# Ohio Legislative Service Commission

## Bill Analysis

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# H.B. 64

131st General Assembly
(As Introduced)

**Rep.** R. Smith

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

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. Items generally are presented in the order in which they appear in the Revised Code.

# DEPARTMENT OF ADMINISTRATIVE SERVICES

## Public Employees Health Care Plan Program

- Requires the Department of Administrative Services (DAS) to study and release standards that may be considered best practices for certain public employer health care plans, instead of adopting and releasing a set of standards that must be considered best practices for those plans.

- Permits health care plans for certain public employees to consider best practices established by the former School Employees Health Care Board or identified by DAS.

- Removes a provision that permits a political subdivision, upon consulting with DAS, to adopt a delivery system of benefits that is not the best practices.

- Requires DAS to study instead of publish information regarding the health care plans offered by certain public employers and consortiums.

- Requires DAS to provide representative cost estimates of options for health care plans instead of assisting in the design of the plans for certain public employers.

- Removes a requirement that DAS prepare and release an annual report on health plan sponsors' compliance with best practices, reducing insurance premium increases, employee expenses, and improving health.

- Removes DAS' authority to adopt rules for the enforcement of health plan sponsors' compliance with best practices.

- Allows the Director of DAS to convene a Public Health Care Advisory Committee, and removes requirements that the Committee make recommendations to DAS relating to best practices; that there are certain appointees; and that members serve without compensation.

- Eliminates the Public Employees Health Care Fund, which DAS uses to carry out the provisions related to public employee health care plans.

- Authorizes DAS, in a reverse auction or competitive sealed bidding process, to deliver notice to a nonresponsive, nonresponsible low bidder by electronic means.

## Job classification plans

- Authorizes the Director of DAS to assign and modify job classification plans, and to establish experimental classification plans, without adopting rules.

## Pay for employee assigned to higher level

- Authorizes an appointing authority, whether or not a vacancy exists, to assign an exempt employee to work in a higher level position for a continuous period of more than two weeks but not more than two years.

- Specifies that such an employee's pay must be established at a rate that is approximately 4% above the employee's current base rate for the period of temporary assignment.

## Fund closures

- Abolishes the Cost Savings Fund.

- Abolishes the Departmental MIS Fund and redirects the Fund's revenue to the Information Technology Fund.

## State agency procurement procedures

### Preference review

- Requires state agencies subject to DAS procurement policies to submit a purchase request to DAS when seeking to purchase supplies or services.

- Requires DAS to determine whether the purchase may be made from specified first or second requisite procurement programs that represent programs for which the law confers requisite preference status for state purchasing.

- Requires DAS to grant a requesting state agency a waiver when the purchase cannot be made from a first or second requisite procurement program, and a release and permit for a state agency to make the purchase directly except when the purchase is for telephone, other telecommunications, and computer services.

- Specifies that a release and permit for telephone, other telecommunications, and computer services must be provided in accordance with policies established by the Office of Information Technology within DAS.

- Authorizes DAS to adopt rules to provide for the manner of carrying out the functions and the powers and duties vested in and imposed upon the Director under the centralized procurement preference review authority.

### Competitive selection threshold

- Eliminates certification authority for state agencies to purchase supplies or services costing between $25,000 and $50,000, and provides, instead, for a single competitive bidding threshold of $50,000.

- Confers rule-making authority on DAS for making purchases by competitive sealed bid.

- Applies the statutory notice provision to "competitive sealed bid" procedures only, instead of to all forms of "competitive selection."

- Eliminates notice by mail of proposed purchases, and provides that any form of electronic notice the director considers appropriate to sufficiently notify competing persons of the intended purchase is sufficient.

### Competitive selection notification list

- Eliminates DAS' authority to divide the state into purchasing districts, and eliminates the ability for persons to be placed on or removed from the competitive selection notification list, which the bill also eliminates.

### Supplies and services

- Reorganizes the State Procurement Law and clarifies that DAS must establish contracts for supplies and services (including telephone, telecommunications, and computer services) for the use of state agencies, and may do so for certain political subdivisions.

- Eliminates the specific authority of DAS to enter into a contract to purchase bulk long distance telephone services for members of the immediate family of deployed persons.

- Clarifies the state entities exempt from the State Procurement Law and DAS.

- Permits the exempt entities to request DAS assistance with procurement of supplies and services and, upon DAS's approval, to participate in contracts awarded by DAS.

### Release and permit

- Requires DAS to grant a release and permit if DAS determines that it is not possible or advantageous for DAS to make a purchase.

- Requires DAS to adopt rules regarding circumstances and criteria for a state agency to obtain a release and permit.

- Permits DAS to grant a blanket release and permit for a state agency for specific purchases.

**Purchasing agreements**

- Permits DAS to enter into cooperative purchasing agreements with certain other state entities.

- Permits the federal government, other states, other purchasing consortia, or any interstate compact authority to purchase supplies or services from DAS contracts.

- Permits DAS to allow state institutions of higher education and governmental agencies to participate in DAS contracts.

- Requires DAS to include in its annual report an estimate of the purchases made by other entities from DAS contracts.

**Financial assurance**

- Permits DAS to require that all bids and proposals be accompanied by a performance bond or other financial assurance, instead of a performance bond or other cash surety.

**Meat and poultry**

- Specifies, for meat products and poultry products, who are eligible vendors.

- Repeals the requirement that DAS establish and maintain a list of approved meat and poultry vendors.

**Produced or mined in U.S.**

- Requires DAS and other state agencies first to consider bids that offer products that have been or that will be produced or mined in the U.S.

**Exemptions removed**

- Requires the Workers' Compensation Administrator to make purchases for supplies and services in accordance with the State Procurement Law.

- Eliminates the Administrator's authority to make contracts for and supervise the construction of any project or improvement, or the construction or repair of buildings, under the Bureau's control.

- Eliminates the Administrator's authority to transfer surplus computers and computer equipment directly to an accredited public school.

- Removes State Procurement Law exemptions for the Ohio Tuition Trust Authority, and instead states that Law does not apply to contracts approved under the Ohio Tuition Trust Authority Board's powers.

### Transportation contracts

- Allows the Director of Transportation to permit a state agency to participate in contracts the Director has entered into for purchases of machinery, materials, supplies, or other articles.

### Emergency procedures

- Repeals and reenacts continuing law authorizing DAS to suspend normal contracting requirements for the Emergency Management Agency or any other state agency involved in response and recovery activities during a declared emergency period.

- Provides that state agencies acting under this emergency authority are exempt from the requirement for Controlling Board approval to contract without competitive selection, but requires these agencies to file a report with the Board's President describing all such purchases made during the period of the declared emergency.

- Requires the Director of DAS to notify the Director of Budget and Management and the Controlling Board members of the Director's approval of a request for suspension during a declared emergency period, and precludes purchases under the suspension authority until after the notice is sent.

## Purchase of recycled products

- Specifies that state entities and offices may purchase recycled products under rules adopted by the Director that establish guidelines and removes the specific requirements that the guidelines must include.

- Eliminates the specific authority for the Director to adopt rules establishing a maximum percentage by which the cost of purchased recycled products may exceed the cost of comparable products.

- Eliminates the requirement that DAS and the Environmental Protection Agency must annually prepare and submit a report that describes the value and types of recycled products that the various state entities and offices purchase with state moneys.

## Excess and surplus supplies

- Requires state agencies to provide the Director with a list of its excess and surplus supplies, including the supplies' location and whether the agency has control of the supplies.

- Requires the Director to take immediate control of excess and surplus supplies and to make arrangements for their disposition, except for excess or surplus supplies that are part of an approved interagency transfer or that are donated food.

- Prohibits the Director from charging a fee for the collection or transportation of excess and surplus supplies.

- Requires the Director to post on a public website a list of the excess and surplus supplies available for acquisition.

- Removes the requirement that the Director dispose of excess and surplus supplies in a specific order of priority and instead permits the Director to dispose of excess and surplus supplies in any of the enumerated manners.

- Eliminates a prohibition that certain entities sell, lease, or transfer excess or surplus supplies acquired to private entities or the general public at a price greater than the price it originally paid for those supplies.

- Removes an exemption that allows the Department of Youth Services to transfer its excess or surplus supplies to community corrections facilities.

## Funding of building operation and maintenance

- Modifies the manner in which DAS seeks reimbursement from state agencies for space occupied in state buildings and funds the maintenance and improvement of those buildings.

- Abolishes the Building Operation Fund.

- Expands the use of the Building Improvement Fund to any facility maintained by DAS.

## Ohio Geographically Referenced Information Program Council

- Revises the membership of the Ohio Geographically Referenced Information Program Council by removing all members appointed by the Governor and replacing those members with specified officials and the executive directors of specified local government associations.

- Stipulates that Council members serve without compensation.

### State printing and forms management

- Eliminates the Statewide Forms Management Program within DAS.
- Modifies the public printing responsibilities of DAS.
- Places public printing for the Bureau of Workers' Compensation under DAS's supervision.
- With respect to certain state publications, eliminates the requirement that each copy indicate the total number of copies produced and the cost of each copy.

### Administration of 9-1-1 funding

- Gives the 9-1-1 Program Office oversight over the administration of three different funds related to 9-1-1 law, rather than administrative authority over one of those funds.
- Repeals a requirement that, although unclear under current law, appears to require the Statewide Emergency Services Internet Protocol Network Steering Committee to annually transfer excess funds remaining in the Wireless 9-1-1 Program Fund to the Next Generation 9-1-1 Fund.

### Electronic record certificate of authenticity

- Eliminates a requirement that a state agency, if it alters the format of an electronic record, create a certificate of authenticity for each set of records that is altered.
- Eliminates a complementary requirement that DAS adopt rules to establish methods for creating certificates of authenticity.
- Removes a provision that allows DAS to permit a state agency to deviate from the rules adopted by DAS regarding electronic records and signatures.

### Enterprise Information Technology Strategy

- Requires the Director to implement strategies that benefit enterprise information technology solutions by improving efficiency, reducing costs, or enhancing the capacity of information technology services.

## Public Employees Health Care Plan Program

(R.C. 9.901, 9.833, and 9.90)

Under the bill, the Department of Administrative Services (DAS) is no longer required to adopt and release a set of standards of best practices for certain public employee health care plans. Correspondingly, the health care plans provided by public employers[1] are no longer required to provide health care plans that contain best practices established by DAS or the former School Employees Health Care Board.

Instead, the bill permits health care plans that provide benefits to those public employees, and all policies or contracts for health care benefits that are issued or renewed after the expiration of any applicable collective bargaining agreement, to consider best practices identified by DAS or established by the former School Employees Health Care Board. The bill removes a provision that permits a political subdivision, upon consulting with DAS, to adopt a delivery system of benefits that is not the best practices if DAS considers it to be most financially advantageous to the political subdivision.

The bill generally modifies DAS's duties related to public employee health care plans by:

--Requiring DAS to study instead of publish information regarding the health care plans offered by certain public employers and consortiums;

--Requiring DAS to provide representative cost estimates of options for health care plans instead of assisting in the design of the plans for certain public employers;

--Requiring DAS to study and release standards that may be considered best practices for certain public employer health care plans instead of adopting and releasing a set of standards that must be considered best practices for those plans;

--Removing a requirement that DAS prepare and release an annual report on the status of health plan sponsors' effectiveness in complying with best practices and in making progress to reduce the rate of insurance premium increases and employee out-of-pocket expenses, as well as progress in improving the health status of employees and their families; and

--Removing the authority of DAS to adopt rules for the enforcement of health plan sponsors' compliance with the best practices standards.

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[1] As used in this provision, "public employer" means political subdivisions, public school districts, and state institutions of higher education.

DAS continues to have duties under ongoing law relating to health care plans for public employers, including identifying strategies to manage health care costs.

The Director of DAS may convene a Public Health Care Advisory Committee to assist in studying the issues discussed in the law described here. The bill removes the following related to the Committee: that the Committee make recommendations to the Director of DAS or the Director's designee on the development and adoption of best practices; that the Committee consist of 15 members with five each appointed by the Speaker of the House, the Senate President, and the Governor; that appointees include representatives from state and local government employers and employees, insurance agents, health insurance companies, and joint purchasing arrangements; and that the members serve without compensation.

Finally, the bill eliminates the Public Employees Health Care Fund, which DAS uses to carry out the provisions relating to public employee health care plans and related administrative costs.

## Notification to low bidder

(R.C. 9.312)

The bill authorizes DAS to provide notice by electronic means to a nonresponsive, nonresponsible low bidder in a reverse auction or competitive sealed bidding process. DAS can provide this notice alternatively by first class mail. Under prior law, first class mail was the only means authorized.

## Job classification plans

(R.C. 124.14 and 124.15; Sections 690.10 (repealing Section 701.61 of H.B. 59 of the 130th GA) and 701.20)

The bill authorizes the Director of DAS to assign and modify job classification plans, and to establish experimental classification plans, without adopting rules. The Director currently may take these actions without adopting rules under temporary authority that expires July 1, 2015. The bill specifies that the Director may take these actions without adopting rules on a permanent basis.

Under current law that will resume when the temporary authority expires, when the Director proposes to modify a classification or the assignment of classes to pay ranges, the Director must send written notice of the proposed rule to the appointing authorities of the affected employees 30 days before a hearing on the proposed rule. The appointing authorities must notify the affected employees regarding the proposed rule.

The Director also must send these appointing authorities notice of any final rule that is adopted within ten days after adoption.

The bill instead requires the Director to notify the appointing authorities of the affected employees before implementing a modification in a classification or in the assignment of classes to pay ranges. The notice must include the effective date of the modification. The appointing authorities must notify the affected employees regarding the modification.

## Pay for employee temporarily assigned to a higher level

(R.C. 124.181; Section 690.10 (repealing Section 701.10 of H.B. 59 of the 130th GA))

The bill authorizes an appointing authority, whether or not a vacancy exists, to assign an employee to work in a higher level position for a continuous period of more than two weeks but not more than two years. The bill requires the employee's pay to be established at a rate that is approximately 4% above the employee's current base rate for the period of temporary assignment.

Under current law, whenever an employee is assigned to work in a higher level position for a continuous period of more than two weeks but not more than two years because of a vacancy, the employee's pay may be established at a rate that is approximately 4% above the employee's current base rate for the period of temporary assignment. When a vacancy does not exist, an appointing authority, with an exempt employee's written consent, may assign the duties of a higher classification to the exempt employee for not more than two years, and the exempt employee is entitled to compensation at a rate commensurate with the duties of the higher classification.

## Fund closures

(R.C. 124.392; Section 610.40 (amending Section 20.15 of H.B. 215 of the 122nd GA)

The bill abolishes the Cost Savings Fund, which consists of savings accrued through employee participation in the Mandatory Cost Savings Program and mandatory cost savings days. The Fund may be used to pay employees who participated in the Program and the costs savings days.

The bill also abolishes the Departmental MIS Fund. DAS is currently required to establish charges for recovering the costs of management information systems activities

and deposit those charges to the credit of the Fund. Under the bill, the charges are to be deposited into the existing Information Technology Fund[2] instead.

## State agency procurement procedures

(R.C. 9.83, 113.07, 122.87, 125.02, 125.03, 125.035, 125.04, 125.041, 125.05, 125.061, 125.07, 125.08, 125.081, 125.10, 125.11, 125.45, 125.48, 125.52, 125.601, 125.607, 125.609, 918.41, 1349.04, 3334.08, 4121.03, 4121.121, 4123.322, 5147.07, 5162.11, and 5513.01; R.C. 125.021, 125.022, 125.023, 125.03, 125.051, 125.06, and 125.17 (all repealed))

### Procurement preference review

The bill establishes a centralized procurement preference review process whereby state agencies that are subject to DAS procurement policies must submit a purchase request to DAS when seeking to purchase supplies or services. Under the preference review, DAS must ascertain whether the purchase can be made from Ohio Penal Industries or the Community-based Rehabilitation Program (referred to as the first requisite procurement programs) or specified "second requisite procurement programs."

DAS must direct the requesting agency to use one of the first requisite programs or provide the agency with a waiver from one of the first programs. DAS then must determine whether the purchase can be fulfilled by a second requisite procurement program. DAS must generally complete its determination within five business days after receipt of the agency request; if no program responds concerning its ability to fulfill the request, the requesting agency is authorized to use its direct purchasing authority to obtain the services or supplies, subject to the requirements of the release and permit and applicable competitive bidding thresholds.

The bill authorizes DAS to adopt rules under the Administrative Procedure Act to provide for the manner of carrying out the functions and the powers and duties contemplated by the procurement review process. It specifies that the procurement review process also applies to agency purchases *below* the competitive bid threshold.

### Competitive selection threshold and notice

The bill eliminates current certification authority for state agencies to purchase supplies and services that cost more than $25,000 but less than $50,000, and instead adopts a single $50,000 threshold. So, state agencies may, without competitive selection, make purchases below $50,000 after complying with the new DAS preference review.

[2] R.C. 125.15, not in the bill.

For purchases of $50,000 or more, the agency must purchase through DAS unless a waiver or release and permit is granted in conjunction with the review.

The bill confers rule-making authority on DAS for making purchases by competitive sealed bid, but specifies that contracts are to be awarded as provided in continuing law to the lowest responsive and responsible bidder and according to the criteria and procedures affording a preference for U.S. and Ohio products. The bill limits current laws' notice provision for "competitive selection" to competitive sealed bids. Under current law, "competitive selection" includes competitive sealed bidding, competitive sealed proposals, and reverse auctions. Current law requires DAS to adopt rules regarding notice for competitive sealed proposals but is silent about notice for reverse auctions; so, presumably, DAS may adopt rules under its current rule-making authority for reverse auctions but is not required to do so.

The bill eliminates the requirement for notice by mail and provides that the manner of providing notice of a purchase by DAS by competitive sealed bid may be in any electronic form the director considers appropriate to sufficiently notify competing persons of the intended purchases. The bill removes the requirement for DAS to make a public posting of notice on a bulletin board, and the complementary penalty of invalidating all proceedings and any contract entered into for a failure to post.

### Competitive selection notification list

The bill eliminates DAS authority to divide the state into purchasing districts, and eliminates the ability for persons to be placed on or removed from the competitive selection notification list, which the bill also eliminates. Similarly, the bill removes authority for DAS to charge an annual registration fee of not more than $10 for the listing privilege.

The bill retains current authority for persons certified as a minority business enterprise to be placed on a special minority business enterprise notification list. Presumably, the requirements for maintaining this list may be provided in rules because the bill eliminates the current direction for the list to be maintained in similar fashion to the competitive selection notification list that the bill eliminates.

### Contracts for supplies and services

Generally, the bill reorganizes the State Procurement Law and clarifies that DAS must establish contracts for supplies and services (including telephone, telecommunications, and computer services) for the use of state agencies, and may do so for certain political subdivisions. The bill eliminates the specific authority of DAS to enter into a contract to purchase bulk long distance telephone services for members of the immediate family of deployed persons. Therefore, the Attorney General is no longer

charged with expediting cases or issues that relate to this telephone service for members of deployed persons' families.

The bill clarifies the state entities that are exempt from the requirement described above. The exempt entities are the Adjutant General for military supplies and services, the General Assembly, the judicial branch, state institutions of higher education, certain state elected officials,[3] and the Capitol Square Review and Advisory Board. These are largely the same as current law, but the bill adds state elected officials into the exception and further clarifies the application of the exception to state institutions of higher education; current law applies to institutions administered by boards of trustees. However, the bill permits the exempt entities to request DAS assistance with procurement of supplies and services and, upon DAS's approval, to participate in contracts awarded by DAS. Additionally, the bill specifies that nothing in the provision exempting certain state elected officials from following certain State Procurement Law provisions prevents those officials from complying with or participating in any aspect of that Law through DAS.

### Release and permit

An agency that has been granted a release and permit for a purchase may make the purchase without competitive selection, and DAS must grant a release and permit if DAS determines that it is not possible or advantageous for DAS to make the purchase. DAS must adopt rules regarding circumstances and criteria for a state agency to obtain a release and permit to make a purchase not under DAS. Upon request, DAS can grant a blanket release and permit for a state agency for specific purchases. A blanket release and permit runs for a fiscal year or for a biennium, as determined by the DAS Director.

### Purchasing agreements and participation in DAS contracts

Under the bill, DAS can enter into cooperative purchasing agreements with certain other state entities.[4] Under continuing law, DAS also may enter into purchasing agreements with other states, the federal government, other purchasing consortia, and political subdivisions. Additionally, the bill permits the federal government, other states, other purchasing consortia, or any interstate compact authority to purchase supplies or services from contracts entered into by DAS.

[3] The Attorney General, Auditor of State, Secretary of State, and Treasurer of State.

[4] The Adjutant General, the General Assembly, the judicial branch, state institutions of higher education, the Attorney General, Auditor of State, Secretary of State, and Treasurer of State.

The bill permits DAS to allow state institutions of higher education and governmental agencies[5] to participate in DAS contracts. Under ongoing law, DAS may charge an entity a reasonable fee to cover the administrative costs incurred because an entity participates in a DAS contract. An entity desiring to participate in a DAS contract must file certain documents with DAS. A governmental agency desiring to participate in a DAS contract must file a written request for inclusion in the contract. A state institution of higher education desiring to participate in a DAS contract must file a certified copy of a resolution of the board of trustees or similar authorizing body. The resolution must request that the state institution of higher education be authorized to participate in the contracts.

DAS must include in its annual report an estimate of the purchases made by other entities from DAS contracts. Under current law, the annual report has to include an estimate of the cost DAS incurs by permitting other entities to participate in DAS contracts.

### Financial assurance

The bill makes a slight change in that it permits DAS to require that all bids and proposals be accompanied by a performance bond or other financial assurance. Current law allows DAS to require that bids and proposals be accompanied by a performance bond or other cash surety.

### Meat and poultry

The bill specifies, for meat products and poultry products, that only bids received from vendors under inspection by the U.S. Department of Agriculture or that are licensed by the Ohio Department of Agriculture are eligible for acceptance. Current law requires only those bids received from vendors offering products from establishments on the DAS's current list of meat and poultry vendors are eligible. However, the bill repeals the requirement that DAS establish and maintain a list of approved meat and poultry vendors.

### Produced or mined in the U.S.

The bill requires DAS and other state agencies first to consider bids that offer products that have been or that will be produced or mined in the U.S. Contrarily, current law requires DAS and other state agencies first to remove bids that offer products that have not been or that will not be produced or mined in the U.S.

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[5] A political subdivision or special district in Ohio, or any combination of these entities; the federal government; other states or groups of states; other purchasing consortia; and any agency, commission, or authority established under an interstate compact or agreement.

### Exemptions removed

The bill requires the Workers' Compensation Administrator to make purchases for supplies and services in accordance with the State Procurement Law, and removes the Administrator's authority to purchase supplies and services, make contracts for telecommunications services, and perform office reproduction services; thereby requiring the Bureau to use DAS for these services. Further, the bill eliminates the Administrator's authority to make contracts for and supervise the construction of any project or improvement, or the construction or repair of buildings, under the Bureau's control. The bill also eliminates the Administrator's authority to transfer surplus computers and computer equipment directly to an accredited public school.

The bill removes exemptions for the Ohio Tuition Trust Authority that state that the State Procurement Law does not apply to the Authority, and instead states that the Law does not apply to contracts approved under the Ohio Tuition Trust Authority Board's powers. The bill further eliminates the requirement that DAS, upon the Authority's request, act as the Authority's agency for the purchase of equipment, supplies, insurance, or services, or the performance of administrative services under the State Procurement Law.

### Transportation contracts

Under the bill, the Director of Transportation, in addition to other entities under continuing law,[6] can permit a state agency to participate in contracts the Director has entered into for purchases of machinery, materials, supplies, or other articles. These purchases are exempt from competitive bidding requirements.

### Emergency procurement procedures

The bill repeals but reenacts law that authorizes DAS to suspend normal contracting and purchasing requirements for the Emergency Management Agency and other state agencies engaged in response and recovery activities during the period of an emergency declared by the Governor or the President of the United States.[7] The bill specifies that purchases made under the emergency authority are exempt from the requirement for Controlling Board approval for an exemption from competitive

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[6] The Ohio Turnpike and Infrastructure Commission, any political subdivision, and any state university or college.

[7] Continuing law specifies that the Director of Public Safety or the Executive Director of the Emergency Management Agency must request the suspension from DAS at the same time either requests the Governor or U.S. President to declare an emergency. The Governor must include, in any proclamation issued by the Governor declaring an emergency, language requesting the suspension during the emergency period.

selection, but requires state agencies making such purchases to make a report to the President of the Controlling Board describing all such purchases made during the emergency period. The report must be filed within 90 days after the declaration of emergency expires.

The bill provides that before any purchases may be made under the emergency authority, the Director of DAS must send notice of the Director's approval of the suspension to the Director of Budget and Management and to the members of the Controlling Board. The notice must provide details of the request for suspension and a copy of the Director's approval.

## Purchase of recycled products

(R.C. 125.082)

The bill specifies that state entities and offices[8] may purchase recycled products under rules adopted by the Director that establish guidelines. Further, the bill removes the specific requirements that the guidelines: (1) are consistent with and substantially equivalent to certain regulations adopted by the U.S. Environmental Protection Agency, (2) establish the minimum percentage of recycled materials the products must contain, and (3) incorporate specifications for recycled-content materials. The bill eliminates the specific authority for the Director to adopt rules establishing a maximum percentage by which the cost of purchased recycled products may exceed the cost of comparable products made of virgin materials.

Additionally, the bill eliminates the requirement that DAS and the Environmental Protection Agency must annually prepare and submit a report that describes the value and types of recycled products that are purchased with state moneys by the various state entities and offices.

## Excess and surplus supplies

(R.C. 125.13 and 5139.03)

The bill requires state agencies to provide the Director with a list of its excess and surplus supplies, including the supplies' location and whether the agency has control of the supplies. Current law requires a state agency to provide a list of its excess and surplus supplies and an appraisal value upon the Director's request.

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[8] The General Assembly, the offices of all elected state officers, all departments, boards, offices, commissions, agencies, institutions, including state institutions of higher education, and other Ohio instrumentalities, the Supreme Court, all courts of appeals, and all common pleas courts.

Upon receipt of notification and at no cost to the state agency, the Director must take immediate control of the excess and surplus supplies and make arrangements for their disposition. However, the Director must not take immediate control of excess or surplus supplies that are part of an approved interagency transfer or that are donated food. The bill allows excess and surplus supplies of food to be donated directly to nonprofit food pantries and institutions without notification to the Director.

Also, the Director cannot charge a fee for the collection or transportation of excess and surplus supplies. The Director must post on a public website a list of the excess and surplus supplies available for acquisition.

The bill removes the requirement that the Director dispose of excess and surplus supplies in a specific order of priority and instead permits the Director to dispose of excess and surplus supplies in any of the following ongoing manners: (1) to state agencies, (2) to state-supported or state-assisted institutions of higher education, (3) to tax-supported agencies, municipal corporations, or other Ohio political subdivisions, private fire companies, or private, nonprofit emergency medical service organizations, (4) to nonpublic elementary and secondary schools chartered by the State Board of Education, (5) to the general public by auction, sealed bid, sale, or negotiation. In addition to ongoing manners of disposal, the bill permits the Director to dispose of excess and surplus supplies by interagency trade or to a 501(c)(3) nonprofit organization that also receives state funds or has a state contract.

The bill eliminates a current law prohibition that no state-supported or state-assisted institution of higher education, tax-supported agency, municipal corporation, or other Ohio political subdivision, private fire company, or private, nonprofit emergency medical service organization is to sell, lease, or transfer excess or surplus supplies acquired to private entities or the general public at a price greater than the price it originally paid for those supplies.

Finally, the bill removes an exemption that allows the Department of Youth Services to transfer its excess or surplus supplies to community corrections facilities, which remain the Department's property for five years and then become the facility's property. Presumably, the Department would be required to follow the normal procedures for disposition of these excess or surplus supplies.

## Funding of building operation and maintenance

(R.C. 125.27 and 125.28)

The bill modifies the manner in which DAS seeks reimbursement from state agencies for space occupied in state buildings and funds the maintenance and improvement of those buildings, as follows:

--It removes the specific provisions detailing how state agencies funded in whole or in part by non-GRF money are to reimburse the state for the cost of occupying space in state facilities. It retains, however, the current requirement that the DAS Director determine the reimbursable cost of space in state-owned or state-leased facilities and collect reimbursements for that cost.

--It abolishes the Building Operation Fund; consequently, *all* money collected by DAS for operating expenses of facilities owned or maintained by DAS is to be deposited into the existing Building Management Fund.

--It removes the requirement that all money collected by DAS for debt service be deposited into the GRF.

--It eliminates the current funding source for the Building Improvement Fund and, instead, requires that money collected from state agencies for depreciation and related costs be deposited into the Fund *or* deposited into the Building Management Fund and then transferred to the Building Improvement Fund. Under the bill, the Building Improvement Fund is to be used for major maintenance or improvements required in any facility maintained by DAS, rather than just the Rhodes or Lausche state office towers, Toledo Government Center, Ocasek Government Office Building, and Vern Riffe Center for Government and the Arts, as provided under current law.

## Ohio Geographically Referenced Information Program Council

(R.C. 125.901; Section 701.40)

The bill revises the membership of the Ohio Geographically Referenced Information Program Council in DAS by removing all members appointed by the Governor and replacing those members with all of the following or their designees:

(1) The Chancellor of the Board of Regents (whom the bill renames the Director of Higher Education);

(2) The Chief of the Division of Oil and Gas Resources Management in the Department of Natural Resources;

(3) The Director of Public Safety;

(4) The Executive Director of the County Auditors' Association;

(5) The Executive Director of the County Commissioners' Association;

(6) The Executive Director of the County Engineers' Association;

(7) The Executive Director of the Ohio Municipal League; and

(8) The Executive Director of the Ohio Townships Association.

Continuing law requires the Council to develop and annually update a real property management plan containing specified information and a real property inventory, both regarding state-owned property. Excluded from the plan and inventory is property owned by the General Assembly and legislative agencies, any court or judicial agency, and the offices of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General.

The bill retains as members of the Council the state chief information officer, the Directors of Natural Resources, Transportation, Environmental Protection, and Development Services, and the Treasurer of State or their designees. Currently, the members appointed by the Governor must represent county auditors, county commissioners, county engineers, regional councils, municipal corporations, regulated utilities, and a public university. The bill states that the Council as revised by the bill constitutes a continuation of the existing Council rather than a new council.

Finally, the bill stipulates that Council members serve without compensation.

## State printing and forms management

### Statewide Forms Management Program

(R.C. 125.91, 125.92, 125.93, 125.96, and 125.98 (all repealed))

The bill eliminates the State Forms Management Control Center under the supervision of DAS. The Center is tasked with developing and maintaining a Statewide Forms Management Program designed to simplify, consolidate, or eliminate, where possible, forms, surveys, and other documents used by state agencies.

### Public printing

(R.C. 125.31, 125.36, 125.38, 125.39, 125.42, 125.43, 125.45, 125.49, 125.51, 125.58, 125.76, and 5709.67; R.C. 125.32, 125.37, 125.47, 125.48, 125.50, 125.52, 125.53, 125.54, 125.55, 125.56, 125.57, 125.68, and 149.13 (repealed))

The bill modifies the public printing responsibilities of DAS, as follows:

--It replaces the term "paper" with the term "printing goods and services" and updates other references with respect to the printing process.

--It provides for the use of requests for proposals in addition to invitations to bid on printing contracts.

--It places public printing for the Bureau of Workers' Compensation under DAS's supervision.

--It permits DAS to advertise an invitation to bid or request for proposal for the purchase of printing goods and services a second time, if the bids or proposals are rejected the first time as not being in the interest of the state.

--It eliminates the requirement that printing for the state be divided into four classes and separate contracts be entered into for each class.

--It eliminates specific duties of DAS with respect to the determination of paper to be used, provisions for the binding of publications, and the general preference for in-state printing.

Lastly, the bill removes the requirement that each copy of certain state publications indicate the total number of copies produced and the cost of each copy.

## Administration of 9-1-1 funding laws

(R.C. 128.40 and 128.54(A)(5))

### 9-1-1 Program Office: fund administration

The bill requires the 9-1-1 Program Office to oversee the administration of three different funds related to 9-1-1 law, whereas current law requires the Office to "administer" only the Wireless 9-1-1 Government Assistance Fund. Under the bill, the Office must oversee the administration of not only the Wireless 9-1-1 Government Assistance Fund, but also the Wireless 9-1-1 Program Fund and the Next Generation 9-1-1 Fund. The 9-1-1 Program Office is not specifically authorized to make deposits into or transfers out of any of these funds.

Under continuing law, the Wireless 9-1-1 Government Assistance Fund is used by the Tax Commissioner to make monthly disbursements to county 9-1-1 systems. The fund is populated by a 25-cent monthly charge on Ohio wireless subscribers, as well as a charge of 0.5% of the sale price of prepaid wireless services.[9] Most of the charges collected go to the Wireless 9-1-1 Government Assistance Fund. Two per cent of the charges go to the Wireless 9-1-1 Program Fund, which is an administrative fund used by the Statewide Emergency Services Internet Protocol Network Steering Committee to

[9] R.C. 128.42, not in the bill.

defray the committee's costs in carrying out its duties. The Next Generation 9-1-1 Fund is funded by other sources, and goes toward costs associated with phase II wireless systems and a county's migration to next generation 9-1-1 systems and technology.[10]

### Transfers to the Next Generation 9-1-1 Fund

The bill repeals a requirement that, although unclear under current law, appears to require the Statewide Emergency Services Internet Protocol Network Steering Committee to annually transfer excess funds remaining in the Wireless 9-1-1 Program Fund to the Next Generation 9-1-1 Fund. The reason this requirement is unclear is because the Tax Commissioner and the Steering Committee, after paying administrative costs, are required under current law to transfer any excess remaining in "the administrative funds" to the Next Generation 9-1-1 Fund. This probably means that the Tax Commissioner and the Steering Committee must transfer the excess remaining in *each entity's respective administrative* fund – the Wireless 9-1-1 Administrative Fund (Tax Commissioner) and the Wireless 9-1-1 Program Fund (Steering Committee) – to the Next Generation 9-1-1 Fund. But because the names of these funds are not spelled out, the requirement is unclear.

Under the bill, the Tax Commissioner, and not the Steering Committee, is clearly required to annually transfer any excess remaining in the Wireless 9-1-1 Administrative Fund to the Next Generation 9-1-1 Fund. The only other source of funding for the Next Generation 9-1-1 Fund would be assessments for unpaid wireless charges.[11] If the Next Generation 9-1-1 Fund is currently funded by excess transfers from the Wireless 9-1-1 Program Fund, the bill would change that.

## Electronic record certificate of authenticity

(R.C. 1306.20)

The bill removes provisions regarding a certificate of authenticity that must be created by a state agency when the state agency alters the format of an electronic record. Currently, a state agency that retains an electronic record may choose to retain it in a format that is different from the format in which the record was originally created, used, sent, or received. If a state agency alters the format, it must create a certificate of authenticity for each set of records that is altered. The bill removes this requirement. The bill also removes a complementary provision requiring DAS, in consultation with the State Archivist, to adopt rules that establish the methods for creating a certificate of authenticity.

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[10] R.C. 128.022, not in the bill.

[11] R.C. 128.46(E)(4), not in the bill.

Current law requires a state agency that creates, uses, or receives an electronic signature, or creates, uses, receives, or retains an electronic record, to do so in compliance with rules adopted by DAS, unless DAS has authorized noncompliance upon written request of the state agency. The bill removes the ability of a state agency to request, and DAS to authorize, noncompliance.

## Enterprise Information Technology Strategy Implementation

(Section 207.230)

The bill establishes a policy of modernizing the state's information technology (IT) management and investment practices by shifting away from a limited, agency-specific IT focus toward a statewide method supporting development of enterprise IT solutions.[12] In furtherance of this policy, the bill requires the Director to determine and implement strategies that will benefit the enterprise IT shift by improving efficiency, reducing costs, or enhancing the capacity of IT services.

These improvements and efficiencies may result in the consolidation and transfer of IT services. Notwithstanding any law to the contrary, as determined to be necessary for successful implementation of these enterprise IT shift improvements and efficiencies, the Director may request the Director of Budget and Management to consolidate or transfer IT-specific budget authority between agencies or within agencies as necessary to implement enterprise IT cost containment strategies and related efficiencies. When the Director of Budget and Management is satisfied that the proposed consolidations and transfers are cost advantageous to the enterprise IT shift, the Director may transfer appropriations, funds, and cash as needed to implement the enterprise IT shift. The establishment of any new fund or additional appropriation is subject to approval by the Controlling Board.

The Director of Budget and Management and Director of DAS may transfer any employees and any assets and liabilities, including, but not limited to, records, contracts, and agreements, in order to facilitate improvements required by the enterprise IT shift.

[12] Section 207.210 of the bill.

- Beginning July 1, 2016, increases to $350 (from $300) the fee charged to certain long-term care facilities for the Ohio Long-term Care Consumer Guide.
- Changes (from 90 days to a period specified in rules) the period for which an applicant for the Medicaid-funded component of the PASSPORT program may participate in the state-funded component of the PASSPORT program.
- Makes a corresponding change to the period for which an individual may participate in the state-funded component of the Assisted Living Program.
- Repeals a provision that grants eligibility for the state-funded component of the PASSPORT program to an individual no longer eligible for the Medicaid-funded component of the PASSPORT program.
- Makes technical corrections to statutory cross-references in the law governing the state-funded component of the PASSPORT and Assisted Living Programs.

## Ohio Long-term Care Consumer Guide fee increase

(R.C. 173.48)

Beginning July 1, 2016, the bill increases to $350 (from $300) the fee charged to long-term care facilities that are residential facilities for the Ohio Long-term Care Consumer Guide. The Guide is developed and published by the Department of Aging for individuals and their families to use in considering long-term care facility admission.[13]

## State-funded component of the PASSPORT program

(R.C. 173.522)

The bill changes the period of time for which an individual may participate in the state-funded component of the PASSPORT program, which provides home and community-based services as an alternative to nursing facility placement for eligible individuals who are aged and disabled. PASSPORT has both a Medicaid-funded component and a state-funded component.[14] Currently, an applicant for the Medicaid-

[13] R.C. 173.46, not in the bill.

[14] R.C. 173.51, not in the bill.

funded component of PASSPORT may participate in the state-funded component for 90 days. The bill changes that period to a period to be specified by the Director of Aging in rules.

The bill also repeals a provision in current law that provides state-funded component eligibility to an individual who is no longer eligible for the Medicaid-funded component of PASSPORT but still needs home and community based services to protect the individual's health and safety.

## State-funded component of the Assisted Living Program

(R.C. 173.543)

The bill changes the period of time for which an individual may participate in the state-funded component of the Assisted Living Program. Current law provides for an Assisted Living Program to deliver assisted living services to eligible individuals. The Program consists of a Medicaid-funded component and a state-funded component.[15] Eligible individuals may participate in the state-funded component for up to 90 days. The bill instead requires the Director to adopt rules specifying how long an individual may participate in the state-funded component.

## Technical correction

(R.C. 173.523, 173.544, and 173.545)

The bill makes technical corrections to statutory cross-references in the law governing the state-funded component of the PASSPORT and Assisted Living Programs.

[15] R.C. 173.51, not in the bill.

# DEPARTMENT OF AGRICULTURE

## Elimination of Agricultural Financing Commission

- Eliminates the Agricultural Financing Commission, which is required to make recommendations to and advise the Director of Agriculture concerning the Family Farm Loan Program, which was repealed in 2007.

## Application of fertilizer and manure

- Prohibits, with certain exceptions, the application of fertilizer or manure in the western basin of Lake Erie on frozen ground, on saturated soil, and during certain weather conditions.

- Requires the Director of Agriculture to administer the fertilizer provisions and the Director of Natural Resources to administer the manure provisions.

- States that the prohibition does not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law.

- Exempts a person in the western basin of Lake Erie from the prohibition if the person applies fertilizer or manure, as applicable, under specified circumstances, including injecting the fertilizer or manure into the ground and incorporating the fertilizer or manure within 24 hours of surface application.

- Authorizes the Director of Agriculture or the Director of Natural Resources to investigate complaints filed against a person that violates the above prohibition, including applying for a search warrant.

- Authorizes the applicable Director, to assess a civil penalty not to exceed $10,000 against a person that violates the prohibition against the application of fertilizer or manure, as applicable, only if the person is afforded an opportunity for an adjudication hearing.

- Specifies that a violator of the prohibition against the application of manure is guilty of a first degree misdemeanor and also may be assessed damages for repairing any damage to property caused by the violation.

- Requires a legislative review of the above provisions four years after their effective date to determine if they should be repealed.

### Certification of manure applicators

- Prohibits a person, for the purposes of the cultivation, primarily for sale, of plants on more than 50 acres, from applying manure obtained from a concentrated animal feeding facility issued a permit under the Concentrated Animal Feeding Facilities Law unless one of the following applies:

  --The person has been issued a livestock manager certification under that Law; or

  --The person has been certified under the bill to apply the manure by the Director of Agriculture.

- Requires the Director to issue, renew, and deny certifications for the application of manure in the same manner as for the certification of fertilizer applicators as required by current law enacted in 2014.

### Review compliance certificates

- Eliminates provisions governing review compliance certificates issued under the Concentrated Animal Feeding Facilities Law, the operation of which has expired.

### High Volume Breeder Kennel Control License Fund

- Eliminates the requirements that money may only be released from the High Volume Breeder Kennel Control License Fund with Controlling Board approval and that the Director request the release of not more than $2,500,000 per biennium, thus removing the cap on expenditures from the Fund.

### Wine tax diversion

- Extends through June 30, 2017, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.

## Elimination of Agricultural Financing Commission

(R.C. 901.61, 901.62, 901.63, and 901.64 (repealed) and 902.01)

The bill eliminates the Agricultural Financing Commission, which is required to make recommendations to and advise the Director of Agriculture concerning the Family Farm Loan Program, which was repealed in 2007.

## Application of fertilizer and manure

(R.C. 905.326, 905.327, 1511.10, 1511.11, and 1511.99; Section 709.10)

### Prohibition and exemptions

The bill establishes prohibitions governing the application of fertilizer and manure in Lake Erie's western basin. The Director of Agriculture or the Director's designee must administer and enforce the provisions governing the application of fertilizer. The Director of Natural Resources or the Director's designee must administer and enforce the provisions governing the application of manure. Under the bill, the western basin of Lake Erie is land in Ohio that is located in the St. Marys, Auglaize, Blanchard, Sandusky, Cedar-Portage, Lower and Upper Maumee, Tiffin, St. Joseph, Ottawa, and River Raisin watersheds.

Except as described below, the bill prohibits any person in the western basin from surface applying fertilizer or manure, as applicable, under any of the following circumstances:

(1) On snow-covered or frozen soil;

(2) When the top two inches of soil are saturated from precipitation; or

(3) When the local weather forecast for the application area contains greater than a 50% chance of precipitation exceeding ½ inch in a 24-hour period.

The bill states that the prohibition does not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law. It also specifies that the prohibition does not apply if a person in the western basin applies fertilizer or manure, as applicable, under any of the following circumstances:

(1) The fertilizer or manure application is injected into the ground;

(2) The fertilizer or manure application is incorporated within 24 hours of surface application;

(3) The fertilizer or manure application is applied onto a growing crop;

(4) The fertilizer application consists of potash or gypsum; or

(5) In the event of an emergency, the Director of Agriculture or the Director of Natural Resources, as applicable, provides written consent and the fertilizer or manure application is made in accordance with procedures established in the U.S. Department

of Agriculture Natural Resources Conservation Service Practice Standard Code 590 prepared for Ohio.

### Enforcement

Upon receiving a complaint by any person or upon receiving information that would indicate a violation of the above prohibition, the applicable Director may investigate or make inquiries into any alleged violation of the prohibition.

After receiving a complaint or upon receiving information that would indicate a violation, the applicable Director may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged violation. If an individual denies access to the applicable Director, the Director may apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises to determine if a violation occurred. The court must issue the search warrant for the purposes requested if there is probable cause to believe that the person violated the prohibition. The finding of probable cause may be based on hearsay, provided that there is a reasonable basis for believing that the source of the hearsay is credible.

Under the bill, the applicable Director may assess a civil penalty against a person that violates the above prohibition. The applicable Director may impose a civil penalty only if the applicable Director affords the person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination that the person violated the above prohibition. The person may waive the right to an adjudication hearing.

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the applicable Director determines that a violation has occurred or is occurring, the Director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with the Administrative Procedure Act.

A violator must pay a civil penalty in an amount established in rules adopted by the applicable Director. The civil penalty cannot be more than $10,000 for each violation. Each 30-day period during which a violation continues constitutes a separate violation. In addition, a violator of the prohibition against the application of manure is guilty of a first degree misdemeanor. The violator also may be assessed damages for repairing any damage to property caused by the violation.

### Termination of prohibition

Not later than four years after the bill's effective date, the standing committees of the General Assembly that are primarily responsible for agriculture and natural resources matters must review the effectiveness of the prohibition and its enforcement. The committees must issue a joint report to the Governor containing their findings and recommendations. If they do not recommend continuing the above provisions, they may also recommend revisions to the governing statutes.

## Certification of manure applicators

(R.C. 903.40)

The bill prohibits a person, for the purposes of the cultivation, primarily for sale, of plants or any parts of plants on more than 50 acres, from applying manure obtained from a concentrated animal feeding facility issued a permit under the Concentrated Animal Feeding Facilities Law unless one of the following applies:

(1) The person has been issued a livestock manager certification under that Law; or

(2) The person has been certified under the bill to apply the manure by the Director of Agriculture.

Under the bill, the Director must issue, renew, and deny certifications for the application of manure in the same manner as for the certification of fertilizer applicators as required by current law enacted in 2014. Procedures, requirements, and other provisions governing the certification of fertilizer applicators apply to the certification of persons under the bill.

## Review compliance certificates

(R.C. 903.01, 903.03, 903.07, 903.09, 903.10, 903.11, 903.12, 903.13, 903.16, 903.17, and 903.25; R.C. 903.04 (repealed))

The bill eliminates provisions governing review compliance certificates issued under the Concentrated Animal Feeding Facilities Law, the operation of which has expired. Sub. S.B. 141 of the 123rd General Assembly, which took effect March 15, 2001, transferred the regulation of animal waste disposal at concentrated animal feeding facilities (CAFFs) from the Environmental Protection Agency to the Department of Agriculture. The act required the Director of Agriculture to finalize a program under which the Director was given the authority to issue, in part, permits to install and permits to operate for CAFFs. The Director finalized the program in August, 2002. Prior to the finalization, the Director of Environmental Protection issued installation permits

for the installation or modification of disposal systems for animal waste that involved 1,000 or more animal units or any parts of those disposal systems in compliance with the Federal Water Pollution Control Act.

Current law specifies that on and after the date that is two years after the date on which the Director of Agriculture finalized the program for the issuance of permits to install for CAFFs, which was in August, 2004, and until the issuance of a permit to operate, no person lawfully could operate a CAFF in existence prior to August, 2004, unless the person applied for a review compliance certificate issued by the Director. Upon the Director's review of specified information concerning a facility and inspection of the facility, the Director had to issue a review compliance certificate to the facility if the Director determined that it satisfied certain criteria. A permit to operate had to be obtained prior to expiration of the review compliance certificate, which was valid for five years. Because the above deadlines have passed, the statutes governing review compliance certificates are obsolete.

## High Volume Breeder Kennel Control License Fund

(R.C. 956.18)

The bill eliminates the requirements that:

(1) Money may only be released from the existing High Volume Breeder Kennel Control License Fund with Controlling Board approval; and

(2) The Director request the release of not more than $2,500,000 per biennium, thus removing the cap on expenditures from the Fund.

## Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

The bill extends through June 30, 2017, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund. Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to $1.48 per gallon. From the taxes paid, a portion is credited to the fund for the encouragement of the state's grape and wine industry, and the remainder is credited to the GRF.

Under current law, the amount credited to the Ohio Grape Industries Fund is scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2015. The extra 2¢ earmark began in July 1995 and originally was scheduled to terminate in June 2001, but has been extended by two-year intervals since July 2001.

- Provides for the Energy Strategy Development Program, to be monitored by the Ohio Air Quality Development Authority, to develop energy initiatives, projects, and policy that align with Ohio's energy policy.

## Energy Strategy Development Program

(Section 213.20)

The bill requires the Energy Strategy Development Program to develop energy initiatives, projects, and policy that align with the energy policy of Ohio. Although the Revised Code and the bill do not expressly create this Program, apparently this requirement implicitly does. In addition, the bill requires the Ohio Air Quality Development Authority to be responsible for monitoring the Program.

The bill provides that the issues addressed by the Program are not to be limited to those provided for under Ohio law governing the Authority (R.C. Chapter 3706., not in the bill). The bill also provides that the Program pays for costs associated with the administration of the outstanding loans (apparently those made by the Authority under R.C. 166.30 and 3706.27) and working with outside parties associated with the loans.

For purposes of funding the Program, the bill creates, by uncodified law, the Energy Strategy Development Fund in the state treasury. The Fund is to consist of money credited to it and *money obtained for advanced energy projects from federal or private grants, loans, or other sources* (with respect to the italicized language, the bill is not clear as to what this money is or where it comes from). The bill further provides for the transfer of cash to the Fund on July 1 of each fiscal year in the upcoming biennium from various other funds. The bill also provides that all cash credited to the Fund be transferred on July 1, 2017 to the GRF and that the Fund be abolished after the transfer.

- With respect to entities that receive state economic development awards, requires the Attorney General to determine compliance with the terms of the award, including the performance metrics, at the end of the year by which the entity is required to meet one of those metrics, rather than annually, as required under current law.

- Requires the Attorney General to enter into an agreement with the U.S. Secretary of the Treasury to participate in the federal Treasury Offset Program for the collection of outstanding state income tax and unemployment debts.

## Monitoring compliance with state economic development awards

(R.C. 125.112)

Under current law, entities that receive a state award for economic development (such as a grant, loan, or other similar form of financial assistance or a contract, purchase order, or other similar transaction) must comply with certain terms and conditions, including performance metrics. The Attorney General is required to monitor the compliance of such entities with the terms and conditions of their awards and submit an annual report to the General Assembly regarding the level of compliance of each entity.

The bill would eliminate the requirement that compliance by such entities be monitored annually. Instead, the Attorney General must determine the extent to which an entity has complied with the terms and conditions of its award, including the performance metrics, *at the end of the calendar year by which the entity is required to meet a performance metric under the award* (referred to as the "closeout year.") Annually, the Attorney General would report on the compliance levels of only those entities.

## Treasury Offset Program

(R.C. 131.025)

The bill requires the Attorney General to enter into an agreement with the U.S. Secretary of the Treasury to participate in the federal Treasury Offset Program for the collection of state income tax obligations and unemployment compensation debts that have been certified to the Attorney General for collection pursuant to continuing law.

Under the Treasury Offset Program, an individual's or an entity's federal tax refund can be reduced by the amount the individual or entity owes for specified government debt, including unemployment compensation debt and state income tax obligations.[16]

[16] 26 U.S.C. 6402(e) and (f) and 31 C.F.R. 285.8.

- Authorizes the Auditor of State to conduct a performance audit of a municipal corporation, county, or township that is under a fiscal caution, a fiscal watch, or a fiscal emergency.

- Authorizes the Controlling Board to provide sufficient funds for purposes of such a performance audit.

## Performance audits of local governments in fiscal distress

(R.C. 118.04, 118.041, and 118.042)

The bill authorizes the Auditor of State, on the Auditor of State's initiative, to conduct a performance audit of a financially distressed municipal corporation, county, or township that is under a fiscal caution, a fiscal watch, or a fiscal emergency.

All expenses incurred by the Auditor of State relating to a determination or termination of one of these three conditions, including providing technical and support services, must be reimbursed from an appropriation for that purpose. The bill specifies that expenses incurred for conducting a performance audit also must be reimbursed from the appropriation.

- Permits a state agency to certify to the Office of Budget and Management (OBM) the amount due for a service subscription provided to a state agency for which an ongoing service was initiated but payment was not received.
- Authorizes the Director of OBM to transfer from the receiving agency to the providing agency the amount that should have been paid for the service subscription.
- Defines a service subscription as an ongoing service provided to a state agency by another state agency for which an estimated payment is made in advance and final payment due is determined based on actual use.
- Permits the Director, under certain circumstances, to transfer interest earned by any state fund to the GRF.
- Authorizes the Director, in each fiscal year, to transfer up to $60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted to ensure that GRF receipts and balances are sufficient to support GRF appropriations.
- Permits the Director to issue guidelines to agencies applying for federal money made available to the state for fiscal stabilization and recovery purposes.
- Appropriates any money the Controlling Board approves for expenditure, or any increase in appropriation the Controlling Board approves, pursuant to existing law.
- Abolishes various uncodified funds.

## State agency service subscription late payment transfer authorization

(R.C. 131.34)

The bill authorizes any state agency that has provided a service subscription to another state agency to certify to the Director of Budget and Management (1) that the service subscription has been initiated and (2) the amount due for the service subscription. The agency providing the service subscription may make a certification only if it does not receive payment from the agency receiving the service subscription within 30 days after the providing agency initiates the service subscription and submits an invoice requesting payment for it. After determining what part of the certified amount should have been paid by the receiving agency and that the receiving agency

has an unobligated balance in an appropriation for the payment, the Director may transfer the amount that should have been paid from the appropriate fund of the receiving agency to the appropriate fund of the providing agency. The transfer must be made on an intrastate transfer voucher.

Under the bill, a service subscription is an ongoing service provided to a state agency by another state agency for which an estimated payment is made in advance and the final payment due is determined based on actual use.

Under current law a providing agency that has provided goods and services to a receiving agency may follow a similar process to recover payment.

## Transfers of interest to the GRF

(Section 512.10)

The bill permits the Director, through June 30, 2017, to transfer interest earned by any state fund to the GRF as long as the source of revenue of the fund is not restricted or protected under the Ohio Constitution or federal law.

## Transfers of non-GRF funds to the GRF

(Section 512.20)

The bill authorizes the Director, in both fiscal year 2016 and 2017, to transfer up to $60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted. These transfers are to be made to ensure that available GRF receipts and balances are sufficient to support GRF appropriations in each fiscal year.

## Federal money for fiscal stabilization and recovery

(Section 521.60)

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

## Expenditures and appropriation increases approved by Controlling Board

(Section 503.100)

The bill states that any money the Controlling Board approves for expenditure, or any increase in appropriation the Controlling Board approves, as permitted under existing law[17] is hereby appropriated for the period ending June 30, 2017.

## Various uncodified funds abolished

(Section 512.60)

The bill requires the OBM Director to abolish various uncodified funds pertaining to certain state agencies, as indicated in the bill, after (1) transferring their cash balances to other funds, and (2) cancelling and reestablishing encumbrances. The amendment or repeal of any Revised Code sections that create any of the abolished funds is addressed in other parts of this analysis.

[17] R.C. 127.14, 131.35, and 131.39, not in the bill.

- Extends the permit period for an agent representing a career college or school, from one year to up to two years.

## Career college agent permit

(R.C. 3332.10)

The bill extends the permit period for an agent representing a career college or school, from one year to up to two years. Such agents distribute literature and information on behalf of such institutions. They also solicit fee-based career college programs.

# CASINO CONTROL COMMISSION

## Appeals from Commission orders

- Requires an appeal from an Ohio Casino Control Commission order to be taken to the Franklin County Court of Common Pleas.
- Authorizes the court to suspend a Commission order, and to fix the terms of the suspension under certain circumstances.
- Specifies the maximum time for termination of any order issued by a court of common pleas or a court of appeals suspending the effect of a Commission order generally relating to an applicant, licensee, or person excluded or ejected from a casino facility.
- Requires the court of common pleas, or the court of appeals on appeal, to render judgment in the matter within six months after the filing date of the Commission's record.
- Prohibits a court of appeals from issuing an order suspending the effect of an order that extends beyond six months after the filing date of the Commission's record.
- Specifies that an appeal of the Commission's order must be set down for hearing at the earliest possible time and must be given precedence over all other actions.

## Casino Law

- States that the Commission has jurisdiction over all persons conducting or participating in the conduct of skill-based amusement machine operations.
- Grants the Commission authority to adopt rules related to the operation of skill-based amusement machines.
- Expands the Commission's authority relating to gaming agents to include employing and assigning gaming agents to assist the Commission in carrying out its duties under the Gambling Law.
- Gives the Commission and gaming agents authority to detect, investigate, seize evidence, and apprehend and arrest persons allegedly committing violations of gambling offenses under the Gambling Law, and grants the Commission access to skill-based amusement machine facilities.
- Creates a criminal penalty under the Casino Law for a person who purposely or knowingly operates a skill-based amusement machine operation in a manner other

than the manner required under the Gambling Law, and states that such premises are a nuisance subject to abatement.

- Changes the mental state throughout the Casino Law penalty provisions that must accompany certain violations from knowingly or intentionally to purposely or knowingly.

- Removes a deadline by which the Commission must have adopted initial casino-related rules.

### Commissioner salary

- Adjusts a Commissioner's salary on the effective date of the bill and on July 1, 2016, and July 1, 2017.

### Appeals from Commission orders

(R.C. 119.12)

The bill requires an appeal from an order of the Ohio Casino Control Commission to be taken to the Court of Common Pleas of Franklin County. Under continuing law, generally, a party adversely affected by an order of an agency may appeal to the Court of Common Pleas of the county of residence. However, appeals from orders of certain state agencies, including the Liquor Control Commission, the State Medical Board, the State Chiropractic Board, and the Board of Nursing, also must be taken to the Court of Common Pleas of Franklin County.

The bill authorizes the court to suspend an order of the Commission, and to fix the terms of the suspension, if it appears to the court that (1) an unusual hardship to the appellant will result from execution of the order pending determination of the appeal and (2) the health, safety, and welfare of the public will not be threatened by suspension of the order. Continuing law includes the same authorization for a court with respect to an appeal from an order of the State Medical Board and the State Chiropractic Board.

The bill specifies that any order issued by a court of common pleas or a court of appeals suspending the effect of an order of the Commission that limits, conditions, restricts, suspends, revokes, denies, not renews, fines, or otherwise penalizes an applicant, licensee, or person excluded or ejected from a casino facility must terminate within six months after the date of the filing of the Commission's record with the clerk of the court of common pleas. The bill prohibits a court from extending such a suspension.

The bill also requires the court of common pleas, or the court of appeals on appeal, to render judgment in the matter within six months after the date the Commission's record is filed with the clerk of the court of common pleas. A court of appeals is prohibited from issuing an order suspending the effect of an order that extends beyond six months after the date on which the Commission's record is filed with the clerk of a court of common pleas.

Finally, the bill specifies that an appeal of the Commission's order is to be set down for hearing at the earliest possible time and is to be given precedence over all other actions. Continuing law gives precedence to hearings on appeals from orders of the Liquor Control Commission, the State Medical Board, and the State Chiropractic Board.

## Casino Law

(R.C. 3772.03 and 3772.99)

### Skill-based amusement machine operations

To ensure the integrity of skill-based amusement machine operations, the bill states that the Commission has jurisdiction over all persons conducting or participating in the conduct of skill-based amusement machine operations, including having the authority to license, regulate, investigate, and penalize those persons in a manner consistent with the Commission's authority to do the same for casino gaming. The bill grants the Commission the authority to adopt rules under the Administrative Procedure Act, including rules establishing fees and penalties, related to the operation of skill-based amusement machines.

The bill expands the Commission's authority related to gaming agents to include employing and assigning gaming agents to assist the Commission in carrying out its duties under the Gambling Law. Under continuing law, the Commission may employ and assign gaming agents to assist the Commission is carrying out its duties under the Casino Law. Additionally, the bill states that the Commission and its gaming agents have authority with regard to the detection and investigation of, the seizure of evidence allegedly relating to, and the apprehension and arrest of persons allegedly committing violations of the Casino Law, gambling offenses under the Gambling Law, or violations of any other Ohio law that may affect the integrity of casino gaming or the operation of skill-based amusement machines. The Commission may access casino facilities and skill-based amusement machine facilities to carry out the requirements of those laws.

The bill states that a person who purposely or knowingly operates a skill-based amusement machine operation in a manner other than the manner required under the Gambling Law commits a felony, and states that the premises used or occupied in such

a manner is a nuisance subject to abatement. (The felony is of the fifth degree on a first offense and of the fourth degree on subsequent offenses.)

Under current law, the Commission was to assume jurisdiction over and oversee the regulation of skill-based amusement machines under Ohio law beginning on July 1, 2011. Under continuing law, a skill-based amusement machine is a mechanical, video, digital, or electronic device that rewards players with merchandise prizes or with redeemable vouchers for merchandise prizes. Generally, a merchandise prize and a redeemable voucher awarded for any single play may not exceed a $10-value. The vouchers or prizes must be distributed at the site of the skill-based amusement machine at the time of play. The games are not to be determined by chance, but rather by achieving the object of the game.

### Other Commission provisions

Throughout the Casino Law penalty provisions, the bill changes the mental state that must accompany certain violations from knowingly or intentionally to purposely or knowingly.

The bill also removes a deadline by which the Commission must have adopted initial casino-related rules within six months of September 10, 2010, that is, by March 10, 2011. Under the bill, the Commission must continue to adopt the rules on the enumerated topics.

## Commissioner salary

(R.C. 3772.02)

The bill adjusts a Commissioner's salary as indicated in the following table:

| Current law | As of provision's effective date | As of July 1, 2016 | As of July 1, 2017 |
|---|---|---|---|
| $30,000 per year | $50,000 per year | $40,000 per year | $30,000 per year |

The bill also removes a provision requiring a Commissioner's salary to be paid in monthly installments. Under continuing law, each Commissioner also receives actual and necessary expenses incurred in the discharge of the Commissioner's official duties.

# DEPARTMENT OF COMMERCE

## Licensing unit

- Creates a unit within the Department of Commerce that can administer the licensing, registration, and related ministerial functions of the other divisions within the Department.

## Securities Law

- Exempts certain persons from the dealer license requirement.
- Modifies the definition of "institutional investor."

## Small Government Fire Department Services Loan Program

- Creates the Small Government Fire Department Services Revolving Loan Fund.
- Permits the State Fire Marshal to loan money from the Fund for purposes of the existing Small Government Fire Department Services Revolving Loan Program.

## State Liquor Regulatory Fund

- Generally requires all money collected under the Liquor Control Law to be credited to the existing State Liquor Regulatory Fund, rather than the Liquor Control Fund as required under current law.

## Real estate licenses

- Increases, from $10,000 per year to $25,000 per fiscal year, the amount of loans the Real Estate Education and Research Fund may advance annually to applicants for salesperson licenses.
- Permits a licensed real estate broker or salesperson whose license is on deposit as an armed serviceperson to take up to the longer of 12 months after the licensee's first birthday after discharge or the amount of time the licensee spent on active duty to complete continuing education requirements.
- Permits a licensee who is the spouse of a member of the armed forces an extended time period to renew the license and to complete continuing education requirements.
- Specifies that "armed forces" in the context of the licensure of real estate brokers and salespersons includes the Ohio National Guard and any other state's national guard.

## Real estate appraiser assistants

- Requires that, in accordance with federal law, real estate appraiser assistants complete 14 classroom hours of continuing education instruction annually, without existing law's two-year grace period.

- Exempts real estate appraisers who have obtained a temporary certification or license from existing law's continuing education requirements.

## Licensing unit

(R.C. 121.08)

The bill creates a licensing unit within the Division of Administration of the Department of Commerce. The purpose of the new unit would be to administer the licensing, registration, and related ministerial functions of the other divisions within the Department. The other divisions that would be expected to transfer functions to the new division would include:

- The Office of the State Fire Marshal;
- The Division of Financial Institutions;
- The Division of Real Estate and Professional Licensing;
- The Division of Liquor Control;
- The Division of Industrial Compliance;
- The Division of Unclaimed Funds;
- The Division of Securities.

## Securities Law – "institutional investors" and dealer license exemption

(R.C. 1707.01 and 1707.14)

The bill exempts from the dealer license requirement persons who have no Ohio place of business, are federally registered, and effect transactions in Ohio only with institutional investors.

The bill also modifies the definition of "institutional investor" under the Ohio Securities Law to more specifically identify the types of entities included and, for many institutional investors, create an asset threshold of $10,000,000.

| Under current law, "institutional investor" means: | Under the bill, "institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity: |
|---|---|
| A bank. | A bank or international banking institution. |
| An insurance company. | An insurance company.<br>A separate account of an insurance company. |
| Pension fund or pension fund trust, employees' profit-sharing fund, or employees' profit-sharing trust. | An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of $10,000,000 or its investment decisions are made by certain types of fiduciaries.<br>Certain plans established and maintained by a state or local government for the benefit of its employees, if the plan has total assets in excess of $10,000,000 or its investment decisions are made by a duly designated public official or by a certain type of fiduciary. |
| Any trust in respect of which a bank is trustee or cotrustee. | A trust, if it has total assets in excess of $10,000,000, its trustee is a bank, and its participants are exclusively plans of the types described in the cell above, regardless of the size of their assets, except a trust that includes as participants certain similar self-directed plans. |
| Any association engaged, as a substantial part of its business or operations, in purchasing or holding securities. | An investment company as defined in the federal Investment Company Act. |
| | A federally registered broker-dealer or a state licensed dealer. |
| | A 501(c)(3) organization or specified type of business form with total assets in excess of $10,000,000. |
| | A licensed small business investment company with total assets in excess of $10,000,000. |
| | A private business development company with total assets in excess of $10,000,000. |

| Under current law, "institutional investor" means: | Under the bill, "institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity: |
|---|---|
| | A federal covered investment adviser acting for its own account. |
| | A "qualified institutional buyer." |
| | A "major U.S. institutional investor." |
| A corporation.<br>"Institutional investor" does not include any business entity formed for the primary purpose of evading the Ohio Securities Law. | Any other person, other than an individual, of institutional character with total assets in excess of $10,000,000 not organized for the specific purpose of evading the Ohio Securities Law. |
| | Any other person specified by rule adopted or order issued under the Ohio Securities Law. |

## Small Government Fire Department Services Revolving Loan Program

(R.C. 3737.17)

The bill creates the Small Government Fire Department Services Revolving Loan Fund and permits the State Fire Marshal to loan moneys from the Fund for the purposes of the Small Government Fire Department Services Revolving Loan Program. Under continuing law, the Program administers loans to qualifying small governments to expedite purchases of major equipment for fire fighting, ambulance, emergency medical, or rescue services, and to expedite projects for the construction or renovation of fire department buildings.

The Fund will consist of moneys from repaid loans under the Program, investment earnings on money in the Fund, and moneys appropriated to the Fund.

## State Liquor Regulatory Fund

(R.C. 4301.12)

The bill generally requires all money collected under the Liquor Control Law to be credited to the existing State Liquor Regulatory Fund rather than the Liquor Control Fund as provided under current law. Finally, the bill removes a provision regarding the use of money in the Liquor Control Fund for paying the operating expenses of the Liquor Control Commission.

## Real estate licenses

### Real Estate Education and Research Fund

(R.C. 4735.06)

The bill increases, from $10,000 per year to $25,000 per fiscal year, the overall limit of the amount of loans the Real Estate Education and Research Fund is permitted to lend to applicants for salesperson licenses. Under continuing law, these individual loans, not exceeding $2,000, may be used by applicants to complete education requirements for licensure.

### Real estate broker and salesperson licenses – military

(R.C. 4735.13 and 4735.141)

The bill changes the time period within which a licensed real estate broker or salesperson who is a member of the armed forces must complete existing continuing education requirements. Specifically, the bill permits a broker or salesperson whose license is on deposit as an armed serviceperson to take up to the longer of 12 months after the broker's or salesperson's first birthday after discharge (continuing law) or the amount of time equal to the total number of months the licensee spent on active duty (added by the bill). The bill states that this extension must not exceed the total number of months that the licensee served in active duty. The broker or salesperson must submit proper documentation of active duty service and the length of that service to the Superintendent of the Division of Real Estate and Professional Licensing.

Similarly, the bill permits a licensee, who is the spouse of a member of the armed forces whose service results in the licensee's absence from Ohio (or in the case of a licensee who holds a license through a reciprocity agreement, the spouse's service results in the licensee's absence from the licensee's state of residence), to take up to the same amount of time as described in the paragraph above to complete continuing education requirements. The bill requires the licensee to submit proper documentation of the spouse's active duty service and the length of that service. The bill also extends the time period within which such a licensee must renew the license to the renewal date that follows the date of the spouse's discharge from the armed forces.

The bill specifies that "armed forces" means the U.S. armed forces, a reserve component of the U.S. armed forces, the Ohio National Guard, and the national guard of any other state.

## Real estate appraiser assistants – continuing education

(R.C. 4763.01 and 4763.07)

The bill requires, in accordance with federal law, that each state-registered real estate appraiser assistant annually complete, and submit proof of successfully completing, a minimum of 14 classroom hours of continuing education instruction in courses or seminars approved by the Real Estate Appraiser Board. Current law exempts an appraiser assistant from these requirements for the first two years of being classified as an appraiser assistant. The bill removes this grace period.

Continuing law requires the completion of 14 hours of continuing education instruction for state-certified general real estate appraisers, state-certified residential real estate appraisers, and state-licensed residential real estate appraisers. The bill exempts appraisers with a certification or license from another state that is temporarily recognized in Ohio.

The bill removes "appraisal consulting" and "appraisal consulting service" from the Real Estate Appraiser Law, as these terms appear to no longer be used in the industry.

# DEVELOPMENT SERVICES AGENCY

## Fund closures

- Abolishes the Motion Picture Tax Credit Program Operating Fund and redirects the Fund's revenue to the Business Assistance Fund.

- Abolishes the Industrial Site Improvements Fund and the Rural Industrial Park Loan Fund.

## Report deadlines

- Changes, from August 1 to October 1, the due date of the annual report that must be prepared by the Development Services Agency (DSA) regarding its bond financed economic assistance programs.

- Moves from January 7 to August 1 of each year the date by which DSA must submit a report regarding the Career Exploration Internship Program to the Governor and General Assembly leaders.

## Housing Trust Reserve Fund

- Creates the Housing Trust Reserve Fund in the state treasury.

- Provides that the Reserve Fund is to consist of specified housing trust fund fees received each year by the Treasurer of State.

- Permits the Director to request the Director of Budget and Management to transfer money from the Reserve Fund to the Low- and Moderate-Income Housing Trust Fund if money in the Fund falls below a certain level.

## Entrepreneurial business incubators report

- Requires DSA to produce and post on its website by December 31, 2015 a report that maps and reviews entrepreneurial business incubators in Ohio.

## Fund closures

### Motion Picture Tax Credit Program Operating Fund

(R.C. 122.174 and 122.85)

The bill abolishes the Motion Picture Tax Credit Program Operating Fund. The Fund consists of application fees paid by motion picture companies applying for certification of a motion picture as a tax credit-eligible production and all grants, gifts, fees, and contributions made to the Director of Development Services for marketing and promotion of the motion picture industry in Ohio. Money in the Fund is used to cover administrative costs of the Motion Picture Tax Credit Program and the Ohio Film Office.

Under the bill, the revenue currently required to be deposited into the Fund is to be deposited into the existing Business Assistance Fund instead. The Business Assistance Fund is used by the Director to pay expenses related to the administration of the Business Services Division of the Development Services Agency (DSA).

### Industrial Site Improvements Fund

(R.C. 122.95 and 122.951; R.C. 122.952 (repealed))

Under current law, the Director may make grants from the Industrial Site Improvement Fund to eligible counties for the purpose of acquiring commercial or industrial land or buildings and making improvements to commercial or industrial areas within a county, if the grant would create new jobs or preserve existing jobs. The Fund consists of money appropriated to it by the General Assembly.

The bill abolishes the Fund, but retains the grant program.

### Rural Industrial Park Loan Fund

(R.C. 122.26 (repealed))

The bill abolishes the Rural Industrial Park Loan Fund, which is currently used by the Director to provide financial assistance in the form of loans and loan guarantees for the development or improvement of industrial parks. The Rural Industrial Park Loan Program, however, is retained under the bill.

## Report deadlines

### Annual financial report regarding economic assistance programs

(R.C. 122.64)

The Director is currently required to make a report of the activities and operations of DSA's bond financed economic assistance programs for the preceding fiscal year and submit that report to the Governor and General Assembly by August 1 of each year. The bill changes the due date to October 1.

### Career Exploration Internship Program report deadline

(R.C. 122.177)

The bill moves from January 7 to August 1 of each year, until 2017, the date by which DSA must submit a report regarding the Career Exploration Internship Program to the Governor and General Assembly leaders. Under current law, DSA administers the Program to award grants to businesses that employ a student intern in a career exploration internship.

## Housing Trust Reserve Fund

(R.C. 174.02, 174.09, and 319.63)

The bill creates the Housing Trust Reserve (Reserve) Fund in the state treasury. It is to consist of specified housing trust fund fees collected by county recorders under existing law and paid to the Treasurer of State. Currently, the Treasurer of State deposits the first $50 million of those housing trust fund fees received each year in the Low- and Moderate-Income Housing Trust Fund and deposits any amounts in excess of $50 million into the GRF. Under the bill, any amounts received in excess of $50 million are to be deposited into the Reserve Fund *unless* the cash balance of the Reserve Fund is greater than $15 million. In that event, the Treasurer of State must deposit any amounts received in excess of $50 million into the GRF.

If, in the prior fiscal year, the Treasurer of State received less than $50 million of housing trust fund fees, the Director may request the Director of Budget and Management to transfer money from the Reserve Fund to the Low- and Moderate-Income Housing Trust Fund. Based on the information provided by the DSA Director regarding the transfer request, the OBM Director is to determine the amount to be transferred. However, the amount transferred, when combined with the housing trust fund fees received by the Treasurer of State in the prior fiscal year, cannot exceed $50 million.

## Entrepreneurial business incubators report

(Section 257.90)

Under the bill, DSA must produce a report mapping and reviewing entrepreneurial business incubators (EBIs) in Ohio. An EBI is an entity supporting startup companies, offering a collaborative environment, and providing access to support services, technical expertise, and business assistance resources to help innovators grow their business ideas into independent job-creating companies. The report must be produced and made publicly available on the DSA website by December 31, 2015.

The report must:

- Identify locations and available support services, unmet service areas, and duplication of service at EBIs;
- Classify the industry of member entrepreneurs receiving services by the following categories: advanced manufacturing, aerospace and aviation, agribusiness, food processing, automotive supply chain, biohealth, energy, information technology, polymers, chemicals, and additional industry sectors, as determined by DSA;
- Gather data on member entrepreneurs based on jobs, capital investment, and sales; and
- Describe characteristics of EBIs that successfully graduate companies to be independent job creators for Ohio.

# DEPARTMENT OF DEVELOPMENTAL DISABILITIES

## Supported living certificates

- Provides that a person or government entity's supported living certificate is suspended or revoked automatically or is to be denied renewal if the person or government entity's Medicaid provider agreement to provide supported living is suspended, revoked, or denied revalidation.

- Increases to five (from one year) the period during which a person or government entity is prohibited from applying for a supported living certificate following an order refusing to issue or renew the certificate.

## Residential facility licensure

- Repeals certain provisions related to the licensure of residential facilities by the Ohio Department of Developmental Disabilities (ODODD).

- Permits the ODODD Director to reduce the maximum capacity of certain residential facilities.

- Permits the ODODD Director to assign the responsibility for conducting surveys and inspections to the Ohio Department of Health (ODH).

- Authorizes the renewal of interim licenses for 180 (rather than 150) days.

- Requires a licensee to transfer records to the new licensee or management contractor when the identity of the licensee or contractor changes significantly.

## Incentives to convert ICF/IID beds

- Permits the ODODD Director to forgive the outstanding balance a county board of developmental disabilities (CBDD) or nonprofit, private agency otherwise owes under an agreement regarding the construction, acquisition, or renovation of a residential facility if certain conditions are met.

- Permits the ODODD Director to change the terms of an agreement with a CBDD or private, nonprofit agency regarding the construction, acquisition, or renovation of a residential facility if certain conditions are met.

## Consent for medical treatment

- Authorizes a guardian (or court in the absence of a guardian) of a resident of an institution for the mentally retarded who is physically or mentally unable to receive

information or who has been adjudicated incompetent to give informed consent to an experimental procedure on the resident's behalf.

- Eliminates provisions requiring informed consent before a resident of an institution for the mentally retarded receives convulsive therapy, major aversive interventions, or unusual or hazardous treatment procedures.

### ICF/IID's Medicaid rates

- Specifies the Medicaid rate paid to an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) in peer group 1 or peer group 2 for a Medicaid recipient placed in the chronic behaviors and typical adaptive needs classification or the typical adaptive needs and nonsignificant behaviors classification.

### Admissions to ICFs/IID

- Prohibits, with certain exceptions, an ICF/IID with more than eight beds from admitting an individual as a resident unless specified conditions are met.

### Enrolling ICF/IID residents

- Requires ODODD to develop and make available to all ICFs/IID a written pamphlet that describes the services that Medicaid covers under the ICF/IID benefit and the home and community-based services covered by ODODD-administered Medicaid waiver programs.

- Requires ICFs/IID to provide the pamphlet to residents and their guardians, to discuss the pamphlet with them at certain times, and to refer to CBDDs those residents who indicate interest in enrolling in an ODODD-administered Medicaid waiver program.

- Requires a CBDD to enroll the resident in an ODODD-administered Medicaid waiver program if specified conditions are met.

- Makes ODODD responsible for the nonfederal share of the Medicaid expenditures for the home and community-based services received by such an ICF/IID resident so enrolled in an ODODD-administered Medicaid waiver program.

- Provides for the Medicaid-certified capacity of an ICF/IID with more than eight beds to be reduced for each resident so enrolled in an ODODD-administered Medicaid waiver program.

## ICF/IID sleeping room occupancy

- With certain exceptions, prohibits the operator of an ICF/IID from allowing more than two residents to share a sleeping room.

- Requires the operator of an ICF/IID in which more than two residents share a sleeping room to submit to ODODD a plan to come into compliance with the occupancy limit.

- Prohibits an ICF/IID from admitting a new resident if more than two residents share a sleeping room.

## Medicaid rates for certain ICFs/IID

- Provides for certain modifications in an ICF/IID's Medicaid payment rate for a certain period following the ICF/IID (1) downsizing, (2) partially converting to a provider of home and community-based services, or (3) beginning to participate in Medicaid after obtaining beds from certain downsized ICFs/IID.

## Service and support administrators

- Prohibits service and support administrators for county boards of developmental disabilities from providing programs or services to individuals with mental retardation or developmental disabilities through self-employment.

## ICF/IID franchise permit fees

- Reduces the per bed per day franchise permit fee charged to ICFs/IID from $18.17 to $18.07 for fiscal year 2016 and to $18.02 for fiscal year 2017 and thereafter.

- Requires ODODD to notify, electronically or by U.S. Postal Service, ICFs/IID of (1) the amount of their franchise permit fees and (2) the date, time, and place of hearings to be held for appeals regarding the fees.

## Conversion of beds

- Provides that the Medicaid Director is not required to conduct an adjudication when (1) terminating an ICF/IID's provider agreement due to the ICF/IID converting all of its beds to providing HCBS or (2) amending an ICF/IID's provider agreement to reflect its reduced capacity resulting from a conversion of some of its beds.

- Provides that the prohibition against making a Medicaid payment to an ICF/IID for the day a Medicaid recipient is discharged does not apply if the recipient is discharged because all of the beds in the ICF/IID are converted to providing HCBS.

- Revises the requirements and procedures for ODODD to terminate the franchise permit fee of an ICF/IID that converts its beds to providing HCBS.

### Priority status for residents

- Specifies that a resident of a nursing facility or ICF/IID receives priority status on the waiting list for home and community-based services provided by a county board of developmental disabilities.

### FY 2016 and 2017 Medicaid rates for ICF/IID services

- Modifies the formula to be used in determining the fiscal year 2016 Medicaid payment rates for ICFs/IID in peer groups 1 and 2.

- Provides for the fiscal year 2016 total Medicaid rate paid to an ICF/IID in peer group 1 or peer group 2 for services provided to a low resource utilization resident to be the lesser of the rate determined with the modifications or a specified flat rate.

- Requires ODODD, if the fiscal year 2016 mean total per Medicaid day rate for ICFs/IID in peer groups 1 and 2 is other than $288.99, to adjust the total rate by a percentage that equals the percentage by which the mean rate is greater or less than that amount.

- Modifies the formula to be used in determining the fiscal year 2017 Medicaid payment rates for ICFs/IID in peer groups 1 and 2.

- Requires ODODD, if the fiscal year 2017 mean total per Medicaid day rate for ICFs/IID in peer groups 1 and 2 is other than $289.60, to adjust the total rate by a percentage that equals the percentage by which the mean rate is greater or less than that amount.

- Provides for an ICF/IID in peer group 3 that obtained an initial Medicaid provider agreement during fiscal year 2015 to continue to be paid, for services provided during fiscal year 2016, the ICF/IID's total per Medicaid day rate in effect on June 30, 2015.

### ICF/IID Medicaid Rate Workgroup

- Requires the ICF/IID Medicaid Rate Workgroup to assist ODODD with its evaluation of revisions to the formula used to determine Medicaid payment rates for ICF/IID services during fiscal years 2016 and 2017.

### Medicaid rate for Individual Options services

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

### ICF/IID payment methodology transformation

- Requires ODODD to issue a request for proposals for an entity to develop a plan to transform the Medicaid payment formula for ICF/IID services in a manner that includes quality incentive measures, bases payments on health outcomes, and promotes services provided in the most integrated setting.

### Quality Incentive Workgroup

- Requires the ODODD Director to create the ICF/IID Quality Incentive Workgroup to study the issue of establishing, as part of the Medicaid payment formula for ICF/IID services, accountability measures that act as quality incentives.

### County board share of expenditures

- Requires the ODODD Director to establish a methodology to be used in fiscal years 2016 and 2017 to estimate the quarterly amount each CBDD is to pay of the nonfederal share of the Medicaid expenditures for which the CBDD is responsible.

### Developmental centers

- Permits a developmental center to provide services to persons with mental retardation and developmental disabilities living in the community or to providers of services to these persons.

### Innovative pilot projects

- Permits the ODODD Director to authorize, in fiscal years 2016 and 2017, innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and CBDDs.

### Use of county subsidies

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

## Updating statute citations

- Provides that the ODODD Director is not required to amend any rule for the sole purpose of updating the citation in the Ohio Administrative Code to its authorizing statute to reflect that the bill renumbers the authorizing statute or relocates it to another Revised Code section.

## Supported living certificates

(R.C. 5123.1610 (primary), 5123.033, 5123.16, 5123.161, 5123.162, 5123.163, 5123.164, 5123.166, 5123.167, 5123.169, and 5123.1611)

Continuing law prohibits a person or government entity from providing supported living without a valid supported living certificate issued by the Ohio Department of Developmental Disabilities (ODODD) Director. Supported living providers also may have a Medicaid provider agreement with the Ohio Department of Medicaid (ODM) to provide supported living under the Medicaid program.

### Automatic suspensions and revocations

The bill provides that all of the following apply if ODM suspends, terminates, or refuses to revalidate a Medicaid provider agreement that authorizes a person or government entity to provide supported living under the Medicaid program:

(1) In the case of a suspended provider agreement, the person or government entity's supported living certificate is automatically suspended on the date that the suspension of the provider agreement begins and the suspension of the certificate is automatically lifted on the date that the suspension of the provider agreement is lifted.

(2) In the case of a revoked provider agreement, the person or government entity's supported living certificate is automatically revoked on the date that the provider agreement is terminated.

(3) In the case of a provider agreement that expires because ODM refuses to revalidate it, the person or government entity's supported living certificate is automatically revoked on the date that the provider agreement expires, unless the expiration date of the provider agreement is the same as the expiration date of the supported living certificate, in which case the ODODD Director must refuse to renew the certificate.

The bill provides that the ODODD Director is not required to issue an adjudication order in accordance with the Administrative Procedure Act (R.C. Chapter

119.) for (1) the suspension or revocation of a supported living certificate pursuant to this provision of the bill or (2) refusing to renew a supported living certificate pursuant to this provision of the bill.

### Reapplication period for supported living certificate

The bill increases to five years the period during which a person or government entity, and a related party of the person or government entity, is prohibited from applying for a supported living certificate following an adjudication order issued by the ODODD Director in which the Director refused to issue or renew a supported living certificate. The bill makes this provision consistent with an existing provision that applies when a supported living certificate is revoked. Under current law, a person or government entity, and a related party of the person or government entity, cannot apply for a supported living certificate for a one-year period following the Director's refusal to issue or renew the certificate. The bill makes the five-year prohibition period also apply when a person or government entity's supported living certificate is automatically revoked or refused renewal because the person or government entity's Medicaid provider agreement is revoked or refused revalidation.

## Residential facility licensure

(R.C. 5123.19, 5123.196, and 5123.198)

The bill makes several changes to the law governing the licensure of residential facilities by ODODD. The bill repeals provisions that require ODODD to do all of the following:

(1) Establish procedures for public notice of certain actions taken by the Director;

(2) Adopt rules establishing certification procedures for licensees and management contractors, classifications for the types of residential facilities, and requirements for the training of facility personnel;

(3) Perform surveys when multiple facilities that are owned or operated by the same person or entity are not in compliance with the law;

(4) Establish procedures to notify interested parties regarding facilities that are closing or losing their license.

The bill permits the Director to reduce the maximum capacity of a residential facility that has operated at less than the maximum capacity for more than 12 months. The bill also permits the Director to assign the responsibility for conducting residential facility surveys and inspections to the Ohio Department of Health (ODH). Current law

allows the Director to assign the responsibility to county boards of developmental disabilities only.

The bill prohibits a person or government entity and related parties whose application for a license has been denied from applying for a license within five years of the denial. Current law prohibits application within one year of the denial.

The bill requires a licensee to transfer records to the new licensee or management contractor when the identity of the licensee or management contractor changes significantly.

## Incentives to convert ICF/IID beds

(R.C. 5123.376)

Continuing law authorizes ODODD to assist with construction projects regarding services to individuals with developmental disabilities. The assistance is provided in accordance with an agreement between the ODODD Director and a county board of developmental disabilities (CBDD) or private, nonprofit agency incorporated to provide developmental disability services. Generally, the agreement may provide for ODODD to pay 90% of the total project cost where circumstances warrant.[18]

The bill authorizes the ODODD Director to make changes to the terms of an agreement regarding the construction, acquisition, or renovation of a residential facility for individuals with developmental disabilities if certain conditions are met, including all of the following conditions:

(1) The agreement must have been entered into during the period beginning January 1, 1975, and ending December 31, 1984.

(2) The agreement must require the CBDD or private, nonprofit agency to use the residential facility as a residential facility for at least 40 years.

(3) The agreement must concern a residential facility that is an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) with a Medicaid-certified capacity of at least 16.

(4) The CBDD or private, nonprofit agency must apply to the ODODD Director for the change in the agreement's terms.

[18] R.C. 5123.36, not in the bill.

The ODODD Director may authorize a CBDD or private, nonprofit agency not to repay the amount of an outstanding balance otherwise owed pursuant to the agreement if the CBDD or agency meets the following additional condition: the residential facility must have converted all of its ICF/IID beds to beds that provide home and community-based services under an ODODD-administered Medicaid waiver program. The ODODD may change other terms in the agreement, including terms regarding the length of time the residential facility must be used as a residential facility, if the CBDD or private, nonprofit agency meets the following additional condition: the residential facility must have converted at least 50% of its ICF/IID beds to beds that provide home and community-based services under an ODODD-administered Medicaid waiver program.

## Consent for medical treatment

(R.C. 5123.86)

Current law authorizes the guardian of a resident of an institution for the mentally retarded who is physically or mentally unable to receive information or who has been adjudicated incompetent to receive information on and consent to surgery on the resident's behalf. If the resident lacks a guardian, current law authorizes a court to receive the information and give the consent. If a court consents, it must notify the Ohio protection and advocacy system and the resident of the right to consult with legal counsel and the right to contest the recommendation of the institution's chief medical officer.

The bill extends a guardian's or court's authority to give consent on a resident's behalf, under the conditions described above, to those procedures that are experimental in nature. Under current law, only the resident may consent to experimental procedures.

The bill also eliminates provisions requiring informed consent before a resident receives convulsive therapy, major aversive interventions, or unusual or hazardous treatment procedures. According to ODODD staff, those therapies, interventions, and procedures are no longer available to residents.[19]

Finally, the bill eliminates a provision prohibiting an Ohio Department of Mental Health and Addiction Services (ODMHAS) or ODODD employee or official who serves as a resident's guardian from giving consent to a resident's surgery.

[19] Telephone interview with Ohio Department of Developmental Disabilities staff (Jan. 28, 2015).

## ICF/IIDs' Medicaid rates for certain residents

(R.C. 5124.155 (primary) and 5124.15)

The bill establishes a potentially lower Medicaid payment rate for ICF/IID services provided by an ICF/IID in peer group 1 or peer group 2 to a Medicaid recipient placed in the chronic behaviors and typical adaptive needs classification or the typical adaptive needs and nonsignificant behaviors classification established for the grouper methodology that is used in determining ICF/IIDs' rates for direct care costs. The Medicaid payment rate for ICF/IID services provided by an ICF/IID in peer group 1 or peer group 2 to such a recipient is to be the lesser of the regular rate for ICF/IID services determined in accordance with statutory formula or the following flat rate:

(1) $206.90 in the case of ICF/IID services provided by an ICF/IID in peer group 1 to a recipient in the chronic behaviors and typical adaptive needs classification;

(2) $212.76 in the case of ICF/IID services provided by an ICF/IID in peer group 2 to a recipient in the chronic behaviors and typical adaptive needs classification;

(3) $174.88 in the case of ICF/IID services provided by an ICF/IID in peer group 1 to a recipient in the typical adaptive needs and nonsignificant behaviors classification;

(4) $179.23 in the case of ICF/IID services provided by an ICF/IID in peer group 2 to a recipient in the typical adaptive needs and nonsignificant behaviors classification.

## Admissions to ICFs/IID in peer group 1

(R.C. 5124.68)

### Prohibition

The bill prohibits, with certain exceptions, an ICF/IID with a Medicaid-certified capacity exceeding eight (i.e., an ICF/IID in peer group 1) from admitting an individual as a resident unless all of the following apply:

(1) A completed admission application that ODODD is required to prescribe is submitted for the individual to the CBDD serving the county in which the individual resides at the time the application is completed.

(2) The CBDD has provided to the individual and ODODD a copy of an evaluation of the individual that the bill requires the CBDD to conduct.

(3) Not later than 30 days after ODODD receives a copy of the CBDD's evaluation of the individual, ODODD determines that the individual chooses to receive ICF/IID services from the ICF/IID after being fully informed of all available alternatives.

#### CBDD evaluations and recommendations

A CBDD must do both of the following not later than 60 days after receiving a completed admission application for an individual seeking admission to an ICF/IID in peer group 1:

(1) Using information included in the application and additional information, if any, ODODD is authorized to specify, evaluate the individual seeking admission and make recommendations regarding the nature, extent, and timing of the services that the individual needs and the least restrictive environment in which the individual could receive the needed services.

(2) Provide a copy of the evaluation to the individual and ODODD.

#### Exceptions

The bill provides that the prohibition regarding admissions to ICFs/IID in peer group 1 does not apply under the following circumstances:

(1) When the individual seeking admission is a Medicaid recipient receiving ICF/IID services on the date immediately preceding the date the individual is admitted to the ICF/IID.

(2) When the individual seeking admission is a Medicaid recipient returning to the ICF/IID following a temporary absence for which the ICF/IID, pursuant to continuing law, is paid to reserve a bed for the individual.

(3) When ODODD, despite receiving the CBDD's evaluation of the individual within the required time, fails to meet the deadline for making a determination of whether the individual seeking admission chooses to receive ICF/IID services from the ICF/IID after being fully informed of all available alternatives.

### Enrolling ICF/IID residents in ODODD Medicaid waiver programs

(R.C. 5124.69 and 5126.0510)

The bill requires ODODD to develop and make available to all ICFs/IID a written pamphlet that describes all of the items and services covered by Medicaid as ICF/IID services and as home and community-based services available under ODODD-administered Medicaid waiver programs. Each ICF/IID is required to provide the

pamphlet to its residents who receive ICF/IID services and the guardians of such residents. An ICF/IID must discuss the items and services described in the pamphlet with those residents and their guardians (1) at least annually, (2) any time the resident or guardian requests to receive the pamphlet and to discuss the items and services described in it, and (3) any time the resident or guardian expresses to the ICF/IID an interest in home and community-based services.

If an ICF/IID resident who receives ICF/IID services, or the resident's guardian, indicates to an ICF/IID an interest in enrolling the resident in an ODODD-administered Medicaid waiver program that covers home and community-based services, the ICF/IID is required by the bill to refer the resident or guardian to the CBDD serving the county in which the resident would reside while enrolled in the Medicaid waiver program. The CBDD, not later than 30 days after being contacted by the resident or guardian and notwithstanding its waiting list for the Medicaid waiver program, must enroll the resident in the program if all of the following apply:

(1) The resident has been on the waiting list for the program since at least December 1, 2014;

(2) The resident is eligible and chooses to enroll in the program;

(3) The program has an available slot;

(4) The ODODD Director determines that ODODD has the funds necessary to pay the nonfederal share of the Medicaid expenditures for the home and community-based services provided to the resident under the program.

A CBDD is required, under certain circumstances, to pay the nonfederal share of Medicaid expenditures for home and community-based services provided under an ODODD-administered Medicaid waiver program to an individual the CBDD determines is eligible for CBDD services. The circumstances include when the CBDD provides the home and community-based services and when the services are provided by another provider to an individual for whom there is in effect an agreement between the CBDD and ODODD for the CBDD to pay the nonfederal share. The bill provides that a CBDD is not required to pay the nonfederal share when the home and community-based services are provided to an individual who enrolls in the Medicaid waiver program pursuant to a referral made under this provision of the bill. Under continuing law, ODODD is to be responsible for the nonfederal share instead.[20]

[20] R.C. 5123.047, not in the bill.

The ODODD Director is required by the bill to notify the ODH Director if a resident of an ICF/IID with more than eight beds (i.e., an ICF/IID in peer group 1) enrolls in an ODODD-administered Medicaid waiver program pursuant to a referral made under this provision of the bill. On receipt of the notice, the ODH Director must do both of the following:

(1) Reduce by one the Medicaid-certified capacity of the ICF/IID from which the resident received ICF/IID services on the date immediately preceding the date the resident is enrolled in the Medicaid waiver program;

(2) Notify the Medicaid Director of the reduction.

The Medicaid Director, on receipt of the ODH Director's notice, is required to amend the ICF/IID's Medicaid provider agreement to reflect the ICF/IID's reduced Medicaid-certified capacity. The Medicaid Director is not required to conduct an adjudication in accordance with the Administrative Procedure Act (R.C. Chapter 119.) when amending the provider agreement.

## ICF/IID sleeping room occupancy

(R.C. 5124.70)

The bill prohibits, with limited exceptions, the operator of an ICF/IID from allowing more than two residents to share a sleeping room. The bill specifically exempts those ICFs/IID that, by January 1, 2015, reduced their Medicaid-certified capacities by 20% by becoming either a downsized ICF/IID or a partially converted ICF/IID.

If two or more residents of an ICF/IID share a sleeping room on the effective date of the occupancy limit, the ICF/IID operator may continue to allow more than two residents to share a sleeping room until January 1, 2016 but must submit a plan to ODODD detailing how the ICF/IID will come into compliance with the limit. The plan must be submitted by December 31, 2015, and include the following:

(1) Detailed descriptions of the actions that will be taken to come into compliance with the limit, including a plan to reduce the ICF/IID's Medicaid-certified capacity either by downsizing its capacity or converting some of its beds to providing HCBS under the IO waiver;

(2) A discharge planning process that provides residents with information regarding HCBS;

(3) The ICF/IID's projected Medicaid-certified capacity for each year covered by the plan;

(4) The date by which the plan is to be completed, which is to be no later than December 31, 2023.

The bill requires ODODD to review each plan that it receives to determine whether to approve the plan. In making its decision, ODODD is to consider whether the plan includes the required information and whether successful implementation of the plan is feasible.

On and after January 1, 2016, an ICF/IID operator who submitted the required plan may continue to permit more than two residents to share a sleeping room only if either of the following applies: (1) the Department has not yet decided whether to approve the plan or (2) the Department approves the plan and the operator complies with it.

The bill prohibits the operator of an ICF/IID where two or more residents share a sleeping room from admitting a new resident.

### Medicaid rates for downsized, partially converted, and new ICFs/IID

(R.C. 5124.101 and 5124.15)

Continuing law establishes conditions under which an ICF/IID in peer group 1 or peer group 2 that, on or after July 1, 2013, becomes a downsized ICF/IID, partially converted ICF/IID, or new ICF/IID may file with ODODD a Medicaid cost report sooner than it otherwise would. A downsized ICF/IID is an ICF/IID that permanently reduced its Medicaid-certified capacity pursuant to a plan approved by ODODD. A partially converted ICF/IID is an ICF/IID that converted some, but not all, of its beds to home and community-based services beds under the Individual Options Medicaid waiver program. Peer group 1 consists of ICFs/IID with more than eight beds. Peer group 2 consists of ICFs/IID with no more than eight beds, other than ICFs/IID in peer group 3. Peer group 3 consists of ICFs/IID (1) that are first certified after July 1, 2014, (2) that have a Medicaid-certified capacity not exceeding six, (3) that have contracts with ODODD that are for 15 years and include a provision for ODODD to approve all admissions to, and discharges from, the ICF/IID, and (4) whose residents are admitted directly from a developmental center or have been determined by ODODD to be at risk of admission to a developmental center.

For a downsized or partially converted ICF/IID to be allowed to file a Medicaid cost report sooner than it otherwise would, the ICF/IID must have, as of the day it downsizes or partially converts, (1) a Medicaid certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately before the day it downsizes or partially converts or (2) at least five fewer ICF/IID beds than it had on the day immediately before the day it downsizes or partially converts. For a new ICF/IID to be allowed to file a Medicaid cost report sooner than it otherwise would, the ICF/IID's beds must be from a

downsized ICF/IID that has, as of the day it downsizes or partially converts, (1) a Medicaid-certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately before the day it downsizes or (2) at least five fewer ICF/IID beds than it had on the day immediately before the day it downsizes.

The bill requires ODODD to make certain modifications to the formula used to determine an ICF/IID's Medicaid payment rate when it accepts from the ICF/IID a Medicaid cost report that the ICF/IID is allowed to file sooner than it otherwise would be allowed to file. The modifications apply to the direct care and capital costs components of the formula.

The modification applicable to direct care costs concerns the case mix score that is a factor in determining an ICF/IID's payment rate for direct care cost. In place of the annual average case mix score that would otherwise be used, an ICF/IID's case mix score in effect on the last day of the calendar quarter that ends during the period the Medicaid cost report covers (or, if more than one calendar quarter ends during that period, the last of those calendar quarters) is to be used.

The modification applicable to capital costs is to be made only for downsized and partially converted ICFs/IID (not for new ICFs/IID) and concerns limits on costs of ownership, capitalized costs of nonextensive renovations, and efficiency incentives. A downsized or partially converted ICF/IID is not to be subject to the limit on the costs of ownership per diem payment rate or the limit on the payment rate for per diem capitalized costs of nonextensive renovations that otherwise would apply. However, the ICF/IID, regardless of whether it is in peer group 1 or peer group 2, is to be subject to the limit on the total payment rate for costs of ownership, capitalized costs of nonextensive renovations, and efficiency incentive that applies only to ICFs/IID in peer group 2 under current law.

The modifications to the payment formula are to be used to determine the Medicaid rates to be paid for ICF/IID services provided during the period that begins and ends as follows:

(1) In the case of a downsized or partially converted ICF/IID:

(a) The beginning date is the day that the ICF/IID downsizes or partially converts if that day is the first day of the month or, if not, the first day of the month immediately following the month that the ICF/IID downsizes or partially converts;

(b) The ending date is the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID is to file its first regular Medicaid cost report after downsizing or partially converting.

(2) In the case of a new ICF/IID:

(a) The beginning date is the day that the ICF/IID's Medicaid provider agreement takes effect.

(b) The ending date is the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID is to file its first regular Medicaid cost report.

## Service and support administrators – county boards

(R.C. 5126.15 and 5126.202)

Under continuing law not modified by the bill, county boards of developmental disabilities are authorized, and in certain instances required, to provide service and support administration to individuals with mental retardation or developmental disabilities (MR/DD). Service and support administrators are required to assist individuals in receiving services, including assessing individual needs for services, establishing an individual's eligibility for services, and ensuring that services are effectively coordinated. They are prohibited from being employed by or serving in a decision-making or policy-making capacity for any other entity that provides programs or services to individuals with MR/DD. The bill also prohibits service and support administrators from providing programs or services to individuals with MR/DD through self-employment.

## ICF/IID franchise permit fees

### Permit fee rate

(R.C. 5168.60)

Continuing law imposes an annual assessment on ICFs/IID. The assessment is termed a "franchise permit fee." Revenue raised by the franchise permit fee is to be used for the expenses of the programs ODODD administers and ODODD's administrative expenses.[21]

The bill reduces the rate at which the ICF/IID franchise permit fee is assessed. Under current law, the rate is $18.17 per bed per day. Under the bill, the rate is $18.07 for fiscal year 2016 and $18.02 for fiscal year 2017 and thereafter.

[21] R.C. 5168.69, not in the bill.

### Notice of fees

(R.C. 5168.63 and 5168.67)

Under current law, ODODD is required to mail each ICF/IID notice of the amount of its franchise permit fee not later than the first day of each September. If an ICF/IID requests an appeal regarding its franchise permit fee, ODODD must mail a notice of the date, time, and place of the hearing to the ICF/IID.

The bill requires that these notices be provided electronically or by the U.S. Postal Service.

## Conversion of ICF/IID beds to HCBS beds

(R.C. 5124.60, 5124.61, 5164.38, and 5168.64)

Continuing law includes provisions aimed at increasing the number of slots for HCBS that are available under ODODD-administered Medicaid waiver programs. An ICF/IID is permitted to convert some or all of its beds from providing ICF/IID services to providing HCBS if a number of requirements are met. For example, the ICF/IID must provide its residents certain notices, provide the ODH Director and ODODD Director at least 90 days' notice of the intent to convert the beds, and receive the ODODD Director's approval. An individual who acquires, through a request for proposals issued by the ODODD Director, an ICF/IID for which a residential facility license was previously surrendered or revoked also may convert all or some of its beds if similar requirements are met.

### ODM adjudication not required

Continuing law requires the ODH Director, when an ICF/IID converts some or all its beds under the provisions discussed above, to (1) terminate the ICF/IID's Medicaid certification if all of the ICF/IID's beds are converted or (2) reduce the ICF/IID's Medicaid certified-capacity by the number of beds converted if some but not all of the ICF/IID's beds are converted. The ODH Director is required to notify the Medicaid Director when terminating an ICF/IID's Medicaid certification or reducing an ICF/IID's Medicaid certified-capacity. On receipt of the ODH Director's notice, the Medicaid Director must (1) terminate the ICF/IID's Medicaid provider agreement if the ODH Director terminated the ICF/IID's Medicaid certification or (2) amend the ICF/IID's provider agreement to reflect the ICF/IID's reduced Medicaid-certified capacity if the ODH Director reduces the ICF/IID's capacity.

Current law provides that an ICF/IID is not entitled to notice or a hearing under the Administrative Procedure Act (R.C. Chapter 119.) before the Medicaid Director

terminates the ICF/IID's Medicaid provider agreement following the ICF/IID's total conversion. Current law also provides, in the case of an ICF/IID that is acquired through a request for proposals issued by the ODODD Director following the surrender or revocation of the ICF/IID's residential facility license, that the ICF/IID is not entitled to notice or a hearing before the Medicaid Director amends the ICF/IID's provider agreement to reflect its reduced Medicaid-certified capacity resulting from the ICF/IID's partial conversion. The bill provides instead that the Medicaid Director is not required to conduct an adjudication in accordance with the Administrative Procedure Act when terminating an ICF/IID's provider agreement following the ICF/IID's total conversion or when amending an ICF/IID's provider agreement to reflect its reduced Medicaid-certified capacity resulting from a partial conversion. This is to apply regardless of whether the ICF/IID was acquired through a request for proposals issued by the ODODD Director following the surrender or revocation of the ICF/IID's residential facility license.

### Medicaid payment to an ICF/IID for day of discharge

Current law prohibits a Medicaid payment from being made to an ICF/IID for the day a Medicaid recipient is discharged from the ICF/IID. The bill provides that this prohibition does not apply if the Medicaid recipient is discharged because all of the ICF/IID's beds are converted to providing HCBS under the provisions discussed above.

### Termination or redetermination of fee after a conversion

The bill revises the law governing the termination or redetermination of an ICF/IID's franchise permit fee when it converts to providing HCBS. Under current law, ODODD is required to terminate or redetermine an ICF/IID's franchise permit fee if it converts one or more of its beds to providing HCBS during the period beginning on the first day of May of a calendar year and ending on the first day of January of the immediately following calendar year. ODODD must terminate the ICF/IID's franchise permit fee if the ICF/IID's Medicaid certification is terminated because of the conversion. The termination is to take effect on the first day of the quarter immediately following the quarter in which ODODD receives ODH's notice of the conversion. ODODD must redetermine the ICF/IID's franchise permit fee if the ICF/IID's Medicaid certified capacity is reduced because of the conversion. The redetermination applies for the second half of the fiscal year for which the franchise permit fee is assessed.

ODODD is required by the bill to terminate an ICF/IID's franchise permit fee if all of the ICF/IID's beds are converted to providing HCBS and its Medicaid provider agreement is terminated as a consequence. ODODD must terminate the franchise permit fee regardless of when the conversion takes place. The termination is to take

effect on the first day of the quarter immediately following the quarter in which the conversion takes place.

Under current law, the requirement to terminate or redetermine an ICF/IID's franchise permit fee because of a conversion does not apply when the conversion occurs under the statute regarding an ICF/IID that was acquired, through a request for proposals issued by the ODODD Director, after the ICF/IID's residential facility license was previously surrendered or revoked. The bill makes the termination and redetermination requirement also apply when the conversion occurs under that statute.

## Priority status for residents of ICFs/IID and nursing facilities

(R.C. 5126.042)

Current law requires that a CBDD establish a waiting list for home and community-based services if it determines that available resources are insufficient to meet the needs of all individuals who request those services. Under existing law, the following individuals receive priority status on the waiting list: (1) an individual who has an emergency status, (2) an individual who is receiving supported living, family support services, or adult services for which no federal financial participation is received under the Medicaid program, (3) an individual whose primary caregiver is at least 60 years of age, and (4) an individual who has intensive needs as determined by the ODODD. The bill provides that an individual who resides in a nursing facility or an ICF/IID also receive priority status on the waiting list.

## FY 2016 and 2017 Medicaid rates for ICF/IID services

(Sections 259.160, 259.170, and 259.180)

ICFs/IID are placed in three different peer groups for the purpose of Medicaid payment rates. Peer group 1 consists of ICFs/IID with a Medicaid-certified capacity exceeding eight. Peer group 2 consists of ICFs/IID with a Medicaid-certified capacity not exceeding eight, other than ICFs/IID in peer group 3. Peer group 3 consists of ICFs/IID (1) that are first certified after July 1, 2014, (2) that have a Medicaid-certified capacity not exceeding six, (3) that have contracts with ODODD that are for 15 years and include a provision for ODODD to approve all admissions and discharges, and (4) whose residents are admitted directly from a developmental center or have been determined by ODODD to be at risk of admission to a developmental center.

### Fiscal year 2016 Medicaid rates for ICFs/IID in peer groups 1 and 2

The bill includes provisions governing the fiscal year 2016 Medicaid payment rates for ICFs/IID in peer groups 1 and 2. The provisions make modifications to the

statutory formula used to determine the rates, provide for the rates for ICF/IID services provided to low resource utilization residents not to exceed certain amounts, require ODODD to adjust rates if the mean rate for the ICFs/IID is other than a certain amount, and requires ODODD to reduce the rates if CMS requires the ICF/IID franchise permit fee to be reduced or eliminated.

**Modifications to rate formula**

The bill requires ODODD to modify the formula used in determining the fiscal year 2016 Medicaid payment rates for ICFs/IID in peer groups 1 and 2. One set of modifications applies to existing ICFs/IID (i.e., ICFs/IID that have valid Medicaid provider agreements on June 30, 2015 and during fiscal year 2016 and ICFs/IID that undergo a change of operator that takes effect during fiscal year 2016, for which the exiting operators have valid provider agreements on the day immediately preceding the effective date of the change of operator, and for which the entering operators have valid provider agreements during fiscal year 2016). Another set of modifications applies to new ICFs/IID for which initial provider agreements are obtained during fiscal year 2016.

An existing ICFs/IID's rate is to be adjusted as follows:

(1) The efficiency incentive for capital costs is to be reduced by 50%.

(2) In place of the maximum cost per case-mix unit established for its peer group, the maximum costs per case-mix unit is to be an amount ODODD is to determine. In making this determination, ODODD is required to strive to the greatest extent possible to avoid rate reductions under the bill's provision regarding rate adjustments (see "**Adjustment to rates if mean is other than a certain amount**" below) and to have the amount so determined result in payment of all desk-reviewed, actual, allowable direct care costs for the same percentage of Medicaid days for ICFs/IID in peer group 1 as for ICFs/IID in peer group 2 as of July 1, 2015, based on May 2015 Medicaid days.

(3) In the place of the inflation adjustment otherwise calculated in determining its rate for direct care costs, an inflation adjustment of 1.014 is to be used.

(4) In place of the efficiency incentive otherwise calculated in determining its rate for indirect care costs, its efficiency incentive is to be $3.69 if it is in peer group 1 and $3.19 if it is in peer group 2.

(5) In place of the maximum rate for indirect care costs established for its peer group, the maximum rate is to be $68.98 if it is in peer group 1 and $59.60 if it is in peer group 2.

(6) In place of the inflation adjustment otherwise calculated in determining its rate for indirect care costs, an inflation adjustment of 1.014 is to be used.

(7) In place of the inflation adjustment otherwise made in determining its rate for other protected costs, its other protected costs (excluding the franchise permit fee component of those costs) from calendar year 2014 are to be multiplied by 1.014.

A new ICF/IID's rate is to be adjusted as follows:

(1) In place of the initial rate for direct care costs otherwise determined for it when there is no cost or resident assessment data for it, its initial rate for direct care costs is to be determined as follows:

(a) The median of the costs per case-mix units is to be determined for each peer group.

(b) The median determined above for its peer group is to be multiplied by the median annual average case-mix score for its peer group for calendar year 2014.

(c) The product determined above is to be multiplied by 1.014.

(2) In place of the initial rate for indirect care costs otherwise determined for it, its initial rate for indirect care costs is to be $68.98 if it is in peer group 1 or $59.60 if it is in peer group 2.

(3) In place of the initial rate for other protected costs otherwise determined for it, its initial rate for other protected costs is to be 115% of the median fiscal year 2016 rate determined for existing ICFs/IID.

The bill provides that a new ICF/IID's initial rate for fiscal year 2016 is to be adjusted in accordance with continuing law governing the adjustment of initial rates. If the adjustment affects the new ICF/IID's fiscal year 2016 rate, the modifications made under the bill to the rates of existing ICFs/IID are to apply to the new ICF/IID's adjusted rate.

**Low resource utilization residents**

Under the bill, the total per Medicaid day rate for ICF/IID services an ICF/IID in peer group 1 or 2 provides in fiscal year 2016 to a low resource utilization resident is to be the lesser of the rate determined with the modifications discussed above or a certain flat rate. A low resource utilization resident is a resident who is placed in the chronic behaviors and typical adaptive needs classification or the typical adaptive needs and nonsignificant behaviors classification established for the grouper methodology used in determining rates for direct care costs. The following are the flat rates:

(1) $206.90 for ICF/IID services an ICF/IID in peer group 1 provides to a Medicaid recipient in the chronic behaviors and typical adaptive needs classification;

(2) $212.76 for ICF/IID services an ICF/IID in peer group 2 provides to a Medicaid recipient in the chronic behaviors and typical adaptive needs classification;

(3) $174.88 for ICF/IID services an ICF/IID in peer group 1 provides to a Medicaid recipient in the typical adaptive needs and nonsignificant behaviors classification;

(4) $179.23 for ICF/IID services an ICF/IID in peer group 2 provides to a Medicaid recipient in the typical adaptive needs and nonsignificant behaviors classification.

#### Adjustment to rates if mean is other than a certain amount

If the mean total per Medicaid day rate for all ICFs/IID in peer groups 1 and 2, weighted by May 2015 Medicaid days and determined in accordance with the modifications and limits discussed above as of July 1, 2015, is other than $288.99, ODODD must adjust, for fiscal year 2016, the total per Medicaid day rate for each ICF/IID in peer group 1 or 2 by a percentage that is equal to the percentage by which the mean total per Medicaid day rate is greater or less than $288.99.

#### Rate reduction if franchise permit fee is reduced or eliminated

The bill requires ODODD, if CMS requires that the ICF/IID franchise permit fee be reduced or eliminated, to reduce the amount it pays ICFs/IID in peer groups 1 and 2 for fiscal year 2016 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

### Fiscal year 2017 Medicaid rates for ICFs/IID in peer groups 1 and 2

The bill includes provisions governing the fiscal year 2017 Medicaid payment rates for ICFs/IID in peer groups 1 and 2. The provisions make modifications to the statutory formula used to determine the rates, require ODODD to adjust rates if the mean rate for the ICFs/IID is other than a certain amount, and require ODODD to reduce the rates if CMS requires the ICF/IID franchise permit fee to be reduced or eliminated.

#### Modifications to rate formula

The bill requires ODODD to modify the formula used in determining the fiscal year 2017 Medicaid payment rates for ICFs/IID in peer groups 1 and 2. One set of modifications applies to existing ICFs/IID (i.e., ICFs/IID that have valid Medicaid provider agreements on June 30, 2016 and during fiscal year 2017 and ICFs/IID that undergo a change of operator that takes effect during fiscal year 2017, for which the

exiting operators have valid provider agreements on the day immediately preceding the effective date of the change of operator, and for which the entering operators have valid provider agreements during fiscal year 2017). Another set of modifications applies to new ICFs/IID for which initial provider agreements are obtained during fiscal year 2017.

An existing ICFs/IID's rate is to be adjusted as follows:

(1) The efficiency incentive for capital costs is to be reduced by 50%.

(2) In place of the maximum cost per case-mix unit established for its peer group, the maximum costs per case-mix unit is to be an amount ODODD is to determine. In making this determination, ODODD is required, to the greatest extent possible, to avoid rate reductions under the bill's provision regarding rate adjustments (see "**Adjustment to rates if mean is other than a certain amount**" below) and to have the amount so determined result in payment of all desk-reviewed, actual, allowable direct care costs for the same percentage of Medicaid days for ICFs/IID in peer group 1 as for ICFs/IID in peer group 2 as of July 1, 2016, based on May 2016 Medicaid days.

(3) In the place of the inflation adjustment otherwise calculated in determining its rate for direct care costs, an inflation adjustment of 1.014 is to be used.

(4) In place of the efficiency incentive otherwise calculated in determining its rate for indirect care costs, its efficiency incentive is to be $3.69 if it is in peer group 1 and $3.19 if it is in peer group 2.

(5) In place of the maximum rate for indirect care costs established for its peer group, the maximum rate is to be $68.98 if it is in peer group 1 and $59.60 if it is in peer group 2.

(6) In place of the inflation adjustment otherwise calculated in determining its rate for indirect care costs, an inflation adjustment of 1.014 is to be used.

(7) In place of the inflation adjustment otherwise made in determining its rate for other protected costs, its other protected costs (excluding the franchise permit fee component of those costs) from calendar year 2015 are to be multiplied by 1.014.

A new ICF/IID's rate is to be adjusted as follows:

(1) In place of the initial rate for direct care costs otherwise determined for it when there is no cost or resident assessment data for it, its initial rate for direct care costs is to be determined as follows:

(a) The median of the costs per case-mix units is to be determined for each peer group.

(b) The median determined above for its peer group is to be multiplied by the median annual average case-mix score for its peer group for calendar year 2015.

(c) The product determined above is to be multiplied by 1.014.

(2) In place of the initial rate for indirect care costs otherwise determined for it, its initial rate for indirect care costs is to be $68.98 if it is in peer group 1 or $59.60 if it is in peer group 2.

(3) In place of the initial rate for other protected costs otherwise determined for it, its initial rate for other protected costs is to be 115% of the median fiscal year 2017 rate determined for existing ICFs/IID.

The bill provides that a new ICF/IID's initial rate for fiscal year 2017 is to be adjusted in accordance with continuing law governing the adjustment of initial rates. If the adjustment affects the new ICF/IID's fiscal year 2017 rate, the modifications made under the bill to the rates of existing ICFs/IID are to apply to the new ICF/IID's adjusted rate.

#### Adjustment to rates if mean is other than a certain amount

If the mean total per Medicaid day rate for all ICFs/IID in peer groups 1 and 2, weighted by May 2016 Medicaid days and determined in accordance with the modifications discussed above as of July 1, 2016, is other than $289.60, ODODD must adjust, for fiscal year 2017, the total per Medicaid day rate for each ICF/IID in peer group 1 or 2 by a percentage that is equal to the percentage by which the mean total per Medicaid day rate is greater or less than $289.60.

#### Rate reduction if franchise permit fee is reduced or eliminated

The bill requires ODODD, if CMS requires that the ICF/IID franchise permit fee be reduced or eliminated, to reduce the amount it pays ICFs/IID in peer groups 1 and 2 for fiscal year 2017 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

### Fiscal year 2016 Medicaid rates for ICFs/IID in peer group 3

The bill provides for ICFs/IID in peer group 3 that obtained initial Medicaid provider agreements during fiscal year 2015 to continue to be paid, for services provided during fiscal year 2016, their total per Medicaid day rates in effect on June 30, 2015. However, if CMS requires that the ICF/IID franchise permit fee be reduced or

eliminated, ODODD is required to reduce the amount it pays such ICFs/IID for fiscal year 2016 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

## ICF/IID Medicaid Rate Workgroup

(Section 259.200)

For fiscal years 2016 and 2017, the bill retains the previously created ICF/IID Medicaid Rate Workgroup to assist ODODD with its evaluation of revisions to the formula used to determine Medicaid payment rates for ICF/IID services. ICF/IID services include items and services furnished in an intermediate care facility for individuals with intellectual disabilities if certain conditions specified in federal law are met.[22]

The bill requires ODODD and the Workgroup to (1) focus on serving individuals with complex challenges that ICFs/IID are eligible to meet and pursue, and (2) try to reduce the Medicaid-certified capacity of individual ICFs/IID and the total number of ICF/IID beds in the state in order to increase service choices and community integration of individuals eligible for ICF/IID services. The Workgroup is no longer required to consider the impact of exception reviews conducted under Ohio law on ICFs/IID's case-mix scores.

## Medicaid rate for certain Individual Options services

(Section 259.220)

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 (IO) Medicaid waiver program to be, for 12 months, 52¢ higher than the rate for services that a Medicaid provider provides to an IO enrollee who is not a qualifying enrollee. The higher rate is to be paid for the first 12 months, consecutive or otherwise, that the provider provides the services to the qualifying IO enrollee during the period beginning July 1, 2015, and ending June 30, 2017.

An IO enrollee is a qualified IO enrollee for the purpose of this provision of the bill if all of the following apply:

[22] R.C. 5124.01(Y) and 42 Code of Federal Regulations 440.150, not in the bill.

(1) The enrollee resided in a developmental center, converted ICF/IID,[23] or public hospital immediately before enrolling in the IO Medicaid waiver program.

(2) 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.

(3) The ODODD Director has determined that the enrollee's special circumstances (including the enrollee's diagnosis, service needs, or length of stay at the developmental center, converted ICF/IID, or public hospital) warrants paying the higher Medicaid rate.

## ICF/IID payment methodology transformation

(Section 259.260)

The bill requires ODODD to issue a request for proposals (RFP) for an entity, pursuant to a contract with ODODD, to develop a plan to transform the formula used to determine Medicaid payment rates for ICFs/IID services. The RFP must be issued not later than June 30, 2016. Any contract ODODD enters into under the RFP is to require all of the following:

(1) That the plan include quality incentive measures, have payments be based on health outcomes, and promote ICF/IID services that are provided in the most integrated setting appropriate to the needs of each Medicaid recipient receiving the services;

(2) That the entity developing the plan consider the recommendations of the ICF/IID Medicaid Rate Workgroup[24] and the ICF/IID Quality Incentive Workgroup[25];

(3) That the plan be developed with the goal of beginning implementation of the transformation on July 1, 2017.

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[23] A converted ICF/IID is an ICF/IID, or former ICF/IID, that converted some or all of its beds to providing HCBS under the IO Medicaid waiver program.

[24] The ICF/IID Medicaid Rate Workgroup was created to assist with a study of ICF/IID issues mandated by Am. Sub. H.B. 153 of the 129th General Assembly. Am. Sub. H.B. 59 of the 130th General Assembly required ODODD to retain the workgroup for the purpose of a study of the Medicaid program's rate formula for ICF/IID services.

[25] See "**ICF/IID Quality Incentive Workgroup**," below.

## ICF/IID Quality Incentive Workgroup

(Section 259.270)

The bill requires the ODODD Director to create the ICF/IID Quality Incentive Workgroup to study the issue of establishing, as part of the Medicaid payment formula for ICF/IID services, accountability measures that act as quality incentives for ICFs/IID. The Director, or the Director's designee, is to be the Workgroup's chairperson. The Director is permitted to appoint one or more ODODD staff members to also serve on the Workgroup and is required to appoint to the Workgroup one or more persons with developmental disabilities who advocate for such persons and representatives of the following:

(1) The Ohio Centers for Intellectual Disabilities formed by the Ohio Health Care Association;

(2) The Values and Faith Foundation;

(3) The Ohio Association of County Boards Serving People with Developmental Disabilities;

(4) The Ohio SIBS;

(5) The Arc of Ohio;

(6) The Ohio Provider Resource Association.

Members of the Workgroup are to serve without compensation or reimbursement, except to the extent that serving on the Workgroup is considered part of their usual job duties.

The bill requires the Workgroup to complete its study, and complete a report with recommendations regarding accountability measures for ICFs/IID, not later than November 4, 2015. The Workgroup must submit copies of the report to the Governor and General Assembly.

## County board share of nonfederal Medicaid expenditures

(Section 259.60)

The bill requires the ODODD Director to establish a methodology to be used in fiscal years 2016 and 2017 to estimate the quarterly amount each CBDD is to pay of the nonfederal share of the Medicaid expenditures for which the CBDD is responsible. With certain exceptions, continuing law requires the CBDD to pay this share for home and

community-based services provided to an individual who the CBDD determines is eligible for CBDD services.[26] ODODD was similarly required to establish the methodology for fiscal years 2014 and 2015 under H.B. 59 of the 130th General Assembly.

Each quarter, the Director must submit to the CBDD written notice of the amount for which the CBDD is responsible. The notice must specify when the payment is due.

## Developmental center services

(Section 259.130)

The bill permits an ODODD-operated residential center for persons with mental retardation and developmental disabilities (i.e., a developmental center) to provide services to persons with mental retardation and developmental disabilities living in the community or to providers of services to these persons. ODODD is permitted to develop a method for recovery of all costs associated with the provision of the services. A similar provision was included in H.B. 59 of the 130th General Assembly.

## Innovative pilot projects

(Section 259.150)

For fiscal years 2016 and 2017, the bill permits the ODODD Director to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and CBDDs. Under the bill, a pilot project may be implemented in a manner inconsistent with the laws or rules governing ODODD and CBDDs; 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. A similar provision was included in H.B. 59 of the 130th General Assembly.

[26] R.C. 5126.0510.

## Use of county subsidies to pay nonfederal share of ICF/IID services

(Section 259.210)

The bill requires the ODODD Director to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to CBDDs if (1) Medicaid covers the ICF/IID services, (2) the ICF/IID services are provided to a Medicaid recipient who is eligible for the ICF/IID services and the recipient does not occupy a bed in the ICF/IID that used to be included in the Medicaid-certified capacity of another ICF/IID certified by the Director of Health before June 1, 2003, (3) the ICF/IID services are provided by an ICF/IID whose Medicaid certification by the Director of Health was initiated or supported by a CBDD, and (4) the provider of the ICF/IID services has a valid Medicaid provider agreement for the services for the time that the services are provided. A similar provision was included in H.B. 59 of the 130th General Assembly.

## Updating authorizing statute citations

(Section 259.230)

The bill provides that the ODODD Director is not required to amend any rule for the sole purpose of updating the citation in the Ohio Administrative Code to the statute that authorizes the rule to reflect that the bill renumbers the authorizing statute or relocates it to another Revised Code section. The citations must be updated as the Director amends the rules for other purposes.

# DEPARTMENT OF EDUCATION

## I. School Financing

- Specifies a formula amount of $5,900, for fiscal year 2016, and $6,000, for fiscal year 2017.

- Renames "state share index" to "state share percentage," and revises its computation by (1) revising the calculation of the wealth index and other factors, and (2) basing "three-year average valuation" data on the average of total taxable value for tax years rather than fiscal years.

- Revises the calculation of targeted assistance funding by (1) renaming the "wealth index" factor of the computation to "capacity measure" and (2) basing the "three-year average valuation" on the average of total taxable value for tax years rather than fiscal years.

- Revises the calculation of targeted assistance supplemental funding by basing the "three-year average tax valuation" on the average of a district's tax valuation for tax years rather than fiscal years.

- Revises the dollar amounts for each category of special education services.

- Revises the dollar amounts for the calculation of kindergarten through third-grade literacy funds.

- Maintains the dollar amount for economically disadvantaged funds from fiscal year 2015 for both years of the biennium, and revises the calculation of the "economically disadvantaged index for a school district" that is used as a factor in the computation of economically disadvantaged funds.

- Maintains the dollar amounts for each category of limited English proficient students from fiscal year 2015 for both years of the biennium.

- Maintains the dollar amount for gifted identification funds and for each gifted unit from fiscal year 2015 for both years of the biennium.

- Revises the dollar amounts for each category of career-technical education programs and career-technical associated services.

- Changes the transportation funding formula by using "total ridership" (average number of students enrolled in regular education in grades kindergarten through 12

provided bus service during the first full week of October) rather than "qualifying ridership" (students who live more than one mile from school).

- Removes the requirement that each city, local, and exempted village school district report all data used to calculate funding for transportation through the Education Management Information System (EMIS).

- Removes the requirement that a community school governing authority that enters into an agreement to transport students or accepts responsibility to transport students must provide or arrange transportation free of charge for each of its enrolled students who would otherwise be transported by the students' school districts under those districts' transportation policies.

- Clarifies that payments made to a community school for transporting students must be calculated on a "per rider basis."

- Extends the Straight A Program to fiscal years 2016 and 2017, and (1) permits governmental entities partnering with educational entities to apply for grants, (2) requires the Straight A governing board to issue a "timely decision" on a grant rather than within 90 days, and (3) eliminates the committee that annually reviewed the program.

- Specifies that the amount a school district or community school must pay to a joint vocational school district providing special education and related services to a student of the district or school for costs that exceed the amount the joint vocational district receives under the funding formula must be calculated using a formula approved by the Department.

- Specifies that a city, local, or exempted village school district may enroll under its interdistrict open enrollment policy an adjacent or other district student who is a preschool child with a disability.

- Requires the Department of Education to pay to a district that enrolls under its open enrollment policy an adjacent or other district student who is a preschool child with a disability, and to deduct from the state education aid of the student's resident district, $4,000 for that student.

- Specifies that, if a preschool child with a disability who is a resident of one district receives special education from another district under an agreement between the districts, the district providing the education may require the child's district of residence to pay the full amount (rather than half) of the tuition of the district providing the education, as calculated in accordance with existing law.

## II. Community Schools

- Requires every entity proposing to establish a community school to obtain approval from and enter into a written agreement with the Department of Education, including certain entities that are currently exempt from that requirement.

- Decreases the length of the initial term of a sponsor's agreement with the Department of Education from seven years to five years and establishes a new renewal process, for a term of up to 12 years, based on prescribed factors.

- Removes the limit on the number of community schools an entity may sponsor (currently 100 schools) and instead permits each entity to sponsor schools in a manner consistent with the written agreement with the Department of Education.

- Specifies that each contract between a sponsor and a governing authority must contain a statement requiring any contracts between the governing authority and an attorney, accountant, or auditing firm to be independent from the community school's operator.

- Requires each contract between a sponsor and a governing authority to contain a statement that all moneys an operator loans must be accounted for, documented, and based on fair market lender rates.

- Generally prohibits the sponsor of a community school from selling any goods or services to that school.

- Eliminates a provision permitting a sponsor's decision to terminate or not renew its contract with the governing authority.

- Modifies the evaluation system for community school sponsors in several ways, including: (1) differentiates between sponsors based on number of schools, geographic proximity of schools to the sponsor, and the sponsor's organizational capacity, (2) adds a rating of "poor," and (3) removes the rating of "emerging."

- Requires the Department of Education to annually rate all sponsors based on compliance with laws and rules and academic performance and requires the Department to rate every third year a sponsor's adherence to quality practices.

- Requires the Department of Education to establish an incentive and restriction system based upon the overall ratings which will, among other things, allows an "exemplary" sponsor to automatically renew its written agreement with the Department and will revoke sponsorship authority of a "poor" sponsor.

- Permits, but does not require, the Department of Education to assume sponsorship of schools when a sponsor's authority to sponsor is revoked due to receipt of an overall rating of "poor" and specifies that assumed schools do not apply to the limit on the number of directly authorized community schools.

- Expands the authority of the Office of Ohio School Sponsorship by permitting the Office to promulgate the format, rules, requirements, procedures, deadlines, and ratings for submitting and processing applications and for contracts between the Department of Education and the governing authority of a community school.

- Eliminates a provision requiring the Department of Education to approve each application that satisfies the initial requirements for sponsorship and gives the Department discretion to approve or deny applications based on standards of quality authorizing, capacity, financial constraints, or other reasons.

- Requires that the designated community school fiscal officer be an employee of the governing authority of the community school, independent from any operator with which the school contracts.

- Immunizes a sponsor or its officers, directors, or employees from civil actions for harm allegedly rising from failure of the community school to meet the obligations of any contract or other obligation entered into on behalf of the community school and another party.

- Exempts a community school that merges or consolidates into a single public benefit corporation from the requirement to distribute assets as if it were a permanently closed community school provided that certain prescribed conditions are satisfied.

- Eliminates a prescribed appeal procedure in cases in which the governing authority has notified the operator of its intent to terminate or not renew the operator's contract.

- Permits a community school sponsored by an entity that is rated "exemplary" by the Department of Education to be licensed by the Department to operate a preschool program and to admit individuals who are general education preschool students (preschool students who are not receiving special education) to that program.

- Requires a community school that operates a preschool program that is licensed by the Department to comply with the same licensing and operational standards that apply to preschool programs operated by school districts, eligible nonpublic schools, and county DD boards under current law.

- Specifies that a community school that operates a preschool program that is licensed by the Department may not receive state community school operating funding for students enrolled in that program, but authorizes the program to apply for early childhood education funding.

## III. State Testing and Report Cards

### State assessments

- Limits the cumulative duration for the administration of state assessments and district-wide assessments administered to a majority of students in a grade or subject area, to 2% of the school year.

- Limits the cumulative duration for time spent on preparation for assessments to 1% of the school year.

- Makes eligible for high school graduation an individual who entered ninth grade for the first time *prior* to the 2014-2015 school year, if that person completes one of the three graduation pathways otherwise required for high school students who began ninth grade after that date.

- Makes eligible for high school graduation a person who entered ninth grade for the first time *prior* to the 2014-2015 school year, and who has not passed all areas of the Ohio Graduation Tests (OGT), if the person meets a graduation requirement (established by rules adopted by the State Board of Education) that combines partial passage of the OGT and completion of a graduation pathway.

- Requires that school districts and schools administer the English language arts assessment to third graders at least once annually, instead of twice as under current law.

- Eliminates the current requirement that school districts and schools administer the diagnostic assessments for grades one through three.

- Retains the requirement that school districts and schools administer the kindergarten readiness assessment adopted by the State Board of Education.

- Requires the reading skills assessments administered under the third-grade reading guarantee to be completed annually by September 30 starting with the 2015-2016 school year.

## State report card measures

- Requires the State Board of Education to establish proficiency percentages to meet each report card indicator that is based on a state assessment and sets deadlines by which the proficiency percentages must be established.

- Makes clarifications regarding the calculation and application of the K-3 progress measure.

- Adds a new graded measure that indicates the percentage of third-grade students who are promoted to the fourth grade on time.

- Renames the "Kindergarten Through Third Grade Literacy" overall grade component as "Early Literacy.

- Adds the new graded measure for third-grade students promoted on time to the newly renamed Early Literacy component.

- Removes measures from students in a five-year adjusted graduation cohort in the calculation of the "prepared for success" overall grade component. (Retains measures for students in a four-year adjusted graduation cohort.)

- Requires the Department of Education, by July 1, 2015, to develop a method to determine student academic progress of high school students using the results of the end-of-course examinations in English language arts and mathematics.

- Requires the Department to include the student academic progress data for high school students in the calculation of the overall and disaggregated value-added progress dimension measures, instead of as a separate measure, starting with the report cards for the 2015-2016 school year.

- Requires the Department to report the overall value-added progress dimension and disaggregated value-added progress dimension scores required for the state report card for the 2014-2015 school year calculated with the high school academic progress data as ungraded measures on the Department's website not later than January 31, 2016.

- Extends the deadline for the 2014-2015 state report card from September 15, 2015, to January 15, 2016.

- Extends until January 31, 2016, the deadline for the Department of Education's reports regarding students with disabilities for the 2014-2015 school year.

- Prohibits, for the 2014-2015 school year only, the Department from ranking school districts, community schools, and STEM schools according to academic performance measures.

- Sets a deadline of January 31, 2016, for the Department to rank districts, community schools, and STEM schools according to expenditures for the 2014-2015 school year.

## IV. Educator Evaluations and Licensing

### Teacher evaluations

- Removes a provision requiring that, in order for a teacher who was rated as "accomplished" to be evaluated on a less frequent basis, the teacher also must receive a student academic growth measure of at least "average."

- Beginning with teacher evaluations for the 2015-2016 school year, requires a teacher's student academic growth factor to be determined using a method established by the Department of Education for teachers to whom value-added data from assessments, either state assessments or approved-vendor assessments, is unavailable.

- Allows the student academic growth factor to count for less than 50%, but not less than 25%, of a teacher's evaluation if the method determined by the Department applies.

- Requires each school district board to update its standards-based teacher evaluation policy for use in the 2015-2016 school year and thereafter to include the changes made by the bill and excludes the updates from collective bargaining.

- Requires the State Board to update its standards-based teacher evaluation framework for use in the 2015-2016 school year and thereafter to include the changes made by the bill and excludes this update from collective bargaining.

- Requires each district board or governing authority annually to report, for each teacher evaluation conducted, the individual component measures or ratings assigned to that teacher, including the student academic growth measure, teacher observation rating or performance measure, and any other applicable measure.

### Teacher licensing

- Modifies the required components of the Ohio Teacher Residency Program to specify that mentoring must be provided by any teacher (rather than a lead professional educator) during only the first two years of the program and that the district or school must determine if counseling is necessary.

- Specifies that one of the required measures of progression through the Ohio Teacher Residency Program must be the performance-based assessment required by the State Board for resident educators in the third year of the program.

- Permits districts and schools, beginning with the 2015-2016 school year, to not conduct teacher evaluations for teachers participating in the Ohio Teacher Residency Program for the year during which those teachers take the majority of the required performance-based assessment for resident educators.

- Requires the State Board, by July 1, 2016, to adopt rules that exempt consistently high-performing teachers from (1) the requirement to complete additional coursework to renew an educator license and (2) any related requirement prescribed by the district's or school's local professional development committee.

- Modifies the duration for which a pupil-activity program permit is valid (three years under current law) by specifying that, if the applicant holds an educator license, the permit is instead valid for the same number of years as the individual's educator license.

## Evaluation of school counselors

- Requires the Educator Standards Board to develop standards for school counselors.

- Requires the State Board of Education to develop, not later than May 31, 2016, a standards-based framework for the evaluation of school counselors that aligns with the standards for school counselors adopted by the Educator Standards Board and satisfies other requirements.

- Requires the State Board to develop specific standards and criteria that distinguish between accomplished, skilled, developing, and ineffective ratings for school counselor evaluations.

- Requires each school district board of education to adopt, not later than September 30, 2016, a standards-based school counselor evaluation policy that conforms to the framework developed by the State Board.

- Requires each district's policy to include procedures for implementing the framework beginning in the 2016-2017 school year and for using the evaluation results beginning in 2017-2018 for decisions regarding the retention and promotion of school counselors and the removal of poorly performing school counselors.

- Requires each district board to annually submit a report to the Department of Education, in a form and manner prescribed by the Department, regarding its implementation of its standards-based school counselor evaluation policy.

## V. Exemptions and Waivers

### Exemptions for high-performing school districts

- Repeals the current provision regarding exemptions for high-performing school districts and, instead, creates a new exemption provision for high-performing school districts effective with the 2016-2017 school year.

- Permits the Superintendent of Public Instruction to waive additional requirements upon application from high-performing school districts.

### Conditional waivers for innovative programs

- Authorizes community schools, in addition to school districts and STEM schools under current law, to request from the Superintendent of Public Instruction a waiver for up to five school years from (1) administering the state-required achievement assessments, (2) teacher evaluations, and (3) reporting of student achievement data for report card ratings.

- Specifies that school districts, community schools, and STEM schools may submit a request for a waiver during the 2015-2016 school year only.

- Limits, to ten, the total number of school districts, community schools, and STEM schools that may be granted a waiver, based on requests for a waiver received during the 2015-2016 school year.

- Removes a provision requiring a school district to be a member of the Ohio Innovation Lab Network in order to be eligible to submit a request for a waiver.

- Removes STEM schools' current presumptive eligibility for being granted a waiver.

- Removes a provision specifying that a district's or school's waiver application that includes an overview of the district's or school's alternative assessment system must include "links to state-accepted and nationally accepted metrics, assessments, and evaluations."

- Revises the timing of the decision by the state Superintendent on whether to approve or deny a waiver or to request additional information from "not later than 30 days after receiving a request for a waiver" to "upon receipt of a waiver."

- Defines "innovative educational program or strategy," for purposes of a waiver, as a program or strategy that uses a new idea or method aimed at increasing student engagement and preparing students to be college or career ready.

## VI. Other Education Provisions

### Ed Choice Scholarships

- Increases maximum amount of an Ed Choice scholarship that may be awarded to a high school student from $5,000 to $5,700.

- Changes the basis for the Ed Choice scholarship according to performance index score ranking of a student's assigned district building, from a ranking based on the performance index scores of all public schools to a ranking based on the performance index scores of all buildings operated by school districts.

### College Credit Plus program

- Removes the end date of July 1, 2016, with regard to the exemption from the College Credit Plus (CCP) program for career-technical education programs that grant articulated credit to students.

- Specifies that career-technical education programs that grant transcripted credit to students must be governed by the CCP program.

- Requires the CCP program to be the sole mechanism by which state funds are paid to colleges for students to earn "transcripted" credit, rather than "college-level" credit, while enrolled in high school and college.

- Requires the Director of the Department of Higher Education and the Superintendent of Public Instruction to include, in each biennial report on the CCP program, an analysis of quality assurance measures related to the program.

### Credit based on subject area competency

- Requires the State Board of Education, not later than December 31, 2015, to update its statewide plan regarding methods for students to earn high school credit based on subject area competency to also include methods for students enrolled in 7th and 8th grade to meet curriculum requirements based on such competency.

- Requires school districts and community schools, beginning with the 2016-2017 school year, to comply with the updated plan and to permit students enrolled in 7th and 8th grade to meet curriculum requirements accordingly.

- Requires the Department of Education to provide assistance to the State Board for purposes of updating the statewide plan and to, upon completion of the plan, inform students, parents, and schools of the updated plan.

## Competency-Based Education Pilot Program

- Establishes the Competency-Based Education Pilot Program to provide grants to school districts, community schools, and STEM schools for designing and implementing competency-based models of education for their students during the 2016-2017, 2017-2018, and 2018-2019 school years.

- Requires districts or schools that wish to participate in the pilot program to submit an application to the Department of Education not later than November 1, 2015.

- Requires the Department to select, not later than January 31, 2016, not more than ten applicants to participate in the pilot program, and requires the Department to award each district or school selected to participate in the pilot program a grant of up to $250,000 for each fiscal year of the biennium.

- Requires each district or school selected to participate in the pilot program to satisfy specified requirements for the competency-based education offered by the district or school and agree to an annual performance review conducted by the Department.

- Specifies that a district or school selected to participate in the pilot program remains subject to all accountability requirements in state and federal law that are otherwise applicable to that district or school.

- Specifies that a student enrolled in a district or school selected to participate in the pilot program who is participating in competency-based education must be considered to be a full-time equivalent student while participating in competency-based education for purposes of state funding for that district or school, as determined by the Department.

- Requires the Department to post two reports on its website (the first not later than December 31, 2016, and the second not later than December 31, 2018) regarding the pilot program.

## Education and business partnerships

- Specifically permits the Superintendent of Public Instruction to form partnerships with Ohio's business community to implement initiatives that connect students with the business community to increase student engagement and job readiness.

## Education of older students

- Changes the name of the Adult Career Opportunity Pilot Program to the Adult Diploma Pilot Program and makes changes in the administration of the program.

- Repeals separate provisions of current law that permit an individual age 22 and above who has not received a high school diploma or equivalence certificate to enroll for up to two cumulative school years in certain types of public schools and public two-year colleges for the purpose of earning a high school diploma.

## Student health services

- Specifically permits the board of education or governing authority of a school district, educational service center, community school, STEM school, or college-preparatory boarding school to enter into a contract with a hospital or an appropriately licensed health care provider to provide health services to students.

- Specifies that the hospital's or provider's employees who are providing the services of a nurse under the contract are not required to obtain a school nurse license or school nurse wellness coordinator license, but must hold a credential equivalent to being licensed as a registered nurse or licensed practical nurse.

## Site-based management councils

- Repeals a provision of current law requiring each school district with a total student count of 5,000 or more to designate one school building to be operated by a site-based management council, unless the district received a specified grade on the most recent report card or the district filed an alternative management structure with the Department.

## Student transportation

- Specifies that a school district board of education is not required to transport students to and from a nonpublic or community school on weekends absent an agreement to do so that was entered into before July 1 of the school year in which the agreement takes effect.

- Clarifies that a community school that takes over responsibility to transport a school district's resident students to and from the community school may determine that it is impractical to transport a student using the same procedures, requirements, and payment structure that a school district uses to determine impracticality.

- Removes a provision requiring a district board to submit a resolution declaring impracticality of transportation to the educational service center (ESC) that contains

the district's territory and specifying the ESC's required actions upon receiving the resolution.

### School district competitive bidding

- Increases the competitive bidding threshold for school building, improvement, and repair contracts for school districts from $25,000 to $50,000.

### Other provisions

- Modifies a provision permitting school districts to contract with public and private entities to provide academic remediation and intervention services to students in grades 1-6 outside of regular school hours by expanding eligibility to students in any grade.

- Removes a requirement that the State Board adopt a measure, to be reported separately from the district's or school's report card, for the amount of extracurricular services offered to students.

- Permits the State Board of Education to establish an annual Teacher of the Year program, and allows, under the Ethics Law, a teacher recognized as a Teacher of the Year to receive a gift or privilege as part of the program and a person or entity to make a voluntary contribution to the program.

## I. School Financing

(R.C. 3313.981, 3314.08, 3314.091, 3317.013, 3317.014, 3317.016, 3317.017, 3317.018, 3317.02, 3317.022, 3317.0212, 3317.0213, 3317.0214, 3317.0217, 3317.051, 3317.16, 3317.20, 3319.57, 3323.13, and 3326.33; Sections 263.220, 263.230, 263.240, and 263.350)

H.B. 59 of the 130th General Assembly (the general operating budget act for the 2013-2015 biennium) enacted a new system of financing for school districts and other public entities that provide primary and secondary education. This system 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 districts with relatively low median income, 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), as well as categorical payments (which include special education funds, kindergarten through third grade literacy

funds, economically disadvantaged funds, limited English proficiency funds, gifted funds, career-technical education funds, and student transportation funds).

The bill makes changes to the current funding system as described below and applies these changes, where applicable, to the core foundation funding formulas for city, local, and exempted village school districts, joint vocational school districts, community schools, and STEM schools. For a more detailed description of the bill's school funding system, see the LSC Redbook for the Department of Education and the LSC Comparison Document for the bill. Click on "Budget Bills and Related Documents," then on "Main Operating," and then on "Redbooks" or "Comparison Document."

Note, as used below, "ADM" means average daily membership. The Department of Education uses the student enrollment that a district is required to report three times during a school year to calculate a district's average daily membership for the specific purposes or categories required for the school funding system, including a district's "formula ADM" and "total ADM."[27]

## Formula amount

(R.C. 3317.02)

The bill specifies a formula amount of $5,900, for fiscal year 2016, and $6,000, for fiscal year 2017. That amount is incorporated in the school funding system to calculate a district's base payment (the "opportunity grant") and is used in the computation of various other payments. (The formula amount for fiscal year 2015, prescribed by H.B. 59 of the 130th General Assembly, is $5,800.)

## State share percentage for city, local, and exempted village school districts

(R.C. 3317.017)

The bill renames "state share index" to "state share percentage." Under current law, the "state share index" is an index that depends on valuation and, for city, local, and exempted village school districts with relatively low median income, on median income. It is adjusted for school districts where 30% or more of the potential taxable valuation is exempted from taxation, which reduces the qualifying districts' three-year

[27] R.C. 3317.03, not in the bill.

property valuation in the formula and, thereby, increases their calculated core funding.[28]

The bill revises the computation of the "state share percentage" in the following manner. First, it renames the "wealth index" factor of the computation to "capacity measure." Additionally, it revises the calculation of the "capacity measure" and the calculation of other factors of the calculation of the "state share percentage." Finally, it bases the "three-year average valuation" data for the computation on the average of total taxable value for tax years rather than fiscal years.

The "state share percentage" is a factor in the calculation of the opportunity grant, special education funds, catastrophic cost for special education students, kindergarten through third grade literacy funds, limited English proficiency funds, career-technical education funds, and career-technical education associated services funds for city, local, and exempted village school districts. It is also a factor in the calculation of additional state aid for preschool special education children that is paid to city, local, and exempted village school districts and institutions (the departments of Mental Health and Addiction Services, Developmental Disabilities, Youth Services, and Rehabilitation and Correction), the calculation of payments to county DD boards that provide special education and related services to children with disabilities, and the criteria for a city, local, exempted village, or joint vocational school district to qualify for a grant program for innovators.[29]

## Targeted assistance

(R.C. 3317.0217)

The bill revises the calculation of targeted assistance funding, which is based on a district's value and income, by (1) renaming the "wealth index" factor of the computation to "capacity measure" and (2) basing the "three-year average tax valuation" on the average of total taxable value for tax years rather than fiscal years. Targeted assistance is paid to city, local, and exempted village school districts, and community schools and STEM schools are paid 25% of the per-pupil amount of targeted assistance funding for each student's resident school district (unless the community school is an Internet- or computer-based community school (e-school)).

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[28] Another "state share percentage," which is calculated differently, is a factor in the calculation of the opportunity grant for joint vocational school districts. The bill does not make any changes to that calculation (R.C. 3317.16).

[29] Previous funding formulas also used a "state share percentage" for similar purposes.

The bill also revises the calculation of targeted assistance supplemental funding, which is based on a district's percentage of agricultural property, by basing the "three-year average tax valuation" on the average of a district's tax valuation for tax years rather than fiscal years. Targeted assistance supplemental funding is paid to city, local, and exempted village school districts.

## Special education funding

(R.C. 3317.013)

The bill specifies the following dollar amounts for the six categories of special education services, as described in the table below. These amounts are used in the calculation of special education funding for city, local, and exempted village school districts, joint vocational school districts, community schools, and STEM schools. These amounts are increased from the ones specified for fiscal years 2014 and 2015.

| Category | Disability | Dollar amount for fiscal year 2016 | Dollar amount for fiscal year 2017 |
|---|---|---|---|
| 1 | Speech and language disability | $1,547 | $1,578 |
| 2 | Specific learning disabled; developmentally disabled; other health-impairment minor; preschool child who is developmentally delayed | $3,926 | $4,005 |
| 3 | Hearing disabled; severe behavior disabled | $9,433 | $9,622 |
| 4 | Vision impaired; other health-impairment major | $12,589 | $12,841 |
| 5 | Orthopedically disabled; multiple disabilities | $17,049 | $17,390 |
| 6 | Autistic; traumatic brain injuries; both visually and hearing impaired | $25,134 | $25,637 |

## Kindergarten through third grade literacy funds

(R.C. 3314.08(C)(1)(d), 3317.022(A)(4), and 3326.33(D))

The bill revises the dollar amounts for the calculation of kindergarten through third grade literacy funds for city, local, and exempted village school districts and the payment of these funds to community schools and STEM schools.

### Economically disadvantaged funds

(R.C. 3314.08(C)(1)(e), 3317.022(A)(5), 3317.16(A)(3), and 3326.33(E))

The bill revises the dollar amounts for the calculation of economically disadvantaged funds for city, local, and exempted village school districts, joint vocational school districts, community schools, and STEM schools.

It also revises the "economically disadvantaged index for a school district" that is used in the factor for the calculation of economically disadvantaged funds as follows:

(1) For a city, local, or exempted village school district, the bill uses the percentage of students in the sum of the total ADM of all city, local, and exempted village school districts who are identified as economically disadvantaged as part of the computation of the index;

(2) For a joint vocational school district, the bill uses the percentage of students in the sum of the formula ADM of all joint vocational school districts who are identified as economically disadvantaged as part of the computation of the index.

### Funding for limited English proficient students

(R.C. 3317.016)

The bill specifies the following dollar amounts for categories of limited English proficient students, as described in the table below. These amounts are used in the calculation of funding for limited English proficient students for city, local, and exempted village school districts, joint vocational school districts, community schools, and STEM schools. The amounts are the same as those currently specified for fiscal year 2015.

| Category | Type of student under current law | Dollar amount for fiscal year 2016 and for fiscal year 2017 |
|---|---|---|
| 1 | A student who has been enrolled in schools in the U.S. for 180 school days or less and was not previously exempted from taking the spring administration of either of the state's English language arts assessments (reading or writing) | $1,515 |
| 2 | A student who has been enrolled in schools in the U.S. for more than 180 school days or was previously exempted from taking the spring administration of either of the state's English language arts assessments (reading or writing) | $1,136 |

| Category | Type of student under current law | Dollar amount for fiscal year 2016 and for fiscal year 2017 |
|---|---|---|
| 3 | A student who does not qualify for inclusion in categories 1 or 2 and is in a trial-mainstream period, as defined by the Department | $758 |

## Gifted funding

(R.C. 3317.022(A)(7) and 3317.051)

### Gifted identification funding

The bill maintains the dollar amount for gifted identification funding ($5.05) from fiscal year 2015 for both fiscal years of the biennium. This funding is paid to city, local, and exempted village school districts.

### Gifted unit funding

The bill also maintains the dollar amount for each gifted unit ($37,370) from fiscal year 2015 for both fiscal years of the biennium. The Department must pay gifted unit funding to a district in an amount equal to the dollar amount for each gifted unit times the number of units allocated to a district. Under current law, the Department must allocate funding units to a city, local, or exempted village school district for services to identified gifted students as follows:

(1) One gifted coordinator unit for every 3,300 students in a district's gifted unit ADM (which is the district's formula ADM minus the number of its resident students enrolled in community schools and STEM schools), with a minimum of 0.5 units and a maximum of 8 units for any district.

(2) One gifted intervention specialist unit for every 1,100 students in a district's gifted unit ADM, with a minimum of 0.3 units allocated for any district.

## Career-technical education funding

(R.C. 3317.014)

The bill specifies the following dollar amounts for the five categories of career-technical education programs, as described in the table below. These amounts are used in the calculation of career-technical education funding for city, local, and exempted village school districts, joint vocational school districts, community schools, and STEM schools. These amounts are increased from the ones specified for fiscal years 2014 and 2015.

| Category | Career-technical education programs[30] | Dollar amount for fiscal year 2016 | Dollar amount for fiscal year 2017 |
|---|---|---|---|
| 1 | Workforce development programs in agricultural and environmental systems, construction technologies, engineering and science technologies, finance, health science, information technology, and manufacturing technologies | $4,992 | $5,192 |
| 2 | Workforce development programs in business and administration, hospitality and tourism, human services, law and public safety, transportation systems, and arts and communication | $4,732 | $4,921 |
| 3 | Career-based intervention programs | $1,726 | $1,795 |
| 4 | Workforce development programs in education and training, marketing, workforce development academics, public administration, and career development | $1,466 | $1,525 |
| 5 | Family and consumer science programs | $1,258 | $1,308 |

## Career-technical education associated services funding

(R.C. 3317.014)

The bill specifies the following amount for career-technical education associated services: $236, in fiscal year 2016, or $245, in fiscal year 2017. These amounts are multiplied by a district's total career-technical ADM and a district's state share percentage in order to calculate the district's career-technical education associated services funding. These amounts, too, are increased from those for fiscal years 2014 and 2015.

## Transportation funding

(R.C. 3317.0212)

The bill changes the calculation of the statewide transportation cost per student that is used in the transportation funding formula by using "total ridership" rather than

[30] Current law specifies that each career-technical education program must be defined by the Department in consultation with the Governor's Office of Workforce Transformation (R.C. 3317.014).

"qualifying ridership." A district's "total ridership" is the average number of resident students enrolled in regular education in grades kindergarten through 12 who are provided school bus service by a district during the first full week of October, whereas a district's "qualifying ridership" only includes those students who live more than one mile from the school they attend.

The bill also removes the requirement that each city, local, and exempted village school district report all data used to calculate funding for transportation through the Education Management Information System (EMIS).

### Transportation provided by community schools

(R.C. 3314.091)

The bill removes the requirement that a community school governing authority that enters into an agreement to transport students or accepts responsibility to transport students must provide or arrange transportation free of charge for each of its enrolled students who would otherwise be transported by the students' school districts under those districts' transportation policies. However, the bill retains this requirement for the enrolled students who are required to be transported under current law.

The bill also clarifies that payments made to a community school for transporting students must be calculated "on a per rider basis."

### Payments prior to bill's 90-day effective date

(Section 263.220)

The bill requires the Superintendent of Public Instruction, prior to the effective date of the bill's school funding provisions (90 days after the bill is filed with the Secretary of State), to make operating payments in amounts "substantially equal" to those made in the prior year, "or otherwise," at the Superintendent's discretion.

### Payment caps and guarantees

(Sections 263.230 and 263.240)

The bill adjusts a city, local, or exempted village school district's aggregate amount of core foundation funding and pupil transportation funding by imposing a cap that restricts the increase in the aggregate amount of funding over the previous year's state aid to no more than 10% of the previous year's state aid in each fiscal year of the biennium. This capped funding is further adjusted by guaranteeing that all districts, with a formula ADM greater than zero, receive at least 99% of certain resources specified in the bill (including the district's previous year state aid, tangible personal

property tax reimbursements and electric deregulation reimbursements, property tax from operating levies, school district income tax, shared municipal income taxes, and gross casino revenue distributions).

Similarly, joint vocational school districts are guaranteed to receive at least 99% of certain resources specified in the bill but are also subject to a cap that limits the increase in state aid to no more than 10% of the previous year's state aid in each fiscal year of the biennium.

The bill also requires the Department to adjust, as necessary, the transitional aid guarantee base of school districts that participate in the establishment of a joint vocational school district that first begins receiving core foundation funding in fiscal years 2016 or 2017 and to establish, as necessary, the guarantee base of the new joint vocational school district as an amount equal to the absolute value of the sum of the associated adjustments for the participant school districts.

## Straight A Program

(Section 263.350)

The bill extends the Straight A Program to fiscal years 2016 and 2017. This program was created in uncodified law by H.B. 59 of the 130th General Assembly to provide grants for fiscal years 2014 and 2015 to school districts, educational service centers (ESCs), community schools, STEM schools, college-preparatory boarding schools, individual school buildings, education consortia, institutions of higher education, and private entities partnering with one or more of those educational entities. The purpose of those grants is to fund projects aiming to achieve significant advancement in one or more of the following goals: (1) student achievement, (2) spending reduction in the five-year fiscal forecast, (3) utilization of a greater share of resources in the classroom, and (4) use a shared services delivery model.

The bill largely retains the provisions of the Straight A Program, as enacted in H.B. 59 and as subsequently amended in H.B. 342 of the 130th General Assembly. It does, however, change these provisions in the following ways:

(1) Permits governmental entities partnering with one or more educational entities to apply for grants;

(2) Removes the requirement that the Straight A governing board issue a decision on a grant application within 90 days of receiving the application and instead requires the board to issue a "timely decision"; and

(3) Eliminates the advisory committee that annually reviewed the grant program and provided strategic advice to the governing board and the Director of the Governor's Office of 21st Century Education.

## Payment of excess cost for special education services

(R.C. 3317.16)

Law not changed by the bill requires a city, local, or exempted village school district or community school to pay a joint vocational school district providing special education and related services to a student of the district or school for the costs that exceed the amount the joint vocational school district receives under the formula for providing those services. Under the bill, the amount of this payment must be calculated using a formula approved by the Department. This replaces the requirement in current law that this amount be calculated by subtracting the formula amount, the amount for the student's special education category, and any additional state aid attributable to the student's special education category from the actual cost to provide special education and related services to the student.

## Open enrollment for preschool children with disabilities

(R.C. 3313.981)

The bill permits a city, local, or exempted village school district to enroll under its interdistrict open enrollment policy an adjacent or other district student who is a preschool child with a disability. For each of these students, the Department of Education must pay $4,000 to the district that enrolls the student and deduct that amount from the state education aid of the student's resident district.

## Special education provided by another district for preschool children

(R.C. 3323.13)

If a preschool child with a disability who is a resident of one district receives special education from another district under an agreement between the districts, the bill specifies that the district providing the education may require the child's district to pay the tuition of the district providing the education as calculated in accordance with existing law, rather than half of that amount as provided under current law.

## II. Community Schools

### Background on community schools

Community schools (often called "charter schools") are public schools that operate independently from any school district under a contract with a sponsoring entity. A conversion community school, created by converting an existing school, may be located in and sponsored by any school district or educational service center in the state. On the other hand, a new "start-up" community school may be located 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 poorly performing school district as determined by the school's performance index, value-added progress dimension, or overall score ratings on the state report card, or (3) a school district in the original community school pilot project area (Lucas County).[31]

The sponsor of a start-up community school may be any of the following:

(1) The school district in which the school is located;

(2) A school district located in the same county as the district in which the school is located has a major portion of its territory;

(3) A joint vocational school district serving the same county as the district in which the school is located has a major portion of its territory;

(4) An educational service center;

(5) The board of trustees of a state university (or the board's designee) under certain specified conditions;

(6) A federally tax-exempt entity under certain specified conditions; or

(7) The mayor of Columbus for new community schools in the Columbus City School District under specified conditions. However, it does not appear that those conditions have been triggered.[32]

[31] R.C. 3314.02(A)(3).

[32] R.C. 3314.02(C)(1)(a) through (g).

### Governance

The term "governing authority" generally refers to a group of individuals selected by the proposing person or group to carry out and ensure the performance of school functions and the contract entered into with the sponsor of the community school.[33] Under continuing law, each governing authority must consist of a board of not less than five individuals who each serve on no more than five community school boards at the same time.[34]

### Operators

The term "operator" is defined by statutory law as either of the following:

- An individual or organization that manages the daily operations of a community school pursuant to a contract between the operator and the school's governing authority; or

- A nonprofit organization that provides programmatic oversight and support to a community school under a contract with the governing authority and that retains the right to terminate its affiliation with the school if the school fails to meet the organization's quality standards.[35]

Many community school governing authorities contract with an operator to run the day-to-day operations of the school. The school's contract with the operator is separate from the school's contract with the sponsor.

## Department of Education approval of all sponsors

The bill requires every entity to obtain approval from and enter into a written agreement with the Department of Education prior to entering into a preliminary agreement to sponsor a community school. The bill specifically requires three currently exempt entities, described below, to comply with this requirement.

### Grandfathered sponsors

(R.C. 3314.015, 3314.021, and 3314.027)

Under current law, any entity that was already sponsoring community schools as of April 8, 2003, as part of the original community school project area (Lucas County)

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[33] R.C. 3314.01(B), not in the bill.

[34] R.C. 3314.02(E).

[35] R.C. 3314.02(A)(8).

may continue to sponsor the school in conformance with the terms of the sponsor contract and may enter into new contracts without obtaining initial approval of the Department of Education. Current law also permits the successor of the University of Toledo Board of Trustees, or its designee (as part of the original community school pilot project area), to continue to sponsor its community schools according to the terms of the sponsor contracts and to renew those contracts. Beginning on the bill's effective date, both of these entities are subject to approval by the Department for continued authority to sponsor community schools. The bill requires these entities to apply to the Department for approval and enter into an agreement with the Department. The bill also specifies that these entities are subject to the same reapplication, evaluation, and approval procedures as all other sponsors.

### Certain educational service centers

(R.C. 3314.015 and 3314.02(B)(2))

Under current law, an educational service center (ESC) may sponsor a conversion community school located within its service territory or in a contiguous county without approval from the Department of Education and without entering into an agreement with the Department regarding the manner in which the ESC will conduct its sponsorship. The bill removes this provision and, instead, requires that any ESC that sponsors a community school must be approved by and enter into an agreement with the Department under the same terms and conditions as all other sponsors.

## Sponsor agreements with the Department

(R.C. 3314.015)

### Length and renewal

The bill decreases the length of the initial term of a sponsor's agreement with the Department of Education from seven years to five years and modifies the way in which a sponsor's agreement is subject to renewal in the following ways:

- Removes the continuous one-year extension of the sponsor contract for sponsors that are not in the lowest 20% of sponsors statewide and sponsors who are rated as "exemplary" or "effective."

- Establishes a new renewal process, for a term of up to 12 years, based upon the academic performance of students enrolled in the sponsor's schools and the sponsor's adherence to quality practices.

The bill also specifies that the first two years of an initial agreement with the Department must be designated for training, planning, and collecting the resources required to carry out high quality sponsorship practices.

### Limit on number of schools sponsored

The bill removes the limit on the number of community schools an entity may sponsor and, instead, permits each entity to sponsor schools in a manner that is consistent with the written agreement with the Department. Under current law, a community school may sponsor up to 100 schools.

## Contracts between sponsors and governing authorities

(R.C. 3314.03 and 3314.46)

Each contract entered into between a sponsor and the governing authority of a community school must contain statutorily prescribed statements, descriptions, or assurances. The bill adds that each contract must contain a statement that if the governing authority contracts with an attorney, accountant, or auditing firm, the attorney, accountant, or auditing firm must be independent from the operator. The bill also requires each contract to contain a statement that all moneys an operator loans to a school must be accounted for, documented, and based on fair market lender rates.

### Selling of services

The bill prohibits the sponsor of a community school from selling any goods or services to that school. However, the sponsor is not required to comply with this requirement with respect to any contract for involving the sale of goods or services entered into prior to the bill's effective date until the expiration of the contract.

Continuing law does permit a sponsor to charge a fee for its oversight and monitoring duties, in an amount of up to 3% of the total amount of the school's state operating payments.

### Termination of sponsor contracts

(R.C. 3314.07(B)(4))

The bill makes final a sponsor's decision to terminate or not renew its contract with the governing authority of a community school for poor academic performance or poor fiscal management by eliminating the current provision permitting that decision to be appealed to the State Board of Education.

## Sponsor evaluation system

(R.C. 3314.016)

Continuing law requires the Department of Education to develop and implement an evaluation system that rates each sponsor based on the sponsor's compliance with applicable laws and rules, academic performance of the students enrolled in those schools, and adherence to quality practices prescribed by the Department. Currently, under this system, each sponsor receives an annual "rating" based on a combination of three components. They are: (1) the academic performance of students enrolled in community schools that are sponsored by the entity, (2) the sponsor's adherence to quality practices, which must be specified by the Department, and (3) the sponsor's compliance with applicable laws and administrative rules as measured by standards adopted by rule of the State Board of Education.[36] Based on all three of those components, a sponsor is rated as "exemplary," "effective," or "ineffective." Each component must be weighted equally, except that entities sponsoring community schools for the first time may be assigned the rating of "emerging" for the first two consecutive years.

The bill makes the following modifications to the sponsor evaluation system:

- Requires the Department to differentiate between sponsors based on factors such as the total number of schools to be sponsored, the geographic proximity of those schools to the sponsor, and the entity's organizational capacity.

- Adds a rating of "poor" to the list of ratings the Department must use to rate all sponsors.

- Removes the provision that permits a sponsor to be rated "emerging" for the first two years the entity exists.

- Removes the requirement that the Department must "annually" rate sponsors and the requirement that each component be rated equally and instead requires the Department to designate an overall rating of sponsors without a specified timeframe.

- Requires the Department to annually rate all sponsors based on compliance with applicable laws and administrative rules and academic

[36] R.C. 3313.016(B)(1)(a) to (c).

performance of students enrolled in community schools sponsored by the same entity.

- Requires the Department to rate every third year a sponsor's adherence to quality practices.

## Incentives and restrictions based on sponsor evaluations

(R.C. 3314.015 and 3314.016)

The bill requires the Department of Education to establish an incentive and restriction system based upon the overall rating given to each sponsor.

### "Exemplary" sponsors

Entities with an overall rating of "exemplary" may, under the bill, take advantage of the following incentives:

- Renewal of the written agreement with the Department, not to exceed 12 years, provided that the entity consents to continued evaluation of adherence to quality practices;

- The ability to extend the term of the contract between the sponsor and the governing authority beyond the term described in the written agreement with the Department;

- An exemption from the preliminary agreement and contract adoption and execution deadline requirements;

- An exemption from the automatic contract expiration requirement, should a new community school fail to open by September 30 of the calendar year in which the community school contract is executed;

- No limit on the number of community schools the entity may sponsor;

- No territorial restrictions on sponsorship; or

- Any other incentives determined necessary or appropriate by the Department.

### "Ineffective" sponsors

The bill prohibits a sponsor with an overall rating of "ineffective" from sponsoring any new or additional community schools. These sponsors are also subject

to a one-year quality improvement plan with timelines and benchmarks that have been established by the Department.

### "Poor" sponsors

Under the bill, any sponsor that receives an overall rating of "poor" must have all sponsorship authority revoked subject to a hearing by an officer appointed by the Superintendent of Public Instruction.

The bill also provides that, in the event a sponsor's authority is revoked due to the sponsor receiving an overall rating of "poor," the Department of Education may assume sponsorship of any of the sponsor's schools until the earlier of the expiration of two school years or until a new sponsor is selected by the school's governing authority. Additionally, under the bill the Office of Ohio School Sponsorship may extend the term of the contract as necessary to accommodate the term of the Department's authorization to sponsor that school. The bill also prescribes that the schools sponsored by the Department in this manner do not apply to the limit on the number of directly authorized community schools.

## Direct authorization; Office of School Sponsorship

(R.C. 3314.029)

Under continuing law, the Department of Education's Office of Ohio School Sponsorship is permitted to directly authorize the operation of a limited number of both new and existing community schools, rather than those schools being subject to the oversight of other public or private sponsors. The office is also authorized to assume the sponsorship of a community school whose contract has been voided due to its sponsor being prohibited from sponsoring additional schools. Despite being ranked among other sponsors based on the performance of the schools directly authorized by the Office and the schools whose sponsorship the Office has assumed, the Office is expressly exempt from the prohibitions against sponsoring additional community schools based on its ranking.

The bill expands the authority of the Office of Ohio School Sponsorship in the following ways:

- Permits the Office to promulgate the format, requirements, procedures, deadlines, and ratings for the submission and processing of applications submitted with the intent to establish a community school;

- Permits the office to promulgate the format, requirements, procedures, deadlines, and ratings for contracts entered into between the Department of Education and the governing authority of a community school;

- Requires that each application submitted include, in addition to the requirements under continuing law, any other information the Office requests after the Office determines that information is necessary and appropriate;

- Eliminates the current provision requiring the Department to approve each application to establish a community school unless within 30 days after receipt of the application, the Department determines the application does not satisfy the initial requirements of sponsorship;

- Replaces that provision with a two-step approval or rejection process by first reviewing each application and assigning it a rating and next, permitting the Department to approve up to 20 applications for community schools to be established or to continue operation each school year (only five of the 20 may be establishing new schools) taking into consideration standards of quality authorizing, capacity, financial constraints, or other reasons; and

- Permits the Department, beginning with the 2015-2016 school year, to solicit applications for the establishment of up to five new community schools that meet certain prescribed criteria designed to further high quality standards and the provision of innovated educational delivery models, as determined by the Department.

## Designated fiscal officer

(R.C. 3314.011)

Under continuing law, every community school must have a designated fiscal officer. The bill requires that fiscal officer to be an employee of the governing authority, independent of any operator with which the school contracts.

## Civil immunity for community school sponsors, officials, and employees

(R.C. 3314.07)

The bill expands the types of civil liability from which a sponsor or its officers, directors, or employees are exempt, to include harm allegedly rising from failure of the community school to meet the obligations of any contract or other obligation entered

into on behalf of the community school and another party. Continuing law already affords civil immunity for harm allegedly arising from failure of the school to perform any statutory or common law duty or other legal obligation and for an act or omission of the school or its officers, directors, or employees that results in harm.

The bill also permits a sponsor who prevails in an action for a failure to meet contractual obligations (as described above) to recover reasonable attorney's fees and other expenses of litigation to be paid jointly and severally by the governing authority of the community school, individual members of the governing authority, or from any other plaintiff the court considers necessary and appropriate.

### Community school mergers and consolidation

(R.C. 3314.074)

Under the bill, a community school that merges or consolidates into a single public benefit corporation is exempt from the requirement to distribute assets as if it were a permanently closed community school, if the merger or consolidation satisfies the following conditions:

(1) At least one of the community schools involved in the merger or consolidation is sponsored by an entity rated as "exemplary" by the Department of Education;

(2) The governing authority of the community school created by the merger or consolidation enters into a sponsor contract with an entity rated as "exemplary"; and

(3) The merged or consolidated community schools are located in the same county or school district.

### Elimination of appeal procedures for termination of operator contract

(Repealed R.C. 3314.026)

The bill repeals a statute that prescribes an appeal procedure in cases in which the governing authority has notified the operator of its intent to terminate or not renew the operator's contract.

Under that procedure, the operator may appeal the decision to the school's sponsor, except that if the sponsor has sponsored the school for less than 12 months, the appeal must be made to the State Board of Education. The sponsor or the State Board must determine whether the operator should continue to manage the school, taking into consideration whether the operator has managed the school in compliance with law and the terms of the contract between the sponsor and the school and whether the school's

progress in meeting the academic goals stated in that contract has been satisfactory. If the sponsor or State Board decides that the operator should continue to manage the school, the sponsor must remove the existing governing authority and the operator must appoint a new one for the school.

## Preschool programs operated by community schools

(R.C. 3301.52, 3301.541, 3301.55, 3301.56, 3301.57, 3301.58, 3314.03, 3314.06, and 3314.08; Section 263.20)

### Preschool program requirements

The bill permits a community school that is sponsored by an entity that is rated "exemplary" by the Department of Education to be licensed by the Department to operate a preschool program for children age three or older. This program must comply with the same licensing and operational standards that apply to preschool programs operated by school districts, eligible nonpublic schools, and county DD boards under current law.

If a community school operates a preschool program that is licensed by the Department, the bill permits the school to admit individuals who are general education preschool students (preschool students who are not receiving special education) to that program. Otherwise, except for early enrollment of a kindergarten student who is shown to be ready for school by evaluation or under an acceleration policy or for enrollment of a preschool student in a Montessori preschool program, a community school may not enroll students who are under five years old.

### Student count

The bill requires the governing authority of a community school to annually report the number of students enrolled in a preschool program operated by the school that is licensed by the Department who are not receiving special education and related services pursuant to an individualized education program (IEP).

### Funding

The bill specifies that community schools that operate preschool programs that are licensed by the Department may not receive state community school operating funding for students enrolled in those programs. However, the bill does authorize those programs to apply for early childhood education funding (per pupil funds that the

Department may pay to certain qualified preschool providers for students from families with incomes of not more than 200% of the federal poverty guidelines).[37]

## III. State Testing and Report Cards

### Time limits on assessments

(R.C. 3301.0728; conforming changes in R.C. 3314.03, 3326.11, and 3328.24)

Beginning with the 2015-2016 school year, the bill requires school districts, and other public schools to limit the cumulative amount of time spent on the administration of state assessments to 2% of the school year. The state assessments under this limit include: (1) the applicable achievement assessments administered to students in grades three through eight,[38] (2) the assessments required by the College and Work Ready Assessment System (which includes a nationally standardized assessment that measures college and career readiness and the seven end-of-course examinations),[39] (3) the kindergarten readiness assessment,[40] and (4) any assessment required by the district or school to be administered district-wide to the majority of students in a specified subject area or grade level.

The bill also limits the cumulative duration for preparation for the assessments listed above to 1% of the school year unless otherwise required by an agreement with the Department of Education or the federal government. Preparation for assessments includes formal practice assessments, lessons on test-taking skills, and content reviews that immediately precede and are specifically for an assessment listed above.

To calculate the duration of the limitation, the bill defines "school year" as the number of hours that the school is open for instruction with students in attendance according to the school calendar adopted by the board. If more than one school within the district serves a particular grade level, the "school year" for that grade level is determined by averaging the number of hours prescribed by the school calendars of each applicable school.

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[37] Previous budget acts also enacted similar early childhood education funding provisions. The bill also specifically permits community schools operating a Montessori program in a municipal school district (Cleveland) to apply for early childhood funding for fiscal years 2016 and 2017. Currently, a community school operating a Montessori program in any school district may apply for such funds for fiscal year 2015. (See Section 263.20 of H.B. 59, as amended by H.B. 487, both of the 130th General Assembly.

[38] R.C. 3301.0710(A), not in the bill.

[39] R.C. 3301.0712(B), not in the bill.

[40] R.C. 3301.0715.

The bill exempts time spent on the following from the 2% limitation: (1) assessments created by teachers for regular classroom instruction, (2) assessments for children with disabilities, (3) assessments for limited English proficient students, (4) end-of-course examinations that exceed the number of examinations typically taken in one year by a student in a particular grade, (5) assessments administered to less than 50% of students in a grade in a school year or to less than 50% of students in a cohort of students within three years, and (6) assessments administered to a student at the request of the student, parent, or guardian, including multiple administrations of end-of-course examinations and assessment taken to earn postsecondary credit. The bill requires the Department to publish guidelines for the assessment limitations and exceptions.

The bill requires each school district and school to include information on assessments administered by the district or school, including the duration of each assessment and the district or school's compliance with the limitation on the duration of assessments, on its website not later than October 1, 2015, and not later than September 15 each year.

## High school graduation testing requirements

(R.C. 3313.614)

The bill provides additional pathways to high school graduation for students who entered ninth grade prior to the 2014-2015 school year. Under current law, such students must attain a passing score on each of the Ohio Graduation Tests (OGT),[41] but beginning with students who enter ninth grade in the 2014-2015 school year or later, high school students must complete one of three graduation pathways to be eligible for a diploma. Those pathways are: (1) score at "remediation-free" levels in English, math, and reading on nationally standardized assessments, (2) attain a cumulative passing score on the end-of-course examinations, or (3) attain a passing score on a nationally recognized job skills assessment and obtain either an industry-recognized credential or a state agency- or board-issued license for practice in a specific vocation.[42]

The bill makes eligible for graduation a person who entered ninth grade prior to the 2014-2015 school year, and who satisfies either of the following conditions:

(1) The person completes one of the graduation pathways described above;

[41] R.C. 3301.0710(B)(1) and 3313.61, neither in the bill.

[42] R.C. 3313.618, not in the bill.

(2) The person successfully completes some, but not all, areas of the OGT, but also completes one of the graduation pathways, in accordance with rules established by the State Board of Education.

Under the bill, the State Board's rules must be adopted by December 31, 2015, and must prescribe the manner in which such a person may be eligible to graduate from high school under the second option described above. Finally, the rules must do the following:

(1) Include the date by which a person who began ninth grade prior to the 2014-2015 school year may be eligible for high school graduation under the bill's revised graduation provisions;

(2) Include methods of replacing individual assessments of the OGT and methods of integrating the three graduation pathways;

(3) Ensure that the second graduation option described above requires a mastery that is equivalent or greater to the expectations of the OGT.

## Third-grade English language arts assessment

(R.C. 3301.0711)

Instead of requiring two administrations of the third-grade English language arts assessment, as under current law, the bill requires that school districts and schools only administer that assessment at least once annually. Effectively, this eliminates the fall administration of the third-grade English language arts assessment. However, the bill does allow districts and schools to administer the assessment in the summer to students who failed to attain the required score for promotion as an option. The bill also specifies that scores from the optional summer administration not be included in calculating performance measures for the state report cards.

## Background on state achievement assessments

State law, in part in compliance with the federal "No Child Left Behind Act,"[43] prescribes a series of elementary and secondary achievement assessments, which must be administered to students enrolled in public schools (school district-operated schools, community schools, STEM schools, and college-preparatory boarding schools).[44] The aggregate student scores on those assessments are used in computing annual state

[43] Public Law No. 107-110, 20 United States Code 6301 *et seq.*

[44] R.C. 3301.0711; R.C. 3301.0710 and 3301.0712, not in the bill.

report card ratings for school districts and other public schools.[45] The state assessments and end-of-course examinations are also administered to students enrolled in a chartered nonpublic school under a state scholarship program (Ed Choice Scholarship Program, Jon Peterson Special Needs Scholarship Program, Cleveland Scholarship Program, and Autism Scholarship Program).[46]

Chartered nonpublic schools are not required to administer the elementary achievement assessments to nonscholarship students, except in cases in which at least 65% of the school's enrollment is made up of students who are participating in any of the state scholarship programs. Such a school must administer the elementary assessments to all of its students, but the law authorizes the parent of a nonscholarship student to opt the student out of the assessments. Such a school may also be exempted from the requirement if the school has received a waiver from the Superintendent of Public Instruction under certain conditions.[47]

The composition of elementary-level achievement assessments are shown in the table below.

| | English language arts | Math | Science | Social studies |
|---|---|---|---|---|
| **Grade 3** | X | X | | |
| **Grade 4** | X | X | | X |
| **Grade 5** | X | X | X | |
| **Grade 6** | X | X | | X |
| **Grade 7** | X | X | | |
| **Grade 8** | X | X | X | |

Students enrolled in public high schools must take seven end-of-course examinations in the areas of English language arts I, English language arts II, science, Algebra I, geometry, American history, and American government. In addition, eleventh-grade students in public and chartered nonpublic high schools must take a nationally standardized assessment that measures college and career readiness.

[45] R.C. 3302.03; R.C. 3314.017, not in the bill.

[46] R.C. 3310.14, 3310.522, and 3313.976(A)(11), not in the bill.

[47] R.C. 3301.0711(K)(1).

### End-of-course examination exemption for chartered nonpublic schools

For the 2014-2015 school year only, chartered nonpublic schools are exempted from being required to administer the end-of-course examinations, and students in such schools are exempted from being required to take those examinations.[48] After that school year, a chartered nonpublic school may be exempt from the end-of-course examination requirement, if it publishes for each graduating class the results of the required nationally standardized assessment that measures college and career readiness. That exemption goes into effect on October 15, 2015, but only if the General Assembly does not enact different requirements that are effective by that date regarding end-of-course examinations for chartered nonpublic schools.[49]

## Diagnostic assessments

(R.C. 3301.079, 3301.0714(B)(1)(n), 3301.0715, and 3313.608)

The bill eliminates the current requirement that school districts, community schools, and STEM schools administer diagnostic assessments for grades one through three. However, the bill does retain the requirement that the State Board of Education adopt diagnostic assessments that are aligned with state academic standards and model curricula. Additionally, the bill continues to require districts and schools to administer a kindergarten readiness assessment.

If a district or school continues to administer diagnostic assessments adopted by the State Board, the district or school must provide a student's completed diagnostic assessment, the results, and any other accompanying documents used during the assessment to the parent of that student and include any such information in any reading improvement plan developed for a student under the third-grade reading guarantee. The bill also retains the current law that districts and schools submit results of diagnostic assessments to the Department.

### Third-grade reading guarantee diagnostic assessments

(R.C. 3313.608; Section 263.550)

The bill conforms the assessments to be administered to students for purposes of the third-grade reading guarantee with the elimination of the diagnostic assessments described above. Instead of requiring diagnostic assessments, the bill requires that

[48] Section 12 of Sub. H.B. 367 of the 130th General Assembly.

[49] R.C. 3313.612(B)(2), (D), and (G), not in the bill.

districts and schools use reading skills assessments that are approved by the Department of Education.

The bill also requires that these reading skills assessments be completed by September 30, annually, beginning with the 2015-2016 school year.

### Background on diagnostic assessments

Under current law, public schools must administer diagnostic assessments in reading, writing, and math to students in kindergarten through second grade, and reading and writing to students in the third grade. The State Board must adopt the assessments which schools, generally, must administer to all students. Each diagnostic assessment must be designed to measure student comprehension of academic content and mastery of related skills for the relevant subject area and grade level.[50]

## State report card measures

Effective March 22, 2013, H.B. 555 of the 129th General Assembly established a new academic performance rating and report card system for school districts and individual schools, including community schools and STEM schools, using "A," "B," "C," "D," or "F" letter grades and numerous reported and graded performance measures. Most of the performance measures are based on student scores on the academic achievement assessments. The major six components of the rating system are: (1) gap closing, (2) achievement, (3) progress, (4) graduation, (5) kindergarten through third grade literacy, and (6) prepared for success. Most of the separate performance measures are graded separately and then used to assign the grade for the respective organizing component and an overall grade.

The bill makes a few revisions to the report card system.

### Proficiency percentages for state report cards

(R.C. 3302.02)

The bill requires the State Board of Education to adopt rules to establish proficiency percentages to meet each report card performance indicator based on a state assessment. In other words, the State Board must determine what percentage of students must receive a score of "proficient" or higher on a state assessment in order for a district or school to be considered to have met the performance indicator for that assessment. Current law requires that "performance indicators met" is one of the graded

[50] R.C. 3301.079(D).

components on the state report card and is also used in the calculation of a school district or school's overall grade.[51]

The bill sets deadlines by which the State Board must adopt these proficiency percentages as follows:

(1) Not later than January 15, 2016, for the 2014-2015 school year;

(2) Not later than July 1, 2016, for the 2015-2016 school year;

(3) Not later than July 1, 2017, for the 2016-2017 school year, and for each school year thereafter.

Under current law, adopting rules to establish such measures for the 2014-2015 school year and each school year thereafter is optional for the State Board.

### K-3 literacy progress

(R.C. 3302.03(C)(1)(g))

The bill makes two clarifications in the calculation and application of the K-3 progress measure in the state report card. First, it states that the previous year's average value be used for purposes of determining the grade of "C" for the K-3 literacy progress measure. Current law does not specify the year. Second, under current law, a district or school where less than 5% of its students score below grade level on the kindergarten diagnostic assessment does not receive a K-3 literacy grade. The bill stipulates that in order for a district or school to be exempt from that grade, 95% or more students from that district or school also must score proficient or higher on the third grade English language arts assessment.

### Third-grade reading retention measure

(R.C. 3302.02(C)(1)(h))

The bill adds a new graded measure to the report card beginning with the 2014-2015 school year. The new measure assigns a grade to the percentage of third-grade students who have never been retained under the third-grade reading guarantee[52] and are promoted to the fourth grade and who are not exempt from retention under the guarantee. In adopting benchmarks for assigning letter grades for this measure, the

[51] R.C. 3302.03(C)(1)(c) and (C)(3)(b).

[52] R.C. 3313.608.

State Board must designate 97% or higher as an "A." This measure is also included in the overall grade for a district or school. (See "**Early literacy component**," below.)

### Early literacy component

(R.C. 3302.03(C)(3)(e), 3310.03, and 3314.35)

The bill renames the "Kindergarten through Third Grade Literacy" component for the calculation of the overall report card grade to "Early Literacy." The component consists of two graded measures, the kindergarten through third grade literacy progress measure, under existing law, and the new third-grade reading retention measure described above. Due to the change in this component, the bill also makes changes to Ed Choice scholarship qualifications and community school closure based on the K-3 literacy progress grade.

#### Relationship to Ed Choice

Under the bill, the Ed Choice scholarship qualification based on this grade is phased in. For a student to be eligible based on the student's assigned building, for two of the three most recent school years, the building must have (1) received a "D" or "F" for making progress in improving literacy in grades K-3 (as under current law) for the 2013-2014 school year or a "D" or "F" for the new overall Early Literacy component for the 2014-2015 school year and any school year thereafter, and (2) must neither have received an "A" for making progress in improving literacy in grades K-3 (as under current law) for the 2013-2014 school year nor an "A" for the new overall Early Literacy component for the 2014-2015 school year and any school year thereafter.

#### Relationship to community school closure

The bill revises the conditions for which a community school that does not serve a grade higher than third grade must permanently close by phasing in the new overall Early Literacy grade on a building's state report card. To trigger the closure requirement, for two of the three most recent school years, the school must have received an "F" for making progress in improving literacy in grades K-3 (as under current law) for the 2013-2014 school year or an "F" for the new overall Early Literacy component for the 2014-2015 school year and any school year thereafter.

### Prepared for Success component

(R.C. 3302.02(C)(3)(f))

The bill removes the five-year adjusted graduation cohort from the calculation of the "Prepared for Success" component of the overall report card grade. The bill retains the four-year adjusted graduation cohort. In other words, under the bill, only data from

students in the four-year adjusted graduation cohort will be used to determine the score or grade for the Prepared for Success component.

### High school value-added component

(R.C. 3302.03(C)(1)(e) and (f) and (D); Section 263.500)

The bill makes changes regarding the inclusion of the high school value-added component in the state report card. Instead of requiring the student academic progress of high school students as a separate graded measure starting with report cards for the 2015-2016 school year, as under current law, the bill incorporates the measure into the current value-added measures, both overall and disaggregated by subgroups, on the report card. As a result, the high school student progress measure is no longer a separate measure to be included in the "Progress" component of the overall report card score, but as a part of the overall and disaggregated value-added measures. The bill also directs the Department by July 1, 2015, to develop a method to determine high school student academic progress using the results of the end-of-course examinations in English language arts and mathematics required by the state College and Work Ready assessments.[53] Current law does not specify which assessment to use.

Finally, the bill requires the Department to report the overall value-added progress dimension and the disaggregated value-added progress dimension scores required for the 2014-2015 school year calculated with the high school academic progress data as an ungraded measure on the Department's website by January 31, 2016.

## Report card deadlines

(Section 263.510)

The bill extends the deadline for the 2014-2015 state report card from September 15, 2015, to January 15, 2016. Current law requires the Department of Education to issue report cards that measure the academic performance of school districts and schools annually not later than September 15 or the preceding Friday when that day falls on a Saturday or Sunday.[54]

[53] R.C. 3301.0712(B)(2), not in the bill.

[54] R.C. 3302.03.

## Reports for students with disabilities

(Section 263.520)

The bill extends the deadline for the report the Department of Education must issue regarding performance measures disaggregated for a school district's or school's students with disabilities subgroup using data from the 2014-2015 school year to January 31, 2016. Those performance measures are the value-added progress dimension score, performance index score, and four- and five-year adjusted cohort graduation rates.[55] Under current law, the Department must submit this report not later than October 1 each year. The bill continues that deadline for subsequent years.

## School district and school rankings

(Section 263.490)

The bill prohibits, temporarily, for the 2014-2015 school year only, the Department of Education from ranking school districts, community schools, and STEM schools according to academic performance measures as otherwise required by continuing law. Those measures include performance index, student performance growth based on the value-added progress dimension, and the performance of, and opportunities provided to, students identified as gifted using value-added progress dimensions, if applicable, and other relevant measures as designated by the superintendent of public instruction.[56] The bill also sets a deadline of January 31, 2016, for the Department to rank districts, community schools, and STEM schools according to expenditures for the 2014-2015 school year. School expenditure rankings include current operating expenditure per equivalent pupils and the percentage of total operating expenditures spent for classroom instruction.[57]

# IV. Educator Evaluations and Licensing

## Ohio Teacher Evaluation System

Under current law, all school districts and educational service centers, and all community schools and STEM schools that receive federal Race to the Top grant funds, must conduct annual teacher evaluations under the Ohio Teacher Evaluation System (OTES) developed by the State Board of Education. OTES provides for multiple evaluation factors, including student academic growth, formal teacher observations,

[55] R.C. 3302.035, not in the bill.

[56] R.C. 3302.021(A)(1), (2), and (5), not in the bill.

[57] R.C. 3302.021(A)(3) and (4).

and classroom walkthroughs. The alternative framework also provides for multiple factors, including student academic growth and the teacher performance measure, both defined by the Department of Education, as well as student surveys, teacher self-evaluations, peer review evaluations, and student portfolios.[58]

For more information about the current law on the teacher evaluation frameworks, as recently amended by H.B. 362 of the 130th General Assembly, effective September 11, 2014, see pp. 8-12 of the LSC Final Analysis for that act, at www.lsc.ohio.gov/analyses130/14-hb362-130.pdf.

### Frequency of teacher evaluations

(R.C. 3319.111(C)(2))

Under current law, the district board or school governing authority generally must conduct an annual evaluation of each teacher under OTES. However, the board or governing authority may evaluate a teacher less frequently if (1) the teacher was rated as "accomplished" or "skilled" on the teacher's most recent evaluation, and (2) the teacher's student academic growth measure, for the most recent school year for which data is available, was at least "average," as determined by the Department. Under this provision, teachers rated as "accomplished" may be evaluated every three years, while those rated as "skilled" may be evaluated every two years. However, an evaluator still must conduct at least one observation of, and hold at least one conference with, the teacher.

The bill removes the contingency that, in order for a teacher who was rated as "accomplished" to be evaluated on a less frequent basis, the teacher must also receive a student academic growth measure of at least "average." It also removes the requirement that an evaluator must conduct an observation of, and hold a conference with, a teacher who was rated as "accomplished." However, both of these provisions continue to apply to teachers rated as "skilled."

### Student academic growth

(R.C. 3319.111, 3319.112, and 3319.114)

Beginning with the teacher evaluations for the 2015-2016 school year, the bill makes changes to the calculation of the student growth factor portion of a teacher evaluation for teachers for whom value-added data from assessments, either state assessments or approved-vendor assessments, is unavailable. For such teachers, the student growth factor must be determined using the method established in accordance

[58] R.C. 3319.111, 3319.112, and 3319.114.

with guidance issued by the Department of Education. It may count for less than 50% but not less than 25% of the teacher's total evaluation. The percentage is to be determined by the district board. Since the bill creates a new method for determining student growth, it also removes the requirement that teacher evaluation framework adopted by the State Board identify measures of student academic growth for grade levels and subjects for which the value-added progress dimension or an alternative student academic progress measure does not apply.

The bill requires the State Board, by October 31, 2015, to update the standards-based teacher evaluation framework to conform with the new provisions. School district boards, for the teacher evaluations beginning with the 2015-2016 school year, also must update their standards-based teacher evaluation policies. Neither the update by the State Board nor a school district board is subject to collective bargaining.

Finally, the bill updates the percentages in the alternate teacher evaluation framework to reflect the changes of the bill as follows:

(1) 42.5 to 75% for the teacher performance measure;

(2) 25 to 50% for the student academic performance measure;

(3) Not more than 15% for one of the following: student surveys, teacher self-evaluations, peer review evaluations, or student portfolios.

### Reporting of teacher evaluation results

(R.C. 3319.111(G))

The bill requires each district board and school governing authority to annually report, for each teacher evaluation conducted, the individual component measures and ratings assigned to the teacher, the overall rating assigned to the teacher, and the data used to calculate each rating under the evaluation. Specifically, the individual components and ratings that must be reported are as follows:

(1) The student academic growth measure and the teacher observation rating, if the district did not use the alternative framework.

(2) The student academic growth measure, the teacher performance measure, and any other measure assigned to that teacher (which may include student surveys, teacher self-evaluations, peer review evaluation, or student portfolios), if the district used the alternative framework.

Additionally, the Department must establish guidelines for reporting the required information. The bill specifically prohibits the guidelines from permitting or requiring the reporting of any teacher's name or personally identifiable information.

Under current law, the district board or school governing authority annually must report to the Department the number of teachers assigned each rating under OTES, aggregated by the teacher preparation programs from which the teachers graduated and the years in which they graduated. This information is then used by the Chancellor of the Board of Regents (renamed as the Director of the Department of Higher Education under the bill) to compile a report for each approved teacher preparation program that includes the number and percentage of all graduates of the program who were rated at each performance level.[59]

## Ohio Teacher Residency Program

(R.C. 3319.111 and 3319.223)

Under current law, most newly licensed educators are issued either a resident educator license or an alternative resident educator license under which they also must complete a four-year teacher residency program – the Ohio Teacher Residency Program. The bill modifies several required components of this program.

First, the bill modifies a requirement that the program include mentoring by teachers who hold a lead professional educator license issued by the State Board of Education. Instead, the bill requires that the program include mentoring by any teacher during only the first two years of the program. Second, it modifies the required counseling component by specifying that the district or school must determine if counseling is necessary. Finally, it specifies that one of the required measures of progression through the program must be the performance-based assessment required by the State Board for resident educators in the third year of the program.

The bill also permits districts and schools, beginning with the 2015-2016 school year, to forgo evaluations for teachers participating in the residency program for the year during which those teachers take, for the first time, the majority of the assessment required under the program (see above). Currently, districts and schools must conduct an annual evaluation under OTES for each teacher participating in the program.

[59] R.C. 3333.0411.

## Renewal of educator licenses for consistently high-performing teachers

(R.C. 3319.22)

The bill requires the State Board of Education, by July 1, 2016, to adopt rules that exempt consistently high-performing teachers from (1) the requirement to complete additional coursework to renew an educator license issued by the State Board, and (2) any related requirement prescribed by the district's or school's local professional development committees. The bill also requires the State Board, by that same date, to define "consistently high-performing teachers" for the purpose of this provision.

Under current law, the State Board must adopt rules establishing standards and requirements for obtaining educator licenses, as well as requirements for renewing such licenses. If these rules require additional coursework for license renewal, then each school district and chartered nonpublic school must establish a local professional development committee to determine whether the coursework proposed by a teacher is appropriate for license renewal and meets the requirement of these rules.

## Pupil-activity program permits

(R.C. 3319.303)

Under current law, the State Board of Education must adopt rules establishing standards and requirements for obtaining a pupil-activity program permit, which is issued by the State Board for coaching, supervising, or directing a pupil-activity program (including programs in music, language, arts, speech, government, and athletics[60]). Currently, all pupil-activity program permits are valid for three years and are renewable.

The bill modifies the duration for which a pupil-activity program permit is valid, if the applicant already holds an educator license, certificate, or permit issued by the State Board. In this instance, the bill specifies that the pupil-activity program permit is valid for the same number of years as the individual's educator license, certificate, or permit, and is also renewable. Also, if the educator's license is suspended or revoked, the permit is also subject to suspension or revocation. The bill does not specify how to determine the duration of the permit if the applicant holds multiple licenses, certificates, or permits.

[60] R.C. 3313.53, not in the bill.

If an applicant does not hold an educator license, certificate, or permit issued by the State Board, the pupil-activity program permit remains valid for three years, as under current law.

## Evaluation of school counselors

(R.C. 3319.113 and 3319.61)

### Standards for school counselors

The bill requires the Educator Standards Board to develop standards for school counselors that align with the American School Counselor Association's professional standards and the additional minimum operating standards for school districts adopted by the State Board of Education.[61] These standards must reflect all of the following:

(1) What school counselors are expected to know and be able to do at all stages of their careers;

(2) Knowledge of academic, personal, and social counseling for students;

(3) Effective principles to implement an effective school counseling program;

(4) Ohio-specific knowledge of career counseling for students and education options that provide flexibility for earning credit, such as earning units of high school credit based on a demonstration of subject area competency in accordance with methods adopted by the State Board under current law[62] and earning college credit through the College Credit Plus program.[63]

### Standards-based state framework for evaluation of school counselors

The bill requires the State Board, not later than May 31, 2016, to develop a standards-based state framework for the evaluation of school counselors. The State Board may update this framework periodically by adoption of a resolution.

The framework must establish an evaluation system that does the following:

[61] R.C. 3301.07(D)(3), not in the bill.

[62] R.C. 3313.603(J), not in the bill.

[63] R.C. Chapter 3365.

(1) Requires school counselors to demonstrate their ability to product positive student outcomes using metrics, including those from the school or school district's state report card issued by the Department of Education;[64]

(2) Is aligned with the standards for school counseling adopted by the Educator Standards Board and requires school counselors to demonstrate their ability in all the areas identified by those standards;

(3) Requires that all school counselors be evaluated annually, except as otherwise appropriate for high-performing school counselors;

(4) Assigns a rating on each evaluation in accordance with the specific standards and criteria for those ratings developed by the State Board (see "**Ratings for school counselor evaluations**" below);

(5) Designates the personnel that may conduct evaluations of school counselors in accordance with this framework;

(6) Requires that each school counselor be provided with a written report of the results of that school counselor's evaluation;

(7) Provides for professional development to accelerate and continue school counselor growth and provide support to poorly performing school counselors.

### Ratings for school counselor evaluations

The bill also requires the State Board to develop specific standards and criteria that distinguish between the following levels of performance for school counselors for the purpose of assigning ratings on school counselor evaluations:

(1) Accomplished;

(2) Skilled;

(3) Developing;

(4) Ineffective.

The State Board must consult with experts, school counselors and principals employed in public schools, and representatives of stakeholder groups in developing these standards and criteria.

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[64] R.C. 3302.03.

### School district evaluation policies for school counselors

Not later than September 30, 2016, the bill requires each school district board of education to adopt a standards-based school counselor evaluation policy that conforms with the standards-based state framework for the evaluation of school counselors. The policy must become operative at the expiration of any collective bargaining agreement covering school counselors employed by the board that is in effect on the bill's effective date and must be included in any renewal or extension of such an agreement.

The board must include both of the following:

(1) The implementation of the standards-based state framework for the evaluation of school counselors beginning in the 2016-2017 school year;

(2) Procedures for using the evaluation results, beginning in the 2017-2018 school year, for decisions regarding the retention and promotion of school counselors and the removal of poorly performing school counselors.

Each district board must annually submit a report to the Department, in a form and manner prescribed by the Department, regarding its implementation of its evaluation policy. The bill specifies that the Department must not permit or require that the name or personally identifiable information of any school counselor be reported to the Department as part of this annual report.

### Collective bargaining agreements

The bill specifies that its requirements regarding school counselor evaluations prevail over any conflicting provision of a collective bargaining agreement entered into on or after the bill's effective date.

## V. Exemptions and Waivers

## Exemptions for high-performing school districts

(R.C. 3302.05 (repealed), 3302.16, 3313.608, 3313.843, 3317.15, and 3319.301)

Current law requires the State Board of Education to adopt rules freeing specified higher performing school districts from state education statutes and rules, except certain State Board operating standards for school districts. The bill repeals that provision and, instead, creates a new exemption provision.

For this purpose, the bill defines a "high-performing school district" as any school district (city, local, or exempted village school district, specifically including a

municipal school district (Cleveland Municipal School District), and a joint vocational school district) that:

(1) Has for the two most recent school years received an "A" for the overall value-added progress dimension on the state report card;

(2) Had at least 95% of its third grade students score proficient or higher on the third-grade English language arts state achievement assessment; and

(3) Had a four-year adjusted cohort graduation rate of 93% or higher.

In order to determine if a joint vocational school district is considered "high-performing," the Department of Education must develop performance criteria that are equivalent to the requirements for other types of districts based on report cards issued for joint vocational school districts.[65]

Beginning with the 2017-2018 school year, the bill also requires that at least 75% of students in a four-year adjusted cohort receive a remediation-free score, based on the district's average scores on the nationally standardized assessment to measure college readiness,[66] in order to be considered "high-performing."

Once a school district meets the prescribed conditions, the district is considered high-performing for three years, unless less than 95% of a district's third-grade students fail to score proficient or higher on the third-grade English language arts state achievement assessment.[67] Failure to meet that measure results in an immediate loss of high-performing status for the district.

If a high-performing school district passes a resolution stating its intent to take advantage of the exemptions, it may be exempt from the following requirements beginning in the 2016-2017 school year:

(1) The teacher credential qualification requirements required to be provided to third-grade students in need of intensive remediation under the Third-Grade Reading Guarantee. Under that provision, teachers who provide intensive remediation in reading to third-grade students must have additional credentials, such as a reading endorsement on the teacher's license, a master's degree in reading, rated highly in

[65] R.C. 3302.033, not in the bill.

[66] R.C. 3301.0712(B)(1), not in the bill.

[67] R.C. 3301.0710(A)(1)(a), not in the bill.

reading instruction, or passage of a rigorous test of principles of scientifically research-based reading instruction.[68]

(2) Class size requirements;

(3) The requirement to have a service agreement with an educational service center (ESC) for school districts with an average daily membership of 16,000 students or less;[69]

(4) The requirement to consult with an ESC to provide services to children with disabilities;[70]

The bill also permits high-performing school districts to hire nonlicensed individuals to teach classes for not more than 40 hours a week. Current law allows districts to hire a nonlicensed individual to teach classes for not more than 12 hours a week.[71]

Finally, beginning in the 2016-2017 school year, a high-performing school district may apply to the Superintendent of Public Instruction for a waiver that exempts the district from other provisions of the Revised Code or rules or standards of the State Board of Education not specified in the bill. The State Superintendent must consider every waiver application and determine whether to deny or grant a waiver on a case-by-case basis.

## Conditional waiver for innovative programs

(R.C. 3302.15 and 3326.29 (repealed))

Current law authorizes all STEM schools and up to ten school districts that are members of the Ohio Innovation Lab Network to submit to the Superintendent of Public Instruction a request for a waiver for up to five school years from (1) administering the state-required elementary and secondary achievement assessments, (2) teacher evaluations, and (3) reporting of student achievement data for the purpose of report card ratings. The bill makes changes to this waiver program.

First, the bill eliminates the provision that makes eligible all STEM schools to be granted a waiver and eliminates a provision that requires school districts to be members

[68] R.C. 3313.608((H).

[69] R.C. 3313.843(B)(1).

[70] R.C. 3317.15(C).

[71] R.C. 3319.301.

of the Ohio Innovation Lab Network in order to submit a request for a waiver. The bill also adds community schools to the list of entities that may submit a request for and be granted a waiver, and in doing so, limits to ten the number of school districts, community schools, and STEM schools that may granted a waiver under the program. The bill limits requests for a waiver to be submitted during the 2015-2016 school year only.

The bill also makes the following changes to the waiver program:

(1) Removes a requirement for a district's or school's alternative assessment system (that is part of a waiver application) to include "links to state-accepted and nationally accepted metrics, assessments, and evaluations";

(2) Revises the timing of the decision by the state Superintendent on whether to approve or deny a waiver or to request additional information from not later than 30 days after receiving a request for a waiver to "upon receipt of a waiver";

(3) Defines "innovative educational program or strategy," for purposes of a waiver, as a program or strategy that uses a new idea or method aimed at increasing student engagement and preparing students to be college or career ready.

### Background

Current law authorizes all STEM schools (revised under the bill) and up to ten school districts that are members of the Ohio Innovation Lab Network to submit to the Superintendent of Public Instruction a request for a waiver for up to five school years from any or all of the following: (1) administering the elementary and secondary achievement assessments, (2) teacher evaluations, and (3) reporting of student achievement data for the purpose of report card ratings.

A district or STEM school that obtains a waiver must use an alternative assessment system in place of the state-mandated assessments. Within 30 days of receiving a waiver request (revised under the bill), the state Superintendent must approve or deny the request or may request additional information from the district or STEM school. A waiver granted to a school district or school is contingent on an ongoing review and evaluation of the program for which the waiver was granted by the state Superintendent.

Each request for a waiver must include the following: (1) A timeline to develop and implement an alternative assessment system for the school district or STEM school, (2) an overview of the proposed educational programs or strategies to be offered by the school district, (3) an overview of the proposed alternative assessment system, including links to state-accepted and nationally accepted metrics, assessments, and

evaluations (removed under the bill), (4) an overview of planning details that have been implemented or proposed and any documented support from educational networks, established educational consultants, state institutions of higher education, and employers or workforce development partners, (5) an overview of the capacity to implement the alternative assessments, conduct the evaluation of teachers with alternative assessments, and the reporting of student achievement data with alternative assessments for the purpose of report card ratings, all of which must include any prior success in implementing innovative educational programs or strategies, teaching practices, or assessment practices, (6) an acknowledgement by the school district of federal funding that may be impacted by obtaining a waiver, and (7) the items from which the district or STEM school wishes to be exempt, which are the administration of state assessments, teacher evaluations, and reporting of student achievement data.

Each request must also include the signature of all of the following: (1) the superintendent of the school district or STEM school, (2) the president of the district board or STEM school governing body, (3) the presiding officer of the labor organization representing the district's or STEM school's teachers, if any, and (4) if the district's or STEM school's teachers are not represented by a labor organization, the principal and a majority of the administrators and teachers of the district or school.

For purposes of the waiver program, the Department of Education must seek a waiver from the testing requirements prescribed under the federal "No Child Left Behind Act" if necessary to implement the waiver program. The Department must create a mechanism for the comparison of the proposed alternative assessments and the state assessments as it relates to the evaluation of teachers and student achievement data for the purpose of state report card ratings.

## VI. Other Education Provisions

### Ed Choice scholarships

(R.C. 3310.03 and 3310.09)

The bill makes two changes to the Educational Choice Scholarship Program. First, it raises the maximum amount that can be awarded to a student in grades 9 through 12 from $5,000 to $5,700. This is the same maximum amount awarded to students who are in grades 9 through 12 under the Cleveland Scholarship Program.[72]

Second, the bill changes the basis for eligibility according to performance index score. Current law qualifies for a scholarship a student who would be assigned to a

[72] R.C. 3313.978, not in the bill.

school building that has been ranked, in at least two out of three years, in the lowest 10% of *all public school buildings* according to performance index score. That ranking, required of the Department of Education in separate law, includes the rankings of not only school district-operated buildings, but community schools and STEM schools as well.[73] The bill, instead, changes the requirement so that the qualifying performance index score ranking is the lowest 10% among all school buildings operated by school districts, as determined by the Department. That is, the ranking for Ed Choice purposes only, under the bill, no longer includes community schools and STEM schools. (Ed Choice does not apply to community schools and STEM schools.)

### Background

The Educational Choice Scholarship Program operates statewide in every school district except Cleveland to provide scholarships for students who are assigned or would be assigned to district schools that have persistently low academic achievement or are from low-income families. Under the program, students may use their scholarships to enroll in participating chartered nonpublic schools.

Under continuing law, a student is eligible for a first-time Ed Choice scholarship if the student was attending, or otherwise would have been assigned to, a school building operated by the student's resident district that, on two of the three most recent report cards, either:

(1) Received a combination of any of the following ratings:

(a) Academic watch or emergency, under the former rating system;

(b) A "D" or "F" for both the performance index score and the overall value-added progress dimension or if the building serves only grades 10 through 12, the building received a grade of "D" or "F" for the performance index score and had a four-year adjusted cohort graduation rate of less than 75% (applies only for report cards issued for the 2012-2013 and 2013-2014 school year);

(c) A "D" or "F" for the overall grade or "F" for the overall value-added progress dimension (applies for report cards issued for the 2014-2015 school year and thereafter);

(2) Was ranked in the lowest 10% of all public school buildings according to performance index score (changed to 10% of school district-operated buildings under the bill); or

[73] R.C. 3302.21(A)(1), not in the bill.

(3) Received a "D" or "F" in "making progress in improving K-3 literacy" starting in the 2016-2017 school year.

In addition, students whose family incomes are at or below 200% of the federal poverty guidelines also qualify for Ed Choice scholarship. Students who qualify under this provision are phased in by grade level over 13 years. Awards granted under this qualification are funded by an appropriation from the General Assembly, as opposed to a deduction from the school district of residence.[74]

In the case of eligibility based on school performance ratings, the school cannot have been rated any of the following on the most recent report card:

(1) Excellent or effective, under the former rating system;

(2) Received an "A" or "B" for the performance index score and the value-added progress dimension or, if a building serves only grades 10 through 12, the building received a grade of "A" or "B" for the performance index score and had a four-year adjusted cohort graduation rate of 75% or higher (applies only for report cards issued for the 2012- 2013 and 2013-2014 school years);

(3) An "A" or "B" for the overall grade or "A" for the value-added progress dimension or, if a building serves only grades 10 through 12, the building received a grade of "A" or "B" for the performance index score and had a four-year adjusted cohort graduation rate of 75% or higher (applies for report cards issued for the 2014-2015 school year and thereafter);

(4) An "A" for "making progress in improving K-3 literacy."

The amount of each annual Ed Choice scholarship is the lesser of (1) the tuition charged by the chartered nonpublic school in which the student is enrolled or (2) a "maximum" amount, which is:

(a) $4,250 for grades K through 8; and

(b) $5,000 for grades 9 through 12 (changed to $5,700 under the bill).

[74] R.C. 3310.032, not in the bill.

## College Credit Plus program changes

(R.C. 3365.02, 3365.07, and 3365.15)

### Career-technical education programs under CCP

The College Credit Plus (CCP) program allows high school 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. College courses under CCP may be taken at any public or private college, as well as any eligible out-of-state college. The program governs arrangements in which a high school student enrolls in a college and, upon successful completion, receives transcripted credit[75] from the college. Under current law, specified programs are exempt from the CCP program, including, until July 1, 2016, career-technical education programs that grant articulated credit.[76]

The bill removes the end date for this exemption, thus extending the exemption indefinitely for career-technical education programs that grant articulated credit. However, the bill further specifies that if such a program grants transcripted credit, that program must be governed by CCP.

### Funding under the CCP program

Current law stipulates that the CCP program is the sole mechanism by which state funds are paid to colleges for students to earn college-level credit while enrolled in a high school, with the exception of Early College High School (ECHS) programs that obtain a waiver, Advanced Placement (AP) or International Baccalaureate (IB) courses, and career-technical education programs that grant articulated credit.

The bill modifies this stipulation by clarifying that the CCP program is the sole mechanism by which such funds are paid for students to earn "transcripted credit" for college courses while enrolled in *both* a high school and a college. All programs and courses that are currently exempt from this funding stipulation, as described above continue to be exempt under this clarification.

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[75] "Transcripted credit" is defined as "post-secondary credit that is conferred by an institution of higher education and is reflected on a student's official record at that institution upon completion of a course." R.C. 3365.01(U), not in the bill.

[76] "Articulated credit" is defined as "post-secondary credit that is reflected on the official record of a student at an institution of higher education only upon enrollment at that institution after graduation" from high school. R.C. 3365.01(A), not in the bill.

### Biennial report on the CCP program

Under current law, the Chancellor of the Board of Regents (renamed as the Director of the Department of Higher Education under the bill) and the Superintendent of Public Instruction must submit a biennial report detailing the status of the CCP program to the Governor, President of the Senate, Speaker of the House, and chairpersons of the House and Senate Education committees. The bill adds a requirement that each biennial report also include an analysis of "quality assurance measures" related to the program.

## Credit based on subject area competency

(R.C. 3313.603(J) and 3314.03(A)(11)(f); Section 263.540)

Under current law, the State Board of Education, in consultation with the Chancellor of the Board of Regents, was required to adopt by March 31, 2009, a statewide plan implementing methods for students to earn high school credit based on subject area competency or a combination of classroom instruction and subject area competency. The statute required the plan to be phased in during the 2009-2010 school year. Currently, all school districts and community schools are required to comply with this plan and to award credit accordingly.

The bill requires the State Board to update the statewide plan by December 31, 2015, to also include methods for students enrolled in 7th and 8th grade to meet curriculum requirements based on subject area competency or a combination of classroom instruction and subject area competency. Additionally, the Department of Education must provide assistance to the State Board for purposes of updating the statewide plan to "reduce barriers to student participation in credit flexibility options." Upon completion of the plan, the Department must inform students, parents, and schools of the plan, and, beginning with the 2016-2017 school year, all school districts and community schools are required to comply with the updated plan and permit students to meet curriculum requirements accordingly.

## Competency-Based Education Pilot Program

(R.C. 3302.42; Section 263.280)

The bill establishes the Competency-Based Education Pilot Program to provide grants to school districts, community schools, and STEM schools for designing and

implementing competency-based models of education for their students during the 2016-2017, 2017-2018, and 2018-2019 school years.[77]

### Selection of pilot program participants

A district or school that wishes to participate in the pilot program must submit an application to the Department of Education by November 1, 2015, in a form and manner prescribed by the Department. By January 31, 2016, the Department must select not more than ten districts or schools to participate in the pilot program.

### Awarding of grants to pilot program participants

The Department must award each district or school selected to participate in the pilot program a grant of up to $250,000 for each fiscal year of the biennium. The grant must be used during the 2015-2016 and 2016-2017 school years to plan for implementing competency-based education in the district or school during the 2016-2017, 2017-2018, and 2018-2019 school years.

### Requirements for pilot program participants

#### Competency-based education requirements

A district or school selected to participate in the pilot program must offer competency-based education that satisfies all of the following requirements:

(1) Students must advance upon mastery;

(2) Competencies must include clear, measurable, transferrable learning objectives that empower students;

(3) Assessments must be meaningful and a positive learning experience for students;

(4) Students must receive timely, differentiated support based on their individual learning needs;

(5) Learning outcomes must emphasize competencies that include application and creation of knowledge, along with the development of work-ready skills;

(6) It must incorporate partnerships with post-secondary institutions and members of industry.

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[77] The bill specifically includes joint vocational school districts and the only "municipal" school district in the state (Cleveland). The specific inclusion of Cleveland is not substantive since it would be included already as a "city" school district.

#### Annual performance review requirement

The Department must require a district or school to agree to an annual performance review conducted by the Department as a condition of participating in the pilot program.

#### Accountability requirements

The bill specifies that a district or school selected to participate in the pilot program remains subject to all accountability requirements in state and federal law that are applicable to that district or school.

### State funding for pilot program participants

The bill specifies that, if a district or school is selected to participate in the pilot program, each student enrolled in the district or school who is participating in competency-based education must be considered to be a full-time equivalent student while participating in competency-based education for purposes of state funding for that district or school, as determined by the Department.

### Reports regarding the pilot program

The bill requires the Department to post two separate reports regarding the pilot program on its website.

First, the Department must post, by December 31, 2016, a preliminary report that examines the planning and implementation of competency-based education in the districts and schools selected to participate in the pilot program.

Next, the Department must post, by December 31, 2018, a report that includes all of the following:

(1) A review of the competency-based education offered by the districts and schools selected to participate in the pilot program;

(2) An evaluation of the implementation of competency-based education by the districts and schools selected to participate in the pilot program and student outcomes resulting from that competency-based education;

(3) A determination of the feasibility of a funding model that reflects student achievement outcomes as determined through competency-based education.

## Education and business partnerships

(Section 263.530)

The bill specifically permits the Superintendent of Public Instruction to form partnerships with Ohio's business community, including the Ohio Business Roundtable, to create and implement initiatives that connect students with the business community. These initiatives are aimed to increase student engagement and job readiness through internships, work study, and site-based learning experiences.

If the Superintendent forms such a partnership, the initiatives implemented through that partnership must do all of the following:

(1) Support career connections included in the model curriculum developed by the State Board of Education for grades K-12 that embed career connection learning strategies into regular classroom instruction.

(2) Provide an opportunity for students to earn high school credit or meet curriculum requirements in accordance with the statewide plan on subject area competency (see above).

(3) Inform the development of student success plans for students who are at-risk of dropping out of school.[78]

## Adult Diploma Pilot Program

(R.C. 3313.902; Section 263.260)

The bill changes the name of the Adult Career Opportunity Pilot Program (established in 2014 by H.B. 483 of the 130th General Assembly) to the Adult Diploma Pilot Program. It also makes several changes to the pilot program, which are described in greater detail below.

Under law not changed by the bill, the pilot program permits eligible institutions to develop and offer programs of study that allow eligible students (those who are at least 22 years old and have not received a high school diploma or certificate of high school equivalence) to obtain a high school diploma. A program of study is eligible for approval if it (1) allows an eligible student to complete the requirements for obtaining a high school diploma while also completing requirements for an approved industry credential or certificate, (2) includes career advising and outreach, and (3) includes opportunities for students to receive a competency-based education. For purposes of

[78] R.C. 3301.079(B)(2) and 3313.603(J); R.C. 3313.6020(C), not in the bill.

the pilot program, an eligible institution is a community college, technical college, state community college, or "Ohio technical center" recognized by the Chancellor of the Ohio Board of Regents (renamed as the Director of Higher Education under the bill) that provides post-secondary workforce education.

### Program approval

Under current law, an eligible institution must obtain approval from the State Board of Education and the Chancellor (renamed as the Director of Higher Education under the bill) in order to participate in the pilot program. The bill requires an eligible institution to obtain this approval from the Superintendent of Public Instruction instead of from the State Board, but it retains the requirement that an eligible institution also obtain this approval from the Chancellor.

### Granting of high school diplomas

The bill requires the State Board, notwithstanding the requirements for a high school diploma in current law,[79] to grant a high school diploma to each student who (1) enrolls in an approved program of study at an approved institution and (2) completes the requirements for obtaining a high school diploma that are specified in rules adopted by the State Superintendent.

### Funding

#### Calculation of funding

The bill requires the Department of Education to calculate a state payment for each student enrolled in an approved program of study at each approved institution using the following formula:

(The student's career pathway training program amount + the student's work readiness training amount) X 1.2

#### Career-pathway training program amount

A student's "career pathway training program amount" means the following:

(1) If the student is enrolled in a tier one career pathway training program (a career pathway training program that requires more than 600 hours of technical training, as determined by the Department), $4,800.

[79] R.C. 3313.61, 3313.611, 3313.613, 3313.614, and 3313.618, not in the bill.

(2) If the student is enrolled in a tier two career pathway training program (a career pathway training program that requires more than 300 hours of technical training but less than 600 hours of technical training, as determined by the Department), $3,200.

(3) If the student is enrolled in a tier three career pathway training program (a career pathway training program that requires 300 hours or less of technical training, as determined by the Department), $1,600.

**Work readiness training amount**

A student's "work readiness training amount" means the following:

(1) If the student's grade level upon initial enrollment in an approved program of study at an approved institution is below the ninth grade, as determined in accordance with rules adopted by the State Superintendent, $1,500.

(2) If the student's grade level upon initial enrollment in an approved program of study at an approved institution is at or above the ninth grade, as determined in accordance with rules adopted by the State Superintendent, $750.

**Payment of funding**

The bill requires the Department to pay the amount calculated for each student under the bill's provisions to the student's institution in three separate payments. First, 25% of the amount calculated must be paid to the student's institution after the student successfully completes the first third of the approved program of study, as determined by the Department. Next, another 25% of the amount calculated must be paid to the student's institution after the student successfully completes the second third of the approved program of study, as determined by the Department. Finally, the remaining 50% of the amount calculated must be paid to the student's institution after the student successfully completes the final third of the approved program of study, as determined by the Department.

**Funding for associated services**

The bill permits each approved institution to use the amount that is "in addition to the student's career pathway training amount and the student's work readiness training amount" for the associated services of the approved program of study. The bill specifies that these services include counseling, advising, assessment, and other services as determined or required by the Department.

### Rules

Law unchanged by the bill requires the state Superintendent, in consultation with the Chancellor (renamed as the Director of Higher Education under the bill), to adopt rules for the implementation of the pilot program, including the requirements for applying for program approval. The bill specifies that these rules must also address all of the following:

(1) The requirements for obtaining a high school diploma through the pilot program, including the requirement to obtain a passing score on an assessment that is appropriate for the career pathway training program that is being completed by the student and the date on which these requirements take effect;

(2) The assessment or assessments that may be used to complete the assessment requirement for each career pathway training program and the score that must be obtained on each assessment in order to pass the assessment;

(3) Guidelines regarding the funding of the pilot program, including a method of funding for students who transfer from one approved institution to another approved institution prior to completing an approved program of study;

(4) Circumstances under which a student may be charged for tuition, supplies, or associated fees while enrolled in an approved institution's approved program of study;

(5) A requirement that a student may not be charged for tuition, supplies, or associated fees while enrolled in an approved institution's approved program of study except in the circumstances described under the rules; and

(6) The payment of federal funds that are to be used by approved programs of study at approved institutions.

## Repeal of separate provisions, enrollment of individuals age 22 and up

(Repealed R.C. 3314.38, 3317.036, 3317.23, 3317.231, 3317.24, and 3345.86; repealed Section 733.20 of Am. Sub. H.B. 483 of the 130th General Assembly; conforming change in R.C. 3317.01)

The bill repeals separate provisions of current law that permit an individual age 22 and above who has not received a high school diploma or a certificate of high school equivalence, which, like the Adult Diploma Pilot Program described above, were enacted in 2014 by H.B. 483 of the 130th General Assembly. Those provisions authorize such an individual to enroll for up to two cumulative school years of additional tuition-

free education in any of the following, for the purpose of earning a high school diploma:

(1) A city, local, or exempted village school district that operates a dropout prevention and recovery program;

(2) A community school that operates a dropout prevention and recovery program;

(3) A joint vocational school district that operates an adult education program;

(4) A community college, university branch, technical college, or state community college.

The provisions that are repealed by the bill include (1) the requirement that each of the educational entities report the enrollment of individuals ages 22 and older and (2) the requirement that the Department pay to each of those educational entities, for each enrolled individual age 22 and older, $5,000 times the individual's enrollment on a full-time equivalency basis (based on the reported enrollment) times the portion of the school years in which the individual is enrolled in the entity expressed as a percentage.

## Provision of health care services to students

(R.C. 3313.68, 3313.72, and 3313.721; conforming changes in R.C. 3314.03(A)(11)(d), 3326.11, and 3328.24)

The bill permits the board of education or governing authority of a school district, educational service center (ESC), community school, STEM school, or college-preparatory boarding school to enter into a contract with a hospital or an appropriately licensed health care provider to provide health services to students, if those health services are specifically authorized by Ohio law. It also permits a district board to enter into such a contract in lieu of appointing a school physician or dentist or contracting with an ESC for the services of a nurse to provide diabetes care to students.

If the board or governing authority enters into such a contract, the bill specifically exempts employees of the hospital or the health care provider who are providing the services of a nurse under the contract from any requirement to obtain a school nurse license or a school nurse wellness coordinator license issued by the State Board. The bill also exempts such employees from any requirement prescribed by rule of the State Board related to either license. However, the bill specifies that such employees must, at a minimum, hold a credential equivalent to being licensed as a Registered Nurse or Licensed Practical Nurse.

### Background on student health services

Under current law, district boards are specifically permitted to contract with a health district for the services of a school physician, dentist, or nurse. Additionally, a separate provision permits district boards to appoint school physicians and dentists to provide health services to students, as well as to contract with ESCs for the services of a school nurse, Registered Nurse, or Licensed Practical Nurse to provide diabetes care to students.

The State Board is required to establish standards and requirements for obtaining a school nurse license and a school nurse wellness coordinator license, which, at a minimum, must require the applicant to be licensed as a Registered Nurse. However, it is unclear if current law requires all nurses who provide health services to students to hold one of these licenses.[80]

## Site-based management councils

(Repealed R.C. 3313.473)

Under current law, each school district with a total student count of 5,000 or more must designate one school building to be operated by a site-based management council, unless the district received, on its most recent report card, a grade of an "A" or "B" for the performance index score and the value-added dimension (for the report card issued for the 2013-2014 school year) or for the overall grade (for the report card issued for the 2014-2015 school year and thereafter). The State Board of Education must adopt rules specifying the composition, powers, and duties of these councils. In lieu of complying with these rules, a district board may file with the Department of Education an alternative structure for a district site-based management program in at least one of its school buildings.

The bill repeals this provision.

## Student transportation

### Transportation of nonpublic and community school students

(R.C. 3327.01 and 3327.02)

The bill specifically provides that a district board is not required to transport elementary or high school students to and from a nonpublic or community school on weekends, unless the district board and the nonpublic or community school have an

[80] R.C. 3319.221, not in the bill.

agreement in place before July 1, of the school year in which the agreement takes effect, instead of prior to July 1, 2014, as under current law.

Furthermore, the bill clarifies that in the event a community school takes over the responsibility for transportation of a school district's resident students to and from the community school, the community school may determine that it is impractical to transport any one student to and from school using the same procedure, requirements, and payment structure as a school district uses to determine that it is impractical to transport that student. In such case, the school must make a payment in lieu of transportation to parent, guardian, or custodian of the student. Under continuing law, that payment may not be less an amount determined by the General Assembly as the minimum (currently $250) and may not be more than the amount determined by the Department of Education as the average cost of pupil transportation for the previous school year.

### District resolution declaring student transportation impractical

(R.C. 3327.02)

The bill removes a provision requiring that, if a district board passes a resolution declaring a student's transportation impractical, the board also must submit the resolution for concurrence to the ESC containing the district's territory. The bill also removes a provision specifying that, upon receiving the resolution:

(1) If the ESC disagrees with the board and considers the student's transportation practical, then the ESC must inform the district board and the board must provide the transportation.

(2) If the ESC agrees with the board and considers the student's transportation impractical, the board may offer payment in lieu of transportation.

### Background on transportation

State law generally requires each city, exempted village, and local school district to transport to and from school any student in grades K to 8 who resides in the district and is enrolled in a school that is more than two miles from the student's home. A district is required to transport resident students attending the district's own schools, as well as those attending nonpublic schools and community schools. A district may choose to transport students it is not required to transport, including high school students. If a district opts to transport high school students, it appears that the district must offer that service to nonpublic and community school students as well as those attending its own schools. Still, a district need not transport any private or community

school student for whom the direct travel time is more than 30 minutes.[81] A district also must transport STEM school students, unless the school's proposal as approved by the STEM committee provides for transportation.[82]

A district or school may offer a payment in lieu of providing transportation to the parent of a student it is required to transport, upon a finding that it is impractical to transport that student.[83]

A community school may transport its own students, and receive a payment for doing so, either through an agreement with the students' resident school district or by unilaterally assuming the district's transportation responsibility. If a community school unilaterally takes over transportation, the state payment for each student the school transports is the amount that would have been calculated for the district for the transportation mode the district would have used.[84]

## Competitive bidding threshold for school building contracts

(R.C. 3313.46)

Current law specifies that school district boards of education must fulfill various competitive bidding requirements when contracting for public improvement projects valued over $25,000, except in cases of urgent necessity or security. The bill increases the competitive bidding threshold from $25,000 to $50,000 for such public improvement contracts, including contracts to build, repair, enlarge, improve, or demolish any school building.

## Contracting for academic remediation and intervention services

(R.C. 3313.6010)

The bill specifically permits a school district to contract with public and private entities for the purpose of providing academic remediation and intervention services, outside of regular school hours, to students in any grade. Services provided must be in the subjects of math, science, reading, writing, or social studies. Under current law, school districts may enter into contracts providing such services, in accordance with rules adopted by the State Board of Education, only to students in grades 1-6.

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[81] R.C. 3327.01.

[82] R.C. 3326.20, not in the bill.

[83] R.C. 3327.01 and 3327.02.

[84] R.C. 3314.091, not in the bill.

## Report on extracurricular activities

(R.C. 3302.034)

Currently, the State Board of Education is required to adopt several measures to be reported for each district and each building in a district, as well as each community school, STEM school, and college-preparatory boarding school. These measures are reported separately from those included on the district's or school's report card, and the Department of Education must make the measures available on its website.

The bill removes one of these required measures, which specifies the amount of extracurricular services offered to students at the district or school.

## Ohio Teacher of the Year award

(R.C. 3319.67)

The bill allows the State Board of Education to establish an annual Teacher of the Year recognition program for outstanding teachers. Under the bill, a teacher who is recognized as a Teacher of the Year may accept gifts and privileges as part of the recognition program. Further, the bill permits a person or entity to make a voluntary contribution to the recognition program.

The bill specifies that the Ethics Law does not prohibit a teacher from accepting gifts or privileges under the program and does not prohibit a person or entity from making a voluntary contribution to the program. The Ethics Law generally prohibits a public servant from soliciting or accepting any additional compensation for the performance of the person's official duties and prohibits any person from knowingly promising or giving a public servant such additional compensation.[85]

[85] R.C. 2921.43(A), not in the bill.

# ENVIRONMENTAL PROTECTION AGENCY

## Extension of E-Check

- Authorizes the extension of the motor vehicle inspection and maintenance program (E-Check) through June 30, 2021, in Ohio counties in which a program is federally mandated.

- Retains the requirement that the new contract ensure that the program achieves at least the same emissions reductions as achieved by the program under the contract that was extended.

- Retains the requirement under which the Director of Administrative Services must use a competitive selection process when entering into a new contract with a vendor.

- Also retains all statutory requirements governing the implementation and operation of the program, including requirements that the program must be a decentralized program and that it must include a new car exemption.

## Waste Management Fund

- Renames the Solid Waste Fund in the Solid, Hazardous, and Infectious Wastes Law the Waste Management Fund, and does all of the following with regard to the uses of the Fund:

  --Eliminates its use for providing compliance assistance to small businesses and paying a share of the administrative costs of the Environmental Protection Agency; and

  --Retains its use for the other purposes specified in continuing law; and

  --Adds that it must be used to address violations of the Air and Water Pollution Control Laws at facilities regulated under the Solid, Hazardous, and Infectious Wastes Law.

- Eliminates the Construction and Demolition Debris Facility Oversight Fund, credits the money that currently is credited to that Fund to the Waste Management Fund, and retains the use of that money exclusively for the administration and enforcement of the Construction and Demolition Debris Law and rules adopted under it.

- Does the following regarding the Infectious Waste Management Fund:

--Eliminates the Fund, and credits the money that currently is credited to that Fund to the Waste Management Fund; and

--Requires, rather than authorizes as in current law, the Director of Environmental Protection to use that money exclusively for the administration and enforcement of the infectious waste provisions in the Solid, Hazardous, and Infectious Wastes Law and rules adopted under them.

### Solid waste transfer and disposal fees

- Extends the expiration of four state fees levied on the transfer or disposal of solid waste from June 30, 2016, to June 30, 2018.

- Retains the aggregate amount of those fees at $4.75, and reallocates several of the individual fees and their uses, including increasing the fee the proceeds of which are credited to the Environmental Protection Fund, which is used in part for administration, and requiring that Fund also to be used for small business compliance assistance.

### Sale of tire fees

- Extends from June 30, 2016, to June 30, 2018, the expiration of both of the following:

  --The 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program; and

  --An additional 50¢ per-tire fee on the sale of tires the proceeds of which are credited to the Soil and Water Conservation District Assistance Fund.

### Materials Management Advisory Council

- Merges the Solid Waste Advisory Council with the Recycling and Litter Prevention Advisory Council, and renames the merged Council the Materials Management Advisory Council.

- Generally transfers the duties and responsibilities of the two Councils to the new Council, and establishes the following additional duties and responsibilities:

  --Triennially providing advice to the Director of Environmental Protection in conducting a review of the progress made toward achieving the objectives, restrictions, and goals established under specified provisions of the statute governing the state solid waste management plan;

--Preparing and submitting an annual report to the General Assembly on the state's solid waste management system and efforts towards achieving the goals, restrictions, and objectives established under specified provisions of the statute governing the plan;

--Researching and responding to question posed by the Director; and

--Establishing and developing partnerships that foster a productive marketplace for the collection and use of recycled materials.

- Requires the Governor to appoint the members of the new Council who must represent specified interests.

## Extension of various air and water 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 under the Water Pollution Control Law;

--The sunset of the annual discharge fees for holders of national pollutant discharge elimination system permits issued under the Water Pollution Control Law;

--The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;

--A higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications to take examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable; and

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.

## Escrow requirement for community water systems

- Expands the requirement that the owner or operator (hereafter owner) of a community water system deposit a specified amount in escrow when planning to construct, install, or make a substantial modification to the system by removing the exemption for a system supplying water only to premises owned by the water supplier.

- Increases the maximum amount that the owner must deposit in escrow from $50,000 to $250,000.

- Specifies that the Director may issue a notice of a failure to correct a significant deficiency in accordance with a schedule accepted by the Director.

- Requires the owner of a system that is subject to the escrow requirement, within five days of receiving a notice, or if funds in an escrow account are not adequate to correct the significant deficiency, to deposit all rents and fees in escrow until the Director determines that the significant deficiency has been corrected.

- Allows the Director to authorize the use of the funds in the escrow for a contractor or receiver to correct the significant deficiency or connect to another public water system approved by the Director.

## Lead contamination of drinking water from plumbing

- Prohibits using certain plumbing supplies and materials that are not lead free in the installation or repair of a public water system or of any plumbing in a facility providing water for human consumption rather than requiring certain plumbing supplies and materials that are used in a public water system or in plumbing for facilities connected to a public water system to be lead free as in current law.

- Expands the list of plumbing supplies and materials to which the above prohibition applies to include plumbing fittings and plumbing fixtures.

- Generally prohibits a person from doing any of the following:

--Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free;

--Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies; and

--Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use it in the installation or repair of any plumbing providing water for human consumption.

- Establishes several exemptions from the above prohibitions, including pipes, pipe fittings, or plumbing fittings or fixtures that are used exclusively for nonpotable services.

- Revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law.

- Establishes a formula for calculating the weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture.

### Public water system capability

- Requires all public water systems, rather than only specified types of public water systems, to demonstrate the technical, managerial, and financial capability to comply with the Safe Drinking Water Law and rules adopted under it.

- Requires a public water system, prior to October 1, 2018, to submit an asset management plan that is acceptable to the Director in accordance with a schedule established by the Director and, after October 1, 2018, to submit such a plan within 30 days after receiving a request to do so from the Director.

- Requires a public water system to demonstrate capability by implementing a written asset management plan not later than October 1, 2018, unless required earlier by the Director or by a date specified by the Director if the Director has requested a system to submit a plan.

- Requires a public water system to include in the plan specified information, including an inventory and evaluation of all assets and a long-term funding strategy to support asset management plan implementation.

- Authorizes the Director to take regulatory actions to improve and ensure the capability of a public water system that has failed to make the required demonstration, including denying a plan for the construction or installation of or substantial change in a public water system.

- Allows the use of moneys in the existing Drinking Water Protection Fund to meet any state matching requirements that are necessary to obtain federal grants.

### Emergency actions and confidentiality under water laws

- Requires a person that discharges material into the environment, if an emergency exists, to disclose information to the Director or the Director's authorized representative (hereafter Director) necessary for response or investigatory purposes under the Water Pollution Control Law.

- Requires the person, if the person claims that the information contains trade secret information, to submit both a complete and a redacted version.

- Allows the Director, during an emergency, to share the complete version with public and private water systems, provided that the water systems maintain the confidentiality of the information and use the information for specified purposes, including:

  --Assessing exposure or potential exposure of persons or aquatic organisms to any component of or chemical in a pollutant or contaminant spilled, released, or discharged; and

  --Testing for such a component or chemical.

- Requires the Director, if the Director shares the complete information, to so notify the person that designates the information as a trade secret as soon as practicable.

- Stipulates both of the following:

  --The sharing of complete information does not affect the designation of a trade secret pursuant to the bill and does not subject the information to public disclosure; and

  --Nothing precludes a person that has designated a trade secret and has provided that information to the Director from requesting a confidentiality agreement with a recipient of the information.

- Authorizes the Director to disclose to a person that seeks to obtain information containing trade secret information the identity of the person that has designated the information as containing trade secrets.

- Establishes similar provisions in the Safe Drinking Water Law.

## Phosphorous monitoring for a publicly owned treatment works

- Requires specified publicly owned treatment works, including those with a design flow of one million gallons per day or more, to begin monthly monitoring of total and dissolved phosphorous by December 1, 2016.

- Requires publicly owned treatment works that are not subject to specified phosphorous effluent limit to complete and submit an optimization study, not later than December 1, 2017, that evaluates their ability to reduce phosphorous to that limit.

## Water Pollution Control Loan Fund

- Expands the uses of the existing Water Pollution Control Loan Fund by adding eight categories of projects and activities that may receive assistance from the Fund.

- Adds state agencies to the types of entities that may receive money from the Fund under continuing law for the construction of publicly owned wastewater treatment works.

- Revises how the Fund is to be used to pay the reasonable costs of administering the Fund and its governing statute.

- Requires all loans made from the Fund to be fully amortized not later than 30 years after project completion rather than 20 years.

- Allows money credited to the Fund to be used for the awarding of principal forgiveness assistance under the Federal Water Pollution Control Act.

- Removes the requirement that the Director must first determine that sewerage systems tributary to a publicly owned treatment works are not subject to excessive infiltration and inflow before providing financial assistance from the Fund for a treatment works project.

- Revises the requirement that, before providing financial assistance, the Director must first determine that the applicant will implement a user charge system to pay the operation, maintenance, and replacement expenses of the project by eliminating the stipulation that the user charge system be a proportional system.

- For purposes of the statute governing the Fund, expands the definition of "Federal Water Pollution Control Act" to include applicable portions of the American Recovery and Reinvestment Act of 2009 and the Water Resources Reform and Development Act of 2014.

## Section 401 water quality certification; certified water quality professionals

- Requires data sufficient to determine the existing aquatic life use, rather than a use attainability analysis, to accompany an application for a section 401 water quality certification if the project involves a stream for which a specific aquatic life use designation has not been made.

- Authorizes the Director to establish a program and adopt rules to certify water quality professionals to assess streams to determine existing aquatic life use and to categorize wetlands in support of applications for section 401 water quality certification and isolated wetland permits.

- Requires the Director to use information submitted by certified water quality professionals in reviewing such applications.

- Requires the Director's rules to address specified topics, including experience requirements for applicants, an annual certification fee, suspension and revocation of certifications, and technical standards to be used by certified water quality professionals in conducting stream assessments and wetlands categorizations.

## Dredged material in Lake Erie and tributaries

- Beginning July 1, 2020, prohibits a person from depositing dredged material in Ohio's portion of Lake Erie and direct tributaries that resulted from harbor or navigation maintenance activities unless authorized by the Director.

- Authorizes the Director of Environmental Protection, in consultation with the Director of Natural Resources, to determine that factors exist that result in the inability to comply with the above prohibition and, after making that determination, to allow open lake placement of dredged material from specified bodies of water through the issuance of a section 401 water quality certification.

- Allows the Director of Environmental Protection to authorize the deposit of dredged material from harbor or navigation maintenance activities for specified facilities and projects, including beach nourishment and habitat restoration.

- Authorizes the Director of Environmental Protection to consult with the Director of Natural Resources for the above purpose, but specifies that the Director of Environmental Protection has exclusive authority to approve the location in which dredged material is proposed to be deposited.

- Requires the Director of Environmental Protection to endeavor to work with the U.S. Army Corps of Engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material consistent with the above requirements.

### Enforcement of Water Pollution Control Law

- Increases criminal penalties for certain violations of the Water Pollution Control Law, and establishes culpable mental states regarding certain violations.

- Provides that if a person is convicted of or pleads guilty to a violation of any provision of that Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any actual response costs, including addressing impacts to aquatic resources.

### Air Pollution Control Law technical correction

- Corrects an erroneous cross-reference.

## Extension of E-Check

(R.C. 3704.14)

The bill authorizes the extension of the motor vehicle inspection and maintenance program (E-Check) through June 30, 2021, in Ohio counties in which a program is federally mandated. The bill accomplishes the extension by doing both of the following:

--Authorizing the Director of Environmental Protection to request the Director of Administrative Services to extend the contract in existence on June 30, 2015, for a period of up to 24 months through June 30, 2017; and

--Requiring that prior to the expiration of the contract extension, the Director of Environmental Protection request the Director of Administrative Services to enter into a new contract with a vendor to operate a program in Ohio counties in which a program is federally mandated through June 30, 2019, with an option for the state to renew the contract for a period of up to 24 months through June 30, 2021.

The bill retains the requirement that the new contract ensure that the program achieves at least the same emissions reductions as achieved by the program under the contract that was extended. It also retains the requirement under which the Director of Administrative Services must use a competitive selection process when entering into a new contract with a vendor. Finally, the bill retains all statutory requirements

governing the implementation and operation of the program, including requirements that the program must be a decentralized program and that it must include a new car exemption.

## Waste Management Fund

(R.C. 3714.051, 3714.07, 3714.08, 3714.09, 3734.02, 3734.021, 3734.061, 3734.07, 3734.551, and 3734.57)

The bill renames the Solid Waste Fund in the Solid, Hazardous, and Infectious Wastes Law the Waste Management Fund. It also eliminates the Construction and Demolition Debris Facility Oversight Fund and the Infectious Waste Management Fund and credits the money that currently is credited to those Funds to the Waste Management Fund. It then does all of the following with regard to the purposes for which the renamed Fund is used:

(1) Retains the use of money collected from the following sources for the administration and enforcement of the laws pertaining to solid wastes, infectious wastes, and construction and demolition debris:

--One of the four state fees levied on the transfer or disposal of solid waste (see fee discussion below); and

--Reimbursement of expenses incurred by the Director of Environmental Protection in preparing and ordering the implementation of an initial or amended solid waste management plan.

(2) Eliminates the use of the Fund for providing compliance assistance to small businesses and paying a share of the administrative costs of the Environmental Protection Agency (EPA) (see fee discussion below);

(3) Adds that the Fund must be used to address violations of the Air and Water Pollution Control Laws at facilities regulated under the Solid, Hazardous, and Infectious Wastes Law;

(4) Retains the use of money collected from the following sources exclusively for the administration and enforcement of the Construction and Demolition Debris Law and rules adopted under it:

--The application fee for the issuance of a permit to install a new construction and demolition debris facility;

--The disposal fee for construction and demolition debris or asbestos or asbestos-containing material; and

--Reimbursement of expenses incurred by the Director for the inspection of, or investigation of a violation by, a construction and demolition debris facility;

(5) Retains the use of money collected from the following sources exclusively for the administration and enforcement of the infectious waste provisions in the Solid, Hazardous, and Infectious Wastes Law and rules adopted under them:

--The registration fee for an infectious waste generator; and

--Reimbursement of expenses incurred by the Director for the inspection of, or investigation of a violation by, an infectious waste treatment facility or a solid waste facility that accepts infectious wastes.

Finally, regarding the use of money collected from the sources specified in item (5), above, the bill requires, rather than authorizes as in current law, the Director to use that money for the specified purposes.

## Solid waste transfer and disposal fees

(R.C. 3734.57 and 3745.015)

The bill revises provisions governing solid waste transfer and disposal fees in the Solid, Hazardous, and Infectious Wastes Law. It extends the expiration of four state fees levied on the transfer or disposal of solid waste from June 30, 2016, to June 30, 2018. In addition, it retains the aggregate amount of those fees at $4.75, but reallocates the individual fees and their uses as follows:

(1) Decreases from $1 to $.90 the per-ton fee the proceeds of which are credited to two funds that are used for purposes of Ohio's hazardous waste management program, and allocates $.20, rather than 30% as in current law, of the fee to the Hazardous Waste Facility Management Fund and $.70, rather than 70% as in current law, to the Hazardous Waste Clean-Up Fund;

(2) Decreases from $1 to $.75 the per-ton fee the proceeds of which are credited to the Solid Waste Fund (renamed the Waste Management Fund by the bill), which is used for the solid and infectious waste and construction and demolition debris management programs;

(3) Increases from $2.50 to $2.85 the per-ton fee the proceeds of which are credited to the Environmental Protection Fund, which is used by EPA to pay its costs of administering and enforcing laws governing environmental protection, and requires that Fund to also be used to pay the costs of providing compliance assistance to small businesses; and

(4) Retains the $.25 per-ton fee the proceeds of which are credited to the Soil and Water Conservation District Assistance Fund, which is used to assist soil and water conservation districts.

## Sale of tire fees

(R.C. 3734.901)

The bill extends until June 30, 2018, the sunset of the 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program. The fee is scheduled to expire on June 30, 2016.

The bill also extends until June 30, 2018, the sunset of an additional 50¢ per-tire fee on the sale of tires the proceeds of which are credited to the Soil and Water Conservation District Assistance Fund, which is used to provide money to soil and water conservation districts. Current law requires the additional fee to be collected and so credited until June 30, 2016.

## Materials Management Advisory Council

(R.C. 3734.49, 3734.50, 3734.51 (repealed), 3734.822, 3736.03, 3736.04 (repealed), 3736.05, and 3736.06; Section 515.10)

The bill merges the Solid Waste Advisory Council with the Recycling and Litter Prevention Advisory Council and renames the merged Council the Materials Management Advisory Council. It generally transfers the duties and responsibilities of the two Councils, as indicated in parentheses, to the new Council and establishes additional duties and responsibilities for the new Council, as indicated in parentheses, as follows:

(1) Providing advice and assistance to the Director of Environmental Protection with preparation of the state solid waste management plan and periodic revisions to the plan (Solid Waste Management Advisory Council);

(2) Approving or disapproving the draft state solid waste management plan and periodic revisions prior to the plan's adoption (Solid Waste Management Advisory Council);

(3) Annually reviewing the implementation of the state solid waste management plan (Solid Waste Management Advisory Council);

(4) Preparing and submitting an annual report to the General Assembly on the state's solid waste management system and efforts towards achieving the goals, restrictions, and objectives established under specified provisions of the statute

governing the state solid waste management plan. The report may recommend legislative action (new).

(5) Triennially providing advice to the Director in conducting a review of the progress made toward achieving the objectives, restrictions, and goals established under specified provisions of the statute governing the plan (new);

(6) With the approval of the Director, establishing criteria by which to certify, and certify, state agencies and political subdivisions for receipt of grants for activities or projects that are intended to accomplish the purposes of any of the statewide source reduction, recycling, recycling market development, and litter prevention programs established under current law (Recycling and Litter Prevention Advisory Council);

(7) Advising the Director on establishing and implementing statewide source reduction, recycling, recycling market development, and litter prevention programs (Recycling and Litter Prevention Advisory Council);

(8) Researching and responding to questions posed to the new Council by the Director (new); and

(9) Establishing and developing formal and informal partnerships with other entities that foster a productive marketplace for the collection and use of recycled materials (new).

The bill deletes the requirement that the Solid Waste Management Advisory Council annually review implementation of solid waste management plans of county and joint solid waste management districts.

Under the bill, the Governor, with the advice and consent of the Senate, must appoint the following 11 members to the new Council:

(1) One member who is an employee of a health district whose duties include enforcement of the solid waste provisions of the Solid, Hazardous, and Infectious Wastes Law;

(2) One member representing the interests of counties;

(3) One member representing the interests of municipal corporations;

(4) One member representing the interests of townships;

(5) One member representing the interests of solid waste management districts;

(6) One member representing a statewide environmental advocacy organization;

(7) One member representing the public; and

(8) Four members with knowledge of or experience in waste management, recycling, or litter prevention programs. Those members also must represent a broad range of interests, including manufacturing, wholesale, retail, labor, raw materials, commercial recycling, and solid waste management.

The bill provides for staggered three-year terms for the appointees and includes standard procedures governing their appointment, the filling of vacancies, and removal of appointees. Additionally, the bill requires the Director to appoint the chairperson of the new Council and requires the new Council to meet at least twice a year. A majority vote of the members is necessary to take action. Members serve without compensation, but must be reimbursed for expenses.

Finally, the bill provides for the necessary transfer of assets and liabilities to the new Council and provides that legal actions initiated under current law by either of the existing Councils are to be continued by the new Council.

## Extension of various air and water fees

### Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under current law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under existing law. Current law requires the fee to be paid through June 30, 2016. The bill extends the fee through June 30, 2018.

### Water pollution control fees and safe drinking water fees

(R.C. 3745.11(L), (M), and (N))

Under current law, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of $100 plus 0.65 of 1% of the estimated project cost, up to a maximum of $15,000, when submitting an application through June 30, 2016, and a fee of $100 plus 0.2 of 1% of the estimated project cost, up to a maximum of $5,000, on and after July 1, 2016. Under the bill, the first tier fee is extended through

June 30, 2018, and the second tier applies to applications submitted on or after July 1, 2018.

Current law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under current law, the fees are due by January 30, 2014, and January 30, 2015. The bill extends payment of the fees and the fee schedules to January 30, 2016, and January 30, 2017.

In addition to the fee schedules described above, current law imposes a $7,500 surcharge to the annual discharge fee applicable to major industrial dischargers that is required to be paid by January 30, 2014, and January 30, 2015. The bill continues the surcharge and requires it to be paid annually by January 30, 2016, and January 30, 2017.

Under current law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of $180. Under current law, the fee is due annually not later than January 30, 2014, and January 30, 2015. The bill continues the fee and requires it to be paid annually by January 30, 2016, and January 30, 2017.

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in current law. The fee for initial licenses and license renewals is required in statute through June 30, 2016, and has to be paid annually prior to January 31, 2016. The bill extends the initial license and license renewal fee through June 30, 2018, and requires the fee to be paid annually prior to January 31, 2018.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water supply system to obtain approval of the plans from the Director. Ongoing law establishes a fee for such plan approval of $150 plus 0.35 of 1% of the estimated project cost. Under current law, the fee cannot exceed $20,000 through June 30, 2016, and $15,000 on and after July 1, 2016. The bill specifies that the $20,000 limit applies to persons applying for plan approval through June 30, 2018, and the $15,000 limit applies to persons applying for plan approval on and after July 1, 2018.

Current law establishes two schedules of fees that the EPA charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. A schedule with higher fees is applicable through June 30, 2016, and a schedule with lower fees is applicable on and after July 1, 2016. The bill continues the higher fee schedule through June 30, 2018, and applies the lower fee schedule to evaluations conducted on or after July 1, 2018. The bill continues through June 30, 2018, a provision stating that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay $1,800 for each additional survey requested.

### Fees for certification of water supply or wastewater systems operators

(R.C. 3745.11(O))

Current law requires a person applying to the Director to take an examination for certification as an operator of a water supply system or a wastewater system to pay a fee, at the time an application is submitted, in accordance with a statutory schedule. A higher schedule is established through November 30, 2016, and a lower schedule applies on and after December 1, 2016. The bill extends the higher fee schedule through November 30, 2018, and applies the lower fee schedule beginning December 1, 2018.

### Application fees – water pollution control and safe drinking water

(R.C. 3745.11(S))

Current law requires any person applying for a permit other than a NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of $100 at the time the application is submitted through June 30, 2016, and a nonrefundable fee of $15 if the application is submitted on or after July 1, 2016. The bill extends the $100 fee through June 30, 2018, and applies the $15 fee on and after July 1, 2018.

Similarly, under existing law, a person applying for a NPDES permit through June 30, 2016, must pay a nonrefundable fee of $200 at the time of application. On and after July 1, 2016, the nonrefundable application fee is $15. The bill extends the $200 fee through June 30, 2018, and applies the $15 fee on and after July 1, 2018.

## Escrow requirement for community water systems

(R.C. 6109.08)

The bill expands the requirement that the owner or operator (hereafter owner) of a community water system or any part of a system deposit a specified amount in

escrow when planning to construct, install, or make a substantial modification to the system by removing the exemption for a system supplying water only to premises owned by the water supplier, but retains the exemptions for a publicly owned and operated system and a system regulated by the Public Utilities Commission. It retains the requirement that the amount deposited in escrow must equal 15% of the system's or part's cost owned by the owner, but increases the maximum amount that the owner must deposit from $50,000 to $250,000. The bill authorizes the Director of Environmental Protection in lieu of escrow, to allow a system to provide financial assurance in a form and amount determined by the Director.

Under the bill, the Director may issue a notice of a failure to correct a significant deficiency in accordance with a schedule accepted by the Director. The bill requires the owner of a system that is subject to the escrow requirement, within five days of receiving a notice, or if funds in an escrow account are not adequate to correct the significant deficiency, to deposit all rents and fees in escrow until the Director determines that the significant deficiency has been corrected. The Director may authorize the use of the funds in the escrow for a contractor or receiver to correct the significant deficiency or connect to another public water system approved by the Director.

## Lead contamination of drinking water from plumbing

(R.C. 6109.10)

The bill revises the statute governing the prevention of lead contamination of drinking water from plumbing. It first prohibits using any pipe, pipe fitting, plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of a public water system or of any plumbing in a residential or nonresidential facility providing water for human consumption. Current law instead requires pipes, pipe fittings, solder, and flux that are used in a public water system or in plumbing for residential or nonresidential facilities providing water for human consumption that are connected to a public water system to be lead free. The bill retains a provision that exempts leaded joints necessary for the repair of cast iron pipes.

The bill also prohibits a person from doing any of the following:

(1) Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(2) Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies, except for the selling of plumbing supplies by manufacturers of those supplies; and

(3) Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

The bill exempts the following from all of the above prohibitions:

(1) Pipes, pipe fittings, or plumbing fittings or fixtures, including backflow preventers, that are used exclusively for nonpotable services; and

(2) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are at least two inches in diameter.

Under the bill, the owner or operator of a public water system must identify and provide notice to persons that may be affected by lead contamination of their drinking water if the contamination results from the lead content in the construction materials of the public water distribution system, the corrosivity of the water supply is sufficient to cause the leaching of lead, or both. Current law instead requires each public water system to identify and provide notice to persons that may be affected by lead contamination of their drinking water.

In addition, the bill revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law. It retains current law specifying that solders and flux are lead free if they contain not more than .2% lead.

The weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture must be calculated by using the following formula: for each wetted component, the percentage of lead in the component must be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to determine the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component must be added together, and the sum of the weighted percentages must constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components must be used to determine whether the wetted surfaces are lead free pursuant to the bill's revised definition of "lead free." For purposes of the lead contents of materials that are provided as a range, the maximum content of the range must be used.

## Public water system capability

(R.C. 6109.24)

The bill requires all public water systems, rather than only specified types of public water systems, to demonstrate the technical, managerial, and financial capability to comply with the Safe Drinking Water Law and rules adopted under it. Under the bill, a public water system, prior to October 1, 2018, must submit an asset management plan that is acceptable to the Director in accordance with a schedule for submission established by the Director. After that date, a system must submit such a plan within 30 days after receiving a request to do so from the Director.

The bill requires a public water system to demonstrate capability by implementing a written asset management plan not later than October 1, 2018, unless required earlier by the Director or by a date specified by the Director if the Director has requested a system to submit a plan. A system must include in the plan all of the following information:

(1) An inventory and evaluation of all assets;

(2) Operation and maintenance programs;

(3) An emergency preparedness and contingency planning program;

(4) Criteria and timelines for infrastructure rehabilitation and replacement;

(5) Approved capacity projections and capital improvement planning; and

(6) A long-term funding strategy to support asset management plan implementation.

The bill authorizes the Director to take regulatory actions to improve and ensure the capability of a public water system that has failed to make the required demonstration, including denying a plan for the construction or installation of or substantial change in a public water system.

## Drinking Water Protection Fund

(R.C. 6109.30)

The bill eliminates the prohibition in current law against the use of moneys in the Drinking Water Protection Fund to meet any state matching requirements that are necessary to obtain federal grants. Under continuing law, the Fund is used to administer state and federal safe drinking water laws, provide technical assistance to

public water systems, and conduct studies and support programs related to drinking water.

## Emergency actions and confidentiality under water laws

(R.C. 6109.34 and 6111.05)

### Water Pollution Control Law

The bill revises the provisions of the Water Pollution Control Law governing the Director's authority regarding emergency actions and confidentiality of information provided under the Law. The bill specifies that if an emergency requires the Director or the Director's authorized representative (hereafter Director unless otherwise specified) to respond to protect public health or safety or the environment, the Director may request either of the following to disclose records, reports, or information (hereafter information) necessary to respond to or investigate the emergency:

(1) Any person that is responsible for causing or allowing a spill, release, or discharge of a pollutant or contaminant into or on the environment; or

(2) Any person having knowledge of the components or chemical identity of the pollutant or contaminant.

Upon receiving the request, the person must submit the information without undue delay. If the person claims that any portion of the information contains trade secret information, the person must submit both a complete and a redacted version of the information. The person must mark the redacted version "public version" and redact any trade secret information.

Under the bill, the Director must consider any submitted information or any particular part of the information designated as a trade secret to be a trade secret and, generally as in existing law, manage that trade secret information as confidential (solely the Director's responsibility). The bill retains the stipulation that the confidentiality of trade secret information does not apply to data concerning the amounts of contents of discharges or the quality of receiving waters to which the Director has access under the Water Pollution Control Law. It eliminates the requirement that the Director give ten days' written notice to the person claiming trade secrecy before divulging trade secret information.

The bill prohibits the Director from disclosing any complete information designated as containing trade secret information. However, during an emergency that requires the Director to respond to protect public health or safety or the environment or during an investigation of such an emergency, the Director may share any of the

complete information with the owner or operator of a public or private water system that needs the information for any of the following purposes:

(1) Assessing exposure or potential exposure of persons or aquatic organisms to any component of or chemical in a pollutant or contaminant spilled, released, or discharged;

(2) Conducting or assessing sampling to determine exposure levels of various population groups or aquatic organisms to any such component or chemical; or

(3) Testing for any such component or chemical.

The bill requires the Director, prior to sharing any such complete information, to label and identify, to the extent practicable, any of that information as a trade secret. If the Director shares any of the information, the Director (solely the Director's responsibility) must notify the person that designated the trade secret information of that sharing as soon as practicable. Nothing in the above provisions precludes a person that designated trade secret information under the bill from requesting a confidentiality agreement with a recipient of the information.

During an emergency action taken to protect public health or safety or the environment, the owner or operator of a public or private water system may share complete information that has been designated as containing trade secret information with an agent, consultant, or representative of the owner or operator. An owner or operator, including an agent, consultant, or representative, that receives such information must maintain the confidentiality of the information and may use the information only for the purposes specified above.

The bill states that the sharing of information containing trade secret information does not change the status of the information as being designated a trade secret pursuant to the bill. In addition, the sharing does not subject the information to public disclosure.

The Director may disclose to a person that seeks to obtain information containing trade secret information the identity of the person that has designated that information as containing trade secret information. The person to whom the Director discloses that identity may contact the person that designated the trade secret information.

The bill retains current law under which, except with regard to trade secret information, any records, reports, or information obtained under the Water Pollution Control Law must be available for public inspection.

### Safe Drinking Water Law

The bill establishes similar provisions in the Safe Drinking Water Law. It specifies that during an emergency that requires the Director to respond to protect public health or safety or the environment or during an investigation of such an emergency, the Director may share any complete information designated as containing trade secret information. A person that receives such information must maintain the confidentiality of the information and use it only for the purposes established in the bill as discussed above.

The sharing of complete information designated as containing trade secret information does not change the status of the information as being designated a trade secret pursuant to the bill. In addition, the sharing does not subject the information to public disclosure.

## Phosphorous monitoring for a publicly owned treatment works

(R.C. 6111.03)

The bill requires a publicly owned treatment works with a design flow of one million gallons per day or more, or designated as a major discharger, to begin monthly monitoring of total and dissolved phosphorous not later than December 1, 2016. Additionally, not later than December 1, 2017, a publicly owned treatment works that is not subject to a phosphorus effluent limit of one milligram per liter as a 30-day average must complete and submit an optimization study that evaluates the publicly owned treatment works' ability to reduce phosphorous to that limit. Finally, the Director must modify NPDES permits to include those requirements.

## Water Pollution Control Loan Fund

(R.C. 6111.036)

The bill, in addition to adding state agencies to the types of entities that may receive money from the existing Water Pollution Control Loan Fund under continuing law for the construction of publicly owned wastewater treatment works, expands the uses of the Fund by also allowing its use as follows:

(1) For the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(2) For measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;

(3) For measures to reduce the demand for publicly owned wastewater treatment works capacity through water conservation, efficiency, or reuse by any municipal corporation, other political subdivision, state agency, or interstate agency having territory in Ohio;

(4) For the development and implementation of watershed projects meeting applicable criteria established in the Federal Water Pollution Control Act;

(5) For measures to reduce the energy consumption needs of publicly owned wastewater treatment works by any municipal corporation, other political subdivision, state agency, or interstate agency having territory in Ohio;

(6) For reusing or recycling wastewater, stormwater, or subsurface drainage water;

(7) For measures to increase the security of publicly owned wastewater treatment works; and

(8) To any qualified nonprofit entity, as determined by the Director of Environmental Protection, to provide assistance to owners and operators of small and medium publicly owned wastewater treatment works for either of the following:

--To plan, develop, and obtain financing for eligible projects, including planning, design, and associated preconstruction activities; or

--To assist such treatment works in achieving compliance with the Federal Water Pollution Control Act.

The bill also revises the use of the Fund to pay the reasonable costs of administering the Fund and its governing statute by doing both of the following:

(1) Allowing the Fund to be used to pay the reasonable costs of conducting activities under the governing statute rather than administering that statute; and

(2) Removing the stipulation that cumulative expenditures from the Fund for administrative costs must be capped at 4% of the total amount of the capitalization grants received, and instead specifying that the reasonable costs of administering the Fund and conducting Fund-related activities cannot exceed one of the following amounts, whichever is greater, plus the amount of any fees collected by the state for that purpose regardless of the source:

--4% of the total amount of the capitalization grants received;

--$400,000 per year; or

--0.2% per year of the current valuation of the Fund.

Under the bill, all loans made from the Fund must be fully amortized not later than 30 years after project completion rather than 20 years. The bill allows money credited to the Fund to be used for the awarding of principal forgiveness assistance under the Federal Water Pollution Control Act.

The bill removes the requirement that the Director must first determine that sewerage systems tributary to a publicly owned treatment works are not subject to excessive infiltration and inflow before providing financial assistance from the Fund for a treatment works project. It revises the requirement that, before providing financial assistance, the Director must first determine that the applicant will implement a user charge system to pay the operation, maintenance, and replacement expenses of the project by eliminating the stipulation that the user charge system be a proportional system.

Finally, for purposes of the statute governing the Fund, the bill expands the definition of "Federal Water Pollution Control Act" to include applicable portions of the American Recovery and Reinvestment Act of 2009 and the Water Resources Reform and Development Act of 2014.

## Section 401 water quality certification; certified water quality professionals

(R.C. 6111.30)

The bill revises one of the requirements governing information to be included with an application for a section 401 water quality certification under the Water Pollution Control Law by requiring an application to include data sufficient to determine the existing aquatic life use, rather than a use attainability analysis, if the project involves a stream for which a specific aquatic life use designation has not been made.

The bill authorizes the Director to establish a program and adopt rules to certify water quality professionals to assess streams to determine existing aquatic life use and to categorize wetlands in support of applications for section 401 water quality certification and isolated wetland permits. It then requires the Director to use information submitted by certified water quality professionals in reviewing such applications.

The Director's rules must do all of the following:

(1) Provide for the certification of water quality professionals for the above purposes. Those rules must do all of the following:

--Authorize the Director to require an applicant to submit information necessary for the Director to assess a water quality professional's experience in conducting stream assessments and wetlands categorizations;

--Authorize the Director to establish experience requirements and to use tests to determine the competency of applicants;

--Authorize the Director to approve and deny applications based on applicants' compliance with the requirements established in rules;

--Require the Director to revoke certification of a water quality professional if the Director finds that the professional falsified any information on the application for certification regarding the professional's credentials; and

--Require periodic renewal of a water quality professional's certification and establish continuing education requirements for purposes of that renewal.

(2) Establish an annual fee to be paid by certified water quality professionals in an amount calculated to defray costs incurred by the EPA for reviewing applications and issuing certifications;

(3) Authorize the Director to suspend or revoke a certification if the water quality professional's performance has resulted in submission of improper documentation that is inconsistent with standards established in rules as discussed below;

(4) Authorize the Director to review documentation submitted by a certified water quality professional to ensure compliance with the rules establishing standards;

(5) Require a certified water quality professional to submit any documentation developed in support of an application for a section 401 water quality certification or an isolated wetland permit upon the Director's request;

(6) Authorize random audits by the Director of documentation developed or submitted by certified water quality professionals to ensure compliance with the rules establishing standards; and

(7) Establish technical standards to be used by certified water quality professionals in conducting stream assessments and wetlands categorizations.

## Dredged material in Lake Erie and tributaries

(R.C. 6111.32)

Beginning July 1, 2020, the bill prohibits a person from depositing dredged material in the portion of Lake Erie that is within Ohio's jurisdictional boundaries or in the direct tributaries of Lake Erie within Ohio that resulted from harbor or navigation maintenance activities unless the Director of Environmental Protection has determined that the dredged material is suitable for one of the locations, purposes, or activities specified below and has issued a section 401 water quality certification authorizing the deposit. The Director, in consultation with the Director of Natural Resources, may determine that financial, environmental, regulatory, or other factors exist that result in the inability to comply with the above prohibition. After making that determination, the Director of Environmental Protection, through the issuance of a section 401 water quality certification, may allow for open lake placement of dredged material from the Maumee River, Maumee Bay Federal Navigation Channel, and Toledo Harbor.

The bill allows the Director to authorize the deposit of dredged material that resulted from harbor or navigation maintenance activities for any of the following:

(1) Confined disposal facilities;

(2) Beneficial use projects;

(3) Beach nourishment projects if at least 80% of the dredged material is sand;

(4) Placement in the littoral drift if at least 60% of the dredged material is sand;

(5) Habitat restoration projects; and

(6) Projects involving amounts of dredged material that do not exceed 10,000 cubic yards, including material associated with dewatering operations related to dredging operations.

Under the bill, the Director of Environmental Protection may consult with the Director of Natural Resources for purposes of the above provisions. The bill specifies that the Director of Environmental Protection has exclusive authority to approve the location in which dredged material is proposed to be deposited. The Director of Environmental Protection may adopt necessary rules.

Finally, the bill requires the Director of Environmental Protection, in order to ensure the regular and orderly maintenance of federal navigation channels and ports in Ohio, to endeavor to work with the U.S. Army Corps of Engineers on a dredging plan

that focuses on long-term planning for the disposition of dredged material consistent with the bill's requirements.

## Enforcement of Water Pollution Control Law

(R.C. 6111.99)

The bill increases criminal penalties for certain violations of the Water Pollution Control Law and establishes culpable mental states regarding certain violations as follows:

| Type of violation | The bill | Current law |
|---|---|---|
| Violations of provisions regarding prohibited acts of pollution, compliance with effluent standards, and right of entry for enforcement purposes. | A purposeful violation is a felony punishable by a fine of not more than $25,000, imprisonment for not more than four years, or both.<br><br>Each day of violation is a separate offense.<br><br>A knowing violation is a misdemeanor punishable by a fine of not more than $10,000, imprisonment for not more than one year, or both.<br><br>Each day of violation is a separate offense. | A violation is punishable by a fine of not more than $25,000, imprisonment for not more than one year, or both.* |
| Violations of provisions regarding submission of false information. | A purposeful violation is a felony punishable by a fine of not more than $25,000, imprisonment for not more than four years, or both.<br><br>Each day of violation is a separate offense.<br><br>A knowing violation is a misdemeanor punishable by a fine of not more than $10,000, imprisonment for not more than one year, or both.<br><br>Each day of violation is a separate offense. | A violation is punishable by a fine of not more than $25,000.* |

| Type of violation | The bill | Current law |
|---|---|---|
| Violations of orders, rules, or terms or conditions of a permit. | A purposeful violation is a felony punishable by a fine of not more than $25,000, imprisonment for not more than four years, or both.<br><br>Each day of violation is a separate offense.<br><br>A knowing violation is a misdemeanor punishable by a fine of not more than $10,000, imprisonment for not more than one year, or both.<br><br>Each day of violation is a separate offense. | A violation is punishable by: a fine of not more than $25,000, imprisonment for not more than one year, or both.* |
| Violations of provisions regarding waste minimization and treatment plans and fees per ton of waste. | A knowing violation is a misdemeanor punishable by a fine of not more than $10,000, imprisonment for not more than one year, or both.<br><br>Each day of violation is a separate offense. | A violation is punishable by a fine of not more than $10,000.* |
| Violations of provision requiring approval for plans for disposal of industrial waste. | A knowing violation is a misdemeanor punishable by: a fine of not more than $10,000, imprisonment for not more than one year, or both.<br><br>Each day of violation is a separate offense. | A violation is punishable by a fine of not more than $500.* |
| Violations of provision requiring approval of plans for installation of or changes in sewerage or treatment works. | A violation is punishable by a fine of not more than $10,000.*<br><br>Each day of violation is a separate offense. | A violation is punishable by a fine of not more than $100.* |

* No culpable mental state is specified. The default culpable mental state is recklessness.

The bill also provides that if a person is convicted of or pleads guilty to a violation of any provision of the Water Pollution Control Law, the court imposing the sentence may order the person to reimburse the state agency or a political subdivision for any actual response costs incurred in responding to the violation, including the cost of restoring affected aquatic resources or otherwise compensating for adverse impact to aquatic resources directly caused by the violation, but not including costs of prosecution.

## Air Pollution Control Law technical correction

(R.C. 3704.04)

The bill corrects an erroneous cross-reference.

# OHIO FACILITIES CONSTRUCTION COMMISSION

## Declaration of public exigency

- Expands the authority of the Executive Director of the Ohio Facilities Construction Commission (OFCC) to declare a public exigency regarding any public works.

- Allows the OFCC Executive Director to declare a public exigency upon the request of a state institution of higher education or any other state instrumentality.

## Cultural facilities cooperative use agreements

- Renames a "cooperative contract" under the Public Works Law a "cooperative use agreement."

- Specifies, when an Ohio sports facility is financed in part by state bonds, that construction services must be provided on the state's behalf or at the direction of the governmental agency or nonprofit corporation that will own or manage the facility.

- Specifies that the construction services must be specified in a cooperative use agreement between the OFCC and the governmental agency or nonprofit corporation.

- Exempts the cooperative use agreement and actions taken under it from Public Works and Public Improvements Laws, but subjects them to phases of those laws relating to cultural facilities and the use of domestic steel and the Prevailing Wage Law.

- Specifies that a cooperative use agreement must have a provision requiring a cultural project to be completed and ready to support culture, rather than completed and ready for full occupancy.

- Expands the definition of "governmental agency" in the public works law to include state agencies and state institutions of higher education.

## State-financed historical facilities

- Specifies that a cultural organization financing a historical facility project with state money may use not more than 3% of the money to pay its cost of administering the project.

## Surety bonds

- Transfers from the Director of Administrative Services to the Executive Director authority to adopt rules regarding certain surety bonds.

## Electronically filed bids

- Allows a public bid guaranty to be provided by means of an electronic verification and security system.

- Limits the ability to broadcast a public bid opening by electronic means to only bids that are filed electronically.

- Eliminates the requirement that submitted bids be tabulated on duplicate sheets.

## Energy and water conservation

- Clarifies that the Executive Director has authority to enter into energy or water conservation contracts on the Executive Director's own initiative or at the request of a state agency.

## School Facilities Commission

- Provides that the project scope and basic costs established by the School Facilities Commission at the request of a school district seeking new conditional approval of a classroom facilities project, after a lapse of a previous conditional approval, are valid for 13 months, rather than one year as prescribed under current law.

- Permits funds appropriated to the Commission for classroom facilities projects that were not spent or encumbered during the first year of each biennium, and which are greater than half of such appropriations for the entire biennium, to be used for various Commission programs.

- Abolishes the requirement that the Commission biennially report to the General Assembly regarding the expenditure of funds made by the Commission.

- Requires the Commission, in consultation with the Office of Budget and Management, to prepare a study of the impacts, benefits, and risks associated with a school district funding its share of the cost of a school facilities project under any of the Commission's programs with cash-on-hand resulting from a lease-purchase agreement.

- Eliminates the Education Facilities Trust Fund and the Ohio School Facilities Commission Fund.

## Declaration of public exigency

(R.C. 123.10)

The bill expands the authority of the Executive Director of the Ohio Facilities Construction Commission (OFCC) to declare a public exigency. Under current law, the Executive Director may declare a public exigency when an injury or obstruction occurs in any public work of the state maintained by the Director of Administrative Services. The bill removes the limitation "maintained by the Director of Administrative Services" to allow the Executive Director to declare a public exigency regarding any public work of the state.

Current law allows the Executive Director to declare a public exigency on the Executive Director's own initiative or upon the request of the director of a state agency. The bill expands this authorization to allow the Executive Director also to declare a public exigency upon the request of a state institution of higher education or any other state instrumentality.

## Cultural facilities cooperative use agreements

(R.C. 123.28 and 123.281)

Ohio's Public Works Law defines "cooperative contract" to mean a contract between the OFCC and a cultural organization providing the terms and conditions of the cooperative use of an Ohio cultural facility. The bill changes the name "cooperative contract" to "cooperative use agreement." The bill also expands the meaning of "governmental agency," as it is used in the Public Works Law, to include a state agency and state institutions of higher education.

Instead of the current requirement that a cooperative use agreement include a provision specifying that a project can be completed and ready "for full occupancy" without exceeding appropriated funds, the bill requires the specification to be that the project can be completed and ready "to support culture" without exceeding appropriated funds.

Current law provides that a cooperative use agreement generally is not subject to Public Works Law. The bill subjects a cooperative use agreement to provisions of the Public Works Law regarding cultural facilities and the use of domestic steel.

The bill provides that when an Ohio sports facility is financed in part by state bonds, construction services must be provided on the state's behalf or at the direction of the governmental agency or nonprofit corporation that will own or manage the facility. The construction services must be specified in a cooperative use agreement between the

OFCC and the governmental agency or nonprofit corporation. The cooperative use agreement, and actions taken under it, are exempt from Public Works and Public Improvements Laws, but are subject to provisions of those laws relating to cultural facilities and the use of domestic steel and the Prevailing Wage Law.

## State-financed historical facilities

(R.C. 123.281)

The bill specifies that a cultural organization financing a historical facility project with state money may not use more than 3% of the money to pay the organization's cost of administering the project.

Current law authorizes cultural organizations to enter into agreements with the OFCC whereby the organization provides construction services on behalf of the state to construct, partly with state funds, a "state historical facility," which is a site or facility used for cultural activities and that is created, operated, and maintained by the Ohio Historical Society (OHS), owned at least partly by the state or the OHS, and managed by or under contract with the OFCC.

To the extent the state funds are raised by state-issued bonds, the use of the bond proceeds must comply with certain federal restrictions if the bonds are to qualify bondholders for federal income tax exemption on the interest. Noncompliance jeopardizes the bonds' tax-exempt status and invokes the federal anti-arbitrage "rebate" requirements, causing the state to have to pay the federal government the extra yield the state receives from using the bond proceeds for purposes other than the governmental purposes that qualify the bonds for tax exemption. The purpose of the anti-arbitrage rebate provision is to discourage state and local governments from using federally tax exempt bond issuances to raise money that is used to invest in higher-yielding securities, thereby profiting from the spread between the higher yield and the government's interest cost (i.e., arbitrage). One of the federal anti-arbitrage restrictions limits, in effect, the portion of bond proceeds that may be used to pay working capital (i.e., operating) expenditures by counting a limited amount of those expenditures among the legitimate public purpose uses of the bond proceeds. Working capital expenditures in excess of that limit are considered not to be for the public purpose and therefore could invoke the rebate requirement.[86]

[86] Internal Revenue Code sec. 148. 26 Code of Fed. Regs. 1.148-6.

## Surety bond authority

(R.C. 9.333 and 153.70)

The bill transfers from the Director of Administrative Services to the Executive Director the authority to adopt rules regarding surety bonds provided by a construction manager at risk, or by a design-build firm, to a public authority.

## Electronically filed bids

(R.C. 153.08)

The bill modifies provisions of the Ohio Public Improvements Law regarding the competitive bidding process for the selection of a contractor for the construction of buildings or structures for the use of the state or any institution supported by the state. Currently, a public bid opening may be broadcast by electronic means. The bill limits this to allow only bids filed electronically to be broadcast by electronic means. Current law requires all electronically filed bids to be made available to the relevant public authority after the public bid opening. The bill provides that this may be achieved by means of an electronic verification and security system established under rules adopted by OFCC under the Administrative Procedure Act. Finally, the bill removes a current requirement that all submitted bids be tabulated upon duplicate sheets.

## Contracts for energy and water conservation

(R.C. 156.01, 156.02, and 156.04)

The bill clarifies that the Executive Director has authority to enter into energy or water conservation contracts on the Executive Director's own initiative or at the request of a state agency. Continuing law authorizes the Executive Director to contract with various entities for a report containing an analysis and recommendations pertaining to the implementation of energy or water conservation measures, and to enter into an installment payment contract for the implementation of energy or water saving measures.

The bill also replaces references to the Department and Director of Administrative Services with references to the Executive Director who replaced the Department and Director in previous legislation.

## School Facilities Commission

### Background on School Facilities Commission programs

As an independent agency of the OFCC, the School Facilities Commission (SFC) administers several programs that provide state assistance to school districts and community schools in constructing classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Other smaller programs address the particular needs of certain types of districts and schools but most assistance continues to be based on relative wealth.

### Lapse in project funding for Classroom Facilities Assistance Program

(R.C. 3318.054)

When a district is eligible for CFAP funding, it must secure local funding to pay its portion of the project cost, usually by seeking voter approval for a bond issue and an accompanying property tax levy to pay its share. For a district for which state funding lapses due to failed voter approval of local funding, the law prescribes procedures for a board to follow if it wishes to revive its project after such a lapse. To do so, the board must request that School Facilities Commission set a new scope and estimated cost for the project based on the district's current wealth percentile and tax valuation. The new scope and estimated costs are valid for one year.

The bill extends that validity of the scope and estimated costs to 13 months.

### Reuse of unspent funds

(R.C. 3318.024)

In addition to CFAP as under current law, the bill permits funds appropriated to the SFC for classroom facilities projects that were not spent or encumbered during the first year of each biennium, and which are greater than half of such appropriations for the entire biennium, to be used for the following:

(1) Funding for school districts that voluntarily develop joint use or other cooperative agreements that significantly improve the efficiency of the use of facility space within or between districts;

(2) The School Building Emergency Assistance Program;

(3) Early assistance to a school district that has entered into an Expedited Local Partnership agreement;

(4) The Exceptional Needs School Assistance Program, including assistance for the relocation or replacement of facilities required as a result of any contamination of air, soil, or water that impacts the occupants of the facility;

(5) The Accelerated Urban School Building Assistance Program; and

(6) The Vocational School Facilities Program.

### Reporting of classroom facilities project expenditures

(R.C. 3318.19 (repealed); conforming change in R.C. 3318.01)

The bill eliminates a requirement for the SFC to biennially report to the General Assembly the details of the SFC's expenditure of funds. This report contains a detailed statement of classroom facilities acquired in whole or in part by the state and sold to school districts, and also contains information regarding the nature and progress of the program.

### Funding projects with lease-purchase agreements

(Section 285.80)

The bill requires the SFC, in consultation with the Office of Budget and Management, to prepare a study of the impacts, benefits, and risks associated with a school district funding its share of the cost of a school facilities project under any of the SFC's programs with cash-on-hand resulting from a lease-purchase agreement entered into under current law, which agreement itself was not subject to voter approval. The study must be completed not later than nine months after the bill's effective date and must be submitted to the Governor and the General Assembly. Except in limited circumstances specified by the bill and with approval of the SFC, until the study is completed, the bill prohibits a school district from funding its share of the cost of a project with cash-on-hand resulting from an unvoted lease-purchase agreement. (With Commission approval, a district may use such proceeds to pay its share of project cost overruns, locally funded initiatives (nonstate-funded portions of a project), and district costs under the Expedited Local Partnership programs.)

Under current law, the board of education of a school district, the governing board of an educational service center, or the governing authority of a community school may acquire buildings or building improvements and furnishings by a lease-

purchase agreement. The agreement must provide for a series of not more than 30 one-year renewable lease terms, at the end of which series title to the property is vested in the district, ESC, or community school, if all of its obligations under the agreement have been satisfied.[87]

### Education Facilities Trust Fund

(Repealed R.C. 183.26; conforming changes in R.C. 3318.33 and 3318.40)

The bill eliminates the Education Facilities Trust Fund, which consists of a portion of the state's tobacco master settlement agreement proceeds to be used to pay costs of constructing, renovating, or repairing primary and secondary schools.

### Ohio School Facilities Commission Fund

(Repealed R.C. 3318.33; conforming changes in R.C. 3318.02 and 3318.30)

The bill eliminates the Ohio School Facilities Commission Fund, which consists of (1) transfers of moneys authorized by the General Assembly, (2) investment earnings on the Public School Building Fund, Education Facilities Trust Fund, and School Building Program Assistance Fund, and (3) revenues received by the SFC to be used to pay for commission operations.

[87] R.C. 3313.375, not in the bill.

# DEPARTMENT OF HEALTH

## Smoking related provisions

### School smoking prohibitions

- Extends to all individuals, the prohibition from smoking, using tobacco, or possessing any substance that contains tobacco in any area under the control of a school district or an educational service center (ESC) or at any school-supervised activity, and expands the prohibition to include outdoor facilities.

- Prohibits pupils from using nicotine or possessing any substance containing nicotine in any area under the control of a school district or ESC, including any outdoor facilities, or at any school-supervised activity.

### Food service operation license

- Authorizes a food service operation licensor to revoke a license when the license holder has acquired, within a period of two years, three or more violations for failure to enforce or observe smoking prohibitions, or because the license holder has failed to pay an associated civil fine of more than $1,000.

- Specifies that a decision to revoke a food service operation license may be appealed.

### Violation of smoking prohibitions

- Requires a proprietor of a public place or place of employment to permit an officer or employee of the Ohio Department of Health (ODH) prompt entry to investigate complaints against the proprietor regarding smoking.

- Requires ODH to adopt rules to prescribe fines for violations committed by retail tobacco stores regarding filings with ODH for exemption from smoking prohibitions.

- Specifies that such a violation is not included in the progressive fine schedule created by ODH.

### Policy for state institutions of higher education

- Requires the Department of Higher Education and ODH to develop, not later than six months after the effective date of the provision, a model policy regarding the use of tobacco at state institutions of higher education.

- Requires state institutions of higher education to adopt, not later than 12 months after the model policy is developed, policies that are not less stringent than the model policy.

### State-level review of child deaths

- Requires the ODH Director to establish guidelines for the state-level review of deaths of children under 18 years of age.

- Allows the ODH Director to access certain information when reviewing a death, provides for immunity for civil liability for persons participating in a review, and prohibits the dissemination of confidential information gathered during a review.

### Distribution of money from the "Choose Life" Fund

- Authorizes the ODH Director to distribute money in the "Choose Life" Fund that is allocated to a county to an eligible organization located in a noncontiguous county so long as:

  --No eligible organization located within the county to which the money is allocated or a contiguous county has applied for the money; and

  --The eligible organization from the noncontiguous county provides services within the county to which money is allocated.

### Public Health Emergency Preparedness Fund

- Creates in the state treasury the Public Health Emergency Preparedness Fund, and requires ODH to use money in the Fund to pay expenses related to public health emergency preparedness and response activities.

### Physician and Dentist Loan Repayment programs

- Modifies the limit on the amount of state funds that may be repaid on behalf of a physician participating in the Physician Loan Repayment Program or a dentist participating in the Dentist Loan Repayment Program.

- Repeals provisions requiring the Physician Loan Repayment Advisory Board and Dentist Loan Repayment Advisory Board to submit annual reports.

- Includes providing clinical education in the teaching activities that count towards the service hours of a participating dentist.

## Signature on vital records

- Repeals a provision that requires birth, fetal death, and death records and certificates be printed legibly or typewritten in unfading black ink and prohibits facsimile signatures.

- Permits signatures on records, certificates, and reports authorized under the Vital Statistics Law to be made by photographic, electronic, or other means prescribed by the ODH Director.

## Immunizations

- Specifies that, beginning January 1, 2016, ODH will no longer provide GRF-funded vaccines from appropriation line item 440418, Immunizations, except in specified circumstances.

## WIC vendor contracts

- Requires ODH to process an application for a Women, Infants, and Children (WIC) vendor contract within 45 days if the applicant already has a WIC vendor contract.

## Population Health Planning and Hospital Benefit Advisory Workgroup

- Creates the Population Health Planning and Hospital Benefit Advisory Workgroup to collaborate and make recommendations on population health planning, health needs assessments, health improvement plans, forming health and wellness trusts, and hospital community benefit funding.

- Requires the Workgroup to submit a report of its recommendations to the General Assembly not later than December 31, 2015.

## Smoking related provisions

### School smoking prohibitions

(R.C. 3313.751)

The bill extends to all individuals, instead of just students as under current law, the prohibition from smoking, using tobacco, or possessing any substance derived from tobacco in any area under the control of a school district or an educational service center (ESC) or at any school-supervised activity. The bill also expands the prohibition to include outdoor facilities and to prohibit students from using nicotine or possessing any substance containing nicotine.

The board of education of a school district and ESC must adopt a policy providing for enforcement of the smoking and tobacco-use prohibition against all persons. And the board must adopt a policy establishing disciplinary measures for a violation of the smoking and tobacco-use prohibition, presumably by students.

For purposes of these provisions, to "smoke" means to burn any substance containing tobacco, including a lighted cigarette, cigar, or pipe, or to burn a clove cigarette. To "use tobacco" means to chew or maintain any substance containing tobacco, including smokeless tobacco, or any substance derived from tobacco, in the mouth to derive the effects of tobacco. And to "use nicotine" means to maintain any substance containing nicotine or a similar substance intended for human consumption or to consume nicotine or a similar substance, whether by means of smoking, heating, chewing, absorbing, dissolving, or ingesting by any other means.

The term "use nicotine" does not include use of nicotine replacement therapy products. These products are smoking or nicotine cessation products that have been approved by the U.S. Food and Drug Administration as nicotine replacement therapy products.

### Food service operation license

(R.C. 3717.49)

The bill authorizes a licensor of food service operations to revoke a license upon determining that the license holder has acquired, within a period of two years, three or more violations for failure to enforce or observe certain smoking prohibitions. The licensor also is authorized to revoke a license when the licensor determines that the license holder has failed to pay a civil fine greater than $1,000 associated with such a violation. Only violations or fines that occur after the effective date of these provisions are subject to the provisions. The bill specifies that the license holder may appeal a revocation under the appeals process in continuing law.

### Violation of smoking prohibitions

(R.C. 3794.06 and 3794.07)

The bill requires proprietors of public places or places of employment to permit prompt entry of an officer or employee of the Ohio Department of Health (ODH) or its designee to investigate complaints made against the proprietor regarding smoking prohibitions. A proprietor's failure to permit prompt entry is a violation of the Non-Smoking Law.

The bill requires ODH to adopt rules to prescribe fines for violations committed by retail tobacco stores regarding filings with ODH for an exemption from the smoking prohibitions. Continuing law requires ODH to establish a schedule of fines for violations of smoking laws. The schedule of fines must be progressive based on the number of prior violations by a proprietor. The bill exempts fines charged for violations regarding filings with ODH for the retail tobacco store exemption from this progressive schedule of fines.

### Policy for state institutions of higher education

(Section 733.10)

The bill requires the Department of Higher Education and ODH to develop, not later than six months after the effective date of the provision, a model policy regarding the use of tobacco at state institutions of higher education. State institutions of higher education must adopt, not later than 12 months after the model policy is developed, policies that are not less stringent than the model policy.

## State-level review of child deaths

(R.C. 121.22, 149.43, 2151.421, 3701.045, 3701.70, 3701.701, 3701.702, 3701.703, and 4731.22)

### ODH Director to establish guidelines

The bill requires the ODH Director to establish guidelines for a state-level review of the deaths of children under 18 years of age who, at the time of death, were Ohio residents. The bill largely parallels current law provisions regulating county and regional child fatality review boards. Existing law, unchanged by the bill, permits a county, or group of counties, to establish a county or regional child fatality review board to review the deaths of children under 18 years of age who were residents of the county or region at the time of death. Current law also requires that each county or regional board report its findings to ODH.

### Purpose

The bill specifies that the purpose of a review of child death conducted by the Director pursuant to the guidelines is to decrease the incidence of preventable child deaths by doing all of the following:

(1) Promoting cooperation, collaboration, and communication between all groups, professions, agencies, or entities that serve families and children;

(2) Maintaining a comprehensive database of child deaths that occur in Ohio in order to develop an understanding of the causes and incidence of those deaths;

(3) Recommending and developing plans for implementing state and local service and program changes and changes to the groups, professions, agencies, or entities that serve families and children that prevent child deaths.

### No review during pending investigation

The bill specifies that, under the guidelines, the Director may not conduct a review of the death of a child while an investigation of the child's death or prosecution of a person for causing the death is pending, unless the prosecuting attorney agrees to allow the review. Moreover, the bill provides that a person, entity, law enforcement agency, or prosecuting attorney may not provide any information regarding the death of a child to Director 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. The bill requires that, on the Director's request, a law enforcement agency or prosecuting attorney, on the conclusion of an investigation or prosecution, notify the ODH Director of the conclusion.

### Information provided to the Director

The bill requires that, on the request of the Director, any individual, public children services agency, private child placing agency, or agency that provides services specifically to individuals or families, law enforcement agency, or other public or private entity that provided services to a child whose death is being reviewed by the Director pursuant to the guidelines, submit a summary sheet of information to the Director.

In the case of a health care entity, the sheet must contain only information available and reasonably drawn from the child's medical record created by the entity. With respect to a child one year of age or younger whose death is being reviewed by the Director, on the request of the Director, a health care entity that provided services to the child's mother must submit to the Director a summary sheet of information available and reasonably drawn from the mother's medical record created by the health care entity. Before submitting the sheet, the entity must attempt to obtain the mother's consent to do so, but a lack of consent does not preclude the entity from submitting the sheet.

In the case of any other entity or individual, the sheet must contain only information available and reasonably drawn from any record involving the child that the individual or entity develops. In addition, the bill provides that, on the request of

the Director, an individual or entity may, at the individual's or entity's discretion, make any additional information, documents, or reports available to the Director.

### Access to certain confidential information

The bill allows the Director, when conducting a review pursuant to the guidelines, access to any confidential report of child abuse or neglect that was provided to law enforcement or a public children services agency. The bill also requires that the Director preserve the confidentiality of such a report.

### Use of information obtained by the Director

The bill provides that all of the following are confidential and may be used by the Director or a person participating in the review of a child's death pursuant to the guidelines only in the exercise of ODH's proper functions:

(1) Any information, document, or report presented to the Director;

(2) All statements made by those participating in a review;

(3) All work products of the Director.

Under the bill, a person who knowingly permits or encourages the unauthorized dissemination of confidential information is guilty of a misdemeanor of the second degree.

### Civil immunity

Under the bill, an individual or public or private entity providing information, documents, or reports to the Director 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, documents, or reports to the Director. In addition, the bill provides that each person participating in the review is immune from civil liability for injury, death, or loss to person or property that might otherwise be incurred or imposed as a result of the person's participation.

### Open meetings and public records law

Current law provides that, with certain exceptions, "all meetings of any public body are declared to be public meetings open to the public at all times." At present, the exceptions include meetings of a county or regional child fatality review board. Under the bill, meetings related to a review of a child's death by the Director are not meetings that must be open to the public at all times.

Existing law also requires that, upon request, records kept by any public office be promptly prepared and made available for inspection. The bill specifies that, in the case of a review of a child's death by the Director, all of the following are not public records:

(1) Records provided to the Director;

(2) Statements made by persons participating in the Director's review;

(3) All work products of the Director.

Currently, the records, statements, and work products of a county or regional child fatality review board are not public records.

## Distribution of money from the "Choose Life" Fund

(R.C. 3701.65)

The bill allows the ODH Director to distribute money from the "Choose Life" Fund that has been allocated to a county to an eligible organization within a noncontiguous county, so long as the organization provides services in the county for which the funds have been allocated and no eligible organization located within that county or a contiguous county applies for the money. The existing "Choose Life" Fund consists of contributions that are paid to the Registrar of Motor Vehicles by applicants who voluntarily elect to obtain "choose life" license plates. Money from the Fund is allocated to each county in proportion to the number of "choose life" license plates issued during the preceding year to vehicles registered in the county.

Under current law, the funds allocated for each county must be equally distributed to eligible organizations within the county that apply for funding. However, if no eligible organization located within the county applies, the funds may be allocated to eligible organizations located in contiguous counties. An eligible organization is a nonprofit organization that meets all of the following requirements:

(1) Is a private, nonprofit organization;

(2) Is committed to counseling pregnant women about the option of adoption;

(3) Provides services to pregnant women who are planning to place their children for adoption, including counseling and meeting the material needs of the women;

(4) Does not charge women for any services received;

(5) Is not involved or associated with any abortion activities, including counseling for or referrals to abortion clinics, providing medical abortion-related procedures, or pro-abortion advertising; and

(6) Does not discriminate in its provision of any services on the basis of race, religion, color, age, marital status, national origin, handicap, gender, or age.

## Public Health Emergency Preparedness Fund

(R.C. 3701.834; Section 289.50)

The bill creates the Public Health Emergency Preparedness Fund in the state treasury. All federal funds that ODH receives to conduct public health emergency preparedness and response activities must be credited to the Fund. The bill requires ODH to use money in the Fund to pay expenses related to public health emergency preparedness and response activities.

## Physician and Dentist Loan Repayment programs

### Limit on state funds

(R.C. 3702.74 and 3702.91)

The bill makes various changes to the Physician Loan Repayment Program and the Dentist Loan Repayment Program, which offer funds to repay some or all of the educational loans of physicians and dentists who agree to provide primary care or dental services in health resource shortage areas.

The bill modifies the limit on the amount of state funds that are used for repayment made on behalf of a participating physician or dentist whose repayment also includes federal funds. Under current law, the amount of state funds included in a participant's repayment must equal the amount of federal funds that are included in the repayment if the source of the federal funds is the Bureau of Clinician Recruitment and Services (BCRS) in the U.S. Department of Health and Human Services. The bill eliminates the provision that applies the limit only to those participants whose repayment includes funds from the BCRS. Thus, under the bill, if a participant's repayment includes funds from any federal source, the amount of state funds included in a participant's repayment must equal the amount of those federal funds.

### Annual reports

(R.C. 3702.80 and 3702.94 (repealed))

The bill repeals requirements that the Physician Loan Repayment Advisory Board and Dental Loan Repayment Advisory Board each submit to the Governor and the General Assembly an annual report describing the operations of the programs.

### Teaching activities

(R.C. 3702.91(A))

With respect to the Dental Loan Repayment Program, current law permits teaching activities to count as service hours only if they involve supervising dental students and dental residents at the service site. The bill provides instead that teaching activities means providing clinical education to dental students and residents and dental health profession students at the service site.

## Signatures on vital records

(R.C. 3705.08)

The bill changes current law requirements for signatures on vital records to permit signatures to be made by electronic means. Under current law, all birth, fetal death, and death records and certificates must be printed legibly or typewritten in unfading black ink and facsimile signatures are prohibited. The bill repeals those provisions and expressly states that required signatures may be filed and registered by means prescribed by the ODH Director, including by electronic means.

## Immunizations

(Section 289.30)

The bill specifies that, beginning January 1, 2016, ODH will no longer provide general revenue funded (GRF-funded) vaccines from appropriation line item 440418, Immunizations. Local health departments and other local providers who receive GRF funding for vaccines from ODH before January 1, 2016 must instead bill private insurance companies, as appropriate, to recover the costs of providing and administering vaccines. The bill, however, allows ODH to continue to provide GRF-funded vaccines in the following circumstances: (1) to cover uninsured adults, (2) to cover individuals on grandfathered private insurance plans that do not cover vaccines, and (3) in certain exceptional cases determined by the ODH Director.

## WIC vendor contracts

(Section 289.40)

In Ohio, ODH administers the federal Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The act requires that during fiscal years 2016 and 2017 ODH review and process a WIC vendor contract application not later than 45 days after it is received if on that date the applicant is a WIC-contracted vendor and meets all of the following requirements:

(1) Submits a complete WIC vendor application with all required documents and information;

(2) Passes the required unannounced preauthorization visit within 45 days of submitting a complete application;

(3) Completes the required in-person training within 45 days of submitting the complete application.

ODH must deny the application if the applicant fails to meet all of the requirements. After an application has been denied, the applicant may reapply for a contract to act as a WIC vendor during the contracting cycle of the applicant's WIC region.

## Population Health Planning and Hospital Benefit Advisory Workgroup

(Section 289.60)

The bill creates the Population Health Planning and Hospital Benefit Advisory Workgroup. The Workgroup is required to collaborate regarding the development of recommendations for aligning population health planning and nonprofit hospital community benefit expectations, and to make several recommendations. The recommendations include:

- Aligning population health planning among state, regional, and local health assessments and plans;

- Coordinating nonprofit hospitals' community health needs assessments and community health improvement plan activities with regional or community health needs assessments and community health improvement plan activities;

- Establishing regional community health improvement plans that meet the requirements for accreditation of participant health districts by the Public Health Accreditation Board;

- Forming regional community health and wellness trusts that have advisory boards that include representatives of health districts, nonprofit hospitals, and the community;

- Designating a portion of each nonprofit hospital's community benefit to fund regional population health priorities in order to be eligible for state tax benefits.

The Workgroup must submit a report of its recommendations to the General Assembly not later than December 31, 2015. After submitting the report, the Workgroup ceases to exist.

The Workgroup includes 22 members: the Executive Director of the Office of Health Transformation or a designee; the ODH Director or a designee; the Medicaid Director or a designee; the Tax Commissioner or a designee; a majority party member and a minority party member of the House of Representatives; a majority party member and a minority party member of the Senate; one representative each from the Ohio Hospital Association, the Association of Ohio Health Commissioners, Inc., and the Ohio Association of Community Health Centers; three representatives of health policy and research institutes or associations; three representatives of local boards of health; three representatives of nonprofit hospitals or nonprofit hospital systems; and two other individuals selected by the Executive Director of the Office of Health Transformation. The bill requires members to be appointed not later than fifteen days after the bill's effective date, and any vacancies must be filled in the same manner as the original appointments. Members cannot receive compensation or reimbursement for expenses incurred while serving on the Workgroup, but may receive compensation or benefits earned from their regular employment.

The bill requires the Executive Director of the Office of Health Transformation or the Executive Director's designee to serve as the chairperson. Staff and other support services are to be provided by ODH.

## DEPARTMENT OF HIGHER EDUCATION (BOARD OF REGENTS)

- Renames the office of the Board of Regents as the "Department of Higher Education."

- Renames the Chancellor of the Board of Regents as the "Director of Higher Education."

- Allows a community college, technical college, or state community college to offer bachelor's degree programs, upon receiving approval from the Director of Higher Education, in subject areas that are not the same or substantially similar as (1) those currently offered by any state university within 30 miles of the college or (2) those that a state university plans to offer within a year of the college's application.

- Requires the Director to conduct two studies, one not later than December 31, 2018, and one not later than December 31, 2020, to determine the effects of bachelor's programs at two-year colleges on fulfilling the needs of students and local industry and to submit those studies to the General Assembly and Governor.

- For fiscal year 2016, limits the increases of in-state undergraduate instructional and general fees for:

- (1) State universities and the Northeast Ohio Medical University to 2% or $93, whichever is higher, over the previous year;

- (2) Regional campuses to 2% or $116, whichever is higher, over the previous year; and

- (3) Community colleges, state community colleges, and technical colleges to 2% or $83, whichever is higher, over the previous year.

- For fiscal year 2017, prohibits an increase in in-state undergraduate instructional and general fees for all state institutions of higher education.

- Qualifies a veteran for in-state tuition at a state institution of higher education, if the veteran (1) is receiving federal veterans' education benefits under the G.I. Bill, (2) served on active duty for at least 90 days, (3) enrolls within three years of discharge from active duty, and (4) resides in the state as of the first day of a term of enrollment.

- Qualifies a veteran's spouse or dependent for in-state tuition at a state institution of higher education, if the spouse or dependent (1) is receiving transferred federal veterans' education benefits under the G.I. Bill from a veteran who served on active

duty for at least 90 days, (2) enrolls within three years of the veteran's discharge from active duty, and (3) resides in the state as of the first day of a term of enrollment.

- Authorizes the Director to set statewide entry standards for teacher preparation programs offered at institutions of higher education.

- Moves, from December 31 to February 15, the annual deadline for the Director to report to the Governor and the General Assembly the aggregate academic growth data for students of graduates of teacher preparation programs.

- Eliminates a requirement that the Director annually (1) submit to the Governor and the General Assembly a report including a description of advanced standing courses offered by public and chartered nonpublic schools and (2) post the information on the Director's website.

- Requires each state institution of higher education, not later than January 1, 2016, and every five years thereafter on January 1, to evaluate, based on enrollment and student performance, all courses and programs the institution offers.

- Eliminates the requirement that the Ohio University College of Osteopathic Medicine to have an advisory committee.

- Makes changes regarding the administration of scholarship program reserve funds.

## Board of Regents name change

(R.C. 121.03, 125.901, 1713.02, 1713.03, 1713.031, 1713.04, 1713.05, 1713.06, 1713.09, 1713.25, 3301.079, 3313.603, 3313.902, 3319.22, 3319.223, 3319.61, 3333.01, 3333.011, 3333.012 (renumbered from 3333.031), 3333.021, 3333.03, 3333.032, 3333.04, 3333.041, 3333.0414, 3333.042, 3333.043, 3333.044, 3333.045, 3333.047, 3333.048, 3333.049, 3333.0410, 3333.0411, 3333.0412, 3333.0413, 3333.05, 3333.06, 3333.07, 3333.071, 3333.08, 3333.09, 3333.10, 3333.11, 3333.12, 3333.121, 3333.122, 3333.123, 3333.124, 3333.13, 3333.14, 3333.15, 3333.16, 3333.161, 3333.162, 3333.163, 3333.164, 3333.17, 3333.171, 3333.18, 3333.19, 3333.20, 3333.21, 3333.22, 3333.23, 3333.25, 3333.26, 3333.28, 3333.29, 3333.30, 3333.31, 3333.33, 3333.34, 3333.342, 3333.35, 3333.36, 3333.37, 3333.372, 3333.373, 3333.374, 3333.375, 3333.39, 3333.391, 3333.392, 3333.43, 3333.44, 3333.50, 3333.55, 3333.58, 3333.59, 3333.61, 3333.611, 3333.612, 3333.613, 3333.62, 3333.63, 3333.64, 3333.65, 3333.66, 3333.67, 3333.68, 3333.69, 3333.71, 3333.72, 3333.73, 3333.731, 3333.74, 3333.75, 3333.76, 3333.77, 3333.78, 3333.79, 3333.82, 3333.83, 3333.84, 3333.86, 3333.87, 3333.90, 3333.91, 3334.08, 3345.022, 3345.05, 3345.06, 3345.061, 3345.32, 3345.35, 3345.421, 3345.45,

3345.48, 3345.50, 3345.51, 3345.54, 3345.692, 3345.70, 3345.72, 3345.73, 3345.74, 3345.75, 3345.76, 3345.81, 3354.01, 3354.071, 3354.09, 3357.01, 3357.071, 3357.09, 3357.19, 3358.071, 3365.02, 3365.07, 3365.15, 4763.01, 5104.30, 5709.93, 5747.01, 5751.20, 5910.08, and 5919.341; Sections 263.210, 263.340, 369.150, 369.170, 369.380, 369.550, and 733.10)

The bill renames the administrative office of the Ohio Board of Regents as the "Department of Higher Education" and the Chancellor of the Board of Regents as the "Director of Higher Education." The bill maintains the current law that the Board of Regents acts as an advisory board to the Director.

## Bachelor's degree programs at two-year colleges

(R.C. 3333.0414, 3354.071, 3357.071, and 3358.071; conforming changes in R.C. 3354.01, 3354.09, 3357.01, 3357.09, 3357.19, 3358.01, and 3358.08)

### Approval for two-year colleges to offer bachelor's degree programs

The bill permits the board of trustees of any community college, technical college, or state community college to apply to the Director of Higher Education for approval to offer bachelor's degree programs in subject areas that are not either of the following:

(1) The same or substantially similar subject areas currently offered at any state university, either on its main campus or a regional campus, or university branch, that is within 30 miles of the main campus of the college;

(2) The same or substantially similar subject areas that a state university plans to offer on its main campus, regional campus, or university branch within one year of the date the college submits its application for approval.

Before granting approval to a program, the Director must determine and certify that there is a demonstrated need for such a program in the geographic area of the community college, technical college, or state community college. If the Director grants approval, the college may offer such programs and award the appropriate bachelor's degrees to students upon completion of the programs.

### Study of bachelor's degree programs offered by two-year colleges

The bill requires the Director to conduct and complete two studies of the bachelor's degree programs approved and offered by community colleges, technical colleges, and state community colleges under the bill's provisions to determine the effects of the programs on fulfilling the needs of students and local industry. The first study must be completed not later than December 31, 2018, and the second study must

be completed not later than December 31, 2020. Each study must be submitted to the General Assembly and the Governor.

## Cap on undergraduate tuition increases

(Section 369.170)

For fiscal year 2016 (the 2015-2016 academic year), the bill requires the board of trustees of each state institution of higher education to limit increases of in-state undergraduate instructional and general fees as follows:

(1) For each state university and the Northeast Ohio Medical University, not more than 2% or $93, whichever is higher, over what the institution charged the previous year;

(2) For each university regional campus, not more than 2% or $116, whichever is higher, over what the institution charged the previous year; and

(3) For each community college, state community college, or technical college, not more than 2% or $83, whichever is higher, over what the institution charged the previous year.

For fiscal year 2017 (the 2016-2017 academic year), the bill prohibits the boards of trustees of each state institution of higher education from increasing its in-state undergraduate instructional and general fees over what the institution charged for the 2015-2016 academic year.

As in previous biennia when the General Assembly capped tuition increases, the bill's limits 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 Director of Higher Education, with Controlling Board approval, may modify the limitations to respond to exceptional circumstances as the Director identifies.

These limitations do not apply to institutions that participate in an undergraduate tuition guarantee program.[88]

[88] R.C. 3345.48, not in the bill.

## In-state tuition for veterans, spouses, and dependents

(R.C. 3333.31)

The bill qualifies a veteran for in-state tuition at state institutions of higher education, if the veteran is the recipient of federal veterans' education benefits under the "All-Volunteer Force Educational Assistance Program" (also called the Montgomery G.I. Bill) or the "Post 9/11 Veterans Educational Assistance Program" (also called the Post 9/11 G.I. Bill). In order to qualify, the veteran also must (1) have served on active duty for at least 90 days, (2) enroll within three years of discharge from active duty, and (3) reside in the state as of the first day of a term of enrollment at the institution.

The bill also qualifies a veteran's spouse or dependent for in-state tuition at state institutions of higher education, if (1) the spouse or dependent is the recipient of transferred education benefits under either of the aforementioned G.I. Bills, and (2) the veteran from who the benefits were transferred served on active duty for at least 90 days. Additionally, the spouse or dependent, whichever is applicable, must enroll within three years of the veteran's discharge from active duty and reside in the state as of the first day of a term of enrollment at the institution.

Current law, unaffected by the bill, also qualifies a veteran and the veteran's spouse and dependents for in-state tuition under a different set of conditions. To qualify under that provision, the veteran must have (1) served at least one year on active military duty or (2) been killed in action or declared a prisoner of war (POW) or missing in action (MIA). Additionally, if the veteran is seeking residency status for in-state tuition, the veteran must have established domicile in the state as of the first day of a term of enrollment. If the spouse or dependent is seeking such status, both the veteran and the spouse or dependent, whichever is applicable, must have established domicile, unless the veteran was killed in action or declared POW or MIA.

It appears that, under the bill, veterans and their spouses and dependents may continue to qualify under the current law or may qualify under the new provision, so long as all of the applicable criteria are met.

## Entry standards for teacher preparation programs

(R.C. 3333.048)

The bill authorizes the Director of Higher Education to set statewide entry standards for teacher preparation programs that are offered at institutions of higher education and approved by the Director.

Under current law, the Director must establish metrics and set standards and requirements for educator preparation programs. The Director also grants approval for such programs based on these standards. However, the Director is not specifically authorized to establish entry standards for the programs. Therefore, such standards are likely left to the discretion of the board of trustees of each higher education institution, as each institution typically sets its own standards for admissions and entry into academic programs.

### Report on performance of teacher preparation program graduates

(R.C. 3333.041)

Moves, from December 31 to February 15, the annual deadline for the Director of Higher Education to report to the Governor and the General Assembly the aggregate academic growth data for students of graduates of teacher preparation programs.

### Annual report on advanced standing programs

(R.C. 3333.041)

The bill eliminates a requirement that the Director of Higher Education annually submit to the Governor and the General Assembly a report including a description of advanced standing courses offered by public and chartered nonpublic schools. It also eliminates the requirement to post the information included in the report on the Director's website. Advanced standing programs include the College Credit Plus (CCP) program (see "**College Credit Plus program changes**" under **DEPARTMENT OF EDUCATION** above), Advanced Placement courses, International Baccalaureate diploma courses, and Early College High School (ECHS) programs.[89]

### Evaluation of courses and programs

(R.C. 3345.35)

The bill requires each state institution of high education to evaluate by January 1, 2016, and every five years thereafter by January 1, all courses and programs offered by the institution. The evaluation must be based on enrollment and student performance. For courses with low enrollment, the institution must evaluate the benefits of collaboration with other state institutions, based on geographic region, to deliver the course. Finally, each institution must submit its findings to the Director of Higher Education not later than 30 days after completion of the evaluation.

[89] R.C. 3313.6013(A), not in the bill.

## Ohio University College of Osteopathic Medicine advisory committee

(R.C. 3337.10; repealed R.C. 3337.11)

The bill eliminates the requirement for the Ohio University College of Osteopathic Medicine to have an advisory committee. It also eliminates all requirements related to the committee's structure and membership, including provisions specifying the election of officers and quorums at committee meetings. Finally, it eliminates a duty of the committee to annually submit recommendations to Ohio University's Board of Trustees.

## Deadline for certification of reserve fund transfer of scholarship programs

(R.C. 3333.124, 3333.613, 5910.08, and 5919.341)

The bill authorizes the Director of Budget and Management to transfer funds from the reserve funds of the Ohio College Opportunity Grant Program, Ohio First Scholarship Program, Ohio National Guard Scholarship Program, and War Orphans Scholarship Program in order to meet General Revenue Fund (GRF) obligations, if it is determined that GRF appropriations are insufficient. Current law authorizes the Director to transfer "any unencumbered balance" of those funds to the GRF.

The bill authorizes the Director of Budget and Management to transfer the unexpended balance of the amounts initially transferred to the GRF back to those scholarship reserve funds, if the funds transferred from those reserve funds are not needed. The bill also eliminates an authorization for the Director to seek Controlling Board approval to establish appropriations for the National Guard Scholarship Reserve Fund.

Finally the bill revises, from July 1 of each fiscal year to "as soon as possible following the end of each fiscal year," the deadline by which the Director of Higher Education must certify to the Director of Budget and Management the unencumbered balance of GRF appropriations made in the immediately preceding fiscal year for the Ohio College Opportunity Grant Program, Ohio First Scholarship Program, Ohio National Guard Scholarship Program, and War Orphans Scholarship Program.

## Support obligors

- Modifies the processing charge a court or administrative agency must impose on an obligor under a support order.
- Requires child support obligors ordered to seek work or participate in a work activity to register with OhioMeansJobs.

## Adult protective services

- Requires the Ohio Department of Job and Family Services (ODJFS) to establish and maintain a statewide adult protective services information system.
- Requires each county department of job and family services (CDJFS) to prepare a memorandum of understanding that establishes the procedures to be followed by local officials when working on cases of elder abuse, neglect, and exploitation.
- Adds irreparable financial harm as a basis for obtaining an emergency order for protective services without giving notice to the adult.
- Establishes procedure for obtaining an ex parte emergency protective services order for an older adult.
- Requires a CDJFS to refer a report of elder abuse, neglect, or exploitation it receives to one of a number of specified state agencies if the person who is the subject of the report falls under the agency's jurisdiction.
- Requires ODJFS to provide training on the implementation of the adult protective services statutes and to require all protective services caseworkers and their managers to complete the training.
- Modifies the definition of "exploitation" as that term is used in adult protective services statutes.

## Child care

- Makes various changes to definitions governing child day-care.
- Consolidates existing provisions related to criminal records checks for child day-care centers, type A family day-care homes, licensed type B family day-care homes, and in-home aides and repeals duplicative provisions.

- Prohibits the ODJFS Director from issuing or renewing a license for a type A home or type B home if a minor resident has been adjudicated a delinquent child for committing a disqualifying offense.

- Requires a center, type A home, or licensed type B home to request a criminal records check for each job applicant and employee rather than only those applicants for and employees with positions involving responsibility for the care, custody, or control of a child.

- Adds offenses to the list that disqualifies a person from licensure or employment under current law.

- Requires the Director to adopt rules establishing standards for minimum instructional time for child care facilities rated through the Step Up to Quality rating system.

- Repeals provisions that specify child day-care center staff member training requirements and instead requires the Director to adopt rules regarding training.

- Authorizes the Director to contract with a government or private nonprofit entity to conduct type A family day-care home inspections.

- Specifies that certain actions of the ODJFS Director are not subject to the Administrative Procedure Act (Chapter 119. of the Revised Code).

- Requires ODJFS to suspend, without prior hearing, the license of a child care facility under specified circumstances.

- Requires the Director to establish an hourly reimbursement ceiling for in-home aides providing publicly funded child care, rather than a reimbursement ceiling that is 75% of the ceiling for type B family day-care homes.

- Permits child-care staff members to furnish evidence of qualifications to a designee of the Director.

- Changes to 300% (from 200%) of the Federal Poverty Line, the maximum amount of income a family can have for initial and continued eligibility for publicly funded child care.

- Repeals a provision that prohibits a caretaker parent from being required to pay a fee for publicly funded child care that exceeds 10% of the parent's family income.

## Prevention, Retention, and Contingency (PRC) program

- Replaces a requirement that each CDJFS adopt a statement of policies governing the PRC program with a requirement that each CDJFS adopt a PRC program plan.

- Requires each CDJFS to adopt its initial PRC program plan not later than November 15, 2015 and update its plan not later than October 1, 2017, and at least every two years thereafter.

- Requires each CDJFS to include in its PRC program plan all required benefits and services specified in rules the ODJFS Director is required to adopt.

- Requires that the required benefits and services include, at a minimum, short-term supportive services and disaster assistance.

- Permits each CDJFS to include additional benefits and services in its PRC program plan.

- Prohibits required and additional benefits and services from including work subsidies.

- Mandates required and additional benefits and services to have the primary purposes of (1) diverting families from participating in Ohio Works First and (2) meeting an emergent need that, if not met, would threaten the safety, health, or well-being of one or more members of a family.

## Disability Financial Assistance

- Permits ODJFS to contract with a state agency to make eligibility determinations for the Disability Financial Assistance Program.

- Requires ODJFS to pay the state agency's administrative costs to make those determinations.

## Military Injury Relief Fund

- Transfers from ODJFS to the Department of Veterans Services all duties relating to grants from the Military Injury Relief Fund.

- Expands the service members eligible to receive a grant from the Fund to include a service member injured while serving after October 7, 2001, or any service member diagnosed with post-traumatic stress disorder while serving, or after having served, after October 7, 2001.

- Requires the Director of Veterans Services to adopt rules necessary to administer the Military Injury Relief Fund Grant Program.

- Specifies that the current rules regarding the grant program remain effective until the Director of Veterans Services rules take effect.

### Audit Settlements and Contingency Fund

- Renames the ODJFS General Services Administration and Operating Fund the Audit Settlements and Contingency Fund.

- Specifies that the Fund is to consist of money transferred from any of the Funds used by ODJFS, other than the GRF, and is to be used to pay for required audits, settlements, contingencies, and other related expenses.

- Permits the Director of Budget and Management to transfer money from the Fund to any fund used by ODJFS or to the GRF.

### Administration of WIOA

- Requires the ODJFS Director to administer the Workforce Innovation and Opportunity Act (WIOA) during fiscal years 2016 and 2017.

### Comprehensive Case Management and Employment Program

- Requires ODJFS, in consultation with the Governor's Office of Workforce Transformation, to create, coordinate, and supervise the Comprehensive Case Management and Employment Program (CCMEP) during fiscal years 2016 and 2017.

- Requires that CCMEP, to the extent funds under the TANF block grant and WIOA are available, make certain employment and training services available to participants in accordance with comprehensive assessments of their employment and training needs.

- Requires work-eligible individuals to participate in CCMEP as a condition of participating in Ohio Works First (OWF).

- Permits OWF participants who are not work-eligible individuals and individuals receiving benefits and services under the Prevention, Retention, and Contingency Program to volunteer to participate in CCMEP.

- Requires low-income adults, in-school youth, or out-of-school youth who have barriers to employment to participate in CCMEP as a condition of participating in workforce development activities funded by the TANF block grant.

- Requires CCMEP to serve individuals who are at least age 16 but not more than age 24 beginning December 15, 2015, and to serve other individuals beginning July 1, 2016.

- Requires each board of county commissioners to designate, not later than October 15, 2015, either the CDJFS or workforce development agency (WDA) as the lead agency for purposes of CCMEP.

- Assigns to the lead agency certain duties, including the duty to serve as the county fiscal agent for CCMEP.

- Requires ODJFS, in consultation with the Governor's Office of Workforce Transformation, to establish an evaluation system for CDJFSs' and WDAs' administration of CCMEP.

- Requires ODJFS, in consultation with CDJFSs and WDAs, to review the agencies' existing functions to discover opportunities for efficiencies so that CCMEP's capacity may be increased.

## Child placement level of care tool pilot program

- Requires ODJFS to implement, oversee, evaluate, and seek federal and state funding for a pilot program in ten counties selected by ODJFS for use of a Child Placement Level of Care Tool.

- Provides for the pilot program to begin not later than six months after authority for the program is effective under the bill and for the program to last no longer than 18 months after it begins.

## Support obligors

### Support processing charge

(R.C. 3119.27)

The bill modifies the processing charge that a court or administrative agency must impose on a support obligor. A court that issues or modifies a support order (which can be either a child support order or spousal support order) or an agency that

issues or modifies an administrative child support order must impose on the order's obligor a processing charge equal to 2% of the support payment to be collected under the order. Under current law, the amount charged is the greater of 2% of the support amount or $1 per month.

### Seek work orders for child support obligors

(R.C. 3121.03)

The bill requires a court or administrative child support agency, when ordering a child support obligor to seek employment or participate in a work activity, to also require the obligor to register with OhioMeansJobs. Under continuing law, this order supports an existing child support order. It is issued to an obligor that is able to work, but is unemployed, has no income, and does not have an account at a financial institution.

## Adult protective services

### Statewide adult protective services information system

(R.C. 1347.08, 5101.612, and 5101.99)

The bill requires the Ohio Department of Job and Family Services (ODJFS) to establish and maintain a uniform statewide adult protective services information system. The information system is to contain records regarding all reports of abuse, neglect, or exploitation of adults made to a county department of job and family services (CDJFS); the investigations of those reports; the protective services provided to adults; and any other information related to adults in need of protective services that ODJFS or a CDJFS is required by law to maintain. ODJFS is to implement the information system on a county-by-county basis and notify all CDJFSs when statewide implementation of the system is complete.

The bill specifies that the information contained in or obtained from the information system is confidential, is not a public record, and is not subject to the disclosure laws that apply to other state-implemented personal information systems. The information may be accessed or used only in a manner, to the extent, and for the purposes authorized by, rules adopted by ODJFS. A person who knowingly accesses, uses, or discloses information contained in the information system other than in accordance with those rules is guilty of a fourth degree misdemeanor.

### Memorandum of understanding

(R.C. 5101.621)

The bill requires each CDJFS to prepare a memorandum of understanding that sets forth the procedures to be followed by local officials when working on cases of elder abuse, neglect, and exploitation. Those procedures are to include the officials' roles and responsibilities for handling cases that have been referred by CDJFS to another agency and for filing criminal charges against the persons alleged to have committed the abuse, neglect, or exploitation. The memorandum also must provide for the establishment of an interdisciplinary team to coordinate efforts to prevent, report, and treat abuse, neglect, and exploitation of adults.

The bill specifies that a failure to follow the procedures established by the memorandum of understanding is not grounds for the dismissal of a charge or complaint arising from a report of abuse, neglect, or exploitation; for the suppression of evidence obtained as a result of such a report; or for appeal or post-conviction relief.

The bill requires the memorandum of understanding to be signed by the director of the CDJFS; the director of any state agency with which the CDJFS has entered into an interagency agreement; the county peace officer; all chief municipal peace officers within the county; law enforcement officers handling adult abuse, neglect, and exploitation cases; the county prosecuting attorney; and the county coroner. The memorandum of understanding may additionally be signed by the following as members of the interdisciplinary team established by the memorandum of understanding: a representative of the area agency on aging; the regional long-term care ombudsman; a representative of the board of alcohol, drug addiction, and mental health services; a representative of the local board of health; a representative of the county board of developmental disabilities; a representative of a victim assistance program; a representative of a local housing authority; or any other person whose participation furthers the goals of the memorandum of understanding.

### Reports of elder abuse, neglect, or exploitation

(R.C. 5101.61)

The bill requires all CDJFSs to be available to receive reports of elder abuse, neglect, or exploitation 24 hours a day and seven days a week. The bill specifies that the information in the reports is confidential and repeals a provision that requires the information to be made available upon request to agencies authorized by a CDJFS to receive the information.

### Referring reports of elder abuse, neglect, or exploitation

(R.C. 5101.611)

The bill modifies the requirement that a CDJFS refer a report of elder abuse, neglect, or exploitation to another state agency if the person who is the subject of the report falls under that agency's jurisdiction. If the subject of the report is a resident of a long-term care facility regulated by the Department of Aging, the report is to be referred to the State Long-Term Care Ombudsman Program. If the subject of the report is resident of a nursing home and has allegedly been abused, neglected, or exploited by an employee of the nursing home, the report is to be referred to the Department of Health. If the subject of the report is a child, the report is to be referred to the public children services agency. The referrals are to be made in accordance with rules ODJFS adopts.

Additionally, the bill requires a CDJFS to treat reports of abuse, neglect, and exploitation that are referred to it by the State Ombudsman or a regional long-term care ombudsman program as if the reports were made under the law governing adult protective services.

### Emergency protective services

(R.C. 5101.69, 5101.691, and 5101.692)

Current law permits a CDJFS to petition the court for an order authorizing the provision of protective services on an emergency basis. In general, the adult must be given at least notice of the filing and contents of the petition, the adult's rights, and the consequences of a court order at least 24 hours before the hearing required by current law. The court may waive the notice requirement if reasonable attempts have been made to notify the adult or the adult's family or guardian, if any and immediate and irreparable physical harm to the adult or others would result from a 24-hour delay. The bill permits the court, in addition, to waive the 24-hour notice period if immediate and irreparable financial harm to the adult or others would result from the delay.

#### Emergency ex parte orders

The bill adds provisions allowing for ex parte emergency protective-services orders. These are orders issued without prior notice to the adult. Under the bill, a court, through a probate judge or a magistrate under the direction of a probate judge, may issue by telephone an ex parte emergency order authorizing the provision of protective services to an adult on an emergency basis if all of the following are the case:

(1) The court receives notice from the CDJFS or its authorized employee that the CDJFS or employee believes an emergency order is needed as described in this section.

(2) There is reasonable cause to believe that the adult is incapacitated.

(3) There is reasonable cause to believe that there is a substantial risk to the adult of immediate and irreparable physical harm, immediate and irreparable financial harm, or death.

An ex parte order, which must be journalized by the judge or magistrate, may remain in effect for not longer than 24 hours, except that if the day following the day on which the order is issued is not a working day, the order remains in effect until the next working day. The CDJFS must file a regular petition for emergency court-ordered services within 24 hours after an ex parte order is issued or, if the day following the day on which the order was issued is not a working day, on the next working day. The proceedings are then the same as for a regular emergency petition, except that the court must hold a hearing not later than 24 hours after the issuance of the ex parte order (or on the next working day if the day following the day on which the order is issued is not a working day) to determine whether there is probable cause for the order. At the hearing, the court must determine whether protective services are the least restrictive alternative available for meeting the adult's needs. At the hearing, the court may do any of the following:

(1) Issue temporary orders to protect the adult from immediate and irreparable physical harm or immediate and irreparable financial harm, including, but not limited to, temporary protection orders, evaluations, and orders requiring a party to vacate the adult's place of residence or legal settlement;

(2) Order emergency services;

(3) Freeze the financial assets of the adult.

A temporary order is effective for 30 days. The court may renew the order for an additional 30-day period. Information contained in the order may be entered into the Law Enforcement Automated Data System.

### Designation of duties

(R.C. 5101.622)

The bill permits a CDJFS to enter into a contract with one or more state agencies to perform any of its duties regarding receiving reports of abuse, neglect, and exploitation; investigating the reports and arranging for the provision of protective

services; and petitioning the court for an order authorizing the provision of protective services.

### ODJFS rules

(R.C. 5101.71)

Current law permits ODJFS to provide a program of ongoing, comprehensive, formal training to CDJFSs regarding the implementation of the law governing adult protective services. The bill instead requires ODJFS to provide training and require all protective services caseworkers and their supervisors to undergo the training.

As part of its authority to adopt rules governing the implementation of the law governing adult protective services, ODJFS is permitted by current law to adopt rules regarding CDJFSs' plans for proposed expenditures and reporting of expenditures for the program. The bill permits, in addition, that the rules include other requirements for intake procedures, investigations, case management, and the provision of protective services.

### Definition of "exploitation"

(R.C. 5101.60)

Current law defines "exploitation" to mean the unlawful or improper act of a caretaker using an adult or an adult's resources for monetary or personal benefit, profit, or gain. The bill specifies that exploitation occurs when a caretaker obtains or exerts control over an adult or the adult's resources either without consent, beyond the scope of express or implied consent, or by deception, threat, or intimidation.

## Child care

### Regulation of child care: background

(R.C. 3301.51 to 3301.59; R.C. Chapter 5104.)

ODJFS and CDJFSs are responsible for the regulation of child care providers, other than preschool programs and school child programs, which are regulated by the Ohio Department of Education (ODE). Child care can be provided in a facility, the home of the provider, or the child's home. Not all child care providers are subject to regulation, but a provider must be licensed or certified to be eligible to provide publicly funded child care. The distinctions among the types of providers are described in the table below.

| Child Care Providers | | |
|---|---|---|
| **Type** | **Description/Number of children served** | **Regulatory system** |
| **Child day-care center** | Any place in which child care is provided as follows:<br>--For 13 or more children at one time; or<br>--For 7-12 children at one time if the place is not the permanent residence of the licensee or administrator (which is, instead, a type A home). | A child day-care center must be licensed by ODJFS, regardless of whether it provides publicly funded child care. |
| **Family day-care home** | **Type A home** – a permanent residence of an administrator in which child care is provided as follows:<br>--For 7-12 children at one time; or<br>--For 4-12 children at one time if 4 or more are under age 2.<br><br>**Type B home** – a permanent residence of the provider in which child care is provided as follows:<br>--For 1-6 children at one time; and<br>--No more than 3 children at one time under age 2. | A type A home must be licensed by ODJFS, regardless of whether it provides publicly funded child care.<br><br>To be eligible to provide publicly funded child care, a type B home must be licensed by ODJFS. |
| **In-home aide** | A person who provides child care in a child's home but does not reside with the child. | To be eligible to provide publicly funded child care, an in-home aide must be certified by a CDJFS. |

### Changes to child day-care definitions

(R.C. 5104.01)

The bill makes several changes to child day-care definitions. Under current law, "child care" means administering to the needs of infants, toddlers, preschool-age children, and school-age children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the 24-hour day in a place or residence other than a child's own home. The bill repeals the part of that definition that excludes care provided by relatives from child care. The bill also clarifies that care provided by an in-home aide in the child's own home is child care.

Current law defines Head Start as a comprehensive child development program that receives funds under federal law and is licensed as a child day-care center. The bill

clarifies that Head Start serves children from birth to three years old and preschool-age children.

The bill also expands the definition of "owner" of a center, type A home, and type B home. Under current law, an owner is a person (which includes an individual, corporation, business trust, estate, trust, partnership, and association)[90] or a government entity. The bill expands that definition to include in addition a firm, organization, institution, or agency, as well as the individual governing board members, partners, incorporators, agents, and the authorized representatives of those entities. Consequently, the bill expands existing provisions that relate to owners to include those entities and individuals. These include, for example, restrictions on seeking a license after revocation or denial and criminal records check and attestation requirements (see "**Criminal records checks**" below).[91]

Finally, the bill expands the definitions of part-time child care providers. Under current law, only centers or type A homes that provide child care for no more than four hours per day for any child meet the definition. The bill expands part-time child care to include centers and type A homes that operate for not more than 15 consecutive weeks per year, regardless of the number of hours per day.

### Criminal records checks and attestations

(R.C. 109.57, 109.572, 5104.012, 5104.013, 5104.04, 5104.09, 5104.37, and 5104.99)

ODJFS is required by current law to request a criminal records check of the following persons: (1) the owner, licensee, or administrator of a child day-care center, (2) the owner, licensee, or administrator of a type A family day-care home, (3) the administrator of a licensed type B family day-care home, and (4) any person age 18 or older who lives in a type A home or licensed type B home. A CDJFS is required to request a criminal records check of an in-home aide. An administrator of a center or type A home is required to request a criminal records check of any applicant who has applied to the center or type A home for employment as a person responsible for the care, custody, or control of a child. The criminal records checks for all of these specified persons must be requested at the time of initial application and every five years thereafter.

In general, the ODJFS Director is prohibited from granting a license to a center, type A home, or type B home and a CDJFS director is prohibited from certifying an in-home aide if a person for whom a criminal records check is required in connection with

[90] R.C. 1.59, not in the bill.

[91] R.C. 5104.013 and 5104.03, not in the bill.

the center or home has been convicted of or pleaded guilty to certain offenses. A license or certificate may be issued if the person has met ODJFS established rehabilitation standards. Additionally, a center or type A home is prohibited from employing or contracting with another entity for the services of a person as a person responsible for the care, custody, or control of a child if the person has been convicted of or pleaded guilty to specified offenses, unless the person meets ODJFS rehabilitation standards. The center or home may employ a person conditionally until the criminal records check is completed, but the center or home's administrator must review the results of the criminal records check before the applicant has sole responsibility for the care, custody, or control of any child.

Current law also contains another provision listing offenses that disqualify a person from owning or operating a center, type A home, or licensed type B home; being employed in any capacity in a center or type A home; or being certified as an in-home aide unless rehabilitation standards are met.[92] The offenses are somewhat duplicative of those that are included in the criminal records check requirements, but the list is not as extensive. The provision also requires that the following attestations be made:

- Each employee of a center or type A home and every person age 18 or older residing in a type A home or licensed type B home must sign a statement attesting to the fact that the employee or resident has not been convicted of or pleaded guilty to any disqualifying offense and that no child has been removed from the employee's or resident's home pursuant to an abuse, dependency, or neglect adjudication.

- Each licensee of a type A home or licensed type B home must sign a statement attesting to the fact that no person under age 18 who resides in the home has been adjudicated a delinquent child for committing any disqualifying offense.

- Each administrator and licensee of a center, type A home, or licensed type B home must sign a statement attesting that the administrator or licensee has not been convicted of or pleaded guilty to any disqualifying offense and that no child has been removed from the person's home pursuant to an abuse, dependency, or neglect adjudication.

- Each in-home aide must sign a statement attesting that the aide has not been convicted of or pleaded guilty to any disqualifying offense and that no child has been removed from the aide's home pursuant to an abuse, dependency, or neglect adjudication.

[92] R.C. 5104.09.

Withholding or falsifying information on the attestations described above is a first degree misdemeanor.

The bill consolidates all of the existing provisions related to criminal records checks, disqualifying offenses, and attestations that concern child care into a single Revised Code section and makes conforming technical changes.[93] It also makes several substantive changes to these provisions.

First, the bill extends its criminal records check and attestation requirements to include employees, owners, and licensees of licensed type B homes rather than only administrators of licensed type B homes. Further, it specifies that criminal records check requirements for employees apply to ***any*** employee rather than only those employed as a person responsible for the care, custody, or control of a child.

Next, in addition to the attestation required under current law, the bill expressly prohibits the ODJFS Director from issuing a license to a type A home or type B home if a child under 18 residing in the home has been adjudicated a delinquent child for committing any of the offenses for which a criminal records check must be performed.

Finally, the bill adds the following offenses to those currently included in a criminal records check (and that are disqualifying offenses unless rehabilitation standards are met): extortion, trafficking in persons, commercial sexual exploitation of a minor, soliciting to engage in sexual activity for hire, aggravated arson, arson, disrupting public services, vandalism, inciting to violence, aggravated riot, riot, inducing panic, misrepresentation relating to provision of child care, failure to disclose the death or injury of a child in a child care facility, intimidation, failure to report child abuse or neglect, making a false report of child abuse or neglect, escape, or aiding escape or resistance to lawful authority.[94]

### Minimum instructional time for certain child care facilities

(R.C. 5104.015, 5104.017, and 5104.018)

The bill requires the Director to adopt rules establishing standards for minimum instructional time for child day-care centers, type A family day-care homes, and licensed type B family day-care homes that are rated through the quality tiered rating and improvement system (Step Up to Quality) that existing law requires the Director to establish.

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[93] R.C. 5104.013.

[94] R.C. 2151.421, 2905.11, 2905.32, 2907.19, 2907.24, 2909.02, 2909.03, 2909.04, 2909.05, 2917.01, 2917.02, 2917.03, 2917.31, 2919.224, 2919.225, 2921.03, 2921.14, 2921.34, 2921.35, not in the bill.

### Child day-care center staff training

(R.C. 5104.037 (repealed), 5104.015, 5104.016, and 5104.036)

Under current law, a child day-care center staff member must complete 15 hours of in-service training annually, with certain exceptions. The bill repeals this provision and instead requires that the Director adopt rules regarding the training of child day-care center staff members.

### Type A family day-care home inspections

(R.C. 5104.03)

The bill authorizes the Director to contract with a government or private nonprofit entity to conduct inspections of type A family day-care homes. Current law requires that each child day-care center, type A family day-care home, or type B family day-care home be inspected following the filing of an application for licensure. Under existing law, however, the Director may contract with a government or private nonprofit entity to conduct inspections for type B homes only.

#### Certain actions not subject to the Administrative Procedure Act

The bill specifies that certain actions of the Director are not subject to the Administrative Procedure Act (Chapter 119. of the Revised Code). Under existing law, if the Director revokes the license of a child day-care center, type A home, or licensed type B home, the Director cannot issue another license to the owner of the center or home until five years have elapsed from the date the license is revoked.

In addition, if the Director denies an application for licensure, current law prohibits the Director from accepting another application from the applicant until five years have elapsed since the date the previous application was denied. The bill provides that the Director's refusal to issue a license because the application was filed within five years of license revocation or application denial is not subject to the Administrative Procedure Act.

### Summary suspension of child care licenses

(R.C. 5104.042 (new))

The bill requires ODJFS to suspend, without prior hearing, the license of a center, type A home, or licensed type B home if any of the following occur:

(1) A child dies or suffers a serious injury while receiving child care in the center or home;

(2) A public children services agency (PCSA) receives a report of the possible abuse or neglect or possible threat of abuse or neglect of a child receiving child care in the center or home and the person who is the subject of the report is the owner, licensee, administrator, employee, or resident of the center or home;

(3) An owner, licensee, administrator, employee, or resident of the center or home is charged by an indictment, information, or complaint with an offense relating to the abuse or neglect of a child;

(4) ODJFS determines that the center or home created a serious risk to the health or safety of a child receiving child care in the center or home that resulted in or could have resulted in a child's death or injury;

(5) The owner, licensee, administrator, employee, or resident of the center or home is charged by an indictment, information, or complaint with fraud.

Under the bill, ODJFS must issue a written order of suspension and must furnish a copy of the order to the licensee. The licensee may appeal the suspension to the common pleas court of the county in which the licensee resides or the licensee's business is located.

The bill provides that a summary suspension remains in effect, unless reversed on appeal, for the longer of 60 days or until any of the following occurs:

(1) The PCSA completes its investigation of the report of the possible abuse or neglect or the possible threat of abuse or neglect;

(2) All criminal charges are disposed of through dismissal, a finding of not guilty, conviction, or a plea of guilty;

(3) A final order issued by ODJFS becomes effective.

Additionally, if ODJFS initiates the revocation of a license that has been summarily suspended, the suspension remains in effect until the revocation process is completed.

### In-home aide reimbursement for publicly funded child care

(R.C. 5104.30)

The bill requires the Director to establish an hourly reimbursement ceiling for in-home aides providing publicly funded child care. Under current law, the reimbursement ceiling must be 75% of the reimbursement ceiling that applies to

licensed type B family day-care homes. The bill changes the reimbursement ceiling set by the Director to an hourly cap.

#### Child-care staff credential procedures

(R.C. 5104.036)

The bill permits child-care staff members of a child day-care center to furnish evidence of qualifications to a designee of the Director, rather than only to the Director. Continuing law generally requires such staff members to furnish evidence of at least high school graduation or certification of equivalency, or evidence of completion of a training program approved by ODJFS or the State Board of Education.

#### Publicly funded child care

(R.C. 5104.38)

##### Eligibility

Existing law requires the Director to adopt rules governing financial and administrative requirements for publicly funded child care, including the maximum amount of income a family can have to qualify. Currently, that maximum income is capped at 200% of the Federal Poverty Line for both initial and continued eligibility. The bill increases the maximum income that the Director may establish to 300%.

##### Fees paid by caretaker parents

Existing law also requires the Director to adopt a schedule of fees that may be charged to caretaker parents for publicly funded child care. The Director is restricted from requiring a fee in excess of 10% of a family's income. The bill repeals that limitation on the Director's ability to determine the fee schedule.

### Prevention, Retention, and Contingency (PRC) program

(R.C. 5108.04 (primary), 5108.01, 5108.021, 5108.03, 5108.041, 5108.042, 5108.05, 5108.06, 5108.07, 5108.09, 5108.10 (repealed), and 5108.11)

The PRC program is one of the state's TANF programs. The purpose of TANF, as stated in the federal law creating it, is to increase the flexibility of states in operating a program designed to (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives, (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage, (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these

pregnancies, and (4) encourage the formation and maintenance of two-parent families.[95] The PRC program is administered by ODJFS on the state level. On the county level, it is administered by CDJFSs.

Current law requires each CDJFS to adopt a written statement of policies governing the PRC program for the county. A CDJFS's statement of policies must establish or specify (1) the benefits and services to be provided under the county's PRC program, (2) restrictions on the amount, duration, and frequency of the benefits and services, (3) eligibility requirements, and (4) certain other matters.

The bill replaces the requirement for each CDJFS to adopt a written statement of policies with a requirement for each CDJFS to adopt a written PRC program plan. The initial plan must be adopted not later than November 15, 2015. The plan must be updated not later than October 1, 2017, and at least every two years thereafter. A CDJFS is permitted to amend and suspend its plan. Each CDJFS is required to comply with rules that the bill requires the ODJFS Director to adopt when adopting, updating, amending, or suspending its plan.

A CDJFS's PRC program plan is required to include all benefits and services that the Director's rules require be included. The bill requires that all of the following be specified in the rules as required benefits and services: short-term supportive services, disaster assistance, and any other benefits and services the Director specifies. A CDJFS's plan may include additional benefits and services.

Current law requires that the benefits and services included in a CDJFS's statement of policies for its PRC program be allowable uses of federal TANF funds, except that they may not be "assistance" as defined in a federal regulation but rather benefits and services that the regulation excludes from that definition. Assistance includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).[96] The following are excluded from assistance: (1) nonrecurrent, short-term benefits that are designed to deal with a specific crisis situation or episode of need, are not intended to meet recurrent or ongoing needs, and will not extend beyond four months, (2) work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training), (3) supportive services such as child care and transportation provided to families who are employed, (4) refundable earned income tax credits, (5) contributions to, and distributions from, Individual Development

[95] 42 U.S.C. 601(a).

[96] 45 C.F.R. 260.31(a).

Accounts, (6) services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support, and (7) transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.[97]

The bill includes a similar requirement. All benefits and services provided under the PRC program, regardless of whether they are required or additional, must be allowable uses of federal TANF funds and must not be assistance but rather benefits and services excluded from the federal definition of "assistance." However, the bill establishes one exception. Despite being excluded from assistance, work subsidies are not to be included in any required or additional benefit or service available under the PRC program. The bill also mandates that required and additional benefits and services have the primary purposes of (1) diverting families from participating in Ohio Works First (OWF) and (2) meeting an emergent need that, if not met, would threaten the safety, health, or well-being of one or more members of a family.

In addition to other rules discussed above, the Director is required by the bill to adopt rules specifying and establishing all of the following for the PRC program:

(1) Income and other eligibility requirements for required benefits and services and maximum eligibility requirements for additional benefits and services;

(2) The maximum amount of required benefits and services and additional benefits and services an eligible individual may receive in a year;

(3) Other requirements for CDJFSs' PRC program plans.

If a CDJFS includes additional benefits and services in its PRC program plan, it must establish eligibility requirements for the benefits and services that do not exceed the maximum eligibility requirements specified in the Director's rules.

The bill applies requirements to CDJFSs' PRC program plans that current law applies to their statements of policies. For example, as is required for a statement of policies, a PRC program plan must be consistent with (1) the plan of cooperation that continuing law requires boards of county commissioners to develop to enhance the administration of the PRC program and other programs, (2) the review and analysis of the CDJFS's implementation of the PRC program and OWF that the county family services committee is required by continuing law to conduct, (3) federal and state laws

[97] 45 C.F.R. 260.31(b).

and the state's TANF plan. The bill requires that a PRC program plan also be consistent with the rules that the Director is required to adopt.

Under current law, a CDJFS must do either of the following before the CDJFS director signs and dates the initial or updated statement of policies for the PRC program: provide the public and local government entities at least 30 days to submit comments on the statement or have the county family services planning committee review the statement. The bill requires a CDJFS to take either of those actions before the PRC program plan is submitted to ODJFS.

## Disability Financial Assistance eligibility determinations

(R.C. 5115.04)

The bill permits ODJFS to enter into an agreement with a state agency to have the state agency make eligibility determinations for the Disability Financial Assistance Program. Current law requires ODJFS to supervise and administer the Program, subject to several exceptions. The bill adds an additional exception to permit another state agency to make eligibility determinations for the Program, and to require ODJFS to pay administrative costs incurred by the state agency to make the eligibility determinations. The bill defines "state agency" as every organized body, office, agency, institution, or other entity established by the laws of the state for the exercise of any function of state government.[98]

## Military Injury Relief Fund Grant Program

(R.C. 5101.98 (5902.05), 4503.535, 5747.01, 5747.113, and 5902.02; Section 759.10)

The bill expands the scope of service members who are eligible to receive a grant under the Military Injury Relief Fund Grant Program. Currently, any service member injured while serving under Operation Iraqi Freedom, Operation New Dawn, or Operation Enduring Freedom is eligible. The bill expands this to make any service member who was injured while serving after October 7, 2001, eligible. This includes service members diagnosed with post-traumatic stress disorder while serving, or after having served, after October 7, 2001.

The bill requires the Department of Veterans Services (DVS) to administer the provision of grants from the Military Injury Relief Fund instead of ODJFS.

The Director of DVS must adopt rules necessary to administer the Grant Program. The bill specifies that the rules currently governing the Grant Program, which

[98] R.C. 117.01, not in the bill.

were adopted by the ODJFS Director, must be administered by the Director of DVS and that they remain effective until the Director of DVS adopts rules as required. All references made in the rules to ODJFS must be read as if they refer to DVS. Finally, in applying the rules, the Director of DVS must read the eligibility of an individual for a grant as if it had been expanded as explained above.

## Audit Settlements and Contingency Fund

(R.C. 5101.073; Section 305.150)

Under existing law, the ODJFS General Services Administration and Operating Fund is used to pay for the expenses of the programs administered by ODJFS and its administrative expenses, including the costs of required audit adjustments and other related expenses. The bill renames that fund the ODJFS Audit Settlements and Contingency Fund and specifies that the Fund is to be used to pay for audits, settlements, contingencies, and other related expenses. As necessary, the ODJFS Director may request the Director of Budget and Management to transfer money from any of the funds used by ODJFS, except the GRF, to the Fund. Additionally, the Director of Budget and Management, in consultation with the ODJFS Director, may transfer money from the Fund to any fund used by ODJFS or to the GRF.

The bill also permits the Fund to hold earned federal revenue the final disposition of which is unknown.

## Administration of WIOA

(Section 305.190(B))

The federal Work Innovation and Opportunity Act (WIOA) was enacted in 2014 for the following purposes:

(1) To increase access to and opportunities for the employment, education, training, and support services that individuals, particularly those with barriers to employment, need to succeed in the labor market;

(2) To support the alignment of workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system in the U.S.;

(3) To improve the quality and labor market relevance of workforce investment, education, and economic development efforts to provide America's workers with the skills and credentials necessary to secure and advance in employment with family-

sustaining wages and to provide America's employers with the skilled workers the employers need to succeed in a global economy;

(4) To promote improvement in the structure and delivery of services through the U.S. workforce development system to better address the employment and skill needs of workers, jobseekers, and employers;

(5) To increase workers' and employers' prosperity, the economic growth of communities, regions, and states, and the United States' global competitiveness;

(6) To provide workforce investment activities, through statewide and local workforce development systems, that increase the employment, retention, and earnings of participants, and increase attainment of recognized postsecondary credentials by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet the skill requirements of employers, and enhance the productivity and competitiveness of the U.S.[99]

The bill requires the ODJFS Director to administer WIOA during fiscal years 2016 and 2017.

## Comprehensive Case Management and Employment Program

(Section 305.190(C) to (J))

### CCMEP created

The bill requires ODJFS, in consultation with the Governor's Office of Workforce Transformation, to create, coordinate, and supervise the Comprehensive Case Management and Employment Program (CCMEP) during fiscals years 2016 and 2017. To the extent funds under the TANF block grant and WIOA are available, CCMEP must make certain employment and training services available to its participants in accordance with comprehensive assessments of the participants' employment and training needs.

### Participants

Subject to a phase in period and rules that the bill permits the ODJFS Director to adopt, the following individuals are required or permitted to participate in CCMEP:

(1) Individuals who are considered to be work eligible for the purpose of Ohio Works First (OWF) are required to participate in CCMEP as a condition of participating

[99] 29 U.S.C. 3101.

in OWF. A work eligible individual is subject to work and other requirements under continuing law governing OWF.

(2) An OWF participant who is not considered to be work eligible may volunteer to participate in CCMEP.

(3) An individual receiving benefits and services under the Prevention, Retention, and Contingency Program may volunteer to participate in CCMEP.

(4) A low-income adult, in-school youth, or out-of-school youth who is considered to have a barrier to employment under WIOA is required to participate in WIOA as a condition of participating in workforce development activities funded by the TANF block grant or WIOA.

A low-income individual is an individual (1) who, or whose family member, is enrolled, or during the past six months was enrolled, in SNAP (food stamps), a TANF program, SSI, or a state or local income-based public assistance program, (2) in a family with total family income not exceeding the higher of the federal poverty line or 70% of the lower living standard income level established by the U.S. Secretary of Labor, (3) who is homeless, (4) who receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act, (5) who is a foster child on behalf of whom state or local government payments are made, or (6) with a disability whose own income does not exceed the higher of the federal poverty line or 70% of the lower living standard income level but whose family income exceeds that limit.[100]

An individual is an in-school youth if the individual is (1) attending school, (2) not younger than 16 and, unless the individual has a disability, not older than age 21 years of age, and (3) one or more of the following: (a) basic skills deficient, (b) an English language learner, (c) an offender, (d) homeless, (e) a runaway, (f) in foster care, (g) aged out of the foster care system, (h) eligible for assistance under the John H. Chafee Foster Care Independence Program, (i) in an out-of-home placement, (j) pregnant or parenting, (k) disabled, or (l) in need of additional assistance to complete an educational program or to secure or hold employment.[101]

An individual is an out-of-school youth if the individual is (1) not attending any school, (2) not younger than 16 or older than 24 years of age, and (3) one or more of the following: (a) a school dropout, (b) within the age of compulsory school attendance but has not attended school for at least the most recent complete school year calendar

[100] 29 U.S.C. 3102(36).

[101] 29 U.S.C. 3164(a)(1)(C). The minimum age to be an in-school youth is set by section 305.190(A)(3) of the bill.

quarter, (c) a recipient of a secondary school diploma or its recognized equivalent but basic skills deficient or an English language learner, (d) subject to the juvenile or adult justice system, (e) homeless, (f) a runaway, (g) in foster care, (h) aged out of the foster care system, (i) eligible for assistance under the John H. Chafee Foster Care Independence Program, (j) in an out-of-home placement, (k) pregnant or parenting, (l) disabled, or (m) in need of additional assistance to enter or complete an educational program or to secure or hold employment.[102]

The requirement or option for an individual to participate in CCMEP is to be phased in pursuant to the following schedule:

(1) Beginning December 15, 2015, for individuals who are at least 16 but not more than 24 years of age;

(2) Beginning July 1, 2016, for other individuals.

### Assessment and services

The bill requires an individual participating in CCMEP to undergo a comprehensive assessment of the individual's employment and training needs in accordance with procedures that ODJFS is required to establish. As part of the assessment, an individualized employment plan must be created for the individual. The plan is to be reviewed, revised, and terminated in accordance with the assessment procedures. The plan must specify which of the following services, if any, the individual needs:

(1) Support for the individual to obtain a high school diploma or the equivalent of a high school diploma;

(2) Job placement;

(3) Job retention support;

(4) Other services that aid the individual in achieving the plan's goals.

The bill provides that the services an individual receives in accordance with the individualized employment plan are inalienable by way of assignment, charge, or otherwise and exempt from execution, attachment, garnishment, and other similar processes.

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[102] 29 U.S.C. 3164(a)(1)(B).

### Lead local agency

Each board of county commissioners is required by the bill to designate either the CDJFS or workforce development agency (WDA) as the lead agency for purposes of CCMEP. The boards must inform ODJFS of their designations. The lead agency is required to do all of the following:

(1) Submit to ODJFS a plan that establishes standard processes for determining and maintaining individuals' eligibility to participate in CCMEP;

(2) Serve as the county fiscal agent for CCMEP;

(3) In partnership with the other agency not designated as the lead agency and any subcontractors,[103] (a) actively coordinate activities regarding CCMEP with the other agency and subcontractors and (b) help both agencies and any subcontractors to use their expertise in administering CCMEP.

The lead agency is responsible for all funds that ODJFS, the Auditor of State, the U.S. Department of Health and Human Services, the U.S. Department of Labor, or any other government entity determines have been expended or claimed for CCMEP, by or on behalf of the county, in a manner that federal or state law or policy does not permit.

### Evaluation system

ODJFS is required to establish, in consultation with the Governor's Office of Workforce Transformation, an evaluation system for CDJFSs' and WDAs' administration of CCMEP. The evaluation system must incorporate all of the following, as applicable to CCMEP:

(1) Criteria for evaluating the performance of workforce programs that the Governor's Office of Workforce Transformation is required to establish under continuing law;

(2) Performance and other administrative standards that continuing law permits ODJFS to establish for the administration and outcomes of programs administered by CDJFSs, CSEAs, and PCSAs;

(3) Performance accountability indicators in the state plan for workforce development activities.

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[103] A subcontractor is an entity with which a CDJFS or WDA contracts to perform, on behalf of the CDJFS or WDA, one or more of the CDJFS's or WDA's duties regarding CCMEP.

ODJFS is required to evaluate CDJFSs' and WDAs' administration of CCMEP in accordance with the evaluation system.

### Review of CDJFSs' and WDAs' functions

The bill requires ODJFS, in consultation with CDJFSs and WDAs, to review the agencies' existing functions to discover opportunities to make their administration of the functions more efficient. The purpose of the review is to make it possible to increase the number of individuals who participate in CCMEP and the availability of services under CCMEP.

### Applicability of state laws

The bill provides that CCMEP is a family services duty (a duty state law requires or allows a CDJFS to assume) and therefore is subject to all statutes applicable to family services duties. This makes CCMEP subject to statutes that address issues such as the following: (1) the recovery of money spent for family services duties, (2) grant agreements between ODJFS and county entities regarding family services duties, (3) contracts for the coordination, provision, enhancement, or innovation of family services duties, (4) operational agreements between ODJFS and boards of county commissioners regarding changes to family services duties, (5) ODJFS establishing and enforcing performance and other administrative standards for family services duties, (6) using funds appropriated for family services duties for incentive awards to counties, (7) ODJFS taking corrective action against a county entity regarding a family services duty, and (8) reporting requirements for family services duties.

The bill provides that CCMEP is a TANF program and therefore subject to all statutes applicable to TANF programs, including statutes concerning (1) the county share of public assistance expenditures, (2) appeals by applicants and participants of decisions regarding TANF programs, and (3) general administrative matters regarding TANF programs.

The bill also provides that CCMEP is a workforce development activity and therefore subject to all statutes applicable to workforce development activities, including statutes concerning (1) grant agreements between ODJFS and local entities regarding workforce development activities, (2) contracts for the coordination, provision, enhancement, or innovation of workforce development activities, (3) ODJFS taking corrective action against a local entity regarding a workforce development activity, (4) reporting requirements for workforce development activities, and (5) the state's workforce development system.

### Rules

The bill requires the ODJFS Director to adopt rules as necessary to implement CCMEP. The rules may address any of the following issues:

(1) Eligibility for CCMEP;

(2) Employment and training services available under CCMEP;

(3) Partnerships between CDJFSs, WDAs, and subcontractors;

(4) The plan that the lead agency must submit to ODJFS establishing standard processes for determining and maintaining individuals' eligibility to participate in CCMEP;

(5) Any other issues that the Director determines should be addressed in the rules.

## Child placement level of care tool pilot program

(Section 305.120)

### Pilot program

The bill requires ODJFS to implement and oversee the use of a Child Placement Level of Care Tool as a pilot program in up to ten counties that it selects. ODJFS must include, presumably from each county selected, at least one private child placing agency or private custodial agency. A selected county and agency must agree to participate in the pilot program. Also, the pilot program must be developed with the participating counties and agencies, and it must be acceptable to all those participating.

The pilot program must begin not later than 180 days after the program requirement takes effect and end not later than 18 months after it begins. The length of the pilot program must not include any time expended in preparation to implement the program or for any post-pilot-program evaluation activity.

### Child Placement Level of Care Tool

Under the bill, the "child placement level of care tool" is an assessment tool to be used in the pilot program to assess a child's placement needs when the child must be removed from home and cannot be placed with a relative (who is not certified as a foster caregiver) that includes assessing a child's functioning, needs, strengths, risk behaviors, and exposure to traumatic experiences.

### Pilot program evaluation

ODJFS, in accordance with Ohio law governing competitive selection for state government purchases of supplies or services,[104] must provide for an independent evaluation of the pilot program to rate its success in the following areas:

- Placement stability, length of stay, and other outcomes for children;
- Cost;
- Worker satisfaction;
- Any other criteria ODJFS determines will be useful in the consideration of statewide implementation.

The evaluation design must include a comparison of data to historical outcomes or control counties and a prospective data evaluation in each of the pilot counties.

### Funding and rules

ODJFS is required to seek maximum federal financial participation to support the pilot program and evaluation. In addition, ODJFS must seek state funding to implement the pilot program and to contract for its evaluation, notwithstanding the limits on ODJFS use of the federal financial participation amounts withheld from amounts to be reimbursed to counties.[105] ODJFS may adopt rules under the Administrative Procedure Act (Chapter 119.) as necessary to carry out the purposes of the pilot program, its evaluation, and the securing of federal and state funding.

[104] R.C. 125.01 to 125.12, many of the sections in that range are in the bill.

[105] R.C. 5101.141(E), not in the bill.

- Increases the salaries of the Ohio Supreme Court justices and the judges of the courts of appeals, courts of common pleas, municipal courts, and county courts by 5%, rounded to the next highest $50, each fiscal year, starting July 1, 2015, with the last increase July 1, 2018.
- Changes the date for the justices' and judges' salary increases to a fiscal year (July 1), rather than a calendar year (January 1).
- Eliminates the annual cost-of-living adjustment that was last applied in 2008 to justices' and judges' salaries.

## Salary increases for justices and judges

(R.C. 141.04)

The bill increases the annual salaries of justices of the Ohio Supreme Court, and judges of the courts of appeals, courts of common pleas and divisions thereof, municipal courts, and county courts, by 5% each year, rounded to the next highest $50. The salary increases start July 1, 2015, with the last increase beginning July 1, 2018. The bill also changes to July 1 the date on which justices' and judges' salary increases begin, instead of January 1 under current law. Justices and judges may receive salary increases during their terms of office because the Ohio Constitution does not prohibit in-term increases for them. However, the Ohio Constitution prohibits their compensation from being diminished during their terms of office.[106]

The last act that increased the salaries of justices and judges was H.B. 712 of the 123rd General Assembly, which took effect December 8, 2000. In the 2000 act, their salaries were increased and then indexed to the consumer price index[107] (CPI) each calendar year from 2002 through 2008. The annual cost-of-living adjustment, or COLA, that was applied to the salaries was the lesser of 3% or the percentage increase, if any, in the CPI for the previous year, rounded to the nearest one-tenth of 1%. Because the COLA ceased after 2008, salaries have not changed since that year. The bill entirely eliminates the COLA.

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[106] Ohio Constitution, Article IV, Section 6; *MacDonald v. Bell*, 23 Ohio App.2d 249 (7th Dist. Ct. App. 1970).

[107] The CPI used is the consumer price index prepared by the U.S. Bureau of Labor Statistics (U.S. city average for urban wage earners and clerical workers: all items, 1982-1984=100).

The bill's revisions to the salary amounts for July 1, 2014,[108] are not salary increases. The amounts merely reflect the current salaries of justices and judges as a result of the COLA being applied to their salaries each year from 2002 through 2008.

The salaries of the chief justice and justices of the Supreme Court and of the judges of the courts of appeals are paid entirely by the state. But the salaries of the common pleas, municipal, and county court judges are paid in part by the state and in part by the relevant local government. The bill applies the 5% increases to these aggregate judicial salaries, but it holds the local share at the current level, so that the state pays for all of the increases.

The following chart summarizes the bill's judicial salary provisions, and for common pleas, municipal court, and county court judges, states their aggregate salaries:

| Judicial Office | 2014 Salary | 2015 Salary | 2016 Salary | 2017 Salary | 2018 Salary |
|---|---|---|---|---|---|
| Chief Justice, Supreme Court | $150,850 | $158,400 | $166,350 | $174,700 | $183,450 |
| Justice, Supreme Court | $141,600 | $148,700 | $156,150 | $164,000 | $172,200 |
| Court of Appeals Judge | $132,000 | $138,600 | $145,550 | $152,850 | $160,500 |
| Court of Common Pleas Judge | $121,350 | $127,450 | $133,850 | $140,550 | $147,600 |
| Municipal Court Judge (full-time and part-time in large jurisdictions)[109] | $114,100 | $119,850 | $125,850 | $132,150 | $138,800 |
| Municipal Court Judge (part-time in small jurisdictions)[110] | $65,650 | $68,950 | $72,400 | $76,050 | $79,900 |
| County Court Judge | $65,650 | $68,950 | $72,400 | $76,050 | $79,900 |

[108] *See*, for example, R.C. 141.04(A)(1)(a) or (A)(2)(a).

[109] A part-time judge of a municipal court that has a population of more than 50,000 in its territory receives the same salary as a full-time municipal court judge. If the presiding judge of a municipal court that has full-time judges or that has a population of more than 50,000 in its territory is also the administrative judge, that judge receives additional compensation of $1,500, which is paid by the relevant local government or governments. R.C. 1901.11(B)(2) and (C).

[110] A part-time judge of a municipal court that has a population of 50,000 or less in its territory receives the same salary as a county court judge, all of whom are part-time.

- Requires one State Lottery Commission appointee to have experience or training in the areas of problem gambling or other addictions and in assistance to recovering gambling or other addicts.
- Removes a provision that permits the Director of the State Lottery Commission to conduct statewide joint lottery games under an agreement with other lottery jurisdictions, if the Governor or the Governor's authenticating officer signs the agreement to so do.
- Authorizes the Director to license a limited liability company or any other business entity as a lottery sales agent.
- Removes a provision prohibiting the Director from issuing a lottery sales agent license to a person to engage in the sale of lottery tickets as the person's sole occupation or business.
- Specifies that the Director has discretion to refuse to grant, or to suspend or revoke, a lottery sales agent license for any of several enumerated deficiencies.
- Makes managers and, in addition to corporations, other business entities liable for certain of the enumerated deficiencies as they apply in a business context.
- Abolishes the Charitable Gaming Oversight Fund.
- Clarifies the law regarding employees of the Auditor of State who are prohibited from being awarded a lottery prize.

## Commission membership

(R.C. 3770.01)

The bill requires one person appointed as a member of the State Lottery Commission to have experience or training in the areas of problem gambling or other addictions and in assistance to recovering gambling or other addicts. Unlike the other Commission members, this member is not required to have prior experience or education in business administration, management, sales, marketing, or advertising.

Under current law, this member must represent an organization that deals with problem gambling and assists recovering gambling addicts.

## Statewide joint lottery games

(R.C. 3770.02(J), 3770.03(B)(5), and 3770.06)

The bill removes a current law provision that permits the Director of the State Lottery Commission to conduct statewide joint lottery games under an agreement, if the Governor or the Governor's authenticating officer signs an agreement with other lottery jurisdictions to conduct statewide joint lottery games. Under continuing law, if the Governor directs the Director to do so, the Director must enter into an agreement with other lottery jurisdictions to conduct statewide joint lottery games. The bill also modifies current law to reflect this change and clarify that the Commission's rules must include special game rules to implement any agreements the Governor directs the Director to enter into with other lottery jurisdictions to conduct statewide joint lottery games.

## Lottery sales agent licensing

(R.C. 3770.05)

The bill makes several revisions in the law pertaining to the licensing of lottery sales agents. First, the bill authorizes the Director to license a limited liability company or any other business entity as a lottery sales agent. Under continuing law, a person, association, corporation, partnership, club, trust, estate, society, receiver, trustee, person acting in a fiduciary or representative capacity, state or political subdivision instrumentality, or any other combination of individuals can be licensed as a lottery sales agent. The bill removes the term "person" and replaces it with the term "individual" in this definition.[111]

Second, the bill removes a provision prohibiting the Director from issuing a lottery sales agent license to any person or group of persons to engage in the sale of lottery tickets as the person's or group's sole occupation or business.

Third, the bill specifies that the Director has discretion to refuse to grant, or to suspend or revoke, a lottery sales agent license for any of several enumerated deficiencies. Under current law, the Director is required to refuse to grant, or to suspend or revoke, a lottery sales agent license for any of these deficiencies. Examples of the deficiencies include having been convicted of a felony, having been convicted of an offense that involves illegal gambling, or, in a business context, it appears to the Director that, due to the experience, character, or general fitness of any director, officer,

[111] This change is technical because the law being described here enumerates most of the common business entities, most of which also are included in the general definition of "person." "Person," as so defined, also includes an individual. R.C. 1.59(C).

or controlling shareholder, a lottery sales agent license would be inconsistent with the public interest, convenience, or trust.

In the enumeration of deficiencies that apply in a business context, the bill makes two further changes. Continuing law makes directors, officers, and controlling shareholders liable for some of the enumerated business deficiencies. The bill makes managers also liable for these deficiencies. Continuing law also makes corporations liable for some of the enumerated business deficiencies. The bill makes "other business entities" also liable for these deficiencies.

## Charitable Gaming Oversight Fund

(R.C. 3770.061 (repealed))

The bill abolishes the Charitable Gaming Oversight Fund used by the Commission to provide oversight, licensing, and monitoring of charitable gaming activities in Ohio. The Fund consists of money received from the Attorney General's Office pursuant to an agreement under which the Commission is to carry out the duties of the Attorney General under the state Gambling Law (R.C. Chapter 2915.).

## Auditor of State employees prohibited from receiving prize

(R.C. 3770.07)

The bill clarifies the law regarding employees of the Auditor of State who are prohibited from being awarded a lottery prize. Current law prohibits these employees who actively audit, coordinate, or certify commission drawings from being awarded a lottery prize. The bill removes the prohibition respecting these employees who "certify" drawings and replaces it with a prohibition on employees who "observe" the drawings. Auditor of State employees do not certify commission drawings, but may observe the drawings.

## Assistive personnel

- Grants certified assistive personnel who provide services to individuals enrolled in specified Medicaid programs administered by the Ohio Department of Aging (ODA) or the Ohio Department of Medicaid (ODM) the authority to administer prescribed medication, perform specified health-related activities, and perform tube feedings.

- Requires ODA and ODM to investigate complaints regarding the performance of those activities by assistive personnel.

- Requires ODA and ODM to develop courses that train the assistive personnel to engage in those activities and that train registered nurses to provide the training courses to the personnel.

- Requires ODA and ODM to certify personnel and registered nurses who successfully complete the applicable training and satisfy other requirements.

- Requires ODA and ODM to establish and maintain a registry of all personnel and registered nurses who have been certified by ODA or ODM, respectively.

- Permits ODA, ODM, the Department of Health, and the Department of Developmental Disabilities to enter into an interagency agreement to establish a unified system of training and certifying assistive personnel, MR/DD personnel, and registered nurses.

## State agency collaboration for health transformation initiatives

- Extends to fiscal years 2016 and 2017 provisions that authorize the Office of Health Transformation Executive Director to facilitate collaboration between certain state agencies ("participating agencies") for health transformation purposes, authorize the exchange of personally identifiable information between participating agencies regarding a health transformation initiative, and require the use and disclosure of such information in accordance with operating protocols.

## Medicaid third party liability

- Establishes a rebuttable presumption (rather than an automatic right) regarding the right to recover a portion of a medical assistance recipient's tort action or claim against a third party.

- Specifies that a third party's payment to ODM or a Medicaid managed care organization (MCO) regarding a medical assistance claim is final two years after the payment is made.

- Authorizes a third party to seek recovery of all or part of an overpayment by filing a notice with ODM or the MCO before that date.

- If ODM or the MCO agrees that an overpayment was made, requires ODM or the MCO to pay the amount to the third party or authorize the third party to offset the amount from a future payment.

### Continuing issues regarding creation of ODM

- Extends through June 30, 2017, the authority of the ODM and ODJFS directors to establish, change, and abolish positions for their respective agencies and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote employees who are not subject to state law governing public employees' collective bargaining.

- Continues the authority of the ODJFS Director and boards of county commissioners to negotiate about amending or entering into a new grant agreement regarding the transfer of Medicaid, CHIP, and RMA to ODM.

### ICDS performance payments

- For fiscal years 2016 and 2017, permits ODM to provide performance payments to Medicaid managed care organizations that provide care to Integrated Care Delivery System (ICDS) participants, and requires ODM to withhold a percentage of the premium payments made to the organizations for the purpose of providing the performance payments.

### Termination of waiver programs

- Addresses administrative issues regarding termination of Medicaid waiver programs.

### Money Follows the Person

- Requires that federal payments made to Ohio for the Money Follows the Person demonstration project be deposited into the Money Follows the Person Enhanced Reimbursement Fund.

## Behavioral health

- During fiscal years 2016 and 2017, permits Medicaid to cover state plan home and community-based services for Medicaid recipients of any age who have behavioral health issues and countable incomes not exceeding 150% of the federal poverty line.

## Medicaid School Program

- Makes a qualified Medicaid school provider solely responsible for timely repaying any overpayment that the provider receives under the Medicaid School Program and that is discovered by a federal or state audit.

- Prohibits ODM, with regard to an overpayment, from paying the federal government to meet or delay the provider's repayment obligation and from assuming or forgiving the provider's repayment obligation.

- Requires each qualified Medicaid school provider to indemnify and hold harmless ODM for any cost or penalty resulting from a federal or state audit.

## Optional Medicaid eligibility groups

- Eliminates a requirement that the Medicaid program set the income eligibility threshold for pregnant women at 200% of the federal poverty level.

- Eliminates a requirement that the Medicaid program cover the group consisting of women in need of treatment for breast or cervical cancer.

- Eliminates a requirement that the Medicaid program cover the group consisting of nonpregnant individuals who may receive family planning services and supplies.

## Transitional Medicaid

- Repeals a requirement that the ODM Director implement a federal option that permits individuals to receive transitional Medicaid for a single 12-month period (rather than an initial 6-month period followed by a second 6-month period).

## Medicaid ineligibility for transfer of assets

- Permits an institutionalized individual to enroll in Medicaid despite a transfer of assets for less than fair market value under an additional circumstance.

## Personal needs allowance

- Increases the monthly personal needs allowance for Medicaid recipients residing in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID.

## Independent providers' agreements

- Prohibits, effective July 1, 2016, ODM from entering into an initial Medicaid provider agreement with an independent provider to provide certain aide services, certain nursing services, home and community-based services (HCBS), or services covered by the Helping Ohioans Move, expanding (HOME) choice demonstration program.

- Permits independent providers' Medicaid provider agreements that are in effect on June 30, 2016, to continue in effect until they are phased out pursuant to a plan ODM is required to develop in consultation with other departments.

- Requires the last of the Medicaid provider agreements that are to be phased out to and not later than July 1, 2019.

- Exempts, from the prohibition against initial Medicaid provider agreements and the phase-out requirement for existing provider agreements, independent providers who provide services covered by Medicaid waiver programs that include participant-directed service delivery systems.

## Suspension of provider agreements

- Makes an indictment of a provider, or provider's owner, officer, authorized agent, associate, manager, or employee, for a Medicaid-related criminal charge a reason to suspend a Medicaid provider agreement on the basis of being a source of a credible allegation of fraud rather than a separate cause for suspending a provider agreement.

- Subjects hospitals, nursing facilities, ICFs/IID to the requirement to suspend a Medicaid provider agreement because of an indictment for a Medicaid-related charge.

- Permits ODM to suspend a Medicaid provider agreement when an owner, officer, authorized agent, associate, manager, or employee of a provider has another provider agreement suspended due to a credible allegation of fraud.

- Requires ODM, when a Medicaid provider agreement is suspended due to a credible allegation of fraud, to suspend all Medicaid payments to the provider.

- Permits a provider to submit to ODM, as part of a request to reconsider a Medicaid provider agreement suspension, information about mistaken identity instead of information about a mistake of fact.

- Permits ODM to suspend a Medicaid provider agreement before conducting an adjudication if ODM determines that a credible allegation exists that the provider has negatively affected the health, safety, or welfare of Medicaid recipients.

### Nursing facilities' Medicaid payment rates

- Repeals the laws establishing the formula for determining nursing facilities' regular Medicaid payment rates.

- Repeals most of the laws specifying circumstances under which a nursing facility is paid a Medicaid rate that is different from the regular rate.

- Repeals and revises many laws related to nursing facilities' Medicaid payment rates, including laws regarding cost reports and deadlines for calculating the rates.

- Requires ODM, beginning with fiscal year 2017, to (1) reduce all nursing facilities' Medicaid rates by an amount ODM determines and (2) use not more than the funds made available by the reductions to increase rates paid to nursing facilities that meet one or more quality indicators.

### Care management system

- Repeals provisions that require ODM to take specified actions regarding Medicaid care management system participation.

### HCAP

- Continues the Hospital Care Assurance Program (HCAP) for two additional years.

- Eliminates a requirement for a portion of the money generated by the HCAP assessments and intergovernmental transfers to be deposited into the Legislative Budget Services Fund.

- Abolishes the Legislative Budget Services Fund when all the remaining money in the fund has been spent.

### Hospital franchise permit fees

- Continues the assessments (i.e., franchise permit fees) imposed on hospitals for two additional years.

- Requires ODM to establish a payment schedule for hospital franchise permit fees for each year and to include the payment schedule in the preliminary determination notice that ODM is required to mail hospitals.

## Nursing home and hospital long-term care units

- Provides that a bed surrender does not occur for the purpose of the franchise permit fee charged nursing homes unless the bed is removed from a nursing home's licensed capacity in a manner that makes it impossible for the bed to ever be a part of any nursing home's licensed capacity.

- Provides that a bed surrender does not occur for the purpose of the franchise permit fee charged hospital long-term care units unless the bed is removed from registration as a skilled nursing facility bed or long-term care bed in a manner that makes it impossible for the bed to ever be registered as such a bed.

- Requires ODM to notify, electronically or by U.S. Postal Service, nursing homes and hospital long-term care units of (1) the amount of their franchise permit fees, (2) redeterminations of the fees triggered by bed surrenders, and (3) the date, time, and place of hearings to be held for appeals regarding the fees.

## Home care services contracts

- Repeals a provision that requires, for contracts for home care services paid for with public funds, that the provider have a system for monitoring the delivery of services by the provider's employees.

## Assistive personnel

### Authority to provide specified health care services

(R.C. 173.57, 173.571(A), 5166.40, and 5166.41(A))

The bill authorizes assistive personnel to administer prescribed medications, perform health-related activities, and perform tube feedings when no other provisions of the Revised Code specifically authorize them to do so. It specifies that assistive personnel are persons, other than health care professionals, who are employed or under contract to provide home and community-based services. Included as assistive personnel are those who provide the services to individuals (1) receiving the services under Ohio Department of Aging (ODA) -administered Medicaid components (or, if those components are terminated, participating in the unified long-term services and support Medicaid waiver component) or (2) enrolled in a home and community-based services Medicaid waiver component administered by the Ohio Department of Medicaid (ODM).

### Prescribed medication, health-related activities, and tube feedings

(R.C. 173.57 and 5166.40)

In establishing the authority of assistive personnel, the bill defines "prescribed medication" as a drug that is to be administered according to the instructions of a licensed health professional authorized to prescribe drugs. It defines "tube feeding" as the provision of nutrition to an individual through a gastrostomy tube or jejunostomy tube.

Regarding the authority to perform health-related activities, the bill lists specific types of activities. These activities are limited to the following:

(1) Taking vital signs;

(2) Application of clean dressings that do not require health assessment;

(3) Basic measurement of bodily intake and output;

(4) Oral suctioning;

(5) Use of glucometers;

(6) External urinary catheter care;

(7) Emptying and replacing ostomy bags;

(8) Collection of specimens by noninvasive means;

(9) Use of continuous positive airway pressure machines;

(10) Use of biphasic positive airway machines;

(11) Use of pulse oximeters.

### Nursing delegation requirements

(R.C. 173.57, 173.571(B), 5166.40, and 5166.41(B))

For each type of service being performed, the bill specifies whether nursing delegation is required. "Nursing delegation" is defined by the bill as the process established in rules adopted by the Board of Nursing under which a registered nurse, or a licensed practical nurse acting at the direction of a registered nurse, transfers the performance of a particular nursing activity or task to another individual who is not otherwise authorized to perform the activity or task.

Without nursing delegation, assistive personnel may perform health-related activities and administer oral and topical prescribed medications. Assistive personnel providing services to individuals receiving the services under ODA-administered Medicaid components (or, if those components are terminated, participating in the unified long-term services and support Medicaid waiver component) may also administer oxygen and meter-dose inhaled respiratory prescribed medications without nursing delegation.

With nursing delegation, assistive personnel may administer prescribed medications through gastrostomy and jejunostomy tubes, perform routine tube feedings, and administer routine doses of insulin through subcutaneous injections, insulin pumps, and inhalation methods. The gastrostomy and jejunostomy tubes being used for medication administration and tube feedings must be "stable and labeled."

### Conditions on performance of services

(R.C. 173.571(C) and 5166.41(C))

To be authorized under the bill to administer prescribed medication, perform health-related activities, or perform tube feedings for individuals receiving those services under ODA-administered Medicaid components (or, if those components are terminated, participating in the unified long-term services and support Medicaid waiver component) assistive personnel must obtain the appropriate certificates issued either under the certification program the bill requires ODA to establish or a certification program established pursuant to an interagency agreement (see "**Interagency agreement**," below). To be authorized to perform the services for individuals enrolled in a home and community-based services Medicaid waiver component administered by ODM, assistive personnel must obtain the appropriate certificates issued either under the certification program the bill requires ODM to establish or the certification program established pursuant to the interagency agreement.

The bill provides that assistive personnel may act only as authorized by the certification held. If nursing delegation is required, the bill provides that the assistive personnel may not act without nursing delegation or in a manner that is inconsistent with the delegation.

The bill requires the employer of assistive personnel to ensure that they have been trained specifically with respect to each individual for whom they administer prescribed medications, perform health-related activities, or perform tube feedings. If the personnel have not received the training, they are prohibited from performing the services.

If an employer believes that assistive personnel have not or will not safely administer prescribed medications, perform health-related activities, or perform tube feedings, the employer is required by the bill to prohibit the action from continuing or commencing. Assistive personnel are prohibited from engaging in the action or actions subject to the employer's prohibition.

### Implementation rules

(R.C. 173.571(D) and 5166.41(D))

Under the bill, ODA is required to adopt rules governing its implementation of the authority granted to assistive personnel to administer prescribed medications, perform health-related activities, and perform tube feedings for individuals receiving the services under ODA-administered Medicaid components or, if those components are terminated, participating in the unified long-term services and support Medicaid waiver component. Similarly, ODM is required to adopt rules governing its implementation of the authority granted to assistive personnel to provide the services for individuals enrolled in a home and community-based services Medicaid waiver component administered by ODM.

The bill requires the rules to include the following:

(1) Requirements for documentation of the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by assistive personnel;

(2) Procedures for reporting errors that occur in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by assistive personnel;

(3) Other standards and procedures the departments consider necessary for implementation of the authority granted by the bill to assistive personnel.

### Complaints

(R.C. 173.572 and 5166.42)

The bill requires ODA, or its designee, to accept complaints from any person or government entity regarding the administration of prescribed medications, performance of health-related activities, and performance of tube feedings by assistive personnel for individuals receiving the services under ODA-administered Medicaid components or, if those components are terminated, participating in the unified long-term services and support Medicaid waiver component. Similarly, ODM, or its designee, is required to accept complaints from any person or government entity

regarding the provision of the services for individuals enrolled in a home and community-based services Medicaid waiver component administered by ODM.

Each department is required to conduct investigations of the complaints it receives as it considers appropriate. Each department must adopt rules establishing procedures for accepting complaints and conducting investigations of the complaints.

### Immunity from liability

(R.C. 173.573 and 5166.43)

The bill provides that assistive personnel are not liable for any injury caused by administering prescribed medications, performing health-related activities, or performing tube feedings, if both of the following apply:

(1) The assistive personnel acted in accordance with the methods taught in training completed in compliance with the bill's requirements;

(2) The assistive personnel did not act in a manner that constitutes wanton or reckless misconduct.

### Training courses

(R.C. 173.574, 5123.43, 5166.44, and 5166.51)

The bill requires ODA and ODM each to develop courses for the training of assistive personnel in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings. ODA is to provide training for assistive personnel who will provide services for individuals receiving the services under ODA-administered Medicaid components or, if those components are terminated, participating in the unified long-term services and support Medicaid waiver component. ODM is to provide training for assistive personnel who will provide the services to individuals enrolled in a home and community-based services Medicaid waiver component administered by ODM.

The bill specifies, however, that neither ODA nor ODM is required to develop the training courses if, pursuant to an interagency agreement, ODA, ODM, Ohio Department of Health (ODH), and Ohio Department of Developmental Disabilities (ODODD) develop training courses for assistive personnel and MR/DD personnel. If the departments develop the training courses pursuant to the interagency agreement, the bill also specifies that ODODD will no longer be required to provide courses for the training of MR/DD personnel in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings.

The training courses developed by ODA and ODM or through the interagency agreement may be separate or combined training courses for the administration of prescribed medications, performance of health-related activities, and performance of tube feedings. Training in the administration of prescribed medications through gastrostomy and jejunostomy tubes may be included in a course providing training in tube feedings. Training in the administration of insulin may be developed as a separate course or included in a course providing training in the administration of other medications.

ODA and ODM are required by the bill to adopt rules, and any interagency agreement must include language, specifying the content and length of the training courses. The rules or agreement may include any other standards the departments consider necessary. The content of the training must include all of the following:

(1) Infection control and universal precautions;

(2) Correct and safe practices, procedures, and techniques for administering prescribed medication;

(3) Assessment of drug reaction, including known side effects, interactions, and the proper course of action if a side effect occurs;

(4) The requirements for documentation of medications administered to each individual;

(5) The requirements for documentation and notification of medication errors;

(6) Information regarding the proper storage and care of medications;

(7) Course completion standards that require successful demonstration of proficiency in administering prescribed medications;

(8) Any other material or standards for course completion standards that the department considers relevant to the administration of prescribed medications by assistive personnel.

### Training provided by registered nurses

(R.C. 173.575, 173.576, 5123.44, 5166.45, 5166.46, and 5166.52)

Under the bill, each assistive personnel training course developed by ODA or ODM or through the interagency agreement must be provided by a registered nurse. To provide a training course, a registered nurse must complete the training required by the bill.

The bill requires ODA and ODM each to develop the courses that train registered nurses to provide assistive personnel training courses. The bill specifies, however, that neither ODA nor ODM is required to develop these training courses if training courses for the registered nurses are developed under an interagency agreement. If the departments develop the registered nurse training courses pursuant to the interagency agreement, the bill also specifies that ODODD will no longer be required to provide courses to train registered nurses to provide MR/DD personnel training courses.

The registered nurse training courses may be courses that train registered nurses to provide all of the personnel training courses or to provide any one or more of those courses. Rules are to be adopted by ODA and ODM, or language included in the interagency agreement, specifying the content and length of the training courses for registered nurses. The rules or interagency agreement may include any other standards the department or departments consider necessary.

The bill requires a registered nurse who provides the assistive personnel training developed by ODA to obtain a certificate or certificates issued either by ODA under its certification program or by ODM under a certification program established pursuant to the interagency agreement. A registered nurse who provides the assistive personnel training developed by ODM must obtain a certificate or certificates issued by ODM either under its certification program or under a certification program established pursuant to the interagency agreement. A registered nurse who provides the assistive personnel training developed pursuant to the interagency agreement must obtain a certificate or certificates issued by ODM under a certification program established pursuant to the interagency agreement.

### Certification program

(R.C. 173.577, 5123.45, 5166.47, and 5166.54)

The bill requires ODA and ODM each to establish a program under which each department issues certificates to (1) assistive personnel to administer prescribed medications, perform health-related activities, and perform tube feedings and (2) registered nurses to provide the training courses for assistive personnel.

The bill specifies, however, that neither ODA nor ODM is required to develop the certification programs if a program that certifies assistive personnel, MR/DD personnel, and registered nurses is developed pursuant to an interagency agreement. Additionally, if the certification program is developed pursuant to the interagency agreement, ODODD will no longer be required to establish a certification program for MR/DD personnel or registered nurses.

To receive a certificate under a certification program established by ODA or ODM or under the interagency agreement, assistive personnel and registered nurses must successfully complete the applicable training courses and meet all other applicable requirements established in rules or in the interagency agreement. ODA and ODM must issue the appropriate certificates to assistive personnel and registered nurses who meet certification requirements. If a certification program is established pursuant to the interagency agreement, the bill specifies that ODM is to issue the appropriate certificates to assistive personnel, MR/DD personnel, and registered nurses who meet the applicable requirements for the certificates.

Certificates issued to assistive personnel are valid for one year and may be renewed. Certificates issued to registered nurses are valid for two years and may be renewed. To be eligible for renewal, assistive personnel and registered nurses must meet applicable continued competency requirements and continuing education requirements established in rules or the interagency agreement. The bill provides that continuing nursing education completed for renewal of a license to practice nursing as a registered nurse may be counted toward the continuing education requirements for renewal of a certificate to provide assistive personnel training courses.

The rules adopted by ODA and ODM for the certification program, or the interagency agreement, must establish all of the following:

(1) Requirements that assistive personnel and registered nurses must meet to be eligible to take a training course;

(2) Standards that must be met to receive a certificate, including requirements pertaining to an applicant's criminal background;

(3) Procedures to be followed in applying for a certificate and issuing a certificate;

(4) Standards and procedures for renewing a certificate, including requirements for continuing education and, in the case of assistive personnel who administer prescribed medications, standards that require successful demonstration of proficiency in administering prescribed medications;

(5) Standards and procedures for suspending or revoking a certificate;

(6) Standards and procedures for suspending a certificate without a hearing pending the outcome of an investigation;

(7) Any other standards and procedures the respective department considers necessary.

### Registry

(R.C. 173.578, 5123.451, 5166.48, and 5166.55)

The bill requires ODA and ODM to each establish and maintain a registry that lists the assistive personnel and registered nurses who hold valid certificates issued by the respective department. The bill specifies, however, that neither ODA nor ODM is required to develop a registry if a registry is established and maintained, pursuant to an interagency agreement. ODODD would no longer be required to establish and maintain a registry of MR/DD personnel authorized to administer prescribed medications, perform health-related activities, and perform tube feedings and registered nurses authorized to provide MR/DD personnel training.

The bill requires that a registry specify the type of certificate held by each individual and any limitations that apply to the individual. The information in a registry must be made available to the public in computerized form or any other manner that provides continued access to the information in the registry.

### Adoption of rules

(R.C. 173.579 and 5166.49)

All rules required to be adopted under the bill by ODA and ODM must be adopted in accordance with the Administrative Procedure Act. ODA must adopt its rules in consultation with the Office of the State Long-Term Care Ombudsman Program, the Board of Nursing, and the Ohio Nurses Association. ODM must adopt its rules in consultation with ODA, ODH, ODODD, the Board of Nursing, and the Ohio Nurses Association.

### Administration of medication in residential care facilities

(R.C. 3721.011)

The bill permits medication to be administered in residential care facilities by assistive personnel who are authorized to administer medication to individuals receiving services under ODA-administered Medicaid components or, if those components are terminated, participating in the unified long-term services and support Medicaid waiver component.

### Interagency agreement

(R.C. 5166.50)

The bill permits ODM, ODA, ODH, and ODODD to enter into an interagency agreement to provide for a unified system regarding the authority of assistive personnel and MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings. The agreement may provide for the following:

(1) The development of courses for training of personnel in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings;

(2) The development of courses that train registered nurses to provide the personnel training developed pursuant to the agreement or the training courses developed by ODA or ODM for assistive personnel or ODODD for MR/DD personnel;

(3) The establishment of a certification program issuing certificates for the following:

(a) To authorize personnel to administer prescribed medications, perform health-related activities, and perform tube feedings;

(b) To authorize registered nurses to provide the personnel training developed pursuant to the agreement or the courses developed by ODA, ODM, or ODODD.

(4) The establishment and maintenance of a registry that lists all personnel holding certificates to administer medications, perform health-related activities, and perform tube feedings, and all registered nurses holding a certificate to provide personnel training.

## State agency collaboration for health transformation initiatives

(R.C. 191.04 and 191.06; R.C. 191.01 and 191.02, not in the bill)

H.B. 487 of the 129th General Assembly authorized the Office of Health Transformation (OHT) Executive Director or the Executive Director's designee to facilitate the coordination of operations and exchange of information between certain state agencies ("participating agencies") during fiscal year 2013. H.B. 487 specified that the purpose of this authority was to support agency collaboration for health transformation purposes, including modernization of the Medicaid program, streamlining of health and human services programs in Ohio, and improving the quality, continuity, and efficiency of health care and health care support systems in Ohio. In furtherance of this authority, H.B. 487 required the OHT Executive Director or

the Executive Director's designee to identify each health transformation initiative in Ohio that involved the participation of two or more participating agencies and that permitted or required an interagency agreement. For each health transformation initiative identified, the OHT Executive Director or the Executive Director's designee had to, in consultation with each participating agency, adopt one or more operating protocols.

H.B. 487 also authorized a participating agency to exchange, during fiscal year 2013 only, personally identifiable information with another participating agency for purposes related to or in support of a health transformation initiative that had been identified as described above. If a participating agency used or disclosed personally identifiable information during fiscal year 2013, it was required to do so in accordance with all operating protocols adopted as described above that applied to the use or disclosure.

The main appropriations act of the 130th General Assembly, H.B. 59, extended the authorizations and requirements regarding the use and disclosure of personally identifiable information, described above, to fiscal years 2014 and 2015. The bill further extends these authorizations and requirements to fiscal years 2016 and 2017.

## Medicaid third party liability

### Portion of tort award subject to government right of recovery

(R.C. 5160.37)

An individual who receives medical assistance under Medicaid, the Children's Health Insurance Program (CHIP), or the Refugee Medical Assistance Program (RMA) gives an automatic right of recovery to ODM or a county department of job and family services (CDJFS) against the liability of a third party for the cost of medical assistance paid on the medical assistance recipient's behalf. If a recipient receives a tort recovery for injuries a third party caused the recipient, current law specifies that ODM or the appropriate CDJFS must receive no less than the lesser of (1) one-half of the amount remaining after attorneys' fees, costs, and other expenses are deducted from the recipient's total judgment, award, settlement, or compromise or (2) the actual amount of medical assistance paid on the recipient's behalf.

In 2013, the U.S. Supreme Court found that a North Carolina statute specifying that an irrebuttable presumption exists that one-third of a Medicaid recipient's tort recovery is attributable to medical expenses was pre-empted by the federal Medicaid anti-lien provision (42 U.S.C. 1396p(a)(1)).[112] The federal provision prohibits a state from

[112] *Wos v. E.M.A.*, 133 S.Ct. 1391 (2013).

making a claim to any part of a Medicaid recipient's tort recovery that is not designated for medical care.[113]

The bill responds to the Supreme Court decision by specifying that there is a rebuttable presumption (rather than a right) that ODM or a CDJFS is to receive (1) not less than one-half of a judgment, award, settlement, or compromise from a medical assistance recipient's tort action or claim against a third party, or (2) the actual amount of medical assistance paid on the recipient's behalf (whichever is less). The bill permits a party to rebut the presumption by a showing of clear and convincing evidence that a different allocation is warranted. The bill also specifies that the allocation of medical expenses pursuant to a settlement agreement between a medical assistance recipient and the third party may be considered by ODM or the CDJFS but it is not binding on either.

### Recovery of overpayments

(R.C. 5160.401)

According to the federal Centers for Medicare & Medicaid Services (CMS), it is common for Medicaid recipients to have one or more additional sources of coverage for health care services. "Third party liability" refers to the legal obligation of third parties (e.g., certain individuals, entities, insurers, or programs) to pay part or all of the expenditures for medical assistance furnished under Medicaid. Under federal law, all other available third party resources must meet their legal obligation to pay claims before Medicaid pays for a Medicaid recipient's care.[114]

Current Ohio law reflects federal policy by requiring a responsible third party to pay a claim for payment of a medical item or service provided to an individual who receives medical assistance from Medicaid, the Children's Health Insurance Program (CHIP), or the Refugee Medical Assistance Program.[115] The bill specifies that a payment a third party makes is final on the date that is two years after the payment was made to ODM or the applicable Medicaid managed care organization (MCO). After a claim is final, the claim is subject to adjustment only if the third party commences an action for recovery of an overpayment before the date the claim became final and the recovery is agreed to by ODM or the MCO.

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[113] 42 U.S.C. 1396p(a)(1).

[114] U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, *Medicaid Third Party Liability and Coordination of Benefits*, available at http://medicaid.gov/medicaid-chip-program-information/by-topics/eligibility/tpl-cob-page.html.

[115] R.C. 5160.40(A)(4).

The bill authorizes a third party that determines that it overpaid a claim for payment to seek recovery of all or part of the overpayment by filing a notice of its intent to seek recovery with ODM or the relevant MCO, as applicable. The notice of recovery must be filed in writing before the date the payment is final and specify all of the following:

--The full name of the medical assistance recipient who received the medical item or service that is the subject of the claim;

--The date or dates on which the medical item or service was provided;

--The amount allegedly overpaid and the amount the third party seeks to recover;

--The claim number and any other number that ODM or the MCO has assigned to the claim;

--The third party's rationale for seeking recovery;

--The date the third party made the payment and the method of payment used;

--If payment was made by check, the check number; and

--Whether the third party would prefer to receive the amount being sought by payment from ODM or the MCO, either by check or electronic means, or by offsetting the amount from a future payment owed to ODM or the MCO.

The bill specifies that if ODM or the appropriate MCO determines that a notice of recovery was filed before the claim for payment is final and agrees to the amount sought by the third party, ODM or the MCO, as applicable, must notify the third party in writing of its determination and agreement. Thereafter, the third party's recovery must proceed by the method specified by the third party.

## Continuing issues regarding creation of ODM

(Sections 327.20 and 327.30)

Medicaid assistance programs (Medicaid, CHIP, and RMA) were administered by the Office of Medical Assistance in ODJFS before ODM was created. The biennial budget act enacted in 2013, H.B. 59 of the 130th General Assembly, created ODM.

### Temporary authority regarding employees

H.B. 59 gave the ODM Director authority, during the period beginning July 1, 2013, and ending June 30, 2015, to establish, change, and abolish positions for ODM, and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote all employees of ODM who are not subject to the state's public employees collective bargaining law. H.B. 59 gave the ODJFS Director corresponding authority regarding ODJFS employees as part of the transfer of medical assistance programs to ODM.

The authority described above includes assigning or reassigning an exempt employee to a bargaining unit classification if the ODM Director or ODJFS Director determines that the bargaining unit classification is the proper classification for that employee.[116] The actions of the ODM Director or ODJFS Director must comply with the requirements of a federal regulation establishing standards for a merit system of personnel administration. If an employee in the E-1 pay range is to be assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a lower classification, the ODM Director or ODJFS Director, or in the case of a transfer outside ODM or ODJFS, the ODAS Director, must assign the employee to the appropriate classification and place the employee in Step X. The employee is not to receive any increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation. Actions the ODM Director, ODJFS Director, and ODAS Director take under this provision of the act are not subject to appeal to the State Personnel Board of Review.

Under the bill, the ODM Director and ODJFS Director continue to have this authority until June 30, 2018.

### New and amended grant agreements with counties

H.B. 59 permitted the ODJFS Director and boards of county commissioners to enter into negotiations to amend an existing grant agreement or to enter into a new grant agreement regarding the transfer of medical assistance programs to ODM. Any such amended or new grant agreement had to be drafted in the name of ODJFS. The amended or new grant agreement had to be executed before July 1, 2013, if the amendment or agreement did not become effective sooner than that date.

Under the bill, the ODJFS Director and boards of county commissioners continue to have this authority. An amended or new grant agreement may be executed before

[116] An exempt employee is a permanent full-time or permanent part-time employee paid directly by warrant of the OBM Director whose position is included in the job classification plan established by the ODAS Director but who is not considered a public employee for purposes of Ohio's collective bargaining law. (R.C. 124.152.)

July 1, 2015, if the amendment or agreement does not become effective sooner than that date.

## ICDS performance payments

(Section 327.70)

ODM is authorized under continuing law to implement a demonstration project to test and evaluate the integration of care received by individuals dually eligible for Medicaid and Medicare. In statute the project is called the Integrated Care Delivery System (ICDS).[117] It may be better known, however, as MyCare Ohio. For fiscal years 2016 and 2017, the bill requires ODM, if it implements ICDS in a way that provides participants with care through Medicaid managed care organizations, to do both of the following:

(1) Develop quality measures designed specifically to determine the effectiveness of the health care and other services provided to participants by Medicaid managed care organizations;

(2) Determine an amount to be withheld from the Medicaid premium payments paid to Medicaid managed care organization for participants.

For purposes of the amount to be withheld from premium payments, the bill requires ODM to establish a percentage amount and apply the same percentage to all Medicaid managed care organizations providing care to ICDS participants. Each organization must agree to the withholding as a condition of receiving or maintaining its Medicaid provider agreement. The bill authorizes the ODM Director to use these amounts to provide performance payments to Medicaid managed care organizations providing care to ICDS participants in accordance with rules that the Director may adopt. The bill provides that an organization providing care under ICDS is not subject to withholdings under the Medicaid Managed Care Performance Payment Program for premium payments attributed to ICDS participants during fiscal years 2016 and 2017.

## Administrative issues related to termination of waiver programs

(Section 327.100)

If ODM and ODA terminate the PASSPORT, Assisted Living, Ohio Home Care, or Ohio Transitions II Aging Carve-Out program, the bill provides that all applicable statutes, and all applicable rules, standards, guidelines, or orders issued by ODM or ODA before the program is terminated, are to remain in full force and effect on and

[117] R.C. 5164.91, not in the bill.

after that date, but solely for purposes of concluding the program's operations, including fulfilling ODM's and ODA's legal obligations for claims arising from the program relating to eligibility determinations, covered medical assistance provided to eligible persons, and recovering erroneous overpayments. The right of subrogation for the cost of medical assistance and an assignment of the right to medical assistance continue to apply with respect to the terminated program and remain in force to the full extent provided under law governing the right of subrogation and assignment. ODM and ODA are permitted to use appropriated funds to satisfy any claims or contingent claims for medical assistance provided under the terminated program before the program's termination. Neither ODM nor ODA has liability under the terminated program to reimburse any provider or other person for claims for medical assistance rendered under the program after it is terminated.

### Money Follows the Person Enhanced Reimbursement Fund

(Section 327.110)

The bill provides for federal funds Ohio receives for the Money Follows the Person demonstration project to be deposited into the Money Follows the Person Enhanced Reimbursement Fund. The fund was created in 2008 by H.B. 562 of the 127th General Assembly after Ohio was first awarded a federal grant for the demonstration project. ODM is required to continue to use the money in the fund for system reform activities related to the demonstration project.

### Home and community-based services regarding behavioral health

(Section 327.190)

During fiscal years 2016 and 2017, the bill permits Medicaid to cover state plan home and community-based services for Medicaid recipients of any age who have behavioral health issues and countable incomes not exceeding 150% of the federal poverty line. A Medicaid recipient is not required to undergo a level of care determination to be eligible for the services. The bill authorizes the ODM Director to adopt rules as necessary to implement this provision.

### Medicaid School Program

(R.C. 5162.365 (primary), 5162.01, 5162.36, 5162.361, and 5162.363)

Under the Medicaid School Program, a qualified Medicaid school provider may submit a claim to ODM for federal Medicaid funds for providing, in schools, services covered by the Medicaid School Program to Medicaid recipients who are eligible for the services. Continuing law requires ODM to enter into an interagency agreement with

ODE that provides for ODE to administer the Medicaid School Program (other than aspects of the program that state law requires ODM to administer).

The following may obtain a Medicaid provider agreement to become a qualified Medicaid school provider: a board of education of a city, local, or exempted village school district; the governing authority of a community school; the State School for the Deaf; and the State School for the Blind. Generally, a qualified Medicaid school provider is subject to all conditions of participation in the Medicaid program that apply to other providers. Current law provides that the conditions expressly include conditions regarding audits and recovery of overpayments. The bill provides that the conditions also expressly include conditions regarding claims.

The bill makes a qualified Medicaid school provider solely responsible for timely repaying any overpayment that the provider receives under the Medicaid School Program and that is discovered by a federal or state audit. This is the case regardless of whether the audit's finding identifies the provider, ODM, or ODE as being responsible for the overpayment.

ODM is prohibited by the bill from doing any of the following regarding an overpayment that a qualified Medicaid school provider is responsible for repaying:

(1) Making a payment to the federal government to meet or delay the provider's repayment obligation;

(2) Assuming the provider's repayment obligation;

(3) Forgiving the provider's repayment obligation.

The bill requires each qualified Medicaid school provider to indemnify and hold harmless ODM for any cost or penalty resulting from a federal or state audit finding that a claim submitted by the provider did not comply with a federal or state requirement applicable to the claim, including a requirement of a Medicaid waiver program.

## Elimination of certain optional Medicaid eligibility groups

(R.C. 5163.06 and 5163.061 (repealed))

Federal law requires a state's Medicaid program to cover certain groups (mandatory eligibility groups). A state's Medicaid program is permitted to cover other groups (optional eligibility groups). The bill eliminates requirements in state law that the Medicaid program cover the following optional eligibility groups:

(1) The group consisting of the following individuals who are not in comparable mandatory eligibility groups: (a) women during pregnancy and the 60-day period beginning on the last day of pregnancy with incomes not exceeding 200% of the federal poverty line, (b) infants, and (c) children;

(2) The group consisting of women in need of treatment for breast or cervical cancer;

(3) The group consisting of nonpregnant individuals who may receive family planning services and supplies.

## Transitional Medicaid

(R.C. 5163.08 (repealed))

Federal law includes a provision for transitional Medicaid. This provision requires a state's Medicaid program to continue to cover, for an additional six months and, if certain requirements are met, up to another additional six months certain low-income families with dependent children that would otherwise lose Medicaid eligibility because of changes to their incomes. The requirements for the second 6-month period of eligibility include reporting and income requirements. Federal law gives states the option to provide the low-income families transitional Medicaid for a single 12-month period rather than an initial 6-month period followed by a second 6-month period.[118] The 12-month option enables the low-income families to receive transitional Medicaid for up to a year without having to meet the additional requirements for the second 6-month period.

The bill repeals a requirement that the ODM Director implement the option regarding the single 12-month eligibility period for transitional Medicaid.

## Exception to Medicaid ineligibility for transfer of assets

(R.C. 5163.30)

Generally, an institutionalized individual is ineligible for nursing facility services, nursing facility equivalent services, and home and community-based services (HCBS) for a certain period of time if the individual or individual's spouse disposes of assets for less than fair market value on or after the look-back date. An institutionalized individual is (1) a nursing facility resident, (2) an inpatient in a medical institution for whom a payment is made based on a level of care provided in a nursing facility, or

[118] 42 U.S.C. 1396r-6. This federal law is scheduled to expire March 31, 2015. Congress has extended the law when it was scheduled to expire on previous occasions.

(3) an individual who would be eligible for Medicaid if the individual was in a medical institution, would need hospital, nursing facility, or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) services if not for HCBS available under a Medicaid waiver program, and is to receive HCBS. The look-back date is the date that is a certain number of months before (1) the date an individual becomes an institutionalized individual if the Medicaid recipient is eligible for Medicaid on that date or (2) the date an individual applies for Medicaid while an institutionalized individual.

There are exceptions to this period of ineligibility. For example, an institutionalized individual may be granted a waiver of all or portion of the period of ineligibility if the ineligibility would cause an undue hardship for the individual.

The bill establishes a new exception. An institutionalized individual may be granted a waiver of all of the period of ineligibility if all of the assets that were disposed of for less than fair market value are returned to the individual or individual's spouse or if the individual or spouse receives cash or other personal or real property that equals the difference between what the individual or spouse received for the assets and the assets' fair market value. Unless the institutionalized individual is eligible for a waiver under another exception, no waiver of any part of the period of ineligibility is to be granted if the amount the individual or spouse receives is less than the difference between what the individual or spouse received for the assets and the assets' fair market value.

### Monthly personal needs allowance for Medicaid recipients in ICFs/IID

(R.C. 5163.33)

The bill increases the monthly personal needs allowance for Medicaid recipients residing in ICFs/IID. Beginning January 1, 2016, the personal needs allowance is to be at least $50 per month for an individual resident and at least $100 for a married couple if both spouses are residents of an ICF/IID and their incomes are considered available to each other rather than $40 or an amount determined by ODM. This personal needs allowance is the same that applies to residents of nursing facilities.

### Independent providers' Medicaid provider agreements

(R.C. 5164.302 (primary), 5164.01, 5164.37, 5164.38, and 5166.30)

The bill restricts the Medicaid program's coverage of the following services when they are provided by independent providers:

(1) The following aide services: home health aide services available under the Medicaid program's home health services benefit, home care attendant services available under a Medicaid waiver program covering HCBS, and personal care aide services available under Medicaid waiver program covering HCBS;

(2) The following nursing services: nursing services available under the Medicaid program's home health services benefit, private duty nursing services, and nursing services available under a Medicaid waiver program covering HCBS;

(3) Services covered by a Medicaid waiver program covering HCBS;

(4) Services covered by the Helping Ohioans Move, Expanding (HOME) choice demonstration program.

The bill defines "independent provider" as an individual who personally provides one or more of the applicable services on a self-employed basis and does not employ, directly or through contract, another individual to provide any of those services.

Specifically, the bill prohibits, with one exception, ODM from entering into an initial Medicaid provider agreement on or after July 1, 2016, with an independent provider to provide any of the applicable services. If an independent provider has a provider agreement in effect on June 30, 2016, that authorizes the independent provider to provide any of the applicable services, the independent provider may continue to provide the services on and after July 1, 2016, and ODM may revalidate the provider agreement. However, the bill requires ODM, in consultation with ODA, ODODD, and ODH, to develop a plan to phase out the provider agreements. With one exception, the plan must provide for ODM to terminate or refuse to revalidate the provider agreements during the period beginning July 1, 2016, and ending June 30, 2019. The last of the provider agreements must cease to be in effect not later than July 1, 2019. A provider agreement may cease to be in effect sooner than its phase-out date if it is suspended or terminated pursuant to continuing law that authorizes ODM to take certain actions against Medicaid providers.

ODM is not required to issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) when ODM, pursuant to this provision of the bill, denies an initial provider agreement to an independent provider or revokes or refuses to revalidate an independent provider's Medicaid provider agreement.

There is an exception to the prohibition against initial independent provider agreements and the requirement to phase-out independent provider agreements that

are in effect June 30, 2016. The prohibition and phase-out requirement do not apply to provider agreements that authorize independent providers to provide to Medicaid recipients enrolled in participant-directed Medicaid waiver programs any of the applicable services that are available through a participant-directed service delivery system. The following are participant-directed Medicaid waiver programs:

(1) The Integrated Care Delivery System;

(2) The Medicaid-funded component of the PASSPORT program administered by ODA;

(3) The Self-Empowered Life Funding program administered by ODODD;

(4) A Medicaid waiver program in operation on the effective date of this provision of the bill to which is added, on or after that date, a participant-directed service delivery system;

(5) A Medicaid waiver program that begins operation on or after the effective date of this provision of the bill and includes a participant-directed service delivery system.

The Medicaid waiver programs known as Ohio Home Care and Ohio Transitions II Aging Carve-Out are authorized by current law to cover home care attendant services provided by independent providers. Because neither program is a participant-directed Medicaid waiver program, they are required to cease covering such services in accordance with the bill's prohibition and phase-out requirement regarding independent providers. However, either or both programs may continue to cover such services if they become a participant-directed Medicaid waiver program on or after the effective date of this provision of the bill.

The bill provides that an independent provider who provides any of the applicable services is not considered to be either of the following due to a provider agreement or the provision of the services:

(1) An employee of the state or in the service of the state for the purpose of the state's civil service law;

(2) A public employee for the purpose of the state's public employee collective bargaining law.

## Suspension of Medicaid provider agreements

(R.C. 5164.36 (primary), 173.391, 5164.01, 5164.37 (repeal and new enact), 5164.38, and 5164.57)

### Credible allegation of fraud and indictments

Current law includes a statute that generally requires ODM to suspend a Medicaid provider agreement on determining there is a credible allegation of fraud against the provider for which an investigation is pending under the Medicaid program. There is a separate statute in current law that requires ODM to suspend a Medicaid provider agreement on receiving notice and a copy of an indictment charging the provider (unless the provider is a hospital, nursing facility, or ICF/IID), or the provider's owner, officer, authorized agent, associate, manager, or employee, with committing an act that would be a felony or misdemeanor under Ohio's laws and relates to or results from (1) furnishing or billing for Medicaid services or (2) participating in the performance of management or administrative services relating to furnishing Medicaid services. The bill consolidates and revises these statutes.

Under the bill, an indictment of a person who is a provider or a provider's owner, officer, authorized agent, associate, manager, or employee constitutes a credible allegation of fraud for which ODM must suspend a Medicaid provider agreement if the indictment charges the person with a committing an act that would be a felony or misdemeanor under Ohio's laws or the laws in the jurisdiction in which the act is committed and relates to, or results from, one or more of the following:

(1) Furnishing, ordering, prescribing, or certifying Medicaid services;

(2) Billing for Medicaid services;

(3) Referring a person to Medicaid services;

(4) Participating in the performance of management or administrative services related to furnishing Medicaid services.

In contrast to current law, the bill provides that such an indictment is grounds for suspending any Medicaid provider agreement, including hospitals, nursing facilities, and ICFs/IID. The bill maintains current law that prohibits ODM from suspending a provider agreement if the provider or provider's owner can demonstrate through the submission of written evidence that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the indictment.

The bill permits ODM, when it suspends a provider's (provider A's) Medicaid provider agreement because of a credible allegation of fraud, to suspend the provider agreement of any other provider (provider B) of which provider A is an owner, officer, authorized agent, associate, manager, or employee. However, this does not apply if provider B or provider B's owner can demonstrate through the submission of written evidence that provider B or the owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee (provider A) that resulted in the credible allegation of fraud.

Current law requires ODM, when it suspends a Medicaid provider agreement because of a credible allegation of fraud or indictment, to terminate Medicaid payments to the provider for services rendered subsequent to the date on which ODM sends the provider or owner notice of the suspension. Claims for payment of services rendered before the notice is issued may be subject to prepayment review procedures whereby ODM reviews claims to determine whether they are supported by sufficient documentation, are in compliance with state and federal statutes or rules, and are otherwise complete. The bill requires ODM, when it suspends a Medicaid provider agreement because of a credible allegation of fraud (including an indictment) to suspend all Medicaid payments to the provider for services the provider provided before, or provides after, the suspension of the provider agreement.

Under current law, a Medicaid provider agreement's suspension resulting from a credible allegation of fraud is to continue in effect until (1) ODM or a prosecuting authority determines that there is insufficient evidence of fraud by the provider or (2) the proceedings in any related criminal case are completed through dismissal of the indictment or through conviction, entry of a guilty plea, or finding of not guilty. The bill provides for the suspension also to cease if ODM or a prosecuting authority determines that there is insufficient evidence of fraud by a provider's owner, officer, authorized agent, associate, manager, or employee.

If ODM commences a process to terminate a Medicaid provider agreement that is suspended due to a credible allegation of fraud or indictment, the suspension must continue in effect until the termination process is concluded. The bill provides that the termination process includes any judicial appeal.

Current law prohibits a provider and the provider's owner, officer, authorized agent, associate, manager, or employee from doing any of the following while a Medicaid provider agreement is suspended: (1) owning, or providing services to, any other Medicaid provider or risk contractor or (2) arranging, rendering, or ordering services for any other Medicaid provider, a risk contractor, or a Medicaid recipient. Under the bill, these persons are also prohibited, during the suspension, from referring, prescribing, or certifying services to or for any other Medicaid provider, a risk

contractor, or Medicaid recipient. However, the bill provides that the prohibition applies to a provider's owner, officer, authorized agent, associate, manager, or employee only if such a person's actions resulted in the credible allegation of fraud.

Continuing law permits a provider or provider's owner to request reconsideration of a Medicaid provider agreement suspension. Written information and documents pertaining to certain matters must be submitted with the request. Current law specifies that the written information and documents may pertain to whether the determination to suspend the provider agreement was based on a mistake of fact, other than the validity of an indictment. The bill specifies instead that the written information and documents may pertain to whether the suspension determination was based on mistaken identity.

### Health, safety, and welfare of Medicaid recipients

The bill permits ODM to suspend a Medicaid provider agreement before conducting an adjudication under the Administrative Procedure Act (R.C. Chapter 119.) if ODM determines that a credible allegation exists that the provider, by act or omission, has negatively affected the health, safety, or welfare of one or more Medicaid recipients. When ODM suspends a provider agreement for this reason, ODM (1) is required to also suspend all Medicaid payments to the provider for Medicaid services the provider provided before, or provides after, the provider agreement's suspension and (2) may also suspend the provider agreement of any other provider of which the provider is an owner, officer, authorized agent, associate, manager, or employee. "Owner" is defined as any person having at least 5% ownership in a Medicaid provider.

ODM is required by the bill to notify a provider not later than five days after suspending the provider's provider agreement. The notice must also inform the provider about the suspension of Medicaid payments.

Not later than ten days after suspending a provider's provider agreement, ODM must notify the provider of ODM's intent to terminate the provider's provider agreement. The notice must be provided as part of the adjudication continuing law requires ODM to conduct when terminating a provider agreement. It must state that the provider agreement is to be terminated because of the allegation that the provider negatively affected the health, safety, or welfare of one or more Medicaid recipients. The notice may state additional reasons for the termination.

A Medicaid provider agreement suspension and suspension of Medicaid payments is to continue in effect until the process to terminate the suspended provider agreement, including any judicial appeal, is concluded. However, if ODM fails to provide notice about the suspension or notice about ODM's intent to terminate the

provider agreement by the deadline, the suspension is to be lifted on the day immediately following the deadline.

The bill provides that this provision does not limit ODM's authority under any other statute to suspend or terminate a provider agreement or Medicaid payments to a provider.

## Nursing facilities' Medicaid payment rates

(R.C. 5165.01 (primary), 173.47, 5165.10, 5165.106, 5165.109, 5165.155, 5165.158, 5165.193, 5165.40, 5165.41, 5165.99, and 5168.40; Repeals R.C. 5165.101, 5165.102, 5165.103, 5165.104, 5165.105, 5165.107, 5165.108, 5165.15, 5165.151, 5165.152, 5165.153, 5165.154, 5165.156, 5165.157, 5165.16, 5165.17, 5165.19, 5165.192, 5165.21, 5165.23, 5165.25, 5165.26, 5165.28, 5165.29, 5165.30, 5165.32, 5165.33, 5165.37, and 5165.516)

### Repeal of statutory formula

The bill repeals the laws establishing the formula for determining nursing facilities' regular Medicaid payment rates. Under current law, a nursing facility's regular total rate is the sum of (1) each of its rates for the cost centers (ancillary and support costs, capital costs, direct care costs, and tax costs), (2) its critical access incentive payment (if applicable), and (3) its quality incentive payment. ODM is required by current law (also repealed by the bill) to pay a qualifying nursing facility a quality bonus in addition to its regular total rate.

The bill also repeals all but two of the laws specifying circumstances under which a nursing facility is paid a rate that is different from the regular rate. The circumstances specified in the laws being repealed are when a nursing facility (1) is new, (2) provides services to low resource utilization residents, (3) is designated an outlier or provides services to a resident who meets the criteria for admission to an outlier nursing facility, (4) provides services to a resident participating in the Centers of Excellence program, and (5) has a unit paid under an alternative purchasing model ODM is allowed to establish for residents with specialized health care needs.

The first of the two laws not repealed concerns the Medicaid payment rate for nursing facility services provided to a resident eligible for Medicaid and post-hospital extended care services under Medicare Part A (i.e., a dual eligible individual). Under that continuing law, ODM must pay the lesser of (1) the coinsurance for the services as provided under Medicare Part A and (2) the Medicaid maximum allowable, less the amount paid under Medicare Part A.

The other law not repealed concerns the Medicaid rate paid to a nursing facility to reserve a bed for a recipient during a temporary absence. The rate to be paid to a nursing facility for reserving a bed depends on its occupancy rate.

### Repeal of and revisions to statutes related to the statutory formula

The bill repeals and revises a number of laws related to nursing facilities' Medicaid payment rates. The following are the repealed and revised laws:

#### Cost reports

Current law requires each nursing facility to file with ODM an annual cost report. The law specifies the period that a cost report is to cover and when it is due and authorizes ODM to grant extensions. The bill retains the requirement for nursing facilities to file with ODM a cost report but, instead of requiring an annual cost report, requires that the cost reports be filed at times ODM requires. The provisions concerning the coverage period, due dates, and extensions are repealed. Also repealed are provisions that (1) require franchise permit fees to be reported as nonreimbursable expenses, (2) prohibit certain fines from being reported in cost reports, (3) specify how cost reports are to be completed, (4) provide for an addendum for reporting costs that may be disputed, (5) concern amendments to cost reports, (6) concern ODM's reviews of cost reports, and (7) require that ODM's manual and program for field audits of cost reports mandate that an auditor provide a nursing facility certain information that is sufficient to permit the nursing facility to calculate with reasonable certainty the rate to which it is entitled. Whereas current law provides for a nursing facility's rate to be reduced by a certain amount while its Medicaid provider agreement is being terminated due to failure to file a cost report, the bill requires that the rate be reduced in accordance with rules.

#### Rate for added, replaced, and renovated beds

The bill repeals a requirement that the Medicaid payment rate for added, replaced, and renovated nursing facility beds be the same as the rate for existing beds.

#### Cost of operating rights for relocated beds not an allowable cost

The bill repeals a law that makes amortization of the cost of acquiring the operating rights for relocated beds an impermissible cost for the purpose of determining a nursing facility's Medicaid payment rate.

#### Goods, services, and facilities furnished by a related party

The bill repeals a law that generally makes the costs of goods, services, and facilities furnished to a nursing facility by a related party allowable costs at the

reasonable cost to the related party. Current law establishes exceptions in the case of capital costs. A related party of a nursing facility provider is an individual or organization that, to a significant extent, has common ownership with, is associated or affiliated with, has control of, or is controlled by, the provider. A relative of a nursing facility owner also is a related party.

#### No reduced rate due to lower rates charged others

The bill repeals a prohibition against ODM reducing a nursing facility's Medicaid payment rate on the basis that the nursing facility charges a lower rate to a resident who is not eligible for Medicaid.

#### No payment for day of discharge

The bill repeals a prohibition against making a Medicaid payment to a nursing facility for the day a Medicaid recipient is discharged.

#### Deadline for determining rates

The bill repeals a requirement for ODM to make its best efforts to calculate nursing facilities' Medicaid payment rates in time to pay the rates by August 15th of each fiscal year. If ODM is unable to meet this deadline for a fiscal year, ODM is required by current law to pay each nursing facility the rate calculated at the end of the previous fiscal year. If ODM also is unable to calculate the rates in time to pay them by September 15 and October 15, ODM is required to pay the previous fiscal year's rate to make those payments. Current law permits ODM to increase the rate paid for these months by 5% if so requested by a nursing facility. Subsequent payment adjustments must be made if the actual rate is higher or lower than the rate paid before the actual rate is determined. ODM must use rates calculated for a fiscal year to make payments due by November 15th.

#### Adjustments to rate when there is a change of operator

Also repealed by the bill is a law that expressly permits the Medicaid Director to adopt rules governing adjustments to the Medicaid payment rate for a nursing facility that undergoes a change of operator. This law prohibits a rate adjustment resulting from a change of operator from taking effect before the effective date of the new operator's Medicaid provider agreement.

### Rate reductions and increases regarding quality indicators

The bill requires ODM to reduce each nursing facility's total Medicaid payment rate for fiscal year 2017 and each fiscal year thereafter. ODM is to determine the amount of the reduction for each fiscal year.

Using not more than the funds made available for a fiscal year by the rate reduction, ODM is required to increase the total Medicaid payment rate to be paid for that fiscal year to each nursing facility that meets at least one certain quality indicators for the applicable measurement period. The largest increase available for a fiscal year is to be made to nursing facilities that meet all of the quality indicators for the applicable measurement period. For fiscal year 2017, the measurement period begins July 1, 2015, and ends December 31, 2015. For each subsequent fiscal year, the measurement period is the calendar year immediately preceding the fiscal year.

The following are the quality indicators:

(1) A nursing facility's residents must have received an average of at least 2.8 hours of direct care per inpatient day from nursing aides and an average of least 1.3 hours of nursing care per inpatient day from registered nurses, other than the nursing facility's director of nursing, and from licensed practical nurses.

(2) At least 85% of a nursing facility's long-stay residents (residents who have resided in the nursing facility for at least 100 days) must have received direct care from not more than 12 different nurse aides during any 30-day period.

(3) Not more than a "target" percentage of a nursing facility's short-stay residents (residents who are not long-stay residents) must have had new or worsened pressure ulcers and not more than a "target" percentage of long-stay residents at high risk of pressure ulcers must have had pressure ulcers. ODM is required to specify the target percentages. The amount specified for short-stay residents may differ from the amount specified for long-stay residents.

(4) Not more than the "target" percentage of a nursing facility's short-stay residents may have newly received an antipsychotic medication and not more than the "target" percentage of the nursing facility's long-stay residents may have received such medication. ODM is required to specify the target percentages, and the amounts specified may differ for short-stay residents and long-stay residents.

(5) The number of a nursing facility's residents who had avoidable inpatient hospital admissions must not have exceeded the rate that ODM is required to specify.

The bill provides that if a nursing facility undergoes a change of operator during a fiscal year, the new operator is to be paid the same rate increase for the remainder of the fiscal year that the former operator was paid that fiscal year for meeting quality indicators. For the immediately following fiscal year, the amount of the increase is to be as follows:

(1) If the change of operator takes effect on or before the first day of October of the calendar year immediately preceding the fiscal year, the amount determined pursuant to the normal method discussed above;

(2) If the change of operator takes effect after the first day of October of the calendar year immediately preceding the fiscal year, the amount equal to the mean increase for all nursing facilities for the fiscal year.

In the case of a new nursing facility, the nursing facility's rate for its first year of operation is to be increased by the amount equal to the mean increase resulting from the quality indicators for all nursing facilities for the fiscal year.

## Medicaid care management system

(R.C. 5167.03)

The bill repeals provisions that require ODM to take specified actions regarding Medicaid care management system participation, so that decisions regarding program designation and enrollment are left to ODM's discretion. Specifically, the bill repeals the following requirements:

(1) The requirement to designate for participation in the system those individuals who receive Medicaid on the basis of being included in either (a) the covered families and children group or (b) the aged, blind, or disabled group, subject to specified exceptions;

(2) The requirement to ensure the participants mentioned above are enrolled in Medicaid managed care organizations that are health insuring corporations;

(3) The prohibition from designating for participation individuals who receive Medicaid on the basis of being aged, blind, or disabled and satisfy other specified criteria;

(4) The prohibition from including Medicaid-covered alcohol, drug addiction, and mental health services in any component of the system when the nonfederal share of the cost of those services is provided by a board of alcohol, drug addiction, and mental health services or a state agency other than ODM.

## HCAP

(R.C. 5168.01, 5168.06, 5168.07, 5168.10, 5168.11, and 5168.12 (repealed); Sections 610.10 and 610.11)

The bill continues the Hospital Care Assurance Program (HCAP) for two additional years. HCAP is scheduled to end October 16, 2015, but under the bill, is to continue until October 16, 2017. Under HCAP, hospitals are annually assessed an amount based on their total facility costs and government hospitals make annual intergovernmental transfers. ODM distributes to hospitals money generated by the assessments and intergovernmental transfers along with federal matching funds generated by the assessments and transfers. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty line.

The bill eliminates a requirement for a portion of the money generated by the HCAP assessments and intergovernmental transfers to be deposited into the Legislative Budget Services Fund and repeals the law creating the fund. Under current law, ODM is required to deposit into that fund an amount equal to the amount by which the biennial appropriation from the fund exceeds the amount of unexpended, unencumbered money in the fund. The money for the deposits is to come from the first installment of the HCAP assessments and intergovernmental transfers made during each year.

The bill requires that any money remaining in the Legislative Budget Services Fund on the date that the law creating the fund is repealed be used solely for the purpose stated in that law. The law states that the fund can be used solely to pay the expenses of LSC's Legislative Budget Office. The bill abolishes the fund when all the money in it has been spent.

## Hospital franchise permit fees

(R.C. 5168.23 and 5168.26; Sections 610.10 and 610.11)

The bill continues the assessments imposed on hospitals for two additional years, ending October 1, 2017, rather than October 1, 2015. The assessments are in addition to HCAP, but like HCAP, they raise money to help pay for the Medicaid program. To distinguish the assessments from HCAP, the assessments are sometimes called hospital franchise permit fees.

Under current law and unless ODM adopts rules establishing a different payment schedule, each hospital is required to pay its assessment for a year in accordance with the following schedule:

(1) 28% is due on the last business day of October;

(2) 31% is due on the last business day of February;

(3) 41% is due on the last business day of May.

The bill eliminates this payment schedule and instead requires ODM to establish a payment schedule for each year. ODM is required to consult with the Ohio Hospital Association before establishing the payment schedule for a year and to include the payment schedule in each preliminary determination notice of the assessment that continuing law requires ODM to mail to hospitals.

## Nursing homes' and hospital long-term care units' franchise permit fees

(R.C. 5168.40, 5168.44, 5168.45, 5168.47, 5168.48, 5168.49, and 5168.53)

The bill revises the law governing the annual franchise permit fees that nursing homes and hospital long-term care units are assessed. The fees are a source of revenue for nursing facilities and HCBS covered by the Medicaid program and the Residential State Supplement program.

### Bed surrenders

Under continuing law, ODM is required to redetermine each nursing home's and hospital long-term care unit's franchise permit fee for a year if one or more bed surrenders occur during the period beginning on the first day of May of the preceding calendar year and ending on the first day of January of the calendar year in which the redetermination is made. Current law defines "bed surrender" as the following:

(1) In the case of a nursing home, the removal of a bed from a nursing home's licensed capacity in a manner that reduces the total licensed capacity of all nursing homes;

(2) In the case of a hospital, the removal of a hospital bed from registration as a skilled nursing facility bed or long-term care bed in a manner that reduces the total number of hospital beds registered as skilled nursing facility beds or long-term care beds.

The bill revises what constitutes a bed surrender. In the case of a nursing home, a bed surrender does not occur unless a bed's removal from its licensed capacity is done

in a manner that, in addition to reducing the total licensed capacity of all nursing homes, makes it impossible for the bed to ever be a part of any nursing home's licensed capacity. In the case of a hospital long-term care unit, a bed surrender does not occur unless a bed's removal from registration as a skilled nursing facility bed or long-term care bed is done in a manner that, in addition to reducing the total number of hospital beds registered as such, makes it impossible for the bed to ever be registered as a skilled nursing facility bed or long-term care bed.

### Notices of fees and redeterminations

Under current law, ODM is required to mail each nursing home and hospital long-term care unit notice of the amount of its franchise permit fee for a year not later than the first day of each October. ODM must mail each nursing home and hospital long-term care unit notice of its redetermined franchise permit fee due to bed surrenders not later than the first day of each March. If a nursing home or hospital long-term care unit requests an appeal regarding its franchise permit fee, ODM must mail a notice of the date, time, and place of the hearing to the nursing home or hospital.

The bill requires that these notices be provided electronically or by the U.S. Postal Service.

## Home care services contracts

(R.C. 121.36)

For contracts for home care services paid for with public funds, the bill repeals a provision of current law that requires the provider to have a system for monitoring the delivery of the services by the provider's employees.

- Eliminates provisions that result in the automatic suspension of a certificate to practice for failure to renew or register the certificate, including failure to complete continuing education requirements, and instead permits the State Medical Board to suspend the certificate.

- Provides that an adjudication hearing is not required if the Board imposes a civil penalty for failure to complete continuing education requirements but does not take any other action.

- Authorizes the Board to impose, before restoring or issuing certain certificates to practice, additional terms and conditions on applicants, including physical examinations and skills assessments.

- Provides that an adjudication hearing is not required if the Board imposes a civil penalty for failure to complete continuing education requirements but does not take any other action.

- Clarifies continuing education requirements for physicians but does not make substantive changes to the requirements.

- Requires that the Board's secretary and supervising member, as opposed to the Board, review and make eligibility determinations concerning expedited certificates to practice medicine and surgery or osteopathic medicine and surgery by endorsement.

- Requires that if the requirements for an expedited certificate are not met, the secretary and supervising member must treat the application as an application for a certificate to practice medicine and surgery or osteopathic medicine and surgery.

- Authorizes the Board to impose a civil penalty on a professional who violates the law administered by the Board.

- Requires the Board to adopt guidelines regarding the amounts of civil penalties that may be imposed and specifies that the amount of a civil penalty cannot exceed $20,000.

## Suspension of certificate for failure to renew or register

(R.C. 4730.14 and 4731.281)

Under current law, the failure of a physician (including a podiatrist) or physician assistant to renew or register a certificate to practice operates to suspend the certificate automatically. The law specifies procedures to (1) reinstate a certificate that has been suspended for two years or less or (2) restore a certificate that has been suspended for more than two years.

The bill eliminates the automatic suspension and instead allows the State Medical Board to suspend a certificate for a failure to renew or register.

In general, the bill permits the Board to reinstate or restore a certificate under the same terms and conditions as existing law. However, in the case of a physician (including a podiatrist), the bill increases the reinstatement fee from $50 to $100 and the restoration fee from $100 to $200. The fees for a physician assistant remain the same.

If the Board finds that a certificate holder has failed to complete continuing education requirements, current law permits the Board to impose a civil penalty of not more than $5,000, in addition to or instead of any other authorized action. The bill maintains this civil penalty and specifies that, if the Board imposes only a civil penalty and takes no other disciplinary action, it cannot conduct an adjudication under the Administrative Procedure Act.

## Conditions for restoring or issuing certificates

(R.C. 4731.222)

### Skills assessments

Under existing law, the Board may restore a certificate to practice that has been in a suspended or inactive state for more than two years. The Board may also issue a certificate to practice to an applicant who has not been engaged in practice for more than two years as an active practitioner or a student. Before restoring or issuing a certificate, the Board may impose terms and conditions, including (1) requiring the applicant to pass an examination to determine fitness to resume practice, (2) requiring the applicant to obtain additional training and pass an examination, or (3) restricting or limiting the applicant's practice.

The bill authorizes the Board to impose additional terms and conditions before restoring or issuing a certificate to practice. These include:

(1) Requiring an assessment of the applicant's physical skills for purposes of determining whether the applicant's coordination, fine motor skills, and dexterity are sufficient for performing medical evaluations and procedures in a manner that meets the minimal standards of care;

(2) Requiring an assessment of the applicant's skills in recognizing and understanding diseases and conditions;

(3) Requiring the applicant to undergo a comprehensive physical examination, which may include an assessment of physical abilities, evaluation of sensory capabilities, or screening for the presence of neurological disorders.

### Conforming and clarifying changes

The provisions regarding the Board's authority to restore or issue certificates to practice are part of the law governing physicians (including podiatrists) and practitioners of the limited branches of medicine, which consist of cosmetic therapy, massage therapy, naprapathy, and mechanotherapy.[119] For consistency within these provisions, the bill includes references to podiatrists and practitioners of limited branches of medicine where the references are currently omitted.

In addition to the changes made for consistency, the bill specifies that the Board is authorized to impose one or more of the terms and conditions included in either existing law or the bill. Current law provides that the Board may impose any of the specified terms and conditions, but it does not expressly authorize the Board to impose more than one of them.

## Continuing education requirements

(R.C. 4730.14, 4731.15, 4731.22, 4731.281, 4731.282, 4731.283 (repealed), 4731.293, 4731.295, 4731.296, 4731.297, 4778.06, and 5903.12)

If the Board finds that a physician (including a podiatrist) or physician assistant has failed to complete continuing education requirements, current law permits the Board to impose a civil penalty of not more than $5,000, in addition to or instead of any other authorized action. The bill maintains this civil penalty and specifies that, if the Board imposes only a civil penalty and takes no other disciplinary action, it cannot conduct an adjudication under the Administrative Procedure Act.

The bill clarifies continuing education requirements for physicians (including podiatrists) by requiring that physicians complete 100 hours of continuing medical

[119] R.C. 4731.15 and 4731.151, not in the bill.

education, rather than requiring physicians to certify to the State Medical Board that they have completed 100 hours of continuing medical education. It does not make substantive changes to the requirements.

## Expedited certificate to practice by endorsement

(R.C. 4731.299)

Current law authorizes the Board to issue, without examination, an expedited certificate to practice medicine and surgery or osteopathic medicine and surgery by endorsement. Individuals seeking an expedited certificate must file a written application with the Board. The bill specifies that the secretary and supervising member of the Board must review all applications for expedited certificates. The bill also provides that, if the secretary and supervising member determine that an applicant has met all of the necessary requirements, the Board must issue the certificate. Under the bill, if the secretary and supervising member determine that an applicant has not met all of the requirements, the application must be treated as an application for a certificate to practice medicine and surgery or osteopathic medicine and surgery.

## Civil penalties imposed by the Board

(R.C. 4730.252, 4731.225, 4731.24, 4760.133, 4762.133, 4774.133, and 4778.141)

The bill generally authorizes the Board to impose a civil penalty on a professional who violates the law administered by the Board. The bill applies to the following professionals: physicians, podiatrists, physician assistants, massage therapists, cosmetic therapists, naprapaths, mechanotherapists, anesthesiologist assistants, oriental medicine practitioners, acupuncturists, radiologist assistants, and genetic counselors. Existing law does not generally authorize a civil penalty.

If the Board imposes a civil penalty, it must do so pursuant to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.) and an affirmative vote of not fewer than six Board members. The amount of a civil penalty must be determined by the Board in accordance with guidelines adopted by the Board. The civil penalty may be in addition to any other disciplinary action that current law permits the Board to take.

The bill requires the Board to adopt, and authorizes it to amend, guidelines regarding the amounts of civil penalties to be imposed. At least six Board members must approve the adoption or amendment of the guidelines. Under the guidelines, the amount of a civil penalty cannot exceed $20,000.

The bill provides that amounts received from payment of civil penalties must be deposited by the Board to the credit of the existing State Medical Board Operating Fund. With respect to civil penalties imposed for violations involving drug, alcohol, or substance abuse, the Board must use the amounts received solely for investigations, enforcement, and compliance monitoring.

## DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES

### Recovery supports for the mentally ill and drug-addicted

- Defines the term, "recovery support," and replaces references to "recovery support service" with references to "recovery support" throughout the Revised Code.

- Defines "community addiction services provider" and "community mental health services provider" to include a provider of recovery supports who is compensated with public funds.

- Specifies that a recovery support is a separate component of the continuum of care for persons suffering from mental illness or drug or alcohol addiction.

- Requires the Ohio Department of Mental Health and Addiction Services (ODMHAS) Director and ODMHAS to perform duties related to the provision of recovery supports that are similar to those performed under existing law related to the provision of addiction and mental health services.

- Requires a community mental health and addiction plan that a board of alcohol, drug addiction, and mental health services (ADAMHS board) submits to ODMHAS under existing law include a list of the ODMHAS priorities for recovery supports that have been communicated to the ADAMHS board.

- Requires an ADAMHS board to submit a statement identifying the recovery supports the board intends to make available and requires ODMHAS to approve or disapprove that statement in whole or in part.

- Requires an ADAMHS board to contract with community mental health and addiction services providers for the provision of recovery.

- Specifies that the continuum of care for opioid and co-occurring drug addiction includes recovery supports.

- Requires a report on public funding that an ADAMHS board must submit to ODMHAS under existing law identify funds the board receives for recovery supports associated with opioid and co-occurring drug addiction.

- Requires an ADAMHS board and ADAMHS board executive director to perform duties related to the provision of recovery supports that are similar to those performed under existing law related to the provision of addiction and mental health services.

- Requires information concerning an individual's receipt of recovery supports to be kept confidential in the same manner as information concerning an individual's mental health treatment.

- Requires an annual report that ODMHAS must submit to the Governor under existing law to contain information concerning the recovery supports that ODMHAS offers.

- For state and federal reporting purposes, requires ODMHAS to collect information concerning the delivery of recovery supports.

- Authorizes ODMHAS facilities to exchange psychiatric records and other information with payers and providers of recovery supports.

- Makes technical and conforming changes associated with the bill's other provisions on addiction and mental health services and recovery supports.

### Recovery housing

- Defines "recovery housing" to include housing for individuals recovering from alcoholism as well as drug addiction.

- Eliminates provisions that prohibit residential facilities from owning or operating recovery housing or providing addiction services, but prohibits recovery housing from being subject to ODMHAS residential facility licensure.

### Prohibition on discriminatory practices

- Prohibits an ADAMHS board or community addiction or mental health services provider from discriminating in the provision of addiction and mental health services, in employment, or under a contract based on religion or age (in addition to race, color, creed, sex, national origin, or disability, as specified in existing law).

### Joint state plan to improve access

- Eliminates certain requirements relating to a joint state plan designed to improve access to alcohol and drug addiction services for individuals a PCSA identifies as being in need of those services.

### Confidentiality of records

- Eliminates the confidentiality of specified mental health records identifying a patient who has been deceased for 50 years or longer.

### Mental health service provider noncompliance

- Permits ODMHAS to suspend the admission of patients to a hospital treating mentally ill persons or a community addiction services provider offering overnight accommodations under certain circumstances.

- Authorizes ODMHAS to refuse to renew a hospital's license to treat the mentally ill for specified reasons.

### Residential facilities

- Amends the definition of "residential facility" to create different classes of residential facilities based on the size of the facility and the types of services offered by the facility.

- Expands the reasons ODMHAS may suspend admissions to a residential facility, refuse to issue or renew, or revoke a facility's license.

- Modifies the requirements regarding the operation of residential facilities.

### Rules

- Modifies ODMHAS's rule-making authority.

### Social Security Residential State Supplement eligibility

- Makes changes to the eligibility requirements for the Residential State Supplement Program.

- Limits the referral requirements under the Residential State Supplement Program.

- Removes the current law requirement that ODMHAS maintain a waiting list for the Residential State Supplement Program.

- Permits the Department of Medicaid to (1) determine whether an applicant meets eligibility requirements and (2) notify each denied applicant of the applicant's right to a hearing.

### Probate court reimbursement

- Eliminates the requirement of sending a probate court's transcript of proceedings to the mentally ill person's county of residence in order for the committing court to be reimbursed for its expenses and instead requires the sending of a certified copy of the commitment order.

## Office of Support Services Fund

- Renames the "Office of Support Services Fund" used by ODMHAS to be the "Ohio Pharmacy Services Fund."

## Drug court pilot program

- Creates a pilot program to provide addiction treatment to persons who are offenders in the criminal justice system and are dependent on opioids, alcohol, or both.

- Requires certified community addiction services providers to provide specified treatment to the participants in the pilot program based on the individual needs of each participant.

- Requires a research institute to prepare a report on the pilot program's findings and to submit the report to the Governor and other specified persons.

## Bureau of Recovery Services

- Transfers the Bureau of Recovery Services in the Department of Rehabilitation and Correction to ODMHAS.

## Recovery supports for the mentally ill and drug-addicted

### Separate component in the continuum of care

(R.C. 340.03 and 5119.01; conforming changes in R.C. 121.372, 140.01, 321.44, 340.01, 340.07, 340.15, 737.41, 2151.3514, 2925.03, 2929.13, 2929.15, 2935.33, 2951.041, 2981.12, 2981.13, 4511.191, 5107.64, 5119.11, 5119.186, 5119.23, 5119.25, 5119.31, 5119.36, 5119.361, 5119.362, 5119.365, and 5119.94; Section 812.40)

Under continuing law modified in part by the bill, a board of alcohol, drug addiction, and mental health services (ADAMHS board) must establish, to the extent resources are available, a continuum of care for persons in need of addiction or mental health services. Current law specifies that certain services, called "recovery support services," are included in the continuum as a type of addiction or mental health service. The bill specifies that a "recovery support" is a separate component of the continuum of care rather than being an addiction or mental health service. Associated with this change, the bill replaces references to "recovery support service" with references to "recovery support" throughout the Revised Code. The bill also makes necessary conforming changes to reflect the status of recovery supports as separate from addiction and mental health services in the continuum of care.

The bill defines a "recovery support" as a form of nonclinical assistance that is intended to help an individual with addiction or mental health needs, or a member of that individual's family, to initiate or sustain the individual's recovery from alcoholism, drug addiction, or mental illness. The bill specifies that a recovery support does not include a treatment or prevention service.

Associated with the establishment of a recovery support as a separate component in the continuum of care, the bill modifies the definitions of "community addiction services provider" and "community mental health services provider" to include a provider of recovery supports who is compensated with local, state, or federal funds administered by an ADAMHS board. The bill makes necessary conforming changes to reflect these modifications.

## ODMHAS's role in the delivery of recovery supports

### Duties

(R.C. 5119.10, 5119.21, and 5119.22)

The bill requires the Ohio Department of Mental Health and Addiction Services (ODMHAS) and the ODMHAS Director to perform duties related to recovery supports that are similar to the duties they perform under existing law related to addiction and mental health services. Specifically, the bill requires ODMHAS to:

--Provide training, consultation, and technical assistance to ODMHAS employees, community mental health and addiction services providers, ADAMHS boards, and other agencies providing addiction and mental health services and recovery supports;

--To the extent resources are available, promote and support a full range of recovery supports that are available and accessible to all Ohio residents, especially for severely mentally disabled children, adolescents, adults, pregnant women, parents, guardians or custodians of children at risk of abuse or neglect, and other special target populations (including racial and ethnic minorities), as determined by ODMHAS;

--Establish a program to protect and promote the rights of persons receiving recovery supports, including the issuance of guidelines on informed consent and other rights;

--Promote the involvement of persons who are receiving or have received recovery supports, including families and other persons having a close relationship to a person receiving those supports, in the planning, evaluation, delivery, and operation of recovery supports; and

--Notify and consult with the relevant constituencies that may be affected by rules, standards, and guidelines issued by ODMHAS, including consumers of recovery supports and their families.

The bill requires the ODMHAS Director to do both of the following related to recovery supports:

--Establish criteria by which an ADAMHS board reviews and evaluates the quality, effectiveness, and efficiency of its contracted recovery supports. Associated with this review and evaluation, ODMHAS may collect information on recovery supports that the ADAMHS board provides.

--Review each ADAMHS board's community mental health and addiction plan, budget, and statement of addiction and mental health services and recovery supports, and approve or disapprove the plan, budget, or statement in whole or in part. The bill requires an ADAMHS board to include in the statement a list of the ODMHAS priorities for recovery supports (in addition to addiction and mental health services) that have been communicated to the ADAMHS board (see "**ADAMHS boards**," below).

#### Annual report to the Governor

(R.C. 5119.60)

The bill specifies that an annual report that ODMHAS submits to the Governor containing information on services offered by ODMHAS also must include information on recovery supports that are offered. The report must include the number and types of recovery supports provided to severely mentally disabled persons through state-operated services and community mental health services providers.

#### Collection of statistics and information

(R.C. 5119.61)

Under existing law, ODMHAS must collect information about addiction and mental health services and report it to state and federal officials for funding evaluation purposes. The bill also requires ODMHAS to collect information on recovery supports for the same purposes. Associated with this requirement, the bill prohibits an alcohol, drug addiction, or mental health services provider from failing to supply statistics and other information to ODMHAS on recovery supports (in addition to services).

### ADAMHS board's role in the delivery of recovery supports

(R.C. 340.03 and 340.033; Section 812.40)

The bill requires ADAMHS boards to perform duties related to recovery supports that are similar to the duties they perform under existing law related to addiction and mental health services. The duties fall into the following categories:

#### (1) Community addiction and mental health planning agency

Regarding its continuing role as the community addiction and mental health planning agency, the bill requires an ADAMHS board to:

--Evaluate the need for recovery supports;

--In cooperation with other local and regional planning and funding bodies and with relevant ethnic organizations, set priorities for recovery supports; and

--In accordance with ODMHAS guidelines, annually develop and submit to ODMHAS a community addiction and mental health plan addressing ODMHAS priorities that have been communicated to the board for recovery supports.

#### (2) Investigations

The bill requires an ADAMHS board to investigate complaints alleging abuse or neglect of any person receiving recovery supports.

#### (3) Audits

The bill requires an ADAMHS board to conduct program audits that review and evaluate the quality, effectiveness, and efficiency of recovery supports provided through community addiction and mental health services providers. In addition, the bill requires a board to annually audit all recovery supports provided under contract with the board.

#### (4) Promotion of local financial support

The bill requires an ADAMHS board to recruit and promote local financial support for recovery supports.

#### (5) Contracts

The bill requires an ADAMHS board to enter into contracts with public and private community addiction and mental health service providers for the provision of recovery supports. In doing so, a board is prohibited from contracting with a provider to provide recovery supports unless the supports meet quality criteria or core

competencies established by ODMHAS. A board must consider the cost effectiveness of recovery supports provided by the provider and may review costs elements (including salary costs) of supports to be provided.

**(6) Annual report**

The bill requires an ADAMHS board to submit to the ODMHAS Director and the county commissioners of the county or counties served by the board, as well as make available to the public, an annual report of the recovery supports (in addition to addiction and mental health services as required under current law) under the board's jurisdiction, including a fiscal accounting.

**(7) Establishment of a continuum of care**

As a separate component in the continuum of care, the bill specifies that a recovery support includes:

--Assistance to obtain education, employment, or job training;

--Assistance to develop social, community, or personal living skills;

--Access to a wide range of housing and housing assistance;

--Assistance for persons with addiction or mental health needs, as well as their families, friends, and others, to find support, consultation, and education regarding mental health and addiction;

--The recognition and encouragement of families, friends, neighborhood networks (especially networks that include racial and ethnic minorities), faith-based organizations, community organizations, and community employment as natural supports for persons with addiction or mental health needs.

Also regarding recovery supports as a separate component in the continuum of care, the bill:

--Requires an ADAMHS board to locate persons in need of recovery supports (in addition to addiction or mental health services as required under current law) for the purpose of informing them of available services and benefits;

--Requires an ADAMHS board to provide assistance for persons receiving recovery supports for the purpose of obtaining services necessary to meet basic human needs for food, clothing, shelter, medical care, personal safety, and income; and

--Eliminates community psychiatric supportive treatment services as a component in the continuum of care.

#### (8) Persons subject to involuntary commitment

The bill requires an ADAMHS board to assure that recovery supports are available to any person involuntarily committed to the board.

#### (9) Payment

The bill requires an ADAMHS board to establish a procedure for authorizing providers to be paid for recovery supports.

#### (10) Advice from recovery support recipients

The bill requires an ADAMHS board to establish a mechanism for obtaining advice and involvement of persons receiving recovery supports (in addition to addiction or mental health services as required under existing law) on matters pertaining to recovery supports in the alcohol, drug addiction, and mental health service district.

#### (11) Opioid and co-occurring drug addiction

The bill requires an ADAMHS board to provide recovery supports for opioid and co-occurring drug addiction. The provision of recovery supports is subject to the same conditions placed on the provision of treatment services under existing law.

### Executive director duties

(R.C. 340.04)

The bill requires an ADAMHS board's executive director to perform duties that are similar to those of an executive director must perform under existing law with respect to addiction and mental health services. Specifically, the bill requires an executive director to:

--Supervise recovery supports;

--Recommend to the board changes necessary to increase the effectiveness of recovery supports;

--Encourage the development and expansion of recovery supports; and

--Prepare for board approval an annual report on recovery supports under the board's jurisdiction, including a fiscal accounting of all supports.

### ADAMHS board statement on recovery supports

(R.C. 340.08)

Under existing law, an ADAMHS board must submit to ODMHAS, in accordance with ODMHAS rules or guidelines, a statement identifying the addiction and mental health services the board intends to make available. The bill requires the statement also to identify the recovery supports the board intends to make available. After submission, ODMHAS must approve or disapprove the list of proposed services and supports. A continuity of care agreement that a board enters into with ODMHAS under existing law cannot require the board to provide recovery supports (in addition to addiction and mental health services) that are not on the list.

In addition, the bill requires the report that an ADAMHS board submits to ODMHAS under existing law, which summarizes complaints and grievances concerning the rights of persons seeking or receiving addiction or mental health services, also to include complaints and grievances concerning the rights of persons seeking or receiving recovery supports.

### Use of funds

(R.C. 340.09)

Under existing law, an ADAMHS board must provide for the board's operation as well as the provision of addiction and mental health services and support functions approved by ODMHAS. The bill also requires an ADAMHS board to provide recovery supports specified in the board's statement of services and supports, and clarifies that funds the General Assembly appropriates and allocates to it must be used for these purposes.

### Confidentiality and exchange of records

(R.C. 5119.28 and 5122.31)

The bill requires information concerning an individual's receipt of recovery supports to be kept confidential in the same manner as information concerning an individual's mental health treatment under existing law. Accordingly, such information must be kept confidential and may be released only in limited circumstances (*e.g.*, pursuant to proper consent, in accordance with federal provisions or other provisions of Ohio law, for payment purposes, pursuant to a court order, or to facilitate the individual's care).

Under law unchanged by the bill, documents pertaining to the hospitalization of the mentally ill and criminal trials of persons alleged to be insane generally must be

kept confidential and not be disclosed unless the patient consents to disclosure. There are several exceptions to this rule, one of which permits ODMHAS hospitals, institutions, and facilities, as well as community mental health agencies, to exchange psychiatric records and other pertinent information with payers and providers of treatment and health services if the purpose of the exchange is to facilitate continuity of care. The bill also permits those hospitals, institutions, facilities, and agencies to exchange psychiatric records and other pertinent information with providers of recovery supports for the same purpose.

## Recovery housing

(R.C. 340.01 and 340.034; Section 812.40)

Under existing law, recovery housing must be included in the array of treatment services and recovery supports for all levels of opioid and co-occurring drug addiction. The bill defines "recovery housing" to include housing for individuals recovering from alcoholism as well as drug addiction. The bill eliminates provisions that prohibit residential facilities from owning or operating recovery housing or providing addiction services, but prohibits recovery housing from being subject to ODMHAS residential facility licensure. Under the bill, a "residential facility" is a publicly or privately operated home or facility that falls into one of the following categories:[120]

(1) Class one facilities provide accommodations, supervision, personal care services, and mental health services for one or more unrelated adults, children, or adolescents with mental illness.

(2) Class two facilities provide accommodations, supervision, and personal care services to any of the following: (a) one or two unrelated persons with mental illness, (b) one or two unrelated adults who are receiving residential state supplement payments, or (c) three to 16 unrelated adults.

(3) Class three facilities provide room and board for five or more unrelated adults with mental illness.

In addition, the bill prohibits recovery housing from being owned and operated by an ADAMHS board unless (1) the board owns and operates the recovery housing on September 15, 2016, or (2) the board determines that there is an emergency need for the board to assume the ownership and operation of the recovery housing (*e.g.*, when an existing owner and operator of the recovery housing goes out of business, and the

[120] R.C. 5119.34.

board considers the assumption of ownership and operation of the recovery housing to be its last resort).

### Prohibition on discriminatory practices

(R.C. 340.12)

The bill prohibits an ADAMHS board or community addiction or mental health services provider from discriminating in the provision of addiction and mental health services, in employment, or under a contract on the basis of religion or age. Those practices are currently prohibited on the basis of race, color, creed, sex, national origin, or disability.

### Joint state plan to improve access to alcohol and drug addiction services

(R.C. 5119.161)

The bill eliminates two requirements relating to a joint state plan administered by ODMHAS, in conjunction with the Ohio Department of Job and Family Services (ODJFS), to improve access to alcohol and drug addiction services for individuals a public children services agency identifies as being in need of those services. First, the bill eliminates the requirement that the plan address the need and manner for sharing information and include a request for an appropriation to pay for alcohol and drug addiction services for caregivers of at-risk children. Second, the bill eliminates the requirement that ODMHAS and ODJFS submit a biennial report to the Governor and certain other public officials of the progress made under the plan.

### Confidentiality of mental health records

(R.C. 5119.28 and 5122.31)

The bill sets a time limit with respect to the confidentiality of mental health records in certain circumstances. First, the bill specifies that all records and reports pertaining to an individual's mental health condition maintained in connection with services certified by ODMHAS that identifies the individual are no longer confidential once the individual has been deceased for 50 years or longer. Second, the bill specifies that all certificates, applications, records, and reports from a hospitalization or commitment due to mental illness that directly or indirectly identify an individual are no longer confidential once the individual has been deceased for 50 years or longer.

## Mental health service provider noncompliance

(R.C. 5119.33 and 5119.36 with conforming changes in R.C. 5119.99)

### Suspension

The bill permits ODMHAS to suspend the admission of patients to a hospital treating mentally ill persons or a community addiction services provider offering overnight accommodations if it finds either of the following:

(1) That the hospital or provider is not in compliance with ODMHAS rules;

(2) The hospital or provider was cited for repeated violations during previous license or certification periods.

### Refusal to renew

The bill also permits ODMHAS to refuse to renew, in addition to revoke under existing law, a hospital's license to treat the mentally ill for any of the following reasons:

(1) The hospital is no longer a suitable place for the care or treatment of mentally ill persons.

(2) The hospital refuses to be subject to ODMHAS inspection or on-site review.

(3) The hospital has failed to furnish humane, kind, and adequate treatment and care.

(4) The hospital fails to comply with the ODMHAS licensure rules.

## Licensing and operation of residential facilities

(R.C. 5119.34 with conforming changes in R.C. 340.03, 340.05, 5119.341, 5119.41, and 5123.19)

### "Residential facility" definition

The bill replaces the definition of "residential facility" with a new definition that creates different classes of publicly or privately operated residential facilities based on the size of the facility and the types of services offered by the facility. These classes parallel current groups included, with the major difference being the removal of the requirement of a referral.

- Class one facilities provide accommodations, supervision, personal care services, and mental health services for one or more unrelated adults, children, or adolescents with mental illnesses.

- Class two facilities provide accommodations, supervision, and personal care services to (1) one or two unrelated persons with mental illness, (2) one or two unrelated adults who are receiving Residential State Supplement payments, and (3) three to 16 unrelated adults.

- Class three facilities provide room and board for five or more unrelated adults with mental illness.

The bill removes from current law's exclusions from the definition of "residential facility" the current exclusion of certified alcohol or drug addiction services. The bill also excludes from the definition the residence of a relative or guardian of a person with mental illness and an institution maintained, operated, managed, and governed by ODMHAS for the hospitalization of mentally ill persons.

Under current law, "residential facility" means a publicly or privately operated home or facility that provides one of the following:

(1) Accommodations, supervision, personal care services, and community mental health services for one or more unrelated adults with mental illness or severe mental disabilities or to one or more unrelated children and adolescents with a serious emotional disturbance or who are in need of mental health services who are referred by or are receiving community mental health services from a community mental health services provider, hospital, or practitioner.

(2) Accommodations, supervision, and personal care services to any of the following: (a) one or two unrelated persons with mental illness or persons with severe mental disabilities who are referred by or are receiving mental health services from a community mental health services provider, hospital, or practitioner, (b) one or two unrelated adults who are receiving Residential State Supplement payments, or (c) three to 16 unrelated adults.

(3) Room and board for five or more unrelated adults with mental illness or severe mental disability who are referred by or are receiving community mental health services from a community mental health services provider, hospital, or practitioner.

### Residential facility suspensions and licensure discipline

Additionally, the bill expands the reasons ODMHAS may suspend admissions to a residential facility, refuse to issue or renew, or revoke a facility's license to also include:

(1) The facility has been cited for a pattern of serious noncompliance or repeated violations during the current licensing period.

(2) ODMHAS finds that an applicant or licensee submitted false or misleading information as part of an application, renewal, or investigation.

Such a suspension remains in effect during the pendency of licensure proceedings.

## Rules

(R.C. 5119.34(E)(1) and 5119.36(L))

The bill changes ODMHAS's rule-making authority:

The bill requires ODMHAS to adopt rules establishing procedures for conducting background investigations of nonresidential occupants of residential facilities who may have direct access to facility residents. Under current law, criminal records checks are only required for prospective or current operators, employees, and volunteers.

The bill also removes ODMHAS' duty to adopt rules governing procedures for obtaining an affiliation agreement between a residential facility and a community mental health services provider.

Finally, in the provision requiring ODMHAS to adopt rules establishing certification standards for mental health services and addiction services, the bill replaces references to "conditional" certifications for addiction service and mental health service providers with "probationary and interim" certifications. These rules address standards and procedures for granting these types of certifications and the limitations to be placed on a provider that is granted such a certification.

## Social Security Residential State Supplement eligibility

(R.C. 5119.41 and 5119.411 (repealed))

The bill makes three changes to the eligibility requirements for the Social Security Residential State Supplement Program. First, the bill removes from the list of residences eligible for the residential state supplement an apartment or room certified

and approved under Ohio law to provide community mental health housing services. Second, the bill permits an individual residing in a living arrangement housing more than 16 individuals to be eligible for the Program if the ODMHAS Director waives the size limitation with respect to that individual (and an individual with such a waiver as of October 1, 2015, remains eligible for the Program as long as the individual remains in that living arrangement). Third, the bill removes the eligibility requirement that a residential state supplement administrative agency have determined that an individual's living environment is appropriate for the individual's needs.

The bill also limits the referral requirements so that a residential state supplement administrative agency must refer an enrolled individual for an assessment with a community mental health services provider only if the agency is aware that the individual has mental health needs. Current law requires the agency to refer an individual for an assessment if the individual is eligible for Social Security payments, Supplemental Security Income payments, or Social Security Disability insurance benefits because of a mental disability.

The bill removes the current law requirement that ODMHAS maintain a waiting list for the Residential State Supplement Program.

The bill also changes the authority under which the ODMHAS Director adopts rules for the Program from R.C. 111.15 rules to APA rules.

Finally, the bill permits the Department of Medicaid, in addition to the applicable county department of job and family services, to (1) determine whether an applicant meets eligibility requirements and (2) notify each denied applicant of the applicant's right to a hearing. Under current law, only the applicable county department of job and family services can engage in those activities. In addition, the hearing is to be held under the general Ohio Department of Job and Family Services appeals procedure, rather than under the APA as under current law.

## Probate court reimbursement for fees for commitment of mentally ill

(R.C. 5122.36)

The bill changes the documents required to be sent by a probate court that is ordering the hospitalization of a mentally ill person whose temporary residence is in that court's county in order for the ordering court's fees and expenses for such hospitalization to be paid by the county of the person's legal residence. Under the bill, the ordering court must send to the probate court of the person's county of legal residence a certified copy of the ordering court's commitment order. Under current law, the ordering court must send a certified transcript of all proceedings in the ordering court. The bill requires the receiving court to enter and record the commitment order

and provides that the certified commitment order is prima facie evidence of the person's residence.

### Office of Support Services Fund

(R.C. 5119.44)

The bill renames the "Office of Support Services Fund" used by ODMHAS to be the "Ohio Pharmacy Services Fund."

### Drug court pilot program

(Section 331.90)

ODMHAS is required to conduct a pilot program to provide addiction treatment, including medication-assisted treatment, to persons who are offenders within the criminal justice system who are eligible to participate in a certified drug court program. Participants in the pilot program are to be selected because of their dependence on opioids, alcohol, or both. In conducting the program, ODMHAS is required to collaborate with the Ohio Supreme Court, the Department of Rehabilitation and Correction, and any agency of the state that ODMHAS determines may be of assistance in accomplishing the objectives of the program. ODMHAS also may collaborate with the Board of Alcohol, Drug Addiction, and Mental Health Services that serves the county in which a participating court is located and with the local law enforcement agencies serving that county.

"Certified drug court program" means a session of a common pleas court, municipal court, or county court, or any division of these courts, that holds initial or final certification from the Ohio Supreme Court as a specialized docket program for drugs. ODMHAS is required to conduct the program in those courts of Crawford, Franklin, Hardin, and Mercer counties that are conducting certified drug court programs. However, if any of these counties do not have a court conducting a certified drug court program, ODMHAS is required to conduct a certified drug court program in another county. In addition to conducting the program in the courts that are conducting certified drug court programs in Crawford, Franklin, Hardin, and Mercer counties, ODMHAS may conduct the program in any court that is conducting a certified drug court program in another county.

#### Selection of persons to participate in the pilot program

A certified drug court program is required to select criminal offenders to participate in the pilot program who meet the legal and clinical eligibility criteria for the certified drug court program and who are active participants in the program. The total

number of offenders participating in the pilot program at any time is limited to 500, except that ODMHAS may authorize additional persons to participate in circumstances that it considers to be appropriate. After being enrolled in a certified drug court program, a participant must comply with all of the program's requirements.

### Treatment provided

Only a certified community addiction services provider is eligible to provide treatment in a certified drug court program.[121] The addiction services provider is required to do all of the following:

(1) Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the provider;

(2) Conduct professional, comprehensive substance abuse and mental health diagnostic assessments of a person under consideration as a program participant, to determine whether the person would benefit from substance abuse treatment and monitoring;

(3) Determine, based on the above assessment, the treatment needs of the participants served by the provider;

(4) Develop individualized goals and objectives for the participants served by the provider;

(5) Provide access to long-lasting antagonist therapies, partial antagonist therapies, or both, that are included in the program's medication-assisted treatment;

(6) Provide other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the provider to be co-occurring disorders;

(7) Monitor program compliance through the use of regular drug testing, including urinalysis, of the participants being served by the provider.

A "prescriber" is any of the following individuals who are authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice: (1) a dentist, (2) a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe drugs and therapeutic devices, (3) an optometrist, (4) a physician authorized to practice

[121] R.C. 5119.36, not in the bill.

medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, (5) a physician assistant, or (6) a veterinarian.[122]

In the case of medication-assisted treatment provided under the pilot program, all of the following conditions apply:

(1) A drug may only be used if the drug has been approved by the U.S. Food and Drug Administration for use in treating dependence on opioids, alcohol, or both, or for preventing relapse into the use of opioids, alcohol, or both.

(2) One or more drugs may be used, but each drug that is used must constitute long-acting antagonist therapy or partial antagonist therapy.

(3) If a drug constituting partial antagonist therapy is used, the program is required to provide safeguards to minimize abuse and diversion of the drug, including such safeguards as routing drug testing of program participants.

### Report

A research institution is required to prepare a report on the findings obtained from the pilot program. The report must include data derived from the drug testing and performance measures used in the program. The research institution must complete its report no later than December 31, 2015. The institution is required, upon its completion of the report, to submit the report to the Governor, Chief Justice of the Ohio Supreme Court, President of the Senate, Speaker of the House of Representatives, ODMHAS, Department of Rehabilitation and Correction, and any other state agency that ODMHAS collaborates with in conducting the pilot program.

## Bureau of Recovery Services

(Section 331.100)

On July 1, 2015, the bill abolishes the Bureau of Recovery Services (BRS) in the Department of Rehabilitation and Correction (DRC) and transfers all of its functions, assets, and liabilities to ODMHAS. Any BRS business that is not completed by DRC on that date must be subsequently completed by ODMHAS; ODMHAS is the successor to BRS.

Beginning on the date of transfer, any rules, orders, and determinations pertaining to BRS continue in effect until modified or rescinded by ODMHAS.

[122] R.C. 4729.01(I), not in the bill.

Additionally, any reference to BRS is deemed to refer to ODMHAS or its director, as appropriate.

The bill requires all BRS employees be transferred to ODMHAS and retain their current positions and benefits, subject to the layoff provisions pertaining to state employees under continuing law.

Finally, the bill specifies both of the following:

(1) No right, obligation, or remedy is lost or impaired by the transfer, and must be administered by ODMHAS.

(2) No pending proceeding is affected by the transfer, and must be prosecuted or defended in the name of ODMHAS or its director.

# DEPARTMENT OF NATURAL RESOURCES

## Sale, transfer, or use of Department property and water

- Requires the Director of Natural Resources to obtain the Governor's approval only for specified types of property transactions in an amount of $50,000 or more rather than generally requiring both the Governor's and Attorney General's approval of any such transaction in any amount as in current law.

- Generally requires any such transaction, regardless of the amount, to be executed in accordance with a provision of the Conveyances and Encumbrances Law that requires specific actions to be taken regarding conveyances of state real estate, including drafting by the Auditor of State and signature by the Governor.

## Department notices

- Requires the Department to publish notices regarding certain activities, projects, or improvements as contemplated in the general newspaper publication statute.

## Mining operation annual reports

- Transfers the responsibility to prepare and publish certain mining operation reports from the Chief of the Division of Geological Survey or the Chief of the Division of Mineral Resources Management, as applicable, to the Director or the Director's designee.

- Authorizes the Director or the Director's designee to require the Division of Mineral Resources Management to perform the reporting duties currently performed by the Division of Geological Survey.

## Streams and wetlands restoration by coal mining operators

- Requires a permitted coal mining and reclamation operator to restore on the permit area streams and wetlands affected by mining operations unless the Chief of the Division of Mineral Resources Management approves mitigation activities off the permit area without a coal mining and reclamation permit, provided that the Chief first must make certain determinations.

- Requires the operator, if the Chief approves restoration off the permit area, to complete all mitigation construction or other activities required by the applicable mitigation plan.

- Specifies that performance security for reclamation activities on the permit area must be released pursuant to current law, except that any release of the remaining portion of performance security must not be approved prior to the construction of required mitigation activities off the permit area.

## Wildlife Boater Angler Fund

- Revises the uses of the Wildlife Boater Angler Fund by allowing its use for maintenance and repair of dams and impoundments, rather than unspecified maintenance, and acquisitions, including lands and facilities for boating access, in addition to its existing uses.

- Specifies that the activities for which the Fund may be used must occur on waters, rather than only on lakes, on which the operation of gasoline-powered watercraft is permissible.

- Increases from $200,000 to $500,000 the amount of annual expenditures from the Fund that may be used to pay for related equipment and personnel costs.

## Deer permits; hunting licenses

- Revises existing law requiring the procurement of a $23 deer permit to hunt deer by establishing a nonresident deer permit, the fee for which is $99, and a resident deer permit, the fee for which is $23.

- Retains existing law providing either half-price or free deer permits for Ohio residents who are at least 66 years old, and specifies that the fee for the existing youth deer permit remains ½ of the regular resident deer permit fee regardless of residency.

- Revises existing law requiring a person on active military duty who is either stationed in Ohio or on leave or furlough to obtain a deer permit by requiring such a person to obtain a resident deer permit and specifying that the person is eligible to obtain a resident deer permit regardless of residency.

- Increases the nonresident hunting license fee and the apprentice nonresident hunting license fee from $124 to $149.

## Oil and Gas Law

### Application of Law

- Applies the Oil and Gas Law to a limited liability company, a joint venture, and any other form of business by including them in the definition of "person" in that Law.

- Applies to public land provisions in the Law governing minimum distances of wells from boundaries of tracts, voluntary and mandatory pooling, special drilling units, establishment of exception tracts to which minimum acreage and distance requirements do not apply, unit operation of a pool, and revision of an existing tract by a person holding a permit under that Law.

- Accomplishes the change by revising the definition of "tract" in that Law by including land that is not taxed.

**Definition of "condensate"**

- Revises the definition of "condensate" in the Law, and thus for purposes of the bill's severance tax provisions, to mean liquid hydrocarbons separated at or near the well pad or along the gas production or gathering system or by, rather than prior to, gas processing.

**Registration containing background information**

- Requires a person that intends to engage in an activity regulated under the Law to register with the Division of Oil and Gas Resources Management and disclose all felony convictions or guilty pleas of or by the person and officers of the person to specified water pollution control laws within the previous 25 years.

- Authorizes the Chief of the Division to request additional information regarding such a felony conviction or felony guilty plea, except for information extending to the person's corporate parent entities.

- Authorizes the Chief to request the Superintendent of the Bureau of Criminal Identification and Investigation to review federal and state criminal records with respect to any person that submitted a form for registration.

- Authorizes the Chief to deny a person's registration by issuance of an order after reviewing the information submitted, any additional information requested, and any information received from a criminal records review requested by the Chief.

- Prohibits the Chief from issuing a permit, registration certificate, or order authorizing an activity under the Law to a person whose registration was denied.

- Excludes specific types of individuals from the registration requirement.

- Allows a person denied a registration to reapply for a registration beginning three months from the date on which the Chief's order denying the registration becomes final and nonappealable.

### Application fee for permit to plug back existing oil or gas well

- Requires an application for a permit to plug back an existing oil or gas well to be accompanied by a nonrefundable fee by removing the exemption in current law under which such an application need not be accompanied by a fee.

### Disclosure of chemical information and records

- Requires an owner or person that is required under current law to maintain records for a product, fluid, or substance or chemical component in a product, fluid, or substance designated by the owner or person as a trade secret to maintain the records for at least two years from the date the product, fluid, substance, or chemical component was brought to a regulated location, rather than from the date it was placed in a well.

- Adds that an owner or person that is required under current law, upon request of the Chief of the Division of Oil and Gas Resources Management, to disclose to the Chief records necessary to respond to a spill, release, or investigation must disclose the records or information without undue delay.

- Requires an owner or person that received a request for records or information to label and clearly identify all records or information that has been designated as a trade secret.

- Authorizes the Chief to provide such records or information to any state agency or emergency responder that is responding to a spill or release or that is participating in an investigation of a spill or release.

- Requires the Chief, if the Chief provides the records or information to a state agency or emergency responder, to notify, as soon as practicable, the owner or person that disclosed the records or information that the Chief has so provided the records or information.

- Prohibits the state agency or emergency responder receiving the information, in addition to the Chief as in existing law, from disclosing the records or information designated as a trade secret unless otherwise authorized by state law.

- Specifies all of the following:

  --The provision of records or information by the Chief to a state agency or emergency responder does not affect the designation of a trade secret under the Law;

--The Chief's provision of records or information to a state agency or emergency responder does not subject the record or information to public disclosure; and

--Nothing in the bill precludes an owner or person that has designated a trade secret under that Law and has disclosed records or information to the Chief from requesting a confidentiality agreement with a recipient of the records or information.

### Emergency planning reporting requirements pertaining to oil and gas facilities

- Requires all persons that are regulated under the Law and rules adopted under it, rather than only owners or operators of facilities that are regulated under the Law, to submit specified information to the Chief of the Division of Oil and Gas Resources Management for inclusion in a database.

- Modifies provisions to be included in the rules governing the database by requiring the rules to ensure both of the following:

  --That the Emergency Response Commission, the local emergency planning committee of the emergency planning district in which a facility is located, and the fire department that has jurisdiction over a facility, rather than the Commission and every local emergency planning committee and fire department in Ohio as in current law, have access to the database; and

  --That the information submitted for the database be made immediately available, rather than available via the Internet or a system of computer disks as in current law, to the above entities.

- Revises current law by stipulating that an owner or operator is deemed to have satisfied all of the inventory requirements established under the Emergency Planning Law by complying with the bill's submission requirements rather than by filing a log and production statement with the Chief as in current law.

### Brine storage permit financial assurance and insurance requirements

#### Financial assurance requirement

- Requires an applicant for a permit or order to store, recycle, treat, or process brine or other waste substances (hereafter brine storage permit) to file with the Director of Natural Resources or the Director's designee a surety bond in an amount established in rules, not to exceed $2 million, and establishes requirements governing the issuance and deposit of the bonds.

- Authorizes a brine storage permit applicant to deposit cash or negotiable certificates of deposit in lieu of a surety bond, and establishes requirements and procedures governing their issuance and deposit.

- Requires such a person to maintain the surety bond or other financial assurance until the person complies with rules governing the closure of the location for which a brine storage permit was issued or, if no such rules are adopted, until the Director or the Director's designee inspects the location and issues a written approval of closure.

#### Bond forfeiture order

- Authorizes the Director or the Director's designee to issue a bond forfeiture order to a person who has been issued a brine storage permit if the Director or the Director's designee finds that the person has failed to comply with a final nonappealable enforcement order or a compliance agreement.

- Requires the Director or the Director's designee to certify the total forfeiture to the Attorney General who must collect it, and requires all money collected from such forfeitures to be credited to the existing Oil and Gas Well Fund.

#### Liability insurance requirement

- Requires an applicant for a brine storage permit to obtain liability insurance coverage in an amount established in rules, not to exceed $12 million.

- Requires the insurance to provide coverage to pay damages for injury to persons or damage to property caused by the location for which the permit was issued.

### Brine transportation

- Prohibits anyone from transporting brine in any manner, rather than just by vehicle as in current law, without being registered by the Chief of the Division of Oil and Gas Resources Management.

- Requires an applicant for a registration certificate to transport brine to list each pipeline that will be used to transport brine.

- Prohibits a registered transporter from allowing any other person to use the transporter's registration certificate to transport brine.

- Prohibits a permit holder or owner of a well for which a permit has been issued under the Law from entering into an agreement with a person who is not registered to transport brine to dispose of brine at the well.

- Requires a registered transporter to keep on each vessel, railcar, and container used to transport brine, in addition to each vehicle as in current law, a daily log and keep a daily log for each pipeline used to transport brine, and requires all logs to be made available upon request of the Chief, the Chief's authorized representative, or a peace officer.

- Requires registered transporters to legibly identify with reflective paint vessels, railcars, and containers employed in transporting or disposing of brine in addition to vehicles as in current law.

- Requires registered transporters to legibly identify pipelines so used in a manner similar to the identification of underground gas lines and to include specified information.

**Notification of emergencies**

- Requires a person engaging in an activity regulated under the Law and rules adopted under it to notify the Director or the Director's designee of specified emergency occurrences, such as an uncontrolled release of gas or oil that may jeopardize worker safety or public safety, within 30 minutes of such an occurrence.

- Requires a person that performs services on behalf of an owner of a well to notify the well owner within 30 minutes if one of the specified occurrences occurs at the well or associated production operation.

- Establishes that failure to comply with the above requirements is a strict liability offense.

**Mandatory pooling**

- Authorizes the owner who has the right to drill to request a mandatory pooling order under the Law rather than the owner of the tract of land who is also the owner of the mineral interest as in current law.

- Allows an application for a mandatory pooling order to be submitted if a tract or tracts, rather than a single tract of land, are of insufficient size or shape to meet the statutory minimum acreage requirements for drilling a proposed well rather than for drilling a well.

- Revises that Law regarding mandatory pooling to distinguish between mineral rights owners and surface rights owners, including by requiring the Chief to notify all mineral rights owners of tracts within the area proposed to be pooled and included in the drilling unit of the filing of the application for a mandatory pooling order and their right to a hearing rather than all owners of land within that area.

### Compulsory unitization

- Revises the statute governing unitization under the Law by establishing new requirements, procedures, and prohibitions and retaining certain provisions as discussed below.

#### Application procedures for compulsory unitization order

- Changes who may apply for unit operation by authorizing a person that has obtained the mineral rights to at least 65% of tracts overlying a pool to submit an application to the Chief of the Division of Oil and Gas Resources Management to consider the need for operation as a unit and to consider the tracts to be included within the unit.

- Retains the requirement that an applicant for a compulsory unitization order submit a $10,000 nonrefundable fee, and requires an applicant to submit specified information to the Chief, including maps of the proposed unit and an affidavit attesting that the applicant has obtained the mineral rights to at least 65% of the tracts overlying a pool.

- Requires the Chief to review the application to determine if it is complete and to notify the applicant if the application is incomplete, and allows the applicant to submit missing information.

- Requires the Chief to schedule a hearing upon determining that the application is complete and to notify the applicant of the scheduled hearing date.

- Requires the applicant to notify by certified mail all unleased mineral rights owners proposed to be included in the unit and all working interest owners in the unit at least 30 days before the scheduled hearing date and to publish notice in local newspapers.

- Requires the Chief to do both of the following:

  --Determine whether the hearing should proceed and, if it should not because of incomplete or improper notification, notify in a timely manner the applicant, all unleased mineral rights owners and all working interest owners, and any other person the Chief determines necessary; and

  --Post on the Division of Oil and Gas Resources Management's website all changes to scheduled hearings.

**Issuance of order and requirements governing compulsory unitization**

- Generally retains existing law by authorizing the Chief to issue a compulsory unitization order if the Chief finds that operation as a unit is reasonably necessary to increase substantially the ultimate recovery of oil and gas and the value of the estimated additional recovery exceeds the estimated additional costs to conduct the operation.

- Authorizes the Chief, in a compulsory unitization order, to include in the unit any tract that is not subject to a voluntary agreement if an applicant is unable to enter into a voluntary agreement creating a unit and the Chief determines that a compulsory unitization order will prevent or assist in preventing waste, avoid drilling of unnecessary wells, or protect correlative rights.

- Retains the requirement that the Chief's order include terms and conditions that are just and reasonable and prescribe a plan for unit operation that includes specified items, and revises and expands the list of items as follows:

  --Requires an allocation to the separately owned tracts in the unit area of all oil, gas, condensate, and natural gas liquids produced rather than only oil and gas;

  --Requires a provision for credits and charges to be made in adjustments among owners to instead be made in adjustments among the person to whom the order is issued and working interest owners in the area;

  --Adds a requirement that the plan include a provision requiring an accounting of the actual costs of unit creation and operation; and

  --Adds a requirement that the plan include a provision requiring an accounting that demonstrates net proceeds for unit creation and operation.

- Revises the stipulation that a compulsory unitization order does not become effective until the plan has been approved in writing by owners who will be required to pay at least 65% of the unit operation's costs and by royalty or fee owners of 65% of the included acreage to instead require such approval by a majority of the mineral rights owners of the unit.

- Requires the person to whom a compulsory unitization order is issued to record the order in the office of the county recorder in each county in which the unit is to be located within ten days of the effective date of the order, and specifies that if the person fails to so record it, the order ceases to be of force and must be revoked by the Chief.

- Generally retains the Chief's authority to amend a compulsory unitization order by an order, and requires the Chief to determine if additional information, a hearing, or a new application for a compulsory unitization order is required for an amendment.

- Allows the Chief to amend a compulsory unitization order after commencement of operations on a unit.

- States all of the following:

  --The Chief retains continuing jurisdiction over any unit created by a compulsory unitization order consistent with the Chief's authority under the Law;

  --A compulsory unitization order takes precedence over any terms included in any agreement between the person to whom the order is issued and any voluntary participants in the unit, including working interest owners; and

  --A compulsory unitization order terminates if drilling operations in the unit are not begun by the date required by the order.

**Payment of royalties**

- Requires the person to whom a compulsory unitization order is issued to pay each unleased mineral rights owner included in the unit a monthly cash payment equal to a one-eighth landowner royalty interest calculated on gross proceeds at the same time that a royalty payment is made to a voluntary participant in the unit that is owed a royalty payment.

- Requires that after the person to whom an order is issued recovers not more than 200% of the actual cost of well site construction, drilling, testing, completing, and producing for a well, the person must pay an unleased mineral rights owner a monthly cash payment equal to a seven-eighths share of the net proceeds of production.

- Specifies that allocation of royalties must be based on the unit participation of an unleased mineral rights owner's tract, as determined on a surface acreage basis unless otherwise specified by the Chief in the compulsory unitization order.

**Prohibitions, liability, and enforcement**

- Prohibits the person to whom a compulsory unitization order is issued from conducting surface operations on or causing disturbances to the surface of the land on a tract belonging to an unleased mineral rights owner and included in the unit by the order without the written consent of the owner of the surface tract.

- States that an unleased mineral rights owner of any tract included in a compulsory unitization order does not incur liability for any personal or property damage associated with any drilling, testing, completing, producing, operating, or plugging activities of any well within a unit subject to an order.

- Establishes that failure to comply with any of several requirements established by the bill is a strict liability offense.

- Generally retains through reenactment several provisions of law, including allocation of oil, gas, condensate, and natural gas liquids (oil and gas in existing law) to separately owned tracts, contracts relating to the sale or purchase of production from a separately owned tract, and ownership of property, and modifies them to apply in the context of compulsory unitization.

- Stipulates that orders issued under existing law governing unitization continue in effect notwithstanding the bill's revisions.

**Penalties for violations**

- Increases civil penalties for certain violations of the Law.

- Increases criminal penalties for certain violations of the Law, and specifies that a knowing violation of the statutes governing the management, transportation, and disposal of brine is a felony and that a negligent violation is a misdemeanor for a first offense and a felony for each subsequent offense.

**Response costs and liability**

- States that a person who violates the general permit requirements of the Law and provisions of that Law governing a permit for recovery operations, or any term or condition of a permit or order, is liable for damage or injury caused by the violation and for the actual cost of rectifying the violation and conditions caused by it.

- Establishes that a person may be subject to both a civil penalty and a term of imprisonment under the Law for the same offense.

- Provides that if a person is convicted of or pleads guilty to a violation of any provision of the Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any actual response costs.

## Sale, transfer, or use of Department property and water

(R.C. 1501.01)

The bill requires the Director of Natural Resources to obtain the Governor's approval only for specified types of property transactions in an amount of $50,000 or more. Those property transactions are the sale, lease, or exchange of portions of lands or real or personal property of the Department of Natural Resources; grants of easements or licenses for the use of the lands or property; and agreements for the sale of water from lands and waters under the Department's administration or care. Current law instead requires both the Governor's and Attorney General's approval of any such transaction in any amount unless that approval is not required for leases and contracts made under the Water Improvements Law and under the statutes governing public service facilities in state parks and the operation and maintenance of canals and canal reservoirs owned by the state.

The bill then requires any such transaction to be executed in accordance with a provision in the Conveyances and Encumbrances Law, if applicable, that generally requires all conveyances of real estate sold on behalf of the state to be drafted by the Auditor of State, executed in the name of the state, signed by the Governor, countersigned by the Secretary of State, sealed with the state seal, and entered by the Auditor of State in records kept by the Auditor for that purpose.

## Department notices

(R.C. 1501.011)

The bill requires the Department to publish notices regarding certain activities, projects, or improvements as contemplated in the general newspaper publication statute. Continuing law requires the Department to supervise the design and construction of, and to make contracts for the construction, reconstruction, improvement, enlargement, alteration, repair, or decoration of, certain projects such as dam repairs, waterway safety improvements, and Division of Wildlife improvements.

The general newspaper publication statute requires that the first publication of a notice be made in its entirety in a newspaper of general circulation, but the second publication may be made in abbreviated form in a newspaper of general circulation and on the newspaper's Internet website if the newspaper has one. That statute also authorizes a state agency or political subdivision to eliminate any further newspaper publications, provided that the second, abbreviated notice meets all of the following requirements:

(1) It is published in the newspaper of general circulation in which the first publication of the notice was made and is published on that newspaper's Internet website if the newspaper has one.

(2) It is published on the state public notice website.

(3) It includes a title, followed by a summary paragraph or statement that clearly describes the specific purpose of the notice, and includes a statement that the notice is posted in its entirety on the state public notice website. The notice also may be posted on the state agency's or political subdivision's Internet website.

(4) It includes the Internet addresses of the state public notice website and of the newspaper's and state agency's or political subdivision's Internet website if the notice or advertisement is posted on those websites and the name, address, telephone number, and electronic mail address of the state agency, political subdivision, or other party responsible for publication of the notice.

A notice published on an Internet website must be published in its entirety.

## Mining operation annual reports

(R.C. 1505.10 and 1561.04)

The bill transfers the responsibility to prepare and publish mining operation annual reports from the Chief of the Division of Geological Survey to the Director or the Director's designee. The Director or the Director's designee may require the Division of Mineral Resources Management to perform the duties currently performed by the Division of Geological Survey regarding preparation and publishing of the reports. Continuing law requires the reports to include lists of operators and extraction operations in Ohio, information regarding commodities extracted, employment, and tonnage extracted at each location, and information regarding the production, use, distribution, and value of Ohio's mineral resources.

The bill also transfers the responsibility to submit an annual mining report to the Governor from the Chief of the Division of Mineral Resources Management to the Director or the Director's designee. Continuing law requires the report to include all of the following:

(1) A summary of the activities and of the reports of deputy mine inspectors;

(2) A statement of the condition and the operation of Ohio mines; and

(3) A statement of the number of accidents in and about the mines, the manner in which they occurred, and any other data and facts bearing on the prevention of

accidents and the preservation of life, health, and property and any suggestions relative to the better preservation of the life, health, and property of those engaged in the mining industry.

The bill also transfers to the Director or the Director's designee the requirement to mail a copy of the report to each coal operator in Ohio and a representative of the miners at each mine as well as other persons identified by the Director. Finally, under the bill, the Director or the Director's designee, rather than the Chief, must prepare and publish quarterly reports containing the above information.

## Streams and wetlands restoration by coal mining operators

(R.C. 1513.16)

The bill requires a permitted coal mining and reclamation operator to restore on the permit area streams and wetlands affected by mining operations unless the Chief of the Division of Mineral Resources Management approves mitigation activities off the permit area without a coal mining and reclamation permit instead of restoration on the permit area, provided that the Chief first makes all of the following written determinations:

(1) A hydrologic and engineering assessment demonstrates that restoration on the permit area is not possible;

(2) The proposed mitigation plan under which mitigation activities described in item (3), below, will be conducted is limited to a stream or wetland, or a portion of a stream or wetland, for which restoration on the permit area is not possible;

(3) Mitigation activities off the permit area, including mitigation banking and payment of in-lieu mitigation fees, will be performed pursuant to a permit issued under the Federal Water Pollution Control Act or a state isolated wetland permit or pursuant to a no-cost reclamation contract for the restoration of water resources affected by past mining activities; and

(4) The proposed mitigation plan and mitigation activities comply with the performance standards applicable to operators.

The bill also requires the operator, if the Chief approves restoration off the permit area, to complete all mitigation construction or other activities required by the mitigation plan. In addition, the bill specifies that performance security for reclamation activities on the permit area must be released pursuant to current law, except that any release of the remaining portion of performance security must not be approved prior to the construction of required mitigation activities off the permit area.

## Wildlife Boater Angler Fund

(R.C. 1531.35)

The bill revises the uses of the Wildlife Boater Angler Fund by allowing its use for maintenance and repair of dams and impoundments, rather than unspecified maintenance as in current law, and acquisitions, including lands and facilities for boating access, in addition to its existing uses for boating access construction and improvements and to pay for equipment and personnel costs involved with those activities. The bill also specifies that the above activities must occur on waters, rather than only on lakes, on which the operation of gasoline-powered watercraft is permissible and increases from $200,000 to $500,000 the amount of annual expenditures from the Fund that may be used to pay for equipment and personnel costs.

## Deer permits; hunting licenses

(R.C. 1533.10, 1533.11, and 1533.12)

The bill revises existing law requiring the procurement of a $23 deer permit to hunt deer by establishing a nonresident deer permit, the fee for which is $99, and a resident deer permit, the fee for which is $23. It retains and slightly revises existing law under which an Ohio resident who is at least 66 years old, unless the person was born on or before December 31, 1937, may obtain a senior resident deer permit, the fee for which is ½ of the resident deer permit fee. The bill similarly retains existing law that allows an Ohio resident who was born on or before December 31, 1937, to be issued a free deer permit. Under the bill, a nonresident who is at least 66 years old must obtain the nonresident deer permit established by the bill rather than the general deer permit required in existing law. The bill also specifies that the fee for a youth deer permit established in current law is ½ of the regular resident deer permit fee regardless of residency.

In addition, the bill revises existing law requiring a person on active duty in the U.S. Armed Forces who is either stationed in Ohio or on leave or furlough to obtain a deer permit by requiring such a person to obtain a resident deer permit and specifying that the person is eligible to obtain a resident deer permit regardless of whether the person is a resident of Ohio. It retains existing law under which such a person need not obtain a hunting license in order to obtain a deer permit.

Finally, the bill increases the fee for a nonresident hunting license and an apprentice nonresident hunting license from $124 to $149.

## Oil and Gas Law

### Application of Law

(R.C. 1509.01)

The bill applies the Oil and Gas Law to a limited liability company, a joint venture, and any other form of business organization or entity by including them in the definition of "person" in that Law.

Additionally, the bill applies to public land provisions in the Law governing minimum distances of wells from the boundaries of tracts, voluntary and mandatory pooling, special drilling units, establishment of exception tracts to which minimum acreage and distance requirements do not apply, unit operation of a pool, and revision of an existing tract by a person holding a permit under that Law. The bill accomplishes the change by revising the definition of "tract" to mean a single, individual parcel of land or a portion of a single, individual parcel of land rather than a single, individually taxed parcel of land appearing on the tax list as in current law.

### Definition of "condensate"

(R.C. 1509.01(D))

The bill revises the definition of "condensate" in the Law to mean liquid hydrocarbons separated at or near the well pad or along the gas production or gathering system or by gas processing rather than prior to gas processing as in current law. The term is used in the statute governing unitization as revised by the bill and also in continuing law authorizing the Chief of the Division of Oil and Gas Resources Management to adopt rules establishing requirements to prevent and contain surface and subsurface discharges of condensates. Additionally, "condensate" as defined in the Law is used in the bill's provisions revising the severance tax.

### Registration containing background information

(R.C. 1509.051)

The bill requires a person that intends to engage in an activity regulated under the Law or rules adopted under it to register with the Division of Oil and Gas Resources Management on a form prescribed by the Chief prior to engaging in the activity. The person must disclose on the form all felony convictions or felony guilty pleas of or by the person and of or by the officers of the person, including any statutory agent, to any of the following that have occurred within the 25 years previous to the date of registration:

(1) Knowing violations of the Federal Water Pollution Control Act;

(2) Purposeful violations of the state Water Pollution Control Law or rules adopted under it; or

(3) Purposeful or knowing violations, as applicable, of any other state's laws implementing the Federal Water Pollution Control Act that are not more stringent than that Act.

The Chief may request additional information if the person has been convicted of or pled guilty to such a felony. However, the Chief cannot request information extending to the person's corporate parent entities. The Chief may request the Superintendent of the Bureau of Criminal Identification and Investigation to review federal and state criminal records with respect to any person that submitted a form for registration.

After the Chief has reviewed the submitted information and any additional information requested or received from a criminal records review, the Chief may deny the person's registration by order. If the Chief issues such an order, the person may appeal to the Oil and Gas Commission or to the Franklin County Court of Common Pleas. The bill prohibits the Chief from issuing a permit, registration certificate, or order authorizing an activity under the Law or rules adopted under it to a person whose registration was denied.

The bill specifies that none of the following are required to submit the above registration containing background information:

(1) A person that is registered with the Division prior to the provision's effective date;

(2) A person that, prior to the provision's effective date, was issued a permit, registration certificate, or order authorizing an activity under the Law or rules adopted under it; and

(3) A person that, prior to the provision's effective date, was authorized to store, recycle, treat, process, or dispose of brine or other waste substances without a permit under conditions specified in current law.

Under the bill, a person whose registration was denied by an order of the Chief may re-apply for a registration beginning three months from the date on which the Chief's order denying the registration becomes final and nonappealable.

### Application fee for permit to plug back existing oil or gas well

(R.C. 1509.06)

The bill requires an application for a permit to plug back an existing oil or gas well to be accompanied by a nonrefundable fee as follows:

(1) $500 for a permit to conduct activities in a township with a population of fewer than 10,000;

(2) $750 for a permit to conduct activities in a township with a population of 10,000 to 14,999; or

(3) $1,000 for a permit to conduct activities in either a township with a population of 15,000 or more or a municipal corporation regardless of population.

The bill accomplishes the change by removing the exemption in current law under which such an application need not be accompanied by a fee.

### Disclosure of chemical information and records

(R.C. 1509.10)

The bill requires an owner or person that is required under current law to maintain records for a product, fluid, or substance or chemical component in a product, fluid, or substance designated by the owner or person as a trade secret to maintain the records for a period of at least two years from the date the product, fluid, substance, or chemical component was brought to a location regulated under or subject to the Law rather than from the date it was placed in a well.

The bill adds that an owner or person that is required under current law, upon request of the Chief of the Division of Oil and Gas Resources Management, to disclose to the Chief records necessary to respond to a spill, release, or investigation must disclose the records or information without undue delay. It also requires an owner or person that received a request for records or information to label and clearly identify all records or information that has been designated as a trade secret.

The bill authorizes the Chief to provide such records or information to any state agency or emergency responder that is responding to a spill or release or that is participating in an investigation of a spill or release. If the Chief provides the records or information to a state agency or emergency provider, the Chief must notify, as soon as practicable, the owner or person that disclosed the records or information that the Chief has so provided the records or information. The state agency or emergency responder receiving the records or information, like the Chief under current law, cannot disclose

the records or information that has been designated as a trade secret unless otherwise authorized by state law.

Finally, the bill specifies all of the following:

--The provision of records or information by the Chief to a state agency or emergency responder does not affect the designation of a trade secret under the Law;

--The Chief's provision of records or information to a state agency or emergency responder does not subject the record or information to public disclosure; and

--Nothing in the bill precludes an owner or person that has designated a trade secret under that Law and has disclosed records or information to the Chief from requesting a confidentiality agreement with a recipient of the records or information.

### Emergency planning reporting requirements pertaining to oil and gas facilities

(R.C. 1509.11, 1509.23, 1509.231, 3750.081, and 3750.13)

The bill revises certain requirements governing the reporting of hazardous materials associated with oil and gas operations. Under current law, persons regulated under the Law must report to the Division of Oil and Gas Resources Management specified information regarding hazardous materials that is required to be reported by the federal Emergency Planning and Community Right-to-Know Act (EPCRA). The Chief of the Division, in consultation with the Emergency Response Commission, must adopt rules that specify the information that must be included in an electronic database that the Chief creates and hosts. The information must be information that the Chief considers to be appropriate for the purpose of responding to emergency situations that pose a threat to public health or safety or the environment.

The bill requires all persons that are regulated under the Law and rules adopted under it, rather than only owners or operators of facilities that are regulated under the Law, to submit the above information to the Chief. As a result, the bill requires the information to be filed with the Chief on or before March 1 of each year rather than as part of an owner or operator's statement of production of oil, gas, and brine for a specified period of time as provided in current law.

The bill retains, with certain modifications, provisions to be included in the rules governing the database and the information submitted for it. Specifically, the bill's modifications require the Chief's rules to do all of the following:

(1) Require that the information be consistent with the information that a person regulated under the Law is required to submit under EPCRA;

(2) Ensure that the Emergency Response Commission, the local emergency planning committee of the emergency planning district in which a facility is located, and the fire department that has jurisdiction over a facility, rather than the Commission and every local emergency planning committee and fire department in Ohio as in current law, have access to the database;

(3) Ensure that the information submitted for the database be made immediately available, rather than available via the Internet or a system of computer disks as in current law, to the above entities; and

(4) Ensure that the information includes the information required to be reported under the Emergency Planning Law and rules adopted under it governing the submission of an emergency and hazardous chemical inventory form.

As a result of the modification discussed in item (1), above, the bill eliminates current law that requires, at a minimum, the information in the database to include the information that a person that is regulated under the Law is required to submit under EPCRA.

For purposes of the above provisions, the bill applies the definition of "facility" in the Emergency Planning Law. Under that Law, a facility is all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person.

The bill then revises a requirement governing the filing of information under the state Emergency Planning Law. Under the bill, an owner or operator of a facility that is regulated under the Oil and Gas Law generally is deemed to have satisfied all of the inventory requirements established under the Emergency Planning Law by complying with the requirements established by the bill. Current law instead specifies that any such owner or operator who has filed a log and production statement with the Chief in accordance with the Oil and Gas Law is generally deemed to have satisfied all of the submission and filing requirements established under the Emergency Planning Law.

Finally, the bill makes conforming changes.

## Brine storage permit financial assurance and insurance requirements

(R.C. 1509.211; Section 715.10)

### Financial assurance requirement

The bill prohibits a person that has been issued a permit or order to store, recycle, treat, or process brine or other waste substances (hereafter brine storage permit) from failing to satisfy the financial assurance requirements established by the bill. Under the bill, a brine storage permit applicant must execute and file with the Director of Natural Resources or the Director's designee a surety bond or other specified form of financial assurance. The surety bond must be in an amount established in rules adopted by the Director, but cannot exceed $2 million. The bond must be payable to the state and conditioned on the performance of all requirements established in the Law and rules adopted under it. The bill establishes standard requirements and procedures governing the issuance and deposit of such surety bonds. It authorizes a brine storage permit applicant, in lieu of a surety bond, to deposit with the Director or the Director's designee cash or negotiable certificates of deposit and establishes requirements and procedures governing their issuance and deposit.

Under the bill, such a person must maintain the surety bond or other financial assurance until the person complies with rules governing the closure of the location for which a brine storage permit was issued. If such rules are not adopted, the person must maintain the surety bond or other financial assurance until the Director or the Director's designee inspects the location for which a brine storage permit was issued and issues a written approval of closure.

### Bond forfeiture order

The Director or the Director's designee may issue a bond forfeiture order to a person who has been issued a brine storage permit if the Director or the Director's designee finds that the person has failed to comply with a final nonappealable enforcement order or a compliance agreement. The bond forfeiture order must include provisions that do all of the following:

(1) Specify the violation giving rise to the order;

(2) Declare that the entire amount of the bond or other form of financial assurance is forfeited; and

(3) If the bond is supported by or in the form of cash or negotiable certificates of deposit, declare the cash or certificates property of the state.

The Director or the Director's designee must certify the total forfeiture to the Attorney General who must collect the amount of the forfeiture. All money collected from such forfeitures must be credited to the existing Oil and Gas Well Fund and used to restore the applicable brine storage location. The Director or the Director's designee is not required to use money in excess of the amount of the bond or other financial assurance to restore the location.

#### Liability insurance requirement

The bill also requires an applicant for a brine storage permit to obtain liability insurance coverage in an amount established in rules adopted by the Director, which cannot exceed $12 million. The insurance must provide coverage to pay damages for injury to persons or damage to property caused by the location for which the permit was issued.

#### Rules

The bill authorizes the Director to adopt rules establishing requirements and procedures concerning the financial assurance and insurance requirements established by the bill.

### Brine transportation

(R.C. 1509.222 and 1509.223)

The bill prohibits anyone from transporting brine without being registered by the Chief of the Division of Oil and Gas Resources Management rather than only prohibiting anyone from transporting brine by vehicle without being so registered. It makes conforming changes in the statute governing registration by removing references to transportation by vehicle only. The bill then requires an applicant for a registration certificate to transport brine to list each pipeline that will be used to transport brine in addition to each vehicle, vessel, railcar, and container as in current law.

The bill states that for purposes of the provisions of the Law governing transporter registration, "transport brine" excludes the movement of brine within the boundaries of a location for which an order or permit was issued under that Law for the storage, recycling, treatment, processing, or disposal of brine or other waste substances and "pipeline" excludes piping or other appurtenances associated with processing activity within the boundaries of such a location.

The bill prohibits a registered transporter from allowing any other person to use the transporter's registration certificate to transport brine. It also prohibits a permit holder or the owner of a well for which a permit has been issued under the Law from

entering into an agreement with a person who is not registered to transport brine to dispose of brine at the well.

Under existing law, a transporter must include with an application for registration a disposal plan for brine that in part includes a list of all disposal sites to be used. A registered transporter that intends to revise the plan must apply to the Chief in order to do so. The bill retains the requirement that an application for revision must include a list of all disposal sites of brine currently transported, but eliminates a requirement that an application also list all sources of brine currently transported. It also eliminates a requirement that approvals and denials of revisions must be by order of the Chief.

The bill requires each registered transporter to keep on each vessel, railcar, and container used to transport brine, in addition to each vehicle as in current law, a daily log and to keep a daily log for each pipeline used to transport brine. All logs must be made available upon request of the Chief, the Chief's authorized representative, or a peace officer. The bill requires a daily log to include, in addition to information specified in current law, the date and time brine is transported through a pipeline and the amount of brine transported through a pipeline, as applicable.

The bill applies existing identification requirements for vehicles used to transport or dispose of brine to vessels, railcars, and containers, requiring registered transporters to identify them with reflective paint and to indicate specified information, including the transporter's name and telephone number. It also requires pipelines used to transport or dispose of brine to be legibly identified on the surface of the ground in a manner similar to the identification of underground gas lines. The identification must indicate specified information, including the transporter's name and telephone number.

### Notification of emergencies

(R.C. 1509.232)

The bill requires a person engaging in an activity regulated under the Law and rules adopted under it to notify the Director or the Director's designee of the occurrence of any of the following within 30 minutes of the occurrence:

(1) Emergency medical treatment at a location other than the production operation of a person exposed to a chemical or injured at a production operation or a fatality occurring at a production operation;

(2) The response of a fire department to a fire at a production operation, excluding flaring or controlled burns authorized under the Law and rules adopted under it or by the terms and conditions of a permit;

(3) An uncontrolled release of gas or oil that may jeopardize worker safety or public safety;

(4) A discharge or spill of a liquid, solid, or semisolid substance or material associated with a production operation or other activity regulated under that Law and rules adopted under it, excluding a discharge or spill consisting solely of fresh water; or

(5) Any other occurrence that the Director specifies in rules.

Additionally, a person that performs services on behalf of the owner of a well must notify the well owner within 30 minutes of any of the above occurrences at the well or associated production operation.

Failure to comply with the bill's emergency notification requirements is a strict liability offense. The bill authorizes the Director to adopt rules necessary for the administration of the requirements.

### Mandatory pooling

(R.C. 1509.27)

The bill authorizes the owner who has the right to drill to request a mandatory pooling order under the Law rather than the owner of the tract of land who is also the owner of the mineral interest as in current law. In addition, the bill allows an application for a mandatory pooling order to be submitted if a tract or tracts, rather than a single tract of land as in existing law, are of insufficient size or shape to meet the statutory minimum acreage requirements for drilling units for drilling a proposed well rather than for drilling a well as in existing law.

The bill also revises that Law regarding mandatory pooling to distinguish between mineral rights owners and surface rights owners as follows:

(1) Requires the Chief to notify all mineral rights owners of tracts within the area proposed to be pooled by an order and included in the drilling unit of the filing of the application for a mandatory pooling order and of their right to a hearing rather than all owners of land within that area;

(2) Requires a mandatory pooling order to allocate on a surface acreage basis a pro rata portion of the production to each tract pooled by the order rather than to the owner of each such tract, and requires the pro rata portion to be in the same proportion that the percentage of the tract's acreage, rather than the owner's acreage, is to the state minimum acreage requirements;

(3) Requires a mandatory pooling order to specify the basis on which each mineral rights owner of a tract, rather than each owner of a tract, pooled by the order must share all reasonable costs and expenses of drilling and producing if the mineral rights owner, rather than the owner of a tract, elects to participate in the drilling and operation of the well;

(4) Prohibits surface operations or disturbances to the surface of the land from occurring on a tract pooled by an order without the written consent of or a written agreement with the surface rights owner of the tract rather than the owner of the tract; and

(5) Provides that a mineral rights owner of a tract pooled by a mandatory pooling order who does not elect to participate in the risk and cost of the drilling and operation of a well must be designated as a nonparticipating owner in the drilling and operation and is not liable for actions or conditions associated with the drilling or operation rather than applying those provisions to the owner of a tract.

### Compulsory unitization

(R.C. 1509.28)

The bill revises the statute governing unitization under the Law by establishing new requirements, procedures, and prohibitions and retaining certain provisions as discussed below.

#### Application procedures for compulsory unitization order

(R.C. 1509.28(A), (B), and (C))

The bill authorizes a person that has obtained the mineral rights to at least 65% of tracts overlying a pool to submit an application to the Chief of the Division of Oil and Gas Resources Management to consider the need for a compulsory unitization order for operation as a unit and to consider the tracts to be included within the unit. Current law instead authorizes the owners of 65% of the land area overlying a pool to apply for unit operation of an entire pool or part of a pool. Current law additionally authorizes the Chief, on the Chief's own motion, to consider the need for such unit operation.

As in current law, the bill requires an applicant for a compulsory unitization order to include in the application a nonrefundable fee of $10,000. The bill also requires that an application include all of the following information rather than information that the Chief may request:

(1) The applicant's name, address, and telephone number;

(2) An affidavit attesting that the applicant has obtained the mineral rights to at least 65% of the tracts overlying a pool;

(3) A summary of the request for compulsory unitization, including an explanation of how the applicant satisfies requirements regarding the necessity of unit operation (see below);

(4) An identification of all mineral rights owners in the proposed unit, including all unleased mineral rights owners;

(5) An identification of all working interest owners in the proposed unit;

(6) Maps illustrating the location of the proposed unit within each applicable county and township and of the proposed boundaries of the unit;

(7) Geophysical data identifying the proposed geological formation to be developed;

(8) An itemized statement of proposed expenditures;

(9) An affidavit detailing attempts to lease unleased mineral rights; and

(10) Any other information the chief determines necessary.

Under the bill, the Chief must review the application to determine if it is complete. If the application is incomplete, the Chief must notify the applicant of all missing items, and the applicant may submit the missing items.

The bill requires the Chief, upon determining that an application is complete, to schedule a hearing and notify the applicant of the scheduled hearing date. The applicant must notify by certified mail all unleased mineral rights owners and all working interest owners proposed to be included in the unit at least 30 days before the hearing date and submit proof of receipt of that certified mailing to the Chief not later than 14 days before the hearing date. The applicant also must publish notice of the hearing in a newspaper of general circulation in the county or counties, as applicable, where the proposed unit is to be located and submit proof of publication to the Chief not later than 14 days prior to the hearing date.

The bill requires the Chief to review the proof of receipt of the certified mailings to determine if the hearing should proceed. If the Chief determines that the hearing should not proceed because of incomplete or improper notification, the Chief must notify the applicant, all unleased mineral rights owners and all working interest owners, and any other person the Chief determines necessary. The bill requires the

Chief to attempt to notify them in a timely manner and to post on the Division's website all changes to scheduled hearings. Finally, the bill authorizes the Chief to establish procedures and requirements governing hearings.

**Issuance of order and requirements governing compulsory unitization**

(R.C. 1509.28(D), (E), (G), (K), (L), (M), (N), (O), and (P))

The bill generally retains existing law by authorizing the Chief to issue a compulsory unitization order if the Chief finds that operation as a unit is reasonably necessary to increase substantially the ultimate recovery of oil and gas and the value of the estimated additional recovery exceeds the estimated additional costs to conduct the operation. It then authorizes the Chief, in a compulsory unitization order, to include in the unit any tract that is not subject to a voluntary agreement if an applicant is unable to enter into a voluntary agreement creating a unit and the Chief determines that a compulsory unitization order will prevent or assist in preventing waste, avoid drilling of unnecessary wells, or protect correlative rights. A mineral rights owner of a tract included in such a unit is considered an unleased mineral rights owner.

The bill retains the requirement that the Chief's order include terms and conditions that are just and reasonable and prescribe a plan for unit operation that includes specified items. It revises and expands the list of items by doing all of the following:

(1) Requiring an allocation to the separately owned tracts in the unit area of all oil, gas, condensate, and natural gas liquids produced rather than only oil and gas;

(2) Requiring a provision for credits and charges to be made in adjustments among owners to instead be made in adjustments among the person to whom the order is issued and working interest owners in the area;

(3) Adding a requirement that the plan include a provision requiring an accounting of the actual costs of unit creation and operation, including costs of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, pipeline construction and maintenance, and marketing and taxes; and

(4) Adding a requirement that the plan include a provision requiring an accounting that demonstrates net proceeds for unit creation and operation.

Under law retained by the bill, the Chief's plan for unit operation must also include:

(1) A description of the unitized area, termed the unit area;

(2) A statement of the nature of the operations contemplated;

(3) A provision providing how the expenses of the unit operations, including capital investment, will be determined and charged to separately owned tracts and how the expenses will be paid;

(4) A provision, if necessary, for carrying or otherwise financing any person who is unable to meet the person's financial obligations in connection with the unit, allowing a reasonable interest charge for that service;

(5) A provision for the supervision and conduct of the unit operations, in respect to which each person must have a vote with a value corresponding to the percentage of the expenses of unit operations chargeable against the interest of that person;

(6) The time when the unit operations will commence, and the manner in which, and the circumstances under which, the unit operations will terminate; and

(7) Additional provisions that are appropriate for carrying on the unit operations and for the protection or adjustment of correlative rights.

The bill revises the stipulation regarding when a compulsory unitization order becomes effective. Under the bill, an order does not become effective unless and until the plan for unit operations has been approved in writing by a majority of the mineral rights owners of the unit, including the person to whom the order is issued and the working interest owners who will be required to pay the costs of the unit operation. Under current law, an order does not become effective until it has been approved in writing by owners who will be required to pay at least 65% of the unit operation's costs and also by the royalty or, with respect to unleased acreage, fee owners of 65% of the acreage to be included in the unit. Under both the bill and current law, if the plan is not approved within six months from the date on which the order was issued, the order will cease to be of force and must be revoked by the Chief.

The bill requires the person to whom a compulsory unitization order is issued to record the order in the office of the county recorder in each county in which the unit is to be located within ten days of the effective date of the order and specifies that if the person fails to so record it, the order ceases to be of force and must be revoked by the Chief.

The bill generally retains the Chief's authority to amend a compulsory unitization order by an order, but eliminates the stipulation that such an amendment does not change the percentage for allocation of oil and gas as established for any

separately owned tract by the original order, except with the consent of all persons owning interest in the tract. The bill requires the Chief to determine if additional information, a hearing, or a new application for a compulsory unitization order is required for an amendment. It allows the Chief to amend a compulsory unitization order after commencement of operations on a unit.

The bill states that the Chief retains continuing jurisdiction over any unit created by a compulsory unitization order consistent with the Chief's authority under the Law. Under the bill, such an order takes precedence over any terms included in any agreement between the person to whom the order is issued and any voluntary participants in the unit, including working interest owners. A compulsory unitization order terminates if drilling operations in the unit do not begin by the date required by the order.

**Payment of royalties**

(R.C. 1509.28(F))

The bill requires the person to whom a compulsory unitization order is issued to pay each unleased mineral rights owner included in the unit a monthly cash payment equal to a one-eighth landowner royalty interest calculated on gross proceeds at the same time that a royalty payment is made to a voluntary participant in the unit that is owed a royalty payment. After the person to whom an order is issued recovers not more than 200% of the actual cost of well site construction, drilling, testing, completing, and producing for a well, the person must pay an unleased mineral rights owner a monthly cash payment equal to a seven-eighths share of the net proceeds of production.

Under the bill, when a cost is charged to a well, the same cost cannot be charged to subsequent wells in the unit or another unit. Additionally, allocation of royalties must be based on the unit participation of an unleased mineral rights owner's tract as determined on a surface acreage basis unless otherwise specified by the Chief in the compulsory unitization order.

**Prohibitions, liability, and enforcement**

(R.C. 1509.28(H), (I), (J), and (T))

The bill prohibits the person to whom a compulsory unitization order is issued from conducting surface operations on or causing disturbances to the surface of the land on a tract included belonging to an unleased mineral rights owner and included in the unit by the order without the written consent of the owner of the surface tract. The person to whom the order is issued must provide a copy of the consent to the Chief.

The bill states that an unleased mineral rights owner of any tract included in a compulsory unitization order does not incur liability for any personal or property damage associated with any drilling, testing, completing, producing, operating, or plugging activities of any well within a unit subject to an order. It generally retains existing law stating that operations conducted pursuant to a compulsory unitization order constitute a fulfillment of all the express or implied obligations of each lease or contract covering tracts in the unit to the extent that compliance with those obligations cannot be had because of the Chief's order.

Under the bill, violations of the prohibitions against failing to comply with all of the following provisions are strict liability offenses:

(1) The requirement that an applicant send by certified mail notice of a hearing;

(2) The requirement that a person to whom a compulsory unitization order is issued pay specified royalties;

(3) The requirement that a person to whom a compulsory unitization order is issued obtain written consent of the owner of the surface tract and provide that written consent to the Chief before conducting surface operations or causing surface disturbances; and

(4) The requirement that a person to whom a compulsory unitization order is issued record the order in the office of each applicable county recorder and provide proof of the recording to the Chief.

**Miscellaneous**

(R.C. 1509.28(Q), (R), (S), and (U); Section 803.10)

The bill generally retains through reenactment several provisions of current law governing unit operation, including allocation of oil, gas, condensate, and natural gas liquids (oil and gas in existing law) to separately owned tracts, contracts relating to the sale or purchase of production from a separately owned tract, and ownership of property and modifies them to apply in the context of compulsory unitization.

The bill defines the following terms:

(1) "Working interest owner" means a person who has obtained a right to the mineral interests of a tract and is obligated, under an agreement or otherwise, to pay a percentage of the cost of leasing, drilling, producing, or operating a well in the unit or of the cost of operating the unit and does not include an unleased mineral rights owner.

(2) "Gross proceeds" means a share of the gross production of oil, gas, condensate, and natural gas liquids free of any and all cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, marketing, or pipeline construction and maintenance, but does not include the costs that result in enhancing the value of marketable oil, gas, condensate, natural gas liquids, or other products to receive a better price so long as the costs are the actual costs of such enhancement and an unleased mineral rights owner's pro rata part of such cost is less than the amount of the enhanced value of the product.

(3) "Net proceeds" means the share of gross production of oil, gas, condensate, or natural gas liquids after payment of all costs of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and marketing and taxes.

Finally, the bill stipulates that orders issued under existing law governing unitization continue in effect notwithstanding the bill's revisions.

### Penalties for violations

(R.C. 1509.33 and 1509.99)

The bill increases civil penalties for certain violations of the Law as follows:

| Type of violation | The bill | Current law |
|---|---|---|
| Violations of provisions of the Oil and Gas Law, including violations of any rules or orders and terms or conditions of a permit or registration certificate, for which no specific penalty is provided. | A civil penalty of not more than $10,000 for each offense. | A civil penalty of not more than $4,000 for each offense. |
| Violations of permitting requirements for the exploration for or extraction of minerals or energy other than oil or natural gas. | A civil penalty of not more than $10,000 for each violation. | A civil penalty of not more than $2,500 for each violation. |

The bill also increases criminal penalties for certain violations of that Law as follows:

| Type of violation | The bill | Current law |
|---|---|---|
| Violations, including violations of any rules or orders and terms or conditions of a permit or registration certificate, for which no specific penalty is provided. | (1) For a first offense: a fine of $500 to $5,000 and imprisonment for not more than six months.<br>(2) For each subsequent offense: a fine of $1,000 to $10,000 and imprisonment for not more than one year. | (1) For a first offense: a fine of $100 to $1,000.<br>(2) For each subsequent offense: a fine of $200 to $2,000. |
| Violations of permitting requirements for the exploration for or extraction of minerals or energy other than oil or natural gas. | A fine of not more than $5,000 for each day of each violation. | A fine of not more than $5,000 for each violation. |
| Violations of provisions relating to the proper handling, storage, management, disposal, and transportation of brine. | The bill increases the penalties according to the culpable mental state.<br>• Knowing violation is a felony punishable by:<br>(1) For a first offense: a fine of $10,000 to $50,000, imprisonment for three years, or both.<br>(2) For each subsequent offense: a fine of $20,000 to $100,000, imprisonment for six years, or both.<br>• Negligent violation:<br>(1) A first offense is a misdemeanor punishable by: a fine of $5,000 to $25,000, imprisonment for not more than one year, or both.<br>(2) Each subsequent offense is a felony punishable by: a fine of $10,000 to $50,000, imprisonment for two years, or both. | • Knowing violation:<br>(1) For a first offense: a fine of $10,000, imprisonment for six months, or both.<br>(2) For each subsequent violation: a fine of $20,000, imprisonment for two years, or both.<br>• Negligent violation: a fine of not more than $5,000. |

| Type of violation | The bill | Current law |
|---|---|---|
| Violations of provisions regarding agreements to transport brine and transporter duties. | • Negligent violation:<br>(1) For a first offense: a fine of not more than $1,000.<br>(2) For each subsequent offense: a fine of not more than $10,000. | • Violation (no culpable mental state is specified – the default culpable mental state is recklessness):<br>(1) For a first offense: a fine of not more than $500.<br>(2) For each subsequent offense: a fine of not more than $1,000. |

### Response costs and liability

(R.C. 1509.33(G) and 1509.99(E))

Under the bill, anyone who violates the general permit requirements of the Law or the provisions of that Law requiring a permit for additional and secondary recovery operations, or any term or condition of a permit or order issued by the Chief of the Division of Oil and Gas Resources Management, is liable for any damage or injury caused by the violation and for the actual cost of rectifying the violation and conditions caused by it. The bill retains current law that imposes such liability on anyone who violates the provisions of that Law governing brine storage and brine transportation.

The bill also provides that a person may be subject to a civil penalty and a term of imprisonment for the same offense by revising current law to state that a person cannot be subject to both a civil penalty and a fine imposed as part of a criminal penalty under the Law for the same offense. Current law instead provides that a person cannot be subject to both a civil penalty and a criminal penalty, including both a fine and a term of imprisonment, under that Law for the same offense.

Under the bill, if a person is convicted of or pleads guilty to a violation of any provision of the Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any actual costs incurred in responding to the violation, including the cost of rectifying the violation and conditions caused by it.

- Removes the requirement that the Board of Nursing collect a $5 fee for written verification of licensure or certification.

## Fees

(R.C. 4723.08 and 4723.88)

The bill removes the requirement that the Board of Nursing collect a $5 fee for written verification of licensure or certification.

# PUBLIC UTILITIES COMMISSION

## Telecommunications

### Withdrawal or abandonment of basic local exchange service

- Would lift the current prohibition against an incumbent local exchange carrier withdrawing or abandoning basic local exchange service (BLES) in an exchange area if the carrier were to withdraw the interstate-access component of its BLES in accordance with an order of the Federal Communications Commission.

- Requires a carrier withdrawing or abandoning BLES to give 120 days' notice to the Public Utilities Commission of Ohio (PUCO) and affected customers.

### Voice service for customers who petition the PUCO (or are identified)

- Permits a residential customer who will be unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES to petition the PUCO to find a willing provider of such service, and permits a collaborative process at the PUCO to identify customers in similar positions.

- Permits the willing provider to use any technology or service arrangement to provide the voice service.

- Permits the PUCO to order the withdrawing or abandoning carrier to provide a reasonable and comparatively priced voice service to a customer described above for one year at the customer's residence if, after an investigation, no willing provider is identified.

- Permits the carrier subject to an order to provide the voice service using any technology or service arrangement.

- Permits the order described above to be extended for one additional year if no alternative reasonable and comparatively priced voice service is available, upon further evaluation.

- Permits the PUCO, at the end of the second year, to issue a new order under which the carrier must *continue* to provide a reasonable and comparatively priced voice service to the customer (perhaps no longer at the customer's residence) if no alternative reasonable and comparatively priced voice service is available.

- Permits a carrier subject to the new order to provide the voice service using any technology or service arrangement.

### Transition to an Internet-protocol network

- Requires the PUCO to use its appropriation in part to plan for the transition from the current public switched telephone network to an Internet-protocol network.

- Requires the PUCO to establish a collaborative process with incumbent and competitive local exchange carriers, the Office of the Ohio Consumers' Counsel, and other invited members to focus on the Internet-protocol-network transition process and related consumer issues.

### Existing carrier agreements not affected

- Ensures that an incumbent local exchange carrier that withdraws or abandons BLES under the bill would still be subject to the PUCO's oversight of the rates, terms, and conditions for carrier access, pole attachments, and conduit occupancy.

- States that the bill does not affect any contractual obligation, including agreements under the federal Telecommunications Act of 1996, as amended, or any right or obligation under federal law or rules.

## Intermodal equipment

- Grants the PUCO the authority to regulate intermodal equipment providers and requires the PUCO to adopt rules applicable to the use and interchange of intermodal equipment (e.g. a semi-trailer transporting a ship container).

- Defines "intermodal equipment," "intermodal equipment provider," and related terms the same as those terms are defined in federal motor carrier safety rules.

## Broadened subpoena power relating to motor carriers

- Broadens PUCO subpoena power, currently limited to the production of documents and other materials relating to hazardous materials transportation, by expanding its application to the production of all books, contracts, records, and documents relating to compliance with motor carrier law and rules.

## Increase of pipeline safety forfeitures

- Increases maximum pipeline safety forfeitures to $200,000 per day and $2 million in the aggregate for a related series of violations or noncompliances.

## Telecommunications

(R.C. 4905.71, 4927.01, 4927.02, 4927.07, 4927.10, 4927.101, 4927.11, and 4927.15; Sections 363.20, 363.30, and 749.10)

### Withdrawal or abandonment of basic local exchange service

The bill would lift the current prohibition against an incumbent local exchange carrier withdrawing or abandoning basic local exchange service (BLES) in an exchange area if:

(1) The Federal Communications Commission (FCC) allows the carrier to withdraw the interstate-access component of its basic local exchange service;

(2) The carrier withdraws that component in the exchange area; and

(3) The carrier gives at least 120 days' prior notice to the Public Utilities Commission (PUCO) and to its affected customers.

Along the same lines, if (1) and (2) above occurred and the notice requirement was met, the bill would relieve the carrier of its carrier-of-last-resort obligation with regard to that exchange area. The carrier-of-last-resort obligation is the requirement that an incumbent local exchange carrier must provide BLES to all persons or entities in its service area requesting BLES (and that BLES must be provided on a reasonable and nondiscriminatory basis).

Under current law, there are also customer-service requirements for the provision of BLES, such as requirements for service installation and reliability. These requirements would not apply to a carrier's service in an exchange area where the carrier withdraws or abandons BLES under the bill, since the requirements apply only to the provision of BLES.[123] The bill expressly states that any "voice service" to which customers are transitioned following the withdrawal of BLES is *not* BLES. Therefore, voice service would not be subject to any requirements governing BLES. "Voice service" is defined as including "all of the applicable functionalities" described in federal regulations. These regulations describe eligibility requirements for federal universal service support in rural, insular, and high-cost areas. The regulations require the provision of voice grade access to the public switched network or its functional equivalent, minutes of use for local service provided at no additional charge to end

[123] R.C. 4927.08, not in the bill.

users, access to emergency service, and toll limitation services to qualifying low-income consumers.[124]

## Terminology explained

### "Incumbent local exchange carrier" (ILEC)

An incumbent local exchange carrier (commonly called an "ILEC") is, under continuing law, the local exchange carrier that, on February 8, 1996 (the date of enactment of the federal Telecommunications Act of 1996), (1) provided telephone exchange service in an area and (2) was deemed to be a member of the Exchange Carrier Association under federal regulations or, since February 8, 1996, became a successor or assign of a member of the Exchange Carrier Association. According to the PUCO, as of 2012 there were 43 ILECs in Ohio.[125]

### "Interstate-access component"

The bill defines "interstate-access component" as the portion of carrier access that is within the jurisdiction of the FCC. "Carrier access" is defined under continuing law as access to and usage of telephone company-provided facilities that enable end user customers originating or receiving voice grade, data, or image communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks and includes special access.

### "Basic local exchange service"

The bill defines BLES as residential-end-user access to and usage of telephone-company-provided services over a single line or small-business-end-user access to and usage of such services over the primary access line of service, which in both cases are not bundled or packaged services, that enables the customer to originate or receive voice communications within a local service area as that area existed on September 13, 2010, or as that area is changed with the PUCO's approval. BLES includes services such as local dial tone service, flat-rate telephone exchange service (for residential end users), touch tone dialing service, access to and usage of 9-1-1 services, and other basic services.

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[124] 47 C.F.R. 54.101(a).

[125] "Telephone Service Areas in Ohio: 2012," available at www.puco.ohio.gov/puco/index.cfm/utility-maps/#sthash.DlRcF2R6.dpbs (click the link for "8.5 x 11 (PDF)" under "Telephone Maps.")

### PUCO process for identifying providers of voice service

If a residential customer receives notice of a BLES withdrawal or abandonment, and the customer will be unable to obtain "reasonable and comparatively priced" voice service upon the withdrawal or abandonment, the bill permits the customer to petition the PUCO.

The bill requires the PUCO to define "reasonable and comparatively priced voice service" to include service that provides voice grade access to the public switched network or its functional equivalent, access to 9-1-1, and that is **competitively priced, when considering all the alternatives in the marketplace and their functionalities**. The language in bold is the more crucial provision. The other language is arguably redundant because the bill's definition of "voice service" already includes, through reference to federal regulations, voice grade access to the public switched network or its functional equivalent and access to emergency service (see "**Withdrawal or abandonment of basic local exchange service**," above).

The petition must be filed not later than 90 days prior to the effective date of the withdrawal or abandonment. The PUCO must then issue an order disposing of the petition not later than 90 days after the petition's filing. If the PUCO determines after an investigation that no reasonable and comparatively priced voice service will be available to the customer at the customer's residence, the PUCO must attempt to identify a willing provider of a reasonable and comparatively priced voice service. The willing provider may utilize any technology or service arrangement to provide the voice service.

### ILECs may be ordered to provide voice service

If no willing provider is identified under the process described above, the PUCO may order the withdrawing or abandoning ILEC to provide a reasonable and comparatively priced voice service to the customer at the customer's residence for 12 months. The ILEC may utilize any technology or service arrangement to provide the voice service.

The PUCO must evaluate, during any 12-month period in which an ILEC has been ordered to provide a reasonable and comparatively priced voice service, whether an alternative reasonable and comparatively priced voice service exists for the affected customer. If no alternative voice service is available, the PUCO may extend the order for one additional 12-month period.

### ILECs may be ordered to continue to provide voice service

After an ILEC has been ordered to provide voice service for 12 months and the order has been extended for an additional 12 months, the bill permits the PUCO to order the ILEC to *continue* to provide a reasonable and comparatively priced voice service to the affected customer under a new, distinct order. Under this new order, the ILEC would still be required to provide voice service using any technology or service arrangement, but it appears that the ILEC would no longer be required to provide service at the customer's residence. This is not explicit in the bill. But the lack of the phrase "at the customer's residence" is the only significant difference between the language governing the first order and the new order. (See the table below for a comparison of the two provisions.) It is also unclear how, under the new order, the service could be provided to a customer without being provided at the customer's residence.

| Language comparison | |
|---|---|
| **Original order** | **New order** |
| "the withdrawing or abandoning carrier to provide a reasonable and comparatively priced voice service to the customer **at the customer's residence**" (R.C. 4927.10(B)(1)(b)) | "the withdrawing or abandoning carrier to **continue** to provide a reasonable and comparatively priced voice service to the **affected** customer" (R.C. 4927.10(B)(2)) |

Similar to the original order, the new order may be issued if, at the end of the 12-month extension period, no alternative reasonable and comparatively priced voice service is available.

### Collaborative process to address the network transition

The bill requires the PUCO, not later than 90 days after the provision's effective date, to establish a collaborative process to address the Internet-protocol-network transition, with all of the following:

- ILECs;
- Any competitive local exchange carriers that provide BLES and are affected by the transition;
- The Office of the Ohio Consumers' Counsel;
- At the invitation of the PUCO, other interested parties and members of the General Assembly.

The collaborative process must focus on the Internet-protocol-network transition processes underway at the FCC and the issues of universal connectivity, consumer protection, public safety, reliability, expanded availability of advanced services, affordability, and competition. The process must ensure that public education concerning the transition is thorough.

The process must include a review of the number and characteristics of BLES customers in Ohio, an evaluation of what alternatives are available to them, including both wireline and wireless alternatives, and the prospect for the availability of alternatives where none "currently" exist. The process must also embark on an education campaign plan for those customers' eventual transition to advanced services.

If the collaborative process identifies residential BLES customers who will be unable to obtain "voice service" upon the withdrawal or abandonment of basic local exchange service (the bill does not use the phrase "reasonable and comparatively priced" here), the PUCO may find those customers to be eligible for the process described above (see "**PUCO process for identifying providers of voice service**") regardless of whether they have filed petitions with the PUCO. The bill states that any customers identified through the collaborative process must be treated as though they filed timely petitions under the bill's provisions.

The collaborative process must, pursuant to the PUCO's rules, respect the confidentiality of any data shared with those involved in the process.

### Transition to an Internet-protocol network

The bill requires the PUCO to use its appropriation for Utility and Railroad Regulation in part to plan for the transition, consistent with the directives and policies of the FCC, from the current public switched telephone network to an Internet-protocol network that will stimulate investment in the Internet-protocol network in Ohio and that will expand the availability of advanced telecommunications services to all Ohioans. The transition plan must include a review of statutes or rules that may prevent or delay an appropriate transition. The bill requires the PUCO to report to the General Assembly on any further action required to be taken by the General Assembly to ensure a successful and timely transition.

### Rulemaking

The bill requires the PUCO, not later than 180 days after the effective date of the requirement, to adopt rules to implement the bill's provisions related to the withdrawal or abandonment of BLES, and to bring its rules into conformity with the relevant provisions of the bill. Rules adopted or amended must include provisions for reasonable customer notice of the steps to be taken during, and the actions resulting

from, the transition plan described above (see "**Transition to an Internet-protocol network**"). Rules adopted or amended must be consistent with the FCC's rules.

If the PUCO fails to comply with these rulemaking requirements before the FCC adopts an order permitting the withdrawal of the interstate-access component of BLES, the bill states that any rule of the PUCO that is inconsistent with that order shall not be enforced.

## Rights and obligations not affected by the bill

### Contractual obligations and federal rights and obligations

The bill states that it does not affect any contractual obligation, including agreements under the federal Telecommunications Act of 1996, as amended, or any right or obligation under federal law or rules.

### Carrier access, pole attachments, and conduit occupancy

The bill ensures that an ILEC that withdraws or abandons BLES under the bill would still be subject to the PUCO's oversight of the rates, terms, and conditions for carrier access, pole attachments, and conduit occupancy. Current law on this subject generally requires that the rates, terms, and conditions for carrier access, pole attachments, and conduit occupancy, provided in Ohio by a telephone company *that is a public utility*, be approved and tariffed as prescribed by the PUCO. The bill adds that this requirement also applies when an *ILEC* provides carrier access, pole attachments, or conduit occupancy. The reason for the addition is that an ILEC is not a public utility with respect to its provision of certain advanced and newer services. So, if an ILEC were to withdraw or abandon BLES and instead provide only an advanced service, that ILEC would no longer be a public utility. Therefore, without the bill's addition, that ILEC could be considered no longer subject to the PUCO's regulation of carrier access, pole attachments, and conduit occupancy.

The bill makes parallel changes in two other provisions of law governing pole attachments and conduit occupancy:

- The bill requires *ILECs*, in addition to telephone companies that are public utilities, to permit pole attachments and conduit occupancy upon reasonable terms and conditions and the payment of reasonable charges.

- The bill requires an *ILEC*, in addition to a telephone company that is a public utility, to obtain PUCO approval before withdrawing a tariff for pole attachments or conduit occupancy, or abandoning the service of providing pole attachments or conduit occupancy.

Finally, the bill states that its provisions related to the withdrawal or abandonment of BLES do not affect carrier-access requirements under Ohio law, or rights or obligations under Ohio law governing pole attachments and conduit occupancy.[126]

## Intermodal equipment

(R.C. 4905.81, 4923.04, and 4923.041)

### Providers

The bill expressly authorizes the PUCO to regulate the safety of operation of each intermodal equipment provider, in addition to regulating the safety of operation of each motor carrier as required in current law. Though not explained in the bill, intermodal equipment is generally considered equipment for combination transport where the freight is not handled when it changes modes of transport. A semi-trailer transporting a ship container would be an example.

### Rules

The bill also requires the PUCO to adopt rules applicable to the use and interchange of intermodal equipment.

### Definitions

"Intermodal equipment," "intermodal equipment provider," and related terms are given the same definitions in the bill as those terms currently have in federal rules. Intermodal equipment means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis. An intermodal equipment provider is any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment. Interchange is the act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider. Interchange does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations.[127]

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[126] R.C. 4905.02(A)(5), not in the bill.

[127] 49.C.F.R. 390.5.

## Broadened subpoena power relating to motor carriers

The bill broadens the PUCO's subpoena power relating to motor carriers. Under the bill, the PUCO may issue a subpoena to compel the production of all books, contracts, records, and documents that relate to compliance with the state's motor carrier laws and rules. Current law limits the power to compelling the production of all books, contracts, records, and documents that relate to the transportation and offering for transportation of hazardous materials.

## Pipeline safety forfeitures

(R.C. 4905.95)

Updates the maximum forfeitures for pipeline safety violation or noncompliance consistent with federal law: $200,000 limit for each day of a violation or noncompliance and $2 million limit for a related series of violations or noncompliances.[128] The limits in existing law are $100,000 and $1 million, respectively.

[128] 49 C.F.R. 190.223(a).

- Establishes a District Administration Costs Program for natural resource assistance councils representing public works districts.

## District Administration Costs Program

(Section 365.10)

The bill authorizes the Director of the Public Works Commission to create a District Administration Costs Program for public works districts that are represented by natural resource assistance councils. The Program is to be used by the councils to pay the direct costs of council administration. Participating councils may be eligible for as much as $15,000 per fiscal year from the allocation to the corresponding public works district from the Clean Ohio Conservation Fund (a fund consisting of proceeds from the sale of general obligation bonds of the state issued to pay the costs of conservation projects). Under the Program, the Director must define allowable and nonallowable administration costs. The bill provides that nonallowable costs include indirect costs, elected official salaries and benefits, and project-specific costs.

Under continuing law, there are 19 public works districts, each with a district public works integrating committee.[129] Each district committee is required to appoint a natural resource assistance council.[130] Councils have the job of reviewing and either approving or disapproving applications for grants (of the district's allocation of Clean Ohio Conservation Fund money) for open space acquisition and related projects and to protect and enhance riparian corridors and watersheds.[131]

[129] R.C. 164.03 and 164.04, not in the bill.

[130] R.C. 164.21, not in the bill.

[131] R.C. 164.22, not in the bill.

- Eliminates the Ohio Quarter Horse Development Fund and specifies that funds currently paid into the Fund instead must be paid into the Ohio Thoroughbred Race Fund to support quarter horse development and purses.
- Increases the amount of moneys paid to the Tax Commissioner by thoroughbred racing permit holders that the Tax Commissioner must pay into the Ohio Thoroughbred Race Fund.
- Abolishes the Ohio Quarter Horse Development Commission.
- Requires the State Racing Commission to adopt rules regarding the maintenance and use of money collected for quarter horse development and purses.

## Quarter Horse Development Fund

(R.C. 3769.03, 3769.08, 3769.083, 3769.086 (repealed), 3769.087, and 3769.101)

The bill eliminates the Ohio Quarter Horse Development Fund, the current purpose of which is to "advance and improve the breeding of racing quarter horses in Ohio." The funds currently paid into the Fund, five-eighths of one per cent of moneys wagered, instead must be paid into the Ohio Thoroughbred Race Fund to support quarter horse development and purses.

The bill increases the amount of additional moneys retained and paid to the Tax Commissioner by thoroughbred racing permit holders, from one-twelfth to one-sixth, that the Tax Commissioner must pay into the Ohio Thoroughbred Race Fund.

The Quarter Horse Development Commission, which currently administers the Quarter Horse Development Fund, is eliminated by the bill. The State Racing Commission is required to adopt rules regarding the maintenance and use of money collected for quarter horse development and purses.

- Authorizes a court, on its own motion, to grant judicial release to an offender in a state correctional institution on compassionate medical grounds if the offender has not been sentenced to death or imprisonment for life.

- Allows the Division of Parole and Community Services to expend up to one-half per cent of the annual appropriation made for halfway house programs and community-based correctional facility programs for goods or services that benefit those programs.

- Removes the requirement that the Office of Budget and Management approve prices fixed by the Department of Rehabilitation and Correction (DRC) for labor and services performed, agricultural products produced, and articles manufactured in correctional and penal institutions.

- Modifies fallback provisions for DRC permanent classified employees, including adding reasons for which the employee may be reinstated to the classified position and specifying reasons for which the employee forfeits the right of reinstatement.

- Eliminates a current law requirement that the managing officer of each DRC institution must file a monthly report with the DRC Director outlining all appointments, resignations, and discharges.

### Fund closures

- The bill abolishes the Confinement Cost Reimbursement Fund and the Laboratory Services Fund.

### Judicial release on compassionate medical grounds

(R.C. 2929.20)

The bill authorizes a sentencing court to grant judicial release to an offender in a state correctional institution who is in imminent danger of death, terminally ill, or medically incapacitated and who is neither on death row nor serving a life sentence. The court may grant the release on its own motion when the Director of Rehabilitation and Correction certifies to the court that the offender (1) is in imminent danger of death, terminally ill, or medically incapacitated, (2) has a permanent deterioration in mental or cognitive ability such that institutional confinement does not offer additional protections for public safety or against recidivism, or (3) other exigent circumstances

exist such that institutional confinement does not offer additional protections for public safety or against recidivism. The court may request health care records from the Department of Rehabilitation and Correction (DRC) to verify the certification.

A motion made by the court to release an offender on compassionate medical grounds is subject to all of the notice, hearing, and other procedural requirements applicable to judicial release generally, except that the court may waive the offender's appearance due to the offender's condition and grant the motion without a hearing if the prosecutor and the victim or victim's representative indicate that they do not wish to participate or present relevant information.

After granting judicial release, the court must determine the offender's health status annually. If the offender's status improves sufficiently, the court may reimpose the reduced sentence after a hearing or waiver of a hearing by the offender.

## Halfway house and community-based correctional facility programs

(R.C. 2967.14 and 5120.112)

DRC or the Adult Parole Authority may require or allow a parolee, a releasee, or a prisoner otherwise released from a state correctional institution to reside in a halfway house or other suitable community residential center. Any county that has a population of 200,000 or more is eligible to formulate a community-based correctional proposal that, upon implementation, would provide a community-based correctional facility and program for the use of that county's common pleas court.[132] The biennial operating budget historically includes an appropriation for halfway house programs and community-based correctional facility programs. The bill allows the Division of Parole and Community Services to expend up to one-half per cent of the annual appropriation made for halfway house programs and community-based correctional facility programs for goods or services that benefit those programs.

## Ohio penal industry prices

(R.C. 5120.28)

The bill removes the requirement that the Office of Budget and Management approve the prices fixed by DRC at which all labor and services performed, agricultural products produced, and articles manufactured in correctional and penal institutions are furnished to the state, its political subdivisions, and public institutions, and to private persons.

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[132] R.C. 2301.51, not in the bill.

## Classified employee fallback rights

(R.C. 5120.38, 5120.381, and 5120.382)

Continuing law allows a DRC employee who moves from a classified position to an unclassified position (as a managing officer, deputy warden, or otherwise), to resume the classified position held by the employee immediately prior to the move. The bill expands these "fallback rights" to allow the employee to resume the classified position (or a substantially equal position, as certified by the DRC Director and approved by the Director of Administrative Services (DAS)) even if the employee has held multiple unclassified positions since the move. If the employee's prior classified position has been placed in the unclassified service or is otherwise unavailable, the DRC Director must appoint the employee to a classified DRC position that is comparable in compensation to the prior position, as certified by the DAS Director.

### Triggering fallback rights

Under the bill, fallback rights for DRC employees are triggered only when the employee is demoted to a pay range lower than the employee's current pay range or when the DRC Director revokes the employee's appointment to the unclassified service. And an employee forfeits the right to resume the classified position if the employee is removed from the unclassified position due to incompetence; inefficiency; dishonesty; drunkenness; immoral conduct; insubordination; discourteous treatment of the public; neglect of duty; a violation of DRC law or DRC or DAS rules; any other failure of good behavior; any other acts of misfeasance, malfeasance, or nonfeasance in office; or a conviction of or plea of guilty to a felony. An employee who transfers to a different agency also loses any right to resume a classified position with DRC upon that transfer.

Currently, fallback rights are triggered when an employee is relieved of the employee's duties in the unclassified service. Current law does not specify employee behavior that may result in a forfeiture of the rights.

### Treatment of a DRC employee who exercises fallback rights

If a DRC employee utilizes the bill's fallback rights, the bill requires that the employee's unclassified DRC service be counted toward that employee's service in the prior classified position. Under current law, only service in an unclassified position held pursuant to the appointment from the classified service is counted toward the employee's service in the prior classified position. The bill also entitles a DRC employee using these fallback provisions to all rights and benefits and any status that the classified position accrued during the employee's unclassified service. Current law instead entitles such an employee to the rights and emoluments accrued during that time.

## Monthly personnel report

(R.C. 5120.38)

The bill eliminates a current law requirement that the managing officer of each DRC institution file with the DRC Director a monthly report of all appointments, resignations, and discharges.

## Fund closures

(R.C. 2929.18, 2969.14, and 5120.135)

Current law requires offenders to reimburse DRC for certain costs it incurs in operating prisons or other facilities used to confine offenders. Those reimbursements are deposited into the Confinement Cost Reimbursement Fund and used by DRC to fund the operation of those prisons and facilities. The bill abolishes the Fund but retains the reimbursement requirement.

The bill also abolishes the Laboratory Services Fund, which consists of payments made by state agencies, local governments, and other entities for laboratory services provided to them by DRC, and removes the payment requirement.

- Increases the renewal fee and late application fee to register as a sanitarian or sanitarian-in-training.

## Fee changes for renewals and late fees

(R.C. 4736.12)

The bill increases the renewal fee to register as a sanitarian or sanitarian-in-training to $90 from $80. The bill also increases the late fee assessed for a late application to register as a sanitarian or sanitarian-in-training to $75 from $50.

- Eliminates the Information Systems Fund and redirects certain revenues of that Fund to the credit of the Corporate and Uniform Commercial Code Filing Fund.

## Elimination of Information Systems Fund

(R.C. 111.181 (repealed) and 1309.528)

The bill eliminates the Information Systems Fund, currently used by the Secretary of State's office for information technology-related expenses. The bill redirects revenues from fees charged to customers for special database requests currently received into the Information Systems Fund to the Corporate and Uniform Commercial Code Filing Fund.

# DEPARTMENT OF TAXATION

## Income tax

- Reduces income tax rates in all brackets by 23% over two years.

- Increases the personal exemption amounts available to lower income taxpayers, from $2,200 to $4,000 for taxpayers with an Ohio adjusted gross income (OAGI) of $40,000 or less, and from $1,950 to $2,800 for taxpayers with an OAGI of between $40,000 and $80,000.

- Restricts the state income tax deduction for Social Security and Tier One railroad retirement benefits to taxpayers whose federal adjusted gross income (FAGI) is not more than $100,000.

- Restricts the retirement income credit, the lump-sum retirement credit, the lump-sum distribution credit, and the senior citizen credit to taxpayers whose individual or joint adjusted gross income (less personal exemptions) for the taxable year is less than $100,000.

- Revises the small business income tax deduction to allow individuals to deduct 100% of business income derived from businesses with annual gross receipts of $2 million or less, and 50% of business income derived from businesses with annual gross receipts of more than $2 million.

- Removes the $125,000 cap (or $62,500 for spouses filing separate returns) on the small business income tax deduction for business income derived from businesses with annual gross receipts of $2 million or less, but retains the cap for business income derived from businesses with annual gross receipts of more than $2 million.

- Adjusts the amount of "withholding" tax that must be paid by a pass-through entity, at least one owner of which is subject to Ohio income tax, and restricts the reclassification of such owners' compensation from such an entity as a distributive share.

## Sales and use tax

- Increases the rate of the state sales and use tax from 5.75% to 6.25% beginning October 1, 2015.

- Subjects cable television services, the transfer of bad debt, travel services, research and public opinion polling services, public relations services, lobbying services,

management consulting services, parking services, debt collection services, and repossession services to sales and use tax.

- Repeals the sales and use tax exemption for the sale of services by the state, political subdivisions, and other government entities.

- Reduces the trade-in credit for purchases of a watercraft or new motor vehicle from a licensed dealer to 50% of the trade-in value.

- Clarifies that the impoundment of motor vehicles by the state or a political subdivision is not subject to sales and use tax.

- Limits the discount afforded to vendors and sellers that timely file their sales or use tax returns to a maximum of $1,000 per month.

### Alcoholic beverage tax

- Eliminates the 3% credit and discounts granted to beer, wine, and mixed alcoholic beverage taxpayers that timely file required reports and remit the taxes due.

### Cigarette and tobacco excise taxes

- Increases the rate of the cigarette excise tax from $1.25 per pack to $2.25 per pack.

- Increases the rate of the excise tax levied on tobacco products other than cigarettes and little cigars from 17% to 60% of such products' wholesale price.

- Increases the rate of the excise tax levied on little cigars from 37% to 60% of wholesale price.

- Eliminates the 2.5% discount to which a seller or distributor is entitled for timely remitting excise taxes for tobacco products other than cigarettes.

- Modifies the method for calculating minimum wholesale and retail cigarette prices, effective July 1, 2015.

- Requires a cigarette manufacturer to certify to the Tax Commissioner the list price of each cigarette brand the manufacturer will sell in the state, and requires the Department of Taxation to post the prices on its website.

- Eliminates the 1.8% tax stamping discount provided to wholesale dealers as consideration for affixing tax stamps to cigarette packages.

## Tax on vapor products

- Levies a tax on the sale or use of nicotine vapor products (such as may be used in "electronic" cigarettes), effective January 1, 2016.

- Commits all revenue to the GRF.

- Imposes the tax upon each "cigarette equivalent" of vapor product at the same rate as the state cigarette tax, and defines a "cigarette equivalent" as .10 milliliter of liquid vapor product or 1 gram of nonliquid vapor product regardless of nicotine concentration.

- Defines a vapor product as a noncombustible product that contains nicotine, is intended and marketed for human consumption, and includes a component that is used to deliver the product by means of a mechanical heating element, battery, or electronic circuit.

- Imposes the tax on wholesale dealers of vapor products, and requires both wholesale and retail dealers of such products to be licensed to operate in Ohio on an annual basis.

- Prohibits municipal corporations from levying a similar tax.

## Commercial activity tax (CAT)

- Decreases the minimum tax due for CAT taxpayers that have between $1 million and $2 million in annual taxable gross receipts.

- Increases the CAT rate on taxable gross receipts in excess of $1 million from 0.26% to 0.32%.

## TPP reimbursements

- Resumes the phase-out of reimbursement payments to school districts and other taxing units for tangible personal property tax losses.

- Increases the portion of CAT revenue and kilowatt-hour excise tax revenue to be credited to the GRF and reduces the portion used to reimburse school districts and other taxing units for tangible personal property tax losses.

## Hydrocarbon severance taxes

- Repeals a cost recovery assessment imposed on a well's owner for the severance of oil and gas.

- Increases the rate of severance tax levied on oil and gas severed by a nonhorizontal well up to the combined rate of the repealed cost recovery assessment and current law's rate of severance tax on oil and gas.

- Exempts from severance tax any gas severed from a nonhorizontal well producing an average of 10 Mcf of gas per day or less or an exempt domestic well, but subjects the owners of most such wells to a $60 annual fee.

- Levies a new value-based severance tax on oil, gas, condensate, and natural gas liquids (NGLs) severed from or collected from oil or gas severed from a horizontal well based on the volume of the resource severed or collected.

- Divides revenue from the new tax among oil and gas regulatory functions of DNR, the General Revenue Fund, and local governments in areas of the state with drilled horizontal wells or oil and gas shale development.

- Creates the 13-member Ohio Shale Products Regional Commission to make grants to local governments in the shale region one-half of the revenue from the new tax allocated for local governments.

- Commits one-half of the revenue administered by the Commission to an endowment fund that cannot be used until 2025.

- Eliminates a severance tax exemption for severed resources used to improve the severer's homestead.

### Severance tax administration

- Transfers the severance permit responsibilities from the Department of Taxation to DNR.

- Adjusts the due dates of severance tax returns.

- Requires severance tax revenue to be credited to funds on a monthly, rather than quarterly, basis.

- Limits the ability of DNR to disclose severance tax information received by the Tax Commissioner.

### Tax credits and exemptions

- Revises computation of the job creation and retention tax credits so that the credit equals an agreed-upon percentage of the taxpayer's Ohio employee payroll rather than Ohio income tax withholdings.

- Removes the 75% cap on the percentage of Ohio employee payroll (or, under current law, Ohio income tax withholdings) a taxpayer and the Tax Credit Authority (TCA) may agree to for the purposes of computing the job retention tax credit.

- Authorizes the TCA to require taxpayers to refund all or a portion of job creation or job retention tax credits if the taxpayer fails to substantially meet the job creation, payroll, or investment requirements included in the tax credit agreement or files for bankruptcy.

- Reduces from 60 to 30 days the amount of time a taxpayer has to submit a copy of a job creation or job retention tax credit certificate.

- Revises the role of the Director of Budget and Management, the Tax Commissioner, and the Superintendent of Insurance in evaluating applications for job retention tax credits and data center sales tax exemptions.

### Current expense levies allocated to community schools

- Authorizes any school district that contains, in its territory, a community school with an "exemplary" sponsor to propose a levy for the current operating expenses of the school district and the community school.

- Authorizes school districts other than the Cleveland Metropolitan School District to allocate 100% of the proceeds of such a levy to partnering community schools.

### Tax Expenditure Review Committee

- Creates a temporary nine-member committee to review most existing "tax expenditures" over a four-year cycle and make recommendations whether to continue, modify, or repeal each expenditure.

- Limits the definition of "tax expenditure" to a tax provision that reduces revenue to the GRF.

- Requires any bill proposing a new or modified tax expenditure explain the expenditure's public policy objectives.

### Administration of county 9-1-1 assistance

- Requires the Tax Commissioner to transfer funds remaining in the Wireless 9-1-1 Government Assistance Fund to the Next Generation 9-1-1 Fund at the direction of the Statewide Emergency Services Internet Protocol Network Steering Committee rather than after monthly disbursements are made to counties.

- Requires that any shortfall in monthly disbursements to counties from the Wireless 9-1-1 Government Assistance Fund be remedied in the following month.

## Income tax

### Rate reduction

(R.C. 5747.02)

The bill phases in a 23% reduction in income tax rates for all income tax brackets over two years. Under the phase-in, tax rates are reduced by 15% for taxable years beginning in 2015 and 23% for taxable years beginning in 2016 or thereafter compared to the rates in effect for 2014.

For taxable years beginning in 2014, the income tax is levied at rates ranging from 0.528% for taxable income up to $5,200 to 5.333% for taxable income above $208,500. There are nine income brackets with increasingly greater rates assigned to higher income brackets.

The income tax is levied on individuals, estates, and some trusts. The tax base for individuals is federal adjusted gross income (FAGI) after several deductions and a few additions; for estates and trusts, the base is federal taxable income after several additions and deductions. An $88 credit is granted for individuals filing a return (joint or individual) showing tax due, after personal and dependent exemptions, of $10,000 or less; the effect of the credit is to exempt such filers from the income tax. The tax applies to residents, and to nonresidents who have income that is attributable to Ohio under statutory attribution rules. For residents who have income taxable by another state with an income tax, a credit is available to offset the tax paid to other states; for nonresidents who have income attributable to Ohio and another state, a credit is allowed to the extent the income is not attributable to Ohio.

### Personal exemption increase for lower income taxpayers

(R.C. 5747.025)

Continuing law allows an income tax taxpayer to claim a personal exemption for the taxpayer, the taxpayer's spouse (if the spouses do not file separately), and the taxpayer's dependents. For taxable years beginning in 2015 and thereafter, the act increases the personal exemption amount available to taxpayers with an Ohio adjusted gross income of $80,000 or less, as reported on the taxpayer's individual or joint annual return. The following chart outlines current personal exemption amounts and the amounts proposed under the bill:

| Ohio adjusted gross income | Current personal exemption amount | Proposed personal exemption amount |
|---|---|---|
| $40,000 or less | $2,200 | $4,000 |
| $40,001 to $80,000 | $1,950 | $2,800 |
| $80,001 or more | $1,700 | $1,700 |

### Means test for Social Security income tax deduction

(R.C. 5747.01(A)(5); Section 803.120)

The bill restricts the state income tax deduction for Social Security and Tier One railroad retirement benefits to taxpayers whose FAGI is less than or equal to $100,000. Under current law, all taxpayers are authorized to deduct Social Security and Tier One railroad retirement benefits they receive. Deductible Social Security benefits include old-age, survivor, and disability insurance benefits. Tier One railroad retirement benefits are the equivalent of Social Security benefits for railroad employees.

The means test on the Social Security income tax deduction would apply to taxable years beginning on or after January 1, 2015.

### Means test for retirement income and senior tax credits

(R.C. 5747.05, 5747.055, 5747.08, 5747.71, and 5747.98; Section 803.70)

The bill restricts the retirement income credit, the lump-sum retirement credit, the lump-sum distribution credit, and the senior citizen credit to taxpayers whose individual or joint adjusted gross income (less personal exemptions) for the taxable year is less than $100,000. Under current law, the credits are available to taxpayers aged 65 years and older regardless of income. The income limits apply to taxable years beginning in or after 2015.

Calculation of the retirement income credit varies depending on whether the retiree (aged 65 years and older) claims the credit on an annual basis or on the basis of a lump-sum distribution of income. For retirees who claim the annual credit, the credit ranges from $25 for retirement income of at least $500, to $200 for retirement income of at least $8,000. The $200 credit is equivalent to exempting at least $15,000 of retirement income from taxation. Retirees who receive a lump-sum distribution of retirement income may claim a one-time credit equivalent to receiving the annual credit each year of the retiree's expected remaining life according to actuarial tables.

The senior citizen credit is an annual credit for taxpayers aged 65 years and older equal to $50; receiving retirement income is not necessary to claim the credit. As an

alternative, a taxpayer aged at least 65 years who receives a lump-sum distribution of retirement income may claim a one-time credit equivalent to $50 for each year of their expected remaining life.

The means test for the retirement income credit, the lump-sum retirement credit, the lump-sum distribution credit, and the senior citizen credit applies to taxable years beginning on or after January 1, 2015.

The bill also moves language relating to those credits and strikes obsolete language.

### Small business income tax deduction

(R.C. 5747.01(A)(31); Section 803.110)

The bill increases the amount of the small business income tax deduction to allow individuals to deduct 100% of business income derived from businesses with gross receipts not exceeding $2 million for the taxable year. In addition, individuals may deduct 50% of business income from businesses with gross receipts exceeding $2 million for the taxable year. The aggregate deduction for business income from businesses with gross receipts exceeding $2 million may not exceed $125,000 (or $62,500 for spouses who file separate returns and each report business income). There is no cap on the deduction for business income from businesses with gross receipts not exceeding $2 million. A business's annual gross receipts would be determined in the same manner as under federal income tax law for the purpose of determining whether certain taxpayers may use cash-basis accounting.

Under continuing law, "business income" is income from the regular conduct of a trade or business, including gains or losses, and includes gains or losses from liquidating a business or from selling goodwill. It is deductible to the extent it is apportioned or allocated to Ohio, in cases taxpayers who have business income attributable to other states The deduction is not available to estates or trusts subject to the income tax. The deduction does not affect the school district income tax base: any taxpayer making the deduction for state income tax purposes must add the deducted amount back into the taxpayer's school district taxable income if the school district's income tax base is based on state taxable income (as opposed to just earned income).

Under current law, the small business income tax deduction equals 50% of business income included in a taxpayer's federal adjusted gross income. The amount of the deduction is limited to $125,000 per taxpayer per year (or $62,500 for spouses who file separate returns and each report business income). The deduction was first available in 2013.

### Pass-through entity withholding tax adjustments

(R.C. 5733.40; Section 803.110)

The bill makes two adjustments to the amount of pass-through entity "withholding" tax that must be paid by some pass-through entities. One adjustment allows an entity to exclude from the withholding tax base any amount paid as an expense to a related person or entity ("related member") if the related member is subject to Ohio income tax on the basis of that amount. Currently, the only expenses paid to related members that may be excluded from the entity withholding tax base are compensation and guaranteed payments paid to owners who hold at least a 20% share of the entity.[133]

The second adjustment allows an entity to exclude from its adjusted qualifying amount compensation or guaranteed payments paid to an owner holding at least a 20% share only to the extent the compensation or payment is not otherwise taxable under the personal income tax. Currently, such compensation or guaranteed payments are considered part of the owner's distributive share of income from the entity and therefore taxable to the entity as part of the adjusted qualifying amount. Also, to the extent that an entity owner's compensation or guaranteed payment is subject to the personal income tax, it could not be considered a distributive share of income for the purposes of the income tax.

The pass-through entity withholding tax is a tax imposed on pass-through entities (e.g., partnerships, S corporations, limited liability companies) having at least one owner who is not an Ohio resident or for whom the entity does not file a return and pay income tax and estimated income tax. The entity is required to pay the withholding tax in an amount approximately equal to the income tax owed by all such owners. The entity's tax payment is meant to ensure that the owners' individual liabilities are satisfied; if an owner files an individual return reporting the income passed through from the entity and paying tax on the income, the owner receives a refundable credit for the owner's share of the withholding tax paid by the entity.

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[133] The withholding tax base is termed "adjusted qualifying amount." A guaranteed payment is a payment made by a pass-through entity to an owner regardless of the entity's income; for federal and state income tax purposes, such payments represent an ordinary expense of the entity and ordinary income of the owner.

## Sales and use tax

### Rate increase

(R.C. 5739.02(A) and 5739.10; Sections 812.20 and 812.60)

Under current law, the state imposes a sales and use tax rate of 5.75% on all retail sales or storage, use, or consumption of tangible personal property and taxable services in Ohio. Counties and transit authorities are authorized to impose additional "piggyback" sales and use taxes. The bill increases the state sales and use tax rate to 6.25% for retail sales and tangible personal property or taxable services stored, used, or consumed on or after October 1, 2015.

### Expansion of base

(R.C. 5739.01(B)(3)(v) to (x), (B)(13), and (B)(52); Sections 812.20 and 812.60)

Under continuing law, the sales or use tax generally does not apply to a service unless the service is expressly made subject to the tax. Beginning on and after October 1, 2015, the bill expands the sales and use tax base by expressly including the sale or use of cable services, travel services, research and public opinion polling services, public relations services, lobbying services, management consulting services, motor vehicle parking services, debt collection services, and repossession services. The bill also extends the taxes to the transfer of "bad" (i.e., uncollectible or worthless debt).

For the purposes of sales and use taxation:

- "Cable services" are the one-way transmission of video and other programming services to subscribers, including any subscriber interaction required for the selection or use of those services.

- "Travel services" are the selling of travel, tour, and accommodation services by an agent to the general public and commercial clients.

- "Research and public opinion polling services" are gathering and presenting marketing and public opinion data related to broadcast media ratings, political opinions, marketing analysis and research, statistical sampling, opinion research, economic research and analysis, and sociological research and analysis.

- "Lobbying services" are activities that serve to influence the behavior or opinion of individuals, industries, or organizations.

- "Management consulting services" are activities that provide advice and assistance to businesses and other organizations on business issues.

- "Debt collection services" are collecting payments for claims and remitting the payments collected to clients.

- "Repossession services" are repossessing tangible assets including automobiles, boats, equipment, aircraft, furniture, and appliances, for a creditor as a result of delinquent debts.

- "Bad debt" is any debt that is worthless or uncollectible, has been uncollected for at least six months, and is deductible for federal income tax purposes.[134]

### Sale of services by government entities

(R.C. 5739.02(B)(22); Sections 812.20 and 812.60)

The bill eliminates a sales and use tax exemption for the sale or use of services provided by the state, political subdivisions, and their agencies. Consequently, the sale or use of such services will be subject to sales and use taxation beginning October 1, 2015, unless the service is not otherwise subject to taxation or another exemption applies.

### Motor vehicle and watercraft trade-in credit

(R.C. 5739.01(H)(2) and (3); Sections 812.20 and 812.60)

The bill reduces the trade-in credit for purchases of a watercraft or new motor vehicle from a licensed dealer to 50% of the trade-in value. Under current law, the taxable "price" of a watercraft or new motor vehicle is reduced by the value of any watercraft or motor vehicle, respectively, accepted by the dealer as part of the transaction. The bill revises this taxable price reduction to one-half of the trade-in value, meaning the consumer will owe sales and use tax on the other half. The change applies to sales of watercraft and new motor vehicles on and after October 1, 2015.

### Impoundment of motor vehicles

(R.C. 5739.01(B)(9); Sections 812.20 and 812.60)

Under continuing law, the storage of tangible personal property is a taxable service. The bill specifies that the impoundment of motor vehicles by the state or a

[134] R.C. 5739.121.

political subdivision is not the storage of tangible personal property for sales and use tax purposes. Accordingly, motor vehicle impoundment by a government entity is not subject to sales and use tax.

### Discount for timely filing a return

(R.C. 5739.12; Section 803.30)

Ohio vendors are generally required to file a monthly sales tax return and remit tax collections to the state by the 23rd day of each month. Vendors with less than $15,000 in quarterly tax liability are authorized to file quarterly returns by the 23rd day of January, April, July, and October. Vendors with less than $1,200 in semi-annual liability are authorized to file semi-annual returns based on a filing schedule determined by the Tax Commissioner.[135]

Under continuing law, vendors receive a discount of 0.75% of the tax due for each timely filed return. The bill limits this discount to $1,000 per month beginning October 1, 2015.

## Alcoholic beverage tax

Continuing law levies an excise tax on manufacturers, importers, and wholesale distributors who sell and distribute beer, wine, or mixed alcoholic beverages in and to Ohio. The tax is due monthly. All revenue is credited to the General Revenue Fund except for a percentage of the wine tax revenue earmarked for the Ohio Grape Industries Fund.

### Beer excise tax credit and discount

(R.C. 4301.42 and 4303.33(A) and (B); Sections 803.20 and 812.20)

The bill eliminates the 3% credit and discount currently granted to beer excise taxpayers who timely file and accurately estimate the required advanced tax payment. Continuing law requires beer excise taxpayers to estimate and pay the tax due for the whole month by the eighteenth day of that month. On or before the tenth day of the following month, the taxpayer is required to report the actual amount of beer produced, bottled, sold, and distributed for sale in this state during the preceding month and pay any additional tax due to the extent that the taxpayer's liability exceeds the advanced payment.

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[135] Ohio Department of Taxation, How to File Sales Tax, www.tax.ohio.gov/taxeducation/Filing_Sales_Tax.aspx.

Under current law, beer excise taxpayers may claim a credit equal to 3% of the advanced tax payment if the payment is received by the Tax Commissioner by the due date. In addition, the taxpayer may claim a 3% discount on any remaining beer excise tax liability (due the tenth day of the following month) to the extent such liability does not exceed 10% of the advanced tax payment. The bill eliminates this credit and discount beginning July 1, 2015.

### Wine, cider, and mixed beverages excise tax discount

(R.C. 4303.33(C); Sections 803.20 and 812.20)

The bill also eliminates the 3% discount currently granted to wine, cider, and mixed beverage excise taxpayers who timely report and remit the tax due. Continuing law requires taxpayers to report monthly sales and distribution of wine, cider, and mixed beverages in this state and remit the excise taxes due on such sales and distribution or before the eighteenth day of the following month. The 3% discount would be eliminated beginning July 1, 2015.

## Cigarette and tobacco excise taxes

Ohio levies an excise tax on the sale, distribution, or use of cigarettes at the current rate of $1.25 per pack. The tax is paid primarily by wholesale dealers through the purchase of stamps that are affixed to packs of cigarettes. Retail sellers must pay the tax on cigarettes that are not taxed at the wholesale dealer level. A separate tax is levied on tobacco products other than cigarettes at the current rate of 17% of the wholesale price, or 37% of wholesale price for "little cigars" – which are noncigarette, filtered smoking rolls wrapped in any substance containing tobacco, other than natural leaf tobacco. (This tax is often referred to as the other tobacco products (OTP) tax.) Revenue from the cigarette and OTP tax is credited to the GRF.

### Cigarette excise tax rate

(R.C. 5743.02 and 5743.32; Sections 757.30 and 803.50)

The bill increases the rate of the cigarette excise tax from the current $1.25 per pack to $2.25 per pack beginning July 1, 2015. On a per-cigarette basis, the increase is from 6.25¢ to 11.25¢. All revenue from the cigarette excise tax will continue to be credited to the GRF.

The rate increase also applies to cigarettes in wholesale and retail dealers' inventories and tax stamps in wholesale dealers' inventories on July 1, 2015. Dealers must pay a "net additional tax" on those inventories. The net additional tax is the additional tax resulting from the rate increase for all cigarette packs bearing a tax stamp

and for all unaffixed tax stamps in the dealer's possession at the beginning of business on that day. All dealers owing additional tax must file a return with the Tax Commissioner and pay the tax by September 30, 2015. A late charge applies for late payments or returns equal to $50 or 10% of the tax due, whichever is greater.

### Tobacco products excise tax rate

(R.C. 5743.01, 5743.51, 5743.62(A), and 5743.63; Section 803.60)

The bill increases the rate of the OTP tax from the current 17% of the wholesale price (37% in the case of little cigars) to 60% beginning July 1, 2015. All revenue from the OTP tax will continue to be credited to the GRF.

### Tobacco products excise tax discount

(R.C. 5743.52 and 5743.62(C); Section 803.40)

The bill discontinues a discount available under current law to sellers and distributors that file OTP tax returns and remit the tax on or before the date the return is due. Currently, the discount equals 2.5% of the amount of tax due. Under continuing law, sellers and distributors file OTP tax returns for each month, and each return is due on or before the 23rd day of the following month.

### Cigarette minimum prices

(R.C. 1333.11 to 1333.211, 1333.99, 5743.01, 5743.05, 5743.15, 5743.20, 5743.36 to 5743.365; Section 812.20)

Continuing law prohibits cigarette retailers and wholesalers from selling cigarettes at below statutory minimum prices with the intent to injure competition. The bill modifies the method for calculating these minimum prices.

### Minimum wholesale cigarette price

The bill modifies the minimum wholesale cigarette price computation as follows:

| Minimum wholesale cigarette price | |
|---|---|
| **Current law** | **Bill** |
| Wholesaler's invoice cost<br>+<br>Wholesaler's mark-up = [3.5% (or actual cost of doing business) x invoice cost]<br>+ | Manufacturer's list price<br>+<br>Wholesaler's mark-up = [3.5% x (manufacturer's list price + state and county excise taxes)]<br>+ |

| Minimum wholesale cigarette price | |
|---|---|
| **Current law** | **Bill** |
| State and county excise taxes<br>=<br>Minimum price ("cost to wholesaler") | State and county excise taxes<br>=<br>Minimum price (renamed the "wholesale cigarette price") |

First, the bill requires that the minimum wholesale price calculation begin with the "manufacturer's list price," rather than the "wholesaler's invoice cost." Correspondingly, the bill adds a requirement that manufacturers certify their brand list prices to the Tax Commissioner each year (see below). Second, the bill requires that, when calculating the wholesaler's mark-up, the mark-up percentage must be applied to the sum of the list price and the state and any county tax levied on the cigarettes.[136] By comparison, under current law, the mark-up percentage is applied only to the invoice cost. Third, the bill prescribes a mark-up percentage of 3.5%, whereas current law creates the presumption of a 3.5% mark-up but allows wholesalers to use a different percentage by demonstrating a higher or lower actual cost of doing business.

**Minimum retail cigarette price**

The bill modifies the minimum retail cigarette price formula as follows:

| Minimum retail cigarette price | |
|---|---|
| **Current law** | **Bill** |
| Retailer's invoice cost<br>+<br>Retailer's mark-up = [8% x (retailer's invoice cost – county excise taxes)]<br>+<br>If the retailer pays cartage costs, the actual cartage costs or 0.75% of the retailer's invoice cost, subtracted by any state or county excises taxes paid by the wholesaler<br>=<br>Minimum price ("cost to retailer") | Wholesale cigarette price<br>+<br>Retailer's mark-up = [8% x (wholesale cigarette price – county excise taxes)]<br>=<br>Minimum price (renamed the "retail cigarette price") |

Under the bill, the basis for computing a retailer's price is the wholesale cigarette price, an amount calculated according to a statutory formula (see above), instead of the

[136] Only Cuyahoga County is authorized to levy a county cigarette excise tax. The total rate levied by the county is 34.5¢ per pack.

retailer's "invoice cost." In addition, the bill removes the express provision for retailer cartage costs.

#### Certification of manufacturer list prices

(R.C. 5743.15 and 5743.20)

Continuing law requires cigarette manufacturers to be licensed by the Tax Commissioner to operate in the state. The bill requires that, as part of its annual license application, a manufacturer must certify to the Tax Commissioner the manufacturer list price of each cigarette brand the entity manufactures. The Commissioner must post, on the Department of Taxation's website, a list of each manufacturer licensed to operate in the state, the manufacturer's brands available for sale in the state, and the manufacturer list price of each of those brands.

Beginning July 1, 2015, a manufacturer may not sell a cigarette brand in Ohio unless the brand is listed on the Department's website. If a manufacturer intends to change the list price of one of its brands during a license year, the manufacturer must certify the new price to the Commissioner before selling the brand at the new price.

#### Administrative provisions

(R.C. 5743.36 to 5743.365, R.C. 1333.11 to 1333.211 repealed)

The bill moves provisions related to the enforcement of cigarette minimum prices from R.C. Chapter 1333. (UCC trade practices) to R.C. 5743. (cigarette and other tobacco taxes).

### Cigarette tax wholesale stamping discount

(R.C. 5743.05)

Current law provides a tax discount to wholesalers as consideration for affixing tax stamps to cigarette packages. The discount equals 1.8% of the value of any tax stamps purchased by the wholesale dealer. The bill eliminates this discount.

## Tax on vapor products

The bill levies an excise tax on the sale or use of nicotine vapor products, effective January 1, 2016. The tax is levied on each "cigarette equivalent" of vapor product at the same rate as the state cigarette tax (currently, 6.25¢ per cigarette). All revenue from the tax is to be credited to the General Revenue Fund.

A corresponding "use" tax also is imposed on persons using, storing, or consuming vapor products for which a wholesale dealer has not paid the tax. (That is,

the use tax applies, for example, to vapor products purchased outside Ohio and brought into Ohio, or otherwise acquired from someone other than a wholesale or retail dealer, in a manner analogous to the cigarette and tobacco product use taxes levied under continuing law.)

### Tax base

(R.C. 5744.01, 5744.02, and 5744.03)

The bill defines a vapor product as any noncombustible product that (1) contains nicotine, in any concentration, (2) is intended and marketed for human consumption, (3) includes a component that is used to deliver the vapor product by means of a mechanical heating element, battery, or electronic circuit, and (4) is not regulated as a drug or device by the U.S. Food and Drug Administration.

A "cigarette equivalent" of vapor product equals .10 milliliter of liquid vapor product or, if the vapor product is not in liquid form, 1 gram of vapor product. The tax is imposed on the basis of the entire volume or weight of the vapor product, not solely on the portion of the product that contains nicotine.

The tax applies to only one sale of a product in the supply chain, unless the product has been repackaged, reconstituted, diluted, or reprocessed. In the latter case, the first transaction after the product has been altered is also subject to taxation.

### Taxpayers

(R.C. 5744.03, 5744.04, and 5744.05)

The excise tax is payable by wholesale dealers of vapor products. A wholesale dealer includes any person that:

(1) Sells vapor products to retail dealers;

(2) Is a retail dealer that receives vapor products upon which the tax has not been paid by another person;

(3) Is a "vapor dealer," i.e., a person that repackages, reconstitutes, dilutes, or reprocesses vapor products for resale to consumers.

The use tax is payable by any person who uses, stores, or consumes vapor products for which the tax has not already been paid.

### Tax returns and payments

(R.C. 5744.06)

Wholesale dealers must file returns and pay the tax on a monthly basis, by the 15th day of each month, unless the Commissioner allows a longer reporting interval. Returns must be filed electronically through the Ohio Business Gateway or other website specified by the Commissioner. Dealers must also maintain the invoice from each vapor product transaction. For each vapor product, the invoice must indicate the total volume or weight of the product and the proportion of that volume or weight that is nicotine.

### Licensing requirements

(R.C. 5744.05)

The bill requires both wholesale and retail dealers of vapor products to obtain an annual license to operate in the state. Under the bill, a retail dealer may purchase vapor products only from a licensed wholesale dealer. Similarly, a wholesale dealer may sell vapor products only to licensed retail dealers, other licensed wholesale dealers, or, if the dealer is a "vapor dealer," to consumers. A person may be licensed as both a wholesale dealer and retail dealer.

Dealers must apply to the Tax Commissioner for the license, which is valid for one year beginning on the first day of October. For wholesale dealers, the application fee is $1,000 per business location. For retail dealers, the per-location fee is $125. If a license is issued after October 1, the application fee is reduced proportionately for the remainder of the year. Revenue from the fee is to be used by the Commissioner for administering the tax.

The Commissioner may refuse to issue or reissue a license if the applicant has any outstanding tax liability or has failed to file any prior vapor products tax return. The Commissioner may also suspend or revoke a license if a taxpayer fails to file a return or pay the tax, and may revoke a license if a taxpayer files a false return. In addition, the Commissioner may cancel a license at the request of the licensee.

The Commissioner must maintain a list on the Department of Taxation's website of all licensed wholesale dealers (but not licensed retail dealers) in the state.

### Administration and enforcement

The bill includes provisions for the administration and enforcement of the new tax that are substantially the same as similar provisions applicable to other statewide

taxes, including the state cigarette and other tobacco product tax. Those provisions address the following:

- Tax refunds and the application of a taxpayer's refund to offset a debt the taxpayer owes to the state (R.C. 5744.07 and 5744.08).
- Interest on unpaid taxes and refund payments (R.C. 5744.07, 5744.13, and 5744.97).
- Assessments to collect unpaid tax, penalty, or interest (R.C. 5744.13).
- Procedures for tax payment by taxpayers that discontinue operations in the state (R.C. 5744.11).
- Records retention and inspection (R.C. 5744.09).
- Seizure and forfeiture of vapor products when the Commissioner has reason to believe that a person is avoiding paying the tax (R.C. 5744.10).
- Officer and employee liability for an entity's failure to file returns or pay the tax (R.C. 5744.11).
- Civil and criminal penalties (R.C. 5744.97 and 5744.99).

### CAT exclusion for vapor product tax payments

(R.C. 5751.01(F)(2)(jj))

For the purpose of the commercial activity tax, wholesale and retail dealers may exclude any amount of state vapor product excise taxes paid during the dealer's tax period from the dealer's taxable gross receipts. This provision is substantially similar to an existing exclusion for cigarette and other tobacco tax payments.

### Municipal taxing authority

(R.C. 715.013)

The bill specifies that municipal corporations may not levy a tax that is "the same as or similar to" the new tax. Continuing law prohibits municipal corporations from levying most of the kinds of taxes the state currently levies (the income tax being the major exception). If there were no such prohibition, municipal corporations would be

authorized to levy taxes under their home rule authority, without authorization from the General Assembly.[137]

## Commercial activity tax (CAT)

(R.C. 5751.03; Sections 803.90 and 803.100)

The CAT is an annual tax imposed on businesses for the privilege of doing business in Ohio that is based on a business's taxable gross receipts. Taxable gross receipts are derived from the business's "gross receipts," which is defined broadly to include all amounts realized that contribute to the production of gross income. Persons with less than $150,000 in taxable gross receipts are excluded from paying the CAT. All other CAT taxpayers pay a minimum tax on their first $1 million in taxable gross receipts plus the CAT rate, 0.26%, multiplied by the taxpayer's receipts in excess of $1 million.

### Minimum tax amount

The bill decreases the minimum tax for CAT taxpayers that have more than $1 million but not more than $2 million in annual taxable gross receipts. The minimum CAT amount for such taxpayers would be reduced from $800 to $150. The decrease would apply to tax periods beginning on or after January 1, 2016.

### Rate

The bill increases the CAT rate due for a taxpayer's taxable gross receipts in excess of $1 million from 0.26% to 0.32%. The increased rate applies to tax periods beginning on or after July 1, 2015.

## Tangible personal property tax reimbursements

### Background

The bill resumes the phase-out of payments currently being made to school districts and other local taxing units to partly reimburse them for the loss of property tax revenue resulting from previously legislated reductions in local property taxes on tangible personal property. Beginning in 2001, the taxable value of some electric utility tangible personal property (TPP) was reduced by legislation that partly deregulated electric utilities. Subsequent utility deregulation legislation in following years reduced the taxable value of natural gas utility TPP and telephone utility TPP. In 2005,

[137] The doctrine of implied pre-emption was abandoned by the Ohio Supreme Court in 1998. Before then, if the state levied a certain kind of tax, municipal corporations were held to be impliedly pre-empted from levying the same kind of tax unless the General Assembly expressly authorized them to levy the tax.

legislation eliminated taxes on TPP used in business over a five-year period. These reductions caused locally levied property taxes to decline accordingly. The legislation provided initial reimbursement for most of the revenue loss and gradual phase-out of the reimbursement over several years. In 2011 and 2012, reimbursement payments were immediately reduced by about 25% and 50%, respectively, and the phase-out of the reduced payments accelerated relative to the original phase-out schedule.[138]

### School district reimbursement

(R.C. 5709.92, 5727.84, 5727.85, 5751.20, and 5751.21)

Under current law, reimbursement payments are generally constant for those districts whose reimbursements have not already been phased out under the 2011-2012 changes. The bill's resumption of the reimbursement phase-out begins in FY 2016 on the basis of a district's combined business and utility property tax replacement payments received in FY 2015. Different phase-out schedules are prescribed for different classes of tax levies, as follows:

**Current expense levies:** Payments for most current expense-purpose levies are phased out according to the amount of a district's FY 2015 current expense levy replacement payment ("current expense allocation") relative to its total operating revenue from state and local sources ("total resources"). Payments are phased out more quickly for districts whose current replacement payments are a relatively small percentage of their total resources. The phase-out also incorporates a tax-raising capacity factor designed to continue relatively greater payments for more years for districts that have relatively lower personal income and per-pupil property wealth. For districts in the middle 20% (third quintile) of tax capacity, the replacement payment will be made in FY 2016 only if and to the extent that the FY 2015 payment represents more than 1.5% of the district's total resources; in FY 2017, the percentage increases from 1.5% to 3%, and it increases by an increment of 1.5% each year thereafter. The percentage for each quintile, both the initial and annual increment, is as follows:

[138] A complete description of the 2011-2012 changes to the reimbursement scheme is available in the LSC bill analysis for H.B. 153 of the 129th GA, pp. 655-665.

| Quintile | Percentage |
|---|---|
| Fifth (highest capacity) | 2% |
| Fourth | 1.75% |
| Third | 1.5% |
| Second | 1.25% |
| First (lowest capacity) | 1% |

As each percentage increases incrementally each year, the amount of the payment decreases until the payments eventually end.

The percentage for all joint vocational school districts is 2% initially, with a 2% incremental increase each year.

Currently, school districts and JVSDs receive payments for such current expense levies only if the district's FY 2011 payment for those levies exceeds 4% of its total resources for the corresponding year. The annual payment equals the amount by which a district's FY 2011 payment for those levies exceeds 4% of its total resources for the corresponding year.

**Non-current-expense, nondebt levies:** Replacement payments for levies funding purposes other than current expenses or debt payment (e.g., permanent improvement levies) are made in FY 2015 in an amount equal to 50% of a district's FY 2015 payment. No payments for such levies will be made after FY 2016. Current law provides for annual payments equal to 50% of the payment a district received in FY 2011.

**Emergency and other fixed-sum levies:** Replacement payments for emergency levies and other levies designed to raise a fixed amount of revenue for current expenses or other purposes (except debt levies) are phased out in one-fifth increments over five years. The phase-out begins in 2017 for utility property-based replacement payments and in 2018 for business property-based payments. Currently, payments for nondebt fixed-sum levies are scheduled to end in 2017 for utility TPP-based reimbursements and in 2018 for business TPP-based reimbursements.

**Debt levies:** Replacement payments for voter-approved fixed-sum debt levies will continue to be paid in the same amount paid in 2014 until the levy is no longer imposed. Payments for debt levies imposed without the need for voter approval (i.e., within the 10-mill limitation on unvoted taxes) and that qualified for reimbursement in FY 2015 will be reimbursed through FY 2016 (for utility TPP-based payments) or through FY 2018 (for business TPP-based payments). This is a continuation of current law.

### Other local taxing unit reimbursement

(R.C. 5709.93, 5727.84, 5727.86, 5751.20, and 5751.22; Section 757.10)

Similar to school district reimbursements, reimbursement payments for other local taxing units currently are generally constant for those still receiving payments after the 2011-2012 changes. The bill's resumption of the phase-out of reimbursements begins in FY 2016 on the basis of a district's combined business and utility property tax replacement payments received in FY 2015.

As with school district reimbursements, different phase-out schedules are prescribed for different classes of tax levies, as follows:

**Current expense levies:** Most current expense-purpose levies are phased out according to the amount of a taxing unit's FY 2015 current expense levy replacement payments ("current expense allocation") relative to its total operating revenue from state and local sources ("total resources"). Payments are phased out more quickly for taxing units whose FY 2015 replacement payments are a relatively small percentage of their total resources. Replacement payments for most current expense levies will be made in FY 2016 only if and to the extent that the FY 2015 payment represent more than 2% of the district's total resources. In FY 2017, the percentage increases from 2% to 4%, and it increases by 2% each year thereafter. As the percentage increases incrementally each year, the amount of the payment decreases until the payments eventually end.

Currently, taxing units and libraries receive payments for such current expense levies only if their CY 2010 payment for those levies exceeds 6% of its total resources for the corresponding year. The annual payment equals the amount by which the CY 2010 payment for those levies exceeds 4% of total resources for the corresponding year.

**Unvoted debt levies:** Replacement payments for debt levies imposed without the need for voter approval (i.e., within the 10-mill limitation on unvoted taxes) and that qualified for reimbursement in CY 2015 will be reimbursed through CY 2016 (for utility TPP-based payments) or through CY 2017 (for business TPP-based payments).

#### Library total resources certification

The bill requires each county auditor to certify to the Tax Commissioner the amount of money distributed from the County Public Library Fund in 2014 to each public library system that received a TPP reimbursement in 2014. Certification must be made by July 31, 2015. The certification is to enable the Commissioner to compute a library system's total resources used in the computation of new reimbursements.

### Appeal of reimbursement computation

(Section 757.20)

The bill authorizes school districts and other local taxing units affected by the bill's TPP reimbursement changes to contest how the Tax Commissioner has classified a levy or calculated its total resources for the purpose of computing the reimbursement payments. Appeals must be filed with the Commissioner and the Commissioner may adjust the classification or computation if warranted by the appeal's merits. The Commissioner's decision is final and not appealable. No adjustments may be made after June 30, 2016.

### CAT revenue to GRF

(R.C. 5751.02 and 5751.20)

The bill increases the percentage of commercial activity tax revenue to be credited to the GRF beginning July 1, 2015, and reduces the percentages to be credited to the School District Tangible Property Tax Replacement Fund and Local Government Tangible Property Tax Replacement Fund. Aside from the small percentage of CAT revenue (0.85%) that will continue to be earmarked for CAT administration expenses and to implement unspecified "tax reform measures," the percentage of CAT revenue credited to the GRF increases from 50% to 75%. The percentage credited to the school district replacement fund decreases from 35% to 20%, and the percentage credited to the local government replacement fund decreases from 15% to 5%.

The bill also moves language related to the use of CAT revenue from one section of law (R.C. 5751.20(B) and (J)) to another (R.C. 5751.02(C) to (F)) without changing the substance of the language other than to change the allocation of revenue between the GRF and the replacement funds as described above.

Under continuing law, the School District Tangible Property Tax Replacement Fund and Local Government Tangible Property Tax Replacement Fund are used to make payments to school districts and other local taxing units to partially reimburse them for the phase-out and eventual repeal (2009) of property taxes on business tangible personal property.

### Kilowatt-hour excise tax revenue to GRF

(R.C. 5727.81, 5727.811, and 5727.84)

The bill directs that all revenue from the kilowatt-hour excise tax be credited to the General Revenue Fund beginning July 1, 2015. Currently, revenue from the tax is apportioned among the GRF and two other funds, as follows: 88% to the GRF, 9% to the

School District Property Tax Replacement Fund, and 3% to the Local Government Property Tax Replacement Fund. The latter two funds are used to make payments to school districts and other local taxing units to partially reimburse them for previously legislated reductions in property tax assessments on tangible personal property of electric and natural gas utilities as part of the deregulation of some aspects of such utilities. In accord with the change in the revenue distribution, the bill changes the statement of the purpose of the tax.

The kilowatt-hour excise tax is levied on the basis of electricity distributed to electricity meters in Ohio. In most cases it is payable by the company that distributes the electricity. Consumers that receive electricity directly from suppliers outside Ohio and large-volume commercial and industrial consumers (using at least 45 million kwh annually at a single site) must pay the tax directly.

## Hydrocarbon severance taxes

Current law levies a tax on any person that severs either of two hydrocarbons – oil or natural gas – from the ground or water in Ohio. The tax equals 10¢ per barrel of oil and 2½¢ per Mcf (1,000 cubic feet) of natural gas and is generally quarterly. A separate "cost recovery assessment" is levied in the additional amount of 10¢ per barrel of oil and ½¢ per Mcf of natural gas for all oil and gas wells, except very low volume wells.

Effective July 1, 2015, the bill repeals the cost recovery assessment, distinguishes between horizontal and nonhorizontal wells for the purposes of imposing different tax rates, bases, and exemptions for oil and gas produced from each type of well, distinguishes for tax purposes additional types of hydrocarbons, and earmarks the revenue from hydrocarbons produced from each type of well for different purposes.

### Horizontal versus nonhorizontal wells

(R.C. 5749.01)

The bill distinguishes between "horizontal" wells and "nonhorizontal" wells for severance tax purposes. Horizontal wells are wells drilled to produce oil or gas with a wellbore that reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and that is stimulated to produce. (Stimulation is defined as a "process of enhancing well productivity, including hydraulic fracturing operations.")

### Taxable resources

(R.C. 5749.01)

The bill defines "oil" and "gas" for the purposes of the severance tax. "Gas" (as compared to the current "natural gas"), is defined as hydrocarbons in a gaseous phase at standard temperature and pressure. "Oil" is defined as hydrocarbons produced in liquid form by ordinary production methods.

The bill also distinguishes two other types of hydrocarbons for purposes of the horizontal well severance tax: condensate – liquid hydrocarbons separated at or near the well pad or along the gas production or gathering system or by gas processing – and natural gas liquids (NGLs) – hydrocarbons separated from severed gas, such as propane and ethane.

### Nonhorizontal well tax rates; cost recovery assessment

(R.C. 1509.50 and 5749.02; R.C. 1509.02, 1509.34, 5703.052, 5749.03, 5749.06, 5749.07, 5749.08, 5749.09, 5749.10, 5749.12 to 5749.15, and 5749.17)

The bill increases the tax rate on the severance of oil from nonhorizontal wells from 10¢ per barrel to 20¢ per barrel. The bill also increases the tax on gas extracted from nonhorizontal wells from the current 2½¢ per Mcf rate to 3¢ per Mcf. Despite this increase, however, the total rate of excise on oil and gas remains the same because the bill repeals the cost recovery assessment. As under current law, the bill dedicates 90% of the revenue from the nonhorizontal well severance taxes to the Oil and Gas Well Fund to fund the oil and gas regulatory activities of DNR and 10% to the Geological Mapping Fund to fund the activities of DNR's Division of Geological Survey.

#### Exemption and fee for gas severed from certain wells

(R.C. 1509.11)

The bill exempts from severance tax gas severed from a non-horizontal well if the total volume of gas produced by that well does not exceed certain thresholds. For a severer filing quarterly returns, the gas is exempt if the well produces an average quarterly gas volume of 910 Mcf or less as measured over the preceding year.

The bill also exempts from the severance tax gas severed from all exempt domestic wells – generally wells owned by a landowner for the purpose of providing gas for the owner's domestic use. Under continuing law, only wells designated as exempt domestic wells on or after June 30, 2010, are exempt from severance tax on the

basis of the exempt status.[139] In lieu of paying a severance tax, the bill requires the owners of such wells, except for an exempt domestic well designated before June 30, 2010, to pay an annual $60 fee to DNR by March 31 of each year. Collected fees are credited to the Oil and Gas Well Fund. Under current law, exempt domestic wells designated on or after June 30, 2010, are subject to an annual cost recovery assessment of $60, payable by July 1. As discussed above, the bill repeals this assessment.

### Horizontal well severance tax

(R.C. 5749.01 and 5749.02)

Beginning July 1, 2015, the bill levies a new value-based severance tax on oil and gas severed from a horizontal well, and condensate and NGL byproducts thereof, and exempts that oil and gas from continuing law's volume-based tax. The new tax, similar to continuing law's severance tax, is imposed on the person that severs the oil or gas. The table below summarizes the base and rates of the new tax, categorized according to each resource. Gas is taxed at one of two rates depending on whether the gas is placed directly into the natural gas distribution system or processed first to extract condensate or NGLs.

| | Tax base (Quarterly) | Tax rate |
|---|---|---|
| **Oil** | Barrels severed × average oil spot price | 6½% |
| **Unprocessed Gas** | Mcf severed × average gas spot price | 6½% |
| **Processed Gas** | Mcf collected after processing × average gas spot price | 4½% |
| **Condensate** | Barrels separated and collected × average condensate spot price | 6½% |
| **NGLs** | BTUs separated and collected × average NGL spot price | 4½% |

As the table indicates, the new tax is based on the product of two variables – the "spot price" of severed gas, oil, condensate, or NGL multiplied by the quantity of each resource severed from, or separated from oil or gas severed from, a horizontal well. The Tax Commissioner calculates the quarterly spot price for a unit of each hydrocarbon by averaging each day's closing spot price reported for that hydrocarbon during the quarter beginning six months before the current quarter, as reported by a publicly available source determined by the Commissioner. The spot price for condensate is

[139] R.C. 1509.31(B).

based on the price of Marcellus-Utica condensate, and the spot price for NGLs is based on the price of natural gas plant liquids composite.

The bill requires the Commissioner to post average quarterly spot prices for oil, gas, condensate, and NGLs applicable to each quarter on the Department of Taxation's website by the last day of the first month of the quarter for which the tax is due. Thus, the average quarterly spot price applicable for a particular quarter is made available to taxpayers several months before the due date of the severance tax return (see "**Return due dates**," below).

#### Horizontal well revenue distribution

All revenue collected from the new horizontal well severance tax is first credited monthly to the Oil and Gas Well Fund and the Geological Mapping Fund according to a deposit schedule prescribed by the Director of OBM on or after July 1 of each year. In creating the deposit schedule, the bill requires the Director to consider amounts currently appropriated from those funds compared to the funds' current balance and anticipated revenue to those funds from other sources. The first required transfer, for November 2015, must occur by December 15, 2015.

After crediting revenue to DNR, the Director quarterly credits remaining horizontal well severance tax revenue as follows:

- 80% to the General Revenue Fund;
- 10% to the County Severance Tax Fund (see "**Revenue to counties**," below);
- 5% to a custodial fund called the Severance Tax Infrastructure Fund (see "**Ohio Shale Products Regional Commission**," below);
- 5% to a custodial fund called the Severance Tax Endowment Fund (see "**Ohio Shale Products Regional Commission**," below).

Interest earnings on money in the latter three funds is credited to the respective fund.

#### Enforcement of horizontal well severance tax

(R.C. 5703.19)

For purposes of enforcing the new severance tax, the bill authorizes the Tax Commissioner to inspect the books and records of any person involved in the sale or transfer of oil, gas, condensate, or NGLs.

### Revenue to counties

(R.C. 190.03, 190.04, 321.50, 1509.11, and 5749.02)

Under the bill, all horizontal well severance tax revenue credited to the County Severance Tax Fund must be distributed quarterly to each county treasury. The amount each county receives is proportionate to the number of horizontal wells located in the county on the last day of the preceding year that had been drilled or for which drilling had been initiated pursuant to a DNR permit, compared to such wells located in the entire state on that day. The proportion is calculated for each year by the Chief of DNR's Division of Oil and Gas Resources Management and certified to the Director of OBM and the Tax Commissioner.

Once received by the county treasury, the money is to be credited to a special county fund called the "Severance Tax Fund." Money in each county's Severance Tax Fund is distributed to local governments in the county according to an order issued by the county's budget commission, which, under continuing law, is a commission consisting of the county auditor, prosecutor, treasurer, and, in some counties, two additional elected members. The primary functions of the budget commission under continuing law include auditing annual tax budgets of taxing authorities in the county, determining annual property tax rates for each taxing authority, and distributing property tax revenue to each taxing authority. The bill requires the budget commission to establish procedures and standards for distributing the money, but the bill does not require the commission to adopt any particular procedure or standard.

### Ohio Shale Products Regional Commission

(R.C. 190.01 to 190.04)

The bill requires horizontal well severance tax revenue credited to the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund to be awarded as grants to local governments in counties with active oil and gas development in the shale formations (defined as "eligible subdivisions" and "eligible counties"). The bill requires the Chief of DNR's Division of Oil and Gas Resources Management to annually update the list of eligible counties. Both funds, which are custodial and not in the state treasury, are administered by a new commission created by the bill called the Ohio Shale Products Regional Commission.

#### Members and administration

The Ohio Shale Products Regional Commission be responsible for all of the following:

(1) Awarding grants to eligible subdivisions from the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund;

(2) Identifying "local match programs" for investments in eligible subdivisions;

(3) Assisting the short-term and long-term needs of eligible subdivisions;

(4) Overseeing the long-term success of eligible subdivisions.

The Commission is a 13-member body with nine members appointed by the Governor and four ex officio members. The nine appointed members include the following:

(1) A county or civil engineer;

(2) A person experienced in local economic development;

(3) A representative of the active oil and gas production region overlaying Ohio's shale formations;

(4) A representative of eligible counties;

(5) A representative of municipal corporations that are eligible subdivisions;

(6) A representative of townships that are eligible subdivisions;

(7) A person recommended for appointment by the Speaker of the House;

(8) A person recommended for appointment by the President of the Senate;

(9) The president of the nonprofit corporation, The Foundation for Appalachian Ohio, or the president's designee.

Appointed members serve four-year, staggered terms except for the representative of the Foundation for Appalachian Ohio, who is a permanent member of the Commission. The bill requires the Governor to appoint members by October 1, 2015, and authorizes the Governor to remove any appointed member for any of several specified reasons (for example, if the member is inefficient or derelict in the discharge of the member's duties or if the member is found by the Ohio Ethics Commission to have violated Ohio ethics law). An appointed member is deemed to automatically resign from the Commission if the member misses 60% or more of Commission meetings over a two-year period. Additionally, the Governor may not appoint someone to the committee who has been convicted of or pled guilty or no contest to a felony offense.

Any member, including an ex officio member, serving on the Commission is deemed to resign automatically upon the member's indictment for a felony offense.

In addition to the nine appointed members, the Commission has the following four ex officio members:

(1) The Director of DNR;

(2) The Chief Investment Officer of JobsOhio;

(3) The Director of Transportation;

(4) The Director of the Governor's Office of Appalachian Ohio.

Any member except for the representative of The Foundation for Appalachian Ohio may be elected chairperson or vice-chairperson of the Commission by the Commission's members. Meetings of the Commission are subject to the requirements of Ohio's Open Meetings Law (R.C. 121.22), and documents of the Commission are public records.

Members of the Commission may be reimbursed for their official travel expenses. The Commission may incur expenses to help the Commission in the performance of its duties. The bill requires the Governor's Office of Appalachian Ohio to provide staff and administrative assistance to the Commission upon request. Any such expenses of the Commission or the Governor's Office of Appalachian Ohio are paid from the Severance Tax Infrastructure Fund and, beginning on or after July 1, 2025, from the Severance Tax Endowment Fund, up to a certain amount.

The Ohio Shale Products Regional Commission is the trustee of the money in the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund and is the only body able to withdraw money from those funds. Upon the request of the Commission, the bill requires the Treasurer of State to select one or more investment managers to invest the money in those funds. Any selected investment manager is subject to the investment limitations imposed on the Ohio Public Employees Retirement System and is bound by interested party and conflict of interest restrictions similar to those applicable to the System.

On or before November 1 of each year, the bill requires the Commission to submit a report to the Governor that includes the financial statements for the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund and persons requesting or receiving money from those funds and for what purpose. The report may be audited by the Auditor of State.

### Grants to eligible subdivisions

In addition to funding the administrative expenses of the Commission and the expenses of the Governor's Office of Appalachian Ohio for assisting the Commission, money in the Severance Tax Infrastructure Fund and Severance Tax Endowment Fund must be used by the Commission to award grants to eligible subdivisions. The Commission may award grants from the Severance Tax Infrastructure Fund to "support and supplement investments" in eligible subdivisions.

In contrast, the Commission may not award grants or withdraw money from the Severance Tax Endowment Fund until July 1, 2025. However, on or after that date, the Commission may award grants from that fund to any subdivision that is or has been an eligible subdivision for projects that "target long-term growth and continued prosperity" in those subdivisions.

### Severance tax homestead use exemption

(R.C. 5749.03)

Beginning July 1, 2015, the bill eliminates an exemption from the severance tax for resources with an annual value of not more than $1,000 that are severed from land owned by a severer and used in or used to improve the severer's homestead.

## Severance tax administration

(R.C. 5749.04, 5749.06, and 5749.17)

Beginning July 1, 2015, the bill makes several administrative changes applicable to all severance taxes.

### Severance tax permits

Current law requires a severer to obtain a license from the Tax Commissioner, or, if required to do so under another provision of law, a permit from DNR before severing natural resources from Ohio's soil or water. Under the bill, the Commissioner would no longer issue severance licenses. Instead, severers would have to obtain a permit from or register with DNR. However, before severing natural resources, severers must apply to the Commissioner to open a severance tax account.

### Return due dates

Under continuing law, severers are generally required to file returns for natural resources severed in each calendar quarter unless the Tax Commissioner prescribes a different reporting period. Current law requires severers to file returns 45 days after the

end of a calendar quarter or other prescribed reporting period. The bill adjusts the return due dates by requiring returns to be filed no later than the 15th day of the second month following the end of each quarter or other reporting period.

### Revenue transfers

The bill provides for monthly distribution of severance tax revenues instead of the current quarterly distribution schedule. Current law requires the Tax Commissioner, by the 15th day of the month following the end of each calendar quarter (i.e., January 15, April 15, July 15, and October 15) to certify to the Director of OBM the total amount in the fund that holds all severance tax revenue – the Severance Tax Receipts Fund – after accounting for amounts set aside for severance tax refunds. The certification must include the proportion of such revenue attributed to the tax on each type of natural resource.

The bill instead requires the Tax Commissioner to make this certification by the 15th day of each month. Additionally, after making this certification, the bill requires the Tax Commissioner to provide for payment of severance tax revenue from the Severance Tax Receipts Fund to the funds to which each severance tax is required to be credited.

### Disclosure of severance tax information

Current law appears to authorize DNR to publicly disclose severance tax information given to it by the Tax Commissioner for the purpose of enforcing oil and gas regulatory laws. The bill explicitly limits the ability of DNR to disclose severance tax information by allowing disclosure only to the Attorney General for purposes of enforcing those laws.

### Effective date

(Section 812.20)

The severance tax provisions take effect July 1, 2015.

## Tax credits and exemptions

### Job creation and retention tax credits

(R.C. 122.17, 122.171, 5725.98, 5726.50, 5729.98, 5733.0610, 5736.50, 5747.058, and 5751.50)

The bill makes several revisions to the computation and administration of the job creation tax credit (JCTC) and the job retention tax credit (JRTC). Under continuing law,

the Tax Credit Authority (TCA) is authorized, upon the application of a taxpayer and the recommendation of JobsOhio and the Director of Development Services, to enter into JCTC and JRTC agreements with the taxpayer to foster job creation, job retention, and capital investment in this state.

The bill revises the computation of JCTCs so that the amount of the credit equals an agreed-upon percentage of the taxpayer's Ohio employee payroll (taxable income paid to Ohio residents) minus baseline payroll (taxable income paid to Ohio residents during the 12 months preceding the agreement). For JRTCs, the amount of the credit would equal an agreed-upon percentage of the taxpayer's Ohio employee payroll. Under current law, both credits are calculated as a percentage of the taxpayer's Ohio income tax withholdings (which could include nonresidents working in Ohio). The bill's change to the credit base would prevent a reduction in the credit amount due to declining Ohio income tax rates.

The bill also removes the 75% cap currently placed on the JRTC percentage. The JRTC percentage is multiplied by the taxpayer's Ohio employee payroll (or, under current law, the taxpayer's Ohio income tax withholdings) to determine the amount of the credit. Under continuing law, the JRTC percentage is negotiated by the TCA and the taxpayer as part of the JRTC agreement.

The bill authorizes the TCA to require the taxpayer to refund all or a portion of a JCTC or JRTC if the taxpayer fails to substantially meet the job creation, payroll, or investment requirements included in the tax credit agreement or files for bankruptcy. Under continuing law, the TCA may seek to recoup all or a portion of the credit if the taxpayer fails to maintain operations at the project site (generally, the business's place of operations in Ohio) for the period of time specified in the tax credit agreement.

The bill reduces from 60 to 30 days the amount of time a taxpayer has to submit a copy of a JCTC or JRTC certificate after a request of the Tax Commissioner or the Superintendent of Insurance. Continuing law permits the Tax Commissioner or Superintendent of Insurance to request a copy of the certificate only when the taxpayer fails to include a copy with their return as required by continuing law.

The bill authorizes the TCA, upon mutual agreement of the taxpayer and the Development Services Agency, to revise JCTC agreements originally approved in 2014 or 2015 to conform with the bill's revisions to the credit. Otherwise, the bill's revisions apply to JCTC and JRTC agreements entered into after the bill's 90-day effective date.

### Evaluation of JRTC and data center sales tax exemption applications

(R.C. 122.171 and 122.175)

The bill revises the role of the Director of Budget and Management, the Tax Commissioner, and the Superintendent of Insurance in evaluating applications for JRTCs and data center sales tax exemptions. Continuing law authorizes the Ohio Tax Credit Authority (TCA) to grant JRTCs to qualifying businesses that complete a capital investment project and agree to retain a specified number of full-time equivalent employees or maintain a certain threshold payroll. The TCA is also authorized to exempt purchases of certain personal property that will be used at an eligible computer data center by a business, or group of businesses, that agrees to invest at least $100 million in the data center and maintain a minimum payroll of $1.5 million.

Under current law, the Director of Budget and Management, the Commissioner, and the Director of Development Services are required to review JRTC and data center sales tax exemption applications and determine the economic impact of proposed projects on state and the affected political subdivisions. These determinations must be sent, along with a recommendation on the application, to the TCA to assist in its determination of whether to grant the credit or exemption. The Superintendent is required to complete this process with respect to JRTC applications submitted by insurance companies.

The bill eliminates the requirement that such government officials' submission to the TCA include a recommendation on the application. The Director of Development Services would still be required to determine the local economic impact of proposed projects and submit recommendations to the TCA.

## Current expense levies allocated to partnering community schools

(R.C. 5705.21 and 5705.212)

Continuing law authorizes certain school districts to propose and levy a property tax for current operating expenses and allocate a portion of the proceeds to one or more "partnering" community schools. The tax may be levied for up to ten years or for a continuing period of time. It may be renewed or replaced, imposed as an "incremental levy," or combined with a bond levy for permanent improvements. If combined with such a bond levy, only the current expense levy revenue may be shared; the bond levy is solely for the purpose of the school district. A levy imposed for a continuing period of time may be reduced by initiative petition in the same manner as any school district continuing expense levy.

The resolution and ballot language proposing such a levy must specify the portion of the proceeds allocated to the school district and the portion allocated to partnering community schools. The revenue allocated to the partnering community schools is credited to a "partnering community schools fund" created by the school district board of education and distributed to the partnering community schools on a per-pupil basis. Only pupils residing in the school district levying the tax are counted for the purposes of determining a partnering community school's share of the revenue deposited to the partnering community schools fund.

### Qualifying school districts

The bill extends the authority to levy property taxes for community schools to any school district that contains a community school sponsored by an "exemplary" sponsor according to the annual ratings published by the Department of Education.[140] Current law limits this authority to the Cleveland Metropolitan School District and the Columbus City School District.

The bill retains all provisions in current law pertaining specifically to the Cleveland Metropolitan School District, but removes criteria that were enacted specifically to enable the Columbus City School District to seek approval of such a levy. A proposed tax in the Columbus district was rejected by voters in 2013.

### Eligible partnering community schools

The bill revises the qualifications for community schools that are allocated levy revenue in school districts other than the Cleveland Metropolitan School District. Under the bill, the community school must be located within the territory of the school district and be sponsored by a sponsor rated "exemplary" in the ratings most recently published before the resolution proposing the levy is certified to the board of elections. Under continuing law unchanged by the bill, a community school located in the Cleveland Metropolitan School District must be sponsored by the district or be a party to an agreement with the district whereby the district and the community school endorse each other's programs.

### Allocating all revenue to partnering community schools

The bill authorizes school districts other than the Cleveland Metropolitan School District to levy a property tax solely for and on behalf of one or more partnering

[140] Continuing law requires the Department to annually rate all entities that sponsor community schools as either "exemplary," "effective," or "ineffective" based on academic performance of students, adherence to quality practices prescribed by the Department, and compliance with applicable laws and administrative rules. R.C. 3314.016.

community schools. Current law does not cap the percentage of levy revenue that may be allocated to community schools, but could imply that at least a portion must be levied for the school district's own expenses. The resolution and ballot language proposing such a levy would be required to specify that all of the levy proceeds are allocated to partnering community schools.

## Tax Expenditure Review Committee

(R.C. 5703.48 and 5703.94)

The bill creates a temporary committee – composed of four legislators, two state agency heads, and three appointees of the Governor – to review the effectiveness of many existing "tax expenditures." This review occurs over four years, beginning in 2016, during which each such tax expenditure is scheduled to be reviewed once. The new committee is named the Tax Expenditure Review Committee.

### "Tax expenditure"

The bill adopts a modified version of existing law's definition of "tax expenditure." Under continuing law, the term is used to define the content of the Department of Taxation's Tax Expenditure Report that accompanies the Governor's proposed biennial operating budget. Under current law, a tax expenditure is "any tax provision in the Revised Code that exempts, either in whole or in part, certain persons, income, goods, services, or property from the effect of taxes established in the Revised Code, including, but not limited to, tax deductions, exemptions, deferrals, exclusions, allowances, credits, reimbursements, and preferential tax rates."

The bill modifies that definition to specify that a provision qualifies as a tax expenditure only if it relates to a tax levied by the state and only if it reduces revenue to the GRF. This modified definition reflects the current understanding of tax expenditures by the Department of Taxation in its preparation of the Tax Expenditure Report. According to the most recently issued Tax Expenditure Report, there are currently 128 tax expenditures (see Tax Expenditure Report, Fiscal Years 2016-2017, available at www.blueprint.ohio.gov/doc/budget/State_of_Ohio_Budget_Tax_Expenditure_Report_FY-16-17.pdf).

### Duty of committee

The bill requires the Tax Expenditure Review Committee to review most existing tax expenditures once over a four-year period (see "**Review schedule**," below). The Committee recommends whether each such tax expenditure should be continued, modified, or repealed and may also recommend "accountability standards" for any future reviews of such expenditures.

By the last day of 2016, 2017, 2018, and 2019, the Committee is required to issue a report of its recommendations for each tax expenditure it reviewed for that year (see "**Review schedule**," below). If the Committee recommends repealing a tax expenditure, the report must include suggestions for contending with amounts of that expenditure earned or received, but not yet realized, by taxpayers for a period before the recommended repeal date. The Committee must deliver a copy of this report to the Governor, the Speaker of the House, the Senate President, the minority leaders of each chamber, and each legislator that serves on each chamber's tax-related standing committee.

After completing its work, the Committee ceases to exist after 2019.

### Review criteria

The bill establishes the following factors the Committee may consider in reviewing existing tax expenditures:

- The number and classes of persons that benefit from the tax expenditure;
- State and local fiscal effects;
- Public policy objectives, for which the committee may consider legislative history, the sponsor's intent, and the tax expenditure's effects on economic development, "high-wage jobs," and "community stabilization";
- The success of the tax expenditure in meeting its objectives;
- Whether the objectives could be served by other means or with less fiscal cost;
- Whether the objectives could have been accomplished by appropriations rather than tax expenditures;
- Whether the tax expenditure is more expansive than intended or has any other unintended effects, including giving an unfair competitive advantage to recipients at the expense of other businesses.

### Review schedule

The bill requires the Committee to review and report on each of the following groupings of tax expenditures, arranged according to each tax (first column of the table below), and the year in which the review must occur (first row of the table).

| | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|
| **Sales and use tax (expenditure is exemption unless noted)** | (1) Copyrighted motion pictures and films | (1) Value of motor vehicle trade-ins | (1) Property used in eligible computer data centers | (1) Property used in energy or waste conversion facilities |
| | (2) Ships and rail rolling stock used in interstate or foreign commerce | (2) Value of watercraft trade-ins | (2) Sales to facilities financed with public hospital bonds | (2) Property used in highway transportation for hire |
| | (3) Emergency and fire vehicles and equipment | (3) Sales to the state and subdivisions | (3) Food sold to students on school premises | (3) Sales to veterans' headquarters |
| | (4) Bulk water for residential use | (4) Transportation of persons and property | (4) Controlled circulation magazines | (4) Used mobile homes |
| | (5) Tangible personal property (TPP) for making retail sales | (5) Packaging and packaging equipment | (5) Sales by churches and nonprofits | (5) Tax reduction on new mobile homes |
| | (6) Computers sold to certified teachers | (6) Agricultural "use on use" property | (6) Sales to churches and nonprofits | (6) TPP used in mining |
| | (7) TPP sold to qualified motor racing teams | (7) Durable medical equipment | (7) Building and construction materials and services used in certain structures | (7) TPP used in agriculture |
| | (8) Equipment used in private warehouses and distribution centers with inventory primarily shipped out of state | (8) Property for use in a retail business outside Ohio | (8) Prescription drugs and selected medical items | (8) TPP used in commercial fishing |
| | (9) TPP and services for maintenance of fractionally owned aircraft | (9) Motor vehicles for use outside Ohio | (9) Sales of animals by nonprofit shelters | (9) TPP used to produce farming TPP |

| | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|
| | (10) TPP and services for maintenance of aircraft<br><br>(11) Flight simulators<br><br>(12) Cable and video service sold by cable or video service providers<br><br>(13) Tax cap on fractionally owned aircraft<br><br>(14) Partial refund on TPP used by electronic information service providers | (10) TPP used in preparing eggs for sale<br><br>(11) TPP for storing, preparing, and serving food<br><br>(12) Agricultural land tile and portable grain bins<br><br>(13) TPP and services used in providing broadcasting services<br><br>(14) TPP and services to electricity providers<br><br>(15) TPP used directly in providing public utility services<br><br>(16) TPP used to produce printed materials<br><br>(17) TPP used primarily in manufacturing TPP<br><br>(18) TPP used in research and development<br><br>(19) Property used to fulfill a warranty or service contract | (10) Sales to qualifying nonprofit corporations<br><br>(11) Drugs distributed to physicians as free samples | |

| | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|
| | | (20) TPP used in electronic publishing<br><br>(21) Telecom service used by qualified call center<br><br>(22) Vendor discount | | |
| **Income tax (expenditure is deduction unless noted)** | (1) Uniformed services retirement income<br><br>(2) Pell grant or Ohio college opportunity grant proceeds<br><br>(3) Exemption for pre-1972 trusts<br><br>(4) Personal exemption credit<br><br>(5) Resident credit for income taxed by another state<br><br>(6) Campaign contribution credit<br><br>(7) Credit for adoption related expenses<br><br>(8) Ethanol plant investment credit | (1) Enterprise zone day care and training credit<br><br>(2) Enterprise zone employee credit<br><br>(3) Disability income<br><br>(4) Contributions to college savings programs<br><br>(5) Contributions to medical savings accounts<br><br>(6) Personal, spousal, and dependent exemption<br><br>(7) Dependent care credit<br><br>(8) Grape production credit | (1) Medical insurance paid by taxpayers not eligible for employer-sponsored medical plans<br><br>(2) Active-duty military income<br><br>(3) Organ donation expenses<br><br>(4) Joint filer credit<br><br>(5) Credit for taxpayers with income below $10,000<br><br>(6) Displaced worker job training credit<br><br>(7) Earned income tax credit | (1) Social security and railroad retirement benefits<br><br>(2) Small business investor income deduction<br><br>(3) Senior citizen tax credit<br><br>(4) Lump sum distribution credit<br><br>(5) Retirement income credits<br><br>(6) Credit for pass-through entity investor's share of financial institutions tax |

| | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|
| | | (9) Small business investment credit | | |
| **Commercial activity tax (expenditure is exclusion unless noted)** | (1) Exemption for pre-1972 trusts<br><br>(2) Receipts from sale of anti-neoplastic drugs<br><br>(3) Receipts from sale of agricultural commodities by commodity handlers<br><br>(4) Exclusion of first $1 million of gross receipts | (1) Receipts from a financial institution for certain services<br><br>(2) Receipts received by a professional employer organization from client employer | (1) State and federal cigarette excise taxes<br><br>(2) Motor vehicle transfer receipts<br><br>(3) Unretained real estate brokerage receipts<br><br>(4) Credit for increased qualified research and development expenses<br><br>(5) Credit for net operating loss carry-forwards and other deferred tax assets | (1) State and federal alcoholic beverage excise taxes<br><br>(2) Horse racing taxes and purse<br><br>(3) Qualified distribution center receipts<br><br>(4) Receipts from sales of uranium from qualifying uranium enrichment zones<br><br>(5) Research and development loan program credit |
| **Financial institutions tax** | (1) Credit for Division of Financial Institutions assessments | None | (1) Credit for increased qualified research and development expenses | None |
| **Public utility excise taxes** | (1) $25,000 exemption from gross receipts for each public utility | None | (1) Exemption for municipal utilities and nonprofit waterworks | (1) Credit for certain natural gas companies<br><br>(2) Sales to other public utilities for resale |

| | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|
| | | | | (3) Exemption for qualified end-users |
| **Insurance taxes** | None | None | None | (1) Deduction for premiums received from qualified small business alliances<br><br>(2) Ohio Life and Health Guaranty Association contribution credit<br><br>(3) Credit for small insurers |
| **Wine and beer taxes** | None | (1) Small brewer's credit | (1) Sacramental wine exemption<br><br>(2) Small wine producer's credit | (1) Advance payment credit or discount |
| **Tobacco taxes** | None | None | None | (1) Discount for cigarette tax stamps<br><br>(2) Discount for timely payment of other tobacco products excise tax |
| **Multi-tax expenditures** | (1) Motion picture credit<br><br>(2) Historic structure rehabilitation credit | (1)Job creation tax credit<br><br>(2) Job retention tax credit | None | (1) Credit for venture capital loan loss<br><br>(2) New Markets tax credit |

### Committee composition

The Committee is composed of nine members: the chairpersons of each chamber's tax-related standing committees, the ranking minority members of those committees, the Tax Commissioner or Commissioner's designee, the Director of Budget

and Management or the Director's designee, and three members of the public, appointed by the Governor. The Governor designates the Committee's chairperson. Appointed members' terms on the Committee coincide with the term of each General Assembly.

### Meetings

The bill requires the Committee to meet at least once annually to complete its review of and report on the tax expenditures described above. The Committee may hold additional meetings at the chairperson's discretion. The Committee's meetings are open to the public to the extent required under the existing Open Meetings Law (R.C. 121.22), and the Committee may, but is not required to, allow any person to present testimony or evidence related to a tax expenditure.

### Proposed tax expenditures

The bill requires any bill introduced in the General Assembly that proposes to enact or modify a tax expenditure to include a statement explaining the expenditure's public policy objectives.

## Administration of county 9-1-1 assistance

(R.C. 128.54 and 128.55; conforming changes in R.C. 128.57)

### Transfers to the Next Generation 9-1-1 Fund

The bill requires the Tax Commissioner to transfer funds remaining in the Wireless 9-1-1 Government Assistance Fund to the Next Generation 9-1-1 Fund *at the direction of the Statewide Emergency Services Internet Protocol Network Steering Committee*. Current law requires these transfers to be made on a monthly basis after disbursements are made to counties from the Wireless 9-1-1 Government Assistance Fund. Under continuing law, the Next Generation 9-1-1 Fund is used for costs associated with phase II wireless systems and a county's migration to next generation 9-1-1 systems and technology.[141]

### Remedying shortfalls in monthly county disbursements

The bill requires that any shortfall in monthly county disbursements from the Wireless 9-1-1 Government Assistance Fund be remedied in the following month. Under continuing law, counties receive monthly disbursements from the fund based on how much was distributed to each county in the year 2013. The funds come from a 25-cent monthly charge on Ohio wireless subscribers (and a charge of 0.5% of the sale price

[141] R.C. 128.022, not in the bill.

of prepaid wireless services).[142] Under continuing law, 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. Current law does not provide for this shortfall to be remedied.

[142] R.C. 128.42, not in the bill.

- Removes the requirement that an individual seeking to take a nationally recognized veterinary examination apply to the State Veterinary Medical Licensing Board for permission to take the examination.
- Increases the cost of an initial veterinary license by $50.
- Removes the fee charged for examinations offered by the Board.
- Expands the list of veterinary college approval entities to include the Program for the Assessment of Veterinary Education Equivalence of the American Association of State Veterinary Boards.

## Veterinary licensing

(R.C. 4741.03, 4741.09 (repealed), 4741.11, 4741.12, 4741.17, 4741.19)

The bill makes changes to the law pertaining to veterinary licensing. First, the bill removes a requirement that an individual seeking to take a nationally recognized veterinary examination apply to the State Veterinary Medical Licensing Board for permission to take the examination. It also makes corresponding changes.

Second, the bill increases the cost of an initial veterinary license, as follows:

- To $425 from $375 for a two initial license;
- To $300 from $250 for a one year initial license.

Third, the bill removes a separate initial license fee for licenses issued by reciprocity in favor of the standard license fee.

Fourth, the bill removes the fee for examinations offered by the Board. The amount of this fee is not prescribed in the Revised or Administrative Codes, but is rather determined by the Board. The bill also removes the right of an applicant who fails the examination to request a written report showing the reasons for the failure.

Finally, the bill expands the list of veterinary college approval entities to include the Program for the Assessment of Veterinary Education Equivalence of the American Association of State Veterinary Boards. A veterinary college in receipt of such an approval has been determined by the Board to provide an education sufficient to meet

the board's education requirement for licensure. The bill also removes the Board's ability to approve other certification programs.

- Modifies the composition of the Department of Youth Services Release Authority to a minimum of three but not more than five members.

## Release Authority

(R.C. 5139.50)

The bill modifies the composition of the Release Authority in the Department of Youth Services. Under the bill, the Release Authority must consist of a minimum of three but not more than five members. Under current law, the Release Authority consists of five or perhaps six members.[143]

Under the bill, the Director of Youth Services must ensure that appointments include all the following:

(1) At least one member who has five or more years of experience in criminal justice, juvenile justice, or an equivalent relevant profession;

(2) At least one member who has experience in victim services or advocacy or who has been a victim of a crime or is a family member of a victim; and

(3) At least one member who has experience in direct care services to delinquent children.

Current law requires that at least four members be appointed who meet this qualification described in (1) above.

The Release Authority serves as the final and sole authority for making decisions, in the interests of public safety and the children involved, regarding the release and discharge of children committed to the legal custody of the Department.

[143] The bill resolves an ambiguity in current law. The ambiguity makes it uncertain whether the Release Authority consists of five or six members.

# MISCELLANEOUS

## OhioMeansJobs registration

- Requires, beginning in 2016, participants in certain training or education programs and recipients of specified vocational rehabilitation services to create an account on the OhioMeansJobs website by specified times established in the bill.
- Exempts certain individuals from those requirements.

## OhioMeansJobs registration

(R.C. 3304.171, 3333.92, and 6301.16)

Beginning January 1, 2016, the bill requires the following individuals to create an account on OhioMeansJobs (the electronic system for labor exchange and job placement activity operated by the state):

(1) Participants in an Adult Basic and Literacy Education funded training or education program at the 12th week of the program;

(2) Participants in an Ohio Technical Center funded training or education program at the time of enrollment in the program;

(3) Participants in an adult training or education program funded under the federal Workforce Innovation and Opportunity Act at the time of enrollment in the program;

(4) Recipients of vocational rehabilitation services provided by the Opportunities for Ohioans with Disabilities Agency upon initiation of a job search as a part of receiving those services.

The bill exempts the following individuals from these requirements (1) an individual who is legally prohibited from using a computer, (2) an individual who has a physical or visual impairment that makes the individual unable to use a computer, or (3) an individual who has a limited ability to read, write, speak, or understand a language in which OhioMeansJobs is available.

## NOTE ON EFFECTIVE DATES

(Sections 812.10 to 812.60)

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 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect.

## HISTORY

| ACTION | DATE |
|---|---|
| Introduced | 02-11-15 |

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