



# Ohio Legislative Service Commission

## Bill Analysis

Brian D. Malachowsky

### H.B. 155

131st General Assembly  
(As Introduced)

**Reps.** Dever and Conditt, Amstutz, Anielski, Becker, Boyd, Brown, Buchy, Derickson, DeVitis, Dovilla, Driehaus, Duffy, Ginter, Grossman, Hall, Hambley, Hayes, Henne, Huffman, Koehler, Landis, LaTourette, Lepore-Hagan, Maag, Manning, McClain, Patmon, Patterson, Ramos, Retherford, Romanchuk, Ryan, Schuring, Sears, Slesnick, Sweeney, Terhar, Zeltwanger

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## BILL SUMMARY

### Qualified ABLE program

- Provides for the establishment, pursuant to federal law authorization, the "Achieve a Better Living Experience" (ABLE) program in Ohio to encourage individuals and families to provide funding to assist disabled persons to maintain a healthy, independent, and quality lifestyle.
- Models the ABLE program after the qualified tuition programs authorized under Section 529 of the Internal Revenue Code, including the creation of ABLE accounts to benefit designated beneficiaries who meet certain disability eligibility requirements established in federal law.
- Requires the Treasurer of State to implement and administer the ABLE program.

### ABLE accounts

- Permits a designated beneficiary or the beneficiary's trustee or guardian to apply, on a form provided by the Treasurer, to open an account to pay for qualified disability expenses of the beneficiary.
- Limits contributions to ABLE accounts to only cash and establishes (1) a maximum annual contribution limited to the federal gift tax exclusion amount and (2) a maximum account value limit that is tied to the maximum established by the Ohio Tuition Trust Authority for the College Advantage Direct 529 Savings Plan.

- Exempts contributions from the federal gift tax, up to the annual limit, and exempts funds disbursed for qualified disability expenses from the federal income tax.
- Exempts ABLE accounts from state and local means-tests for public assistance and excludes accounts from consideration for Medicaid eligibility.
- Exempts ABLE accounts from execution, garnishment, attachment, or sale to satisfy a judgment or order, but subjects the accounts to the Medicaid estate recovery program.
- Limits a beneficiary to a maximum of one ABLE account, but permits the transfer of an account to another designated beneficiary that meets federal eligibility requirements.
- Requires each distribution to be reported to the IRS and each account owner, the designated beneficiary, or the distributee to the extent provided in federal law.
- Requires statements to be provided each quarter to the account owner and requires separate accounting for each designated beneficiary.

### **Treasurer's responsibilities for ABLE program creation**

- Requires the Treasurer to take various actions, listed in the bill, that are necessary to implement and administer an ABLE account program, including seeking rulings from the IRS; developing rules, forms, and marketing plans; and establishing procedures for disbursements and the payment of administrative costs.
- Requires the Treasurer to contract, through a management contract or series of contracts that meet requirements established in the bill with one or more financial organizations to act as managers and depositories under the ABLE program.
- Provides procedures for when a manager's contract expires or is terminated by the Treasurer.
- Permits the Treasurer to enter into agreements with other states that permit their residents to participate in Ohio's ABLE program, and for Ohioans to participate in other states' programs.
- Permits the Treasurer and managers under the ABLE program to charge various fees as provided in the bill.
- Provides that the ABLE program does not create an obligation upon the Treasurer, the state, or any state agency to guarantee to any account owner or designated beneficiary a return on principal or a rate or payment of interest on any account.



- Permits the following agencies to share information, to the extent permitted in federal law, about eligible individuals for purposes of the ABLÉ program: Treasurer; Departments of Medicaid, Job and Family Services, Health, Mental Health and Addiction Services, Developmental Disabilities, and Aging; and Opportunities for Ohioans with Disabilities.

## Advisory Board

- Creates the nine-member ABLÉ Account Program Advisory Board for the purpose of reviewing, advising, and making recommendations to the Treasurer regarding the ABLÉ Program.
- Requires the Advisory Board, in consultation with the Treasurer, to prepare an annual report of its activities and recommendations, and permits the Advisory Board to prepare additional reports of its activities and recommendations, for the Governor, Speaker of the House of Representatives, and the President of the Senate.

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## **CONTENT AND OPERATION**

### **Qualified ABLÉ program**

In order to encourage individuals and families to provide funding to assist disabled persons so that they may maintain a healthy, independent, and quality lifestyle, federal law creates a savings account program that is modeled after the qualified tuition programs authorized under Section 529 of the Internal Revenue Code (for example, Ohio's qualified tuition program is the College Advantage Direct 529 Savings Plan).<sup>1</sup> The program, called the "Achieve a Better Living Experience" (ABLE) program, permits states to provide for the establishment of tax-favored ABLE accounts to provide assistance to disabled persons who are the account beneficiaries. Consistent with federal requirements, the bill requires the Treasurer of State to implement and administer an ABLE program in Ohio that allows individuals to open ABLE accounts.<sup>2</sup> The bill also allows the Treasurer to enter into agreements with other states to allow their residents to participate in Ohio's ABLE program, and for Ohioans to participate in other states' programs.<sup>3</sup> Additionally, the General Assembly declares its intent that the ABLE program, as established in the bill, comply and conform to federal statute and rules authorizing the program.<sup>4</sup> Discussed below are the bill's provisions regarding the specific requirements and limitations on ABLE accounts, creation of the ABLE program, and the creation of the ABLE Account Program Advisory Board.

### **ABLE accounts**

#### **Eligibility to open an ABLE account**

The bill incorporates eligibility requirements from federal law.<sup>5</sup> Under federal law, an individual is an "eligible individual" under the program if the individual is eligible for Social Security benefits based on blindness or disability and the blindness or disability occurred before the individual turned age 26. Alternatively, an "eligible individual" could be an individual who certifies (1) to having a medically determinable

<sup>1</sup> Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, P.L. 113-295, Sec. 101(1) (2014).

<sup>2</sup> R.C. 113.51(A).

<sup>3</sup> R.C. 113.51(B).

<sup>4</sup> Section 3.

<sup>5</sup> R.C. 113.50(D).



physical or mental impairment that began prior to turning age 26, which results in marked and severe functional limitations, which can be expected to result in death or which has lasted or can be expected to last for at least twelve months, or (2) to being blind. The disability certification must be filed with the Secretary for each tax year.<sup>6</sup>

## **Creation**

The bill permits a designated beneficiary, or a trustee or guardian of a designated beneficiary who lacks capacity to apply to open an ABLER account. Under the bill, a "designated beneficiary" is an eligible individual who is a resident of Ohio whose qualified disability expenses may be paid from an ABLER account.<sup>7</sup> "Qualified disability expenses" means any expenses related to the eligible individual's blindness or disability and made for the benefit of the individual, including, for example, the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, legal fees, and other expenses approved by federal regulation and consistent with the federal law.<sup>8</sup>

A designated beneficiary may have only one account and must be an eligible individual at the time the account is opened.<sup>9</sup> An application must also contain all of the following, on a form prescribed by the Treasurer:

- The name, address, Social Security number, and birth date of the account owner;
- If the account owner is not the designated beneficiary, the name, address, and Social Security number of the beneficiary;
- Certification by the applicant of understanding of the maximum account value and the consequences for excess contributions (discussed below);
- Any additional information required by the Treasurer.<sup>10</sup>

Before opening an account the Treasurer or program manager must enter into an agreement with the account owner that discloses the requirements and restrictions on

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<sup>6</sup> 26 U.S.C. 529A(e)(1) and (2).

<sup>7</sup> R.C. 113.50(C).

<sup>8</sup> 26 U.S.C. 529A(e)(5).

<sup>9</sup> R.C. 113.53(A) and (B)(1).

<sup>10</sup> R.C. 113.53(A).



contributions and withdrawals from the account. Once opened, any person may make contributions, subject to federal law.<sup>11</sup>

### **Contributions**

The bill and federal law limit contributions to ABLE accounts to only cash.<sup>12</sup>

#### **Maximum values--annual contributions**

Federal law permits annual contributions to an ABLE account only up to the limit that would be excluded from federal gift tax.<sup>13</sup> The annual exclusion for 2014 and 2015 is \$14,000.<sup>14</sup> The bill requires the Treasurer or program manager to reject or promptly withdraw a contribution if it would exceed the annual limit.<sup>15</sup>

#### **Maximum values--total value**

The bill includes a maximum account value for an ABLE account, to be established by the Ohio Tuition Trust Authority.<sup>16</sup> The maximum amount is calculated to be the maximum amount that may be necessary to pay for the qualified higher education expenses of a beneficiary, consistent with 26 U.S.C. 529. As of January 1, 2015, the maximum is \$414,000.<sup>17</sup> Once the maximum amount is reached in an ABLE account, the Treasurer or program manager must reject or promptly withdraw additional contributions.

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<sup>11</sup> R.C. 113.53(B)(1) and (2).

<sup>12</sup> R.C. 113.53(C) and 26 U.S.C. 529A(b)(2)(A).

<sup>13</sup> 26 U.S.C. 529A(b)(2)(B).

<sup>14</sup> *Frequently Asked Questions on Gift Taxes*, Internal Revenue Service, available at <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Frequently-Asked-Questions-on-Gift-Taxes> (last accessed April 27, 2015).

<sup>15</sup> R.C. 113.53(C).

<sup>16</sup> R.C. 113.50(G).

<sup>17</sup> College Advantage Direct 529 Savings Plan, Supplement to the Offering Statement and Participation Agreement dated November 2, 2013 (January 1, 2015) <http://www.collegeadvantage.com/docs/enrollment-forms/offering-statement-and-participation-agreement.pdf> (last accessed April 27, 2015).

## **No longer eligible**

The bill also requires the Treasurer or program manager to reject or promptly withdraw a contribution if the designated beneficiary is not an eligible individual in the current calendar year.<sup>18</sup>

## **Advantageous treatment**

### **Tax benefits**

Contributions placed into ABLE accounts are exempt from federal gift tax, up to the annual limit. Additionally, funds that are disbursed for qualified disability expenses are exempt from federal income tax.<sup>19</sup> However, a disbursement made for an unqualified payment is subject to income tax and a penalty; the tax imposed on a disqualified disbursement is increased ten per cent.<sup>20</sup>

### **Exclusion from means testing**

The bill exempts the contributions to, amounts in, and any distributions from, ABLE accounts from being considered in determinations for state and local means-tested public assistance programs and the maximum amount of assistance one may receive under those programs.<sup>21</sup> This exemption permits a savings fund for the individual, while maintaining access to public assistance. However, the exclusion only applies to (1) the account owner or designated beneficiary, or (2) an individual whose eligibility for the means-tested program is conditioned on the ABLE account's account owner or designated beneficiary disclosing the owner's or beneficiary's income, resources, or both to the entity administering the means-tested assistance program.<sup>22</sup>

Federal law excludes an ABLE account from calculations for Medicaid eligibility.<sup>23</sup> For example, current Ohio Medicaid rules disqualify a single person with a disability with more than \$1,500 in liquid assets.<sup>24</sup> An ABLE account would be excluded from the \$1,500 calculation, and would not disqualify the individual from Medicaid.

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<sup>18</sup> R.C. 113.53(C).

<sup>19</sup> 26 U.S.C. 529A(c)(1)(B).

<sup>20</sup> 26 U.S.C. 529A(c)(3)(A).

<sup>21</sup> R.C. 113.53(H)(1).

<sup>22</sup> R.C. 113.53(H)(2).

<sup>23</sup> P.L. 113-295, Sec. 103(b)(2) (2014).

<sup>24</sup> O.A.C. 5160:1-3-27.



## **Exemption from execution or attachment**

The bill generally excludes ABLE accounts from execution, garnishment, attachment, or sale to satisfy a judgment or order.<sup>25</sup> However, ABLE accounts are subject to claims made under the Medicaid estate recovery program. This program permits the Department of Medicaid to recoup costs related to care for certain individuals.<sup>26</sup>

## **Transferability**

The bill permits, to the extent authorized under federal law, the changing of the designated beneficiary to another individual. The bill also prohibits pledging of interest as a security for a loan.<sup>27</sup>

## **Distributions**

The bill requires distributions from an ABLE account to any individual or for the benefit of any individual to be reported to the IRS and each account owner, the designated beneficiary, or the distributee to the extent required under law.<sup>28</sup>

## **Statements and accounting**

The bill requires statements to be provided to each account owner within thirty days of the end of each quarter. Statements must include the following, as of the end of the previous quarter: identity of the contributions, the total contributions made, the value of the account, distributions made, and any other information that the Treasurer may require. The bill also requires that statements and information relating to accounts be prepared and filed to the extent required by the bill and any other state or federal law.<sup>29</sup> The bill also requires separate accounting for each designated beneficiary.<sup>30</sup>

## **Treasurer's responsibilities for ABLE program creation**

The bill requires the Treasurer to do all of the following to implement and administer the ABLE program in Ohio:

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<sup>25</sup> R.C. 113.53(G) and 2329.66(A)(10)(c) and (e).

<sup>26</sup> R.C. 5162.21, not in the bill.

<sup>27</sup> R.C. 113.53(D).

<sup>28</sup> R.C. 113.53(E)(1).

<sup>29</sup> R.C. 113.53(E)(2) and (3).

<sup>30</sup> R.C. 113.53(F).





- Develop and implement a program for ABLE accounts in Ohio;
- Engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;
- Seek rulings and other guidance from the Secretary of the Treasury of the United States and the Internal Revenue Service (IRS) relating to the ABLE program;
- Modify the program as necessary to qualify for the federal income tax benefits or treatment provided under 26 U.S.C. 529A and federal rules;
- Develop marketing plans and promotional materials to publicize the program;
- Establish the procedures by which funds held in accounts shall be disbursed;
- Establish the procedures by which funds held in accounts shall be allocated to pay for administrative costs;
- Take any action necessary to implement and administer the program;
- Adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) necessary to implement and administer the program;
- Notify the Secretary of the Treasury of the United States when an account has been opened for a designated beneficiary and submit other reports as required under federal law.<sup>31</sup>

### **Depositories and managers**

The bill requires the Treasurer to solicit proposals from financial organizations to act as depositories and managers of the ABLE program.<sup>32</sup> A "financial organization" is an insurance company, bank, other financial institution or a broker-dealer registered with the Securities and Exchange Commission.<sup>33</sup> The bill requires financial organizations submitting a proposal to describe the investment instruments that will be held in accounts. The Treasurer may select more than one investment instrument for the program.

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<sup>31</sup> R.C. 113.51(A).

<sup>32</sup> R.C. 113.52(A).

<sup>33</sup> R.C. 113.50(E).

When selecting a financial organization or organizations as depositories and managers, the Treasurer must consider the following factors:

- The financial stability and integrity of the organization;
- The safety of the investment instruments being offered;
- The ability to satisfy record keeping and reporting requirements under the bill;
- The organization's plan for promoting the program and the investment the organization is willing to make to promote the program;
- The fees that may be charged to account owners;
- The minimum initial deposit and minimum contributions that the organization will require;
- The ability of the organization to accept electronic deposits, including payroll deduction plans;
- Other benefits to the state or Ohioans, including fees payable to the state to cover the program's operating expenses.<sup>34</sup>

### **Contract requirements**

The bill permits the Treasurer to enter into management contracts as the Treasurer considers necessary and proper for the implementation of the ABLE program.<sup>35</sup> The bill also provides that the Treasurer may enter into a contract or a series of contracts with one or more financial organizations for an organization to act as a manager and depository under the ABLE program.<sup>36</sup>

The bill requires a contract or series of contracts to contain all of the following requirements upon the financial organization:

- Take any action required to keep the program in compliance with the bill's requirements and any actions not contrary to its contract to manage the program to qualify as a qualified ABLE program under federal law;

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<sup>34</sup> R.C. 113.52(A).

<sup>35</sup> R.C. 113.52(C).

<sup>36</sup> R.C. 113.52(B).



- Keep adequate records of each account, keep accounts segregated, and provide the Treasurer the information necessary to prepare the statements required by the bill;
- Compile and calculate information contained in the statements and provide the Treasurer with the calculations;
- Provide the Treasurer with information to determine the program manager's compliance with the ABLE program, if there is more than one such manager;
- Provide the Treasurer with access to the books and records of the program manager, to the extent necessary to determine compliance with the management contract and state and federal law regarding the ABLE program;
- Hold all accounts for the benefit of the account owner;
- Be audited at least annually by a firm of certified public accountants selected by the manager and provide the results to the Treasurer;
- Provide the Treasurer with copies of all nonconfidential regulatory filings and reports during the management contract or while the financial organization is holding any accounts;
- Make available for review by the Treasurer the results of any periodic examination of the financial organization by any state or federal banking, insurance, or securities agency, except where disclosure is prohibited by law;
- Ensure that the description of the program is consistent with the Treasurer's marketing plan.<sup>37</sup>

The bill permits the Treasurer to require an audit be conducted of the operations and financial position of a program manager at any time if the Treasurer has reason to be concerned about the financial position, record keeping practices, or the status of accounts of the manager.<sup>38</sup>

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<sup>37</sup> R.C. 113.52(B)(1) through (10).

<sup>38</sup> R.C. 113.52(C)(2).

## **Contract termination or expiration**

The bill permits the Treasurer to terminate or not renew a management contract.<sup>39</sup> The bill requires the Treasurer to take custody of accounts held by the program manager and seek to promptly transfer the accounts to another financial organization that is selected as a program manager and into new investment instruments. The new investment instruments must be as similar to the original ones as possible.<sup>40</sup>

## **Fees**

The bill requires the Treasurer to impose and collect administrative fees and service charges in connection with any agreement relating to the ABLE program.<sup>41</sup>

The bill permits the following fees:

- A program manager may charge an annual fee to an account owner for the maintenance of an account;<sup>42</sup>
- A program manager may charge other fees, payable to the state to cover the program's operating expenses;<sup>43</sup>
- The Treasurer may impose a nonrefundable application fee.<sup>44</sup>

## **Funds created**

### **Ohio ABLE Savings Program Trust Fund**

The bill creates the Ohio ABLE Savings Program Trust Fund, to be used if the Treasurer elects to accept deposits rather than have deposits sent directly to a program manager.<sup>45</sup> The bill creates the Fund in the custody of the Treasurer, but excludes it from the state treasury. The Fund is to consist of ABLE account deposits that are not deposited directly with a program manager, and disbursements will be upon an order

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<sup>39</sup> R.C. 113.52(C)(3).

<sup>40</sup> R.C. 113.52(E).

<sup>41</sup> R.C. 113.51(A)(5).

<sup>42</sup> R.C. 113.52(A)(5) and 113.53(F).

<sup>43</sup> R.C. 113.52(A)(8).

<sup>44</sup> R.C. 113.53(A).

<sup>45</sup> R.C. 113.55(A).



of the Treasurer. The bill requires interest to be credited to the Ohio ABLE Savings Expense Fund.

### **Ohio ABLE Savings Expense Fund**

The bill creates the Ohio ABLE Savings Expense Fund in the state treasury.<sup>46</sup> The fund will consist of money received from program managers, governmental or private grants, or appropriations for the program. The bill permits all expenses incurred by the Treasurer in developing and administering the ABLE program and all expenses and reimbursements allowed for the ABLE Account Program Advisory Board to be payable from this Fund.

### **Obligation not created**

The bill provides that nothing within the ABLE program creates any obligation of the Treasurer, the state, or any state agency to guarantee for the benefit of any account owner or designated beneficiary a return on the principal, a rate of interest or other return on any account, or payment of interest or other return on any account.<sup>47</sup>

The bill requires every contract, application, or other similar document used in connection to the ABLE program to clearly indicate that the account is not insured by the state and that the principal and investment returns are not guaranteed by the state.

### **Information sharing**

The bill permits the following agencies, to the extent permitted under federal law, to exchange information relating to eligible individuals for the purpose of administering or enforcing the ABLE program: the Treasurer of State, the Department of Medicaid, the Department of Job and Family Services, the Department of Health, the Department of Mental Health and Addiction Services, the Department of Developmental Disabilities, Opportunities for Ohioans with Disabilities Agency, and the Department of Aging.<sup>48</sup>

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<sup>46</sup> R.C. 113.55(B).

<sup>47</sup> R.C. 113.54(A).

<sup>48</sup> R.C. 113.52(D).

## Advisory Board

### Composition

The bill creates the ABLE Account Program Advisory Board, consisting of the following nine members:<sup>49</sup>

- (1) The Director of Developmental Disabilities, or the Director's designee;
- (2) A member of the House of Representatives, appointed by the Speaker of the House of Representatives;
- (3) A member of the Senate, appointed by the President of the Senate;
- (4) A representative of an intellectual or developmental disability advocacy organization, appointed by the Governor;
- (5) A representative of a service provider for individuals with disabilities, appointed by the Governor;
- (6) An individual with significant experience with disability issues who is also the parent of a child with a disability, appointed by the Governor;
- (7) An individual with a disability who has significant experience with disability issues, appointed by the Governor;
- (8) Two individuals with significant experience in finance, accounting, investment management, or other areas that may assist the Board in carrying out its duties, appointed by the Governor.

### Terms

The bill establishes the following terms of office: members appointed by the Governor have four year terms, ending on the last day of the year; members of the Ohio General Assembly have terms equal to the term of the General Assembly. Appointed members serve at the pleasure of the member's appointing authority and may be removed only by that authority. Board members may be reappointed, as long as they continue to meet eligibility requirements.

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<sup>49</sup> R.C. 113.56(A).

## **Vacancies**

Under the bill, vacancies must be filled in the manner provided for original appointments. A member that fills a vacancy serves the remainder of the term for which the predecessor was appointed.<sup>50</sup>

## **Meetings**

The bill requires the Director of Developmental Disabilities or the Director's designee to call the first Board meeting within sixty days after the bill's effective date. At that meeting, the bill requires members to elect a chairperson. If a vacancy occurs in the office of chairperson, the members must select a new chairperson. The bill requires the Board to meet at least four times each year, but it may meet more frequently at the call of the chairperson. The Board is also subject to Ohio's Open Meeting laws.<sup>51</sup>

The bill provides that a majority of the Board members constitutes a quorum. To take any action, at least a majority of the Board members must concur. A vacancy on the Board does not impair the right of the other members to exercise all the functions of the Board.<sup>52</sup>

## **Reimbursement and resources**

On request to the Treasurer, each member must be reimbursed for the actual and necessary travel expenses incurred in the performance of the member's official duties.<sup>53</sup>

The treasurer must also provide the Board with resources necessary to conduct its business. The Board may accept uncompensated assistance from individuals, research organizations, and other state agencies.<sup>54</sup>

## **Duties**

The bill requires the Board to do all of the following:<sup>55</sup>

- Review the work of the Treasurer, related to the ABLÉ program;

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<sup>50</sup> R.C. 113.56(B).

<sup>51</sup> R.C. 113.56(C).

<sup>52</sup> R.C. 113.56(D).

<sup>53</sup> R.C. 113.56(D).

<sup>54</sup> R.C. 113.56(F).

<sup>55</sup> R.C. 113.56(E)(1).

- Advise the Treasurer on the ABLE program, as requested by the Treasurer;
- Make recommendations to the Treasurer for the improvement of the ABLE program;
- In consultation with the Treasurer, prepare an annual report of the Board's activities and recommendations, and deliver that report to the Governor, Speaker of the House of Representatives, and President of the Senate.

The Board also may prepare additional reports of its activities and recommendations. If it does so, the bill requires the Board to deliver such report to the Governor, the Speaker of the House of Representatives, and President of the Senate.<sup>56</sup>

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## HISTORY

ACTION	DATE
Introduced	04-15-15

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<sup>56</sup> R.C. 113.56(E)(2).

