections to Success and Increasing Adoption Act of 2008.”

### ***On behalf of an eligible child***

#### ***State plan amendment requirement***

The bill requires JFS, not later than nine months after the bill’s effective date, to submit an amendment to the state plan to the U.S. Secretary of Health and Human Services to provide federal KGA on behalf of a child to a relative meeting the following requirements:

- The relative has cared for the eligible child as a foster caregiver, as defined by Ohio law, for at least six consecutive months;
- The juvenile court issued an order granting the relative legal custody of the child, or a probate court issued a nontemporary court order granting the relative legal guardianship;
- The relative has committed to care for the child on a permanent basis;
- The relative has signed a federal KGA agreement.

### ***Implementation and performance***

The bill requires implementation of the amendments to the plan to begin 15 months after the bill’s effective date if the plan, as amended, is approved by the Secretary of Health and Human Services.

### ***County expenditure reports***

The bill requires a board of county commissioners, to the extent federal KGA payments for maintenance costs require county funds to be spent, to report the nature and amount of each expenditure to JFS.

### ***Distribution to PCSA***

The bill requires JFS to distribute to PCSAs that incur and report expenditures described immediately above federal financial participation (FFP) received for administrative and training

costs incurred in the operation of federal KGA. JFS may withhold up to 3% of the FFP for certain administrative and training costs.

### ***Interstate compacts***

The bill authorizes JFS to develop or join interstate compacts, on behalf of the state, for providing social services to children regarding whom all of the following apply: (1) they have special needs, (2) Ohio or another party state is providing KGA on their behalf, and (3) they move into or out of Ohio, coming from or going to another state.

### ***JFS rules for federal KGA***

The bill requires JFS, not later than nine months after the bill's effective date, to adopt rules that are necessary to carry out the purposes of the federal KGA for both KG young adults and eligible children. The rules must include the following:

- Allowing a KG young adult, on whose behalf federal KGA is received, to maintain eligibility while transitioning into, or out of, qualified employment or educational activities; and
- Requiring a 30-day notice of termination to be sent by JFS to a person receiving federal KGA for a KG young adult who is determined ineligible for federal KGA.

### **State KGA**

The bill allows a PCSA that had custody of a child immediately prior to a court granting legal custody or legal guardianship to a relative to enter into an agreement with a child's relative under which the PCSA may provide, as needed, and to the extent state funds are available, state kinship guardianship assistance (State KGA), when all of the following apply:

- The relative has cared for the eligible child as a foster caregiver, as defined under Ohio law, for at least six consecutive months;
- A juvenile court issued an order granting the relative legal custody of the child, or a probate court issued a nontemporary court order granting the relative legal guardianship, and the relative has committed to care for the child on a permanent basis;
- The relative signed a State KGA agreement prior to assuming legal custody or guardianship of the child;
- The child had been removed from home pursuant to a voluntary placement agreement, or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child;
- Returning the child home or adoption are not appropriate permanency options for the child;
- The child demonstrates a strong attachment to the relative and the relative has a strong commitment to caring permanently for the child;
- With respect to a child who is 14, the child has been consulted regarding the State KGA arrangement;
- The child is not eligible for federal KGA payments.

State KGA provided under a State KGA agreement is subject to an annual need determination.

The State KGA provisions must be implemented not later than 15 months after the bill's effective date, if the state plan is amended as described above to provide federal KGA to eligible children.

## **Provisions affecting both KGA and KSP**

### **State hearing**

The bill provides that any determination that JFS makes denying or terminating federal KGA for a KG young adult or kinship support program (KSP) payments is subject to a state hearing for an administrative appeal under continuing law. Under continuing law, KSP provides for time limited payments to a kinship caregiver (a relative, as defined in the bill, who is caring for a child in place of the child's parents) who takes care and placement of a child and who does not have foster home certification.<sup>81</sup>

### **Kinship Permanency Incentive Program**

The bill prohibits a kinship caregiver from participating in the kinship permanency incentive program under continuing law if the kinship caregiver is a relative receiving payments under Title IV-E for KGA or for adopted or emancipated young adults or state adoption maintenance subsidy payments. But, if the kinship caregiver is not receiving such assistance or is receiving federal KGA on behalf of an eligible child, the kinship caregiver may participate.

### **Ohio Works First**

The bill further provides that an assistance group that meets certain requirements, including that the group contain a specified relative residing with and caring for a related minor child and receiving any federal or State KGA or KSP payments, may participate in the Ohio Works First Program.

### **Gross income and KGA for child support**

The bill excludes any federal KGA, State KGA, and KSP payments from the definition of gross income for child support calculation purposes. Under current law, federal adoption assistance and foster care maintenance payments are already excluded.

### **Inalienability of benefits**

The bill provides that the following benefits and services are inalienable, whether by way of assignment, charge, or otherwise and exempt from execution, attachment, guardianship and other like processes:

- KGA;
- Extended KGA;

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<sup>81</sup> See R.C. 5101.88 to 5101.8811, not in the bill.

- KSP;
- Kinship permanency incentive program;
- State adoption maintenance subsidy.

### **PCSA duties regarding impossibility of adoption**

The bill repeals the prohibition against a PCSA placing or maintaining a child with special needs in a setting other than with a person seeking to adopt the child, unless the PCSA has determined, and periodically redetermined, the impossibility of the child's adoption. It also repeals the requirement for a PCSA to report to JFS its reasons for determining the impossibility.

### **Online training for foster caregivers**

(R.C. 5103.031 and 5103.0316)

The bill requires JFS to adopt rules in accordance with R.C. Chapter 119 providing for the amount of preplacement and continuing training hours for prospective and existing foster caregivers that may be completed online. It repeals the law permitting up to 20% of required preplacement training for a prospective foster caregiver to be provided online.

### **PASSS program**

(R.C. 5101.1418 and 5153.163)

The bill codifies, and then transfers the operation of, the post adoption special services subsidy (PASSS) program to JFS from PCSAs. Under PASSS, a child in need of public care or protective services may be provided assistance through agreement with the adoptive parent, to the extent state funds are available. Such a child is one (1) who has a physical or developmental disability or emotional condition that existed before the adoption, or developed after the adoption because of the child's preadoption condition, and (2) whose adoptive parent does not have the economic resources to pay the costs resulting from the disability or condition. The agreement allows PASSS payments to be made on the child's behalf for medical, surgical, psychiatric, psychological, and counselling services, including residential treatment.

In addition to the transfer of administration of PASSS completely to JFS, the bill makes the following changes:

- Permits JFS to contract with another person to carry out the PASSS duties;
- Uses the terms "disabled" and "disability" instead of "handicapped" or "handicap" for the PASSS program;
- Prohibits PASSS payments from being made on behalf of (1) any person, 18 or older, beyond the end of the school year during which the person turned 18, or (2) a mentally or physically disabled person who is 21 or older;
- Requires the Director to adopt rules by July 1, 2022, under R.C. Chapter 119, to implement the recodified PASSS. The rules must establish:
  - The application process for the PASSS payments;

- Standards for determining the children who qualify to receive PASSS payments;
- The method of determining the amount, duration, and scope of services provided to a child;
- The method of transitioning the PASSS program from PCSAs to JFS;
- Any other rule, requirement, or procedure JFS considers appropriate for the implementation of this section.

Finally, the bill requires JFS to implement the recodified PASSS program no later than July 1, 2022.

## **Bills of Rights for foster youth and resource families**

(R.C. 2151.011, 2151.316, 5103.02, and 5103.163)

The bill requires JFS to adopt rules, in accordance with R.C. Chapter 119, to establish and enforce a Foster Youth Bill of Rights and a Resource Family Bill of Rights.

The Foster Youth Bill of Rights is for individuals who are: (1) in the temporary or permanent custody of a PCSA or planned permanent living arrangement or (2) in the Title IV-E eligible care and placement responsibility of a juvenile court or other governmental agency and who are subject to out-of-home care or placed with a kinship caregiver.

The Resource Family Bill of Rights serves resource families providing care for individuals who are in the custody or care and placement of an agency that provides Title IV-E reimbursable services under existing law.

The bill defines a “resource caregiver” as a foster caregiver or kinship caregiver. A “resource family” is defined as a foster home or the kinship caregiver family. A kinship caregiver is defined as it is in existing law, which is any of the following who is 18 or older and is caring for a child in place of the child’s parents:

1. The following individuals related by blood or adoption to the child:
  - a. Grandparents, including grandparents with the prefix “great,” “great-great,” or “great-great-great”;
  - b. Siblings;
  - c. Aunts, uncles, nephews, and nieces, including such relatives with the prefix “great,” “great-great,” “grand,” or “great-grand”;
  - d. First cousins and first cousins once removed.
2. Stepparents and stepsiblings of the child;
3. Spouses and former spouses of individuals named in (1) and (2) above;
4. A legal guardian of the child;
5. A legal custodian of the child;

6. Any nonrelative adult that has a familiar and long-standing relationship or bond with the child or the family, which relationship or bond will ensure the child's social ties.

### **Preemption**

The bill specifies that if the rights of an individual under the Foster Youth Bill of Rights conflict with the rights of a resource family or resource caregiver, the rights of the individual under the Foster Youth Bill of Rights preempt the rights of the resource family or resource caregiver under the Resource Family Bill of Rights.

### **Immunity**

The bill also provides that the rights established in the Foster Youth Bill of Rights and Resource Family Bill of Rights do not create grounds for a civil action against JFS, the recommending agency, or custodial agency.

### **Notification for sibling of adopted person**

(R.C. 3107.11 and 3107.15)

The bill provides that the legal parents of an adopted person may be notified that a sibling of the adopted person has been placed into out-of-home care. This notification is an exception to the requirement that when an adoption is finalized, the biological or other legal parents of the adopted person are relieved of all parental rights and responsibilities and all legal relationships between the adopted person and the adopted person's relatives are terminated so that the adopted person becomes a stranger to the adopted person's former relatives.

The bill defines "sibling" as a former biological sibling, former legal sibling, or any person who would have been considered a sibling if not for a termination or other disruption of parental rights.

### **Criminal records check for individuals overseeing a child**

(R.C. 109.572)

The bill adds several crimes to those for which the Bureau of Criminal Identification and Investigation must check when conducting background checks required for persons responsible for out-of-home child care and members of a household for a family hosting a child under a host family agreement. The Superintendent of the Bureau must conduct a criminal records check to determine whether any information exists that indicates that the person has previously been convicted or pleaded guilty to any of the following additional crimes:

- Reckless homicide;
- Aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter;
- Aggravated vehicular assault and vehicular assault;
- Extortion;
- Trafficking in persons;
- Commercial sexual exploitation of a minor;

- Unlawful possession of a dangerous ordnance and illegally manufacturing or processing explosives;
- Improperly furnishing firearms to a minor;
- Participating in a criminal gang;
- Illegal assembly or possession of chemicals for the manufacture of drugs;
- Permitting drug abuse;
- Deception to obtain a dangerous drug;
- Illegal processing of drug documents;
- Tampering with drugs;
- Abusing harmful intoxicants;
- Trafficking in harmful intoxicants and improperly dispensing or distributing nitrous oxide;
- Illegal dispensing of drug samples;
- Possession of counterfeit controlled substances, trafficking in counterfeit controlled substances, aggravated trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, and fraudulent drug advertising.

## **Background checks for institutions and associations**

(R.C. 5103.0310)

### **Requirement to obtain information**

The bill requires an “institution or association,” which is a public or private organization, society, association, or agency that receives or cares for children for two or more consecutive weeks, to comply with the following:

- If it is a residential facility, obtain certain background information before employing a person or engaging a subcontractor, intern, or volunteer;
- If it is *not* a residential facility, obtain the same background information before hiring a person or engaging a subcontractor, intern, or volunteer, but only if the individual will have access to children.

For this purpose, a “residential facility,” is a group home for children, children’s crisis care facility, children’s residential center, residential parenting facility that provides 24-hour child care, county children’s home, or district children’s home. A foster home is not a residential facility.

### **Background information obtained**

The bill requires an institution or association described above, regarding the background information, to (1) *obtain* a search (instead of *conduct* a search as current law requires) of the U.S. Department of Justice’s National Sex Offender Public Website and (2) *obtain* a summary



report (instead of *request* a summary report as current law requires) of a search of the uniform statewide automated child welfare information system (SACWIS).

### **Further action**

The bill allows an institution or association described above to refuse to employ (instead of “hire” as current law requires) the person or to engage the subcontractor, intern, or volunteer based solely on the search and summary report or findings of the summary report if it contains an abuse or neglect determination.

The bill also requires an institution or association described above to obtain the search and summary report for a person, subcontractor, intern, or volunteer if that information has not yet been obtained by the effective date of this provision.

### **Background – current law**

Current law requires any institution or association that is a public or private organization, society, association, or agency that receives or cares for children for two or more consecutive weeks to *conduct* a search of the National Sex Offender website and *request* a summary report of a search of SACWIS for a person that an institution or association plans to employ – it does not apply to a subcontractor, intern, or volunteer. The law also does not distinguish between residential facilities and those that are not, and does not limit the requirement to obtain the search and summary report to individuals who will have access to children if the institution or association is not a residential facility.

### **Federal foster care assistance for emancipated young adults**

Under continuing law, an “emancipated young adult” (EYA) is a person:

- Who was in the temporary or permanent custody of a PCSA, a planned permanent living arrangement, or in the Title IV-E eligible care and placement responsibility of a juvenile court or other governmental agency that provides Title IV-E reimbursable placement services;
- Whose custody, arrangement, or care and placement was terminated on or after the person’s 18<sup>th</sup> birthday; and
- Is not yet 21.<sup>82</sup>

### **Jurisdiction**

(R.C. 2151.451)

The bill expands the juvenile courts that may exercise jurisdiction over an EYA receiving federal foster care payments pursuant to Ohio’s Title IV-E state plan to include the court of the county where the EYA resided when the EYA’s custody, planned permanent living arrangement, or care and placement terminated. Under current law, only the juvenile court of the county where an EYA currently resides may exercise jurisdiction.

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<sup>82</sup> R.C. 5101.141, not in the bill.

## **Voluntary participation agreements**

(R.C. 5101.1412)

An EYA who receives Title IV-E payments may enter a “voluntary participation agreement” (VPA) with JFS or its representative regarding the EYA’s care and placement. As part of the process, JFS or its representative must seek periodic determinations from the court concerning the young adult’s best interests. The bill revises the statutory terms of the judicial interactions, as follows:

1. The bill rewords the mandate to require JFS or its representative to “petition for and obtain a judicial determination” – rather than merely than “seek approval from the court” as under current law – that the EYA’s best interest is served by continuing his or her care and placement.

2. It makes explicit that the requirement to seek the judicial determination is tied to maintaining the EYA’s Title IV-E eligibility.

## **Best interest determination**

(R.C. 2151.452)

The bill eliminates the remedy that an emancipated young adult (EYA) loses eligibility for continued care and placement with JFS or its representative (JFS/Rep) if a court finds, not later than 180 days after a VPA effective date, it is not in the EYA’s best interest. Under continuing law, the court must still make a best-interest determination not later than those 180 days regarding an EYA’s continued care and placement with JFS/Rep, but there is no remedy if the court determines it is not in the EYA’s best interest.

## **Reasonable efforts determination**

(R.C. 2151.452)

The bill revises the timing of the court’s determination whether JFS/Rep has made reasonable efforts to prepare the EYA for independence, as follows:

1. It requires the court to make the determination not later than 12 months after the VPA’s effective date, rather than 12 months after the VPA was signed as under current law;

2. It requires determinations “at least once every 12 months” thereafter, rather than merely “annually” as under current law.

## **Payment suspension**

(R.C. 2151.453)

The bill requires the suspension of federal payments for foster care for the EYA if the best interest and reasonable efforts determinations described above are not timely made. Under current law, only if the reasonable efforts determination regarding preparing the EYA for independence is not timely made, will the federal foster care payments be suspended. Under continuing law, the payments will resume upon a subsequent determination that reasonable efforts have been made to prepare the EYA for independence. Under the bill, a subsequent best interest determination will not result in the resumption of payments.

## **Foster caregiver certification extension**

(Section 751.20)

The bill requires JFS, if a foster caregiver or prospective foster caregiver began continuing training or preplacement training required under continuing law between 2019 and 2021, to extend the certification deadlines for the foster caregivers and prospective foster caregivers to December 31, 2021. The extension does not apply to foster caregivers or potential foster caregivers whose certification deadline is after December 31, 2021.

Additionally, JFS cannot require such extension-eligible foster caregivers or prospective foster caregivers to repeat training or requirements for certification that the caregiver has previously completed. But JFS may require the foster caregiver or prospective foster caregiver to undergo a new background check and home inspection.

## **Home study assessor and professional treatment staff qualifications**

(R.C. 3107.014 and 5103.57)

### **Foster care and adoption home assessor qualifications**

The bill expands the professional and educational qualifications required for individuals who may perform the duties of a foster care and adoption home assessor to include a person who holds at least a bachelor's degree in any of the following human services fields:

- Social work;
- Sociology;
- Psychology;
- Guidance and counseling;
- Education;
- Religious education;
- Business administration;
- Criminal justice;
- Public administration;
- Child-care administration;
- Nursing;
- Family studies;
- Any other human services field related to working with children and families.

Under continuing law, foster care and adoption home assessor duties may only be performed by individuals who: (1) are employed or appointed by, or under contract with a court, PCSA, private child placing agency (PCPA), or private noncustodial agency (PNA), and (2) meet

specified professional or educational qualifications, such as, for example, being a licensed psychologist or a former PCSA employee who, while so employed, conducted the duties of an assessor, and which now include the qualifications discussed above.

### **Professional treatment staff qualifications**

Under the bill, professional treatment staff employed by a PCSA, PCPA, or PNA who are not subject to professional licensing requirements must meet the same educational qualifications (such as, for example, having a bachelor's degree in human services-related studies) and training requirements (including, for example, completing 120 hours of in-service training during the first year of employment) as generally required of PCSA caseworkers in continuing law.

The bill defines the following:

- “Professional treatment staff” means a specialized foster home program agency employee or contractor with responsibility for any of the following:
  - Providing rehabilitative services to a child placed in a specialized foster home program or to the child’s family;
  - Conducting home studies as an assessor for specialized foster homes;
  - Providing clinical direction to specialized foster caregivers;
  - Supervision of treatment team leaders.
- “Specialized foster home” is a “medically fragile foster home” (which provides specialized medical services designed to meet the needs of children with intensive health care needs) or a “treatment foster home” (which incorporates special rehabilitative services to treat the specific needs of the children received in the home and that receives and cares for children who are emotionally or behaviorally disturbed, chemically dependent, have developmental disabilities, or otherwise have exceptional needs).

### **Court order to interview and examine a child**

(R.C. 2151.23 and 2151.25)

#### **PCSA request to juvenile court**

The bill permits a PCSA, if it receives a report of child abuse or neglect or a report that a child may be a dependent child, and is denied reasonable access to the child by a parent, guardian, custodian, or caregiver of the child, or to any other information necessary to determine if the child is, or at risk of becoming, an abused, neglected, or dependent child, to request a juvenile court to issue an order granting the PCSA access to examine and interview the child, or to conduct other activities necessary to determine the risk to the child. The PCSA must make the request by submitting a sworn affidavit explaining the need for the order in the juvenile court of the county in which:

- The child has a residence or legal settlement;
- The reported abuse or neglect of the child occurred or the reported conditions exist regarding the child’s dependency.

Under the bill, the juvenile court has exclusive original jurisdiction to hear and determine a request for a court order to examine and interview a child who may be an abused, neglected, or dependent child.

### **Affidavit requirements**

Under the bill, the affidavit must include the following:

- The particular facts of the allegation or allegations in the report that may indicate the child is an abused, neglected, or dependent child;
- The PCSA's efforts to gather additional information to determine whether or not the child may be, or at risk of becoming, an abused, neglected, or dependent child;
- The PCSA's efforts to obtain consent from a parent, guardian, custodian, or caregiver to examine and interview the child, or to conduct other activities necessary to determine the risk to the child;
- The activities the PCSA deems necessary to determine the current risk to the child.

The bill prohibits the affidavit from identifying the source of the allegation or allegations in the report that may indicate the child is an abused, neglected, or dependent child.

### **Court determination and order**

The bill permits the court, on receipt of a request and a sworn affidavit submitted in accordance with the bill's requirements, if it determines that probable cause exists, to, without a hearing, issue an order requiring the parent, guardian, custodian, or caregiver of the child to comply with the PCSA's investigation, including an interview and examination of the child and other activity the court deems necessary to determine the current risk posed to the child.

Under the bill, the court may include within the order specific instructions on the manner and location of the interview and examination of the child, as well as detail any other necessary activities.

The bill specifies that an order issued pursuant to this section is not a final, appealable order, which means that the order may not be reviewed, affirmed, modified, or reversed, with or without trial.

### **Reimbursement for federal juvenile court programs**

(R.C. 2151.152)

The bill adds prevention services costs under the federal Family First Prevention Services Act to the list of costs for which a juvenile judge may enter into an agreement with JFS to receive reimbursement on behalf of a child in certain circumstances. Under continuing law, JFS may seek federal financial participation for costs incurred by any public entity with authority to implement a program that JFS administers. This includes programs operated under Title IV-E, such as the Family First Prevention Services Act. The funds that JFS collects must be distributed to the entity that incurred the costs.

The bill also adds to the list of approved circumstances of a child on whose behalf the judge seeks reimbursement a child who: (1) is at the imminent risk of removal from the home and (2) is a sibling of a child in the temporary or permanent custody of the court.

## **Streamlining County Level-Information Access Task Force**

(Section 751.10)

### **Task Force creation**

The bill creates the Task Force on Streamlining County Level-Information Access to make recommendations on how county departments of job and family services, child support enforcement agencies, public children services agencies, and county OhioMeansJobs centers can streamline access to information across information technology systems.

### **Membership**

The Task Force must consist of 21 members:

1. Two members of the House, appointed by the Speaker, one from each party;
2. Two members of the Senate, appointed by the President, one from each party;
3. The JFS Director, or the Director's designee;
4. The Medicaid Director, or the Director's designee;
5. The Director of Administrative Services, or the Director's designee;
6. Three representatives of the Ohio Job and Family Services Director's Association, appointed by the Association, with one representative each from a small, medium, and large county, respectively;
7. Three representatives of the Public Children Services Association of Ohio, appointed by the Association, with one representative each from a small, medium, and large county, respectively;
8. Three representatives of the Ohio Child Support Enforcement Agency Director's Association, appointed by the Association, with one representative each from a small, medium, and large county, respectively;
9. Three representatives of the Ohio County Commissioners Association of Ohio, appointed by the Association, with one representative each from a small, medium, and large county, respectively;
10. Two representatives from the Ohio Workforce Association, appointed by the Association, with one representative from a rural workforce area and one representative from a metro workshop area.

### **Meetings**

The Task Force must hold its first meeting by October 8, 2021. Members must elect a chairperson at the first meeting. For each meeting, each Director or Director's designee must select an appropriate subject matter expert from their departments, as necessary, to attend the

meetings and inform the discussions. A majority of the members constitutes a quorum for the conduct of meetings. The Task Force must comply with public records and open meetings requirements in continuing law.

## **Duties**

The Task Force must:

1. Identify barriers to efficient operations between information technology systems that affect both department and agency operations and services to clients;
2. For each identified barrier, explore the feasibility of allowing county employees access to more than one information technology system to provide better service to clients, including by analyzing the flexibility provided and prohibitions under federal law, regulation, guidance, and waivers;
3. Prioritize which barriers should be addressed first based on the outcomes and efficiencies to be gained by improved streamlining processes and information sharing; and
4. Submit a report detailing its findings and recommendations to the General Assembly by February 1, 2022.

The Task Force ceases to exist when it submits the report.

## **Publicly funded child care**

### **Income eligibility**

(Section 307.280)

The bill revises the law governing eligibility for publicly funded child care, but only for the period beginning on the bill's effective date and ending June 30, 2023. During that period, the maximum amount of income that a family may have for initial eligibility must not exceed 142% of the federal poverty line or 150% in the case of a family with a special needs child. It also specifies that the maximum amount of income for continued eligibility must not exceed 300% of the federal poverty law. Under current law unchanged by the bill, ODJFS must adopt rules specifying the maximum amount of income a family may have for initial and continued eligibility, with the maximum amount not exceeding 300% of the federal poverty line.<sup>83</sup>

### **Step Up to Quality**

(R.C. 5104.29 and 5104.31; Sections 265.20 and 265.190)

The bill repeals the law specifying that a licensed child care program may provide publicly funded child care only if the program is rated through the Step Up to Quality Program. It also repeals the law requiring ODJFS to ensure that the following percentages of early learning and development programs providing publicly funded child care are rated in the Step Up to Quality Program's third highest tier or above:

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<sup>83</sup> R.C. 5104.38.

- 25% by June 30, 2017;
- 40% by June 30, 2019;
- 60% by June 30, 2021;
- 80% by June 30, 2023;
- 100% by June 30, 2025.

## **Federal coronavirus relief funds**

(Section 307.270)

The bill establishes limits on JFS's use of funds provided through the "Consolidated Appropriations Act, 2021" or the "American Rescue Plan Act of 2021." These include both of the following:

- Requiring any funds remaining from the "Consolidated Appropriations Act, 2021" to be used by JFS to provide direct child care payments to licensed providers serving children eligible for publicly funded child care;
- In the event Ohio receives federal Child Care Development Fund supplemental discretionary funds from the "American Rescue Plan Act of 2021," requiring JFS to use the funds to provide direct child care payments to licensed providers serving children eligible for publicly funded child care.

## **Type A family day-care homes**

(R.C. 5104.017)

The bill eliminates the requirement that JFS, when adopting rules governing the operation of type A family day-care homes, include standards for preparing and distributing a roster of parents, guardians, and custodians. It also removes an obsolete reference to school-age child type A family day-care homes. Type A providers can generally care for 7-12 children at one time and must be licensed by JFS.

## **Child care resource and referral services**

(R.C. 5104.07)

The bill eliminates the requirement that the JFS Director adopt rules for funding child care resource and referral service organizations. Rather than address the eliminated topics in rule, the bill instead requires them to be made a part of the statewide plan for child care resource and referral services that JFS must develop under current law. The topics currently specified in statute include or address the following:

1. A description of the services that a child care resource and referral service organization is required to provide to families who need child care;
2. The qualifications for a child care resource and referral service organization;



3. A description of the procedures for providing federal and state funding for county or multicounty child care resource and referral service organizations;

4. A timetable for providing child care resource and referral services to all communities in the state;

5. Uniform information gathering and reporting procedures that are designed to be used in compatible computer systems;

6. Procedures for establishing statewide nonprofit technical assistance services to coordinate uniform data collection and to publish reports on child care supply, demand, and cost and to provide technical assistance to communities that do not have child care resource and referral service organizations and to existing child care resource and referral service organizations;

7. Requirements governing contracts, which may include limits on the percentage of funds distributed by the department that may be used for the contracts.

## **Head Start program definition**

(R.C. 5104.01)

The bill revises the “head start program” definition used in the law governing the licensure and regulation of child care providers, including by:

1. Specifying that Head Start is a school-readiness program serving children from low-income families, rather than a comprehensive child development program as under current law; and

2. Updating citations to the federal statutes.

## **Elder Abuse Commission reporting**

(R.C. 5101.741)

The Elder Abuse Commission is responsible for examining elder abuse and identifying ways to reduce its prevalence. Currently, the Commission is required to submit two reports, one addressing the cost to state and county departments of job and family services of implementing its recommendations, and one with a plan of action that may be used by local communities to reduce elder abuse. The bill removes the requirement that the Commission submit a separate report estimating the cost of implementing its recommendations, and instead requires that cost estimates be included in the biennial report detailing a plan of action to reduce elder abuse.

## **Ohio Commission on Fatherhood**

(R.C. 5101.341)

The bill extends the timeline for appointing the chairperson of the Ohio Commission on Fatherhood to every other year, occurring in odd-numbered years. Current law requires the chairperson to be appointed every year.

## Applications for unemployment benefits

(R.C. 4141.01 and 4141.286)

### Determination of benefit rights

The bill revises the process for determining whether a claimant is eligible for unemployment benefits. Determining eligibility is a two-phase process. In the first phase, a claimant files an application for determination of benefit rights, which, except as discussed below, generally examines whether the individual worked and earned enough to be eligible for benefits (“monetary eligibility”). This application is used to establish the claimant’s benefit rights and benefit year, which is the 52-week period during which the claimant may file claims for benefits based on satisfying the monetary eligibility requirements. A claimant does not have to satisfy these monetary eligibility requirements again during a benefit year.

Currently, though, to complete phase one and establish a benefit year, JFS also examines the reason why the claimant is unemployed. If that reason disqualifies the claimant from receiving benefits, the claimant’s application is not valid and the claimant does not establish benefit rights or a benefit year until the disqualification is “removed” – that is, the claimant separates from other work for a reason that does not disqualify the claimant for benefits, an exception applies that negates the disqualification, or the disqualification is overturned. Reasons that disqualify a claimant include unemployment due to a labor dispute, quitting work without just cause or being discharged with just cause, or quitting to marry or because of other domestic obligations.<sup>84</sup>

Thus, it appears that currently if a claimant does not establish a valid application because the claimant was disqualified based on the reason for unemployment, if the claimant subsequently applies in the near future, the claimant has to re-establish monetary eligibility as well as not be unemployed for a disqualifying reason.

Under the bill, beginning July 1, 2022, a claimant establishes a benefit year based on the monetary factors alone, and whether the claimant is disqualified from receiving benefits based on the reason for separating from work will not be a factor in completing this first part of the process. This may allow a claimant to start the claimant’s benefit year sooner than under current law.

However, this change does not eliminate the requirement that, to qualify for benefits, a claimant must not have separated from work for a disqualifying reason. After filing a valid initial application and establishing a benefit year, a claimant enters the second phase of the process. In the second phase, the individual must file a claim for benefits each week the individual seeks benefits during the individual’s benefit year. On filing the first claim in the benefit year, JFS examines whether the reason the claimant separated from work qualifies the claimant for benefits. For each claim, JFS examines other factors including whether the claimant is available, able, and searching for work. If a claimant is re-employed but then separates from reemployment

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<sup>84</sup> R.C. 4141.29 and 4141.291, not in the bill.

and files a claim for benefits before the benefit years ends (referred to as an “additional claim”), JFS again looks at the reason for the separation from employment to determine whether the claimant qualifies.<sup>85</sup> If the claimant is disqualified in this phase, the claimant’s benefit year continues and the claimant does not have to re-establish meeting the monetary eligibility requirements when filing a future claim in that year.

### **Employment checks**

The bill adds a requirement that the JFS Director must check all of the following sources, in addition to checking other sources under current law, when determining whether an initial application is valid or whether a first claim or additional claim for benefits qualifies a claimant for benefits:

- The Ohio New Hire Reporting Center maintained by JFS;
- The National Directory of New Hires maintained by the federal Office of Child Support Enforcement;
- The Integrity Data Hub maintained by the National Association of State Workforce Agencies (NASWA) or a similar database maintained by a successor organization.

The Ohio New Hire Reporting Center and the National Directory of New Hires are part of a reporting system created by the federal “Personal Responsibility and Work Opportunity Reconciliation Act of 1996” and state law implementing that Act.<sup>86</sup> Under the system, Ohio employers report their new hires and rehires to the state directory within 20 days after an individual is hired or the employer engages or re-engages a contractor.<sup>87</sup> The Ohio Child Support office matches the reports against open child support cases to locate parents, establish medical, paternity and child support orders, and enforce existing orders. Once the state matches are complete, the new hire information is sent to the National Directory of New Hires and is utilized by child support agencies nationwide.<sup>88</sup>

NASWA is a national organization representing workforce agencies from all 50 states, Washington D.C., and several U.S. territories. The NASWA Integrity Data Hub provides information on the prevention, detection, and recovery of improper unemployment benefit payments, fraud, and delinquent employer contribution.<sup>89</sup>

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<sup>85</sup> R.C. 4141.28, not in the bill.

<sup>86</sup> Pub. L. No. 104-193, 42 U.S.C. 653, and R.C. 3121.89 through 3121.89111, not in the bill.

<sup>87</sup> R.C. 3121.893, not in the bill.

<sup>88</sup> Ohio Department of Job and Family Services, *New Hire Reporting: State and Federal Requirements & FAQs*, available [here](#).

<sup>89</sup> NASWA, *Integrity Home*, available [here](#).

Currently, the JFS Director may use all of these sources for information when making eligibility determinations but is not required to do so.<sup>90</sup>

## **Federal pandemic unemployment program termination**

(Section 741.20)

### **Pandemic unemployment assistance**

The bill requires the JFS Director, as soon as practicable after the provision's effective date, to terminate Ohio's agreement with the U.S. Secretary of Labor governing the payment of pandemic unemployment assistance (PUA). Effective on the Sunday of the calendar week following the provision's effective date, the Director must stop paying PUA.

PUA provides unemployment benefits to individuals who are not covered by regular state unemployment compensation laws or who have exhausted their state unemployment benefits. PUA expressly includes coverage for self-employed individuals. An individual who applies for PUA must self-certify that the individual is not eligible for any state or federal unemployment benefits and that the individual cannot work for one of several COVID-19-related reasons.

Similar to traditional unemployment benefits, PUA benefits are calculated using an individual's weekly earnings or wages. The minimum weekly PUA benefit in Ohio is \$189.

PUA is funded and administered through agreements between the Secretary and states that wish to participate and that have adequate systems for administering the assistance. PUA is currently scheduled to end on September 4, 2021. Federal law does not specify how much notice a state must provide before terminating a PUA agreement before that date.<sup>91</sup>

### **Other federal unemployment pandemic programs**

The bill also requires the JFS Director, on the provision's effective date, to provide written notice to the Secretary that, 30 days after providing the notice, the following agreements with the Secretary are terminated:

- The agreement governing the payment of federal pandemic unemployment compensation (FPUC) and mixed earner unemployment compensation (MEUC);
- The agreement governing the payment of pandemic emergency unemployment compensation (PEUC).

FPUC provides a \$300 weekly supplement to individuals receiving other forms of unemployment compensation, including traditional unemployment benefits or PUA. MEUC

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<sup>90</sup> R.C. 3121.898, not in the bill; see also 42 U.S.C. 653 and Unemployment insurance Program Letter 03-20, available [here](#).

<sup>91</sup> 15 U.S.C. 9021 and Department of Job and Family Services, *Expanded Eligibility: Frequently Asked Question – I applied for PUA, and it's saying that my weekly benefits will be only \$189. Why is the amount so Low?*, available [here](#).

provides a \$100 weekly supplement to individuals receiving benefits who earned at least \$5,000 in self-employment wages during the most recent taxable year.

PEUC is an extension of unemployment benefits. Currently, an individual who has exhausted all other forms of unemployment compensation and meets other eligibility requirements may receive PEUC for up to 53 weeks.

Similar to pandemic unemployment assistance, FPUC, PEUC, and MEUC are all governed through agreements between a state and the Secretary. A state may terminate an agreement by providing 30-days written notice to the Secretary. Also similar to PUA, the programs are all currently scheduled to end under federal law on September 4, 2021. However, Governor DeWine announced that Ohio will end its participation in FPUC on June 26, 2021.<sup>92</sup>

### **Notice and future agreements**

The bill prohibits the JFS Director from entering new PUA, FPUC, MEUC, or PEUC agreements with the Secretary. It also requires the Director to notify any individual who is receiving any of those types of assistance or compensation on the provision's effective date that the state is terminating the programs and explain how the termination will affect the individual.

## **Unemployment compensation review commission**

(R.C. 4141.21 and 4141.22)

### **Confidentiality**

The Unemployment Compensation Review Commission (UCRC) hears appeals from the JFS Director's determinations involving unemployment benefit claims and other issues under the Unemployment Compensation Law. The bill expands a current confidentiality requirement by making information maintained by, or furnished to, the UCRC by an employer or employee pursuant to the law confidential and, with one exception relating to a nonrefundable tax credit for eligible employee training costs, inadmissible in cases unrelated to the law. Under existing law, information maintained by, or furnished to, the JFS Director is confidential, with the same exception noted above.

### **Prohibitions**

The bill prohibits a person from disclosing, unless permitted under continuing law, any information maintained by, or furnished to, the UCRC by an employer or employee pursuant to the law. Existing law applies this prohibition to information maintained by, or furnished to, the JFS Director. The bill also prohibits a current or former UCRC employee from divulging, except to specific entities during the course of employment, employer business operation information maintained by, or furnished to, the UCRC. Currently, this prohibition applies to employees of the JFS Director, a county family services agency, or a workforce development agency with respect to information maintained by, or furnished to, the JFS Director or those agencies.

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<sup>92</sup> 15 U.S.C. 9023 and 9025 and Ohio Governor's Office, *COVID-19 Update: Ohio Vax-a-Million, Kids Vaccination, Federal Pandemic Unemployment Compensation*, available [here](#).

A person who violates these disclosure prohibitions is disqualified under continuing law from holding any appointment or employment with the JFS Director, a county family services agency, or a workforce development agency, and from an appointment or employment with the UCRC, as added by the bill.

## **SharedWork**

(R.C. 4141.51, 4141.53, and 4141.55)

“SharedWork Ohio” is a voluntary program in which a participating employer reduces the number of hours worked by the employer’s employees in lieu of layoffs. To participate in the program, an employer must submit a shared work plan to the JFS Director. The plan, among other requirements, must identify affected employees and describe the proposed percentage that their hours will be reduced. If the Director approves the plan, an affected employee works the reduced hours, and the Director provides the employee with a shared work benefit. The benefit is equal to the employee’s regular weekly benefit amount for a period of total unemployment as described in continuing law multiplied by the reduction percentage specified in the shared work plan.

The bill increases the maximum percentage a participating employer may reduce an affected employee’s hours. Currently, the proposed reduction percentage permitted in a shared work plan must be between 10% and 50%. Under the bill, the reduction must be between 10% and 60%.

The bill also reduces the time period for the JFS Director to approve or deny a shared work plan. Under the bill, the Director must approve or deny the plan and send written notice of the determination to the employer no later than ten days after receiving the plan. Currently, the Director has 30 days.

Under the bill, if Ohio receives reimbursement for shared work benefits from the federal government under any federal law, the portion of benefits being reimbursed is charged to the mutualized account and not to a participating employer’s experience during the period of reimbursement. Currently, shared work benefits can be charged to the mutualized account only if they are being reimbursed under the federal “Layoff Prevention Act of 2012.” That federal law no longer appears to be reimbursing shared work benefits.<sup>93</sup>

The mutualized account is a separate account within the state Unemployment Compensation Fund. It is primarily used to pay benefits when an employer’s account cannot be charged for those benefits for a variety of reasons. Charging benefits that would otherwise be charged to an employer’s account to the mutualized account may result in the employer paying lower unemployment contributions.<sup>94</sup>

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<sup>93</sup> Section 2162 of the “Layoff Prevention Act of 2012,” Pub. L. No. 112-96.

<sup>94</sup> See R.C. 4141.25, not in the bill.

## Employment connection incentive programs

(R.C. 5116.30)

The bill permits each CDJFS or county workforce development agency, in conjunction with the local workforce development board, to establish an employment connection incentive program to assist public assistance recipients in obtaining and maintaining employment. A public assistance recipient includes a recipient of SNAP benefits, assistance funded by the TANF block grant, or Medicaid. An enrollee may volunteer (but is not required) to participate.

The employment incentive connection program must include assistance in obtaining and maintaining meaningful employment. Assistance in obtaining and maintaining meaningful employment must include all of the following as appropriate for the enrollee:

- Education programs, including English as a second language, literacy, programs designed to lead to the equivalent of a high school diploma, and post-secondary education;
- Job training, placement, and retention programs;
- Apprenticeship programs;
- Mentoring programs;
- Other activities the CDJFS, county workforce development agency, or JFS, in consultation with the Department of Medicaid, specifies.

JFS, in consultation with the Department of Medicaid, must establish criteria to determine the success of employment connection incentive programs. JFS must provide incentive payments to CDJFSs and county workforce development agencies according to their successes. JFS is to determine the amount of each payment and the times at which payments may be earned.

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## JUDICIARY/SUPREME COURT

### Party designation for judicial candidates

- Requires a candidate for chief justice or justice of the Ohio Supreme Court or judge of a court of appeals who was nominated at a primary election to appear on the ballot at the general election with a political party designation.
- Changes the placement of those offices on the ballot.

### Lima Municipal Court clerk

- Specifies that the Lima Municipal Court clerk is an elected position.
- Includes the Lima Municipal Court clerk within the procedure for filling a vacancy.

### Jefferson County County Court

- Effective January 1, 2022, removes the requirement that the presiding judge of the Jefferson County County Court determine areas of separate jurisdiction for the judges of that court and that the judges hold court in Wintersville or Cross Creek, Dillonvale, and Toronto.

### Indigent drivers alcohol treatment fund

- Expands the authorized uses a court may make of surplus money in an indigent drivers alcohol treatment fund to allow expenditure for the costs of staffing, equipment, training, drug testing, supplies, and other expenses of any specialized docket program established within the court and certified by the Supreme Court.

### Probation Workload Study Committee

- Creates the Probation Workload Study Committee within the Ohio Supreme Court to study and discuss probation caseload principles, education standards for probation officers, workload capacity principles, and any other additional subject determined by the Study Committee to be relevant.
- Requires the Study Committee to provide its recommendations to the Governor and legislative leaders by December 31, 2021.

### Clerks of court deputy appointments

- Requires that the appointments of deputies to a clerk of a court of common pleas be “endorsed” by the clerk. Current law requires that such appointments be in writing.

### Party designation for judicial candidates

(R.C. 3501.01, 3505.03, 3505.04, and 3513.257)

The bill requires a candidate for chief justice or justice of the Ohio Supreme Court or judge of a court of appeals who was nominated at a primary election to appear on the ballot at the



general election with a political party designation. Under continuing law, such a candidate who is not affiliated with a party may file a nominating petition and appear on the general election ballot as an independent candidate.

Currently, judicial candidates in Ohio are nominated at party primaries in the same manner as candidates for other offices, but they do not have a party designation on the ballot at the general election. The bill changes this system for Ohio Supreme Court and court of appeals candidates, but maintains the current system for candidates for judge of a municipal court, county court, or court of common pleas.

In moving Ohio Supreme Court and court of appeals candidates to the partisan office ballot, the bill also changes the order in which those offices appear on the ballot. Under continuing law, offices appear on the ballot in a prescribed order, with partisan offices appearing first, then nonpartisan offices, and finally ballot issues. The bill requires offices to appear on the ballot in the following order:

| Partisan offices                               | Nonpartisan offices                     |
|--|---|
| Governor and Lieutenant Governor               | Member of the State Board of Education  |
| Attorney General                               | County judicial offices                 |
| Auditor of State                               | Municipal and township offices          |
| Secretary of State                             | Member of a district board of education |
| Treasurer of State                             |   |
| <i>Chief Justice of the Ohio Supreme Court</i> |   |
| <i>Justice of the Ohio Supreme Court</i>       |   |
| U.S. senator                                   |   |
| U.S. representative                            |   |
| State senator                                  |   |
| State representative                           |   |
| <i>Judge of a court of appeals</i>             |   |
| County commissioner                            |   |
| County auditor                                 |   |
| Prosecutor                                     |   |
| Clerk of the court of common pleas             |   |
| Sheriff  |   |
| County recorder                                |   |
| County treasurer                               |   |

| Partisan offices           | Nonpartisan offices |
|----------------------------|---------------------|
| County engineer<br>Coroner |                     |

## Lima Municipal Court clerk

(R.C. 1901.31)

The bill makes the Lima Municipal Court clerk an elected position, rather than an appointed position under existing law. The clerk is nominated and elected by the qualified electors of the territory in the manner that is provided under Ohio law for the nomination and election of municipal court judges. The clerk holds office for a term of six years and commences on January 1 following the clerk's election and continues until the clerk's successor is elected and qualified.

The bill includes the Lima Municipal Court clerk within the existing procedure for filling a vacancy. If a vacancy occurs because the clerk ceases to hold office before the end of the clerk's term or because a clerk-elect fails to take office, the vacancy is filled, until a successor is elected and qualified, by a person chosen by the residents of the territory of the court who are members of the county central committee of the political party by which the last clerk or clerk-elect was nominated.

## Jefferson County County Court

(R.C. 1907.15; Section 812.10)

The bill removes, effective January 1, 2022, the requirement that the presiding judge of the Jefferson County County Court determine areas of separate jurisdiction for the judges of that court and that the judges hold court in Wintersville or Cross Creek, Dillonvale, and Toronto.

## Indigent drivers alcohol treatment fund

(R.C. 4511.191)

The bill expands the authorized uses a court may make of surplus money in an indigent drivers alcohol treatment fund. Under the bill, a court may expend any of the surplus amount for the cost of staffing, equipment, training, drug testing, supplies, and other expenses of any specialized docket program established within the court and certified by the Supreme Court. Under continuing law, in specified circumstances, a court may: (1) expend any of the surplus amount for alcohol and drug abuse assessment and treatment and for the cost of transportation related to assessment and treatment, (2) expend any of the surplus amount to pay all or part of the cost of purchasing alcohol monitoring devices, (3) transfer to another court in the same county any of the surplus amount, and (4) transfer to the alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services that serves the alcohol, drug addiction, and mental health service district in the which the court is located any of the surplus amount.

## **Probation Workload Study Committee**

(Section 725.10)

The bill establishes the Probation Workload Study Committee within the Supreme Court of Ohio. The Committee is tasked with studying and discussing probation caseload principles, education standards for probation officers, workload capacity principals, and any other additional subjects it determines to be relevant.

The Committee consists of nine members, with the Chief Justice of the Supreme Court, the Executive Director of the Ohio Judicial Conference, and the President of the Ohio Chief Probation Officers Association each appointing three members.

Members of the Committee receive no compensation for their service and will not be reimbursed for expenses incurred through participation on the Committee.

By December 31, 2021, the Committee must provide its recommendations to the Governor, the President of the Senate, and the Speaker of the House. The Committee is abolished when it submits the recommendations.

## **Clerks of court deputy appointments**

(R.C. 2303.05)

The bill requires that the appointments of deputies to a clerk of a court of common pleas be “endorsed” by the clerk. Current law requires that such appointments be in writing.

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## LEGISLATIVE SERVICE COMMISSION

- Codifies the traditional practice that in even-numbered general assemblies the Senate President serves as chairperson of the Legislative Service Commission (LSC) and the Speaker of the House serves as vice-chairperson, and in odd-numbered general assemblies the Speaker serves as chairperson and the Senate President serves as vice-chairperson.
- Eliminates a requirement in current law that LSC meet at least quarterly.

### **LSC chair, meetings**

(R.C. 103.11 and 103.22)

The bill requires that in even-numbered general assemblies the Senate President serves as chairperson of the Legislative Service Commission (LSC) and the Speaker of the House serves as vice-chairperson. In odd-numbered general assemblies, the bill requires the Speaker to serve as chairperson and the Senate President to serve as vice-chairperson. This codifies a traditional practice.

The bill also eliminates a requirement that LSC meet at least quarterly, retaining the existing law that LSC must meet as often as is necessary to perform its duties.

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## JOINT LEGISLATIVE ETHICS COMMITTEE

- Specifies that the Joint Legislative Ethics Committee (JLEC) and the Office of Legislative Inspector General are not occupational licensing boards.
- Specifies that a registration to be a legislative agent, retirement system lobbyist, or executive agency lobbyist is not a license.
- Prevents occupational licensing provisions of H.B. 263 of the 133<sup>rd</sup> General Assembly, which take effect October 9, 2021, from applying to these registrations, thereby allowing JLEC to continue to prohibit registration of persons convicted of specified offenses and automatically ban a person from serving as a legislative agent, retirement system lobbyist, or executive agency lobbyist if convicted of specified offenses.

### JLEC registrations

(R.C. 9.78, 9.79, 101.721, 101.921, 121.621, and 4798.01; Sections 130.25 and 130.26)

The bill specifies that the Joint Legislative Ethics Committee (JLEC) and the Office of Legislative Inspector General are not occupational licensing boards. Additionally, the bill specifies that the registration to be a legislative agent, retirement system lobbyist, or executive agency lobbyist is not a license.

Accordingly, it prevents provisions of [H.B. 263 of the 133<sup>rd</sup> General Assembly](#), known as the “Fresh Start Act,” that take effect October 9, 2021, from applying to these registrations. Generally, the “Fresh Start Act,” prohibits any state licensing authority from refusing to issue an initial license or other authorization to a person to engage in any profession, occupation, or occupational activity regulated by the licensing authority as a result of being convicted of certain offenses.

Therefore, the bill preserves JLEC’s ability to prohibit registration of persons convicted of specified offenses and automatically ban a person from serving as a legislative agent, retirement system lobbyist, or executive agency lobbyist. Under the continued provisions, a person who is convicted of bribery, intimidation, retaliation, theft in office, unlawful interest in a public contract, engaging in a pattern of corrupt activity, or conspiracy, complicity, or an attempt to commit any of those offenses and a person who is convicted of, while holding any government public office and the offense was in relation to their official duties, tampering with records, intimidation of attorney, victim, or witness, perjury, tampering with evidence, obstructing official business, obstructing justice, conspiracy, complicity, or an attempt to commit any of those offenses is prohibited from registering, and permanently banned from serving, as a legislative agent, retirement system lobbyist, or executive agency lobbyist.

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## DEPARTMENT OF MEDICAID

### Medicaid managed care organizations (MCOs)

#### Requirements for contracting entities

- Requires the Department to contract with Medicaid managed care organizations (MCOs) that (1) are domiciled in Ohio, (2) are currently Medicaid MCOs, and (3) have a proven history of providing quality services and customer satisfaction.
- Requires any Medicaid MCO to participate, at minimum, in the geographic regions of Ohio where it is already providing services.

#### Procurement

- Requires the Department to suspend its current Medicaid MCO procurement process and, during FY 2022, complete a new procurement process that includes scoring by a neutral third party and is overseen by JMOC.
- Requires the procurement process to significantly take into account (1) whether the MCO is domiciled in Ohio, (2) the number of Ohio jobs created or lost and other economic impacts by the award of the contracts, and (3) whether the MCO has a proven track record of providing quality services and customer satisfaction.
- Exempts from these requirements a behavioral health managed care plan selected by the Department to assist in implementing the Ohio Resilience Through Integrated Systems and Excellence (OhioRISE) Program.

#### Laboratory services

- Requires Medicaid MCOs to engage in a competitive selection process when contracting with a vendor to provide laboratory services.
- Requires the MCO to give preference to an applicant whose principal place of business is in Ohio if all other criteria between applicants are equal.

#### Employment connection incentive programs

- Requires each Medicaid MCO to establish an employment connection incentive program to assist Medicaid recipients in obtaining and maintaining employment.
- Makes participation in the program voluntary.
- Provides for Medicaid MCOs to earn incentive payments based on their successes with their programs.

#### Duties of area agencies on aging

- Requires the Department of Medicaid, if it adds to the Medicaid managed care system during FYs 2022 and 2023 more Medicaid recipients who are aged, blind, disabled, or also enrolled in Medicare, to take certain actions regarding the duties of area agencies on aging relative to home and community-based waiver services.

## **Medicaid coverage of women postpartum**

- Expands Medicaid coverage for pregnant women to include the maximum period permitted under federal law, instead of for 60 days after giving birth.

## **Medicaid eligibility**

- Requires ODM to take certain actions in the event that the Department receives federal funding for the Medicaid program that is contingent upon a restriction that limits ODM's ability to disenroll ineligible Medicaid recipients.

## **Post-COVID Medicaid redetermination**

- Requires ODM to use third-party data to conduct an eligibility redetermination of all Ohio Medicaid recipients within 60 days after the conclusion of the COVID-19 emergency period.
- Requires the Department to conduct an expedited eligibility review of those recipients identified as likely ineligible for the program based on that verification and (to the extent permitted under federal law) to disenroll those recipients who are no longer eligible.
- Requires the Department to conduct an expedited eligibility review of those recipients who were newly enrolled in the Medicaid program for three or more months during the COVID-19 emergency period and (to the extent permitted under federal law) to disenroll those recipients who are no longer eligible.
- Requires the Department to complete a report containing its findings from the verification and submit it to various state agencies.
- Provides that any third-party vendor expenses incurred by the verification is entirely contingent on the Department realizing cost savings, and limits vendor expenses to 20% of those savings.

## **Medicaid waiver – Ohio Breast and Cervical Cancer Project**

- Requires the Medicaid Director to establish a Medicaid waiver component under which certain women screened for breast or cervical cancer outside of the Ohio Breast and Cervical Cancer Project may receive cancer treatment under the Medicaid program.

## **Medicaid waiver component definition**

- Specifies that the definition of a "Medicaid waiver component" does not include services delivered under a prepaid inpatient health plan.

## **Voluntary community engagement program**

- Requires the Medicaid Director to establish a voluntary community engagement program for medical assistance recipients.
- Requires the program to encourage work among able-bodied medical assistance recipients of working age, including providing information about the benefits of work on physical and mental health.

- Provides that the program is in effect through FY 2022 and FY 2023, or until Ohio is able to implement the waiver component establishing work requirements and community engagement as a condition of enrolling in the Medicaid expansion eligibility group (also known as “Group VIII”).

### **Medicaid Cost Assurance Pilot Program**

- Establishes the Medicaid Cost Assurance Pilot Program to be available to the Medicaid expansion eligibility group population during FY 2022 and FY 2023.
- Requires the Department to implement the pilot program initially to the expansion eligibility group population, with future expansion to be determined based on success criteria.
- By December 31, 2022, requires the Department to submit a report to the Speaker of the House, the Senate President, and the Joint Medicaid Oversight Committee (JMOC) outlining clinical outcome data and cost impacts of the program.

### **Care Innovation and Community Improvement Program**

- Requires the Medicaid Director to continue the Care Innovation and Community Improvement Program for the FY 2022-FY 2023 biennium.

### **Ohio Invests in Improvements for Priority Populations**

- Establishes the Ohio Invests in Improvements for Priority Populations Program as a directed payment program for inpatient and outpatient hospital services provided to Medicaid managed care recipients.
- Provides that, under the program, state university-owned hospitals with fewer than 300 beds can directly receive payment for program services.
- Requires participating hospitals to remit to the Department, through intergovernmental transfer, the nonfederal share of payment for those services.

### **Hospital Care Assurance Program, franchise permit fee**

- Continues, for two additional years, the Hospital Care Assurance Program and the franchise permit fee imposed on hospitals under Medicaid.

### **Medicaid rates for community behavioral health services**

- Permits the Department to establish Medicaid rates for community behavioral health services provided during FYs 2022 and 2023 that exceed the Medicare rates paid for the services.

### **Home and community-based services payment rates**

- Increases the payment rates for providers of certain services under the PASSPORT program, the Ohio Home Care waiver program, the MyCare Ohio Waiver program, and the Assisted Living waiver by 4% in FY 2022 and another 2% in FY 2023.



- Increases the payment rates by the same amount for adult day care providers under the PASSPORT program and the Assisted Living waiver, including MyCare Ohio.

### **Value-based purchasing supplemental rebate**

- Requires the Department of Medicaid to submit a federal state plan amendment to permit the Department to enter into value-based purchasing supplemental rebate agreements with pharmaceutical manufacturers.

### **Medicaid reports**

- Requires the Director to notify JMOC and be available to testify to JMOC before making any Medicaid payment rate increases greater than 10%.
- Requires the Director to report quarterly to JMOC the fee rates and the aggregate total of certain Medicaid program fees and if there is a rate increase pending before the Centers for Medicare and Medicaid Services for any of those fees.

### **Pharmacy supplemental dispensing fee**

- Requires the Department to establish for FY 2022 and FY 2023 a supplemental dispensing fee for retail pharmacies under the care management system.

### **Additional payment for low-income assisted living**

- Requires the Departments of Aging and Medicaid to adopt rules to establish an additional payment amount for residential care facilities that utilize the Low-Income Housing Tax Credit Program and provide services under the Assisted Living program or the ICDS Medicaid waiver component.

### **Nursing facilities**

#### **Critical access nursing facilities**

- For calculating the occupancy and utilization rates to determine if a nursing facility is a critical access nursing facility, provides that “as of the last day of the calendar year” refers to the rates during the applicable calendar year identified in the nursing facility’s cost report.

#### **Medicaid payment rate formula**

- Removes provisions that require the Department, when determining a nursing facility’s occupancy rate, to include any beds that the facility removes from its Medicaid certified capacity, unless also removed from its licensed capacity.

#### **Resident assessment data**

- Requires rules relating to the resident assessment data that nursing facilities must compile quarterly for each resident to specify any resident assessment data that is excluded from the facility’s case mix score calculated quarterly by the Department.

## **Special Focus Facility Program**

- Repeals Ohio's statute pertaining to the federal nursing facility Special Focus Facility (SFF) Program, which requires the Department to terminate a nursing facility's Medicaid participation if the facility is placed on the SFF list and fails to make improvements or graduate from the program within certain periods of time.

## **Quality payments**

- Repeals the quality payments nursing facilities receive under current law for meeting at least one of five quality indicators.

## **Quality incentive payments**

- Extends the quality incentive payments under current law from FY 2021 through FY 2023.
- Provides that a nursing facility receives zero quality points if its total number of points for FY 2022 or FY 2023 for the quality metrics is less than the number equal to the bottom 25% of all nursing facilities.
- Adds a new disqualification from the quality incentive payments for FY 2022 or FY 2023 for a nursing facility that is on CMS's Special Focus Facility Program List in that fiscal year.
- Eliminates a provision of current law that disqualified a nursing facility from receiving a quality incentive payment if its licensed occupancy percentage is below 80% for the applicable fiscal year, unless certain exceptions are met.
- Subtracts \$1.79 from the nursing facility's base rate calculation used to determine the total amount to be spent on quality incentive payments.
- Modifies the calculation used to determine the total amount to be spent on quality incentive payments in a fiscal year by (1) adding \$1.79 to the calculation for 5.2% of each nursing facility's base rate and (2) including a \$25 million add-on to the total in each fiscal year.
- Clarifies that if a nursing facility is new or undergoes a change of operator during FY 2022 or FY 2023, it receives no quality incentive payment for that fiscal year.

## **JMOC report on nursing facility payment formulas**

- Requires the Joint Medicaid Oversight Committee to analyze the efficacy of the current nursing facility quality incentive payment formula, base rate calculation, and cost centers and submit a report of its findings to the General Assembly, including specific officers of the General Assembly, and the Medicaid Director by August 31, 2022.

## **Nursing facility rebasing**

- Requires the Department to conduct its next nursing facility rebasing on the effective date of these provisions, using nursing facility calendar year 2019 data.

- Earmarks \$174 million in each fiscal year during FYs 2022 and 2023 for that rebasing and requires the rebasing determinations to be paid in the following order: (1) direct care costs, (2) ancillary and support costs, (3) tax costs, and (4) capital costs.
- Requires nursing facility payments based on the rebasing calculations to be prorated in order to stay within that earmark.
- Requires the Department to increase or decrease nursing facility payments for the period from July 1, 2021, through the effective date of these provisions based on that rebasing calculation.
- For all rebasings conducted after FY 2022, prohibits the capital costs component of the rebasing from totaling more than 10% of the sum of all of the cost centers under the rebasing and requires the Department to exclude capital costs that exceed 10%.

## **Medicaid managed care organizations (MCOs)**

### **Requirements for contracting entities**

(R.C. 5167.10)

The bill imposes additional requirements on the Department's contracts with Medicaid MCOs to provide health care services to Medicaid enrollees under the care management system. Beginning on and after the effective date of these amendments, the bill requires the Department to include contracts with Medicaid MCOs that:

- Are domiciled in Ohio, including their parent entities;
- Are currently Medicaid managed care organizations; and
- Have a proven history of providing quality services and customer satisfaction, as reported by (1) the Department's Medicaid Managed Care Plans Report Card and (2) the National Committee for Quality Assurance (NCQA) Medicaid health insurance plan ratings.

Additionally, beginning on that date, any organization included as a Medicaid MCO must participate, at minimum, in the geographic regions of Ohio where they are already providing services.

The bill exempts from these requirements a behavioral health managed care plan selected to assist the Department in implementing the Ohio Resilience Through Integrated Systems and Excellence (OhioRISE) Program for children and youth involved in multiple state systems or children and youth with complex behavioral health needs.

### **Procurement**

(Section 333.250)

The bill requires the Department to suspend further action on its current procurement process for selecting Medicaid MCOs. In 2019, Governor DeWine instructed the Department to

re-procure its Medicaid MCO contracts. As a result, on April 9, 2021, the Department announced the selection of six managed care plans to serve as its Medicaid MCOs.<sup>95</sup>

The bill requires the Department to suspend its current process and complete, during FY 2022, a new procurement process that includes scoring by a neutral third party, with oversight by JMOC. The procurement process must significantly take into account all of the following:

- Whether the organization is domiciled in Ohio, including its parent entities;
- The number of Ohio jobs lost or created by the award of the Medicaid managed care organization contracts;
- Other economic impacts in Ohio resulting from the award of the contracts; and
- Whether the managed care organization has a proven history of quality services and customer satisfaction, as reported by the Department's Managed Care Plans Report Card and NCQA health insurance plan ratings.

The bill exempts from these requirements a behavioral health managed care plan selected to assist the Department in implementing the OhioRISE Program.

### **Laboratory services**

(R.C. 5167.15)

Medicaid MCOs provide, or arrange for the provision of, health care services to Medicaid recipients. The bill requires MCOs to use a competitive selection process when contracting with a vendor to provide laboratory services. The competitive selection process must include a period where prospective laboratory services vendors may submit proposed contracts. Laboratory services vendors may only apply during the proposal process if they can demonstrate that they have the necessary staff, equipment, and resources to process laboratory requests in a timely manner and to comply with the requirements specified in their contracts.

If all criteria are equal between multiple laboratory services vendor applicants, an MCO must give preference to an applicant whose principal place of business is located in Ohio.

### **Employment connection incentive programs**

(R.C. 5167.29)

The bill requires that each Medicaid MCO establish an employment connection incentive program to assist Medicaid recipients enrolled in a Medicaid MCO plan in obtaining and maintaining employment. An enrollee may volunteer (but is not required) to participate. If an enrollee volunteers to participate, a Medicaid MCO must do both of the following:

- Identify the barriers that the enrollee has to achieving greater financial independence, including education, employment, physical and behavioral health care, transportation,

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<sup>95</sup> Ohio Department of Medicaid, *Managed Care Procurement*, April 9, 2021, <https://managedcare.medicaid.ohio.gov/wps/portal/gov/manc/managed-care/managed-care-procurement>.

child care, housing, legal problems (including criminal records), and other barriers identified for the enrollee;

- Assist the enrollee in overcoming the barriers, including assistance in obtaining and maintaining meaningful employment.

Assistance in obtaining and maintaining meaningful employment must include all of the following as appropriate for the enrollee:

- Education programs, including English as a second language, literacy, programs designed to lead to the equivalent of a high school diploma, and post-secondary education;
- Job training, placement, and retention programs;
- Apprenticeship programs;
- Mentoring programs;
- Other activities the Department specifies.

The bill permits each Medicaid MCO to contract with a county department of job and family services, county workforce development agency, or local workforce development board to deliver the services provided under an employment connection incentive program.

The Department must establish criteria to determine the success that Medicaid MCOs have with their employment connection incentive programs. The criteria must include the length of time that an enrollee who participated in the program has ceased to be eligible for Medicaid due to increased earnings resulting from employment that the program helped the enrollee obtain or maintain. The Department must provide incentive payments to Medicaid MCOs according to their successes. The Department is to determine the amount of each payment and the times at which Medicaid MCOs earn payments. The amount of a payment must be based on the savings in the nonfederal share of the per recipient per month cost of the capitation payments to the Medicaid MCO resulting from its success with its program.

## **Duties of area agencies on aging**

(Section 333.170)

The bill requires the Department of Medicaid, if it expands the inclusion of the aged, blind, and disabled Medicaid eligibility group or Medicaid recipients who are also eligible for Medicare (dual-eligible individuals) in the Medicaid managed care system during the FY 2022-FY 2023 biennium, to do both of the following for the remainder of the biennium:

1. Require area agencies on aging to be the coordinators of home and community-based waiver services they receive and permit Medicaid managed care organization (MCOs) to delegate to the agencies full-care coordination functions for those and other health care services; and
2. In selecting Medicaid MCOs, give preference to organizations that will enter into subcapitation arrangements with area agencies on aging under which the agencies perform, in addition to other functions, network management and payment functions for services that those recipients receive.

## Medicaid coverage of women postpartum

(R.C. 5163.06 and 5163.061; Section 333.253)

Current law specifies that pregnant women with an income up to 200% of the federal poverty level are eligible for Medicaid for 60 days after giving birth. The bill expands that eligibility to the maximum postpartum period permitted by federal law. If federal law provides Medicaid coverage for a postpartum period longer than 60 days, the bill requires the Medicaid Director to amend the state's Medicaid plan and seek any necessary waiver from the U.S. Centers for Medicare and Medicaid Services to provide Medicaid coverage for this extended period.

The federal American Rescue Plan Act of 2021 established an option under which states may extend Medicaid coverage for pregnant women for one year after giving birth. This option will take effect on April 1, 2022, and remain in effect for five years.<sup>96</sup>

## Medicaid eligibility

(R.C. 5163.52; Section 812.10)

The bill establishes requirements that ODM must follow if it receives federal funding for the Medicaid Program that is contingent upon a temporary maintenance of effort restriction or otherwise has its ability to disenroll ineligible Medicaid recipients restricted (such as the requirements under the Families First Coronavirus Response Act).<sup>97</sup> First, ODM must continue to conduct eligibility redeterminations for the Medicaid Program and act on those redeterminations to the fullest extent permitted under federal law. Second, within 60 days of the expiration of any restriction or limitation described above, the bill requires ODM to complete an audit that does both of the following:

- Completes and acts on all eligibility redeterminations for Medicaid recipients for whom an eligibility redetermination has not been conducted in the past 12 months;
- Requests approval from CMS to conduct and act on eligibility redeterminations for all Medicaid recipients who were enrolled for a period of at least three months during a period of restriction or limitation. If approved by CMS, ODM must conduct and act on any redetermination within 60 days of receiving approval.

The bill requires ODM to submit a report to the Speaker of the House and the President of the Senate summarizing the results of this audit.

The bill delays implementation of these provisions until January 1, 2022.

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<sup>96</sup> American Rescue Plan Act of 2021, Pub. L. No. 117-2, Section 9812.

<sup>97</sup> Section 6008, Pub. L. No. 116-127.

## Post-COVID Medicaid redetermination

(Section 333.255)

Not later than 60 days after the expiration of the federal COVID-19 emergency period,<sup>98</sup> the bill requires ODM to use third-party data sources and systems to conduct eligibility redeterminations of all Medicaid recipients. To the extent permitted by state and federal law, ODM must verify each Medicaid recipient's enrollment records against all of the following: (1) information and databases available to ODM under federal law, (2) identity records, (3) death records, (4) employment and wage records, (5) lottery winning records, (6) residency checks, (7) household composition and asset records, and (8) any other records ODM considers appropriate to strengthen program integrity, reduce costs, and reduce fraud, waste, and abuse in the Medicaid program.

Following this verification and not later than 120 days after the expiration of the federal COVID-19 emergency period, ODM is required to prepare and submit a report regarding its findings from the verification, including any findings regarding fraud, waste, or abuse in the Medicaid program. ODM must submit the report to all of the following:

- The Governor and Lieutenant Governor;
- The members of JMOC;
- The Senate President and House Speaker;
- The chairpersons of the House and Senate finance committees;
- The chairpersons of any other standing committees of the House and Senate that have jurisdiction over ODM.

Within 60 days after the expiration of the federal COVID-19 emergency period, the bill requires ODM to conduct an expedited eligibility review of Medicaid recipients that are identified as likely ineligible for continued participation in the Medicaid program based on the verification described above to determine whether or not a recipient remains eligible for Medicaid. To the extent permitted by federal law, ODM must disenroll those Medicaid recipients who are determined to no longer be eligible based on this expedited review.

Additionally, not later than six months after the expiration of the federal COVID-19 emergency period, the bill requires ODM to conduct an expedited eligibility review of Medicaid recipients who were newly enrolled in the Medicaid program for three or more months during the emergency period, but who were not newly enrolled during the last six months of the emergency period, to determine whether or not a recipient remains eligible for Medicaid. To the extent permitted by federal law, ODM must disenroll those Medicaid recipients who are determined to no longer be eligible based on this expedited review.

The bill provides that any third-party vendor expenses incurred from conducting the verification procedures described above are entirely contingent on validated cost savings realized

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<sup>98</sup> See 42 U.S.C. 1320b-5(g)(1)(B).

by ODM. Any vendor expenses paid related to the verification procedures may not exceed 20% of the cost savings realized by ODM.

## **Medicaid waiver – Ohio Breast and Cervical Cancer Project**

(R.C. 5166.33)

The bill requires the Medicaid Director to establish – subject to federal approval – a Medicaid waiver component under which a woman who meets all of the following conditions may receive cancer treatment under the Medicaid Program:

1. The woman was screened for breast or cervical cancer by a health care provider who either does not participate in the Department of Health’s Ohio Breast and Cervical Cancer Project (BCCP) or was not paid by BCCP for the screening;
2. The woman is in need of treatment for breast or cervical cancer;
3. The woman has a countable income not exceeding 300% of the federal poverty line;
4. The woman is not covered by health insurance;
5. The woman is less than 65 years of age.

### **Breast and cervical cancer project**

According to the Ohio Department of Medicaid, federal law allows states the option of providing full Medicaid coverage to certain women diagnosed with breast or cervical cancer, including pre-cancerous conditions. In Ohio, this Medicaid option is available only to women meeting eligibility requirements who are diagnosed through the BCCP. The bill expands Medicaid coverage to women who satisfy many of the same eligibility requirements but were screened for breast or cervical cancer outside of the BCCP, sometimes referred to in practice as the “wrong door.”

## **Medicaid waiver component definition**

(R.C. 5166.01)

The bill specifies that the current law definition of a “Medicaid waiver component” does not include services that are delivered under a prepaid inpatient health plan.<sup>99</sup> Medicaid waiver component means a component of the Medicaid program authorized by a waiver granted by the U.S. Department of Health and Human Services and does not include the care management system.

## **Voluntary community engagement program**

(Section 333.210; R.C. 5166.37, not in the bill)

As a result of the COVID-19 public health emergency, the bill requires the Medicaid Director to establish and implement a voluntary community engagement program not later than

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<sup>99</sup> Federal law defines a “prepaid inpatient health plan” as an entity that provides limited services to Medicaid enrollees through a limited-benefit risk-based plan. (42 C.F.R. 438.2.)



January 1, 2022. The program must be voluntary and available to all medical assistance recipients (individuals enrolled or enrolling in Medicaid, CHIP, the refugee medical assistance program, or other medical assistance program the Department administers). The program must:

- Encourage medical assistance recipients who are of working age and able-bodied to work;
- Promote the economic stability, financial independence, and improved health incomes from work; and
- Provide information about program services, including an explanation of the importance of work to overall physical and mental health.

As part of the program, the Director must explore partnerships with education and training providers to increase training opportunities for Medicaid recipients. The program is to continue through state FYs 2022 and 2023, or until the Department is able to implement the Work Requirement and Community Engagement Section 1115 Demonstration waiver, whichever is sooner.

Continuing law requires the Director to establish a Medicaid waiver component under which an individual eligible for Medicaid on the basis of being included in the expansion eligibility group (also known as “Group VIII”) – adults under age 65 with no dependents and incomes at or below 138% of the federal poverty level – must meet one of a list of enumerated criteria to enroll in Medicaid. The criteria include (1) being at least age 55, (2) being employed, (3) being enrolled in a school or occupational training program, (4) participating in an alcohol and drug addiction treatment program, or (5) having intensive physical health care needs or serious mental illness.<sup>100</sup> Pursuant to this requirement, the Department submitted a waiver request to the U.S. Centers for Medicare and Medicaid Services (CMS) to implement a Work Requirement and Community Engagement Section 1115 Demonstration waiver program. CMS approved the waiver on March 15, 2019; however, the program was never implemented because the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act prohibits state Medicaid programs from imposing additional eligibility criteria on Medicaid enrollees during the COVID-19 public health emergency.

## Medicaid Cost Assurance Pilot Program

(Section 333.217)

The bill requires the Department to establish the Medicaid Cost Assurance Pilot Program to operate during FYs 2022 and 2023. The Department must open the program to Medicaid enrollees in the expansion eligibility group (otherwise known as “Group VIII”), initially. It may expand the program based on the program outcome data and cost findings in its report (see “**Report and subcommittee**” below).

The pilot program must do all of the following:

- Identify eligible Medicaid enrollees who are members of the expansion eligibility group to participate in the program;

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<sup>100</sup> R.C. 5166.37, not in the bill.

- Provide Medicaid services to pilot program participants at a rate of 95% of current Medicaid managed care organization capitation rates;
- Use technology to (1) utilize automation and artificial intelligence to provide Medicaid program savings by avoiding traditional cost structures, (2) diversify care management system programs to achieve better health outcomes at better value, (3) enable seamless communication between providers and care management entities, and (4) improve the Medicaid program experience for providers and enrollees;
- Develop and implement strategies to provide opportunities for pilot program participants to rise above the poverty level criteria for Medicaid eligibility;
- Enable care management entities under the program to take the risks incidental to the practice of insurance, as a health insuring corporation licensed in Ohio; and
- Include 90-day study periods to determine whether to expand, sustain, or terminate the pilot program.

### **Care management entity**

The Department must contract with a care management entity to administer Medicaid benefits under the pilot program. The care management entity must:

- Be a health insuring corporation licensed in Ohio;
- Be a start-up company domiciled in Ohio; and
- Meet the solvency requirements under current law for health insuring corporations.

### **Report and subcommittee**

The Department must submit a report outlining pilot program clinical outcome data and cost impacts and submit the report to the Speaker of the House, the Senate President, and to the members of the Joint Medicaid Oversight Committee (JMOC) by December 31, 2022.

### **Rules**

The Medicaid Director must adopt rules as necessary to implement the pilot program, including (1) the geographic area where the program will occur, (2) program participant eligibility requirements, and (3) program demonstrated success criteria.

## **Care Innovation and Community Improvement Program**

(Section 333.60)

The bill requires the Medicaid Director to continue the Care Innovation and Community Improvement Program for the FY 2022-FY 2023 biennium. The Director was originally required to establish it for the FY 2018-FY 2019 biennium.<sup>101</sup>

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<sup>101</sup> Section 333.320 of H.B. 49 of the 132<sup>nd</sup> General Assembly and Section 333.220 of H.B. 166 of the 133<sup>rd</sup> General Assembly.

Any nonprofit hospital agency affiliated with a state university and any public hospital agency may volunteer to participate if the hospital has a Medicaid provider agreement. The nonprofit and public hospital agencies that participate are responsible for the state share of the program's costs and must make or request that appropriate government entity to make intergovernmental transfers to pay for the costs. The Director must establish a schedule for making the transfers.

Rather than being required to perform specific tasks delineated for the program in prior budget acts, each participating hospital agency is required to jointly participate in quality improvement initiatives that align with and advance the goals of the Department of Medicaid's quality strategy.

Each participating hospital agency is to receive supplemental Medicaid payments for physician and other professional services that are covered by Medicaid and provided to Medicaid recipients. The payments must equal the difference between the Medicaid rate and the average commercial payment rates for the services. The Director may terminate, or adjust the amount of, the payments if funding for the program is inadequate.

The Director must maintain a process to evaluate the work done under the program by nonprofit and public hospital agencies and their progress in meeting the program's goals. The Director may terminate a hospital agency's participation if the Director determines that it is not participating in required quality improvement initiatives or making progress in meeting the program's goals.

The bill does not include the requirement that existed in prior budget acts for participating agencies to report information to JMOC; however, it includes a new requirement that, not later than December 31 of each year, the Director must submit a report to the Speaker of the House, the Senate President, and JMOC that details the efficacy, trends, outcomes, and number of hospital agencies enrolled in the program. The report must include the total amount of supplemental Medicaid payments made through the program. All data contained in the report is required to be aggregated.

All intergovernmental transfers made under the program must be deposited into the existing Care Innovation and Community Improvement Program Fund. Money in the fund and the corresponding federal funds must continue to be used to make the supplemental payments to hospital agencies under the program.

## **Ohio Invests in Improvements for Priority Populations**

(Section 333.175)

The bill establishes the Ohio Invests in Improvements for Priority Populations (OIPP) Program as a directed payment program for inpatient and outpatient hospital services provided to Medicaid managed care recipients receiving care at state university-owned hospitals with less than 300 inpatient beds.

Under the OIPP Program, participating hospitals receive payments directly (instead of through the contracted Medicaid managed care organization) for inpatient and outpatient hospital services provided under the program and remit to the Department of Medicaid the

nonfederal share of payment for those services. The hospital must make the payment to the Department through intergovernmental transfer, with the funds deposited into the Hospital Directed Payment Fund.

In general, under federal law, states are prohibited from (1) directing Medicaid managed care organization expenditures or (2) making payments directly to providers for Medicaid managed care organization plan services (“directed payments”) unless permitted under federal law or subject to federal authorization.<sup>102</sup> The bill requires the Medicaid Director to seek approval from the Centers for Medicare and Medicaid Services, in accordance with continuing Ohio law, to operate the OIPP Program.

## **Hospital Care Assurance Program, franchise permit fee**

(Sections 601.20 and 601.21, amending Sections 125.10 and 125.11 of H.B. 59 of the 130<sup>th</sup> General Assembly)

The bill continues the Hospital Care Assurance Program (HCAP) for two additional years. The program is scheduled to end October 16, 2021. The bill extends it to October 16, 2023. Under HCAP, hospitals are annually assessed an amount based on their total facility costs, and government hospitals make annual intergovernmental transfers. The Department distributes to hospitals money generated by the assessments and intergovernmental transfers along with federal matching funds. A hospital compensated under the program must provide (without charge) basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty line.

The bill also continues for two additional years another assessment imposed on hospitals; that assessment is to end on October 1, 2023, rather than October 1, 2021. The assessment is in addition to HCAP, but like that program, it raises money to help pay for the Medicaid program. To distinguish the assessment from HCAP, the assessment is sometimes called a hospital franchise permit fee.

## **Medicaid rates for community behavioral health services**

(Section 333.160)

The bill permits the Department to establish Medicaid payment rates for community behavioral health services provided during FY 2022 and FY 2023 that exceed the authorized rates paid for the services under the Medicare Program. This does not apply, however, to services provided by hospitals on an inpatient basis, nursing facilities, or ICF/IIDs.

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<sup>102</sup> Centers for Medicare and Medicaid Services, *Letter Re: Additional Guidance on State Directed Payments in Medicaid Managed Care*, January 8, 2021, <https://www.medicare.gov/Federal-Policy-Guidance/Downloads/smd21001.pdf>.

## **Home and community-based services provider payment rates**

(Section 333.166)

The bill increases the payment rates under the PASSPORT program, the Ohio Home Care waiver program, the MyCare Ohio Waiver program, and the Assisted Living waiver for waiver- and state plan-funded providers of the following services:

- Private duty nursing;
- Nursing;
- Home health aide;
- Personal care;
- Home care attendant and homemaker;
- Assisted living;
- Speech therapy;
- Occupational therapy;
- Physical therapy.

For FY 2022, the payment rates for those services are 4% higher than the rates in effect on June 30, 2021. For FY 2023, the payment rates for those services are 2% higher than the rates in effect on June 30, 2022.

The bill also increases the payments by the same amounts for waiver- and state plan-funded adult day care providers under the PASSPORT program and the Assisted living waiver, including MyCare Ohio recipients under those programs.

## **Value-based purchasing supplemental rebate**

(Section 333.215)

Not later than 60 days after the bill's effective date, the bill requires the Department of Medicaid to submit to CMS a Medicaid state plan amendment to authorize the Department to enter into value-based purchasing supplemental rebate agreements with pharmaceutical manufacturers. The agreements must establish criteria for the payment of supplemental rebates. The rebates can be calculated and paid in a single year or over multiple years.

The Department must use its best efforts to ensure that the agreement form submitted to CMS permits rebates to be calculated on many different bases at the discretion of the Department with the approval of the drug manufacturer, including under (1) outcome-based models, (2) shared savings models, (3) subscription or modified subscription models, (4) risk-sharing models, or (5) guarantees.

The bill provides that the Department is not required to enter into these supplemental rebate agreements.

## **Medicaid reports**

### **Payment rate increase report to JMOC**

(R.C. 5162.82)

The bill requires the Director to notify JMOC and be available to testify before JMOC before making any payment rate increases of greater than 10% under the Medicaid program.

### **Franchise permit fees report to JMOC**

(R.C. 5168.90)

The bill requires the Director to submit a quarterly report to the members of JMOC and the executive director of JMOC with the fee rates and the aggregate total of the following fees:

- The hospital assessment fee;
- The nursing home and hospital long-term care unit franchise permit fee;
- The ICF/IID franchise permit fee; and
- The health insuring corporation franchise fee.

The Director also must report if there is a rate increase pending before the Centers for Medicare and Medicaid Services for any of the above-listed fees.

The Director can adopt rules to compile and submit the quarterly reports, including rules specifying the information that must be submitted to the Director by the Department of Developmental Disabilities regarding the ICF/IID franchise permit fee.

## **Pharmacy supplemental dispensing fee**

(Section 333.245)

The bill requires the Department to establish a supplemental dispensing fee for retail pharmacies under the care management system for FY 2022 and FY 2023. The fee is being continued from last biennium's main operating budget; however, the bill specifies that the three payment levels for the fee must be based on (1) the ratio of Medicaid prescriptions compared to total prescriptions a pharmacy location fills and (2) the number of pharmacy locations participating in the care management system in the geographic area, as determined by the Department.

The Medicaid Director must adjust the fee if the Department receives reduced federal funds for the supplemental dispensing fee. Also, the bill provides that the supplemental dispensing fee cannot cause a reduction in other payments made to a pharmacy for providing prescribed drugs under the care management system.

## **Additional payment for low-income assisted living**

(Section 333.247)

The bill requires the Departments of Aging and Medicaid to each adopt rules to establish an additional payment amount for services provided under the Assisted Living program and ICDS

Medicaid waiver component, respectively, by residential care (assisted living) facilities that utilize the Low-Income Housing Tax Credit Program. The rules must be adopted in accordance with the Administrative Procedure Act and establish an additional payment that is at least \$23 per day for each payment tier established in rules.

## **Nursing facilities**

### **Critical access nursing facilities**

(R.C. 5165.01)

The bill clarifies terminology relating to the critical access incentive payment received by nursing facilities that qualify as critical access nursing facilities. Under current law, to qualify as a critical access nursing facility, the nursing facility must meet certain occupancy and Medicaid utilization rate metrics. For purposes of calculating the occupancy and utilization rates, the bill clarifies that “as of the last day of the calendar year” refers to the rates during the calendar year identified in the nursing facility’s annual cost report filed with the Department.

### **Medicaid payment rate formula**

(R.C. 5165.01, 5165.15, and 5165.17)

In definitions, the bill provides that inpatient days include all days during which a resident, regardless of payment source, occupies a licensed bed in a nursing facility, instead of a bed in a nursing facility that is included in the facility’s Medicaid certified capacity. It also provides that a nursing facility’s occupancy rate refers to the percentage of licensed beds that, regardless of the payer source, are either reserved for use or are actually being used.

The bill also removes provisions of law, under the ancillary and support costs and capital cost center components of the nursing facility payment rate, that require the Department, when determining a nursing facility’s occupancy rate, to include any beds that the facility removes from its Medicaid certified capacity, unless the facility also removes them from its licensed capacity.

### **Resident assessment data**

(R.C. 5165.191)

Relating to the resident assessment data nursing facilities must compile quarterly for each resident, the bill requires the associated rules to specify any resident assessment data that is excluded from the facility’s case mix score calculated quarterly by the Department for each nursing facility.

### **Special Focus Facility Program**

(R.C. 5165.771, repealed; conforming change in R.C. 5165.80)

The bill repeals Ohio’s statute pertaining to the federal Special Focus Facility (SFF) Program. The SFF Program is created under federal law for nursing facilities identified as having substantially failed to meet federal requirements applicable to nursing facilities.<sup>103</sup> Ohio’s statute

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<sup>103</sup> 42 U.S.C. 1396r(f)(10).

requires the Department to terminate a nursing facility's participation in the Medicaid program if the facility is placed in the SFF Program and fails to make improvements or graduate from the SFF Program within certain periods of time. There is no right to appeal under Ohio's statute.

In October 2020, the Ohio Tenth District Court of Appeals found that R.C. 5165.771 violates the due process protections of the U.S. and Ohio Constitutions and upheld a permanent injunction prohibiting its enforcement.<sup>104</sup> The bill repeals Ohio's SFF Program statute, but it does not repeal the underlying federal SFF Program. Nursing facilities may still be placed in the SFF Program and have Medicaid participation terminated, in accordance with CMS' policy memorandum governing the SFF Program's administration.

## **Quality payments**

(R.C. 5165.25, repealed)

The bill repeals the quality payments nursing facilities receive under current law. Those payments are made to nursing facilities for meeting at least one of five quality indicators. The largest quality payment is to be paid to nursing facilities that meet all of the quality indicators for the measurement period (the calendar year preceding the year in which the fiscal year begins). The following are the quality indicators used to determine the payment:

- Not more than a target percentage of short-stay residents (those residing in a nursing facility for less than 100 days) at high risk for pressure ulcers had new or worsening pressure ulcers and not more than a target population of long-stay residents (those residing in a nursing facility for at least 100 days) at high risk for pressure ulcers had pressure ulcers for the measurement period;
- Not more than the target percentage of the nursing facility's short-stay residents newly received antipsychotic medication and not more than a target percentage of the nursing facility's long-stay residents received an antipsychotic medication for the measurement period;
- Not more than the target percentage of the nursing facility's long-stay residents had an unplanned weight loss for the measurement period;
- The nursing facility's employee retention rate is at least a target rate that the Department is to specify;
- The nursing facility obtained a target score determined by the Department on the Department of Aging's most recently published resident or family satisfaction survey.

The bill repeals the quality payments; after FY 2021, nursing facilities will no longer receive quality payments.

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<sup>104</sup> *CT Ohio Portsmouth, LLC v. Ohio Dept. of Medicaid*, 2020-Ohio-5091 (10<sup>th</sup> Dist.).



## Quality incentive payments

(R.C. 5165.26 and 5165.15)

The bill modifies the calculations for quality incentive payments that are added to a nursing facility's Medicaid payment rates. The payment amount is based on the score the facility receives for meeting certain quality metrics regarding its residents who have resided in the nursing facility for at least 100 days (long-stay residents). With certain adjustments, a nursing facility's quality score is the sum of the total number of points that CMS assigned to the nursing facility under its nursing facility five-star quality rating system, based on the most recent four-quarter average data in its Nursing Home Compare, for the following:

- The percentage of the nursing facility's long-stay residents at high risk for pressure ulcers who had pressure ulcers;
- The percentage of the facility's long-stay residents who had a urinary tract infection;
- The percentage of the facility's long-stay residents whose ability to move independently worsened;
- The percentage of the facility's long-stay residents who had a catheter inserted and left in their bladder.

First, the bill extends the payments for FY 2022 and FY 2023. Under current law, the payments end after FY 2021.

Second, the bill adds another circumstance under which a nursing facility is to receive zero quality points. A nursing facility receives zero quality points if its nursing facility's total number of points for FY 2022 or FY2023 for all of the quality metrics is less than the total equal to the bottom 25% of all nursing facilities. Current law, unchanged by the bill, also provides that a nursing facility receives zero quality points for a quality metric if CMS assigned the nursing facility to the lowest percentile for that quality metric.

Third, the bill adds a disqualification from the quality incentive payments. Under the bill, a nursing facility is ineligible for a quality incentive payment if the Department of Health assigned the nursing facility to the Special Focus Facility list on May 1 of the applicable calendar year. The SFF list is part of the SFF Program that federal law requires the U.S. Department of Health and Human Services to create for nursing facilities identified as having substantially failed to meet federal requirements.<sup>105</sup>

Fourth, the bill eliminates a disqualification under current law from the quality incentive payments for a nursing facility if its licensed occupancy percentage is below 80%. Under current law, a nursing facility's licensed occupancy percentage for a fiscal year is to be determined as follows:

1. Multiply the facility's licensed occupancy on December 31 by 365;

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<sup>105</sup> 42 U.S.C. 1396r(f)(10).

2. Divide the number of the facility's inpatient days for the measurement period by the product determined under step 1;

3. Multiply the quotient under step 2 by 100.

This disqualification did not apply if:

- The nursing facility had a quality score of at least 15 points, the facility was initially certified for participation in Medicaid after January 1, 2019;
- One or more of the beds counted in the licensed occupancy percentage could not be used for resident care due to causes beyond the control of the facility operator, such as a force majeure event; or
- The nursing facility underwent a renovation involving capital expenditures of at least \$50,000 that directly impacted the part of the facility in which the beds counted in the licensed capacity were located.

As part of its repeal of the disqualification, the bill also eliminates the exceptions described above.

Fifth, the bill subtracts \$1.79 from the base rate used as part of the calculation for the total amount to be spent on quality incentive payments. Under the bill, the base rate is calculated by determining the sum of the following:

1. The nursing facility's per Medicaid day payment rate for each of the four cost centers (ancillary and support costs, capital costs, direct care costs, and tax costs) and, if the nursing facility qualifies as a critical access nursing facility, its critical access incentive payment;
2. To that sum, add \$16.44;
3. From that sum, subtract \$1.79.

Current law does not include step (3) as part of the base rate calculation.

Sixth, the bill modifies the calculation used to determine the total amount to be spent on quality incentive payments in a fiscal year. Under the bill, the total to be spent is calculated as follows:

1. For each nursing facility, determine the amount that is 5.2% of the nursing facility's base rate (described above) on the first day of the fiscal year plus \$1.79;
2. Multiply that amount by the number of the nursing facility's Medicaid days for the calendar year preceding the fiscal year for which the rate is determined;
3. Determine the sum of (1) and (2) above for all nursing facilities for which the product was determined for the state fiscal year;
4. To that sum, add \$25 million.

Current law does not add \$1.79 as part of the calculation in (1) above or include the \$25 million add-on to the total to be spent on the payments in each fiscal year in (4) above.

Finally, the bill disqualifies a new nursing facility or a nursing facility that undergoes a change of operator during FY 2022 or FY 2023 from receiving a quality incentive payment for the fiscal year in which the new facility obtains an initial provider agreement or the change of operator occurred. The bill provides that the facility is to receive a quality incentive payment under the normal calculation in the immediately following fiscal year.

### **JMOC report on nursing facility payment formulas**

(R.C. 5165.261)

The bill requires the Joint Medicaid Oversight Committee (JMOC) to analyze the efficacy of the following:

1. The current quality incentive payment formula;
2. The nursing facility base rate calculation; and
3. The nursing facility cost centers, which are used to calculate a nursing facility's per Medicaid day payment rate and are redetermined as part of rebasing.

By August 31, 2022, JMOC must submit a report with its recommendations and determinations on whether the quality measures under the quality incentive payment formula are sufficient or whether the measures need to be changed. JMOC must submit its report to:

- The Senate President;
- The Speaker of the House;
- The Minority Leaders of the Senate and House;
- The chair and ranking minority member of the Senate Finance committee;
- The chair and ranking minority member of the House Finance committee;
- The Medicaid Director.

### **Nursing facility rebasing**

(R.C. 5165.36)

The bill makes changes to the nursing facility rebasing process, which current law requires to be conducted at least once every five state fiscal years as a redetermination of all of the four cost components (called "cost centers") used to calculate a nursing facility's per Medicaid day payment rate.<sup>106</sup>

First, the bill requires the department to conduct its next rebasing on the effective date of these provisions (approximately October 1, 2021), based on calendar year 2019 nursing facility data. The bill earmarks \$174 million in each fiscal year during FY 2022 and FY 2023 for the rebasing calculation and requires the Department to pay nursing facilities based on the rebasing calculations in the following order:

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<sup>106</sup> 42 U.S.C. 1396r(f)(10).

1. Direct care costs;
2. Ancillary and support costs;
3. Tax costs; and
4. Capital costs.

The Department must prorate the rebasing determinations as necessary to stay within the earmark.

For services provided July 1, 2021, through the date of the rebasing, the Department must pay nursing facilities based on the cost centers as calculated under that rebasing. If the Department already paid nursing facility operators for services during those dates, the Department must pay or recover the difference between those payments and the payment as calculated using data from the rebasing.

Second, for each rebasing conducted after state FY 2022, the bill prohibits the sum of the capital costs component of the rebasing from being more than 10% of the sum of all of the cost centers calculated under the rebasing. The Department must exclude any capital cost amounts exceeding 10%.

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## JOINT MEDICAID OVERSIGHT COMMITTEE

- Requires appointment of a Joint Medicaid Oversight Committee vice-chairperson.

### **JMOC vice-chairperson**

(R.C. 103.41)

The bill requires that a Joint Medicaid Oversight Committee vice-chairperson be appointed from the majority party members serving on the Committee. In odd-numbered years, the Senate President is required to appoint the vice-chairperson, and in even-numbered years, the Speaker of the House has this responsibility.

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## MEDICAL BOARD

### Out-of-state physician consultation

- Permits a physician licensed in another state or territory to provide consultation to a physician licensed in Ohio in instances when the Ohio-based physician is not responsible for the examination, diagnosis, and treatment of the patient who is the subject of the consultation.

### Physician assistants personally furnishing drugs

- Permits a physician assistant to personally furnish supplies of specified drugs and therapeutic devices at an employer-based health care clinic.

### Impaired practitioners

- Revises the law governing the authority of the State Medical Board to take disciplinary action against practitioners for impairment, by specifying that a practitioner or applicant for licensure who discloses to the Board previous impairment and meets certain conditions is not subject to discipline for that impairment.

### Conscience clause

- Recognizes the authority of a medical practitioner, health care institution, or health care payer to decline to perform, participate in, or pay for any health care service that violates the practitioner's, institution's, or payer's conscience as informed by the moral, ethical, or religious beliefs or principles held by the practitioner, institution, or payer.

### Exception to dietetics licensure

- Exempts, from existing law governing the practice of dietetics, the provision of wellness and lifestyle recommendations, individualized nutritional guidance, and individualized food and diet assessment or education, so long as the provider does not use the title "dietitian" or a similar identifier.

### Massage Therapy Advisory Council

- Creates the Massage Therapy Advisory Council to make recommendations to the State Medical Board regarding issues affecting the practice of massage therapy.

### Out-of-state physician consultation

(R.C. 4731.36)

Existing law specifies that a licensed physician or surgeon in another state or territory is generally not required to obtain an Ohio license to practice medicine or surgery or osteopathic medicine or surgery if that out-of-state physician or surgeon is consulting with an Ohio-licensed physician regarding a patient, and the Ohio-licensed physician is responsible for the examination, diagnosis, and treatment of the patient who is the subject of the consultation. The bill eliminates the requirement that the Ohio-licensed physician receiving a consultation from an out-of-state

physician be involved in the examination, diagnosis, and treatment of the patient who is the subject of the consultation. The effect of this change permits an out-of-state physician to provide a consultation to any Ohio-licensed physician, so long as other conditions of existing law, unchanged by the bill, are met.

## **Physician assistants personally furnishing drugs**

(R.C. 4730.43)

The bill permits a physician assistant with prescriptive authority to personally furnish supplies of certain drugs and therapeutic devices at an employer-based clinic that provides health care services to the employer's employees. Under current law, a physician assistant is authorized to personally furnish only at a health department operated by a board of health, federally funded comprehensive primary care clinic, or a nonprofit health care clinic or program. The drugs and devices that may be personally furnished under the bill at an employer clinic are the same as those that may be personally furnished at other locations under current law: antibiotics, antifungals, scabicides, contraceptives, prenatal vitamins, antihypertensives, drugs and devices used in the treatment of diabetes, drugs and devices used in the treatment of asthma, and drugs used in the treatment of dyslipidemia.

## **Impaired practitioners**

(R.C. 4731.251 and 4731.254)

The bill revises the law governing the authority of the State Medical Board of Ohio to take disciplinary action against practitioners for impairment of their ability to practice due to habitual or excessive use or abuse of drugs, alcohol, or other substances. Current law allows a practitioner to avoid Board discipline by participating in One-Bite, the Board's confidential treatment and monitoring program.

Under the bill, a practitioner or applicant for licensure is not subject to discipline solely for impairment that occurred prior to the practitioner or applicant seeking licensure in Ohio, but only if certain conditions are met. These include all of the following:

- As part of the process of applying for licensure in Ohio, the practitioner or applicant discloses to the Board impairment that occurred either while practicing in another state or before applying for licensure in this state;
- The practitioner or applicant participated in and successfully completed a treatment program for impairment;
- The practitioner or applicant either remains in good standing with the other state's confidential treatment and monitoring program or provides evidence of participation and successful completion of treatment and any terms of aftercare.

If the Board grants the practitioner or applicant a license to practice in Ohio, the bill requires it to refer the practitioner or applicant to the monitoring organization that conducts the One-Bite Program.

## **Types of practitioners**

The bill's provisions apply to the following types of health care professionals, including those licensed by the Board or applicants for licensure: physicians, podiatrists, massage therapists, physician assistants, dietitians, anesthesiologist assistants, respiratory therapists, acupuncturists, radiologist assistants, and genetic counselors.

## **Conscience clause**

(R.C. 4743.10)

The bill specifies that a medical practitioner, health care institution, or health care payer has the freedom to decline to perform, participate in, or pay for any health care service which violates the practitioner's, institution's, or payer's conscience as informed by the moral, ethical, or religious beliefs or principles held by the practitioner, institution, or payer. It further specifies that exercising the right of conscience is limited to conscience-based objections to a particular health care service.

## **Definitions**

**Medical practitioner** means any person who facilitates or participates in the provision of health care services, including nursing, physician services, counseling and social work, psychological and psychiatric services, research services, surgical services, laboratory services, and the provision of pharmaceuticals and may include any of the following: any student or faculty at a medical, nursing, mental health, or counseling institution of higher education or an allied health professional, paraprofessional, or employee or contractor of a health care institution.

**Health care service** means medical care provided to a patient at any time over the entire course of the patient's treatment and may include one or more of the following: testing; diagnosis; referral; dispensing or administering a drug, medication, or device; psychological therapy or counseling; research; prognosis; therapy; record making procedures and notes related to treatment; preparation for or performance of a surgery or procedure; or any other care or service performed or provided by any medical practitioner.

**Participation in a health care service** means to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing, any health care service.

The bill does not define a health care institution or health care payer.

## **Actions in case of a conflict**

Under the bill, whenever a situation arises in which a requested course of treatment includes a particular health care service that conflicts with a medical practitioner's moral, ethical, or religious beliefs or convictions, the practitioner must be excused from participating in the particular health care service.

And when the practitioner becomes aware of the conflict, he or she must notify his or her supervisor, if applicable, and request to be excused from participating in the particular health care service. When possible and when the practitioner is willing, he or she must seek to transfer the patient to a colleague who will provide the requested health care service.



If participation in a transfer of care for a particular health care service violates the practitioner's beliefs or convictions or a willing colleague is not identified, the patient must be notified and provided the opportunity to seek an alternate medical practitioner. Upon a patient's request, the patient's medical records must be promptly released to the patient.

The medical practitioner is responsible for providing all appropriate health care services, other than the particular health care service that conflicts with the medical practitioner's beliefs or convictions, until another medical practitioner or facility is available.

The bill does not outline any actions to be taken in the event the moral, ethical, or religious beliefs of an institution or payer conflict with a particular health care service.

### **Liability**

A medical practitioner, health care institution, or health care payer is not civilly, criminally, or administratively liable for exercising the practitioner's, institution's, or payer's right of conscience. Moreover, an institution is not civilly, criminally, or administratively liable for the exercise of conscience rights by a practitioner employed by, under contract with, or granted admitting privileges by the institution.

### **Discrimination**

The bill prohibits a medical practitioner, health care institution, or health care payer from being discriminated against or suffering any other adverse action as a result of declining to participate in or pay for a particular health service on the basis of conscience.

It also prohibits a medical practitioner from being discriminated against or suffering any adverse action for disclosing any information that the practitioner reasonably believes evinces the following:

- Any violation of the bill's provisions or any other law;
- Any violation of any standard of care or other ethical guidelines for the provision of any health care service;
- Gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

### **Violations**

In the event of a violation of the bill's provision, the bill authorizes a medical practitioner, health care institution, or health care payer to bring a civil action for damages, injunctive relief, or any other appropriate relief.

Upon a finding of a violation, a court must award treble damages as well as reasonable costs and attorney's fees. A court considering the civil action also may award injunctive relief, including reinstatement of a medical practitioner to his or her previous position, reinstatement of board certification, and relicensure of a health care institution or health care payer.

## **EMTALA**

The bill specifies that its provisions are not to be construed to override the requirement under the federal Emergency Medical Treatment and Labor Act (EMTALA)<sup>107</sup> to provide emergency medical treatment to all patients.

## **Exception to dietetics licensure**

(R.C. 4759.10)

The bill exempts from Ohio's Dietetics Licensing Law a person who provides wellness and lifestyle recommendations, individualized nutritional guidance or counseling, or individualized food and diet assessment or education. The exemption applies so long as the person does not use the title "dietitian" or another identifier indicating the person is practicing dietetics.

## **Massage Therapy Advisory Council**

(R.C. 4731.152)

The bill requires the State Medical Board to appoint a Massage Therapy Advisory Council to advise the Board on issues relating to the practice of massage therapy. The advisory council must consist of not more than seven individuals knowledgeable in the area of massage therapy, including at least one physician who is a member of the State Medical Board, one massage therapy educator, and one individual who is not a member of any health care profession to represent consumers. The American Massage Therapy Association and the Associated Bodywork and Massage Professionals, or their successor organizations, may each nominate up to three individuals for consideration by the Board. A majority of the council members must be licensed massage therapists engaged in active practice.

The Board must make initial appointments to the advisory council within 90 days. Initial members serve one-, two-, or three-year terms as selected by the Board. Subsequent members serve three-year terms. Members serve without compensation but may be reimbursed for expenses incurred while performing official duties.

The advisory council must meet at least four times a year and may submit recommendations to the Board regarding issues affecting the practice of massage therapy, including requirements for licensure and renewal, the administration and enforcement of the laws governing the practice of massage therapy, standards for approval of educational programs, standards of practice and ethical conduct, and the safe and effective practice of massage therapy, including scope of practice and minimal standards of care.

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<sup>107</sup> 42 U.S.C. 1395dd.

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## **DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES**

### **Suspending admissions and taking action against a license**

- Authorizes the Ohio Department of Mental Health and Addiction Services (OhioMHAS) Director to suspend admissions at the following facilities without a hearing if the licensee has demonstrated a pattern of serious noncompliance or the violation creates a substantial health and safety risk: residential facilities, certain community addiction services providers, and hospitals for mentally ill persons.
- Specifies a process for appeals when admissions are suspended without a prior hearing.
- Regarding suspending admissions, denying an application, or refusing to renew or revoking a license or certification, (1) authorizes OhioMHAS to take action regardless of whether the deficiencies have been corrected at the time of the hearing and (2) prohibits it from permitting an opportunity for submitting a plan of correction.

### **Certifiable services and supports**

- Specifies reasons the OhioMHAS Director may refuse to certify, renew, or revoke certifiable services and supports provided by a community mental health or addiction services provider.
- Eliminates requirements that the Director (1) identify areas of noncompliance for an applicant who does not satisfy certification standards and (2) provide applicants with reasonable time to demonstrate compliance.

### **Licensing boards and confidential treatment and monitoring programs**

- Supports new or existing confidential treatment and monitoring programs offered by occupational licensing boards for healthcare workers with mental health or substance use disorders, including by allowing boards to contract with certain monitoring organizations to administer the programs.

### **Confidentiality of substance use disorder records**

- Modifies existing requirements for maintaining confidentiality of records regarding drug treatment programs and services that are licensed or certified by OhioMHAS.
- Establishes confidentiality requirements based on federal law and applies them to federally assisted programs for substance use disorder treatment.
- Requires that the disclosure of any confidential information comply with the federal requirements.

### **Opioid treatment programs**

- Lengthens the term of a license to operate an opioid treatment program (OTP) to two years, from one year under current law, except that the OhioMHAS Director can stipulate

annual licensure for an OTP if the Director has concerns about the OTP's compliance record.

- Requires OhioMHAS to inspect all community addiction services providers licensed to operate OTPs at least biennially, as opposed to annually under current law.
- Permits a community addiction services provider to employ an individual who receives medication-assisted treatment from the provider.

### **Substance use disorder treatment in drug courts**

- Continues an OhioMHAS program to provide addiction treatment to persons with substance use disorders through drug courts with programs using medication-assisted treatment.
- Modifies the program by authorizing services to be included for withdrawal management or detoxification, including drugs used in providing those services.
- Requires community addiction services providers to provide specified treatment to the participants in the program based on the individual needs of each participant.

### **County jails reimbursed for substance use treatment drugs**

- Establishes a program to reimburse counties for the cost of drugs used in providing county jail inmates with medication-assisted treatment and withdrawal management or detoxification services related to drug or alcohol use.

### **Pilot to dispense controlled substances in lockable containers**

- Requires OhioMHAS to operate a two-year pilot program to dispense schedule II controlled substances in lockable or tamper-evident containers.

### **ADAMHS board composition and appointment**

- Establishes options for the size of an alcohol, drug addiction, and mental health services (ADAMHS) board that results from the OhioMHAS Director granting approval in calendar year 2021 or 2022 for a county with a population between 70,000 and 80,000 to withdraw from a joint-county alcohol, drug addiction, and mental health service district.
- Provides that an ADAMHS board established from that withdrawal must consist of 18 members, 14 members, or between seven and nine members.
- Provides that an ADAMHS board that already was formed can continue as an 18-member or 14-member board, or, within six months, may choose to reduce to between seven and nine members.
- Specifies the number of members to be appointed by the OhioMHAS Director and the board of county commissioners for the ADAMHS boards described above.
- Provides that if a county with a population between 35,000 and 45,000 joins an existing alcohol, drug addiction, and mental health service district during the two-year period

beginning June 30, 2021, the ADAMHS board serving that district may expand from 14 to 18 members.

- Permits the ADAMHS board to make such an election for one year from the date the county joins the joint-county district.

### **Stabilization centers**

- Continues the requirement that ADAMHS boards establish and administer, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, six mental health crisis stabilization centers.
- Requires the establishment and administration, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, acute substance use disorder stabilization centers.

### **Pediatric behavioral health workforce support**

- Requires the OhioMHAS Director to establish a program to attract, train, support, and retain individuals involved in the pediatric behavioral health workforce, including through providing loan repayment and forgiveness, scholarships, tuition assistance, and fellowships.

## **Suspending admissions and taking action against a license**

(R.C. 5119.33, 5119.34, and 5119.36)

### **Suspending admissions**

Current law authorizes the Ohio Department of Mental Health and Addiction Services (OhioMHAS) to suspend admissions at the following: hospitals that receive mentally ill persons, residential facilities, and community addiction services providers that provide overnight accommodations. The bill specifies that proceedings initiated to suspend admissions and appeals are generally governed by the Administrative Procedure Act (R.C. Chapter 119). However, if the OhioMHAS Director determines that the facility has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of patients or residents, the Director may suspend admissions without a hearing. The order suspending admissions must be lifted if the Director determines the violation that formed the basis for the order has been corrected.

When admissions are suspended without a hearing, all of the following apply to an appeal of that order:

- The facility may request a hearing not later than ten days after receiving the notice;
- If a timely request for a hearing is made, the hearing must commence within 30 days;
- After commencing, the hearing must continue uninterrupted on business days unless the parties agree otherwise;

- If the hearing is conducted by a hearing examiner, the examiner must file a report and recommendations with OhioMHAS within ten days after the later of the hearing ending, a transcript being received, or briefs being received, as applicable;
- A written copy of the report and recommendations must be sent by certified mail to the facility or the facility's attorney, if applicable, within five days of the report being filed with OhioMHAS;
- The facility may file objections within five days of receiving the report;
- OhioMHAS must issue an order approving, modifying, or disapproving the report and recommendations within 15 days of it being filed by the hearing examiner;
- OhioMHAS must lift the order suspending admissions if it determines that the violation that formed the basis for the order has been corrected.

## **Procedures**

The bill specifies that in proceedings to suspend admissions, or to deny an application, refuse to renew, or revoke a license or certification, OhioMHAS may take those actions regardless of whether some or all of the deficiencies that prompted the proceedings have been corrected at the time of the hearing. When OhioMHAS issues an order related to those proceedings or actions it may not permit an opportunity for submitting a plan of correction.

The bill also makes changes regarding hospitals that receive mentally ill persons, residential facilities, and community mental health and addiction services providers, to specify that proceedings initiated to deny applications for licenses or certification, to refuse to renew, or to revoke those licenses or certifications are governed by the Administrative Procedure Act. If an order suspending admissions has been issued, it remains in effect during the pendency of the proceedings.

## **Certifiable services and supports**

(R.C. 5119.36 and 5119.99)

Under current law, OhioMHAS certifies certifiable services and supports provided by community mental health services providers and community addiction services providers. The bill specifies that the OhioMHAS Director may refuse to certify certifiable services and supports, refuse to renew certification, or revoke certification if any of the following apply to an applicant or the holder of a certification:

- The applicant or holder is not in compliance with OhioMHAS rules;
- The applicant or holder has been cited for a pattern of serious noncompliance or repeated violations of statutes or rules during the current or any previous certification period;
- The applicant or holder submits false or misleading information as part of a certification application, renewal, or investigation.

Also regarding certification, the bill eliminates existing requirements that the Director (1) identify areas of noncompliance for an applicant who does not satisfy certification standards and (2) provide applicants with reasonable time to demonstrate compliance.

## **Licensing boards and confidential treatment and monitoring programs**

(Section 337.40)

The bill earmarks funding to be used to expand existing or support new confidential treatment and monitoring programs offered by occupational licensing boards to licensed healthcare workers with mental health or substance use disorders. It also authorizes an occupational licensing board to contract with a monitoring organization to administer a confidential treatment and monitoring program, but only if the organization meets all of the following requirements:

1. Is organized as a not-for-profit entity and exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code;

2. Contracts with or employs to serve as the organization's medical director an individual who is an Ohio-licensed physician or has training and expertise in addiction medicine or psychiatry; and

3. Contracts with or employs one or more individuals licensed by the State Board of Psychology, the Chemical Dependency Professionals Board, and the Counselor, Social Worker, and Marriage and Family Therapist Board as necessary for the organization's operation.

## **Confidentiality of substance use disorder records**

(R.C. 5119.27)

The bill modifies requirements for maintaining confidentiality of records or information regarding drug treatment programs and services that are licensed or certified by OhioMHAS. In their place, the bill establishes confidentiality requirements based on federal law and applies those requirements to records or information regarding federally assisted programs for substance use disorder treatment. The bill requires the disclosure of any confidential information to comply with the federal requirements.

As part of updating the confidentiality requirements, when referring to programs used within the criminal justice system, the bill updates outdated references to "rehabilitation in lieu of conviction" to instead refer to "intervention in lieu of conviction."

## **Opioid treatment programs**

(R.C. 5119.37; Section 337.200)

### **License expiration**

The bill generally extends the license period for opioid treatment programs (OTPs) to two years, from one year under current law. In conjunction with that change, it requires OhioMHAS to inspect all community addiction services providers licensed to operate OTPs at least biennially, as opposed to annually under current law.

The bill provides an exception to biennial licensure if the OhioMHAS Director has concerns about an OTP's compliance record. In that case, the Director may stipulate annual licensure.

## **Employees**

The bill permits a community addiction services provider to employ an individual who receives medication-assisted treatment from the provider. Such employment is prohibited under current law.

## **Substance use disorder stabilization centers**

The bill requires ADAMHS boards to submit to the OhioMHAS Director a plan for the establishment and administration, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, acute substance use disorder stabilization centers. There must be at least one center in each state psychiatric hospital region.

## **Substance use disorder treatment in drug courts**

(Section 337.60)

The bill continues a requirement from previous biennia that OhioMHAS conduct a program to provide substance use disorder treatment, including medication-assisted treatment and recovery supports, to persons who are eligible to participate in a medication-assisted treatment (MAT) drug court program. OhioMHAS's program is to be conducted in a manner similar to programs that were established and funded by the previous three main appropriations acts. The bill, however, modifies the program by also permitting the program to include services for withdrawal management or detoxification, including drugs used for those services.

In conducting the program, OhioMHAS must collaborate with the Ohio Supreme Court, the Department of Rehabilitation and Correction, and any state agency that may be of assistance in accomplishing the objectives of the program. OhioMHAS also may collaborate with the ADAMHS board that serves the county in which a participating court is located and with the local law enforcement agencies serving that county.

OhioMHAS must conduct its program in collaboration with any counties in Ohio that are conducting MAT drug court programs. It also may conduct its program in collaboration with any other court with a MAT drug court program.

## **Selection of participants**

A MAT drug court program must select the participants for OhioMHAS's program. The participants are to be selected because of having a substance use disorder. Those who are selected must be either (1) criminal offenders, including offenders under community control sanctions, or (2) involved in a family drug or dependency court. They must meet the legal and clinical eligibility criteria for the MAT drug court program and be active participants in that program or be under a community control sanction with the program's participating judge. The total number of participants in OhioMHAS's program at any time is limited to 1,500, subject to available funding. OhioMHAS may authorize additional participants in circumstances it considers appropriate. After being enrolled, a participant must comply with all of the MAT drug court program's requirements.



## Treatment

Only a community addiction services provider is eligible to provide substance use disorder treatment, including any recovery supports, under OhioMHAS's program. The provider must:

- Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the provider;
- Assess potential program participants to determine whether they would benefit from treatment and monitoring;
- Determine, based on the assessment, the treatment needs of the participants;
- Develop individualized goals and objectives for the participants;
- Provide access to the drug therapies that are included in the program's treatment;
- Provide other types of therapies, including psychosocial therapies, for both substance abuse disorder and any co-occurring disorders;
- Monitor program compliance through the use of regular drug testing, including urinalysis, of the participants; and
- Provide access to time-limited recovery supports that are patient-specific and help eliminate barriers to treatment, such as assistance with housing, transportation, child care, job training, obtaining a driver's license or state identification card, and any other relevant matter.

Regarding the drug therapies included in the program's substance use disorder treatment, the following apply:

- A drug may be used only if it is (1) a drug that is federally approved for use in medication-assisted treatment, which involves treatment for alcoholism, drug addiction, or both, or (2) a drug that is federally approved for use in, or a drug in standard use for, mitigating alcohol or opioid withdrawal symptoms or assisting with detoxification;
- One or more drugs may be used, but each drug that is used must constitute either or both: (1) long-acting antagonist therapy or partial or full agonist therapy or (2) alpha-2 agonist therapy for withdrawal management or detoxification;
- If a partial or full agonist therapy is used, the program must provide safeguards, such as routine drug testing of participants, to minimize abuse and diversion.

## Planning

To ensure that funds appropriated to support OhioMHAS's program are used in the most efficient manner, with a goal of enrolling the maximum number of participants, the bill requires the Medicaid Director to develop plans in collaboration with major Ohio health care plans. However, there can be no prior authorizations or step therapy for program participants to have access to any drug included in the program's substance use disorder treatment. The plans must ensure:

- The development of an efficient and timely process for review of eligibility for health benefits for all program participants;
- A rapid conversion to reimbursement for all health care services by the participant's health care plan following approval for coverage of health care benefits;
- The development of a consistent benefit package that provides ready access to and reimbursement for essential health care services, including primary health care, alcohol and opioid detoxification services, appropriate psychosocial services, drugs used in medication-assisted treatment, and drugs used in withdrawal management or detoxification; and
- The development of guidelines that require the provision of all treatment services, including medication, with minimal administrative barriers and within time frames that meet the requirements of individual patient care plans.

## **County jails reimbursed for substance use treatment drugs**

(R.C. 5119.191)

The bill creates an OhioMHAS-administered program to reimburse counties for the cost of drugs administered or dispensed to county jail inmates for treatment related to drug and alcohol use or addiction. It applies to drugs used in medication-assisted treatment and drugs used in withdrawal management or detoxification. OhioMHAS must allocate funds to each county for reimbursement based on factors it considers appropriate.

Drugs used in medication-assisted treatment must be approved by the U.S. Food and Drug Administration for that purpose, which applies to alcoholism, drug addiction, or both. Drugs used in withdrawal management or detoxification also must be federally approved, or in standard use for, mitigating opioid or alcohol withdrawal symptoms or assisting with detoxification. The bill specifies that the drugs include oral, injectable, long-acting, or extended-release forms of full agonists, partial agonists, antagonists, and, in the case of drugs used in withdrawal management or detoxification, alpha-2 adrenergic agonists. Each county must ensure that inmates have access to any such prescribed drugs that are covered under Medicaid's fee-for-service component.

The OhioMHAS Director is permitted to adopt rules to implement the program. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

## **Pilot to dispense controlled substances in lockable containers**

(Sections 337.205 and 337.40)

The bill requires OhioMHAS to operate a pilot program under which participating pharmacies will dispense schedule II controlled substances in pill form in lockable containers or tamper-evident containers. The pilot is to be operated for the earlier of two years or until appropriated funds – \$1 million in each fiscal year – are expended.

The bill defines "lockable container" as a container that (1) has "special packaging," which is generally defined under federal law as packaging designed to be significantly difficult for

children to open, but not difficult for normal adults to use,<sup>108</sup> and (2) can be unlocked physically using a key, or physically or electronically using a code or password. “Tamper evident container” is defined by the bill as a container that has special packaging and displays a visual sign in the event of unauthorized entry or displays the time the container was last opened.

### **Pharmacy participation and reimbursement**

Any pharmacy may volunteer to participate in the pilot program. Participating pharmacies are required to dispense schedule II controlled substances in lockable or tamper-evident containers unless the patient or an individual acting on the patient’s behalf requests otherwise.

OhioMHAS must reimburse pharmacies for expenses incurred in participating in the pilot program, including a dispensing fee to be determined by OhioMHAS. Expenses a pharmacy incurs for the containers cannot be charged to a patient, an individual acting on behalf of the patient, or a health insurer or other third-party payer.

### **Report**

The bill requires OhioMHAS to prepare a report at the conclusion of the pilot program and submit it to the General Assembly. In preparing the report, OhioMHAS must contract with a third-party research organization to assess whether a measured decrease in diversion of schedule II controlled substances occurred regarding drugs dispensed through the program as compared to those dispensed outside of the program.

### **Qualified immunity**

The bill grants immunity from liability to pharmacists, pharmacist delegates, and pharmacies for actions taken in good faith in accordance with the bill. The qualified immunity applies to damages in a civil action, criminal prosecution, and professional disciplinary action.

### **Rules**

OhioMHAS may adopt rules to administer the pilot program. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

## **ADAMHS boards**

### **Board size after withdrawing from a joint-county district**

(R.C. 340.022)

The bill modifies the composition and appointment requirements for certain alcohol, drug addiction, and mental health services (ADAMHS) boards.

Current law requires ADAMHS boards to consist of 18 or 14 members. The law authorized a board, if it elected by September 30, 2013, and received approval of the board of county commissioners and notified the OhioMHAS Director by January 1, 2014, to reduce from 18 to 14 members.

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<sup>108</sup> “Poison Prevention Packaging Act of 1970,” 15 U.S.C. 1471.

The bill provides that, notwithstanding the size requirements of current law, if the OhioMHAS Director approves, between January 1, 2021, and December 31, 2022, a board of county commissioners of a county with a population between 70,000 and 80,000 (according to 2010 federal census data) to withdraw from a joint-county alcohol, drug addiction, and mental health service district, the following apply options to an ADAMHS board that is formed as a result:

- A board established on or after the date the Director grants approval can consist of 18 members, 14 members, or between seven and nine members, as determined by the board of county commissioners;
- A board existing immediately before the date the Director grants the approval may continue as an 18- or 14-member board or be reduced to between seven and nine members.

For a newly established board, initial appointments must be staggered among the members as equally as possible with terms of two years, three years, and four years.

For an existing board, the board of county commissioners has six months after the Director's approval to make an election to reduce the board size. Before exercising the option, the board of county commissioners must notify the ADAMHS board and provide an opportunity for the ADAMHS board to participate in a public hearing, in accordance with Ohio's open meetings law. The reduction may occur by attrition as vacancies occur.

### **Composition and appointment of members**

The bill requires the OhioMHAS Director to appoint four members of an 18-member board, three members of a 14-member board, and two members of a seven- to nine-member board. In turn, the bill requires the board of county commissioners to appoint 14 members of an 18-member board, 11 members of a 14-member board, and the remaining members of a seven- to nine-member board.

As part of these appointments, the bill requires the OhioMHAS Director and the board of county commissioners to ensure that:

1. At least one member of the board is a person who has received or is receiving mental health services or is a parent or other relative of such a person; and
2. At least one member of the board is a person who has received or is receiving addiction services or is the parent or guardian of such a person.

### **Board size after joining a joint-county district**

The bill also includes provisions permitting an ADAMHS board meeting certain criteria to expand its membership. If a county with a population between 35,000 and 45,000 (according to 2010 federal census data) joins an existing alcohol, drug addiction, and mental health service district between June 30, 2021, and June 30, 2023, the bill permits the existing ADAMHS board serving that district and that is 14 members to expand its membership to 18 members. The board's option to expand from 14 to 18 members is available for only one year, beginning on the date the county joins the joint-county service district. The bill specifies that the additional

ADAMHS board members are to be appointed in the same manner as under current law for other ADAMHS boards.

### **Mental health crisis stabilization centers**

(Sections 337.40 and 337.130)

The bill continues a requirement, first established for the FY 2019-FY 2020 biennium, that OhioMHAS allocate among the ADAMHS boards, in each of FY 2022 and FY 2023, \$1.5 million for six mental health crisis stabilization centers. Each board must use its allocation to establish and administer a stabilization center in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region. At least one center must be located in each of the six state psychiatric hospital regions.

ADAMHS boards must ensure that each center complies with the following:

- It must admit individuals before and after they receive treatment and care at hospital emergency departments or freestanding emergency departments;
- It must admit individuals before and after they are confined in state correctional institutions, local correctional facilities, or privately operated and managed correctional facilities;
- It must have a Medicaid provider agreement;
- It must admit individuals who have been identified as needing the stabilization services provided by the center;
- It must connect individuals when they are discharged from the center with community-based continuum of care services and supports.

### **Pediatric behavioral health workforce support**

(Sections 337.210 and 337.10)

The bill requires the OhioMHAS Director to establish a program for the purpose of attracting, training, supporting, and retaining individuals involved in the behavioral health workforce to improve access for pediatric patients to evidence-based prevention and inpatient and outpatient services, including at Ohio's children's hospitals. The funding appropriated for the program in the bill is to be used for (1) loan repayment and forgiveness, scholarships, and other forms of tuition assistance for pediatric behavioral health providers practicing in pediatric inpatient and outpatient settings and (2) fellowships for the pediatric behavioral health workforce.

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## DEPARTMENT OF NATURAL RESOURCES

### Division of Wildlife

- Eliminates the nonresident Lake Erie Sport Fishing District permit.
- Removes the \$500,000 cap on annual expenditures from the Wildlife Boater Angler Fund that the Division of Wildlife may make to pay for equipment and personnel costs associated with boating access improvements.
- Reduces, from \$11.50 to \$11.00, the fees for a senior deer permit and senior wild turkey permit, available to Ohio residents 66 and older.
- Removes superfluous definitions of “resident” and “nonresident” in the law governing deer and wild turkey permits.
- Reduces multi-year hunting license fees and senior multi-year fishing license fees.
- Increases adult multi-year fishing license fees.

### Division of Mineral Resources Management

#### Performance security for coal mining operations

- Requires a coal mining and reclamation permittee to submit full performance security instead of using partial security and money from the existing Reclamation Forfeiture Fund for purposes of land reclamation if:
  - Ownership and operational control of the permittee has been transferred, assigned, or sold; and
  - The transferee has not held a mining permit in Ohio for at least five years.
- Specifies that this restriction applies even if the status and name of the permittee otherwise remain the same.

#### Deputy mine inspector eligibility requirements

- Allows an applicant for the position of deputy mine inspector of underground coal mines or underground noncoal mines to have experience in any underground mine located anywhere as long as the total experience equals six years.
- Allows an applicant for the position of deputy mine inspector of surface mines to have experience in surface mines located anywhere as long as the total experience equals six years.

#### Reciprocity for mine personnel

- Authorizes the Chief of the Division of Mineral Resources Management to issue a certificate to work as a mine foreperson, foreperson, or mine electrician to an out-of-state applicant if:

- The applicant holds a valid certification or other authorization from a state with which the Department of Natural Resources (DNR) has a reciprocal agreement; and
- The applicant passes an examination on Ohio mining law or other topics determined by the Chief.
- Allows an out-of-state mine foreperson, foreperson, or mine electrician (working under a reciprocal agreement) who has been issued a temporary certificate to act as a foreperson or mine electrician in Ohio prior to the provision's effective date to continue to work under that temporary certificate until it expires.

## **Division of Oil and Gas Resources Management**

### **Oil and gas well plugging**

- Authorizes the holder of a valid well drilling permit to obtain approval from the Division of Oil and Gas Resources Management to plug that well without obtaining a permit to plug and abandon it if an oil and gas inspector approves it and either of the following apply:
  - The well was drilled to total depth and the well cannot or will not be completed; or
  - The well is a lost hole or a dry hole.
- Requires the plugging of a well drilled to total depth that cannot or will not be completed to be completed within 30 days of the inspector's approval.
- Requires the plugging of a lost hole or dry hole to be completed immediately after determining that the well is a lost hole or dry hole in accordance with rules.
- Clarifies that the Chief of the Division may plug and abandon wells without a permit to do so.
- Specifies that the \$250 application fee for a permit to plug and abandon it is nonrefundable and applies even if oil or gas has not been produced from the well.
- Requires any person undertaking plugging, other than a well owner already required to maintain an insurance policy under current law, to obtain \$1 million in bodily injury and property damage insurance coverage (or \$3 million if the well is in an urbanized area).
- Requires a person to electronically submit proof of that insurance to the Chief on the Chief's request.

### **Defective well casing and plugging requirements**

- Prohibits any person (rather than only the owner of a well, as in current law) from constructing a well that causes damage to other permeable strata, underground sources of drinking water, or the surface of the land or that threatens the public health and safety or the environment.
- Prohibits any person or an owner of a well from operating a well in a way that causes the damage specified above or threatens the public health and safety or the environment.

- Retains current law prohibiting the owner of a well from allowing a well to leak fluid or gases, but eliminates the requirement that the leak must be due to defective casing and either:
  - Cause the damages specified above; or
  - Threaten the public health and safety or the environment.
- Requires either a person that owns a well to notify the Chief of well or casing defects within 24 hours of discovering the defect, rather than only requiring the owner of the well to do so, as in current law.
- Requires either the person that owns a well or that is responsible for the well to immediately repair any defects or to plug it, rather than only requiring the owner of the well to do so, as in current law.
- Requires the Chief to issue a plugging order to either the person that owns the well or the person that is responsible for the well when the Chief determines the well should be plugged, rather than only requiring the owner of the well to do so, as in current law.

## **Oil and Gas Leasing Commission**

- Renames the Oil and Gas Leasing Commission the Oil and Gas Land Management Commission.
- Specifies that the state's policy is to promote exploration for, development of, and production of oil and natural gas resources owned or controlled by the state, rather than to provide access and support for those activities, as in current law.
- Revises the membership of the Commission.
- Requires the Commission to hire at least one person to provide clerical and other services.
- Requires money received by a state agency in exchange for the lease of a formation under state agency-owned land for oil and gas development to be deposited into State Land Royalty Fund.
- Authorizes a state agency to use distributions from that fund for any purpose the agency deems necessary, rather than for capital costs and land acquisition as in current law.
- Eliminates the Forestry Minerals Royalty Fund and the Parks Minerals Royalty Fund used by the Division of Forestry and the Division of Parks and Watercraft respectively for capital expenditures and land acquisition (the divisions will continue to receive distributions from the State Land Royalty Fund).
- Eliminates signing fees, rentals, and royalty payments received by the Division of Wildlife for leases of its land as a source of revenue for the Wildlife Habitat Fund, and instead requires distributions to the Division from State Land Royalty Fund.
- Retains a requirement that 30% of proceeds from a lease for oil and gas development under a state park be deposited into the fund that supports that state park.



- Allows a state agency to lease state agency-owned land (until the Commission adopts rules specifying a standard lease agreement and any other necessary procedures or requirements) for oil and gas development on terms that are just and reasonable, as determined by the custom and practice of the oil and gas industry.
- Specifies such a lease must at least include the elements required to be included in the standard lease agreement.
- Adds new elements to the required standard lease form that must be used by a state agency when leasing state agency-owned land for oil and gas development.
- Requires the Commission to establish a standard surface use agreement form that must be used by a state agency to authorize the use of the surface of a parcel of leased land.
- Revises requirements and procedures concerning the nomination of state agency-owned formations to the Commission for lease and bidding on such leases.
- Revises requirements concerning the notification of nomination decisions and advertisement of bids.
- Specifies that certain information included in a nomination or a bid for a lease is confidential, may not be disclosed by the Commission, and is not a public record.
- Specifies that the Commission is not subject to certain administrative rulemaking requirements.

## **Division of Water Resources**

- Revises the amount of the surety bond that an applicant for a dam or levee construction permit must obtain and bases the amount on the estimated costs of construction.
- Authorizes the Chief of the Division of Water Resources to reduce the required surety amount for specified reasons.
- Authorizes the Chief to assess a civil penalty of up to \$5,000 per day for each day of each violation of the laws governing dams and levees and water diversions and withdrawals or any term or condition of a permit issued under them.
- Disburses money derived from costs and civil penalties to either the Dam Safety Fund or the Water Management Fund, depending on whether violations are committed under the law governing dam safety or the law governing water diversions and withdrawals.
- Requires criminal fines collected from violators of laws governing water well constructions logs and water diversions and withdrawals to be credited to the Water Management Fund, rather than the Dam Safety Fund as under current law.

## **Division of Parks and Watercraft**

- Prohibits a person from operating a watercraft in Ohio if it displays an identification number or registration decal that: (1) is fictitious, (2) is counterfeit or an unlawfully made copy, or (3) belongs to another watercraft.

- Increases the damage threshold that triggers a required watercraft accident report from \$500 to \$1,000.

## **Division of Forestry**

### **Forestry projects on federal land**

- Allows the Chief of the Division of Forestry to enter into agreements with the federal government for forest management projects, including timber sales, pursuant to federal law.
- Allows the Chief to sell timber and other forest products from federal lands in accordance with the terms of an agreement with the federal government.
- Requires the Chief to deposit money received from timber sales from federal lands into the existing State Forest Fund.
- Allows the money derived from those timber sales to be used for forest management projects associated with federal lands.

### **Wildfire reimbursement to firefighting agencies**

- Allows the DNR Director to reimburse firefighting agencies and private fire companies for costs associated with certain fire assistance activities if those costs are eligible in accordance with an agreement between the Division and the federal government.

### **State employees aid in out-of-state wildfires**

- Specifies that all DNR and Department of Commerce employees whom the Chief sends to another state to assist with forest fires are eligible for regular employment benefits and are immune from civil liability when performing duties within the scope of employment, rather than solely DNR's Division of Forestry employees as in current law.

## **Division of Geological Survey**

- Eliminates the Ohio Geology license plate (which is not currently issued by the BMV).
- Correspondingly, eliminates the \$15 contribution for each license plate, which is deposited in the Geological Mapping Fund and must be used to award grants to graduate-level educational institutions for geology-related research activities and providing geology kits to primary and secondary schools.
- Instead, allows the Chief of the Division of Geological Survey to spend any money deposited in the Geological Mapping Fund (not just money from license plate proceeds) for the grants and kits.
- Adds to the purposes for which money in the fund may be used by allowing the Chief to issue grants to collegiate geology departments for undergraduate geological research.

## Other provisions

### Doris Duke Woods

- Designates 120 contiguous acres of Malabar State Park’s most mature hardwood forest located between Bromfield Road and State Route 95 as the “Doris Duke Woods” at Malabar State Park.
- Requires the DNR Director, by October 31, 2021, to designate the Woods as a state nature preserve.
- Specifies that DNR may not remove or allow any person or governmental entity to remove timber from the Woods, except for normal maintenance.
- Specifies that DNR must maintain and keep open to the public any public hiking and horse trails that existed in the Woods prior to its designation.
- Specifies that DNR must allow the use of the Woods for maple syrup harvesting purposes.

### Agreements between DNR and the Malabar Farm Foundation

- Requires the DNR Director to enter into a cooperation agreement with the Malabar Farm Foundation for two years beginning on the date of execution that specifies various terms and provisions.
- Requires the Director to enter into a lease agreement with the Foundation for two years beginning on the date of execution that specifies various terms and provisions, including the leasing of office space to the Foundation.

### Local payments for DNR land

- Requires DNR to reimburse school districts and other taxing authorities for forgone property tax revenue resulting from the state’s acquisition of certain DNR land after 2017.

### Geneva Lodge and Conference Center ownership transfer

- Requires the DNR Director to assume ownership and operation of the Geneva Lodge and Conference Center from Ashtabula County by December 31, 2021.
- Appropriates \$2,800,000 during the biennium ending June 30, 2023, to the State Park Fund to make lease or mortgage payments for the Geneva Lodge and Conference Center.

## Division of Wildlife

### Lake Erie Sport Fishing District permit

(R.C. 1533.38, repealed; conforming changes in R.C. 1531.01, 1533.01, and 1533.101)

The bill eliminates the Lake Erie Sport Fishing District permit that:

1. The Division of Wildlife issues to non-Ohio residents to fish in Lake Erie, its embayments, and other specified areas connected to Lake Erie; and

2. Allows permittees to fish in the District between January and April.

Currently, each applicant must pay a \$10 annual fee for the permit, which is deposited into the Wildlife Fund. A nonresident who wishes to fish in the district must obtain this permit in addition to the nonresident annual fishing license. Thus, under the bill, a nonresident need to obtain only a nonresident fishing license to fish in the District.

### **Wildlife Boater Angler Fund**

(R.C. 1531.35)

The bill removes the \$500,000 cap on annual expenditures from the Wildlife Boater Angler Fund that the Division of Wildlife may make for equipment and personnel costs associated with boating access improvements. Under current law, the fund generally consists of money derived from a portion of the motor fuel excise tax. Money in the fund is used primarily for the acquisition, development, and maintenance of boating access areas.

### **Senior deer and wild turkey fees**

(R.C. 1533.11)

The bill reduces, from \$11.50 to \$11.00, the fees for a senior deer permit and senior wild turkey permit, available to Ohio residents 66 and older.

It also removes superfluous definitions of “resident” and “nonresident” in the law governing deer and wild turkey permits (those definitions already exist in R.C. 1531.01 and 1533.01 and apply to the laws governing hunting and fishing).

### **Lifetime and multi-year hunting and fishing fees**

(R.C. 1533.321)

The bill decreases the following hunting and fishing fees:

| <b>Hunting and fishing fee decreases</b> |                    |                 |
|--|--------------------|-----------------|
| <b>License</b>                           | <b>Current law</b> | <b>H.B. 110</b> |
| Senior 3-year hunting or fishing license | \$27.50            | \$26.00         |
| Senior 5-year hunting or fishing license | \$45.75            | \$43.34         |
| Youth 3-year hunting license             | \$27.50            | \$26.00         |
| Youth 5-year hunting license             | \$45.75            | \$43.34         |
| Youth 10-year hunting license            | \$91.50            | \$86.67         |
| Adult 5-year hunting license             | \$86.75            | \$86.67         |
| Adult 10-year hunting license            | \$173.50           | \$173.34        |

| Hunting and fishing fee decreases |             |          |
|-----------------------------------|-------------|----------|
| License                           | Current law | H.B. 110 |
| Adult lifetime hunting license    | \$450.00    | \$432.00 |

It increases the following fishing fees:

| Fishing fee increases          |             |          |
|--------------------------------|-------------|----------|
| License                        | Current law | H.B. 110 |
| Adult 3-year fishing license   | \$52.00     | \$69.34  |
| Adult 5-year fishing license   | \$86.75     | \$115.56 |
| Adult 10-year fishing license  | \$173.50    | \$231.12 |
| Adult lifetime fishing license | \$450.00    | \$576.00 |

## Division of Mineral Resources Management

### Performance security for coal mining operations

(R.C. 1513.08)

Current law requires a coal mining and reclamation permit applicant to provide their own performance security in a specified amount or a combination of their own performance security and reliance on the Reclamation Forfeiture Fund. If the applicant relies partly on the fund, it must pay an additional coal severance tax, which is credited to the fund. The performance security options are available to any coal mining and reclamation permittee, no matter how long the permittee has held a permit.

The bill requires a coal mining and reclamation permittee to submit full performance security instead of using partial security and money from the Reclamation Forfeiture Fund for purposes of land reclamation if:

1. Ownership and operational control of the permittee has been transferred, assigned, or sold; and
2. The transferee has not held a mining permit in Ohio for at least five years.

It also specifies that this restriction applies even if the status and name of the permittee otherwise remain the same.

## **Deputy mine inspector eligibility requirements**

(R.C. 1561.12)

Current law requires an applicant for the position of deputy mine inspector of underground mines with the Division of Mineral Resources Management to have six years practical experience, at least two of which must have been in underground mines in Ohio. In the case of an applicant who would inspect coal mines, the two years must be in coal mines in Ohio. The bill does the following:

1. Eliminates the requirement that two of the six years of experience be in Ohio underground coal mines for an underground coal mine inspector;
2. Eliminates the requirement that two of the six years of experience be in Ohio underground noncoal mines for an underground noncoal mine inspector; and
3. Allows the experience for either type of inspector to be in *any* underground mine, rather than in specific mining operations as under current law.

Thus, the applicant can have experience in any underground mine located anywhere as long as the total experience equals six years.

Regarding the six years of work experience required for the position of deputy mine inspector of surface mines, the bill eliminates the requirement that two of the six years be in Ohio surface mines. Thus, the applicant can have experience in surface mines located anywhere as long as the total experience equals six years.

## **Reciprocity for mine personnel**

(R.C. 1561.23)

The bill authorizes the Chief of the Division of Mineral Resources Management to issue a certificate to work as a mine foreperson, foreperson, or mine electrician to an out-of-state applicant if:

1. The applicant holds a valid certification or other authorization from a state with which ODNR has a reciprocal agreement for the certification or authorization; and
2. The applicant passes an examination on Ohio mining law or other topics determined by the Chief.

Under continuing law, a mine foreperson is the person whom the operator or superintendent of a mine places in charge of the mine. A foreperson assists the mine foreperson in the immediate supervision of a mine.

The bill also allows an out-of-state mine foreperson, foreperson, or mine electrician (working under a reciprocal agreement) who has been issued a temporary certificate to act as a mine foreperson, foreperson, or mine electrician in Ohio prior to the bill's effective date to continue to work under that temporary certificate. The person may continue to operate under the temporary certificate until it expires or the Chief suspends or revokes it.

Current law allows an out-of-state mine foreperson, foreperson, and mine electrician who holds a valid certificate or other authorization for the position to work under a temporary

certificate in an emergency. To be eligible for a temporary certificate, the foreperson or electrician must give the Chief a copy of the certificate or other authorization from their home state. A temporary certificate is valid for six months.

## **Division of Oil and Gas Resources Management**

### **Oil and gas well plugging**

(R.C. 1509.13)

The bill authorizes the holder of a valid permit to drill a well to obtain approval from the Division of Oil and Gas Resources Management to plug that well without obtaining a permit to plug and abandon it, if an oil and gas inspector approves it and one of the following apply:

1. The well was drilled to total depth and the well cannot or will not be completed; or
2. The well is a lost hole or a dry hole.

The bill requires the permit holder plugging a well that was drilled to a total depth and that cannot or will not be completed to do so within 30 days of the inspector's approval. A permit holder plugging a lost hole or dry hole must do so immediately after determining that the well is a lost hole or dry hole in accordance with rules. The bill clarifies that the Chief of the Division need not obtain a permit to plug and abandon or follow these procedures in order to plug and abandon a well.

Under current law, a person is generally required to obtain a permit to plug and abandon a well. But a well owner with a valid permit to drill the well may do so without a permit to plug and abandon it if an inspector approves the plugging so that it can be completed without undue delay. Current law does not impose the conditions or the timeframe for plugging specified by the bill. The bill eliminates this process for plugging and abandoning a well without a permit.

The bill specifies that the \$250 application fee for a permit to plug and abandon is nonrefundable and applies even if oil or gas has not been produced from the well. Under current law, an applicant generally must pay this application fee only if the well has produced oil or gas.

Finally, the bill requires any person undertaking plugging a well under a permit to obtain \$1 million in bodily injury and property damage insurance coverage (\$3 million if the well is located in an urbanized area), including for damages caused by the plugging of the well. The person must submit proof of insurance electronically to the Chief on the Chief's request. The bill specifies that a well owner already required to obtain an insurance policy for purposes of a well drilling permit does not need to obtain insurance under this requirement.

### **Defective well casing and plugging requirements**

(R.C. 1509.12)

The bill prohibits any person from constructing a well that causes damage to other permeable strata, underground sources of drinking water, or the surface of the land or that threatens the public health and safety or the environment. It also prohibits any person or an owner of a well from *operating* a well in a way that causes those damages or threatens the public health and safety or the environment. Current law prohibits only the owner of a well from

constructing a well in this manner and does not specifically prohibit those damages or threats to the public health and safety or the environment caused by well operation.

The bill retains current law that prohibits the owner of a well from allowing a well to leak fluid or gases, but it eliminates the requirement that the leak must be due to defective casing and either:

1. Cause the damages specified above; or
2. Threaten the public health and safety or the environment.

Under the bill, either the person that owns a well or the person responsible for that well must notify the Chief of well or casing defects within 24 hours of discovering the defect. Further, either the person who constructed the well or the owner of the well must correct the defects or plug the well. Current law requires the notification and corrective action to be completed solely by the owner of the well.

When the Chief finds that a well should be plugged, the bill requires the Chief to order either the person that owns the well or the person responsible for it to plug it. The bill prohibits any person from failing to comply with that order. Under current law, the Chief can only issue the order to the owner.

## **Oil and Gas Leasing Commission**

(R.C. 131.50, 155.29, 155.30, 155.31, 155.32, 155.33, 155.34, 155.35, 155.36, 155.37, 1505.09, 1509.28, and 1531.33; repealed R.C. 1503.012, 1509.76, and 1546.24; Section 715.10)

The Oil and Gas Leasing Commission is responsible for overseeing the lease of state agency-owned mineral rights for oil and gas development. Initial appointments to the Commission were required to occur in 2011, but were not made until 2018. To date, the Commission has not adopted rules specifying nomination and leasing procedures for state agency-owned land as required by current law.

### **Renaming and membership**

The bill renames the Commission the Oil and Gas Land Management Commission. It also specifies that it is the state's policy to promote exploration for, development of, and production of oil and natural gas resources owned or controlled by the state, rather than to provide access and support for those activities, as in current law.

The bill revises the membership of the Commission by doing both of the following:

- Replacing the Chief of the Division of Geological Survey with the ODNR Director or the Director's designee and applying the current requirement that that member serve as chairperson of the Commission;
- Eliminating a requirement that the two members currently required to be recommended by a statewide organization representing the oil and gas industry be selected from a list of at least four people with that background, but specifying that those two members must have knowledge or experience in the oil and gas industry.



The bill specifies that the replacement of the Chief of the Division of Geological Survey with the DNR Director or the Director's designee as chairperson is intended to occur on the bill's effective date.

It also requires the Commission to hire at least one person to provide clerical and other services not later than 90 days after the provision's effective date. Under current law, ODNR must furnish those services and legal and technical services.

## Funding

The bill modifies how money from oil and gas leases is distributed to state agencies. Under current law, signing fees, rentals, and royalty payments received by a state agency from an oil and gas lease are distributed as follows:

- State Land Royalty Fund: most money from state-agency oil and gas leases is deposited in this fund. A state agency is entitled to receive from the fund the amount that the state agency contributed and a share of the investment earnings of the fund. The agency must use the amount received to acquire land and pay capital costs, including equipment and renovations and repairs of facilities;
- Park funds: If oil and gas development occurs under a state park, 30% of the proceeds of an oil and gas lease must be deposited into the fund that supports that state park;
- Forestry Minerals Royalty Fund: if the lease pertains to land owned or controlled by the DNR Division of Forestry, it must be deposited in this fund and used to acquire land for and pay capital costs of the Division;
- Parks Mineral Royalty Fund: if the lease pertains to land owned or controlled by the DNR Division of Parks and Watercraft, it must be deposited in this fund and used to acquire land for and pay capital costs of the Division;
- Wildlife Habitat Fund: if the lease pertains to land owned or controlled by the DNR Division of Wildlife, it must be deposited in this fund and used by the Division to acquire and develop lands for the preservation, propagation, and protection of wild animals.

Money from nomination and bid fees must be deposited into an administrative fund called the Oil and Gas Leasing Commission Fund. Money in the fund must be used by the Commission and DNR to pay for administrative expenses.

The modifications made by the bill do all of the following:

- Authorize state agencies to use money from the State Land Royalty Fund for **any** costs or expenses of the agency (rather than only for capital costs and land) as the agency determines necessary. When the state agency is DNR, each division within the Department is entitled to receive its proportionate share that is attributable to state land owned and controlled by that division;
- Eliminate the Forestry Minerals Royalty Fund and the Parks Mineral Royalty Fund. (The bill requires money received for leases of formations under the control of the Division of Forestry and the Division of Parks and Watercraft to be deposited in the State Land

Royalty Fund, distributed to the respective divisions as indicated above, and used for any costs and expenses of those divisions);

- Eliminate deposits in the Wildlife Habitat Fund if the lease pertains to land owned or controlled by the Division of Wildlife. (The bill requires money received for leases of formations under the control of the Division of Wildlife to be deposited in the State Land Royalty Fund, distributed to the Division as indicated above, and used for any costs and expenses of the Division); and
- Rename the Oil and Gas Leasing Commission Fund the Oil and Gas Land Management Commission Fund and eliminate ODNR as a recipient of money from the fund for administrative purposes.

### **Leasing procedures**

Under current law, until the Commission adopts rules governing leasing procedures, a state agency may lease a formation within a parcel of land for oil and gas development. The state agency must establish bid fees, signing fees, rentals, and at least a  $\frac{1}{8}$  landowner royalty. The bill eliminates an agency's authority to establish lease terms. Instead, it provides that the lease must (1) be on terms that are just and reasonable, as determined by the custom and practice of the oil and gas industry, and (2) include at least the terms required to be specified in the standard lease agreement that the Commission must establish as described below. The bill also eliminates a requirement that the agency consult with the Commission regarding the lease.

Under the bill, a formation is any of the following:

- The distance from the surface of the land to the top of the Onondaga limestone;
- The distance from the top of the Onondaga limestone to the bottom of the Queenston formation; or
- The distance from the bottom of the Queenston formation to the basement rock.

Under current law, a formation also includes the distance from the bottom of the Queenston formation to the top of the Trenton limestone, the distance from the top of the Trenton limestone to the top of the Knox formation, and the distance from the top of the Knox formation to the basement rock. The bill eliminates these references.

### **Standard lease agreement**

Under current law, the Commission must adopt rules establishing the standard lease agreement and any other necessary requirements and procedures. The rules establishing leasing procedures were required to be adopted by June 26, 2012 (within 270 days of the provision's effective date), but were never adopted. The bill instead requires the rules to be adopted within 120 days of the provision's effective date. It also adds new elements to the required standard lease form as follows:

- A prohibition against the use of the surface of the parcel of land for oil and gas development unless the state agency, in its sole discretion, chooses to negotiate and execute a standard surface use agreement;

- A  $\frac{1}{8}$  **gross landowner royalty** (current law specifies at least a  $\frac{1}{8}$  landowner royalty);
- A primary term of three years; and
- An option for the lessee to extend the primary term of the lease for an additional three years by tendering to the state agency the same bonus paid when first entering the lease.

A gross landowner royalty is a royalty based on proceeds received from the production of oil or gas without deduction for post-production costs, but less a proportionate share of any and all taxes and government fees levied on or as a result of the production. Post-production costs are all costs and expenses incurred between the wellhead and point of sale, including, without limitation, the costs of any treating, separating, dehydrating, processing, storing, gathering, transporting, compressing, and marketing.

### **Standard surface use agreement**

The bill also requires the Commission to establish, within 120 days of the provision's effective date, the standard surface use agreement form a state agency must use to authorize the use of the surface of a parcel of land it leases.

### **Administrative procedures**

The bill exempts the Commission from current law that requires a state agency to review existing rules and identify regulatory restrictions. Until June 30, 2023, that law prohibits a state agency from adopting a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.

### **Nomination**

The bill revises requirements and procedures for the submission of a nomination of a formation within a parcel of state agency-owned land. It includes the requirements and procedures in statutory law and eliminates the Commission's authority to adopt rules establishing the procedures and requirements. Specifically, the bill does all of the following regarding nominations:

- Authorizes any person or state agency (rather than only an owner with the right to drill for oil and gas) to nominate state agency-owned formations to the Commission for lease;
- Eliminates certain classification requirements and procedures (classes 1 through 4) regarding the nomination and lease of state agency-owned land (under current law, property is classified according to its amenability to oil and gas development);
- Requires the Commission to notify a state agency of a nomination and allows the state agency to submit comments regarding the nomination (in addition to objections, as in current law); and
- Requires a state agency to submit to the Commission any special terms or conditions (after nomination, but before nomination approval) it believes should apply to a lease of a formation under its land because of specific conditions that apply to land (current law requires these special terms and conditions to be submitted after a nomination has been approved by the Commission).

When a person nominates a formation within a parcel of land to the Commission, the bill requires the person to include in that nomination specified information, including all of the following:

- The name of the person making the nomination and the person's address, telephone number, and email address;
- An identification of the formation and parcel of land proposed to be leased that specifies all of the following:
  - The percentage of the interest owned or controlled by the state agency, and whether that interest is divided, undivided, or partial;
  - The source deed by book and page numbers, including the description and acreage of the parcel and an identification of the county, section, township, and range in which the parcel is located; and
  - A plat map depicting the area in which the parcel is located.
- If the person making the nomination is not a state agency, a nomination fee of \$150 (current law requires the nomination fee to be established in rules);
- The proposed lease bonus that applies to the nomination; and
- If the person making the nomination is not a state agency, proof that the person has met insurance and financial assurance requirements and obtained an identification number from the ODNR Division of Oil and Gas Resources Management.

The bill specifies that only the information identifying the parcel of land may be disclosed to the public until the Commission selects a bid for the nomination. Until bid selection, all other information is confidential, may not be disclosed by the Commission, and is not a public record. When a nomination is submitted to the Commission by a person that is not a state agency, the nomination is the opening bid, but that bid may be supplemented or amended during the bidding process established by the bill.

### **Notice of nomination decision**

The bill requires the Commission to post notice of its nomination decision on the Commission's website and send notice by email and certified mail to the person that submitted the nomination and the state agency that owns the relevant formation. Under current law retained by the bill, the Commission must approve or disapprove a nomination within two calendar quarters from the receipt of the nomination. However, current law only requires the Commission to send notice of the decision by certified mail to the person that submitted the nomination.

### **Advertisement of bids**

The bill requires the Commission to publish advertisements each calendar quarter for bids for oil and gas leases on the Commission's website, rather than requiring DNR to do so as in current law. The bill specifies that the advertisement must include an identification of each formation and parcel of land to be leased, the deadline for bid submission, and a statement that

each bid must contain all of the elements required by the bill's provisions governing bidding procedures (see below). The bill also eliminates a current requirement that the advertisement include a copy of the standard lease form. It retains a requirement that the advertisement include any special terms and conditions that apply to the lease and any other information that the Commission (DNR under current law) considers pertinent.

### **Bidding procedures and requirements**

Under the bill, bidding procedures and requirements are established in statute, rather than in Commission rules as in current law. A person interested in leasing a state agency-owned formation may submit a bid to the Commission on a parcel-by-parcel basis that contains all of the following:

- A bid fee of \$25;
- The name of the person making the bid and the person's address, telephone number, and email address;
- An identification of the formation and parcel of land, including all of the identifying information that was included in the nomination;
- The proposed lease bonus that applies to the bid;
- Proof that the person has met insurance and financial assurance requirements and obtained an identification number from the DNR Division of Oil and Gas Resources Management; and
- Any other information the person believes is relevant to the bid.

The bill specifies that information contained in a bid is confidential, must not be disclosed by the Commission, and is not a public record until a bid is selected by the Commission.

## **Division of Water Resources**

### **Dams and levees enforcement**

(R.C. 1521.06, 1521.061, and 1521.40)

The Division of Water Resources regulates dams and levees, water well logs, and water diversions and withdrawals from state waters. The bill alters the law governing these topics by doing both of the following:

1. Revising the application and financial responsibility requirements for dam or levee construction permits; and
2. Revising the Division Chief's enforcement authority, including authorizing the Chief to assess civil penalties for specified violations.

The table below discusses each of these changes in more detail by comparing the changes made by the bill to current law requirements.

| Current law  | H.B. 110   |
|--|--|
| <b>Financial responsibility – initial</b>  |  |
| <p>Requires an applicant for a dam or levee construction permit to file a surety bond equal to 50% of the estimated construction project costs.</p> <p>No provision.</p> | <p>Instead, generally requires an applicant to submit a surety bond equal to:</p> <ol style="list-style-type: none"> <li>1. \$50,000 for the first \$500,000 of the estimated cost of the project; plus</li> <li>2. 25% of the estimated cost for the next \$4.5 million; plus</li> <li>3. 10% of the estimated cost that exceeds \$5 million.</li> </ol> <p>Authorizes the Chief to reduce the above amount to the cost estimate for construction activities that would be necessary to render the dam nonhazardous if the estimate is provided by the applicant and approved by the Chief.</p> |
| <b>Civil penalties</b>   |  |
| <p>No provision.</p>   | <p>Authorizes the Chief to assess (and the Attorney General to recover) a civil penalty of up to \$5,000 per day for each day of violation of the laws governing dams and levees and water diversions and withdrawals, any rule adopted or issued under those laws, or any term or condition of a permit issued under those laws.</p>  |
| <b>Civil penalties – disbursement</b>  |  |
| <p>No provision.</p>   | <p>Requires civil penalties recovered by the Attorney General to be disbursed to the following funds:</p> <ol style="list-style-type: none"> <li>1. For violations of the law governing dams and levees, the Dam Safety Fund. (The Chief uses the fund to administer that Dam Safety Law.)</li> <li>2. For violations of the law governing water diversions and withdrawals, the Water Management Fund. (The Chief uses the fund to make loans and grants to governmental agencies for water management, water supply improvements, and planning.)</li> </ol>                                    |

| Current law   | H.B. 110   |
|---|--|
| <b>Recovery of costs incurred by the Division – disbursement</b>  |  |
| Requires money recovered by the Attorney General, for costs incurred by the Division in investigating, mitigating, or removing a violation of <i>any</i> law enforced by the Division, to be credited to the Water Management Fund. | Instead, requires money recovered by the Attorney General for costs to be disbursed to the following funds: <ol style="list-style-type: none"> <li>1. For a violation of the law governing dams and levees, the Dam Safety Fund;</li> <li>2. For a violation of the law governing water diversions and withdrawals, the Water Management Fund.</li> </ol>  |
| <b>Criminal fine – disbursement</b>   |  |
| Requires all criminal fines collected from violators of the laws governing dams and levees, water well construction logs, and water diversions and withdrawals to be credited to the Dam Safety Fund.                               | Instead, requires criminal fines collected under those laws to be credited as follows: <ol style="list-style-type: none"> <li>1. For fines collected for violations of the laws governing water well construction logs and water diversions and withdrawals, the Water Management Fund;</li> <li>2. For fines collected for violations of the law governing dams and levees, the Dam Safety Fund.</li> </ol> |

## Division of Parks and Watercraft

### Fraudulent watercraft identification

(R.C. 1547.533; 1547.99, not in the bill)

The bill prohibits a person from operating a watercraft in Ohio if it displays an identification number or registration decal that:

1. Is fictitious;
2. Is counterfeit or an unlawfully made copy; or
3. Belongs to another watercraft.

A person who violates this prohibition is guilty of a minor misdemeanor.

### Boat accident reporting threshold

(R.C. 1547.59)

The bill increases the damage threshold that triggers a required watercraft accident report from \$500 to \$1,000. Under current law, a watercraft operator must submit the report to

the Chief of the Division of Parks and Watercraft after an accident, collision, or other casualty involving a vessel that results in one of the following:

1. Loss of life;
2. Personal injury requiring medical treatment beyond first aid;
3. Damage to property (in excess of \$500 currently and in excess of \$1,000 under the bill); or
4. Total loss of a vessel.

## **Division of Forestry**

### **Forestry projects on federal land**

(R.C. 1503.05 and 1503.271)

The bill allows the Chief of the Division of Forestry to enter into agreements with the federal government for forest management projects, including timber sales, pursuant to specified federal laws. One such federal law authorizes the U.S. Secretary of Agriculture to enter into “good neighbor agreements.” A good neighbor agreement is a cooperative agreement or contract entered into between the Secretary and a state to carry out forest, rangeland, and watershed restoration.

The bill allows the Chief to sell timber and other forest products from federal lands in accordance with the terms of an agreement with the federal government. Currently, the Chief may sell timber and forest products from state forests and state forest nurseries. The Chief must deposit money received from timber sales from federal lands into the existing State Forest Fund.

In addition to fund uses allowed under current law, the bill allows money derived from the timber sales from federal lands to be used for forest management projects associated with those lands.

### **Wildfire reimbursement to firefighting agencies**

(R.C. 1503.141)

The bill allows the DNR Director to reimburse firefighting agencies and private fire companies for costs associated with wildfire suppression, prescribed fire assistance, or emergency response support to federal agencies. However, the Director may provide the reimbursement only if those costs are eligible in accordance with an agreement between the Division and the federal government.

Under current law, the Director may annually designate up to \$200,000 in the State Forest Fund for wildfire suppression payments and reimbursement to firefighting agencies and private fire companies for their costs incurred in wildfire suppression. The payments must be made in specified amounts from money in the fund derived from the sale of standing timber taken from state forest lands. The bill allows money for the new reimbursement authorization to support federal agencies to be drawn from the \$200,000 allocation.



## **State employees aid in out-of-state wildfires**

(R.C. 1503.33)

The bill specifies that all DNR and Department of Commerce employees whom the Chief sends to another state to assist with forest fires are eligible for regular employment benefits (i.e., compensation, pension, indemnity fund rights, and workers' compensation). Additionally, they are immune from civil liability when performing duties within the scope of employment.

Under current law, only Division employees are eligible for those benefits and immunity.

## **Division of Geological Survey**

(R.C. 4503.515, repealed and R.C. 1505.09)

The bill eliminates the Ohio Geology license plate (which is not currently issued by the BMV). Correspondingly, it eliminates the \$15 contribution for each license plate, which is deposited in the Geological Mapping Fund and must be used for the following purposes:

1. Allowing the DNR Director to award grants at least annually to geology departments at state colleges and universities for graduate level research conducted at locations of geological interest in the state; and
2. Providing materials such as rock and mineral kits to state elementary and secondary schools to assist students in the study of geology.

The bill allows the Chief of the Division of Geological Survey to expend *any* money deposited in the Geological Mapping Fund (not just money from license plate proceeds) for the above two purposes. Additionally, it adds to those purposes by allowing the Chief to use fund money for grants to collegiate geology departments for undergraduate geological research.

Currently, mineral severance tax money and any fees collected by the Division for geological record archives and other geological purposes are also deposited in the fund. In addition to the purposes specified above, the fund may be used to perform certain tasks related to geology, geological hazards, and energy and mineral resources, and for funding the Oil and Gas Commission.

## **Other provisions**

### **Doris Duke Woods**

(R.C. 1546.31)

The bill designates 120 contiguous acres of Malabar State Park's most mature hardwood forest located between Bromfield Road and State Route 95 as the "Doris Duke Woods" at Malabar State Park in Richland County. It honors Doris Duke's pioneering contributions to conservation at Malabar State Park and across the nation. It also requires the Director of Natural Resources, by October 31, 2021, to designate the Woods as a state nature preserve.

Under the bill, DNR may not remove or allow any person or governmental entity to remove timber from the Woods, except for normal maintenance. After the Woods are dedicated, DNR must maintain and keep open to the public any public hiking and horse trails that existed in

the Woods prior to its dedication. It also must allow the use of the Woods for maple syrup harvesting.

### **Agreements between DNR and Malabar Farm Foundation**

(Section 715.30)

The bill requires the DNR Director to enter into a cooperation agreement with the Malabar Farm Foundation<sup>109</sup> for two years beginning on the date of execution that specifies various terms and provisions, including:

1. Specifications for an annual planning meeting;
2. Written plans for the Malabar Farm Park; and
3. Each party's authority over the operation of the Park's properties.

It also requires the Director to enter into a lease agreement with the Foundation for two years beginning on the date of execution to lease office space to the Foundation located on the second floor of the Berry House at Malabar Farm. The agreement must allow the Foundation to use the kitchen area on the first floor of the Berry House.

In addition to specifying office space, the lease agreement must contain a variety of contractual terms and provisions, including all of the following:

1. Lease payment terms;
2. A description of authority over the property; and
3. Authorized uses and activities allowed on the property.

### **Local payments for DNR land**

(R.C. 1501.29, 1531.17, and 1546.21)

The bill requires the DNR Director to annually reimburse school districts and other taxing authorities for a portion of property taxes forgone due to the state's acquisition of tax exempt land in excess of 5,000 acres in or after 2018. The annual reimbursement payments equal 2.5% of the land's unimproved taxable value for the tax year in which DNR acquired the land, and must be paid from the state park fund, the wildlife fund, or both, at the option of the Director. The bill allocates 60% of the payments to affected school districts and divides the remaining 40% among the other taxing authorities in proportion to the property tax forgone by each. Taxing authorities may use the revenue for any lawful purpose. Payments must be made before the end of June of each year, beginning in 2022.

Under continuing law, a school district with territory that includes state lands administered by DNR's Division of Wildlife annually receives payments from the Division equal 1% of the land's unimproved taxable value.<sup>110</sup> The bill makes school districts that receive the 2.5%

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<sup>109</sup> <https://malabarfarm.org/>.

<sup>110</sup> R.C. 1531.27, not in the bill.

reimbursement payments ineligible to receive this 1% reimbursement on the basis of the same land.

### **Geneva Lodge and Conference Center ownership transfer**

(Sections 715.20, 343.10, and 343.20)

The bill requires the DNR Director to enter into an agreement, or modify any existing agreement or memorandum of understanding, with Ashtabula County to assume ownership and operation of the Geneva Lodge and Conference Center from the county by December 31, 2021. The agreement must require DNR to do both of the following:

1. Assume any outstanding notes, principal, or interest due on the construction of the Lodge; and
2. Assume maintenance, operating, and any other costs associated with the Lodge.

Once the agreement is executed, Ashtabula County is free and clear of any future obligation relating to the Lodge.

The bill also appropriates \$2,800,000 over the biennium ending June 30, 2023, to the State Park Fund to make lease or mortgage payments for the Lodge prior to and after the execution of the agreement.

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## OPPORTUNITIES FOR OHIOANS WITH DISABILITIES AGENCY

- Requires the Governor to present an award each October, during National Disability Employment Awareness Month, to employers who meet the criteria for having a workplace inclusive of individuals with disabilities.
- Requires the Opportunities for Ohioans with Disabilities Agency to determine the criteria to be used to recommend employers for the award.

### **Employer inclusive workplace award**

(R.C. 3304.24)

The bill requires the Governor to present an award each October, during National Disability Employment Awareness Month, to employers who meet the criteria for having a workplace inclusive of individuals with disabilities. The Opportunities for Ohioans with Disabilities Agency must determine the inclusive workplace criteria to be used to recommend employers for the award.

Congress dedicated October as National Disability Employment Awareness Month to recognize the accomplishments of individuals with disabilities in the workplace and reaffirm support for employment opportunities for individuals with disabilities.<sup>111</sup>

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<sup>111</sup> 36 U.S.C 121 and Library of Congress, *National Disability Employment Awareness Month*, available [here](#).

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## **OHIO OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD**

### **Board vacancies**

- Extends to 90 days (from 60) the maximum transition period that may occur between an expired term of office and the Governor's appointment of a person to fill a vacancy on the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board.

### **Occupational therapy limited permits**

- Eliminates limited permits for occupational therapists and occupational therapy assistants.

### **Physical therapy license applications**

- Eliminates the requirement that a person applying for a physical therapist or physical therapist assistant license submit a physical description and photograph.

### **Orthotists, prosthetists, and pedorthists – enforcement**

- Authorizes the Board to discipline orthotists, prosthetists, and pedorthists for denial, revocation, suspension, or restriction of authority to practice any health care occupation in any jurisdiction.
- Allows the Board to impose a fine or a requirement to take corrective action courses.
- Requires a person who is sanctioned to pay the actual cost of the administrative hearing.
- Transfers the duty to investigate violations to the full OTPTAT Board, in place of the Board's secretary.
- Permits the Board to share confidential investigatory information with any relevant law enforcement, prosecutorial, or regulatory agency.

### **Discipline based on sexual interactions with patients**

- Includes sexual conduct with a patient among the other sex-related behaviors for which the Board may take disciplinary action against a physical therapist or physical therapist assistant.
- Allows the Board, in its regulation of all other professionals under its jurisdiction, to take disciplinary action due to sexual conduct, sexual contact, and sexually demeaning verbal behavior with a patient.

### **Board vacancies**

(R.C. 4755.01)

The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers (OTPTAT) Board consists of 16 members appointed by the Governor with the advice and consent of the Senate.

Members serve for three-year terms, but a member also must serve until a successor is appointed or a period of 60 days has elapsed, whichever is first. The bill extends this transition period to 90 days.

### **Occupational therapist limited licenses**

(R.C. 4755.08 (primary) and 121.22, 4755.01, 4755.02, 4755.04, 4755.05, 4755.06, 4755.11, and 4755.12)

The bill eliminates provisions regarding the issuance of limited permits for occupational therapists and occupational therapy assistants. Under current law, if a person has taken the required licensing examination, a limited permit may be issued by the OTPTAT Board's Occupational Therapy Section. The permit authorizes the person to practice under the supervision of a licensed occupational therapist until the results of the examination are public.

### **Physical therapy license applications**

(R.C. 4755.42 and 4755.421)

The bill eliminates the requirement that a person seeking a license as a physical therapist or physical therapist assistant submit a physical description and photograph. Currently, this is required with every application.

### **Orthotists, prosthetists, and pedorthists – enforcement**

#### **Authorized Board actions**

(R.C. 4779.28)

In regulating orthotists, prosthetists, and pedorthists, the OTPTAT Board's existing disciplinary options include limiting, revoking, or suspending a practitioner's license. The Board also may reprimand a license holder, place a license holder on probation, or refuse to issue a license to an applicant. The bill allows the Board to impose a fine or a requirement that a licensee take corrective action courses.

The bill also allows the Board to take disciplinary action against a licensee or applicant who has experienced denial, revocation, suspension, or restriction of authority to practice any health care profession in Ohio, another state, or any other jurisdiction. This provision does not include people who were sanctioned for failing to renew a license.

#### **Fee for administrative hearing costs**

(R.C. 4779.2810)

The bill requires any orthotist, prosthetist, or pedorthist who is sanctioned for any reason to pay the cost of the administrative hearing. This includes the cost of the court reporter, hearing officer, transcripts, and any witness fees for lodging and travel.

## **Responsibility for investigations**

(R.C. 4779.33)

The secretary of the OTPTAT Board is currently responsible for investigating violations by an orthotist, prosthetist, or pedorthist. The bill transfers this duty to the full Board.

## **Sharing of investigatory information**

(R.C. 4779.33)

The bill specifies that any information and records received or generated by the OTPTAT Board during an investigation regarding an orthotist, prosthetist, or pedorthist are not public records. However, the Board may disclose information to local, state, or federal law enforcement, prosecutorial, or regulatory agencies if an investigation is within their jurisdiction. The agency receiving the information must comply with the same confidentiality requirements as the Board.

Under the bill, information from a Board investigation may be entered as evidence in a criminal trial or administrative hearing. Appropriate measures, such as sealing records or redacting specific information, must be taken to protect the confidentiality of patients, complainants, and others specified by the board.

## **Discipline based on sexual interactions with patients**

(R.C. 4755.11, 4755.47, 4755.64, and 4779.28)

The OTPTAT Board currently has some disciplinary power concerning sexual contact between licensees and patients. The Physical Therapy Section may discipline a licensee for sexual contact with a patient or for verbal behavior that is sexually demeaning. Sexual contact refers to vaginal or anal intercourse and oral sex. Verbal behavior that is sexually demeaning includes any communication that may be reasonably interpreted by the patient as sexually demeaning. The bill adds sexual conduct with a patient as a disciplinable action for physical therapists and physical therapist assistants. Sexual conduct is defined as contact with an erogenous zone of another person with the intent to sexually arouse or gratify either person.

The Board currently does not have the authority to discipline other licensees for sexual interactions with patients, including occupational therapists, occupational therapy assistants, athletic trainers, orthotists, prosthetists, and pedorthists. In the same manner described above for physical therapists, the bill prohibits the other professionals regulated by the Board from engaging in sexual contact, sexual conduct, or verbal behavior that is sexually demeaning with a patient. This applies even if the sexual interaction is consensual. These restrictions do not apply if the patient is the licensee's spouse.

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## STATE PUBLIC DEFENDER

- Specifies that, because adoption proceedings and Juvenile Code custody proceedings are significantly different, parents in an adoption proceeding and parents in a custody proceeding are not similarly situated and do not have to be covered by the same rules and procedures in the proceedings.
- Specifies that, notwithstanding any other provision of law, no party in any adoption proceeding initiated by any private party or parties, even if indigent, is entitled to have counsel appointed for the person under any provision of law.

### **Appointed counsel in adoption proceedings**

(R.C. 3107.019)

The bill adds language to R.C. Chapter 3107, which generally governs adoptions, specifying that:

1. Because adoption proceedings under that Chapter and Juvenile Code custody proceedings are significantly different, parents in an adoption proceeding and parents in a custody proceeding are not similarly situated and do not have to be covered by the same rules and procedures in the proceedings;

2. Notwithstanding any other provision of law, in any adoption proceeding under that Chapter that is initiated by any private party or parties, no party in the proceeding, even if indigent, is entitled to have counsel appointed for the person under the Public Defender Law or any other provision of law. (Note that the Ohio Supreme Court, in *In re Adoption of Y.E.F.* (December 22, 2020), 2020-Ohio-6785, held that, because indigent parents facing the termination of their parental rights in probate court adoption proceedings were similarly situated to indigent parents facing termination of their parental rights in juvenile court permanent-custody proceedings, a statutory provision giving indigent parents in child custody proceedings the right to appointed counsel was unconstitutionally underinclusive as applied to indigent parents facing the loss of their parental rights in probate court and that, as a result, indigent parents were entitled to counsel in adoption proceedings in probate court as a matter of equal protection of the law under the U. S. Constitution and Ohio Constitution).



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## DEPARTMENT OF PUBLIC SAFETY

- Reallocates 10¢ of the \$15 motor vehicle certificate of title fee from deposit in the Motor Vehicle Sales Audit Fund to deposit in the Highway Operating Fund.
- Specifies that a political subdivision employee who renders aid in another state in accordance with the Emergency Management Assistance Compact is considered a state employee for immunity purposes.
- Regarding U.S. Power Squadron license plates, requires U.S. Power Squadron District 7 to equally distribute the contributions for the plates to all Ohio Power Squadron Districts in Ohio, rather than requiring the Registrar to do so as under current law.

### Certificate of title fee allocation

(R.C. 4505.09)

The bill reallocates 10¢ of the \$15 motor vehicle certificate of title fee from deposit in the Motor Vehicle Sales Audit Fund to deposit in the Highway Operating Fund. The amount of the certificate of title fee to be deposited in the Motor Vehicle Sales Audit Fund, to assist the Tax Commissioner's investigations of motor vehicle sales and use tax returns to ensure any tax liability has been satisfied, is reduced from 25¢ to 15¢. Additionally, the amount deposited into the Highway Operating Fund, managed by the Department of Transportation for its highway projects, is increased from 21¢ to 31¢. The overall \$15 motor vehicle certificate of title fee is not altered by the bill.

### Emergency Management Assistance Compact immunity

(R.C. 5502.30)

The bill specifies that a political subdivision employee who renders aid in another state in accordance with the Emergency Management Assistance Compact (EMAC) is considered a state employee for immunity purposes under Article VI of the Compact. Therefore, the employee is:

1. Considered an agent of the requesting state for tort liability and immunity purposes; and
2. Not liable for any act or omission done in good faith while engaged or on account of the maintenance or use of any equipment or supplies in connection with the engagement.

It also specifies that this provision does not entitle a political subdivision employee to any other right or benefit of a state employee.

The EMAC is law in all 50 states. Through it, states may provide mutual assistance in managing any emergency or disaster.<sup>112</sup>

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<sup>112</sup> See <https://www.emacweb.org/>.

## **U.S. Power Squadron license plate distribution**

(R.C. 4501.21)

The bill requires U.S. Power Squadron District 7 (located in Mansfield) to annually distribute the contributions received for U.S. Power Squadron license plates in equal amounts to all U.S. Power Squadrons in Ohio. Current law requires the Registrar to distribute the contributions in equal amounts. U.S. Power Squadrons is a nonprofit boating club and educational organization that provides classes on maritime safety and seamanship.

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## PUBLIC UTILITIES COMMISSION

- Removes the requirement that the Public Utilities Commission (PUCO) office be open during specific business hours.
- Allows the Power Siting Board, subject to Controlling Board approval, to contract for the services of outside experts and analysts and fund the expense through certificate or amendment application fees imposed under existing law.
- Changes the requirement that basic local exchange service provide for a telephone directory in any reasonable format to include, at the telephone company's option, an internet-accessible database of directory listings.
- Requires a telephone company that no longer offers a printed directory to provide reasonable customer notice of available options to obtain directory information.
- Requires PUCO to amend its rules, no later than 90 days after the internet-accessible database format option takes effect, as necessary to bring the rules into conformity with that new format option.

### Hours of operation

(R.C. 4901.10)

The bill removes the requirement that the office of the Public Utilities Commission be open from 8:30 a.m. to 5:30 p.m., Monday through Friday, with the result that the office must be open simply "throughout the year, Saturdays, Sundays, and legal holidays excepted."

### PSB contract for expert or analyst

(R.C. 4906.02)

The bill allows the Power Siting Board (PSB) to contract with experts or analysts (other than employees of the Environmental Protection Agency or Departments of Natural Resources, Agriculture, Health, or Development who may be called temporarily to provide assistance to Chairperson of the Public Utilities Commission) for the purposes of carrying out PSB's powers and duties under current law. Contracts for such experts and analysts are subject to Controlling Board approval, and any expert or analyst must be compensated from the PSB certificate application fee, or if necessary, supplemental application fees, assessed under existing law.<sup>113</sup>

### Internet telephone directories

(R.C. 4927.01; Section 749.10)

The bill changes the requirement that basic local exchange service (BLES) provide for a telephone directory in any reasonable format to include, at the telephone company's option, an

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<sup>113</sup> R.C. 4906.06, not in the bill.

internet-accessible database of directory listings. Continuing law still requires a listing in that directory, for no additional charge, with reasonable accommodations made for private listings.

The bill further requires a telephone company providing BLES that no longer offers a printed telephone directory to provide reasonable customer notice of the available options to obtain such directory information.

PUCO must amend its rules, no later than 90 days after the internet-accessible database format option takes effect, as necessary to bring the rules into conformity with that new format option.

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## **DEPARTMENT OF REHABILITATION AND CORRECTION**

### **Local confinement for fourth and fifth degree felony prison terms**

- Expands the voluntary Targeting Community Alternatives to Prison (T-CAP) program to include fourth degree felonies instead of only fifth degree felonies.

### **Post-release control sanctions**

- Modifies current law regarding post-release control (PRC) by:
  - Changing the duration of mandatory PRC to “up to five years, but not less than two years” for a first degree felony that is not a felony sex offense; “up to three years, but not less than 18 months” for a second degree felony that is not a felony sex offense; and “up to three years, but not less than one year” for a third degree felony that is an offense of violence and is not a felony sex offense;
  - Changing the duration of discretionary PRC to “up to two years” for a third, fourth, or fifth degree felony that is not subject to mandatory PRC;
  - Removing juvenile court delinquent child adjudications as items that must be considered by the Parole Board or court in determining PRC sanctions;
  - Changing from mandatory to discretionary the use of active GPS monitoring for the first 14 days of a prisoner on PRC who is released before the expiration of the prisoner’s term and who earned over 60 days of earned credit;
  - Modifying the mechanism for shortening or terminating PRC of an offender who is complying with the PRC sanctions;
  - Specifying that if, during the period of PRC, the offender serves as a sanction for violating PRC conditions and the maximum prison sanction time available as a PRC sanction, the PRC terminates;
  - Providing rules for determining the manner in which PRC operates when an offender is simultaneously subject to a period of parole and a period of PRC or is subject to two simultaneous periods of PRC; and
  - Specifying that a period of PRC must not be imposed consecutively to any other period of PRC.

### **Sacramental wine in specified governmental facility**

- Exempts small amounts of sacramental wine from the offense of “illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility” when the person conveying, delivering, or attempting to convey or deliver the wine is a cleric.

## **Notification of possible prison term for community control violation**

- Specifies that the notice a court must give to an offender it sentences to a community control sanction for a felony regarding a possible prison term as a violation sanction must indicate “the range from which the term may be imposed.”

## **Prison term penalty for certain conduct by a felony offender serving a community control sanction**

- Modifies provisions regarding a court’s imposition of a prison term as a penalty for a convicted felon who is sentenced to a community control sanction and who violates the conditions of the sanction, violates a law, or leaves the state without the permission of the court or probation officer.

## **Community-based substance use disorder treatment**

- Extends eligibility for the community-based substance use disorder treatment program.
- Removes a restriction that prevents those with certain prior offense of violence convictions from participating in the program.

## **Subsidies for community-based corrections programs**

- Modifies the requirements for the program of subsidies for community-based corrections programs.

## **Administrative releases**

- Expands the Adult Parole Authority’s ability to grant an administrative release to include: (1) a “releasee” who is serving another felony sentence in a prison within or outside Ohio for the purpose of consolidating the records or if justice would best be served, or (2) a “releasee” who has been deported from the U.S.

## **Certificate of qualification for employment (CQE)**

### **Sealing of CQE records**

- Specifies that when a criminal record is sealed, records related to a certificate of qualification for employment (CQE) are also sealed.

### **Consideration of sealed CQE records**

- Provides that a petition for a CQE must include the individual’s criminal history, except for information contained in any record that has been sealed.
- Provides that, upon receiving a petition for a CQE, a court must review the individual’s criminal history, except for information contained in any record that has been sealed.
- Provides that a court may order any report, investigation, or disclosure by the individual, except that the court must not require an individual to disclose information about any record that has been sealed.

- Specifies that in any application for a CQE, a person may be questioned only with respect to convictions and bail forfeitures not sealed.

### **Sealing of records related to an unconditional pardon**

- Allows the Governor to include as a condition of an unconditional pardon that the records related to the conviction or convictions be sealed, and generally provides that the records are not subject to public inspection unless directed by the Governor.

### **Internet access for prisoners**

- Provides greater flexibility for prisons to provide internet access to prisoners in state owned and private prison facilities.

### **Removing outdated law about the Ohio River Valley Facility**

- Removes outdated provisions of the Revised Code that allowed Lawrence County to place inmates in the Ohio River Valley Facility.

### **Local confinement for fourth and fifth degree felony prison terms**

The bill expands the voluntary Targeting Community Alternatives to Prison (T-CAP) program to include fourth degree felonies instead of only fifth degree felonies.

#### **Voluntary local confinement**

(R.C. 2929.34)

Current law provides that in any voluntary county, the board of county commissioners and the administrative judge of the general division of the common pleas court may agree to have the county participate in the procedures regarding state and local confinement described below.

The bill provides, subject to exceptions for certain offenses and categories of offenders, that in any voluntary county, either (1) or (1) and (2) must apply:

1. On or after July 1, 2018, a person sentenced to a prison term for a fifth degree felony may not serve the term in a DRC institution;
2. On or after September 1, 2022, a person sentenced to a prison term for a fourth degree felony may not serve the term in a DRC institution.

The person must instead serve a term of confinement in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, in a community alternative sentencing center or district community alternative sentencing center, or in a community-based correctional facility.

As used in the bill, “voluntary county” means any county in which the board of county commissioners and the administrative judge of the general division of the common pleas court enter into an agreement as described above.

## Exceptions

The provisions do not apply to any person to whom any of the following apply: (1) fourth or fifth degree felony was an offense of violence, sex offense, drug trafficking offense, or any offense for which a mandatory prison term is required, (2) the person previously has been convicted of or pleaded guilty to any felony offense of violence, (3) the person previously has been convicted of or pleaded guilty to any felony sex offense, or (4) the sentence is required to be served concurrently to any other sentence imposed on the person for a felony that is required to be served in a DRC institution.

## Voluntary memorandum of understanding

(R.C. 5149.38)

Current law requires that, not later than September 1, 2022, each voluntary county must submit a memorandum of understanding to DRC for its approval. Also, two or more affiliating voluntary counties may jointly establish a memorandum of understanding to be submitted to DRC for its approval.

The memorandum of understanding must be agreed to and signed by the following: (1) a county commissioner representing the board of county commissioners, (2) the administrative judge of the general division of the common pleas court, (3) the sheriff, and (4) an official from any municipality operating a local correctional facility in the county to which courts sentence offenders.

The memorandum of understanding must do all of the following: (1) set forth the plans by which the county will use grant money provided to it in FY 2023 and succeeding fiscal years under the T-CAP program, (2) specify the manner in which the county will address per diem reimbursement of local correctional facilities for prisoners who serve a prison term in local confinement in the facility under the bill's provisions described above, and (3) specify whether the memorandum of understanding will apply to prison terms for fifth degree felonies or prison terms for fourth and fifth degree felonies.

## Post-release control sanctions

(R.C. 2967.28)

### Background

The bill modifies some of the provisions regarding post-release control (PRC). PRC is a period of supervision by the Adult Parole Authority (APA) after a prisoner's release from imprisonment, other than under a term of life imprisonment, that includes one or more post-release control sanctions. "Post-release control sanction" means a residential sanction, nonresidential sanction, or financial sanction authorized for a felony under R.C. 2929.16 to 2929.18 and that is imposed on a prisoner upon the prisoner's release from a prison term other than a term of life imprisonment.<sup>114</sup>

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<sup>114</sup> R.C. 2967.01, not in the bill.



Under current law, when an offender convicted of a felony is released from prison, in some circumstances the offender must be placed under a period of PRC, and in other circumstances, the PRC is discretionary. When an offender is placed under a PRC period, specified procedures apply regarding the offender, the PRC period, and supervision of the offender. The Parole Board (or court in certain circumstances) imposes PRC sanctions and conditions on the offender that apply during the PRC period.

### **Mandatory PRC**

If an offender is sentenced to prison for a first or second degree felony, for a felony sex offense, or for a third degree felony that is an offense of violence and is not a felony sex offense, the Parole Board is required to impose a period of PRC of a specified duration on the offender after the offender's release from imprisonment. The bill changes the duration of mandatory PRC:

1. From five years to "up to five years, but not less than two years" for a first degree felony that is not a felony sex offense;
2. From three years to "up to three years, but not less than 18 months" for a second degree felony that is not a felony sex offense; and
3. From three years to "up to three years, but not less than one year" for a third degree felony that is an offense of violence and is not a felony sex offense.

The period for a felony sex offense remains five years.

### **Discretionary PRC**

If an offender is sentenced to a prison term for a third, fourth, or fifth degree felony that is not subject to the mandatory PRC provisions described above, the Parole Board, in accordance with specified procedures, is authorized to impose a PRC period on the offender if it determines that PRC is necessary for the offender. The bill changes the duration of discretionary PRC from up to three years to "up to two years" for a third, fourth, or fifth degree felony that is not subject to mandatory PRC.

### **Consideration of delinquent child adjudications**

Prior to the release of an offender for whom it will impose PRC sanctions, the Parole Board (or court) must review certain information in determining which PRC sanctions are reasonable under the circumstances. The bill removes juvenile court delinquent child adjudications as items that the Board (or court) must consider in determining PRC sanctions. The bill does not change the other information that must be considered, including the offender's criminal history, results from the single validated risk assessment tool, and the record of the offender's conduct while imprisoned.

### **Use of active GPS monitoring**

Currently, if an offender who is placed on PRC is released from prison before the expiration of the offender's prison term and the offender earned 60 or more days of credit, the APA must supervise the offender with an active GPS device for the first 14 days after the offender's release from imprisonment. The bill changes from mandatory to discretionary the use of active GPS monitoring for supervising the offender in the specified circumstances.

## **Shortening or terminating PRC**

At any time after a prisoner is released from imprisonment and during the PRC period, the APA (or court) may review the releasee's behavior under the PRC sanctions. The APA (or court) may take specified actions after its review. The bill modifies the actions that the APA (or court) may take. Under the bill, if the APA (or court), based on the review and in accordance with specified standards, determines that the releasee has satisfactorily complied with the sanctions imposed, it may recommend a less restrictive sanction, reduce the PRC period, or, no sooner than a minimum period of time, recommend that the Parole Board (or court) terminate the PRC period. In no case may the Board (or court) reduce the PRC duration imposed for a felony sex offense, described above with regard to mandatory PRC.

Related to the bill's changes, the bill expands a provision that currently requires the DRC to adopt rules that establish standards for certain PRC-related purposes to also require that the rules establish standards to be used by the Parole Board in terminating (or reducing, as currently authorized) the PRC duration when authorized as described in the preceding paragraph or in imposing a less restrictive sanction on a releasee based on results from the single validated risk assessment tool (and, as currently specified, on the releasee's activities, including remaining free from criminal activity and from the abuse of alcohol or other drugs, successfully participating in approved rehabilitation programs, maintaining employment, and paying restitution or meeting the terms of other financial sanctions).

The current provisions regarding the actions the APA (or court) currently may take, repealed by the bill, specify that: (1) if it determines that a more restrictive or a less restrictive sanction is appropriate it may impose a different sanction, (2) the APA may recommend that the Parole Board (or court) increase or reduce the PRC duration, (3) if the APA recommends that the PRC duration be increased, the Board (or court) must review the releasee's behavior and may increase the PRC duration up to eight years, (4) if the APA recommends that the PRC duration be reduced, the Board (or court) must review the releasee's behavior and generally may reduce the PRC duration or, in certain cases, reduce the PRC duration or terminate the PRC, and (5) in no case may the Board (or court) reduce the PRC duration for a felony sex offense to a period less than the length of the prison term included in the prison term originally imposed on the offender, consider any reduction or termination of the PRC duration imposed on a releasee prior to the expiration of one year after the commencement of the PRC period for certain types of indefinite sentences, or permit the releasee to leave Ohio without permission of the court or the releasee's supervising officer.

### **Termination of PRC, if maximum prison time available expires**

If the Parole Board (or court) at a hearing finds that a releasee under a PRC sanction violated the sanction or condition, it may increase the PRC duration up to the maximum authorized duration or impose a more restrictive PRC sanction. When appropriate, the Board (or court) may impose as a PRC sanction a residential sanction that includes a prison term. Subject to one limited exception, a prison term imposed as a PRC sanction under this provision may not exceed nine months, and the maximum cumulative prison term for all violations under this provision may not exceed one-half of the prison term that was originally imposed on the offender. The period of a prison term imposed as a PRC sanction under this provision does not

count as, or may not be credited toward, the remaining PRC period. The bill adds a provision specifying that if, during the releasee's PRC period, the releasee serves as a PRC sanction the maximum prison time available as a sanction, the PRC terminates.

### **Simultaneous parole and PRC; ban on consecutive PRC periods**

The bill replaces several provisions that pertain to calculating service of a PRC period. Under the bill:

1. If an offender is simultaneously subject to a period of parole and a PRC period, or is simultaneously subject to two PRC periods, the period of supervision that expires last determines the length and form of supervision for all the periods and related sentences;

2. An offender is to receive credit for PRC supervision during the period of parole, and is not eligible for final release under a separate provision of law<sup>115</sup> until the PRC period otherwise would have ended;

3. If the period of parole ends prior to the end of the PRC period, the requirements of parole supervision are to be satisfied during the PRC period.

The bill retains a provision specifying that a PRC period may not be imposed consecutively to any other PRC period (although the bill does not include the express statement under existing law that PRC periods are to be served concurrently).

The replaced provisions specify that: (1) a PRC period commences upon an offender's actual release from prison, (2) if a PRC period is imposed and the offender also is subject to a period of parole, and if the PRC period ends prior to the period of parole, the offender is to be supervised on parole and receives credit for PRC supervision during the period of parole and is not eligible for final release until the PRC period otherwise would have ended, (3) if an offender is under a PRC period and also is subject to a period of parole, and if the period of parole ends prior to the PRC period, the offender is to be supervised on PRC and the requirements of parole supervision are to be satisfied during the PRC period, and (4) if an offender is subject to more than one PRC period, the PRC period for all of the sentences is the PRC period that expires last, as determined by the Parole Board (or court).

### **Sacramental wine in specified governmental facility**

(R.C. 2921.36)

The bill exempts from the offense of "illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility" small amounts of wine conveyed or attempted to be conveyed into the facility, or delivered or attempted to be delivered to a person in the facility, when the person engaging in the conduct with the sacramental wine is a "cleric." As used in the exemption, a "cleric" is a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.

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<sup>115</sup> R.C. 2967.16, not in the bill.

The prohibitions under the offense prohibit a person from knowingly: (1) conveying, or attempting to convey, onto the grounds of a detention facility or of an institution, office building, or other place under the control of the Department of Mental Health and Addiction Services (OhioMHAS), the Department of Developmental Disabilities (DODD), the Department of Youth Services, or the Department of Rehabilitation and Correction, any intoxicating liquor, as defined in R.C. 4301.01, or (2) delivering, or attempting to deliver, to any person confined in a detention facility, to a child confined in a youth services facility, to a prisoner temporarily released from confinement for a work assignment, or to a patient in an institution under the control of OhioMHAS or DODD, any such intoxicating liquor. The prohibition currently does not apply to a person who conveys or attempts to convey an item onto the grounds of a detention facility or of an institution, office building, or other place under the control of one of the specified Departments with the written authorization of the person in charge of, and in accordance with the written rules of, the detention facility, institution, office building, or other place. A violation of the prohibition is a second degree misdemeanor.

### **Notification of possible prison term for community control violation**

(R.C. 2929.19 and 2929.15)

Currently, a court that sentences an offender to a community control sanction for a felony must notify the offender that, if the offender violates the sanction conditions, commits a violation of any law, or leaves Ohio without permission of the court or the offender's probation officer, the court may impose any of several types of sanctions. The notice must identify the specified types of sanctions.

The bill changes the reference to one of the types of sanctions, which is a possible prison term. Under the bill, instead of indicating "the specific prison term" that may be imposed for the violation out of the range of terms available for the offense under the Felony Sentencing Law, as required under current law, the notice must indicate the "range from which" the prison term may be imposed for the violation, which must be the range of terms available for the offense under that Law. The bill does not change the references that must be included in the notice to the other types of sanctions that may be imposed, which are a longer time under the same community control sanction or a more restrictive community control sanction. The bill also conforms a cross-reference to that notification in the existing provision governing the imposition of a prison term for such a violation or leaving of the state.

### **Prison term penalty for certain conduct by a felony offender serving a community control sanction**

(R.C. 2929.15)

Current law provides that if an offender who is sentenced to a community control sanction for a felony violates the conditions of the sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose on the violator any of three types of penalties. Two of the types of authorized penalties, unchanged by the bill, are a longer time under the same sanction if the total time under the sanctions does not exceed five years, or a more restrictive sanction, including a new term in a

community-based correctional facility, halfway house, or jail. The third type of authorized penalty is a prison term, subject to a specified maximum (see “**Notification of possible prison term for community control violation**,” above) and to specified conditions. The bill modifies the authorized prison term penalty as follows:

1. It generally retains the provisions that govern prison terms imposed for violations of the conditions, but if the prison term is imposed for a technical violation of the conditions, it clarifies the manner of crediting the time served under the term against the offender’s sentence and replaces the references to “suspended” sentences with references to “reserved” sentences. Under the bill, the provisions specify that:

a. If the prison term is imposed for a technical violation of conditions imposed for a fifth degree felony, the term may not exceed 90 days, provided that if the remaining period of community control at the time of the violation or the remaining period of the “reserved” (currently, “suspended”) prison sentence at that time is less than 90 days, the prison term may not exceed the length of the remaining period of community control or the remaining period of the “reserved” (currently, “suspended”) prison sentence.

b. If the prison term is imposed for a technical violation of conditions imposed for a fourth degree felony that is neither an offense of violence nor a sexually oriented offense, the term may not exceed 180 days, provided that if the remaining period of community control at the time of the violation or the remaining period of the “reserved” (currently, “suspended”) prison sentence at that time is less than 180 days, the prison term may not exceed the length of the remaining period of community control or the remaining period of the “reserved” (currently, “suspended”) prison sentence.

c. If a prison term is imposed on an offender under either provision described above for a technical violation, one of the following applies with respect to the time that the offender spends in prison under the term:

i. Subject to the provisions described below in (ii), the time must be credited against the offender’s community control sanction that was being served at the time of the violation, the remaining time under that community control sanction must be reduced by the time that the offender spends in prison under the term, and the court is to determine whether the offender upon release from the prison term must continue serving the remaining time under the community control sanction, as reduced by the credit, or must have the sanction terminated (the same as current law, except that currently, no reference to community control sanction “termination” is included).

ii. If, at the time a prison term is imposed for a technical violation, the offender was serving a “residential” community control sanction imposed under the Felony Sentencing Law, the time spent serving the residential community control sanction must be credited against the offender’s “reserved” prison sentence, the remaining time under that “residential” community control sanction and under the “reserved” prison sentence must be reduced by the time that the offender spends in prison under the prison term, and the court is to determine whether the offender upon release from the prison term must continue serving the remaining time under the community control sanction, as reduced

by the credit, or must have the sanction terminated (currently, the application of the provision is not limited to “residential” community control sanctions, the references to “reserved” prison sentences are to “suspended” sentences, and no reference to community control sanction “termination” is included).

2. It relocates, but does not otherwise change, a provision that authorizes a judge to use a prison term as a penalty multiple times, to clarify that the authorization is an option along with the other currently authorized prison term penalty. The relocated provision specifies that: (a) a court is not limited in the number of times it may sentence an offender to a prison term for violating the conditions, violating a law, or leaving the state without permission, and (b) if an offender violates the conditions, violates a law, or leaves the state without permission, is sentenced to a prison term for the violation or conduct, is released from the term after serving it, and subsequently violates the conditions of the sanction, violates a law, or leaves the state without permission, the court may impose a new prison term penalty on the offender for the subsequent violation or conduct. As under current law, the prison term penalties are subject to the specified maximum (see “**Notification of possible prison term for community control violation**,” above) and to the limitations described above in (1).

## **Community-based substance use disorder treatment**

(R.C. 5120.035)

The bill extends eligibility for the community-based substance use disorder treatment program to nonviolent third degree felony offenders, and removes a restriction that prevents those with any prior conviction of a felony offense of violence or a prior conviction of a misdemeanor offense of violence within the preceding five years from participating in the program.

Continuing law requires DRC to operate a program for community-based substance use disorder treatment of qualified nonviolent fourth and fifth degree felony offenders who are in their final year of imprisonment.

## **Subsidies for community-based corrections programs**

(R.C. 5149.31)

The bill modifies the requirements for the program of subsidies for community-based corrections programs by also making the subsidies contingent upon the outcomes of any performance-based standards established by DRC. It requires DRC’s standards for community-based corrections programs to be designed to support evidence-based policies and practices, as defined by DRC.

## **Administrative releases**

(R.C. 2967.17)

The bill expands an existing provision that allows the Adult Parole Authority (APA) to grant an administrative release to certain categories of convicted offenders under specified conditions to also allow the APA, in its discretion, to grant an administrative release to a “releasee” who is: (1) serving another felony sentence in a prison within or outside Ohio for the purpose of

consolidation of the records or if justice would best be served, or (2) taken into custody by the U.S. Immigration and Naturalization Service and deported from the U.S. An “administrative release” is a termination of jurisdiction over a particular sentence or prison term by the APA for administrative convenience. A “releasee” is an inmate who has been released from confinement at the expiration of a prison term under a period of post-release control that includes one or more post-release control sanctions.<sup>116</sup>

The existing conditions regarding an administrative release, unchanged by the bill, specify that: (1) the APA may not grant an administrative release except upon concurrence of a majority of the Parole Board and approval of the APA’s Chief, (2) an administrative release does not restore for the recipient rights and privileges forfeited by conviction, and (3) a recipient may subsequently apply for a commutation of sentence to regain the rights and privileges forfeited by conviction, except that specified election-related privileges may not be restored and the privilege of holding a position of honor, trust, or profit may not be restored under this provision to a recipient convicted of specified offenses in certain circumstances.

The categories of offenders for whom the APA currently may grant an administrative release are: (1) parole violators or release violators serving another felony sentence in a prison within or outside Ohio for the purpose of consolidation of the records or if justice would best be served, (2) parole violators at large or release violators at large whose case has been inactive for at least ten years following the declaration of the violation, and (3) parolees taken into custody by the U.S. Immigration and Naturalization Service and deported from the U.S.

## **Certificate of qualification for employment (CQE)**

### **Sealing CQE records**

(R.C. 2953.31 and 2953.32, not in the bill)

An eligible offender may apply to the sentencing court for an order to seal the records of the offender’s case and conviction. Generally, if the court determines that the applicant is an eligible offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, that the interests of the applicant in having those records sealed are not outweighed by any legitimate government needs to maintain those records, and that the rehabilitation of the applicant has been attained to the satisfaction of the court, the court must order all “official records” pertaining to the case sealed and all index references to the case deleted.

The bill expands the definition of “official records” to include all records that are possessed by any public office or agency that relate to an application for or the issuance or denial of, a certificate of qualification for employment (CQE). The current law definition of “official records” means all records that are possessed by any public office or agency that relate to a criminal case.

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<sup>116</sup> R.C. 2967.01, not in the bill.

## **Consideration of sealed CQE records**

(R.C. 2953.25 and 2953.33)

An individual who has been convicted of or pleaded guilty to an offense, who for a specified period of time has been released from incarceration and all supervision imposed after release or has received final release from all other sanctions imposed, and who is subject to a collateral sanction may obtain from the court of common pleas of the county in which the individual resides a CQE that will provide relief from certain bars on employment or occupational licensing.

Under current law, a petition for a CQE must include, among other items, a summary of the individual's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilty for each of those offenses. The bill still requires that the petition include a summary of the individual's criminal history, except that the petition must not include information contained in any record that has been sealed.

Under current law, upon receiving a petition for a CQE the court must review, among other items, the individual's criminal history. The bill still requires that the court review the individual's criminal history, except that the court must not review information contained in any record that has been sealed.

Under current law, the court may order any report, investigation, or disclosure by the individual that the court believes is necessary for the court to reach a decision on whether to approve the individual's petition for a CQE. The bill still allows the court to order such disclosures, except that the court must not require an individual to disclose information about any record sealed.

The bill specifies that in any application for a CQE, a person may be questioned only with respect to convictions and bail forfeitures not sealed.

Generally, if the court finds that granting the petition will materially assist the individual in obtaining employment or occupational licensing, that the individual has a substantial need for relief requested in order to live a law-abiding life, and that granting the petition would not pose an unreasonable risk of safety to the public or any individual, the court may issue a CQE.

## **Sealing of records related to unconditional pardon**

(R.C. 2967.04)

The bill allows the Governor to include as a condition of an unconditional pardon that the records related to the conviction or convictions be sealed, and generally provides that the records are not subject to public inspection unless directed by the Governor. Inspection of the records or disclosure of information contained in them may be made pursuant to the Sealing Law regarding the inspection of sealed records or as the Governor may direct. A disclosure of records sealed under a writ issued by the Governor is not a criminal offense.



## **Internet access for prisoners**

(R.C. 9.08, 5120.62, and 5145.31)

The bill provides greater flexibility for prisons to provide internet access to prisoners in state-owned and private prison facilities by replacing existing law that allows prisoner internet access while “participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes,” with a provision that allows prisoner access to the internet for uses or purposes approved by the prison’s managing officer or the managing officer’s designee.

## **Removing outdated law about the Ohio River Valley Facility**

(R.C. 307.93 and 341.12; repealed R.C. 341.121)

The bill removes outdated portions of the Revised Code that allowed Lawrence County to use the Ohio River Valley Facility, located in Franklin Furnace, to house inmates pursuant to an agreement. These sections are no longer necessary.

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## SECRETARY OF STATE

- Removes from the statement that a foreign nonprofit corporation must submit to the Secretary of State in order to obtain a certificate of authority the statutory requirement that the statement set forth the location of the corporation's principal office in Ohio.
- Specifies that the \$5 fee the Secretary of State may charge for service of process is per address served.
- Requires grants the Secretary of State receives from the U.S. Election Assistance Commission, other than through the Help America Vote Act, to be deposited in the Miscellaneous Federal Grants Fund and spent in accordance with the grant agreement.
- Prohibits a public official responsible for administering or conducting an election from collaborating with or soliciting, accepting, expending, or using any monetary gift, grant, or donation from a nongovernmental person or entity for any costs or activities related to voter programs and other election-related purposes.
- Prohibits the boards of elections Reimbursement and Education Fund from receiving revenues from fees, gifts, grants, or donations.
- Requires the Secretary of State, on July 1, 2021, or as soon as possible thereafter, to certify to the Director of Budget and Management (OBM) the cash balance of, and current existing encumbrances against, the Citizens Education Fund.
- Requires the Secretary of State to specify the sources of revenue that make up the remaining cash balance of the fund.
- Requires the OBM Director to cancel any existing encumbrances against the fund and return any remaining cash balance to the original revenue source as certified by the Secretary of State.
- Abolishes the fund once the existing encumbrances are canceled and the remaining cash balance is returned.
- Eliminates from law the requirement that the Secretary of State forward a copy of each new law to each clerk of the court.

### **Foreign nonprofit corporation certificate of authority**

(R.C. 1703.27)

Under current law, a foreign nonprofit corporation is prohibited from exercising its corporate privileges in Ohio until it receives a certificate authorizing it to do so from the Secretary of State. In applying for the certificate, the foreign nonprofit corporation must provide a statement setting forth specified information, including the location of its principal office in Ohio and the appointment of a designated agent. The bill removes the requirement to list an Ohio office and clarifies that the appointment of the agent must comply with the designated agent provisions that apply to foreign nonprofit corporations.

## **Service of process fees**

(R.C. 111.16)

The bill specifies that the \$5 fee the Secretary of State may charge for service of process is charged per address served. All Ohio businesses are required to have an agent for receiving official and legal documents, and that agent's contact information is required to be registered with the Secretary of State. If a person sues a business, notice of that fact is served to the agent at the registered address. If the agent cannot be reached, the person seeking to sue can deliver the notice to the Secretary of State, who will serve the notice to various last-known addresses of the business (such as the address in the business's most recent tax filings). The bill clarifies that the charge for this service is \$5 for each of these addresses.

## **Federal grants**

(R.C. 111.28)

The bill requires any federal grants the Secretary of State receives from the U.S. Election Assistance Commission (EAC), other than for purposes established under the federal Help America Vote Act (HAVA), to be deposited in the Miscellaneous Federal Grants Fund instead of the HAVA Fund.

Currently, any federal grants from the EAC are placed in the HAVA Fund, even if they are not related to HAVA. The HAVA Fund is used for activities conducted pursuant to HAVA, while the Miscellaneous Federal Grants Fund is used according to the applicable federal grant agreements under other federal programs.

## **Secretary of State funding**

(R.C. 111.27 and 3501.054; repeal of R.C. 111.29)

The bill prohibits a public official responsible for administering or conducting an election from collaborating with or soliciting, accepting, expending, or using any monetary gift, grant, or donation from a nongovernmental person or entity for any costs or activities related to voter registration, voter education, voter identification, get-out-the-vote, absent voting, election official recruitment or training, or any other election-related purpose. The bill defines "public official," for purposes of this provision, as any elected or appointed officer, employee, or agent of the state or any political subdivision, board, commission, bureau, or other public body established by law.

Additionally, the bill prohibits the boards of elections Reimbursement and Education Fund from receiving revenues from fees, gifts, grants, or donations. Under continuing law, the fund is used by the Secretary of State to reimburse boards of elections for certain special elections and required recounts and to provide training and educational programs for the board's members and employees. The fund would continue to receive cash transfers authorized by the Controlling Board.

## **Abolishment of the Citizens Education Fund**

(Section 516.20)

The bill requires the Secretary of State, on July 1, 2021, or as soon as possible thereafter, to certify to the OMB Director the cash balance of, and current existing encumbrances against, the Citizens Education Fund (Fund 4140). The Secretary of State must specify the sources of revenue that make up the remaining cash balance in the fund.

The bill requires the Director to cancel any existing encumbrances against the fund and return any remaining cash balance in the fund to the original revenue source as certified by the Secretary of State. The fund is abolished once the encumbrances are canceled and the remaining cash balance is returned.

### **Copies of laws**

(R.C. 149.08, repealed by the bill; R.C. 149.11, conforming)

The bill eliminates from law the requirement that the Secretary of State forward a copy of each new law to each clerk of the court of common pleas. Under current law, the Secretary of State must forward each engrossed bill to the clerk, within 60 days after it is filed with the Secretary.

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## DEPARTMENT OF TAXATION

### Income tax

- Reduces nonbusiness income tax rates by 5%.
- Explicitly authorizes an income tax deduction for all railroad retirement benefits that are exempt from state taxation under federal law.
- Clarifies that nonresident income not subject to personal income tax based on a reciprocity agreement between Ohio and another state may be deducted on a taxpayer's Ohio return.
- Clarifies that a taxpayer may claim a credit for any income tax withheld on behalf of the taxpayer, including from a taxpayer's wages, retirement income, unemployment compensation, or lottery and casino winnings.
- Extends the amount of time within which a taxpayer must report to the Tax Commissioner a change in the amount of the taxpayer's resident credit for income that is taxed in another state or the District of Columbia.
- Declares that the state does not intend to impose income tax on unemployment compensation reported to a person whose identity was fraudulently used by a third party to collect unemployment compensation.
- Authorizes a nonrefundable tax credit of up to \$1,000 for taxpayers who donate to a nonprofit organization that awards scholarships to primary and secondary school students and that prioritizes low-income students.
- Authorizes a nonrefundable income tax credit of up to \$250 for certain home school education expenses incurred by a taxpayer for one or more of their dependents.
- Authorizes a means-tested, nonrefundable income tax credit for up to \$2,500 in tuition paid to a nonchartered, nonpublic school.
- Delays by one year, from 2022 to 2023, the date by which the Department of Job and Family Services (JFS) must begin to accept state income tax withholding requests from unemployment compensation recipients.
- Requires JFS to report and remit state income tax withholding on unemployment compensation benefits on a monthly basis.
- Eliminates the requirement that, if claiming the business income deduction, each business or professional activity generating income for a taxpayer be reported on their annual income tax return.
- Expands eligibility to receive an Ohio opportunity zone investment income tax credit allocation, i.e., a tax credit certificate, to an investor in an Ohio opportunity zone that is not subject to the personal income tax.

- Increases, from \$1 million to \$2 million, the limit on the amount of such credits that may be awarded to an individual during a fiscal biennium.
- Expands the income tax deduction allowed for contributions to Ohio's 529 education savings program to include contributions to 529 programs established by other states.
- Eliminates the nonrefundable income tax credit for contributions made to the campaign committees of candidates for statewide office.

### **Municipal income tax**

- Modifies and extends, until December 31, 2021, a temporary municipal income taxation rule for employees who are working from home due to COVID-19.
- States that the temporary rule applies only for the purposes of municipal income tax withholding and the siting of an employer's net profits, and not for the purpose of determining an employee's actual tax liability.
- Temporarily shields employers from certain penalties associated with withholding municipal income tax as long as the employer withholds such tax for an employee's principal place of work.
- Makes several changes to the general procedure for creating a joint economic development district (JEDD).

### **Sales and use taxes**

- Exempts employment services and employment placement services from sales and use tax.
- Exempts the sale or use of investment bullion and coins from state and local sales and use taxes.
- Exempts from sales and use taxes memberships to gyms or other recreational facility operated by a nonprofit 501(c)(3) organization.
- Allows certain county sales and use taxes to be levied for the operation of jail facilities, in addition to the construction, acquisition, equipping, or repair of the facilities.
- Repeals several inoperable provisions of use tax law that would have applied only in the event that an act of Congress authorized states to compel sellers that do not have a physical presence in the state ("remote sellers") to collect and remit use tax.

### **Commercial activity tax**

- Requires that a taxpayer's preceding year's taxable gross receipts be used to calculate the commercial activity tax owed on its first \$1 million in gross receipts, instead of its current year's receipts.
- Makes permanent a temporary CAT exemption for Bureau of Workers' Compensation dividends paid to employers.

- Reduces the percentage of commercial activity tax (CAT) revenue devoted to offset the Department of Taxation's administrative expenses from 0.65% to 0.575% beginning July 1, 2021.

### **Kilowatt-hour tax**

- Clarifies eligibility criteria for a kilowatt-hour tax exemption available under continuing law to certain end users that generate their own electricity.

### **Estate tax**

- Makes several administrative changes to the state's repealed estate tax.

### **Property tax**

- Authorizes combined health districts to levy property tax, with voter approval, for operating expenses.
- Authorizes a municipal corporation or township to permanently impose, with voter approval, a combined levy for fire, emergency medical, and police services.
- Extends, by two years, the deadline by which an owner or lessee of a renewable energy facility may apply for existing law's property tax exemption for such facilities.
- Temporarily extends the charitable use property tax exemption to any parking garage owned and operated by a qualifying tax-exempt nonprofit arts institution.
- Temporarily exempts property owned by certain nonprofit arts institutions from special assessments levied by a municipality, special improvement district, or conservancy district.
- Expands an existing property tax exemption for fraternal organizations to include the property of such organizations with national governing bodies.
- Authorizes a property tax exemption for certain property used for federal or state wetland mitigation or water quality improvement projects.
- Imposes a charge against any property that improperly received the homestead exemption if the property owner or occupant fails to notify the county auditor that the owner or occupant no longer qualifies for the exemption.
- Requires the owner of tax-exempt property to notify the county auditor if the property ceases to qualify for an exemption.
- Imposes a charge on property whose owner fails to give such notice equal to the tax savings for up to the five preceding years that the property did not qualify for the exemption.
- Requires federally subsidized residential rental property to be valued for tax purposes based on its market rent without regard to the effects of government police powers or other governmental action, which may include subsidized rent, favorable financing, tax credits, or use restrictions.

- Establishes a temporary procedure by which a 501(c)(3) organization may apply for tax exemption and abatement of more than three years of unpaid property taxes, penalties, and interest due on certain property.
- Allows political subdivisions to use tax increment financing (TIF) district or downtown redevelopment district (DRD) service payments for off-street parking facilities.
- Allows municipalities that create certain types of TIFs the discretion to designate the beginning date of the TIF exemption, rather than the exemption automatically beginning on the effective date of the designating ordinance.

## **Tax cross-references**

- Updates and corrects several cross-references in state tax law.

## **Tax administration**

- Extends the time allowed for the Tax Commissioner to approve or deny a political subdivision's request to transfer money between certain funds of the subdivision.
- Allows the Department of Taxation to disclose to the State Racing Commission confidential taxpayer information to assist the Commission with administering horse racing permits and taxes on horse racing.
- Allows the Department of Taxation to provide to a municipal tax administrator any income tax return relating to that municipality's income tax that is filed electronically with the state.
- Explicitly authorizes the Tax Commissioner to review additional information provided by an applicant for a state tax refund and to adjust the amount of the refund multiple times before issuing a final refund determination.
- Adds resort area and tourism development gross receipts taxes to the list of tax obligations respecting which the Tax Commissioner must periodically verify the compliance of liquor permit holders.
- Requires the monthly disbursements made by the Tax Commissioner from the Wireless 9-1-1 Government Assistance Fund to county treasurers to be made in the same proportion distributed to that county in the corresponding calendar month of the previous year, instead of basing them on 2013 distributions made by the Public Utilities Commission (PUCO).
- Requires any shortfall in distributions resulting from the timing of funds received in a previous month to be distributed in the following month, instead of calculating the county's share of the fund by proportionally reducing the distributions to be equivalent to the amount available in the fund.
- Modifies the law governing the computation and enforcement of cigarette minimum prices.
- Eliminates the Tax Expenditure Review Committee.



- Repeals a provision recommending that any bill proposing to enact or modify a tax expenditure include a statement of the bill's intent.
- Changes the amount a nonprofit corporation must spend granting wishes of minors with life-threatening illnesses to be eligible to receive funds from the Wishes for Sick Children Income Tax Contribution Fund.

## **Income tax**

### **Rate reduction**

(R.C. 5747.02; Section 803.97(A))

The bill reduces the tax rates for all nonbusiness income brackets by 5% over two years. Rates are reduced by 3.5% for taxable years beginning in 2021, and by an additional 1.5% for taxable years beginning in or after 2022. (Business income remains subject to a 3% flat tax.) Previously, the rates in those brackets ranged from 2.850% to 4.797%. After the full 5% reduction, those rates will range from 2.75% to 4.629%.

### **Inflation indexing adjustment**

(R.C. 5747.02 and 5747.025; Section 803.97)

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis. The bill suspends these adjustments for taxable years beginning in 2021 and 2022. Consequently, the 2020 income tax brackets will also apply in 2021 and 2022 (although the tax rates corresponding with those brackets will be reduced as described above). Indexing resumes in 2023.

### **Taxation of railroad retirement benefits**

(R.C. 5747.01(A)(5))

The bill explicitly authorizes an income tax deduction for all railroad retirement benefits that are exempt from state taxation under federal law. Current Ohio law allows a deduction for Tier I railroad retirement benefits, but does not specifically allow a deduction for other types of railroad retirement benefits that are exempted from state taxation under federal law, i.e., any railroad retirement annuities and supplemental annuities.<sup>117</sup>

### **Deduction for certain nonresident income**

(R.C. 5747.01(A)(33) and 5747.10; Section 803.60)

Continuing law authorizes the Tax Commissioner to enter into an agreement with the Commissioner's counterparts in another state or the District of Columbia pursuant to which residents of that state are exempted from Ohio's income tax on income earned or received in

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<sup>117</sup> 45 U.S.C. 231m.

Ohio, as long as the other state provides the same tax treatment for Ohio residents. In the absence of such a reciprocity agreement, Ohio's income tax generally applies to the income of nonresidents earned in Ohio. Currently, Ohio has entered into such agreements with its bordering states – Indiana, Kentucky, West Virginia, Michigan, and Pennsylvania.<sup>118</sup>

The bill clarifies that income not subject to state income tax because of one of these reciprocity agreements may be deducted on the nonresident taxpayer's annual Ohio income tax return.

### **Income tax credit for tax withholdings**

(R.C. 5747.08(H); Section 803.70)

The bill clarifies that any income tax withheld, including from a taxpayer's wages, retirement income, or lottery and casino winnings, entitles the taxpayer who is required to report the income on the taxpayer's annual return to claim a credit for those withheld amounts. Under continuing law, employers, public retirement systems, the state lottery commission, casino operators, and video lottery sales agents are required to withhold state income tax and school district income tax on a taxpayer's wages, retirement income, or lottery and casino winnings, as applicable.

The bill states that the provision is intended to clarify existing law and applies to taxable years beginning on and after January 1, 2016.

### **Resident credit amended return period**

(R.C. 5747.05(B))

The bill extends, from 60 days to 90 days, the time within which a resident taxpayer must report to the Tax Commissioner a change in the amount of the taxpayer's credit for income that is taxed in another state or the District of Columbia. Likewise, the bill extends, from 60 days to 90 days, the time for a resident taxpayer to request a refund due to a change in that credit.

Continuing law allows an income tax credit for a resident Ohio taxpayer for any income that is subject to both Ohio income tax and income tax in another state or the District of Columbia. The credit equals the lesser of the income tax liability owed on that income in the other jurisdiction or the Ohio income tax liability that would otherwise be owed on that income if not for the credit. In essence, the resident credit prevents the double taxation of the same income by Ohio and another jurisdiction. If there is a change in the taxpayer's taxable income or tax liability that impacts the amount of the taxpayer's resident credit, then the taxpayer is required to report the change by filing an amended return.

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<sup>118</sup> See Ohio Department of Taxation, Employer Withholding – Reciprocity FAQs, <https://tax.ohio.gov/wps/portal/gov/tax/help-center/faqs/employer-withholding-reciprocity/employer-withholding-reciprocity>.

## **Tax on fraudulent unemployment compensation**

(Sections 757.10 and 812.23)

The bill declares that the state does not intend to collect tax on unemployment compensation benefits reported to a person whose identity was fraudulently used by a third party to collect those benefits. Under continuing law, unemployment benefits are subject to federal, state, and school district income tax.

The Internal Revenue Service (IRS) requires the el (JFS) to issue IRS Form 1099-G to every person who was issued unemployment benefits. The bill strongly encourages any taxpayer who receives a Form 1099-G that includes fraudulent unemployment benefits to report the fraud to JFS for the purpose of receiving a corrected Form 1099-G. Although the IRS, in Information Release 2021-24, instructs taxpayers who are victims of identity theft to only report actual unemployment benefits received, the IRS warns that a corrected Form 1099-G is required to avoid receiving an unexpected federal tax bill for unreported income.<sup>119</sup>

The bill also requires the Director of JFS and the Tax Commissioner to publish information on the websites of their respective agencies to educate residents about unemployment compensation fraud, including information on measures to help prevent such fraud, recommended actions when a resident suspects or detects such fraud, and the penalties under continuing law for engaging in such fraud. This information must remain on the websites of both agencies until June 30, 2023.

## **Education tax credits**

### **Credit for donations to scholarship organizations**

(R.C. 5747.73, 5747.08, and 5747.98; Section 803.97)

The bill authorizes a nonrefundable tax credit of up to \$1,000 for taxpayers who donate to a nonprofit organization that awards scholarships to primary and secondary school students and that prioritizes low-income students.

To qualify for the credit, a taxpayer must make a cash donation to a certified “scholarship granting organization” and provide a receipt of the donation to the Tax Commissioner. The credit cannot exceed \$1,000 per year. If the donation is made by a pass-through entity, the total credit claimed by all owners with an interest in the entity cannot exceed that amount.

A nonprofit corporation can apply to the Attorney General to be certified as a scholarship granting organization. The Attorney General must certify the organization if all of the following apply:

1. It is a 501(c)(3) tax-exempt organization;
2. It primarily awards academic scholarships to primary and secondary school students;

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<sup>119</sup> See Internal Revenue Service, “IRS Offers Guidance to Taxpayers on Identity Theft Involving Unemployment Benefits,” January 28, 2021, available at <https://www.irs.gov/newsroom/irs-offers-guidance-to-taxpayers-on-identity-theft-involving-unemployment-benefits>.

3. It prioritizes awarding scholarships to low-income students.

The Attorney General must approve or deny a certification application within 30 days of receipt, maintain a list of all scholarship granting organizations on its website, and provide the list to the Tax Commissioner annually and upon request. The Attorney General may adopt rules as necessary to determine eligibility for and administer the credit.

### **Home school expense credit**

(R.C. 5747.72, 5747.08, and 5747.98; Section 803.97)

The bill authorizes a nonrefundable personal income tax credit for certain education expenses incurred by a taxpayer for the benefit of one or more home schooled dependents. The credit equals the full amount of these expenses, up to a maximum of \$250 per taxable year. Amounts paid for books, supplementary materials, supplies, computer software, applications, or subscriptions qualify for the credit, while expenses for computers, electronic devices, or accessories to computers or electronic devices are not credit-eligible. The credit is first available for taxable years beginning in 2021.

### **Nonchartered, nonpublic school tuition credit**

(R.C. 5747.75, 5747.08, and 5747.98; Section 803.180)

The bill authorizes a personal income tax credit for a taxpayer with one or more dependents who attend a nonchartered, nonpublic school. The credit equals the amount of tuition paid during the year by the taxpayer and, if filing a joint return, the taxpayer's spouse for those dependents to attend such a school, up to \$2,500. A taxpayer qualifies for the credit only if the total federal adjusted gross income (FAGI) of the taxpayer's household does not exceed 300% of the federal poverty level for a household of that size. The credit is available for nonchartered, nonpublic school tuition paid on or after January 1, 2021.

A nonchartered, nonpublic school is a private primary or secondary school that, because of truly held religious beliefs, chooses not to be chartered by the State Board of Education.

### **Unemployment compensation income tax withholding**

(R.C. 5747.065; Sections 610.02 and 610.03, amending Section 8 of S.B. 18 of the 134<sup>th</sup> General Assembly)

The bill makes two changes to the law governing state income tax withheld from a taxpayer's unemployment compensation benefits. First, the bill delays by one year the date by which the Department of Job and Family Services (JFS) must begin to accept state income tax withholding requests from unemployment compensation recipients. Under continuing law, individuals may request, at the time they apply for benefits, that JFS withhold federal income tax on their benefits. S.B. 18 of the 134<sup>th</sup> General Assembly modified the law to also allow individuals to elect to have state income tax withheld from their unemployment benefits paid on or after January 1, 2022. The bill delays the application of this provision by one year, allowing unemployment compensation recipients to elect to have state income tax withheld from their unemployment benefits paid on or after January 1, 2023.

Second, the bill requires JFS to report and remit state income tax withholding on unemployment compensation benefits on a monthly basis. The Director of JFS must electronically file a return each month with the Tax Commissioner identifying the total amount of unemployment compensation paid and state income tax withheld during the preceding month for each taxpayer that elected to have state income tax withheld, and remit all such amounts electronically. Current law requires JFS to report and remit these amounts using the frequencies prescribed for employer withholding, which may be daily, every three days, monthly, or quarterly depending upon the overall amount of accumulated withholdings.

### **Business reporting requirement**

(R.C. 5747.08(L); Section 803.130)

The bill removes a requirement that a taxpayer claiming the business income deduction indicate on their annual income tax return each business or professional activity from which that income is derived. Under current law, these indications must be reported according to each activity's corresponding North American Industry Classification System (NAICS) code. This reporting requirement is no longer required for taxable years beginning on or after January 1, 2021.

### **Ohio opportunity zone investment tax credit**

(R.C. 122.84)

The bill expands eligibility to receive an Ohio opportunity zone investment income tax credit allocation, i.e., a tax credit certificate, to an investor in an Ohio opportunity zone that is not subject to the personal income tax. It also increases, from \$1 million to \$2 million, the limit on the amount of such credits that may be awarded to an individual during a fiscal biennium.

### **Opportunity zone background**

Federal law allows states to designate economically distressed areas that meet certain criteria as "opportunity zones."<sup>120</sup> Certain investments made to benefit the zone are eligible for preferential federal tax treatment. Specifically, when a taxpayer reinvests capital gains (i.e., income from the sale of stock or other asset) in an "opportunity zone fund" – an investment fund that holds at least 90% of its assets in property, stock, or ownership interests that benefit opportunity zones – the tax on those capital gains is deferred until the investment is sold or exchanged from the fund. Additional federal benefits are available if the investment is held in the fund for at least five years.<sup>121</sup>

### **Ohio income tax credit**

Continuing law authorizes an Ohio income tax credit for investments that entirely benefit Ohio-designated zones. To qualify for the credit, a taxpayer must invest in an opportunity zone fund that in turn holds 100% of its invested assets in opportunity zones in Ohio (referred to in

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<sup>120</sup> 26 U.S.C. 1400Z-1. A map of opportunity zones designated in Ohio is available at [https://development.ohio.gov/bs/bs\\_censustracts.htm](https://development.ohio.gov/bs/bs_censustracts.htm).

<sup>121</sup> 26 U.S.C. 1400Z-2.

the bill as an “Ohio qualified opportunity fund”) and apply to the Director of Development for a tax credit certificate.

### ***Award to nontaxpayers***

Under current law, the nonrefundable credit equals 10% of a state income taxpayer’s investment. The taxpayer may claim the credit in the year in which the Ohio qualified opportunity fund invests the taxpayer’s investment in a project located in an Ohio opportunity zone, or in the following year (in case the taxpayer’s credit is approved after the tax filing deadline for the year in which the investment was made). The taxpayer may alternatively transfer the credit to another person to claim. The credit may be transferred only once – a transferee may not again transfer the credit.

The bill allows the Director of Development to award a credit to a person that is not subject to the income tax and is, therefore, unable to claim the credit. But continuing law allows such a person to sell or transfer the credit to a taxpayer.

### ***Individual credit limit***

Under current law, the total amount allowed to a particular credit recipient in any fiscal biennium is limited to \$1 million. The bill increases this amount to \$2 million and specifies that the revised limit is on the amount that the Director of Development may allocate in a biennium rather than on the amount that might be claimed by the credit recipient in the biennium. The total amount of credits available for all taxpayers remains limited to \$50 million per biennium.

### **Education savings plan income tax deduction**

(R.C. 5747.01(A)(9) and 5747.70; Section 803.200)

Federal law authorizes states and educational institutions to operate tax-preferred education savings programs, known as “qualified tuition programs” or “529 plans.” The state of Ohio currently offers such a plan, under which individuals may contribute to an investment account to pay for future post-secondary college or university expenses, as well as expenses for primary and secondary school education. Earnings from 529 plans are exempt from federal income tax and the Ohio income tax to the extent the earnings are used to pay the qualified education expenses of the plan beneficiary.

Continuing Ohio law allows a state income tax deduction for contributions to Ohio’s 529 plan. The bill extends the deduction so that it would apply as well to contributions to any 529 plan established by another state or by an educational institution. As under current law, the deduction would be limited to \$4,000 per beneficiary per year for the taxpayer or the taxpayer and the taxpayer’s spouse, regardless of whether the taxpayer and spouse file separate returns or a joint return; annual contributions in excess of \$4,000 per beneficiary may be deducted in ensuing years, subject to the annual \$4,000 limit.

The extended deduction applies to taxable years beginning in 2021 or thereafter.

## Campaign contribution tax credit

(R.C. 5747.29, repealed; and R.C. 5747.98; Section 803.160)

The bill eliminates, for taxable years ending on or after the bill's 90-day effective date, the nonrefundable income tax credit for contributions made to the campaign committees of candidates for statewide office. Under current law, the credit equals the full amount of a taxpayer's monetary contribution, up to \$50 for individuals or \$100 for joint filers. It applies only to contributions made to the campaign committees of candidates for Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, State Board of Education, Chief Justice or Justice of the Supreme Court, or General Assembly.

The credit was previously repealed by H.B. 166 of the 133<sup>rd</sup> General Assembly, but was later reinstated by S.B. 39 of the 133<sup>rd</sup> General Assembly.

## Municipal income tax

### Municipal income taxation during the COVID-19 pandemic

(Section 610.115 and 610.116, amending Section 29 of H.B. 197 of the 133<sup>rd</sup> General Assembly; Section 757.40)

The bill modifies and extends, until December 31, 2021, a temporary rule governing the municipal income taxation of employees who are working at a temporary worksite – including their home – due to the COVID-19 pandemic.<sup>122</sup>

Under the temporary rule, if an individual has to work at a temporary worksite because of the COVID-19 pandemic, that employee is still considered to be working at his or her regular place of employment, or principal place of work. This treatment affects which municipality the employer must withhold income taxes for, which municipality may tax the employee's pay, and whether and how much of the employer's own income is subject to a municipality's income tax.

### Temporary rule extension

The temporary rule, by its own terms, expires 30 days after the end of the Governor's COVID-19 emergency declaration.<sup>123</sup> Under recently enacted provisions of [S.B. 22 of the 134<sup>th</sup> General Assembly](#), the General Assembly could end that emergency declaration on or after that act's effective date (June 23, 2021) by adopting a concurrent resolution to do so or, if the General Assembly does not act to extend the declaration, the emergency is scheduled to end by operation of law on July 23, 2021.<sup>124</sup> Alternatively, if the Governor rescinds the declaration before that date, the rule could end sooner.

The modified provision (which has a 90-day effective date that would fall after July 2021) states that the emergency rule applies until December 31, 2021. In addition, the bill removes the requirement in the current rule that the offsite work arrangement be required by the employer

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<sup>122</sup> The temporary rule was enacted in Section 29 of Am. Sub. H.B. 197 of the 133<sup>rd</sup> General Assembly.

<sup>123</sup> The current state of emergency was declared in Executive Order 2020-01D, issued on March 9, 2020.

<sup>124</sup> Section 3 of S.B. 22 of the 134<sup>th</sup> General Assembly.

as a result of the emergency declaration. Under the bill, the rule would apply to employees who are working at another location “in response to the COVID-19 pandemic,” without regard to whether or not the employer requires the employee to do so.

### **Effect of temporary rule on tax withholding and tax liability**

Under the temporary rule, considering an employee’s income to be earned at their principal place of work potentially allows the employer to avoid withholding taxes for that employee in the municipality where the employee’s temporary worksite is located and prevents the employer from becoming subject to that municipality’s income tax. It also potentially prevents the employee from being taxed on that income by that municipality, unless the employee is a resident of that municipality. (Resident municipalities may tax individual taxpayers on their entire income, regardless of where the income is earned.<sup>125</sup>) The full effect of the current provision is not clear, however, because courts have generally found that a municipality cannot tax a nonresident’s income that is not earned in that municipality and that taxpayers are entitled to a refund of tax withheld on that income.<sup>126</sup> This prohibition arises from due process protections – the Ohio Supreme Court has held that a municipal corporation taxing nonresident income may violate constitutional due process if there is no “fiscal relation” between the tax and the protections, opportunities, and benefits provided by the taxing municipality to the nonresident (e.g., police and fire protection).<sup>127</sup>

The bill states that the temporary rule applies only for the purposes of municipal income tax withholding and the siting of an employer’s net profits, and not for the purpose of determining the employee’s actual tax liability. In effect, the bill requires municipalities to approve an employee’s request for a refund of taxes withheld under the temporary rule on the due process basis described above.

If an employee requests a refund of any taxes withheld under the temporary rule, the bill also prohibits a municipal tax administrator from requiring the employer to provide any documentation to support the refund claim, other than a statement verifying the number of days the employee worked at the employee’s principal place of work and that the employer did not refund any withheld taxes directly to the employee.

If an employee does not request a refund, the municipality in which the employee resides must treat the taxes withheld to the principal place of work municipality as validly paid. Consequently, the employee will owe tax to the municipality of residence only if that municipality does not offer a 100% credit for taxes paid to another municipality or has a higher tax rate than the principal place of work municipality.

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<sup>125</sup> R.C. 718.01(A)(1)(b), not in the bill.

<sup>126</sup> See, e.g., *Miley v. City of Cambridge*, No. 96 CA 44, 1997 Ohio App. LEXIS 3243 (5<sup>th</sup> Dist. June 25, 1997) (granting refund where city ordinance was held unconstitutional because it taxed nonresidents for work outside the city if the employer’s principal place of work was in the city).

<sup>127</sup> *McConnell v. Columbus*, 172 Ohio St. 95, 99-100 (1961).



## **Employer liability**

The bill also provides that, if an employer withheld municipal income tax to an employee's principal place of work between March 9, 2020 (when the temporary rule took effect), and December 31, 2021, a tax administrator may not assess taxes, penalties, or interest against that employer for the failure to withhold those taxes to the municipality in which the employee actually worked or for the failure to situs the employee's wages to that municipality for purposes of the employer's net profit tax liability. This "safe harbor" applies regardless of whether the employee worked in the other municipality because of the COVID-19 pandemic or by order of their employer.

Under continuing law, a tax administrator may assess taxes, penalties, and interest against an employer that improperly withholds tax from an employee's income or that improperly pays its municipal net profits tax.<sup>128</sup>

## **Preexisting law governing transitory employees**

Under continuing law, a nonresident employee may work in a municipality for up to 20 days per year without the employer becoming subject to that municipality's tax withholding requirements and the employee becoming subject to that municipality's income tax. And, if an employee does not exceed the 20-day threshold, that employee's pay is not counted toward the business's payroll factor, one of three factors – along with property and sales – that determines whether, and the extent to which, an employer's own income is subject to the municipality's tax on net profits.<sup>129</sup>

## **JEDD notice and procedures**

(R.C. 715.72)

The bill makes several changes to one of the three statutory procedures for creating a joint economic development district (JEDD). The changes apply to only JEDDs created under the general procedure available to subdivisions throughout the state. The bill does not affect the two restricted procedures available to subdivisions located in charter counties, subdivisions that are part of or contiguous to certain transportation improvement districts, and subdivisions that creating (or that have previously created) a JEDD composed solely of municipal territory that includes an airport.<sup>130</sup>

JEDDs are territorial districts created by a contract between municipal corporations, townships, and, under certain circumstances, counties. A JEDD is governed by board of directors which may impose an income tax within the district to promote economic development or redevelopment, create or preserve jobs, and improve the economic welfare of the district. Revenue from the tax may be used to enhance infrastructure in the area surrounding the district,

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<sup>128</sup> R.C. 718.27, not in the bill.

<sup>129</sup> R.C. 718.01(C)(16) and (17), 718.011, 718.02, and 718.82, not in the bill.

<sup>130</sup> See R.C. 715.70 and 715.71, not in the bill.

provide new and additional services and facilities to the district, and supplement the revenue of each subdivision.

The bill makes three changes to the general procedure for creating a JEDD. First, it allows the owner of property that is part of the territory of a proposed JEDD to opt out of the district if all or part the property (a) is located within  $\frac{1}{2}$  mile of a municipal corporation that is not part of the JEDD (referred to by the bill as a “noncontracting municipal corporation”) or (b) receives water or sewer service under certain agreements from a noncontracting municipal corporation.

Second, the bill requires that notice of a proposed JEDD be sent to noncontracting municipal corporations that are (a) located within  $\frac{1}{2}$  mile of the proposed JEDD, or (b) obligated to provide water or sewer services to all or part of the proposed JEDD under certain agreements.

Finally, if the territory of the proposed JEDD includes property to which any non-JEDD party would provide water or sewer services, the bill requires that the JEDD contract include certain information relating to the district’s public utility infrastructure, including a professional estimate of the cost of providing utility services to the JEDD, an analysis of funding sources, and evidence or estimates indicating that at least part of the necessary utility infrastructure will be constructed within five years of creating the JEDD.

## **Sales and use taxes**

### **Exempt employment services and employment placement services**

(R.C. 5739.01(B)(3)(k) and (l), (j), and (kk), 5739.02(B)(11) and (41), and 5739.03; Section 803.93)

The bill exempts employment services and employment placement services from sales and use tax beginning the first day of the first full month following the bill’s 90-day effective date. Under continuing law, the sale or use of services is generally not taxable unless expressly made subject to the tax. Employment services and employment placement services have been expressly subject to the tax since 1993.<sup>131</sup>

Under current law, taxable “employment services” are transactions in which a service-provider furnishes personnel to perform work under the supervision or control of the purchaser. The personnel may be assigned to a purchaser for a short period of time or on a long-term basis. The personnel are paid by the service-provider or a third party that supplies the personnel to the service-provider. Transactions between members of an affiliated group, medical and health care services, contracting and subcontracting services, and the permanent assignment of an employee over a contract of at least one year are not taxable “employment services” for sales and use tax purposes. Furthermore, if employment services are supplied by a third party to a service-provider, and then by the service-provider to a purchaser, only the transaction between the service-provider and the purchaser is taxable. The hallmark of employment services are personnel that work under the direction or control of a purchaser but are employed and paid by the service-provider (or a third party that provided the personnel to the service-provider).

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<sup>131</sup> Ohio Department of Taxation, “[ST 1993-08 – Employment Service,](#)” revised February 2007.

Current law defines “employment placement services” as a transaction in which a service-provider locates employment for a job-seeker or locates an employee to fill an available position.

### **Investment bullion and coin exemption**

(R.C. 5739.02(B)(57); Section 803.93)

The bill reinstates the sales and use tax exemption for the sale of investment metal bullion and coins. The exemption was repealed the preceding biennial budget act (H.B. 166 of the 133<sup>rd</sup> General Assembly). Investment metal bullion is gold, silver, platinum, or palladium bullion in excess of the minimum fineness required by a contract market for delivery in satisfaction of a commodity futures contract. (The definition is derived from federal law governing whether the purchase of something by an individual retirement account is a “collectible,” and therefore considered a distribution from the IRA; bullion satisfying the federal law definition is not considered a collectible.<sup>132</sup>) An investment coin is any coin composed primarily of gold, silver, platinum, or palladium.

The reinstated exemption applies to the sale or use of investment bullion and coins beginning on or after the first day of the first month that begins after the provision’s effective date.

### **Sales and use tax exemption: nonprofit gym memberships**

(R.C. 5739.01(B)(3)(n) and (o); Section 803.93)

Continuing law subjects to sales and use taxation memberships to gyms or other recreational or sports club facilities but exempts memberships to such facilities provided by state agencies and local governments.<sup>133</sup>

The bill also exempts such membership services if provided by a federally tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code. Such organizations include those that have charitable, religious, educational, or certain other purposes, that do not attempt to influence legislation or engage in political campaigns to any substantial extent, and that do not distribute net earnings to private persons.

The exemption applies on and after the first day of the first month beginning after the bill’s 90-day effective date.

### **County sales and use taxes for jail operations**

(R.C. 5739.021)

The bill allows for certain county sales and use taxes to be levied for the operation of jail facilities, in addition to the construction, acquisition, equipping, or repair of such facilities. Under continuing law, any county, except for one that has adopted a charter (currently only Cuyahoga and Summit counties) may levy up to a 0.5% sales and use tax to be used exclusively for detention purposes, i.e., the construction, acquisition, equipping, or repairing of detention facilities. The

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<sup>132</sup> 26 U.S.C. 408(m)(3).

<sup>133</sup> R.C. 5739.02(B)(22).

bill expands this list of purposes to which proceeds from the 0.5% sales and use tax can be applied to include the operation of jail facilities.

Under continuing law, a county is only able to levy this detention services tax to the extent the rate of the tax, when added to the rate of a transit authority sales and use tax levied in the county, does not exceed 1.5%. Thus, for example, if the county's transit authority levies a 1.25% sales and use tax, then the county could only levy a 0.25% jail facility sales and use tax.

### **Remote sellers**

(R.C. 5741.01 and 5741.03; R.C. 5741.032, repealed; Section 610.30, repealing Section 757.50 of H.B. 59 of the 130<sup>th</sup> General Assembly)

The bill repeals several inoperable provisions of use tax law that would have applied only in the event that an act of Congress authorized states to compel sellers that do not have a physical presence in the state ("remote sellers") to collect and remit use tax on internet and catalog transactions. The repealed provisions expressed the General Assembly's intent, upon the enactment of such a federal act, to enact conforming legislation, earmarked a small portion of new collections for administrative costs and the remainder for the Income Tax Reduction Fund, and exempted remote sellers with annual sales of \$1 million or less.

In 2018, the U.S. Supreme Court struck down a long-standing interpretation of the Commerce Clause (Article 1, Section 8 of the U.S. Constitution) that prevented states from compelling remote sellers to collect and remit state sales or use taxes.<sup>134</sup> Following that decision, many states (including Ohio) began requiring remote sellers with sufficient local "contacts" to collect and remit the taxes. (Continuing Ohio law requires the consumer to pay use tax directly to the state in instances where it is not remitted by the seller.) Since this extension of state tax collection authority was sanctioned by a holding of the U.S. Supreme Court rather than an act of Congress, the provisions repealed by the bill remain inoperable.

## **Commercial activity tax**

### **Minimum commercial activity tax computation**

(R.C. 5751.03; Section 812.20)

The bill requires the minimum commercial activity tax (CAT) to be computed based on the taxpayer's taxable gross receipts reported in the preceding year, rather than the current year. Otherwise, the minimum tax tiers remain the same.

The CAT is levied on the basis of a business's gross receipts from Ohio sales. A business with \$150,000 or less in annual taxable gross receipts pays no CAT. Otherwise, the CAT rate equals 0.26% of a business's taxable gross receipts in excess of \$1 million annually. A differently calculated "minimum tax" applies to the taxpayer's first \$1 million of taxable gross receipts. The amount of minimum tax owed varies according to the business's total taxable gross receipts received, under current law, in the year for which the tax is being calculated, as follows:

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<sup>134</sup> See, *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_, 138 S. Ct. 2080 (2018).

| CAT minimum tax                                      |                              |
|--|------------------------------|
| If taxpayer's total taxable gross receipts are . . . | The CAT minimum tax is . . . |
| Greater than \$150,000, but not over \$1 million     | \$150                        |
| Greater than \$1 million, but not over \$2 million   | \$800                        |
| Greater than \$2 million, but not over \$4 million   | \$2,100                      |
| Greater than \$4 million                             | \$2,600                      |

## Exemption for workers' compensation dividends

(R.C. 5751.01(F)(2)(mm); Section 803.170)

The bill permanently extends a CAT exemption for dividends paid to employers by the Bureau of Workers' Compensation (BWC). Dividends paid to employers in 2020 and 2021 are exempt from the CAT under continuing law, so the bill exempts all dividend payments received by employers on and after January 1, 2022.<sup>135</sup>

Continuing law requires BWC to return excess workers' compensation premiums to employers if the board of directors determines that the surplus of earned premiums over losses is larger than needed to maintain solvency. Such payments are generally referred to as "dividends" and are, in the absence of an exemption, considered to be taxable gross receipts for purposes of the CAT.

## Administrative expense earmark

(R.C. 5751.02)

The bill reduces the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from current law's 0.65% to 0.575%, beginning July 1, 2021. The fund is used to defray the Department of Taxation's expenses in administering the CAT and "implementing tax reform measures." The percentage credited to the fund was previously reduced in July of 2019, from 0.75% to the current 0.65%.

## Kilowatt-hour tax

### Exemptions

(R.C. 5727.80 and 5727.81; Section 803.100)

The bill clarifies eligibility criteria for a kilowatt-hour tax exemption available under continuing law to certain end users that generate their own electricity. The kilowatt-hour tax is imposed on the distribution of electricity to end users in Ohio, at varying rates depending on the

<sup>135</sup> Section 6 of S.B. 18 of the 134<sup>th</sup> General Assembly.

kilowatt-hour consumption of the end user. Most revenue from the kilowatt-hour tax is credited to the GRF.

Current law exempts end users that generate their own electricity and use it on the same site where the electricity was generated. The bill instead specifies that the exemption applies to both of the following:

- Electricity distributed or obtained by an end user if the electricity is generated by a facility that is (1) primarily dedicated to providing electricity to the end user, (2) interconnected and integrated with the end user's electric-consuming facilities, (3) located on the same property as the end user's electric-consuming facilities or on property contiguous to those facilities, and (4) sized to produce an amount of electricity that did not, at the time of interconnection, exceed the end user's electricity needs;
- Electricity generated by an end user primarily for its own consumption on the same premises, including electricity provided by the end user to other entities, so long as the electric generating facility is sized to produce an amount of electricity that did not, at the time of interconnection, exceed the end user's electricity needs.

The bill states that these changes to the exemption criteria are intended to clarify the meaning of existing law.

## **Estate tax**

(R.C. 319.54, 321.27, 5731.21, 5731.24, 5731.28, and 5731.41)

The bill makes several administrative changes to the state's repealed estate tax. The estate tax was repealed on January 1, 2013, but currently continues to apply to newly discovered property of individuals who died before that date.

### **Newly discovered property and refunds**

First, the bill provides that no estate tax will be due for property that is first discovered after December 31, 2021, or property discovered before that date, but not yet disclosed or reported by that date. Similarly, an executor or similar official may no longer file an application for an estate tax refund after that date.

### **Administrative fees**

The bill modifies fees paid to county auditors and treasurers for the administration of the estate tax. Under current law, such fees are tiered based on countywide collections. The bill instead provides for a flat fee equal to 2% of the net tax collected.

The bill also fixes additional compensation paid to county auditors to enforce real property, manufactured home, and estate tax law.<sup>136</sup> Under current law, auditors are

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<sup>136</sup> This compensation appears to apply to any agent of the Tax Commissioner appointed in that enforcement capacity, but county auditors do fulfill that role and appear to be the actual recipients of the compensation. See, e.g., David Yost, "Compensation Increase Legislation pertaining to Nonjudicial County

compensated based on a sliding per capita scale that varies according to the county's population based on the most recent census, up to \$3,000 annually. The bill prohibits the fee from varying with future censuses by fixing the compensation according to the county's 2010 census population.

## **Property tax**

### **Combined health district property tax**

(R.C. 3709.291)

The bill authorizes combined health districts to levy property tax, with voter approval, for operating expenses. Combined health districts include the union of two or more city health districts, two or more county health districts, or at least one city health district and at least one county health district.

The tax may be levied at any rate and for a term of up to ten years. Before it is levied, it must be approved by the voters in the combined health district's territory, in the same manner as most other voter-approved property taxes. Once a combined district levies a property tax, it must comply with the subdivision budgeting and accounting and tax administration provisions to which other taxing authorities are subject. Similar to other taxing authorities, a district that levies such a tax may issue debt secured by anticipated tax collections.

Under current law, health districts are not authorized to directly levy a property tax. A county, however, may levy property tax for the benefit of a county health district.<sup>137</sup> But a county may not levy such a tax for a combined health district, at least, any combined district whose territory extends to other counties or does not include a county health district.

### **Emergency and police services combined levy**

(R.C. 5705.19; Section 803.90)

The bill authorizes a municipal corporation or a township to permanently impose, with voter approval, a combined levy for fire and emergency medical services (EMS) and police services. Under current law, such a combined levy is limited to a five-year term, but a levy for either fire and EMS or police services, but not both, may be permanent, i.e., levied for a "continuing period of time."

Under continuing law, a municipal corporation or a township may also adopt a resolution to terminate or decrease a fire and EMS or a police services levy if the tax is no longer necessary or if the amount levied is more than needed. Such a levy imposed for a continuing period of time may also be reduced by voters, under certain circumstances, through ballot initiative. The bill extends this authority to terminate or decrease a levy to include an emergency and police services combined levy.

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Elected Officials, Judges and Boards of Elections Members (House Bill Number 64)," Auditor of State Bulletin 2016-001 (April 20, 2016), available [here](#).

<sup>137</sup> R.C. 3709.29, not in the bill.

The bill's modifications to combined emergency and police services levies apply to property tax questions considered at any election held on or after the 100<sup>th</sup> day after the provision's effective date.

### **Renewable energy facility exemption extension**

(R.C. 5727.75)

The bill extends, by two years, the deadline to apply for existing law's property tax exemption for qualified renewable energy facilities.

Under continuing law, a renewable energy facility may qualify for a real and tangible personal property (TPP) tax exemption. When an exemption is approved, the owner or lessee of the facility is required to make "payments-in-lieu-of-taxes" (PILOTs) to the local governments in whose territory the facility is located. Currently, the owner or lessee of the facility must apply for the exemption and begin construction on the facility by January 1, 2023. The bill extends this deadline to January 1, 2025.

### **Exemption for nonprofit arts institution property**

#### **Parking garage property tax exemption**

(R.C. 5709.121(G))

The bill temporarily extends the charitable use property tax exemption to any parking garage owned and operated by a tax-exempt nonprofit institution whose primary purpose is to host or present performances in music, dramatics, or the arts ("nonprofit arts institution"), or a limited liability company whose sole member is such an institution, but only if that owner does not currently owe any delinquent property tax or related interest or penalties.

Under continuing law, real property used exclusively for charitable purposes is exempt from taxation, regardless of whether the property is owned by a charitable or noncharitable institution.<sup>138</sup> In limited circumstances, the property's ownership by a charitable institution does qualify it for the charitable use exemption, provided the property is used for a particular delineated purpose, including to present performances in music, dramatics, the arts, and related fields to promote public interest or education in those fields or used without a view to profit.<sup>139</sup> In any case, charitable use of revenue generated from the property is not relevant in determining whether the property qualifies for the exemption.<sup>140</sup>

The bill's temporary extension of the charitable use exemption applies to tax years 2020 to 2024, payable in 2021 to 2025.

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<sup>138</sup> R.C. 5709.12(B), not in the bill. See *True Christianity Evangelism v. Zaino*, 91 Ohio St.3d 117, 118 (2001).

<sup>139</sup> R.C. 5709.121(A).

<sup>140</sup> *Hubbard Press v. Tracy*, 67 Ohio St.3d 564, 566 (1993).



## **Special assessments exemption**

(R.C. 727.031, 1710.06, 6101.48, and 6101.53)

The bill temporarily exempts any real property owned and operated by a nonprofit arts institution, or a limited liability company whose sole member is such an institution, from special assessments levied by a municipality, special improvement district, or conservancy district. The exemption only applies to property located in a county with a population between 500,000 and 540,000 (i.e., Montgomery County), and if the owner does not currently owe any delinquent special assessments or related interest or penalties. The special assessment exemption applies regardless of whether the property qualifies for a property tax exemption.

The special assessments exemption applies to tax years 2020 to 2024, payable in 2021 to 2025.

Special assessments are charges levied by a local government against a property for services provided by that government to that property, such as street lighting or flood control. In general, they may be imposed against most types of property, including many types of property that are otherwise exempt from property tax.

## **Tax year 2020 refunds**

(Section 803.30)

The bill allows the owner and operator of a parking garage that qualifies for the bill's extended charitable use exemption to file a special exemption application for tax year 2020 to allow the parking garage to qualify for the tax exemption for that tax year and to receive a refund of any taxes paid. The owner and operator must file an exemption application with the Tax Commissioner no later than 30 days after the bill's 90-day effective date.

Similarly, the county auditor is required to refund special assessments paid for tax year 2020 by an owner and operator of any property that qualifies for the bill's special assessments exemption, except that the owner is not required to submit an application to receive that refund.

## **Fraternal organization property tax exemption**

(R.C. 5709.17; Section 803.150)

The bill expands an existing property tax exemption for fraternal organizations to include the property of such organizations with national governing bodies.

Continuing law authorizes a property tax exemption for fraternal organizations that have operated in Ohio for at least 85 years, that are exempt from federal income taxation, and that operate under the lodge, council, or grange system. To qualify for exemption, the property must be used primarily for meetings, administration, or providing not-for-profit educational or health services. The property cannot generate more than \$36,000 in rental income per year.

Under current law, the exemption is available only to organizations with a state governing body. The bill expands the exemption to include organizations with a national governing body.

The expansion of the exemption applies to tax year 2021 and every tax year thereafter.

## **Private wetlands exemption**

(R.C. 5709.09; Section 803.140)

The bill authorizes a tax exemption for certain property used for wetland conservation or water quality improvement projects. Such property qualifies for the exemption only if it is owned or held by a 501(c)(3) organization that is dedicated to the conservation of natural resources or improving water quality and the property is either (a) subject to a federal or state environmental response plan for wetland conservation and mitigation, or (b) subject to a program to improve the quality of the state's natural waters that receive funding through the H2Ohio program. The exemption applies to tax years ending on or after the bill's 90-day effective date.

## **Improper homestead exemption recovery**

(R.C. 323.153 and 4503.066)

The bill imposes a charge against property improperly receiving the homestead exemption. Continuing law authorizes two property tax incentives for owner-occupied residences, or "homesteads." The first – often referred to as the 2.5% rollback – is a property tax credit equal to 2.5% of the tax levied on a homestead by certain levies. The second is a credit equal to the taxes on \$25,000 or \$50,000 of a homestead's true value. This second incentive – often referred to as the homestead exemption – only applies if the homeowner or, in the case of a housing cooperative, occupant meets certain criteria, e.g., age, income, disability, or veteran status.

To receive the homestead exemption, an eligible owner or occupant must apply to the county auditor. After a homestead exemption application is approved, the applicant will generally continue to receive the exemption, without filing a new application each tax year, until the property is sold or transferred or the applicant no longer qualifies for the exemption. In the latter case, the applicant is required to inform the county auditor that the owner or occupant no longer qualifies for the exemption. An owner or occupant that fails to do so is guilty of a misdemeanor of the fourth degree, which carries a penalty of up to 30 days in jail and up to a \$250 fine.

The bill imposes a charge against any property improperly receiving the homestead exemption if the applicant fails to notify the county auditor that the applicant no longer qualifies for the exemption. The charge equals the tax savings, plus interest, for each tax year that the county auditor determines the applicant did not qualify for the exemption. A similar charge is imposed under continuing law against property improperly receiving the 2.5% rollback.

The county auditor must notify the applicant, by ordinary mail, of the charge for improperly receiving the homestead exemption and the right to appeal the charge. An applicant that wishes to do so may file an appeal with the county board of revision.

The charge for improperly receiving the homestead exemption and any related interest is treated and enforced as delinquent tax. As with the existing 2.5% rollback charge, homestead exemption charge proceeds are distributed as property taxes and paid to local taxing authorities.

## **Notice requirement for tax-exempt property**

(R.C. 5713.083; Section 803.190)

The bill requires an owner of tax-exempt property to notify the county auditor if the property ceases to qualify for the tax exemption, so that property tax is correctly assessed and charged against that property. An owner required to make such notice must do so on or before December 31 of the tax year the property ceases to qualify for the tax exemption and on a form prescribed by the Tax Commissioner. Upon receipt of the notice, the auditor must return the property to the tax list without first verifying whether the property ceases to qualify for the tax exemption as stipulated by the owner.

Under continuing law, a property owner may apply to the Tax Commissioner or, in a few instances, to the county auditor for a property tax exemption. The application must be filed on or before the last day of the tax year for which the exemption is sought. The Commissioner notifies the county auditor of any approved exemption applications so that the county auditor may remove the exempted property from the tax list. A county auditor may return an exempted property to the tax list if the auditor finds that the property no longer qualifies for exemption.<sup>141</sup>

### **Recoupment charge**

If the county auditor discovers that a property owner required to make such a notice failed to do so, the bill requires the auditor to impose a charge on that property. The charge equals the sum of the tax savings realized due to the improperly received tax exemption for each year during the prior five years the auditor determines that the property did not qualify for the exemption and was owned by that same owner.

The auditor must notify the owner, by ordinary mail, of the charge, the owner's right to appeal the charge, and how the owner may do so. Such an appeal must be filed with the county's board of revision (BOR) and is treated similar to other administrative complaints filed with the BOR that challenge a property's valuation or assessment for property tax purposes. The charge is assessed as delinquent property tax, which, if collected, is distributed proportionally to each local government that assesses tax on that property.

The notice requirement and recoupment charge apply to tax year 2022 and every tax year thereafter.

## **Valuation of subsidized residential rental property**

(R.C. 5713.03 and 5715.01)

The bill modifies the manner by which county auditors may value federally subsidized low-income rental housing for property tax purposes. In particular, the bill prescribes a special rule of valuation for any property, except college and university dormitories, on which at least one leased residential dwelling unit is situated and to which any of the following apply:

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<sup>141</sup> R.C. 5713.08 and 5715.27, not in the bill.

1. Some portion of the unit's construction or renovation costs are paid by financial incentives authorized under federal law;
2. Some portion of the unit tenant's rent is subsidized pursuant to federal law;
3. The unit's developer received federal tax credits to construct the unit as a condition of renting all or a portion of the units to low-income tenants at a less-than-market rent.

In the bill and for the purposes of this analysis, this property is referred to as "subsidized residential rental property."

### **Real property appraisal, generally**

The Ohio Constitution requires real property to be "taxed by uniform rule according to value."<sup>142</sup> To comply with this constitutional requirement, county auditors are generally required to appraise real property according to the value at which the unencumbered property would be sold between a willing buyer and a willing seller, often referred to as "fair market value."

Though a property's recent sales price is generally to be regarded as the best evidence of its fair market value, recent sales are relatively infrequent, and unconventional terms of sale can be present, so three methods of valuation may be applied to estimate value: one based on sales of comparable properties, one based on the cost of construction, and one based on income capacity such as from rental income. The best method for a given property may depend on how the property is or may legally be used, but the methods are not mutually exclusive; more than one approach may be applied and compared with the results of another. These approaches are prescribed and detailed in administrative rules.

Whatever method may be applied, the law directs the appraiser to disregard encumbrances on property, such as easements, when determining its fair market value, unless they arise from "the exercise of police powers" or "other governmental actions," such as zoning or government subsidies.

### **Subsidized residential rental property**

Special considerations are required in valuing subsidized residential rental property. These considerations have been developed in a series of court cases in which tax appraisals of such property were challenged. Courts have generally favored the use of the income approach to value such property, but this approach is complicated because the subsidized rents and construction costs for such property are generally above what the market would otherwise bear without the federal subsidies (subsidized rent is often referred to as "contract rent"). This inflated value is not its unencumbered fair market value because it reflects the rent subsidy, so courts have required the valuation of such property to account for the affirmative value of the subsidies by discounting their effect on value.<sup>143</sup> Nor should the tax value of such property be inflated to

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<sup>142</sup> Ohio Const., art. XII, sec. 2. Exceptions are made only for certain agricultural property (CAUV) and for computing tax reduction factors.

<sup>143</sup> See *Alliance Towers v. Stark Co. Bd. of Revision*, 37 Ohio St.3d 16, 24-25 (1988).

account for tax shelter advantages that might be connected to the property, since courts consider these to be intangible items that do not increase property's fair market value.<sup>144</sup>

However, appraisers are required to account for governmental actions that restrict how the property may be used, so if a property is subject to significant tenant and rent restrictions as the result of the developer accepting a federal income tax credit, the property should be valued in accordance with those restrictions, which equates to how the property would be valued if sold on the open market with those restrictions.<sup>145</sup>

After deciding several cases where one or both of those considerations have been applied in diverse circumstances, courts have summarized them as follows: (1) the inflated value of subsidized residential rental property resulting from federal subsidies must be adjusted out of the determination of its fair market value, generally by using imputed market rents instead of contract rents, and (2) significant restrictions placed on the use of the property as a condition of receiving the subsidies must be accounted for in determining its fair market value.<sup>146</sup>

The practical effect of these considerations may vary according to each situation, particularly with respect to the type of federal subsidy the property is subject to. For example, in one recent case, *Notestine Manor, Inc. v. Logan Co. Bd. of Revision*, the Ohio Supreme Court considered the valuation of subsidized residential rental property subject to a federal program that provided a nonprofit developer with a "capital advance" (i.e., favorable financing) from the U.S. Department of Housing and Urban Development (HUD) to build rental housing for very low-income elderly tenants. HUD and the developer signed an agreement restricting the rent that the tenants would pay and imposing several use restrictions on the property, as well as a restriction on the developer profiting from the lease (i.e., governmental actions).

The Court in *Notestine Manor* upheld a valuation of the property that was determined under the income approach on the basis of the HUD restricted rent, even though the county auditor had used the property's market rent as a basis for the property's valuation, which in this instance was lower than the restricted contract rent and would have resulted in a higher valuation. The use restrictions were used to justify the use of contract rent, coupled with the fact that the federal rent subsidies did not actually raise the rent on the units above what the market could bear.<sup>147</sup>

### **The bill's modifications**

The bill deviates from the analysis prescribed in the *Notestine Manor* case and modifies the standards county auditors must use to value subsidized residential rental property. First, the bill explicitly requires these properties to be valued according to the income approach. This may

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<sup>144</sup> *Alliance Towers*, 37 Ohio St.3d at 23.

<sup>145</sup> See *Woda Ivy Glen L.P. v. Fayette Co. Bd. of Revision*, 121 Ohio St.3d 175 (2009).

<sup>146</sup> See *Columbus City Schs. Bd. of Educ. v. Franklin Co. Bd. of Revision*, 151 Ohio St.3d 12, 15-16 (2017).

<sup>147</sup> *Notestine Manor, Inc. v. Logan Co. Bd. of Revision*, 152 Ohio St.3d 439 (2018).

not be much of a deviation from current practice because, as discussed above, this approach is already favored in valuing such property.

Second, the bill requires auditors to use a property's presumed market rent and not the property's contract rent when employing the income approach to value such property. This approach deviates somewhat from *Notestine Manor*, in which the Court had rejected the "iron rule" that market rent be used to value all such property, regardless of the federal subsidy program the property is subject to.<sup>148</sup> Under the bill, market rent is to be calculated without accounting for the effects that police powers or other governmental actions may have on the property. This is an exception to the general rule that such factors must be considered in valuing real property. The practical effect of this change on current valuation practices depends on the nature of the federal program or subsidy a property is subject to.

The bill's modifications may conflict with the "uniform rule" (i.e., the constitutional requirement that real property be taxed "by uniform rule according to value") to the extent the bill's valuation method results in subsidized residential rental property being valued at more or less than its fair market value.<sup>149</sup>

### **Abatement for charitable use property**

(Section 757.50)

The bill establishes a temporary procedure by which a 501(c)(3) tax-exempt charitable organization that acquired property from a school district may apply for a tax exemption and the abatement of more than three years of unpaid property taxes, penalties, and interest due on the property, provided the property qualifies for continuing law's charitable use exemption, which exempts property used exclusively for charitable purposes or, in some cases, owned by a nonprofit institution.

The application for exemption and abatement may be filed with the Tax Commissioner within 12 months of the bill's 90-day effective date, and list the name of the county in which the property is located; the property's parcel number or legal description; its assessed value; the amount in dollars of the unpaid taxes, penalties, and interest; and any other information required by the Commissioner.

Under continuing law, property may not obtain a tax exemption if more than three years' worth of taxes remain unpaid on the property, even if it qualifies for the exemption.<sup>150</sup>

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<sup>148</sup> See *Notestine Manor, Inc.*, 152 Ohio St.3d at 444-45.

<sup>149</sup> Ohio Const., art. XII, sec. 2; see *State ex rel. Park Investment Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412-13 (1964).

<sup>150</sup> See R.C. 5713.081, not in the bill.

## **Tax increment financing and downtown redevelopment districts**

(R.C. 5709.40 and 5709.41; Section 803.100)

### **TIF background**

Continuing law allows municipalities, townships, and counties to create a tax increment financing (TIF) arrangement to finance public infrastructure improvements. Through a TIF, the subdivision grants a real property tax exemption with respect to the incremental increase in the assessed value of designated parcels that are part of a development project. The owners of the parcels make payments in lieu of taxes to the subdivision equal to the amount of taxes that would otherwise have been paid with respect to the exempted improvements (“service payments”). TIFs thereby create a flow of revenue back to the subdivision that created the TIF, which generally uses those service payments to pay the public infrastructure costs necessitated by the development project.

### **DRD background**

Continuing law also allows municipal corporations to designate Downtown Redevelopment Districts (DRDs) for the purposes of rehabilitating historic buildings, creating jobs, and encouraging economic development in commercial and mixed-use commercial and residential areas. The rules and procedures associated with DRDs are similar to those that apply, under continuing law, to TIF districts. A municipal corporation that establishes a DRD is authorized to exempt a percentage of the increased value of parcels located within the DRD from property taxation. The owners of the parcels make service payments, which are used for economic development purposes.<sup>151</sup>

### **The bill’s modifications**

The bill makes two modifications to the law governing TIFs and DRDs – one related to the use of service payment revenues and one related to the commencement of certain TIF exemptions.

First, the bill allows subdivisions to use TIF or DRD service payments for the construction or renovation of off-street parking facilities, even if all or a portion of the parking spaces are reserved for specific economic development uses. Continuing law allows TIF and DRD service payments to be used to finance various public infrastructure improvements, including roads and water and sewer lines.

Under continuing law, municipal corporations may establish a special type of TIF district in which the municipal corporation, engaging in urban redevelopment, acquires land, leases or conveys it to another person, and exempts from taxation the improvements on the land. The bill allows municipal corporations that establish these TIFs to designate the beginning tax year of the TIF exemption, rather than the exemption automatically beginning on the effective date of the designating ordinance, as follows:

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<sup>151</sup> R.C. 5709.45, not in the bill.

- In the tax year specified in the designating ordinance, as long as that year begins after the effective date of the ordinance;
- If no tax year is specified in the ordinance or the tax year specified begins before that effective date, in the tax year that begins after that effective date in which an exempted improvement first appears on the tax list;
- In the tax year in which the value of an improvement exceeds a specified amount or in which the construction of one or more improvements is completed, as long as that tax year begins after that effective date;
- In different tax years on a parcel-by-parcel basis, with a separate exemption term specified for each parcel.

This discretion is already allowed under continuing law to subdivisions creating DRDs and other types of TIFs.

The bill's modifications governing TIFs and DRDs apply to any proceedings commenced or ordinances adopted after the bill's 90-day effective date, and also to any proceedings commenced or completed or ordinances adopted before that date, but only if those proceedings or ordinances do not conflict with the bill's modifications.

## **Cross-reference corrections**

(R.C. 5726.20, 5747.01(A)(6), (S)(5), and (GG), 5747.10, and 5751.40; Sections 803.50 and 803.60)

The bill makes several updates and corrections to cross-references in state tax law, as follows:

- Corrects an erroneous cross-reference in the financial institutions tax law;
- Corrects an erroneous cross-reference in the definition of taxable business income under the business income deduction law;
- Corrects an erroneous cross-reference in the law governing the qualified distribution center exclusion used in computing taxable gross receipts for the commercial activity tax;
- Updates references to the federal "targeted jobs" tax credit in the state's income tax law to reflect the federal credit's new name, the "work opportunity" tax credit.

## **Tax Administration**

### **Local funds transfer approval period**

(R.C. 5705.16)

The bill extends from ten days to 30 days the Tax Commissioner's deadline to either approve or deny the request of a political subdivision authorized to levy property tax (a "taxing authority") to transfer money between certain of its funds, starting from the time that the request was first received.

Continuing law regulates the ability of a taxing authority to transfer revenue between its funds. Some funds may be transferred unilaterally, without obtaining approval from any official,



e.g., transfers from the taxing authority's general fund to another fund. On the other hand, some transfers are outright prohibited, such as the transfer of funds derived from a tax or license fee imposed for a specific purpose.<sup>152</sup> Any other transfer that is neither unilaterally permitted nor prohibited must first be approved by the Tax Commissioner, pursuant to an application of the taxing authority. The Commissioner may authorize the transfer of funds if the Commissioner finds that the transfer is justified or necessary and that no injury would result from the transfer.

### **Disclosing taxpayer information**

(R.C. 5703.21(C)(21) and (22))

The bill authorizes the Department of Taxation to disclose to the State Racing Commission otherwise confidential taxpayer information for the purpose of assisting the Commission with administering taxes on horse racing and its responsibilities for issuing, denying, suspending, or revoking horse racing permits. The Commission, in turn, must keep the information confidential, unless its disclosure is authorized by law.

The bill also authorizes the Department of Taxation to provide to municipal tax administrators municipal income tax returns filed electronically with the state, but only if the return relates to that municipality's income taxes. Under continuing law, a business subject to municipal income taxes on the basis of the business's net profits may either report and remit these taxes separately to each taxing municipality or elect to report and remit all municipal net profits taxes to the Department of Taxation, which ultimately directs the revenue to the appropriate taxing municipality. Returns must be filed electronically with the Department through the Ohio Business Gateway or through another electronic manner prescribed by the Tax Commissioner.

Continuing law permits disclosure of certain taxpayer information in the Department of Taxation's possession to other state agencies and offices under specified circumstances to aid in the implementation of Ohio law. Otherwise, the Department may not disclose such information, and any Department agent or employee that does so is subject to employment termination and a fine.

### **State tax refund review process**

(R.C. 5703.70)

Under continuing law, a taxpayer may apply to the Tax Commissioner for a refund of overpaid state taxes. If the Commissioner determines that the taxpayer is not entitled to the amount requested, the Commissioner must provide the taxpayer with a written notice of that preliminary determination. The taxpayer then has 60 days to provide the Commissioner with additional documentation supporting the taxpayer's request for the refund, request a hearing on the matter, or both. Then, the Commissioner may issue a final refund determination, which the taxpayer may appeal to the Board of Tax Appeals.

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<sup>152</sup> R.C. 5705.14 and 5705.15, not in the bill.

If the taxpayer provides additional information in response to the Commissioner's preliminary refund determination, the bill explicitly authorizes the Commissioner to review and make adjustments to the taxpayer's refund as many times as necessary before the Commissioner issues a final determination.

### **Tax obligations of liquor permit holders**

(R.C. 4303.26 and 4303.271; Section 803.20)

Continuing law requires the Division of Liquor Control, before approving the transfer or renewal of a liquor permit, to confirm with the Tax Commissioner that the applicant is not delinquent in paying, filing returns for, or providing information regarding sales taxes, withheld income taxes, horse-racing taxes, alcoholic beverage taxes, motor fuel taxes, petroleum activity taxes, cigarette and other tobacco product taxes, or casino gross receipts taxes. The Division is generally prohibited from renewing or transferring the liquor permit until the delinquency is addressed. Beginning February 1, 2022, the bill additionally requires the Division to confirm that the applicant is current on payments of resort area and tourism development district gross receipts taxes levied by certain townships and municipalities.

The Commissioner is required, under continuing law, to annually review the Department's tax records and notify the Division if any liquor permit holder is delinquent in paying, filing returns for, or providing information regarding any of the aforementioned taxes. Beginning February 1, 2022, the bill adds resort area and tourism development district gross receipts taxes to the list of taxes that are subject to this annual review.

Under continuing law, a municipality or township meeting the requirements of a "resort area" may levy a gross receipts tax on businesses for sales made in its territory to raise operating revenue. Municipalities and townships that are in a tourism development district may levy a similar gross receipts tax to foster or develop tourism. Though levied by local subdivisions, these taxes are collected and administered by the Tax Commissioner.

### **Wireless 9-1-1 Government Assistance Fund**

(R.C. 128.55)

Ongoing law requires the Tax Commissioner to make monthly disbursements, plus accrued interest, from the Wireless 9-1-1 Government Assistance Fund to county treasurers. Under the bill, the disbursements are to be made in the same proportion that the Tax Commissioner distributed to that county in the corresponding calendar month of the previous year. If a shortfall in distributions results because of the timing of funds received in a previous month, the bill requires that the shortfall amount be distributed in the following month.

Currently, counties receive monthly disbursements from the fund based on how much the Public Utilities Commission distributed to each county in 2013. But, if the amount available in the Wireless 9-1-1 Government Assistance Fund is insufficient to make the required monthly disbursements, each county's share is proportionately reduced for the month. Shortfalls in monthly county disbursements due to insufficient funds from the previous month are remedied in the following month.

Under continuing law, Ohio wireless subscribers and purchasers of prepaid wireless service pay a charge that provides funds to support 9-1-1 systems. Wireless subscribers pay a 25¢ monthly charge, and purchasers of prepaid wireless service pay 0.5% of the sale price for the wireless service. The charges are deposited in the Wireless 9-1-1 Government Assistance Fund, the Wireless 9-1-1 Administrative Fund, the Wireless 9-1-1 Program Fund, and the Next Generation 9-1-1 Fund. The Wireless 9-1-1 Government Assistance Fund receives 97% of the charges collected, plus interest.<sup>153</sup>

### **Cigarette minimum pricing and offenses**

(R.C. 1333.11, 1333.12, 1333.13, 1333.14, and 1333.15)

Continuing law prohibits cigarette retailers and wholesalers from selling cigarettes for less than statutory minimum prices with the intent to injure competition. A dealer violating the minimum pricing law risks suspension or revocation of its dealer license, may be sued for damages and costs by injured competitors, and may be found guilty of a fourth degree misdemeanor.

The bill makes several modifications to the law governing the statutorily prescribed minimum sales prices of cigarettes in Ohio. First, the bill further specifies the cost basis on which cigarettes' wholesale minimum sale price is calculated and prescribes procedures a wholesaler must follow to obtain the Commissioner's approval to use a cost of doing business in pricing cigarettes that is lower than a statutorily prescribed cost. Second, the bill expressly incorporates into law the current policy of allowing one wholesaler to sell cigarettes to another wholesaler without having to charge the seller's entire cost, as is required for sales to retailers. Third, the bill explicitly requires a competitor's price to be approved by the Tax Commissioner before other wholesalers or retailers may match that competitor's price. Fourth, the bill requires a retailer or wholesaler to obtain approval from the Commissioner before conducting any cigarette sales that are exempt from the minimum pricing law under continuing law. Fifth, the bill clarifies an existing offense prohibiting a wholesaler from selling cigarettes at less than the applicable minimum sale price.

### **Cigarette minimum pricing**

Continuing law prescribes a minimum price that cigarettes may be sold for in Ohio. This minimum pricing law is administered by the Department of Taxation and directed primarily at discouraging unfair competition through underpricing competitors at the wholesale and retail level of trade. Distinct minimum prices, detailed in the table below, apply to sales of cigarettes for resale (wholesale) and to sales for customers' use (retail).

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<sup>153</sup> R.C. 128.021, 128.03, 128.42, and 128.54, not in the bill.

| Current Law's Minimum Cigarette Sales Prices                                    |  |
|---|--|
| Wholesale Price   | Retail Price   |
| Wholesaler's invoice cost   | Retailer's invoice cost  |
| +   | +  |
| Wholesaler's mark-up = [3.5% (or actual cost of doing business) X invoice cost] | Retailer's mark-up = [8% (or actual cost of doing business) X (retailer's invoice cost – county excise taxes)]   |
| +   | +  |
| State and county excise taxes   | If the retailer pays cartage costs, the actual cartage costs or 0.75% of the wholesaler's cost, less any state or county excise taxes paid by the wholesaler |
| =   | =  |
| Minimum wholesale sale price  | Minimum retail sale price  |

### ***Minimum pricing modifications***

In calculating the wholesale minimum sale price, the bill specifies that the wholesaler's invoice costs – the base cost from which each wholesaler's minimum sale price is calculated – is the "manufacturer gross" invoice cost. Current law does not define "invoice cost," nor does the bill further define the term other than adding the descriptor "manufacturer gross" to the term.

The bill also specifies that a wholesaler may use a mark-up other than 3.5% of the invoice price only if it provides proof to the Tax Commissioner that its actual costs of doing business deviates from that amount and the Commissioner approves the modified mark-up. In addition, the bill allows a retailer to use cartage costs other than 0.75% of its invoice costs only if it obtains approval of its actual cartage costs in a similar manner. Current law, in both instances, simply requires that those actual amounts be proved without specifying the manner in which they may be proven.

The bill authorizes the Tax Commissioner to require a wholesaler who requests that the Commissioner approve a different cost of doing business to submit documents supporting the differing cost, including a certification from a certified public accountant (CPA) verifying that the cost has been determined in accordance with generally accepted accounting principles. The Commissioner is required to approve or deny a wholesaler's request within 90 days after the later of the date the request is made or a verifying document is submitted. A wholesaler may appeal the Commissioner's rejection of a request for an alternative cost of doing business to the Board of Tax Appeals.

### ***Sales to other wholesalers***

Current law does not expressly contemplate transactions between two cigarette wholesalers, with the possible implication that when one wholesaler sells cigarettes to another wholesaler, the seller must comply with the wholesale minimum price level, including both the

seller's invoice cost and the mark-up representing the seller's cost of doing business, as described above. The bill specifies that, in such a wholesaler-to-wholesaler sale, the selling wholesaler may exclude the wholesaler's "cost" – presumably its actual, proven costs of doing business or the 3.5% mark-up – when determining the minimum selling price. However, a wholesaler selling to a retailer must continue to charge that wholesaler's minimum sales price. This amendment appears to expressly codify the Department of Taxation's current policy as stated in a 2017 information release.<sup>154</sup>

### ***Competitive sales adjustments***

Under continuing law, a retailer or wholesaler may advertise or sell cigarettes at a price less than the applicable minimum sale price if the purpose in doing so is to match the price of another retailer or wholesaler, respectively.

The bill explicitly allows a wholesaler to match a competitor's price only if the competing wholesaler has obtained approval from the Tax Commissioner that its costs of doing business are lower than the otherwise-prescribed 3.5% mark-up, subject to any financial documentation requirement and appeal rights described above (see "***Minimum pricing modifications***"). A retailer may continue to match a competing retailer's price without the competitor having received the Commissioner's approval.

### ***Minimum pricing exemptions***

Under continuing law, the following cigarette sales are exempt from the minimum pricing law:

- Isolated transactions not in the usual course of business;
- Discontinued product clearance sales;
- Damaged cigarettes;
- Liquidation sales;
- Court-ordered sales.

The bill requires a cigarette retailer or wholesaler to obtain prior approval from the Tax Commissioner before selling any cigarettes that are to be exempted from the minimum pricing law on those grounds.

### **Prohibitions**

Under continuing law, it is a fourth degree misdemeanor for any retailer or wholesaler to sell cigarettes at less than the applicable minimum sale price with the intent to inhibit competition.

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<sup>154</sup> See Information Release XT 2017-01 (April 2017), available at <https://tax.ohio.gov/wps/portal/gov/tax/business/ohio-business-taxes/excise/information-releases/index-excise/XT2017-01>.

The bill clarifies that a wholesaler may charge a price that incorporates a mark-up lower than 3.5% without committing a crime if it has obtained approval from the Tax Commissioner that its cost of doing business is lower than that amount.

### **Tax Expenditure Review Committee**

(R.C. 5703.95, repealed and 107.03(D)(7))

The bill sunsets the Tax Expenditure Review Committee and thus eliminates its related reporting duties. The Committee, consisting of six legislators and a representative of the Tax Commissioner, was created in 2017 to review tax expenditures – tax incentives that exempt all or part of something from a tax levied by the state, such as a deduction, exemption, or credit – and make recommendations about whether each should be maintained, repealed, or modified. Under current law, the Committee is required to study every tax expenditure once every eight years and publish biennial reports of its studies for inclusion with the Governor’s budget.

The bill also repeals a provision, created at the same time as the Committee, recommending that any bill proposing to enact or modify a tax expenditure include a statement of the bill’s intent.

### **Wishes for sick children eligibility change**

(R.C. 3701.602)

The bill reduces, from \$1 million to \$250,000, the amount a nonprofit corporation must spend granting wishes of minors with life-threatening illnesses to be eligible to receive funds from the Wishes for Sick Children Income Tax Contribution Fund.

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## DEPARTMENT OF TRANSPORTATION

### Force account thresholds for road and bridge projects

- Increases the force account thresholds for certain highway projects undertaken by an unchartered municipal corporation, county, or township.
- Increases the force account threshold for county bridge and culvert construction, reconstruction, improvement, maintenance, and repair.

### Traffic safety study

- Requires the Director of Transportation, in conjunction with the relevant chief executive officers and legislative authorities, to conduct a traffic safety study and issue a corresponding report by December 31, 2022, regarding the roads and highways through Strongsville, North Royalton, and Brunswick.
- Appropriates up to \$100,000 from the Highway Operating Fund for the study.

### Force account thresholds for road and bridge projects

(R.C. 723.52, 5543.19, and 5575.01)

“Force account” is a term used to establish whether a governmental agency may use its own labor force to complete a project or whether it must use competitive bidding. Otherwise put, a force account threshold is a threshold amount that, once exceeded, a governmental agency must use competitive bidding.

The bill increases force account thresholds for road and bridge projects in the following ways:

- From \$30,000 to \$90,000 for highway projects undertaken by an unchartered municipal corporation;
- From \$30,000 per mile to \$90,000 per mile for county road construction or reconstruction projects;
- From \$100,000 to \$225,000 for county bridge or culvert construction, reconstruction, improvement, maintenance, or repair projects;
- From \$45,000 to \$90,000 for township road maintenance and repair projects; and
- From \$15,000 per mile to \$45,000 per mile for township road construction projects.

In addition to the threshold increases, the bill makes corresponding increases regarding when a township must submit a force account assessment form for township road projects. In short, if the project cost falls beneath the threshold, the township does not need to submit the form. The increased thresholds are the following:

- For a maintenance or repair project, from \$15,000 to \$30,000; and

- For a construction or reconstruction project, from \$5,000/mile to \$15,000/mile.

## **Traffic safety study**

(Section 755.20)

The bill requires the Director of Transportation to conduct a traffic safety study for the roads and highways within Strongsville, North Royalton, and Brunswick. The Director must work in conjunction with the chief executive officers and legislative authorities from those cities. The study must examine how the relevant highways can be improved for safety and the convenience of the traveling public. For purposes of conducting the study, the Director may appropriate up to \$100,000 from the Highway Operating Fund.

Additionally, the Director must submit a report of the study's findings, by December 31, 2022, to the Governor, the Speaker of the House, the Senate President, the chairpersons of the House and Senate transportation committees, and the chief executive officers and legislative authorities of Strongsville, North Royalton, and Brunswick. The report may include the Director's recommendations for solutions to resolve the traffic safety concerns found during the study.



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## **TREASURER OF STATE**

### **Ohio State and Local Government Expenditure Database**

- Requires the Treasurer of State, in collaboration with the OBM and DAS Directors, to establish and maintain the Ohio State and Local Government Expenditure Database that includes information about state entities' expenditures.
- Allows a political subdivision or state retirement system to agree to have information on the political subdivision's or state retirement system's expenditures included in the Database.
- Requires that the Database be free to access by the public and available on the Treasurer's website, the Office of Budget and Management's (OBM's) website, and by a prominent internet link on each state entity's website.
- Requires the Treasurer to enter into an annual agreement with the OBM and DAS Directors to ensure the proper maintenance and operation of the Database.
- Requires the Database to include certain expenditure information and a searchable database of state and school district employee salary and employment information.
- Requires the Treasurer to coordinate with the OBM Director to allow for public comment regarding the Database's utility.
- Prohibits the Database from including information that is confidential or that is not a public record under state law, but provides that the Treasurer, a state entity, and the Treasurer's and state entity's employees are not liable for disclosure of a Database record that is confidential or not a public record.

### **Treasurer's investment in negotiable certificates of deposit**

- Authorizes the Treasurer of State to invest or execute transactions for interim funds in negotiable certificates of deposit.
- Limits investment in negotiable certificates of deposit to not more than 25% of the state's total average portfolio.
- Expands the limit on investment in debt interests of a single issuer, such that when the amount of such an investment, when added to the amount invested in commercial paper (existing law) and negotiable certificates of deposit (added by the bill), it may not exceed in the aggregate 5% of the state's portfolio.

### **State Board of Deposit secretary**

- Requires an employee of the Treasurer of State's department appointed by the Treasurer, rather than the Cashier of the State Treasury, to serve as secretary of the State Board of Deposit.

## Ohio State and Local Government Expenditure Database

(R.C. 113.70, 113.71, 113.72, 113.73, 113.74, 113.75, 113.76, and 113.77)

### Creation and operation

The bill requires the Treasurer of State, in collaboration with the OBM and DAS Directors, to establish and maintain the Ohio State and Local Government Expenditure Database. The Database must be free to access by the public and available on the Treasurer's website and the Office of Budget and Management's (OBM's) website. Additionally, each state entity must display a prominent internet link to the Database on its website.

The bill requires the Treasurer to enter into an annual agreement with the OBM and DAS Directors to define data storage, data handling, user interface requirements, and other provisions considered necessary to ensure the proper maintenance and operation of the database. State entities must assist in the development, establishment, operation, storage, hosting, and support of the database and comply with all of the bill's requirements regarding the database using existing resources.

### Participation

The bill requires "state entities" to participate in the database, meaning that the General Assembly, Supreme Court, Court of Claims, office of an elected state officer, or a department, bureau, board, office, commission, agency, institution, instrumentality, or other governmental entity of the state established by the Ohio Constitution or laws of Ohio for the exercise of any function of state government must participate in the database. "State entity" does not include a political subdivision, institution of higher education, state retirement system, the City of Cincinnati Retirement System, or JobsOhio.

The "state retirement systems" are the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, and the State Highway Patrol Retirement System. A "political subdivision" is a county, city, village, public library, township, park district, school district, regional water and sewer district, or regional transit authority. The "school districts" that are considered political subdivisions and excluded from the definition of "state entity" are city, local, exempted village, or joint vocational school districts; science, technology, engineering, and mathematics (STEM) schools; and educational service centers. However, community (charter) schools are state entities under the bill and required to participate in the database because they are excluded from the definition of "school districts."

Under the bill, a political subdivision or state retirement system may agree to have information on the political subdivision's or state retirement system's expenditures included in the database. A political subdivision or state retirement system that agrees to have the information included in the database must provide the information to the Treasurer and comply with the bill's requirements in the same manner as a state entity.

## Database expenditure information

The database must include information about expenditures made in each fiscal year that commences after the provision's effective date. It must include the following information for each expenditure:

1. The expenditure amount;
2. The date the expenditure was paid;
3. The supplier to which the expenditure was paid;
4. The state entity that made the expenditure or requested that the expenditure be made.

An "expenditure" is a payment, distribution, loan, advance, reimbursement, deposit, or gift of money from a state entity to any supplier. A "supplier" is any person, partnership, corporation, association, organization, state entity, or other party, including any executive officer, legislative officer, judicial officer, or member or employee of a state entity that either (1) sells, leases, or otherwise provides equipment, materials, goods, supplies, or services to a state entity pursuant to a contract between the supplier and a state entity, or (2) receives reimbursement from a state entity for any expense.

The bill does not prohibit the Treasurer from including any information in the database not required by the bill and that is available to the public.

## Database features

The database must include all of the following features:

- A searchable database of all expenditures;
- The ability to filter expenditures by the category of expense and by the Ohio Administrative Knowledge System accounting code for a specific good or service;
- The ability to search and filter by any of the factors listed in "**Database expenditure information**," above;
- The ability to aggregate data contained in the Database;
- The ability to determine the total amount of expenditures awarded to a supplier by a state entity;
- The ability to download information obtained through the database;
- A searchable database of state and "school district" employee salary and employment information.

The employee salary and employment information must be provided by the Department of Administrative Services or the Department of Education. However, the use of the term "school district" in this database feature may create uncertainty about the bill's application to community schools. Because community schools are excluded from the definition of "school district," it appears that they are state entities subject to the bill's expenditure reporting requirements. The reference here to "school district" apart from the definition of "state entity" suggests that the

salary and employment information of employees of city, local, exempted village, joint vocational, or STEM schools, or of educational service centers, but **not** of community schools, must be provided.

### **Public comment opportunity**

Not later than one year after the database is implemented, the Treasurer must coordinate with the OBM Director to provide an opportunity for public comment as to the database's utility.

### **Exclusion from liability for disclosure**

The bill prohibits the database from including any information that is determined to be confidential or that is not a public record under state law. None of the following are liable for the disclosure of a record contained in the database that is determined to be confidential or that is not a public record under state law:

- The Treasurer;
- The Treasurer's employees;
- A state entity;
- Any employee of a state entity that provides information to the database.

### **Treasurer's investment in negotiable certificates of deposit**

(R.C. 135.143 and conforming changes in R.C. 135.45 and 3770.06)

The bill authorizes the Treasurer of State to invest or execute transactions for interim funds of the state in negotiable certificates of deposit (NCDs), in addition to the other investments permitted by continuing law. Interim funds of the state are public funds in the state treasury after the award of inactive deposits, that are not needed for immediate use, but found by the Treasurer of State to be needed before the end of the designation period. An NCD is a certificate of deposit with a minimum face value of \$100,000 (although typically \$1 million or more). NCDs are guaranteed by a depository institution and can usually be sold in a highly liquid secondary market, but they cannot be cashed in before maturity.<sup>155</sup>

The bill limits investment in NCDs to those (1) issued by a nationally or state-chartered bank, a savings association or a federal association, a state or federal credit union, or a federally licensed or state-licensed branch of a foreign bank, that are (2) rated in the two highest categories by two nationally recognized standard rating services. The bill specifies that the Treasurer cannot invest more than 25% of the state's total average portfolio in NCDs. In terms of investments in a single issuer, the bill expands an existing limit, such that when added to the amount invested in commercial paper (existing law) and NCDs (added by the bill), the investment may not exceed in the aggregate 5% of the state's portfolio.

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<sup>155</sup> Investopedia, Negotiable Certificate of Deposit (NCD), available [here](#).

## State Board of Deposit secretary

(R.C. 135.02)

The bill requires the Treasurer of State to designate an employee of the Treasurer of State's department to serve as the secretary of the State Board of Deposit. Under current law, the Cashier of the State Treasury serves as the Board's secretary. The Board is responsible for approving applications for financial institutions to accept deposits of public funds that have been vetted by the Treasurer.<sup>156</sup>

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<sup>156</sup> Ohio Treasurer of State, *Board of Deposit*, available [here](#).

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## LOCAL GOVERNMENT

### City health districts

- Generally requires each city with a population less than 50,000 served by a board of health of a city health district to complete a study evaluating the efficiency and effectiveness of merging with the general health district that includes the city for the administration of health affairs in the merged general health district.
- Exempts from the bill's requirement a city with a population less than 50,000 whose city health district is accredited or in the process of applying for accreditation.
- Requires the Director of Health, in consultation with the Auditor of State, to develop criteria to be used in determining whether a merger is advisable and requires the city to conduct its evaluation using the developed criteria.
- Requires the city's chief executive, if the study indicates that a merger is advisable, to enter into a contract with the District Advisory Council for the general health district that includes the city for the administration of health affairs in the merged general health district, unless the applicable Advisory Council delays the merger for good cause.

### Auxiliary containers

- Makes permanent all of the following provisions enacted in H.B. 242 of the 133<sup>rd</sup> General Assembly, which otherwise expire on January 15, 2022:
  - Prohibits local governments from imposing a tax, fee, assessment, or other charge on auxiliary containers (for example, a plastic or paper bag), the sale, use, or consumption of auxiliary containers, or on the basis of receipts received from the sale of auxiliary containers;
  - Authorizes a person to use an auxiliary container for commerce purposes or otherwise;
  - Clarifies that existing law prohibiting the improper deposit of litter applies to auxiliary containers under the state anti-littering law.

### Tourism development districts (TDDs)

- Clarifies that a municipality or township may enlarge the territory of an existing tourism development district (TDD) after December 31, 2020 – the deadline under continuing law for creating a new TDD.

### Local workforce development board meetings

- Allows local workforce development boards to hold meetings by interactive video conference or teleconference (states a preference for interactive video conference).
- Requires a board that wishes to hold meetings by video conference or teleconference to adopt rules that require the meetings to be conducted in a certain manner and establish

a minimum number of members who must be physically present at the primary meeting location.

### **Elimination of drainage improvement virtual meetings**

- Eliminates the authority for the following entities to conduct drainage improvement meetings by video conference or, if video conference is not available, by teleconference:
  - A board of supervisors of a soil and water conservation district; and
  - A joint board of county commissioners.

### **Municipal fiscal officer continuing education**

- Requires an *appointed* municipal fiscal officer to complete 18 hours of continuing education during the first term of office and 12 hours in each subsequent term of office.

### **Chief probation officers**

- Exempts a county department chief probation officer from the county's classified civil service, thus placing the officer in the unclassified service.

### **Unpaid municipal trash charges**

- Allows a municipal corporation to place as a lien on property unpaid garbage/trash collection charges when the unpaid amount is equal to or greater than the annual charge for the services.

### **Township fiscal officer assistant compensation**

- Allows township fiscal officers to set the compensation of their hired assistants without prior approval from the board of township trustees.

### **New community authorities**

- Specifies that a person controlling land pursuant to certain 99-year renewable leases qualifies as a developer eligible to form a new community authority.

### **Medical marijuana businesses**

- Prohibits local governments from imposing a tax or fee on medical marijuana businesses that is based on the business's gross receipts or is the same as or similar to a state tax or fee.

### **Agreements with animal shelters**

- Expands the facilities with which a board of county commissioners may enter into an agreement to operate as a dog pound on behalf of the county to include *any* animal shelter for dogs.

### **Shoreline improvement district project expansion**

- Allows a special improvement district to fund projects, including by assessing property within the district, to abate erosion along waters within a watershed district.

- Specifies that an existing qualified nonprofit corporation may create a special improvement district to implement a shoreline improvement project even if the corporation (1) does not have an established police department and (2) is not organized for purposes that include the acquisition of real property.

### **Discriminatory restrictive covenants – void**

- Declares void discriminatory restrictive covenants in deeds limiting the transfer or lease of real property to individuals against whom discrimination is prohibited under the Ohio Civil Rights Law.
- Allows attorneys preparing new deeds to omit discriminatory restrictive covenants that are contained in prior deeds.
- Provides that omission of a discriminatory restrictive covenant from a new deed does not affect that validity of the deed and prohibits county recorders from refusing to record a deed due to such omission.

### **Free library photocopies of identification**

- Requires public libraries to provide an individual with a photocopy of that individual's driver's license, driver's permit, or state identification free of charge if the individual requests one.

### **City health districts**

(R.C. 3709.012, 3709.052, 3709.06, and 3709.07)

The bill directs each city with a population less than 50,000 that is represented by a board of health of a city health district to complete a study examining the efficiency and effectiveness of the city health district merging with the county's general health district. The study must be completed within 18 months after the official announcement of the result of a federal decennial census, including the 2020 census. As part of the study, the city must compare the merger's efficiency and effectiveness with that of remaining as a separate health district.

The Director of Health, in consultation with the Auditor of State, must develop criteria to be used by a city in determining whether a merger with the general health district is advisable. The criteria may include accreditation standards promulgated by the Public Health Accreditation Board, a nonprofit organization that assists local public health entities in obtaining accreditation. The Director also must provide technical and financial assistance to cities and oversee any efficiency and effectiveness study conducted.

Should a study indicate that a merger would be efficient and effective, the bill directs the city's chief executive to enter into a contract with the District Advisory Council for the general health district for the administration of health affairs in the former city health district and the merged general health district. If a merger is required by the bill, it must be completed not later than 30 months after the result of a federal decennial census is announced, unless either of the following acts for good cause to delay implementation of the merger:



1. In a single-county general health district, the district's District Advisory Council; or
2. In a multi-county general health district resulting from a union of general health districts, the District Advisory Council representing the county having a majority of the population to be served by the merged district.

### **Exception for accredited health districts**

The bill exempts from the study and merger requirements a city with a population less than 50,000 whose city health district meets either of the following conditions:

1. The district is accredited by an accreditation body approved by the Director of Health and maintains its accreditation;
2. The district is in the process of applying for accreditation on the bill's 90-day effective date, receives accreditation not later than December 31, 2025, and maintains its accreditation.

Although the bill's study and merger requirements may affect certain cities after each decennial census, the exception for accredited city health districts applies only to cities following the 2020 census.

### **Auxiliary containers**

(R.C. 301.30, 504.04, 715.013, 3736.01, and 3736.021)

The bill modifies the law governing "auxiliary containers," which are single-use or reusable packaging such as bags, cans, bottles, or other containers. These containers may be made of materials such as plastic, glass, metal, or cardboard and are designed for transporting food, beverages, or other merchandise from or at a restaurant, grocery store, or other retail establishment. In particular, the bill permanently does all of the following, which are provisions enacted in [H.B. 242 of the 133<sup>rd</sup> General Assembly](#) that otherwise expire on January 15, 2022:

1. Prohibits local governments with some home rule taxing or fee imposing authority – municipal corporations, charter counties, i.e., Cuyahoga and Summit counties, and limited home rule townships – from imposing a tax, fee, assessment, or other charge on auxiliary containers, the sale, use, or consumption of the containers, or on the basis of receipts received from the sale of the containers, except for a general county sales and use tax. Municipal corporations and charter counties are endowed with home rule authority pursuant to the Ohio Constitution, while a limited home rule township has statutorily granted home rule authority that nevertheless prohibits the township from levying taxes not authorized under state law.<sup>157</sup> (A township with a township administrator, a population of at least 2,500 in its unincorporated territory, and a budget of at least \$3.5 million may elect to form a limited home rule township.)

2. Authorizes a person to use an auxiliary container for any purpose. (It is unclear how this authorization impacts a ban on auxiliary containers that has been or will be enacted by a

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<sup>157</sup> Ohio Const., art. XIII, sec. 6 and Article XVIII, Section 13; R.C. Chapter 504.

municipal corporation or charter county under its home rule authority).<sup>158</sup> The bill specifies that, despite this authorization, nothing in the bill may be construed to prohibit or limit the authority of a county, municipal corporation, or solid waste management district to implement a voluntary recycling program; and

3. Clarifies that the state anti-littering law prohibiting the improper deposit of litter applies to auxiliary containers. Thus, the bill prohibits a person from improperly depositing an auxiliary container on public property, private property not owned by the person, or in or on waters of the state. A violation is a third degree misdemeanor and a sentencing court may require the violator to remove litter from property or the waters of the state.<sup>159</sup>

## **Tourism development districts (TDDs)**

(R.C. 503.56 and 715.014; Section 803.120)

Under continuing law, a township or municipal corporation located in a county with a population between 375,000 and 400,000 that levied a county sales tax rate of 0.50% or less in September 2015 (i.e., Stark County) may designate a special district within which the municipal corporation or township may raise revenue to fund tourism promotion and development by levying sales taxes, business taxes, lodging taxes, admissions taxes, and certain fees on activities occurring in the district. Such a district is referred to as a “tourism development district” or a TDD.

Current law prohibits the creation of a new TDD after December 31, 2020, but is ambiguous as to whether a municipality or township may enlarge the territory of an existing TDD after that date. The bill clarifies that enlarging the territory of an existing TDD after that date is permissible, and specifies that the change is intended to clarify the law as it existed prior to the bill’s clarification.

## **Local workforce development board meetings**

(R.C. 6301.06)

The bill creates an exception to the Open Meetings Law by allowing a local workforce development board to hold a meeting by interactive video conference or teleconference. A board member who attends a meeting by interactive video conference or teleconference is considered present in person at the meeting, may vote, and is counted for purposes of determining whether a quorum is present if the board holds a meeting in the following manner:

1. The board establishes a primary meeting location that is open and accessible to the public;

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<sup>158</sup> Ohio Const., art. X, sec. 3 and art. XVIII, sec. 3 and see *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963.

<sup>159</sup> See [LSC’s Final Analysis of H.B. 242 of the 133<sup>rd</sup> General Assembly](#) for a detailed discussion of the home rule implications of the prohibition and authorization extended by the bill.

2. Meeting-related materials that are available before the meeting are sent via email, facsimile, hand-delivery, or U.S. postal service to each board member;

3. In the case of an interactive video conference, the board causes a clear video and audio connection to be established that enables all meeting participants at the primary meeting location to see and hear each board member;

4. In the case of a teleconference, the board causes a clear audio connection to be established that enables all meeting participants at the primary meeting location to hear each board member;

5. All board members have the capability to receive meeting-related materials that are distributed during the board meeting;

6. A roll call voice vote is recorded for each vote taken; and

7. The board meeting minutes identify which board members remotely attended the meeting by interactive video conference or teleconference.

If the board holds a meeting by interactive video conference or teleconference, use of an interactive video conference is preferred, but nothing prohibits the board from conducting its meetings by teleconference or by a combination of interactive video conference and teleconference at the same meeting.

A board must adopt rules that are necessary to implement the board's authority to hold a meeting by interactive video conference or teleconference, including rules that do all of the following:

1. Authorize board members to remotely attend a board meeting by interactive video conference or teleconference, or by a combination of them, in lieu of attending the meeting in person;

2. Establish a minimum number of board members that must be physically present in person at the primary meeting location if the board conducts a meeting by interactive video conference or teleconference;

3. Require that not more than one board member remotely attending a board meeting by teleconference is permitted to be physically present at the same remote location;

4. Establish geographic restrictions for participation in meetings by interactive video conference and by teleconference;

5. Establish a policy for distributing and circulating meeting-related materials to board members, the public, and the media in advance of or during a meeting at which board members are permitted to attend by interactive video conference or teleconference; and

6. Establish a method for verifying the identity of a board member who remotely attends a meeting by teleconference.

Generally, under continuing law, the Open Meetings Law requires a public body to take official action and conduct all deliberations on official business only in open meetings where the public may attend and observe. Members of a public body must attend meetings in person to be

considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.<sup>160</sup>

## **Elimination of drainage improvement virtual meetings**

(R.C. 940.39 and 6133.041, both repealed)

The bill eliminates the authority for the following entities to conduct drainage improvement meetings by video conference or, if video conference is not available, by teleconference:

1. A board of supervisors of a soil and water conservation district; and
2. A joint board of county commissioners.

Under current law, those boards, when practicable, may conduct virtual drainage improvement meetings by video conference or, if video conference is not available, by teleconference. Current law also specifies that the boards must make provisions for public attendance at any location involved in the meeting and conduct the meeting from the board's main office or board room. Before convening a virtual meeting, the board staff must send, via email, fax, or U.S. mail, a copy of meeting-related documents to each board member. Minutes of each meeting must specify who was virtually attending and who was physically present. Any vote taken in a meeting held virtually that is not unanimous must be recorded as a roll call vote.

## **Municipal fiscal officer continuing education**

(R.C. 733.81)

The bill requires an *appointed* municipal fiscal officer to complete 18 hours of continuing education during the first term of office and 12 hours in each subsequent term of office. This is the current requirement for *elected* municipal fiscal officers. Also currently, both newly appointed and newly elected municipal fiscal officers must take six hours of initial education programs before serving, or during their first year.

## **Chief probation officers**

(R.C. 2301.27)

The bill exempts the chief probation officer of a county department of probation from the classified civil service, thereby placing the officer in the unclassified service. Currently, all positions in a county department of probation are in the classified civil service, except positions held by probation officers in the juvenile division of a court of common pleas.

Members of the classified service are afforded certain protections, including protections against unwarranted discipline, termination, transfer, and other changes in terms and conditions of employment.<sup>161</sup>

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<sup>160</sup> R.C. 121.22.

<sup>161</sup> R.C. 124.34, not in the bill.

Positions in the unclassified service are those that the General Assembly has determined cannot be filled through an examination. Ohio law specifies which employees are in the unclassified service; all other employees are in the classified service. Employees in the unclassified service hold their positions at the pleasure of the appointing authority, may be dismissed from their employment without cause, and are afforded none of the procedural safeguards available to those in the classified service.<sup>162</sup>

## **Unpaid municipal trash charges**

(R.C. 701.10)

Currently, when a municipal corporation collects charges for garage/trash collection services, but an individual has not paid, the municipal corporation can certify the unpaid amount as a lien against the property only once it reaches \$250. The bill also allows a municipal corporation to certify a lien on property when the unpaid amount is equal to or greater than the annual charge for the services. For instance, if the annual rate is \$200 and an individual is behind by \$215, the municipal corporation cannot certify the \$215 as a lien under current law, but can under the bill.

The bill specifies that this provision does not apply to a municipal corporation that collects garbage/trash charges in the same manner as other taxes. The provision only relates to unpaid amounts that are owed to the municipal corporation, that the municipal corporation certifies as a lien to collect.

## **Township fiscal officer assistant compensation**

(R.C. 507.021)

The bill allows township fiscal officers to set the compensation of their hired assistants without prior approval from the board of township trustees, which is required under current law.

## **New community authorities**

(R.C. 349.01)

Continuing law allows for the creation and implementation of “new community development programs,” which aim to develop new properties in relation to existing communities while incorporating planning concepts that promote utility, open space, and supportive facilities for industrial, commercial, residential, cultural, educational, and recreational activities. The resulting “new community districts,” each of which is governed by a body referred to as a new community authority (NCA), are intended to be characterized by well-balanced and diversified land-use patterns.

Under continuing law, a developer that controls or owns the land to be included in the proposed new community district may petition the appropriate county or, in some cases, municipality to create an NCA. Once created, the NCA, which is governed by a board of trustees,

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<sup>162</sup> R.C. 124.11 and 124.34, not in the bill, and *Suso v. Ohio Dept. of Dev.*, 93 Ohio App.3d 493, 499 (10<sup>th</sup> Dist. 1993).

may develop land in the district, provide services in the district, and raise revenue by levying community development charges in the district in conjunction with the developer.

While continuing law allows a developer that controls property pursuant to a lease of at least a 75-year term to create an NCA, the bill specifies that a developer controlling property pursuant to a renewable, 99-year lease is eligible to form an NCA, provided each of the following requirements are met:

- The developer’s proposed NCA consists of at least five such leases;
- The leases are subject to forfeiture for the tenant’s failure to pay property taxes or certain fees or to manage the upkeep of the leased premises;
- The NCA is established before the end of 2021.

## **Medical marijuana businesses**

(R.C. 3796.31)

The bill prohibits local governments from levying any tax or fee on medical marijuana cultivators, processors, or dispensaries that is either: (1) based on gross receipts, or (2) the same as, or similar to a state tax or fee. Current law includes no express statutory authorization for a local government to impose a tax or fee on medical marijuana businesses. However, a municipal corporation or charter county may levy a tax or fee without express state authorization under its home rule authority.<sup>163</sup> Similarly, a limited home rule township, which has been granted limited home rule powers pursuant to state law, may levy fees (but not taxes) without state authorization.<sup>164</sup> Noncharter counties and townships that have not formed a limited home rule government possess only those powers expressly delegated to them by state law (or necessarily implied from those powers) and, therefore, cannot levy such a tax or fee.<sup>165</sup>

### **Local tax prohibition**

The Ohio Constitution allows the General Assembly to enact laws limiting the power of municipal corporations to levy taxes and assessments.<sup>166</sup> Indeed, state law prohibits municipalities from levying several types of taxes, including gross receipts taxes.<sup>167</sup> The two counties in Ohio that have adopted charters – Cuyahoga and Summit – both specifically disclaim

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<sup>163</sup> Ohio Const., art. XVIII, sec. 3 and art. X, sec. 3; *Gesler v. City of Worthington Income Tax Bd. of Appeals*, 138 Ohio St.3d 76; 2013-Ohio-4986; 3 N.E.3d 1177.

<sup>164</sup> R.C. 504.04(A)(1), not in the bill.

<sup>165</sup> See *Geauga County Bd. of Commrs. v. Munn Rd. Sand & Gravel*, 67 Ohio St.3d 579, 621 N.E.2d 696 (1993); *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84 (1935), syllabus, paragraph 1; *State ex rel. Schramm v. Ayres*, 158 Ohio St. 30, 106 N.E.2d 630 (1952); and *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186, 2012-Ohio-2370, 970 N.E.2d 916.

<sup>166</sup> Ohio Const., art. XIII, sec. 6 and art. XVIII, sec 13.

<sup>167</sup> R.C. 715.013, not in the bill.

the power to levy any tax other than the taxes permitted under state law for noncharter counties.<sup>168</sup> Therefore, the bill's local tax prohibition is almost certainly permissible, but it probably does not have an operative effect under continuing constitutional and statutory law. It does not appear that any local government is currently able to levy a tax on medical marijuana businesses, other than local sales taxes, which are preserved by the bill.

### **Local fee prohibition**

Municipal corporations, charter counties, and limited home rule townships, pursuant to their constitutional or statutory home rule authority, may all impose fees on medical marijuana businesses – so the bill's prohibition seems to invalidate any such local fee. However, it is unclear whether the Ohio Constitution authorizes the General Assembly to limit the fees a municipal corporation or charter county might impose for regulatory or other public welfare purposes since those subdivisions have constitutional home rule authority.<sup>169</sup> Conversely, since the home rule powers of a limited home rule township are authorized by statute as opposed to the Ohio Constitution, the General Assembly is authorized to limit the fees such a township may impose.

### **Agreements with animal shelters**

(R.C. 955.15)

The bill expands the facilities with which a board of county commissioners may enter into a written agreement to operate as a dog pound on behalf of the county. Currently, the county may deliver seized dogs to a county humane society, without written agreement, provided that the society has devices for humanely destroying dogs. Under the bill, the county may deliver seized dogs to *any* animal shelter for dogs (which includes county humane societies and also other facilities that keep, house, and maintain dogs, including nonprofits devoted to humane treatment of dogs). The bill specifies that to qualify to enter into an agreement, an animal shelter for dogs must be:

1. Suitable to operate as a dog pound; and
2. Able to adopt out, transfer out, or humanely destroy dogs in accordance with Ohio law. (The bill eliminates the requirement that a humane society have devices for humanely destroying dogs and instead replaces it with this requirement.)

It also requires a county dog pound or animal shelter for dogs, to which a dog has been delivered, to deal with the dog in accordance with Ohio law, including the maintenance of any public records pertaining to the intake and disposition of the dog.

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<sup>168</sup> Article I, Section 1.02, Charter of Cuyahoga County, available at: <http://council.cuyahogacounty.us/en-US/Charter-CuyahogaCounty.aspx>, and Article I, Section 1.02, Charter of Summit County, available at: <https://council.summitoh.net/files/18486/file/summitcountycharter.pdf>.

<sup>169</sup> See *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186, 2012-Ohio-2370, 970 N.E.2d 916, for a discussion of the legal distinction between taxes and fees.

Current law requires a county to make compensation payments from the county's dog and kennel fund to facilities that take a dog on behalf of the county. The bill also allows the county to make compensation payments from the county's general revenue fund.

### **Shoreline improvement districts**

(R.C. 1710.01)

The bill allows a special improvement district to fund shoreline improvement projects to abate erosion along water resources within a *watershed district*. The special improvement district may assess property within the district to fund the project. Watershed districts do not have independent authority to assess property for district projects.

Under current law, a special improvement district may fund shoreline improvement projects to abate erosion along the Lake Erie shoreline only.

Additionally, the bill specifies that an existing qualified nonprofit corporation may create a special improvement district to implement a shoreline improvement project even if the corporation (1) does not have an established police department, and (2) is not organized for purposes that include the acquisition of real property. Under current law, these two elements (along with other specified elements) are required for a nonprofit corporation to create a special improvement district.

### **Discriminatory restrictive covenants – void**

(R.C. 5301.05)

The bill provides that restrictive covenants in deeds limiting sale or lease of real property to individuals protected against housing discrimination by Ohio's Civil Rights Law are void. The bill also allows attorneys preparing new deeds to omit void discriminatory covenants contained in prior deeds with immunity from civil liability. Finally, the bill establishes that omission of a discriminatory restrictive covenant under its new provisions does not effect the validity of deeds and prohibits county recorders from refusing to record deeds because void covenants are omitted.

### **Free library photocopies of identification**

(R.C. 3375.011)

The bill requires public libraries to provide an individual with a photocopy of that individual's driver's license, driver's permit, or state identification free of charge if the individual requests one. Public libraries include the State Library of Ohio and free county, municipal, school district, public and regional libraries.<sup>170</sup>

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<sup>170</sup> R.C. 3375.404, not in the bill.



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## MISCELLANEOUS

### **COVID violations: expunge, refund fines, reinstate permits**

- Vacates violations or sanctions imposed against businesses under certain COVID-related orders or rules.
- Requires state agencies and boards of health to expunge any record of a violation, and to treat any finding of a violation as a nullity.
- Returns to businesses money collected by a state agency or board of health in civil or administrative penalties for violations.
- Requires state agencies and boards of health to cease any disciplinary action against a business for violations occurring before the bill's effective date.
- Requires state agencies and boards of health to restore rights and privileges of a business lost as a result of a violation.
- Requires the Liquor Control Commission to reinstate a revoked liquor permit if certain conditions apply, including:
  - The permit has been revoked as a result of a violation of certain rules governing COVID-19 and disorderly conduct; and
  - The permit holder pays a fine of \$2,500.
- For each permit reinstated, requires the Commission to notify certain entities, including the liquor permit holder and the Division of Liquor Control.

### **Buy Ohio preference for personal protective equipment**

- Requires state agencies to give preference to U.S. and Ohio products through the "competitive sealed bid process" when purchasing personal protective equipment with a purchase cost of less than \$50,000.

### **Open Meetings Law violations**

- Creates a procedure within the Court of Claims to hear complaints alleging a violation of the Open Meetings Law.
- Provides for the assignment of a special master to refer the case to mediation or to proceed with the case and submit a report and recommendation to the Court of Claims.
- Requires that any appeal from an order of the Court of Claims be taken to the court of appeals of the appellate district where the principal place of business of the public body that is alleged to have violated the Open Meetings Law is located.
- Allows a court of appeals to award reasonable attorney's fees to an aggrieved person if the court determines that the public body violated the Open Meetings Law and obviously filed the appeal with the intent to delay compliance with the Court of Claims' order or to unduly harass the aggrieved person.

- Provides that a determination that a public body violated the Open Meetings Law does not void or invalidate any actions taken by the public body.
- Provides that all filing fees collected by a clerk of the common pleas court are to be paid to the county treasurer for deposit into the county general revenue fund.
- Provides that all filing fees collected by the clerk of the Court of Claims are to be kept by the Court of Claims to assist in paying for its costs to implement the bill's provisions.

### **Vax-A-Million database not a public record**

- Specifies the information in the Vax-A-Million database is confidential and not public record.

### **Use of medical marijuana in violation of employer's policy**

- Provides that an employer does not violate the Ohio Civil Rights Law when the employer takes an adverse employment action against a person who uses medical marijuana in contravention of a workplace policy regulating medical marijuana use.

### **Post-Traumatic Stress Fund actuarial study and report**

- Permits the Board of Trustees of the Ohio Police and Fire Pension Fund to use its own actuary or, as under current law, a disinterested third-party actuary to perform an actuarial valuation and report required by continuing law related to the funding requirements of the State Post-Traumatic Stress Fund.
- Extends the due date for the actuarial study and report from October 1, 2021, to December 15, 2021.

### **Court settlements that conflict with the Revised Code**

- Prohibits a public official, in the course of a lawsuit, from entering into an agreement not to enforce a provision of the Revised Code or to act contrary to the Revised Code.
- States that this provision must not be construed to limit or otherwise restrict a court's authority under the Ohio Constitution.

### **Land conveyances**

- Authorizes the conveyance of two tracts of state-owned land, currently under DRC, in Madison and Warren counties.

### **Perpetual easement at Rhodes Tower complex**

- Authorizes the Director of Administrative Services to grant the owner of 60 E. Broad St. in Columbus a perpetual easement over state-owned property at the Rhodes Tower complex, currently subject to a 40-year easement granted in 1974.

### **EEG Combined Transcranial Magnetic Stimulation pilot**

- Renames the Transcranial Magnetic Stimulation Pilot Program to the Electroencephalogram (EEG) Combined Transcranial Magnetic Stimulation Pilot Program.

- Expands the program to be available to first responders and law enforcement officers.
- Expands the list of disorders and conditions that establish eligibility for treatment under the program.
- Authorizes the program to have up to ten branch sites, and specifies that a branch site may be a mobile unit, or an EEG combined neuromodulation portable unit.
- Eliminates the specification that the pilot program be operated for three years.
- Requires the supplier to create and conduct a clinical trial and to establish and operate a clinical practice, and establishes criteria that must be adhered to by the supplier.

### **JobsOhio annual report**

- Changes the date by which the Chief Investment Officer of JobsOhio must deliver an annual report of JobsOhio's activities from March 1 to July 1.

### **Postpartum Cardiomyopathy Awareness Week**

- Designates the fourth week of June as "Postpartum Cardiomyopathy Awareness Week."

### **Maternal Mortality Awareness Month**

- Designates the month of May as "Maternal Mortality Awareness Month."

### **COVID violations: expunge, refund fines, reinstate permits**

(Sections 701.60 and 743.20)

The bill generally requires the expungement and refunding of fines in the case of a business<sup>171</sup> that violated any COVID-19-related order, rule, or directive issued by an elected state officer, a state agency, or a board of health.<sup>172</sup> It also requires state agencies and boards of health to restore rights and privileges of a business lost as a result of a violation, including reinstatement of licenses and permits. These provisions do not prohibit the enforcement of non-COVID-related matters.

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<sup>171</sup> Defined to mean a corporation, association, partnership, limited liability company, sole proprietorship, joint venture, or other business entity composed of one or more individuals, whether or not the entity is operated for profit.

<sup>172</sup> The bill specifically includes executive orders (or an order related to an executive order); state or local orders issued under R.C. Chapter 3701; emergency rules under the Administrative Procedure Act (R.C. 119.03(G) (including O.A.C. Rule 4301:1-1-13 (emergency suspension of sales of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption) and O.A.C. Rule 4301:1-1-80 (limitation on hours for on-premises sales or consumption and expansion of sales of beer, wine, mixed beverages, and spirituous liquor for off-premises consumption))); but also generally applies to any order, rule, or directive of elected state officers, state agencies, and boards of health.

## **Vacate and expunge violations**

First, the bill vacates any violation (and any sanctions imposed in response to a violation) that occurred between March 14, 2020, and the bill's effective date. Any record of a violation must be expunged not later than 30 days after the bill takes effect.<sup>173</sup>

## **Reinstate rights and privileges**

Elected state officers, state agencies, and boards of health must treat any finding of a violation as a nullity and take the steps within their power to restore, within 30 days, any rights or privileges lost as a result of a finding of violation; the bill specifically includes "reinstatement of a revoked license and other right or privilege to do business."

A separate provision of the bill requires the Liquor Control Commission to reinstate a liquor permit if:

1. The permit has been revoked as a result of a violation of certain rules governing COVID-19 and disorderly conduct;
2. The violation occurred between March 14, 2020, and the provision's effective date; and
3. The permit holder pays a fine of \$2,500.

For each permit that has been reinstated, the Commission must notify the following:

1. The liquor permit holder whose permit is reinstated;
2. The Division of Liquor Control and the Investigative Unit of the Department of Public Safety. Following receipt of the notification, the Division and the Investigative Unit must delete any records of the revocation; and
3. The General Assembly.

It is unclear if the general reinstatement requirement conflicts with the more specific provisions requiring payment of a \$2,500 fine to reinstate a liquor permit.

## **Cease disciplinary action**

The bill requires elected state officers, state agencies, and boards of health to cease any disciplinary action against a business for violations occurring between March 14, 2020, and the bill's effective date.

## **Refund civil and administrative fines**

The bill generally requires elected state officers, state agencies, and local boards of health to refund any money collected in a civil or administrative penalty for a violation. Not later than

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<sup>173</sup> Not later than 60 days after the bill takes effect, the Liquor Control Commission must notify business owners that violations of these three rules were expunged: O.A.C. Rule 4301:1-1-13 (emergency suspension of sales of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption), O.A.C. Rule 4301:1-1-80 (limitation on hours for on-premises sales or consumption and expansion of sales of beer, wine, mixed beverages, and spirituous liquor for off-premises consumption), and O.A.C. Rule 4301:1-1-52(B)(1) (prohibited activity-engaging in disorderly activities).

30 days after the bill takes effect, these amounts must be determined and refunded to businesses. A board of health refunds the money directly to each business. Elected state officers and state agencies must certify a list of businesses and amounts to the Director of Budget and Management, who then must issue the refunds to each business. If a business no longer exists, the OBM Director or the board of health must make a reasonable effort to locate, and issue the refund to, the owner.

The bill makes an exception in the case of a violation of one of these three rules:

- Ohio Administrative Code (O.A.C.) Rule 4301:1-1-13 (Emergency suspension of sales of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption), which was in effect from April 7, 2020, to August 6, 2020;
- O.A.C. Rule 4301:1-1-80 (Limitation on hours for on-premises sales or consumption and expansion of sales of beer, wine, mixed beverages, and spirituous liquor for off-premises consumption), which was in effect from July 13, 2020, to November 29, 2020; and
- O.A.C. Rule 4301:1-1-52(B)(1) (Prohibited activity-engaging in disorderly activities), if enforced regarding COVID-19.

If a business violates one of these three rules, the business's fine is not refunded if a non-COVID-related conviction also was assessed at the time of adjudication.

Also regarding these three rules, the Liquor Control Commission must notify businesses that their violations were expunged and must report to the General Assembly about the expungements and the refunds, not later than 30 days after those actions are complete.

### **Venue for enforcement**

Finally, the bill allows a business to bring an action to enforce these provisions in the county where the business is located.<sup>174</sup>

### **Buy Ohio preference for personal protective equipment**

(R.C. 125.035 and 125.05)

The bill requires state agencies to give preference to U.S. and Ohio products through the "competitive sealed bid process" when purchasing personal protective equipment with a purchase cost of less than \$50,000. Under continuing law, purchases greater than \$50,000 generally already are subject to that process.

Under current law, a state agency may purchase, without competitive selection, any supplies or services that cost less than \$50,000. Before making the purchase, a state agency must comply with the first and second requisite procurement program. The process outlined in statute requires that a state agency submit a purchasing request to the Department of Administrative Services (DAS). DAS determines if the request can be fulfilled through a first or second requisite procurement programs such as the Ohio Penal Industries or Ohio Pharmacy Services at the

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<sup>174</sup> This does not include the provision under Section 743.20 of the bill, related to the reinstatement of liquor permits specifically.

Department of Mental Health and Addiction Services. If the request cannot be fulfilled in that manner, DAS provides a waiver and the agency may make the purchase without competitive selection.

The bill establishes an exemption to the above-described process for purchases of personal protective equipment. The agency still must comply with the first and second requisite procurement program. But, if the purchase cannot be filled in that manner, the state agency must apply the same preferences required of DAS purchases, with respect to U.S. and Ohio products, when making the purchase. These criteria and procedures generally apply, under current law, to any purchases for an amount above \$50,000.

Under the bill, “personal protective equipment” means equipment worn to minimize exposure to hazards that cause workplace injuries and illnesses.

## Open Meetings Law violations

(R.C. 121.22(A) and (I))

Ohio law generally requires public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

The bill provides an alternate route for a person to seek enforcement of the Open Meetings Law. Under the bill, any person alleging a violation of the Open Meetings Law may do one of the following, but not both:

- Under the bill, seek enforcement of the Open Meetings Law in the Court of Claims by filing a complaint with the clerk of the Court of Claims or the clerk of the court of common pleas, as provided under “**Action in the Court of Claims.**” Remedies include remedies the Court of Claims orders, an injunction, and payment of the aggrieved party’s filing fees and certain costs, but generally not attorney’s fees.
- Under current law, seek enforcement by bringing an action for an injunction in the court of common pleas in the county in which the public body involved is located, as provided under “**Action in the court of common pleas.**” If a court issues an injunction, it also must order the public body to pay to the plaintiff a civil forfeiture of \$500, court costs, and, generally, reasonable attorney’s fees.

## Action in the Court of Claims

Under the bill, any person alleging a violation of the Open Meetings Law may file a complaint with the clerk of the Court of Claims or the clerk of the court of common pleas, which acts on behalf of the Court of Claims.

### Powers of Court of Claims

(R.C. 2743.03(A)(3)(c) and 2743.76(A) and (H); R.C. 2743.05, not in the bill)

Under the bill, in order to provide for an expeditious and economical procedure that attempts to resolve disputes alleging a violation of the Open Meetings Law, except for a court that hears an action for an injunction as described “**Action in the court of common**

**pleas,”** the Court of Claims is the sole and exclusive authority in Ohio that adjudicates or resolves complaints based on alleged violations of that law. The Court of Claims has exclusive, original jurisdiction to hear complaints alleging a violation of the Open Meetings Law by a public body.

The clerk of the Court of Claims must designate one or more individuals to serve as special masters to hear complaints. All special masters must have been engaged in the practice of law in Ohio for at least four years and be in good standing.

In proceedings under the bill’s provisions, the Court of Claims has the same powers to subpoena witnesses, require the production of evidence, and punish for contempt as the court of common pleas.

### **Clerk of common pleas court acts for Court of Claims clerk**

(R.C. 2743.76(B))

The clerk of the common pleas court in each county acts as the clerk of the Court of Claims for purposes of accepting complaints alleging a violation of the Open Meetings Law, accepting filing fees for those complaints, and serving those complaints.

### **Person aggrieved must choose route for relief**

(R.C. 2743.76(C))

The bill provides that a person allegedly aggrieved by a violation of the Open Meetings Law may seek relief under that law in the court of common pleas or pursuant to the bill’s Court of Claims procedures, but not both.

### **Filing a complaint**

(R.C. 2743.76(D))

An allegedly aggrieved person who chooses to file a complaint with the Court of Claims must file that complaint, with that clerk or with the clerk of the common pleas court of the county in which the public body that allegedly violated the Open Meetings Law is located. The person must attach to the complaint copies of any documents, written responses, or other communications relating to the alleged violation from the public body or its authorized representative, and pay a \$25 filing fee. The clerk must serve a copy of the complaint on the public body and its authorized representative. If the complaint is filed with the clerk of the common pleas court, that clerk must forward the complaint to the clerk of the Court of Claims within five business days after service on the public body and its authorized representative is complete. Upon receipt of the complaint, the clerk of the Court of Claims must assign it to a special master.

### **Special master referral to mediation**

(R.C. 2743.76(E))

Upon service of the complaint, the special master generally must immediately refer the case to the Court of Claims’ mediation services. If, in the interest of justice considering the circumstances of the case or the parties, the special master determines that the case should not

be referred to mediation, the special master must notify the court that the case was not referred, and the case proceeds in accordance with the procedures described under “**Special master’s report and recommendation,**” below.

If the case is referred to mediation, any further proceeding must be stayed until the conclusion of the mediation. The mediation proceedings may be conducted by teleconference, telephone, or other electronic means. If an agreement is reached during mediation, the court must dismiss the complaint. If an agreement is not reached, the special master must notify the court that the case was not resolved and that the mediation has been terminated.

Within ten business days after the termination of the mediation or the notification to the court that the case was not referred to mediation, the public body or its authorized representative must file a response, and if applicable, a motion to dismiss the complaint, with the clerk of the Court of Claims. The public body or its authorized representative also must transmit copies of the pleadings to the allegedly aggrieved party. No further motions or pleadings will be accepted by the clerk of the Court of Claims or by the special master unless the special master directs in writing that a further motion or pleading be filed.

All of the following apply prior to the submission of the special master’s report and recommendation to the Court of Claims:

- The special master cannot permit any discovery;
- The parties may attach supporting affidavits to their respective pleadings;
- The special master may require either or both of the parties to submit additional information or documentation supported by affidavits.

### **Special master’s report and recommendation**

(R.C. 2743.76(F)(1) and (2))

Not later than 30 business days after receiving the response, or motion to dismiss the complaint, of the public body or its authorized representative, the special master must submit to the Court of Claims a report and recommendation based on the ordinary application of statutory and case law as they existed at the time of the filing of the complaint. For good cause shown, the special master may extend the 30-day period for submission of the report and recommendation to the Court of Claims.

Not later than three days after the special master’s report and recommendation is submitted to the Court of Claims, the clerk must send copies to each party by certified mail, return receipt requested. Either party may object to the report and recommendation within seven business days after receiving the report and recommendation by filing a written objection with the clerk and sending a copy to the other party by certified mail, return receipt requested. Any objection must be specific and state with particularity all grounds for the objection.

If neither party timely objects, the Court of Claims must promptly issue a final order adopting the report and recommendation, unless the Court determines that there is an error of law or other defect evident on the face of the report and recommendation. If either party timely objects, the other party may file with the clerk a response within seven business days after



receiving the objection and send a copy of the response to the objecting party by certified mail, return receipt requested. The court, within seven business days after the response to the objection is filed, must issue a final order that adopts, modifies, or rejects the report and recommendation.

### **Dismissal of complaint**

(R.C. 2743.76(C) and (D))

Upon the recommendation of the special master, the Court of Claims on its own motion may dismiss the complaint at any time. The allegedly aggrieved person may voluntarily dismiss the complaint filed by that person.

In addition, if the allegedly aggrieved person files a complaint under the bill and the Court of Claims determines that the complaint constitutes a case of first impression that involves an issue of substantial public interest or a unique or complex case that manifestly requires discovery, hearings, or oral testimony, the court must dismiss the complaint without prejudice and direct the person to commence an action for an injunction in the court of common pleas with appropriate jurisdiction under the Open Meetings Law (discussed below, at “**Action in the court of common pleas**”).

### **Violation of the Open Meetings Law**

(R.C. 2743.76(F)(3))

If the Court of Claims determines that the public body violated the Open Meetings Law as alleged by the aggrieved person, and if no appeal from the court’s final order is taken, all of the following apply:

- The public body must comply with the remedy that the court requires in its order;
- The aggrieved person is entitled to recover from the public body the \$25 filing fee and any other costs associated with the action that the aggrieved person incurred, but is generally not attorney’s fees;
- The Court of Claims must issue an injunction to compel the members of the public body to comply with the Open Meetings Law;
- A determination that the public body violated the Open Meetings Law does not void or invalidate any actions taken by the public body.

### **Appeal from Court of Claims’ final order**

(R.C. 2743.76(G)(1))

Any appeal from a final order of the Court of Claims, or from an order of the Court of Claims dismissing the complaint, must be taken to the court of appeals of the appellate district where the principal place of business of the public body that is alleged to have violated the Open Meetings Law is located. However, a final order can be appealed only if a party filed a timely objection to that report and recommendation. If the Court of Claims materially modifies the special master’s report and recommendation, either party appeal, but the appeal must be limited to the issue in the report and recommendation that is materially modified. Appeals under the bill

must be given such precedence over other pending matters as will ensure that the court will reach a decision promptly.

### **Court of appeals may award attorney's fees**

(R.C. 2743.76(G)(2))

If the public body or its authorized representative appealed and the court of appeals determines that the public body violated the Open Meetings Law as alleged by the aggrieved person, and obviously filed the appeal with the intent either to delay compliance with the Court of Claims' order for no reasonable cause or to unduly harass the aggrieved person, the court of appeals may award reasonable attorney's fees to the aggrieved person in accordance with the provisions described below in "**Action in the court of common pleas.**" No discovery may be conducted on the issue of the public body or its authorized representative filing the appeal with the alleged intent to delay compliance with the Court of Claims' order for no reasonable cause or to unduly harass the aggrieved person. These provisions are not to be construed as creating a presumption that the public body or its authorized representative filed the appeal with either such intent.

### **Filing fees**

(R.C. 2743.76(I) and 2746.04(P))

All filing fees collected by a clerk of the common pleas court under the bill are to be paid to the county treasurer for deposit into the county general revenue fund. The clerk of the common pleas court must transmit all such money collected during a month to the county treasurer on or before the 20<sup>th</sup> day of the following month.

All filing fees collected by the clerk of the Court of Claims are to be kept by the Court of Claims to assist in paying for its costs to implement the bill's provisions. Not later than each February 1, the clerk of the Court of Claims must prepare a report accessible to the public that details the fees collected during the preceding calendar year by the clerk of the Court of Claims and the clerks of the common pleas courts under the bill's provisions.

The bill requires that a common pleas court must tax as costs or otherwise require the payment of the filing fee applicable in a case filed with the Court of Claims that alleges a violation of the Open Meetings Law.

### **State Auditor authority to audit public offices**

(R.C. 2743.76(J))

The bill provides that nothing in its provisions regarding the action with the Court of Claims is to be construed to limit the authority of the State Auditor to audit a public office for compliance with training programs and the adoption of a model public records policy for responding to public records requests.

## Civil actions in the Court of Claims and vexatious litigation

(R.C. 2323.52(A)(3))

Under the bill, an action in the Court of Claims under the bill is a civil action for the purposes of the Vexatious Litigator Law. A vexatious litigator is a person who habitually, persistently, and without reasonable grounds engages, in a civil action, in conduct that obviously serves merely to harass or maliciously injure another party or that is not warranted under existing law or a good faith argument for a modification of that law. If a person is found to be a vexatious litigator, the person can be required to obtain court permission before taking certain actions, including initiating legal proceedings in the Court of Claims.

## Action in the court of common pleas

(R.C. 121.22(I); R.C. 2323.51, not in the bill)

Under current law, any person alleging a violation of the Open Meetings Law may bring an action for an injunction in the court of common pleas in the county in which the public body involved is located (see, “**Overview**,” above). The action must be brought within two years after the alleged violation or threatened violation. Upon proof of a violation or threatened violation, the court of common pleas must issue an injunction to compel the members of the public body to comply with the Open Meetings Law.

If the court of common pleas issues an injunction, the court must order the public body that it enjoins to pay a civil forfeiture of \$500 to the party that sought the injunction and must award to that party all court costs and reasonable attorney’s fees. The court may reduce an award of attorney’s fees to the party that sought the injunction or not award attorney’s fees to that party if the court determines both of the following:

- That, based on the ordinary application of statutory law and case law as it existed at the time of the violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate the Open Meetings Law;
- That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

If the court of common pleas does not issue an injunction and the court determines at that time that the bringing of the action was frivolous conduct, the court must award to the public body all court costs and reasonable attorney’s fees.

A member of a public body who knowingly violates the injunction may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the Attorney General.

## **Vax-A-Million database not a public record**

(Sections 701.05 and 812.23)

The bill specifies in uncodified language that the Vax-A-Million database is confidential and not subject to disclosure as a public record under Ohio's Public Records Law. The provision takes immediate effect when the bill becomes law. Because this provision is uncodified, it probably has no effect after June 30, 2023, under Section 809.10 of the bill.

The confidential information includes the name, email, phone number, address, and vaccine location information of individuals who register for the Vax-A-Million campaign, and includes the name, email, and phone number of a parent or guardian who registers a child. Under continuing law, unless exempt, records that serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of a public office are subject to disclosure under the Ohio Public Records Law.<sup>175</sup>

## **Use of medical marijuana in violation of employer's policy**

(R.C. 3796.28)

The bill specifies that an employer does not violate the Ohio Civil Rights Law<sup>176</sup> when the employer discharges, refuses to hire, or otherwise discriminates against a person because of that person's use of medical marijuana if the person's use of medical marijuana is in violation of the employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.

Continuing law regulating Ohio's medical marijuana program specifies that the law does not do any of following:

1. Require an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana;
2. Prohibit an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of medical marijuana;
3. Prohibit an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;
4. Permit a person to sue an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana.

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<sup>175</sup> R.C. 149.011, not in the bill, and R.C. 149.43.

<sup>176</sup> R.C. 4112.02, not in the bill.

## **Post-Traumatic Stress Fund actuarial study and report**

(Section 610.117)

Current law requires the Board of Trustees of the Ohio Police and Fire Pension Fund (OP&F), in consultation with specified entities, to have a disinterested third-party actuary prepare an actuarial valuation of the funding requirements of the State Post-Traumatic Stress Fund. This fund is to be used to pay compensation for lost wages and medical benefits for a public safety officer who is disabled by post-traumatic stress disorder received in the course, and arising out of, employment as a public safety officer but without an accompanying physical injury. The fund currently is not funded and no payments are being made from it and no one is currently eligible for any claims.<sup>177</sup> The actuary must complete the valuation and prepare a report no later than October 1, 2021.

The bill permits OP&F to use its own actuary or, as under current law, a disinterested third-party to perform the valuation. The bill also extends the due date for the valuation and report from October 1, 2021, to December 15, 2021.

## **Court settlements that conflict with the Revised Code**

(R.C. 9.58)

The bill specifies that in any civil action in a state or federal court, no public official has any authority to compromise or settle the action, consent to any condition, or agree to any order in connection with the case if the compromise, settlement, condition, or order nullifies, suspends, enjoins, alters, or conflicts with the Revised Code. Any such compromise, settlement, condition, or order is void and has no legal effect.

In other words, the bill prohibits a public official or the official's attorney, in the course of a lawsuit, from entering into an agreement not to enforce a provision of the Revised Code or to act contrary to the Revised Code. For example, if a law is challenged as unconstitutional, and a public official agrees that the court is likely to rule the law unconstitutional, the official might enter into a court-approved agreement with the challengers not to enforce the law. Under the bill, the official would be prohibited from doing so. But, the court still could rule the law unconstitutional and order the official not to enforce it.

For this purpose, the bill defines a "public official" as any elected or appointed officer, employee, or agent of the state or any political subdivision, board, commission, bureau, or other public body established by law.

The bill states that this provision must not be construed to limit or otherwise restrict a court's authority under the Ohio Constitution.

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<sup>177</sup> R.C. 126.65, not in the bill.

## Land conveyances

(Sections 753.10 and 753.20)

The bill authorizes the conveyance of two tracts of state-owned land, currently under DRC's jurisdiction. One tract is located in Madison County and consists of approximately 1,247 acres, the other is in Warren County and is approximately 296 acres. The authority to convey the Madison County tract expires three years after the section's effective date. Authority to convey the Warren County tract expires on June 30, 2022.

### Purchaser and real estate agreement

The Madison County tract may be offered for sale by the DAS and DRC Directors through one of two means. Specifically, the property may be offered to a purchaser or purchasers, who are to be determined, through a negotiated real estate purchase agreement, with the price and terms and conditions to be acceptable to the Directors, and payment made at closing. Alternatively, the Directors may conduct a sealed bid or public auction, with the property sold to the highest bidder, if the price is acceptable to the Directors (the DAS Director may reject any or all bids). If an auction is used, the DAS Director must advertise the auction by publication in a newspaper of general circulation in Madison County, once a week, for three weeks in a row, and DRC is to pay advertising costs. If an auction is held and a bid is selected, the bill makes a provision for deposit to be paid no more than five business days after notice of an accepted bid is received, with the balance due no more than 60 business days after that notice. A provision is also made for contingent sales processes should a successful bidder not complete the purchase.

The Warren County tract is to be offered to a grantee, who is to be determined, through a real estate purchase agreement, for a price and at terms and conditions acceptable to the DAS and DRC Directors.

### Conditions

Both tracts are to be conveyed subject to certain conditions. Those are:

- The conveyances include improvements and chattels (personal property) on the conveyed property, and are subject to all easements, covenants, conditions, and restrictions of record; all legal highways and public rights-of-way; zoning, building, and other laws, ordinances, restrictions, and regulations; and real estate taxes and assessments not yet due and payable, and the property is to be conveyed in an "as-is, where-is, with all faults" condition;
- The deeds conveying the property may contain restrictions, exceptions, reservations, reversionary interests, and other terms and conditions the DAS Director (and for the Madison County property, the DRC Director) determines to be in the best interest of the state;
- After the conveyances, any deed restrictions may be waived by the state without further legislation;
- The deed or deeds must contain restrictions prohibiting the property's use or sale if the use or sale will interfere with the quiet enjoyment of neighboring state-owned land;

- The property may only be conveyed if the DAS and DRC Directors first determine the property is surplus property, no longer needed by the state, and that the conveyance is in the state's best interest.

### **Warren County easement**

The Warren County tract is to be conveyed subject to an easement, providing for ingress and egress to the DRC sewer treatment plant. The easement encompasses the existing drive to that plant.

### **Conveyance of whole or part**

The Madison County tract may be conveyed as an entire tract or as multiple parcels, and to a single purchaser or multiple purchasers, as determined by the DAS and DRC Directors.

The Warren County tract must be sold as an entire tract.

### **Manner of conveyance**

For each tract, on payment of the purchase price, and receipt of written notice from the DAS Director, the bill requires the Auditor of State, with the assistance of the Attorney General, to prepare a Governor's Deed. The deed must state the consideration to be paid, be executed by the Governor in the name of the state, countersigned by the Secretary of State, and sealed with the Great Seal of the State. After execution, the deed must be presented in the Auditor's office for recording, and delivered to the grantee. The grantee then must present the deed for recording with the appropriate county recorder.

### **Conveyance costs**

The Madison County grantee is to pay all costs associated with purchase, closing, and conveyance, except as specifically provided otherwise in the bill. In this case, the only exception is for advertising costs.

The grantee of the Warren County tract is to pay all costs associated with purchase, closing, and conveyance.

### **Proceeds**

Proceeds from the sale of both the Madison County tract and Warren County tract are to be deposited in the state treasury, to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund.

## **Perpetual easement at Rhodes Tower complex**

(Section 753.30)

The bill authorizes the DAS Director to grant a perpetual easement over real property located at the Rhodes Tower complex to the owner of a neighboring building at 60 E. Broad Street in exchange for \$1. The property the bill authorizes an easement over is currently subject to a

40-year easement granted in 1974. Without the authorization, the Director could grant an easement over the property but it would be limited to a 15-year term.<sup>178</sup>

The real property covered by the bill is the same as in the 1974 easement, but the DAS Director is authorized to update the legal descriptions from the original easement as necessary to facilitate the new easement's recording or to account for changes in circumstances in the intervening years. Once the easement document is prepared, it is to be executed by the Director, presented to the Auditor of State for recording, and delivered to the owner of 60 E. Broad Street. The owner must then record the easement with the Franklin County Recorder and pay all costs and fees for recording.

This authorization expires three years after the section's effective date.

## **EEG Combined Transcranial Magnetic Stimulation pilot**

(R.C. 5902.09)

### **Background**

H.B. 166 of the 133<sup>rd</sup> General Assembly, effective October 17, 2019, required the Directors of Veterans Services and Mental Health and Addiction Services to establish a three-year pilot program to make transcranial magnetic stimulation available for veterans with substance use disorders or mental illness. The program must operate in conjunction with a supplier for services selected by the Directors.

### **Under the bill**

#### **Treatment and eligibility**

The bill alters the description of the treatment to be provided under the program and expands the individuals who may be eligible for treatment. Under the bill, the pilot program is to make electroencephalogram (EEG) combined transcranial magnetic stimulation available for veterans, first responders,<sup>179</sup> and law enforcement officers.<sup>180</sup> For purposes of the bill, "electroencephalogram (EEG) combined transcranial magnetic stimulation" means treatment in which transcranial magnetic stimulation (TMS) frequency pulses are tuned to the patient's physiology and biometric data, at the time of each treatment, using a pre- and post-TMS EEG.

The bill also expands the list of disorders and conditions that establish eligibility for treatment under the program. Under current law, treatment may be provided to persons with substance use disorders or mental illness. The bill specifies that treatment also may be provided

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<sup>178</sup> R.C. 123.01(A)(5).

<sup>179</sup> "First responder" means an emergency medical service provider, a firefighter, or any other emergency response personnel, or anyone who has previously served as a first responder. (R.C. 2903.01, not in the bill.)

<sup>180</sup> "Law enforcement officer" means a law enforcement officer, a peace officer, or a person authorized to carry firearm who is employed, commissioned, disposed, appointed, or elected in a capacity for this state, a political subdivision of this state, or an agency, department, or instrumentality of this state or a political subdivision of this state. (R.C. 9.69, 109.801, 2901.01, and 2935.01, not in the bill.)



to individuals with sleep disorders, traumatic brain injuries, sexual trauma, post-traumatic stress disorder and accompanying comorbidities, concussions or other brain trauma, or other issues identified by the individual's qualified medical practitioner as issues that would warrant treatment under the program.

### **Program duration**

The bill eliminates the specification that the pilot program be operated for a period of three years, and instead does not specify a duration of the program. Therefore, under the bill, the program could be operated as long as funding is made available.

### **Program locations**

The bill requires the Directors of Veterans Services and Mental Health and Addiction Services, by mutual agreement, to choose a location for the pilot program and for up to ten branch sites. Furthermore, the bill specifies that a branch site may be a mobile unit or an EEG combined neuromodulation portable unit if the Directors determine that mobile units or EEG combined neuromodulation portable units are necessary to expand access to care. Current law, modified by the bill, requires the supplier to choose a location for the pilot program.

### **Clinical trial and clinical practice**

The bill requires that the supplier chosen by the Directors create and conduct a clinical trial, establish and operate a clinical practice, and evaluate outcomes of the clinical trial and the clinical practice. Current law requires the supplier to create, implement, operate, and evaluate outcomes of the pilot program.

The bill requires that the supplier, in conducting the clinical trial and in operating the clinical practice, adhere to all of the following:

1. The U.S. Food and Drug Administration (FDA) regulations governing the conduct of clinical practice and clinical trials;
2. A peer-to-peer support network must be made available by the supplier to any individual receiving treatment under the program;
3. The program protocol will be to use adapted stimulation frequency and intensity modulation based on EEG and motor threshold testing as well as clinical symptoms and signs, and biometrics;
4. Each individual who receives treatment under the program also must receive pre- and post-neurophysiological monitoring, with EEG and autonomic nervous systems assessments, daily checklists of symptoms of alcohol, opioid, or other substance use, and weekly medical counseling and wellness programming, and also must participate in the peer-to-peer support network established by the supplier;
5. Each individual who receives treatment at the clinical practice must be eligible for a minimum of two electroencephalograms during the course of the individual's treatment.

Current law requires that a rule be adopted to require the supplier collect and provide a quarterly report on the clinical protocols and outcomes. The bill clarifies that the report must address the protocols and outcomes of the clinical trial, and of any treatment provided by the

clinical practice. And the bill specifies that the report must be provided to the Directors of Veterans Services and Mental Health and Addition Services. The bill requires that the report also be provided to the FDA.

### **Fund**

The bill renames the Transcranial Magnetic Stimulation Fund, in the state treasury, as the Electroencephalogram (EEG) Combined Transcranial Magnetic Stimulation Fund.

### **JobsOhio Chief Investment Officer's annual report**

(R.C. 187.03)

The bill changes, from March 1 to July 1, the deadline for the Chief Investment Officer of JobsOhio to deliver an annual report of JobsOhio's activities to the Governor, Speaker and Minority Leader of the House, and President and Minority Leader of the Senate.

### **Postpartum Cardiomyopathy Awareness Week**

(R.C. 5.2527)

The bill designates the fourth week of June as "Postpartum Cardiomyopathy Awareness Week" to increase public awareness of postpartum cardiomyopathy, which is a form of heart failure that can happen during the last month of pregnancy or up to five months after giving birth.

### **Maternal Mortality Awareness Month**

(R.C. 5.246)

The bill designates May as "Maternal Mortality Awareness Month" to increase awareness about the causes of pregnancy-associated deaths and to encourage implementation of interventions intended to reduce those deaths.

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## NOTES

### Effective dates

(Sections 812.10 to 812.23)

Article II, Section 1d of the Ohio Constitution states that “appropriations for the current expenses of state government and state institutions” and “[l]aws providing for tax levies” go into immediate effect and are not subject to the referendum. The bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section is subject to the referendum and takes effect on the 91<sup>st</sup> day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect.

### Expiration

(Section 809.10)

The bill includes an expiration clause stating that an item that composes the whole or part of an uncodified section contained in the bill (other than an amending, enacting, or repealing clause) has no effect after June 30, 2023, unless its context clearly indicates otherwise.

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## HISTORY

| Action  | Date     |
|---|----------|
| Introduced  | 02-16-21 |
| Reported, H. Finance                                | 04-21-21 |
| Passed House (70-27)                                | 04-21-21 |
| Reported, S. Finance                                | 06-09-21 |
| Passed Senate (25-8)                                | 06-09-21 |
| House refused to concur in Senate amendments (8-86) | 06-10-21 |