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# OHIO LEGISLATIVE SERVICE COMMISSION

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**H.B. 166**  
**133rd General Assembly**

## Bill Analysis

[Click here for H.B. 166's Fiscal Analysis](#)

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**Primary Sponsor:** Rep. Oelslager

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### SUMMARY

This analysis is arranged by state agency in alphabetical order. The bill's proposed H2Ohio Fund appears as a separate section, beginning on page 184, because it will be used by multiple agencies. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item.

The analysis concludes with a Local Government category, a Miscellaneous category, and a note on effective dates, expiration, and other administrative matters.

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

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## **DEPARTMENT OF ADMINISTRATIVE SERVICES**

### **State agency efficiency review**

- Requires designees from the Department of Administrative Services (DAS) and the Office of Budget and Management (OBM) jointly to review functions and programs of state agencies with the purpose of identifying areas for consolidation.
- Not later than January 1, 2020, requires the designees to identify agency functions and programs to be consolidated.
- Allows the DAS Director to transfer employees, equipment, and assets of a consolidated program.
- Allows the OBM Director to cancel and re-establish encumbrances and make other necessary budget changes to reflect the consolidated programs.

### **State workforce diversity surveys**

- Requires the DAS Director to annually conduct a survey on diversity within each state agency's workforce and report the results to the Governor and the General Assembly not later than December 31, beginning in 2020.

### **Office of Information Technology funds**

- Creates the Enterprise Applications Fund within the state treasury.
- Adds certain fees and rates charged by DAS to the list of operating appropriation items for which the Information Technology Chief Information Officer must compute the amount of revenue attributable to amortization.
- Allows the OBM Director, on request from the DAS Director, to transfer cash from the MARCS Administration Fund, the Enterprise Applications Fund, or the Professions Licensing System Fund to the Major Information Technology Purchases Fund.

### **Coordinated vendor debarment**

- Requires state agencies to exclude from participation in state contracts, any vendors who have been debarred under any sections of the Revised Code.
- Provides for a general prohibition against vendor participation in any state contract for the duration of the debarment.
- Defines "participate," "state contract," and "state agency" for purposes of the general provision.
- Specifies that eligibility for participation in state contracts is restored only when the vendor is not otherwise debarred from state contracts.

## **Surplus property**

- Codifies a law that allows DAS to use the Investment Recovery Fund to pay the operating expenses of the Federal Surplus Property Program in addition to the State Surplus Property Program.

## **Death Benefit Fund recipient participation in state health plan**

- Requires a Death Benefit Fund recipient to file an election form with the Ohio Police and Fire Pension Fund Board of Trustees, rather than DAS, of the election to participate in a health benefit offered to state employees.
- Requires the Board to forward the form to DAS after approving the recipient's application for death benefits.
- Requires DAS to notify the Board of the amount of the cost of a recipient's benefits that the Board must withhold from the recipient's death benefit payments and forward to DAS.
- Requires the Board to pay DAS the remaining costs of the benefits, including any administrative costs, from appropriations made for that purpose.
- Specifies that receiving a health benefit does not make the recipient a state employee, and that a recipient who is a state employee is not eligible for a health benefit through the fund.
- Requires the DAS Director to provide the Board with election forms and notify the Board when a recipient enrolls, disenrolls, or re-enrolls in benefits or when DAS terminates a recipient's health benefits.

## **Vision benefits for state employees**

- Specifically includes vision benefits in the types of benefits DAS contracts for or otherwise provides to state employees.

## **Invoices for state purchases**

- Removes alternate options for inclusion in a state purchasing invoice; requires, instead that all items listed be on the invoice.

## **State employee leave for disaster relief services**

- Authorizes an appointing authority to approve leave with pay for a state employee, who is a verified Team Rubicon volunteer, to participate in disaster relief services with Team Rubicon.

## **State pharmacy benefit manager**

- Requires the DAS Director, in consultation with the Medicaid Director, to select and contract with a state pharmacy benefit manager (PBM).

- Tasks the contracted state PBM with serving as the single PBM used by Medicaid managed care organizations (MCOs) under the care management system.
- Requires the DAS Director to reprocure the state PBM contract every four years.
- Imposes certain disclosure requirements on entities seeking to become the state PBM.
- Requires the Department of Medicaid to be a party to the contract and to review the contract every six months and recommend changes.
- Requires the DAS Director to effect those changes by contract renewal or amendment.
- Permits the affiliated companies of the state PBM to conduct state PBM business in their own names with Medicaid MCOs.
- Imposes a fiduciary duty on the state PBM with respect to DAS and the Department of Medicaid, and requires it to act to maximize the health of Medicaid recipients and promote the efficiency of the Medicaid program.

## **State agency efficiency review**

(Section 701.10)

The bill requires designees from the Department of Administrative Services (DAS) and the Office of Budget and Management (OBM) to jointly review functions and programs of state agencies to determine if any overlap or duplicative functions exist. The designees must collaborate with affected agencies in the course of their review and must determine the cost-effectiveness of the programming in terms of administrative and operational costs, including facilities, personnel, technology, supplies, contracts, and services.

By January 1, 2020, the DAS and OBM Directors jointly must determine, in consultation with the affected agencies, the functions that may be consolidated within and across state departments. The bill places a specific emphasis on facilities utilization, laboratory testing facility consolidation, and field or regional office operation consolidation, but the determination also may include other functions, programs, and services that would reduce costs and improve services and would be suitable for operation within OBM's Shared Services Center.

If the consolidation of functions results in consolidation within the Shared Services Center or otherwise impacts an employee not subject to Ohio's Public Employees' Collective Bargaining Law,<sup>1</sup> the DAS Director may assign, reassign, classify, reclassify, transfer, reduce, promote, or demote any transferred employee. Employment records and actions, including personnel actions, disciplinary actions, performance improvement plans, and performance evaluations transfer with the employee. The employees are subject to the policies, procedures, and work rules of the agency to which they are transferred. The bill also gives the DAS Director

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<sup>1</sup> R.C. Chapter 4117.

authority to transfer equipment and assets relating to a program or function that is being consolidated to the department that is newly responsible for the functions after a consolidation.

Finally, after a consolidation occurs the OBM Director may make necessary budget changes, including cancelling and reestablishing encumbrances.

## **State workforce diversity surveys**

(R.C. 124.91)

The bill requires the DAS Director to annually conduct a survey on diversity within each state agency's workforce at the time of the survey. Under continuing law, "state agency" means every organized body, office, or agency established by Ohio law for the exercise of any function of state government but does not include JobsOhio.<sup>2</sup>

Beginning December 31, 2020, and not later than December 31 of each year thereafter, the DAS Director must file a report about the results of the surveys with the Governor and the General Assembly.

## **Office of Information Technology funds**

(R.C. 125.18)

The bill creates the Enterprise Applications Fund within the state treasury. Additionally, the bill adds the following to the list of operating appropriation items for which the Information Technology Chief Information Officer must compute the amount of revenue attributable to amortization:

--MARCS administration, including the user fees charged by DAS and deposited into the Marcs Administration Fund;

--Enterprise applications, including the rates charged by DAS to benefiting agencies for the operation and management of information technology applications and deposited in the Enterprise Applications Fund;

--Professions licensing system, including the rates charged by DAS for the cost of ongoing maintenance of the professions licensing system and deposited into the Professions Licensing System Fund.

Under continuing law, the Chief Information Officer also must compute the amount of revenue attributable to the amortization of all equipment purchases and capitalized systems from information technology service delivery and major technology purchases operating appropriation items and major computer purchases capital appropriation items that are recovered as part of the information technology service rates charged by DAS and deposited into the Information Technology Fund.

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<sup>2</sup> R.C. 1.60, not in the bill.

Additionally, the bill allows the OBM Director, on request from the DAS Director, to transfer cash from the MARCS Administration Fund, the Enterprise Applications Fund, or the Professions Licensing System Fund to the Major Information Technology Purchases Fund.

## **Coordinated vendor debarment**

(R.C. 9.242, 125.25, 153.02, 5513.06, and 5525.03)

Specific sections of state law authorize the DAS Director, the Executive Director of the Ohio Facilities Construction Commission, and the Director of Transportation to debar vendors who have engaged in specified wrongdoing in the state contracting process. When each of those directors reasonably believes that grounds exist for debarment, they provide the vendor notice and an opportunity for a hearing, determine the length of debarment, and maintain a list of currently debarred vendors. When the debarment period ends, under each specific list, the vendor must be eligible to be awarded contracts by state agencies. The bill provides, in each section, that the vendor may be eligible if the vendor is not otherwise debarred under any list that applies to state contracts.

The bill also provides for a general provision in state law that prohibits any vendor who has been debarred on any list of debarred vendors from participating in state contracts including those specific sections and any other section of the Revised Code. The bill defines “participate,” “state contract,” and “state agency” for purposes of the general provision. “Participate” means to respond to any solicitation or procurement issued by a state agency or be the recipient of an award of a state contract, or to provide any goods or services to any state agency. “State contract” means any contract for goods, services, or construction that is paid for in whole or in part with state funds. “State agency” means “every organized body, office, or agency established by the laws of [Ohio] for the exercise of any function of state government” but does not include JobsOhio.

## **Surplus property**

(R.C. 125.14)

The bill codifies (makes permanent) a provision of law that allows DAS to use the Investment Recovery Fund to pay the operating expenses of the Federal Surplus Property Program in addition to the State Surplus Property Program. Currently, DAS may do so under a provision of the previous main operating budget act that expires June 30, 2019.<sup>3</sup>

Under the continuing Federal Surplus Property Program, DAS assists other state agencies, political subdivisions, and certain private entities in acquiring surplus property from the federal government. DAS deposits the fees it charges for that service in the Investment Recovery Fund.<sup>4</sup>

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<sup>3</sup> Sections 207.40 and 809.10 of H.B. 49 of the 132<sup>nd</sup> General Assembly, not in the bill.

<sup>4</sup> R.C. 125.84 and 125.87, not in the bill.

## Death Benefit Fund recipient participation in state health plan

(R.C. 124.824; Section 361.10)

The Ohio Public Safety Officers Death Benefit Fund pays benefits to the surviving spouse, children, or, in limited cases, surviving parent, of a law enforcement officer or firefighter killed in the line of duty.<sup>5</sup> Under continuing law, a Death Benefit Fund recipient who is a spouse or child may elect to participate in any medical, dental, or vision benefit (a “health benefit”) that DAS contracts for or otherwise provides to state employees. The bill specifies that a recipient receiving a health benefit through the fund is not a state employee. Also, under the bill, if a recipient is eligible to receive these health benefits as a state employee, the recipient cannot receive them through the fund. Continuing law also excludes a recipient eligible to enroll in the federal Medicare program from receiving these benefits through the fund.

Continuing law requires the DAS Director to develop forms for a recipient to enroll, disenroll, or re-enroll in health benefits. The bill requires the DAS Director to provide these election forms to the Ohio Police and Fire Pension Fund Board of Trustees (which administers and serves as the trustees of the fund) and to notify the Board when a recipient enrolls, disenrolls, or re-enrolls in benefits, or when DAS terminates the benefits of a recipient. To receive health benefits through the fund, a recipient must file the election form with the Board of Trustees, rather than with DAS as under current law. The Board of Trustees must forward the election form to DAS after the Board has approved an application for death benefits.

The bill requires DAS to notify the Board of Trustees of the amount of the cost for a recipient’s health benefits that the Board must withhold from the recipient’s death benefit payments and forward to DAS, rather than requiring the recipient to pay the premium or cost directly to DAS as under current law. The amount withheld is the amount of the cost that would be paid by a state employee for those benefits. Under the bill, the Board must pay DAS the remaining cost of the benefits and any administrative costs from appropriations made for that purpose.

The bill appropriates additional funding for health benefits for Death Benefit Fund recipients, which has an immediate effective date. The appropriation language includes a similar provision regarding the administration of health benefits for Death Benefit Fund recipients, thus appearing to give that provision an immediate effective date. The appropriation language also specifies that the administrative costs paid by the Board to DAS cannot exceed 2% of the total costs of the benefits. This cap applies to the FY 2020-FY 2021 biennium.<sup>6</sup>

Under continuing law, the Board must provide DAS with any information DAS requires to provide the benefits. The bill adds that the Board must provide that information to a designated third-party administrator or to both the third-party administrator and DAS.

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<sup>5</sup> R.C. 742.63, not in the bill.

<sup>6</sup> Section 812.23.

## **Vision benefits for state employees**

(R.C. 124.82)

The bill specifically includes vision benefits in the types of benefits for which DAS may contract. Continuing law requires DAS to contract for the issuance of a policy or contract of health, medical, hospital, dental, or surgical benefits, or any combination of those benefits, covering state employees. DAS, under continuing law, also may offer these benefits directly.

## **Invoices for state purchases**

(R.C. 125.01)

The bill changes the current definition of “invoice” in the state purchasing law to require all of the items specified to be described in the itemized listing showing delivery of the supplies or service contracted for in the order: date of purchase or rendering of the service; an itemization of things done, material supplied, or labor furnished; and the sum due under the contract. The current definition of “invoice” provides for an option of including, in the itemized listing showing delivery of the supplies or performance of the service described in the order, either the date of purchasing or rendering of the service *or* an itemization of the things done, material supplied, or labor furnished, and the sum due under the contract. Among other things an “order” (contract) must include an authorization to pay for the contemplated expenditure, signed by the person instructed and authorized to pay upon receipt of a proper invoice. A proper invoice must include all of the items listed above.

## **State employee leave for disaster relief services**

(R.C. 124.132)

The bill authorizes an appointing authority to approve leave not to exceed 30 work days each year, for a state employee who is a verified Team Rubicon volunteer. The bill requires the appointing authority to compensate an employee granted such leave at the employee’s regular rate of pay for those regular work hours during which the employee is absent from work. The leave must be used to participate in disaster relief services upon the request of Team Rubicon. Continuing law authorizes such leave for certified disaster service volunteers of the American Red Cross. The bill extends the same benefit to verified Team Rubicon volunteers. Team Rubicon is a volunteer nonprofit organization consisting mostly of military veterans providing disaster response services.<sup>7</sup>

## **State pharmacy benefit manager**

(R.C. 125.93 and 125.931)

### **Procurement**

The bill establishes a state pharmacy benefit manager (PBM) under the Medicaid care management system. A PBM is an entity that contracts with pharmacies on behalf of a health

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<sup>7</sup> <https://teamrubiconusa.org>.

insurer, including a state agency or managed care organization (MCO). The bill requires the DAS Director (in consultation with the Medicaid Director), by July 1, 2020, and through a procurement process, to select a state PBM to handle all pharmacy claims administration for Medicaid MCOs under the care management system (so long as the Department of Medicaid includes prescribed drugs in that system and contracts with Medicaid MCOs). The Department of Medicaid will also be a party to the contract and is responsible for enforcing the contract after the procurement process.

As part of the procurement process, the DAS Director must:

- Accept applications;
- Establish eligibility criteria for the state PBM;
- Select and contract with a single state PBM; and
- Develop a master contract to be used when the Director contracts with the state PBM, which must prohibit the state PBM from requiring a Medicaid recipient to obtain a specialty drug from a specialty pharmacy owned or otherwise associated with the state PBM.

The Director must reprocur the state PBM contract every four years.

## **Disclosures**

As part of the procurement process, a prospective state PBM must disclose:

- Any activity, policy, practice, contract, or arrangement of the state PBM that may directly or indirectly present any conflict of interest with the PBM's relationship with or obligation to DAS, the Department of Medicaid, or a Medicaid MCO;
- All common ownership, members of a board of directors, managers, or other control of the PBM (or any of the PBM's affiliated companies) with (1) a Medicaid MCO and its affiliated companies, (2) an entity that contracts on behalf of a pharmacy or any pharmacy services administration organization and its affiliated companies, (3) a drug wholesaler or distributor and its affiliated companies, (4) a third-party payer and its affiliated companies, or (5) a pharmacy and its affiliated companies;
- Any direct or indirect fees, charges, or any kind of assessments imposed by the PBM on pharmacies licensed in this state with which the PBM shares common ownership, management, or control, or that are owned, managed, or controlled by any of the PBM's affiliated companies;
- Any direct or indirect fees, charges, or any kind of assessments imposed by the PBM on pharmacies licensed in Ohio that operate more than 11 locations;
- Any direct or indirect fees, charges, or any kind of assessments imposed by the PBM on pharmacies licensed in Ohio that operate 11 or fewer locations; and

- Any financial terms and arrangements between the PBM and a prescription drug manufacturer or labeler, including formulary management, drug substitution programs, educational support claims processing, or data sales fees.

### **Contract amendment**

The Medicaid Director must review the state PBM contract every six months and make recommendations of changes to the DAS Director. By contract amendment or renewal, the DAS Director must effect the recommended changes.

### **Affiliated companies**

The bill specifies that the affiliated companies of the state PBM may conduct PBM business in their own names with Medicaid MCO's. For purposes of these provisions, an affiliated company is an entity (including a third-party payer or specialty pharmacy) with common ownership, members of a board of directors, or managers, or that is a parent company, subsidiary company, jointly held company, or holding company with respect to the other entity.

### **Fiduciary duty**

The bill specifies that the state PBM owes to DAS and the Department of Medicaid a fiduciary duty and must perform its duties with care, skill, prudence, and diligence. The duty includes (1) negotiating the lowest prices for prescription drugs and (2) pricing drugs at those lowest prices, to maximize the health of Medicaid recipients and promote the efficiency of the Medicaid program, and (3) cooperating with state audits.

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## **DEPARTMENT OF AGING**

### **Background checks**

- Requires the Director of Aging or other hiring entity to request a criminal records check before (rather than up to five days after) conditionally employing a person in certain positions involving community-based long-term care or ombudsman services.
- Requires the Department of Aging's procedures to be used for conducting criminal records checks when considering applicants for certain direct-care positions, even if a community-based long-term care provider is also a service provider under a Department of Medicaid-administered program for home and community-based care.

### **Dementia training materials and program support**

- Expands to include other types of dementia (rather than only Alzheimer's disease) that must be covered in Department of Aging training materials and respite care programs funded by the Department.

### **Notice of certification or discipline decisions**

- Requires the Department of Aging to notify a provider of community-based long-term care services of a decision that was reached without a hearing (1) not to certify the provider or (2) to take disciplinary action.

### **Exception to hearing regarding certification**

- Exempts from hearing requirements certain Department of Aging actions regarding the certification of a community-based long-term care provider if the provider's Medicaid provider agreement has been suspended.

### **Home-delivered meals**

- Prohibits the Department of Aging from awarding a grant under Title III of the Older Americans Act of 1965 to a provider of home-delivered meals if the provider offers snacks in addition to the regular meals unless certain requirements are met.
- Prohibits entities that provide home-delivered meals under the PASSPORT program from offering snacks unless the entities meet the same requirements established for the Title III providers.
- Establishes the payment rates for home-delivered meals provided under the PASSPORT program during FYs 2020 and 2021.

### **Assisted Living and PASSPORT payment rates**

- Requires that the rates for each tier of assisted living services provided under the Assisted Living Program during FY 2020 and FY 2021 be at least 2.7% higher than the rates in effect on June 30, 2019.

- Requires that the base and unit rates for home care attendant, personal care, and waiver nursing services provided under the PASSPORT program during FY 2020 and FY 2021 be at least 2.7% higher than the rates in effect on June 30, 2019.

## **Board of Executives of Long-Term Services and Supports**

### **Health services executive license**

- Provides for the Board of Executives of Long-Term Services and Supports to issue health services executive licenses and establishes requirements for the license.
- Prohibits a person from knowingly using words or letters that tend to indicate or imply that the person holds that license unless the person holds the license.
- Provides that such a license is not needed to practice nursing home administration, serve in a leadership position at a long-term services and supports setting, or direct the practices of others in such a setting.

### **Standard nursing home administrator license**

- Revises the requirements for a standard nursing home administrator license, including raising the minimum age to 21 (from 18) and establishing a criminal records check requirement.

### **Out-of-state nursing home administrator license**

- Revises the requirements that a nursing home administrator licensed in another state must meet to obtain a nursing home administrator license in Ohio.

### **Temporary nursing home administrator license**

- Revises the requirements for a temporary nursing home administrator license, including establishing age, character, and criminal records check requirements.
- Provides that a temporary license is to be valid for a period of time the Board of Executives of Long-Term Services and Supports is to specify, not to exceed 180 days.
- Permits a temporary licensee, if the temporary license is valid for less than 180 days, to apply for a one-time renewal for the remainder of the 180-day period.

## **Other licensing changes**

### **Criminal records checks**

- Requires individuals applying for a nursing home administrator license (whether standard, out-of-state, or temporary) or a health services executive license to utilize the same criminal records check process that applies to individuals applying for various occupational licenses.

### **Renewals and reinstatements of licenses**

- Provides that a health services executive license is valid for one year and may be renewed in accordance with procedures the bill establishes.

- Requires the Board to reinstate an expired license if a health services executive satisfies certain requirements within one year after expiration.
- Eliminates annual certificates of registration for nursing home administrator licenses and instead makes standard and out-of-state licenses valid for one year.
- Establishes renewal processes for those licenses.
- Requires the Board to reinstate an expired license if a nursing home administrator satisfies certain requirements within one year after expiration.

### **Continuing education**

- Requires the board to approve continuing education courses for licensed health services executives.

### **Reissuance and restoration of licenses**

- Revises the Board's authority to reissue a license that has been revoked for at least one year or for a felon who has been pardoned or received final release by expressly applying the authority to the three types of nursing home administrator licenses (standard, out-of-state, and temporary) and health services executive licenses.

### **Child support enforcement**

- Clarifies that the Board's duty to deny, not renew, or suspend a license if the individual who seeks or holds the license is in default under a child support order also applies to a temporary license.

### **Reporting changes of address**

- Applies to licensed health services executives a requirement to report to the Board changes in the licensee's residence mailing address and names and addresses of the places in which the licensee practices.

### **Display of licenses**

- Revises requirements regarding the display of licenses by requiring every licensed nursing home administrator and licensed health services executive to display their licenses in the places at which they practice.

### **Verification of licensure status**

- Permits a licensed nursing home administrator and a licensed health services executive to request that the Board provide to a licensing agency of another state verification of license status and other related information in the Board's possession.
- Requires the Board to provide the licensing agency the verification or other related information so requested if the licensee pays to the Board the fee for this service.

## Complaints

- Permits any person to submit to the Board a complaint about another person's violation of, or failure to comply with, the law governing nursing home administrators and health services executives.
- Requires the Board to receive, investigate, and take appropriate action with respect to complaints and other credible information indicating a violation of, or failure to comply with, the law governing nursing home administrators and health services executives.

## Disciplinary action

- Permits, rather than requires, the Board to take certain disciplinary actions.
- Extends the Board's disciplinary authority to individuals who apply for or hold a nursing home administrator license or a health services executive license.
- Revises the reasons for which disciplinary action may be taken, including deviation from the Board's code of ethics, another agency's disciplinary action, and failure to cooperate with an investigation or comply with a subpoena or disciplinary action.
- Revises the types of disciplinary actions that may be taken, including permitting the Board to enter into a consent agreement in lieu of making an adjudication.

## Prohibitions

- Revises the prohibitions regarding the practice of nursing home administration and the licenses needed to engage in that practice, including specifying that a person must *knowingly* violate a prohibition to be subject to a penalty.

## Nursing home notices about administrators

- Revises requirements regarding information that nursing home operators must report to the Board about nursing home administrators.

## Background checks

(R.C. 173.27 and 173.38)

### Conditional employment

The bill requires the Director of Aging or other hiring entity to request a criminal records check before conditionally employing a person in (1) a community-based long-term care position involving direct-care services for consumers or (2) a state or regional long-term care ombudsman position. Under conditional employment, an applicant may begin employment even though the results of a criminal records check have not yet been received. Current law allows the criminal records check to be requested up to five business days after conditional employment begins.

## **Procedures for conducting checks**

(R.C. 173.38 and 5164.342)

The bill eliminates the option of using the Department of Medicaid's criminal records checks procedures (in lieu of the Department of Aging's procedures) for direct-care positions under a Department of Aging-administered program, such as PASSPORT, when the hiring entity for the program is also a provider of home and community-based services under a Department of Medicaid-administered waiver program. However, the bill retains the authority of hiring entities under a Medicaid-administered waiver program to use the Department of Aging's procedures. The Department of Aging's procedures require investigation of whether a person has been found eligible for intervention in lieu of conviction; the Department of Medicaid's procedures do not.

## **Dementia training materials and program support**

(R.C. 173.04)

Current law requires the Department of Aging to disseminate on its website training materials for licensed health care and social service personnel who provide care for persons who have Alzheimer's disease. To the extent that funds are available, the Department also must administer respite care programs for persons with Alzheimer's disease to provide short-term, temporary care for the person in the absence of the person's regular caregiver. The bill expands these topics and programs to include dementia generally (rather than only Alzheimer's disease).

## **Notice of certification or discipline decisions**

(R.C. 173.391)

Except in certain specified circumstances, current law requires the Department of Aging to hold a hearing where there is a dispute regarding (1) a decision not to certify a provider of community-based long-term care services or (2) a disciplinary action taken against a provider. In cases where a hearing is not required, the bill requires the Department to notify the provider of the decision not to certify or the disciplinary action the Department is taking. Under current law, notifying the provider is permissive rather than mandatory.

## **Exception to hearing regarding certification**

(R.C. 173.391)

Under current law, the Department of Aging is not required to hold a hearing when there is a dispute between the Department and a provider of community-based long-term care services regarding the Department's decision not to certify the provider or to take disciplinary action against the provider if the provider's Medicaid provider agreement has been (1) suspended because of a disqualifying indictment or (2) denied or revoked because the provider or its owner, officer, authorized agent, associate, manager, or employee has been convicted of an offense that caused the provider agreement to be suspended because of a disqualifying indictment. The bill provides that the hearing is not required regardless of whether the provider agreement was suspended because of a disqualifying indictment or a

credible allegation of fraud. (See “**Suspension of provider agreements and payments**” in the Department of Medicaid’s section of this analysis below.)

## **Home-delivered meals**

(R.C. 173.30 and 173.525; Section 209.50)

The bill prohibits the Department of Aging from awarding a grant under Title III of the Older Americans Act of 1965 to a provider of home-delivered meals if the provider offers snacks in addition to breakfast, lunch, or dinner meals provided to recipients unless the provider (1) offers a recipient not more than five snack choices at a time, (2) provides a recipient with the amount of calories in, and the sugar and sodium contents of, each snack offered to the recipient, and (3) provides a recipient not more than one snack per each breakfast, lunch, and dinner meal that is provided to the recipient at the same time as the snacks. The bill also requires entities that provide home-delivered meals under the PASSPORT program to comply with these requirements. “Snack” is defined as a small portion of food or drink or a light meal that is usually consumed before or after a breakfast, lunch, or dinner meal.

The bill sets the payment rates for home-delivered meals provided under the PASSPORT program during FYs 2020 and 2021 at the following amounts:

- For each meal delivered daily on a per-meal delivery basis by a volunteer or employee of the provider, \$7.19;
- For each meal delivered in a chilled or frozen format on a weekly delivery basis by a volunteer or employee of the provider, \$6.99;
- For each meal delivered in a chilled or frozen format on a weekly basis by a common carrier used by the provider, \$6.50.

## **Assisted Living and PASSPORT payment rates**

(Sections 209.40 and 209.60)

The bill requires that the payment rates for each tier of assisted living services provided under the Medicaid-funded and state-funded components of the Assisted Living Program during FY 2020 and FY 2021 be at least 2.7% higher than the rates for the services in effect on June 30, 2019.

The bill also requires that the base and unit payment rates for home care attendant, personal care, and waiver nursing services provided under the Medicaid-funded and state-funded components of the PASSPORT program during FY 2020 and FY 2021 be at least 2.7% higher than the rates for the services in effect on June 30, 2019.

## Board of Executives of Long-Term Services and Supports

(R.C. Chapter 4751 (primary); R.C. 109.572, 149.43, 1347.08, 2925.01, 4743.02, 4776.01, 4776.20, and 5903.12; Section 747.30)

### Health services executive license

The bill permits the Board of Executives of Long-Term Services and Supports to issue health services executive licenses. The license is needed to use (1) the title “licensed health services executive” or “health services executive,” (2) the acronym “LHSE,” “L.H.S.E.,” “HSE,” or “H.S.E.” after a person’s name, or (3) any other words, letters, signs, cards, or devices that tend to indicate or imply that a person holds such a license. Whoever knowingly takes any of those actions without the license may be fined, imprisoned, or both. The bill does not require an individual to hold the license to practice nursing home administration or serve in a leadership position or direct the practices at an institution or community-based long-term services and supports setting.

To obtain a health services executive license, an individual must:

- Submit to the Board a completed application;
- Hold a nursing home administrator license;
- Obtain the health services executive qualification through the National Association of Long-Term Care Administrator Boards;
- Comply with the bill’s criminal records check requirements;
- Pay to the Board a license fee of \$100.

A health services executive license certifies that the licensee has met the requirements for the license and is a licensed health services executive while the license is valid.

### Standard nursing home administrator license

The bill revises the requirements for a standard nursing home administrator license as follows:

	Current law	The bill
<b>Application</b>	Submit an application on forms the Board prescribes.	Submit a completed application in accordance with the Board’s rules.
<b>Preliminary fee</b>	Pay a \$50 application fee.	Pay a \$50 administrator-in-training fee if the individual is required by the Board’s rules to serve as a nursing home administrator in training.
<b>Character</b>	Submit evidence of good moral	Be of good moral character.

	Current law	The bill
	character and suitability.	
<b>Age</b>	Be at least 18.	Be at least 21.
<b>Education and work experience</b>	Complete educational requirements and work experience satisfactory to the Board.	Successfully complete educational requirements and work experience specified in the Board's rules, including required experience obtained as a nursing home administrator in training.
<b>Criminal records check</b>	No provision.	Comply with the bill's criminal records check requirements and not have a criminal record that the Board determines makes the individual ineligible for the license.
<b>Additional requirements</b>	No provision.	Satisfy any additional requirements that the Board is permitted to prescribe in rules.

Current law provides that a standard nursing home administrator license certifies that the applicant has met the statutory licensure requirements and is entitled to practice as a licensed nursing home administrator. The bill adds that the license also indicates that the licensee has met any rules the Board adopts.

### **Out-of-state nursing home administrator license**

The bill revises the requirements that an individual holding a valid license from another state must meet to obtain a nursing home administrator license in Ohio as follows:

	Current law	The bill
<b>Out-of-state licensure</b>	Have a valid license issued by the proper authorities of any other state and submit evidence satisfactory to the Board that the other state (1) maintained a system and standard of qualifications and examinations for a nursing home administrator license that were substantially equivalent to those required in Ohio at the time the other state issued the license and (2) gives	Is legally authorized to practice nursing home administration in another state.

	Current law	The bill
	similar recognition to nursing home administrators licensed in this state.	
<b>Application</b>	No provision.	Submit to the Board a completed application for the license in accordance with the Board's rules.
<b>Age</b>	No provision.	Be at least 21.
<b>Education</b>	No provision.	Hold at least a bachelor's degree from an accredited educational institution.
<b>Character</b>	No provision.	Be of good moral character.
<b>Criminal records check</b>	No provision.	Comply with the bill's criminal records check requirements and not have a criminal record that the Board determines makes the individual ineligible for the license.
<b>Licensure exam</b>	Is not required to take the licensure examination.	Pass the licensure examination.
<b>Fee</b>	Pay a \$150 fee.	Pay a \$250 fee.
<b>Additional requirements</b>	No provision.	Satisfy any additional requirements that the Board is permitted to prescribe in rules.

The bill requires that a nursing home administrator license certifies that the individual to whom it was issued has met the requirements of state statutes and any rules and is authorized to practice nursing home administration while the license is valid.

### **Temporary nursing home administrator license**

The bill revises the requirements for temporary nursing home administrator licenses and their duration as follows:

	Current law	The bill
<b>Reason temporary license is requested</b>	To temporarily fill a position of nursing home administrator	A nursing home operator has requested that the Board issue a

	vacated by reason of death, illness, or other unexpected cause.	temporary license to authorize an individual to temporarily practice nursing home administration at the nursing home because of a vacancy in the position of nursing home administrator resulting from a death, illness, or other unexpected cause.
<b>Age</b>	No provision.	Be at least 21.
<b>Character</b>	No provision.	Be of good moral character.
<b>Criminal records check</b>	No provision.	Comply with the bill's criminal records check requirements and not have a criminal record that the Board determines makes the individual ineligible for the license.
<b>License fee</b>	Pay a \$100 fee.	Same.
<b>Additional requirements</b>	No provision.	Satisfy any additional requirements that the Board is permitted to prescribe in rules.

Under the bill, a temporary license is to be valid for a period of time the Board is to specify on the license, not to exceed 180 days (instead of a period not to exceed 180 days as under current law). The Board is required to adopt rules regarding renewal applications. The Board is to specify the period of time for which a renewed temporary license is valid, not to exceed the difference between 180 days and the number of days for which the original temporary license was valid. A renewed temporary license cannot be further renewed. If an individual holding a temporary license intends to continue to practice nursing home administration after the temporary license expires, the individual must obtain a standard nursing home administrator license.

The bill requires a temporary nursing home administrator license to certify that the individual to whom it was issued (1) has met the requirements of state statutes governing the practice of nursing home administration and any rules the Board adopts and (2) is authorized to practice nursing home administration while the temporary license is valid.

## **Other licensing changes**

### **Criminal records checks**

Continuing law establishes a process by which individuals seeking various types of occupational licenses undergo a criminal records check conducted by the Bureau of Criminal

Identification and Investigation. The bill requires individuals seeking a nursing home administrator license (standard, out-of-state, or temporary) or a health services executive license to utilize this process. The Board determines whether the results of a criminal records check disqualify an individual for a license.

### **Renewals and reinstatements of health services executive licenses**

The bill provides that a health services executive license is valid for one year and may be renewed and reinstated in accordance with procedures the bill establishes. To renew a license, a licensed health services executive must:

- Submit to the Board the completed renewal application;
- Pay to the Board a \$50 license renewal fee;
- Submit to the Board satisfactory evidence of having attended the continuing education programs required in rules.

If a health services executive license is not renewed before it expires, the individual may apply for reinstatement. The Board must reinstate the license if the individual meets the renewal requirements within one year after the license's expiration date.

### **Renewals and reinstatements of nursing home administrator licenses**

Under current law, an individual who holds a valid standard license as a nursing home administrator is to be immediately registered with the Board and issued a certificate of registration. The individual must annually apply to the Board for a new certificate of registration and pay a \$300 registration fee. The license of a nursing home administrator who fails to comply with these requirements automatically lapses.

The bill eliminates annual certificates of registration and instead makes standard and out-of-state nursing home administrator licenses valid for one year and establishes renewal and reinstatement processes.

Under the bill, if a licensed nursing home administrator intends to continue to practice nursing home administration without interruption after the administrator's license expires, the administrator must apply for a renewed license. The Board is to renew the license if the administrator submits a renewal application, pays the \$300 renewal fee, submits satisfactory evidence of meeting the continuing education requirements, and satisfies any other requirements required in rules.

If a nursing home administrator license is not renewed before it expires, the individual who held the license can apply for reinstatement. The Board is to reinstate the license if the individual meets the renewal requirements within one year after the license expired.

### **Continuing education**

Current law requires the Board to approve continuing education courses for nursing home administrators. The bill extends this requirement to licensed health services executives.

## **Reissuance and restoration of licenses**

The bill revises the Board's license reissuance authority by permitting the Board to reissue a nursing home administrator license (standard, out-of-state, or temporary) or health services executive license to an individual (1) whose license was revoked at least one year before the individual applies for reissuance or (2) who pleaded guilty to a felony.

## **Child support enforcement requirements**

Continuing law requires that an occupational or professional licensing board, at the request of a child support enforcement agency (CSEA), deny, not renew, or suspend a license if the individual who seeks or holds the license is an obligor under a child support order and is subject to a final and enforceable determination of default or has failed to comply with a subpoena or warrant issued by a court or CSEA with respect to a proceeding to enforce a child support order. The bill clarifies that this requirement applies to temporary nursing home administrator licenses.

## **Reporting changes of address**

Current law requires each individual who holds a standard or temporary nursing home administrator license to report to the Board within ten days of any change in the individual's residential mailing address or place of employment. The bill revises this requirement by also requiring disclosure of the name and address of each long-term services and supports setting at which the individual serves in a leadership position or directs the practices of others.

## **Display of licenses**

The bill requires every licensed nursing home administrator (standard, out-of-state, and temporary) and every licensed health services executive to display their licenses in the places at which they practice nursing home administration and the long-term services and supports settings at which they serve in a leadership position or direct the practices of others. Current law requires every person holding a valid nursing home administrator license to display the license in the nursing home that is the person's principal place of employment and keep on hand the current registration certificate.

## **Verification of licensure status**

The bill permits a licensed nursing home administrator (standard, out-of-state, or temporary) and a licensed health services executive to request that the Board provide to a licensing board or agency of another state verification of the license status and other related information in the Board's possession. The Board is required to provide the requested information if the licensee pays to the Board a fee that must be established in rules.

## **Complaints**

The bill replaces current law requirements regarding complaints regarding nursing home administrators and health services executives with more detailed provisions.

The bill permits any person to submit to the Board a complaint that the person reasonably believes that another person has violated statutes and rules governing nursing home administrators and health services executives. The complaints are not subject to

discovery in any civil action. Nor are they public records or subject to inspection under Ohio law regarding personal information systems. The Board is required to protect the confidentiality of each complainant. However, the Board may disclose the identity of a complainant to a government agency that investigates or adjudicates alleged violations of statutes or rules. That agency must protect the information's confidentiality.

The Board must receive, investigate, and take appropriate action with respect to any submitted complaint and any other credible information the Board possesses that indicates a person may have violated these requirements. In conducting an investigation, the Board is permitted to (1) question witnesses, (2) conduct interviews, (3) inspect and copy any books, accounts, papers, records, or other documents, (4) issue subpoenas, and (5) compel the attendance of witnesses and the production of documents and testimony. The bill prohibits a Board member who supervises an investigation from participating in any adjudication arising from the investigation. The Board may disclose any information it receives as part of an investigation to a government agency that investigates or adjudicates alleged violations of statutes or rules.

### **Disciplinary action**

The bill permits, rather than requires as under current law, the Board to take certain disciplinary actions and revises the reasons for taking disciplinary action and the types of disciplinary actions that may be taken for individuals who hold a nursing home administrator license (standard, out-of-state, or temporary) or a health services executive license. The following table compares the reasons the Board is to take disciplinary action against an individual under current law and the bill:

	Current law	The bill
<b>Standards and requirements</b>	Substantially failing to conform to the Board's standards for nursing home administrators.	Failing to satisfy any requirement established by state statutes or rules that must be satisfied to obtain a license.
<b>Violation of law regarding practice</b>	Having willfully or repeatedly violated any of the provisions of state statutes or rules governing the practice of nursing home administration.	Violating, or failing to comply with a requirement of, state statutes or rules regarding the practice of nursing home administration.
<b>Unfit or incompetent</b>	Being unfit or incompetent by reason of negligence, habits, or other causes.	Being unfit or incompetent to practice nursing home administration, serve in a leadership position at a long-term services and supports setting, or direct the practices of others in such a setting by reason of negligence, habits, or other causes, including the

	Current law	The bill
		habitual or excessive use or abuse of drugs, alcohol, or other substances.
<b>Health and safety</b>	Having willfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the nursing home in which the individual is the administrator.	Acting in a manner inconsistent with the health and safety of (1) the residents of the nursing home at which the individual practices nursing home administration or (2) the consumers of services and supports provided by a long-term services and supports setting at which the individual serves in a leadership position or directs the practices of others.
<b>Criminal record</b>	Having been convicted of a felony in a court of competent jurisdiction in this or another state.	Having been convicted of, or pleaded guilty to, either of the following in a court of competent jurisdiction in this or another state: (1) a felony or (2) a misdemeanor offense of moral turpitude.
<b>Fraud in seeking license</b>	Being guilty of fraud or deceit in the individual's admission to practice nursing home administration.	Making a false, fraudulent, deceptive, or misleading statement in seeking to obtain, or obtaining, a license.
<b>Fraud in practice</b>	Being guilty of fraud or deceit in the practice of nursing home administration.	Making a fraudulent misrepresentation in attempting to obtain, or obtaining, money or anything of value in the practice of nursing home administration or while serving in a leadership position at a long-term services and supports setting or directing the practice of others in such a setting.
<b>Code of ethics</b>	No provision.	Substantially deviating from the Board's code of ethics.
<b>Discipline by another agency</b>	No provision.	Having had another health care licensing agency take any of the

	Current law	The bill
		following actions against the individual for any reason other than nonpayment of a fee: (1) denial, refusal to renew or reinstatement, limitation, revocation, or suspension, or acceptance of the surrender of, a license or other authorization to practice, (2) imposition of probation, (3) issuance of a censure or other reprimand.
<b>Investigations, subpoenas, and disciplinary actions</b>	No provision.	Failing to (1) cooperate with the Board's investigation, (2) respond to or comply with the Board's subpoena, or (3) comply with any disciplinary action taken by the Board.

The bill permits the Board to take any of the following disciplinary actions:

- Deny a nursing home administrator license (standard, out-of-state, or temporary) or a health services executive license;
- Suspend a license;
- Revoke a license either permanently or for a specified time period;
- Place a limitation on a license;
- Place a licensee on probation;
- Issue a written reprimand of a licensee;
- Impose a civil penalty, fine, or other sanction specified in the Board's rules.

The bill requires the Board to take disciplinary action in accordance with the Administrative Procedure Act, except that it may enter into a consent agreement with an individual to resolve an alleged violation instead of making an adjudication regarding the alleged violation.

## **Prohibitions**

The bill revises the prohibitions regarding the practice of nursing home administration. The bill provides that a person must *knowingly* take any of the prohibited actions to be subject to penalty. Specifically, it prohibits any person from knowingly:

- Operating a nursing home unless it is under the supervision of an administrator whose principal occupation is nursing home administration or hospital administration and who is a licensed nursing home administrator or licensed temporary nursing home administrator;
- Practicing or offering to practice nursing home administration unless the person is a licensed nursing home administrator or licensed temporary nursing home administrator;
- Using any of the following unless the person is a licensed nursing home administrator:
  - The title “licensed nursing home administrator,” “nursing home administrator,” “licensed assistant nursing home administrator,” or “assistant nursing home administrator.”
  - The acronym “LNHA,” “L.N.H.A.,” “NHA,” “N.H.A.,” “LANHA,” “L.A.N.H.A.,” “ANHA,” or “A.N.H.A.” after the person’s name.
  - Any other words, letters, signs, cards, or devices that tend to indicate or imply that the person is a licensed nursing home administrator.
- Using any of the following unless the person is a licensed temporary nursing home administrator:
  - The title “licensed temporary nursing home administrator,” “temporary nursing home administrator,” “licensed temporary assistant nursing home administrator,” or “temporary assistant nursing home administrator.”
  - The acronym “LTNHA,” “L.T.N.H.A.,” “TNHA,” “T.N.H.A.,” “LTANHA,” “L.T.A.N.H.A.,” “TANHA,” or “T.A.N.H.A.” after the person’s name.
  - Any other words, letters, signs, cards, or devices that tend to indicate or imply that the person is a licensed temporary nursing home administrator.
- Selling, fraudulently furnishing, fraudulently obtaining, or aiding or abetting another to do so, a nursing home administrator license or temporary nursing home administrator license;
- Otherwise violating any of the provisions of state statutes governing the practice of nursing home administration or the Board’s rules.

The bill does not change the penalties for violating the prohibitions: a fine not exceeding \$500 for a first offense and the same fine, imprisonment for not more than 90 days, or both for a subsequent offense.

### **Nursing home notices about administrators**

Under the bill, every nursing home operator must report to the Board the name and license number of each licensed nursing home administrator (standard, out-of-state, and temporary) who practices nursing home administration at the nursing home not later than ten days after the date the administrator (1) begins to practice or (2) ceases to practice at the nursing home. Current law requires nursing home operators to report after an administrator is no longer so engaged.

## **Reorganization of statutes**

The bill relocates and reorganizes many provisions of the Revised Code Chapter governing the Board to modernize and clarify those statutes. The bill provides that the Board is not required to amend any rule for the sole purpose of updating the citation in the Ohio Administrative Code to the rule's authorizing statute. Those citations can be updated as the Board amends the rules for other purposes.

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## DEPARTMENT OF AGRICULTURE

### Amusement rides

- Increases by \$75 the permit fee for an amusement ride (from \$150 to \$225).
- Increases by \$50 the annual inspection and reinspection fee per ride for kiddie rides (from \$100 to \$150), roller coasters (from \$1,200 to \$1,250), aerial lifts or bungee jumping facilities (from \$450 to \$500), and other rides (from \$160 to \$210).
- Increases from \$105 to \$154 the maximum amount of the fee for the inspection and reinspection of inflatable rides that the Director of Agriculture may establish by rule.
- Requires the existing Advisory Council on Amusement Ride Safety, prior to submitting findings or recommendations to the Director, to vote on whether to submit the findings or recommendations.
- Specifies that the Advisory Council may submit only those findings or recommendations that receive a majority vote.
- Requires the Director, by November 1, 2019, and annually thereafter, to submit a detailed financial report to the Speaker of the House and the Senate President regarding the amusement ride safety program.

### Wine tax diversion to Ohio Grape Industries Fund

- Extends through June 30, 2021, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.

### Promotion of Ohio agricultural goods in alcohol

- Authorizes the Department of Agriculture to promote the use of Ohio-produced agricultural goods grown for inclusion in beer, cider, or spirituous liquor through promotional programs.

### Voluntary nutrient management plans – soil test results

- Increases from three years to four years the amount of time that soil test results are valid for purposes of inclusion in a voluntary nutrient management plan approved by the Director.

### Propane marketing program

- Establishes the Propane Marketing Program.
- Requires the Director to establish a Propane Council composed of members appointed by the Director, including propane retailers and propane wholesale distributors.
- Requires the Council to adopt procedures by which Ohio propane retailers may propose, develop, and operate a marketing program.

- Establishes an assessment on the volume of odorized propane purchased by a retailer from a wholesale distributor that is not more than 0.005 mills per gallon of odorized propane purchased.
- Requires the Director to perform certain duties and responsibilities, including monitoring the actions of the Council to ensure that a Propane Marketing Program is self-supporting.
- Establishes procedures for propane retailers to apply for and receive a refund for assessments levied for the program.

## Amusement rides

### Permit and inspection fees

(R.C. 1711.53)

The bill:

- Increases by \$75 the permit fee for an amusement ride (from \$150 to \$225);
- Increases from \$105 to \$154 the maximum amount of the fee for inspection and reinspection of inflatable rides that the Director of Agriculture may establish by rule; and
- Increases by \$50 the annual inspection and re-inspection fee per ride as illustrated below:

Type of ride	Fee amount under current law	Fee amount under the bill
Kiddie ride	\$100	\$150
Roller coaster	\$1,200	\$1,250
Aerial lift or bungee jumping facility	\$450	\$500
Other rides	\$160	\$210

### Advisory Council

(R.C. 1711.52)

Currently, the Advisory Council on Amusement Ride Safety must study any subject pertaining to amusement ride safety, including administrative, engineering, and technical subjects, and make findings and recommendations to the Director. Additionally, prior to the Director adopting or amending any rules regarding amusement ride safety, the Advisory Council

must study the proposed rules, advise the Director, and make findings and recommendations to the Director.

The bill requires the Advisory Council to vote on whether to submit findings or recommendations to the Director. The Advisory Council may submit only those findings or recommendations that receive a majority vote.

### **Safety program financial report**

(R.C. 1711.532)

The bill requires the Director, by November 1, 2019, and annually thereafter, to submit a detailed financial report to the Speaker of the House and the Senate President that includes:

- The revenue collected from fees for amusement ride permits, inspections, and reinspections and any other revenue collected for the Department of Agriculture's amusement ride safety program applicable to the 12 months preceding the report's submission;
- Expenses relating to the Department's amusement ride safety program in the 12 months preceding the report's submission;
- Any proposed changes to the amusement ride fee schedule (including annual permit fees, inspection fees, and reinspection fees) that the Director determines is necessary for issuing permits and conducting amusement ride inspections and reinspections;
- The amount expended from any appropriation made for the Department's amusement ride safety program applicable to the 12 months preceding the report's submission;
- Any additional revenue that the Director determines is necessary to meet the expenses of the amusement ride safety program during the 12 months immediately following the submission of the report; and
- Any other information that the Director determines is necessary to include in the report.

### **Wine tax diversion to Ohio Grape Industries Fund**

(R.C. 4301.43)

The bill extends through June 30, 2021, 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. The remainder is credited to the GRF.

### **Promotion of Ohio agricultural goods in alcohol**

(R.C. 901.172)

The bill authorizes the Department of Agriculture to establish the following programs to promote the use of Ohio-produced agricultural goods grown for inclusion in beer, cider, and spirituous liquor:

- The “Ohio-Proud Craft Beer” program for beer and cider; and
- The “Ohio Proud Craft Spirit” program for spirituous liquor.

The Department’s Division of Markets must develop logotypes (similar to the Department’s “Ohio Proud” logo for agricultural goods) and issue them to beer, cider, and spirituous liquor producers certified under the programs. The Department must adopt rules establishing reasonable fees and criteria for participation in the programs. The fees must be credited to the General Revenue Fund and used to finance the programs.<sup>8</sup>

## **Voluntary nutrient management plans – soil test results**

(R.C. 905.31)

The bill increases from three years to four years the time that soil test results are valid for inclusion in a voluntary nutrient management plan approved by the Director. Current law authorizes a person who owns or operates agricultural land to operate under a voluntary nutrient management plan, which is a plan for the application of commercial fertilizer on land. Operating in accordance with a plan provides the person applying fertilizer with an affirmative defense in a private civil action for damages caused by the application of fertilizer.

## **Propane Marketing Program**

(R.C. 936.01, 936.02, 936.03, 936.04, 936.05, 936.06, 936.07, 936.08, 936.09, 936.10, 936.11, 936.12, 936.13, and 936.99)

The bill authorizes the creation of the Propane Marketing Program by Ohio propane retailers. Propane is liquefied petroleum gas, a material with a vapor pressure not exceeding that of commercial propane composed predominately of the following hydrocarbons or mixtures: (1) propane, (2) propylene, (3) butane, and (4) butylene.

### **Background**

Ohio law provides a mechanism by which producers of certain agricultural commodities may establish programs to promote the sale and use of their products, develop new uses and markets for them, improve the methods of distributing them to consumers, and standardize their quality for specific uses. These agricultural commodity marketing programs (including Ohio Beef Council and Ohio Egg Marketing Program) are established by producers through the Department. They are funded through assessments on the producers of the commodities. Additionally, the General Assembly has enacted legislation establishing separate Grain and Soybean Marketing Programs.

### **Creation and administration of program**

The bill:

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<sup>8</sup> R.C. 901.172.

- Requires the Director to establish a Propane Council composed of members appointed by the Director, including propane retailers (engaged primarily in the sale of odorized propane to the ultimate consumer or to a retail propane dispenser) and wholesale distributors (primary business involves the sale of propane to a retailer);
- Requires the Council to adopt procedures by which Ohio propane retailers may propose, develop, and operate a marketing program to do specified tasks, including promoting the safe and efficient use of propane and demonstrating to the general public the importance and economic significance of propane;
- Establishes requirements and procedures by which propane retailers may create a Propane Marketing Program, including doing both of the following:
  - Establishing an assessment on the volume of odorized propane purchased by a retailer from a wholesale distributor that is not more than .005 mills per gallon of odorized propane purchased; and
  - Establishing procedures for retailers to vote on the creation of a marketing program.
- Requires the Director to perform certain duties and responsibilities, including monitoring the actions of the Council to ensure that a Propane Marketing Program is self-supporting;
- Establishes procedures for propane retailers to apply for and receive a refund for assessments levied for the Propane Marketing Program;
- Requires the Council to deposit assessments either in a state fund created by the Council or a private bank account provided that certain requirements are met;
- Establishes requirements and procedures for the temporary suspension or termination of the propane marketing program; and
- Prohibits a propane retailer from knowingly failing or refusing to withhold or remit any assessment levied by the Council and specifies that a violator is guilty of a fourth degree misdemeanor.

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## OHIO AIR QUALITY DEVELOPMENT AUTHORITY

- Abolishes the obsolete Advanced Energy Research and Development Fund, which was used to provide grants for advanced energy projects.
- Abolishes the obsolete Advanced Energy Research and Development Taxable Fund, which was used to provide loans for the projects.

### Advanced energy projects program funds

(R.C. 166.30, 3706.27, and 3706.30, all repealed, with conforming changes in R.C. 122.075, 166.01, 3706.25, 3706.29, and 4313.02)

The bill abolishes both of the following obsolete funds:

1. The Advanced Energy Research and Development Fund, which was used to provide grants for advanced energy projects. The fund has not had a balance of more than a penny for ten years.

2. The Advanced Energy Research and Development Taxable Fund, which was used to provide loans for these projects. Nearly all of the money in the fund, \$7.8 million, was transferred out of the fund in FY 2018.

Because these funds are abolished, the bill also eliminates:

1. The Ohio Air Quality Development Authority's power to issue grants and provide loans for eligible advanced energy projects from the above funds; and

2. The requirement that the Authority conduct minority outreach activities for the eliminated grant and loan program for advanced energy projects.

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## ATTORNEY GENERAL

### Organized Crime Investigations Commission

- Allows the Organized Crime Investigations Commission to reimburse political subdivisions for employment related costs, other than workers' compensation, of political subdivision employees who serve as directors and investigatory staff for an organized crime task force under the Commission.

### Contacting persons after accident or crime

- Prohibits health care practitioners and persons paid money or anything of value to solicit employment on behalf of another from directly contacting any party to a motor vehicle accident, any victim of a crime, or any witness to a motor vehicle accident or crime, until 30 days after the accident or crime.
- Requires the Attorney General, if the Attorney General believes a health care practitioner or person described in the previous bullet point violated this prohibition, to issue a notice and conduct a hearing and impose a fine of \$5,000 if a violation actually occurred.
- Increases the fine to \$25,000 if there is a subsequent violation of the prohibition.
- If there are three separate violations and the health care practitioner or person holds a license issued by an agency, requires the Attorney General to notify that agency of the three violations and the agency to suspend the health care practitioner's or person's license without a prior hearing and afford a hearing on request.

### Organized Crime Investigations Commission

(R.C. 177.02)

The bill allows the Organized Crime Investigations Commission to reimburse a political subdivision for costs incurred by the political subdivision as an employer while the political subdivision's employee is serving as a director or investigator on an organized crime task force established by the Commission. Employment costs that the Commission may reimburse include, but are not limited to, the employee's compensation and the employer's contributions to retirement funds. If the Commission reimburses a political subdivision for employment costs, it must do so from the Organized Crime Commission Fund created under continuing law.<sup>9</sup>

Under continuing law, the Commission establishes an organized crime task force and selects the task force director from a local law enforcement agency within the task force's investigatory jurisdiction or from the Bureau of Criminal Identification and Investigation. The director selects investigatory staff from the prosecutors' offices and local law enforcement

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<sup>9</sup> R.C. 177.011, not in the bill.

agencies within the task force's jurisdiction or from the Bureau. During the task force's investigation, the director and investigators are considered employees of the state and Commission for purposes of workers' compensation premiums and tort liability. For all other employment related purposes, the director and investigators remain employees of the state or local agency from which they were selected. Current law requires the Commission to pay for necessary and actual expenses but it is silent regarding compensation and other employment costs incurred by the employing agency.

## **Contacting persons after accident or crime**

(R.C. 1349.05)

The bill prohibits (1) certain health care practitioners, with the intent to obtain professional employment, or (2) persons who have been paid or given, or were offered to be paid or given, money or anything of value to solicit employment on behalf of another (hereafter "specified person"), from directly contacting in person, by telephone, or by electronic means any party to a motor vehicle accident, any victim of a crime, or any witness to a motor vehicle accident or crime until 30 days after the accident or crime. Any communication to solicit employment must be sent via the U.S. Postal Service.

If the Attorney General believes that a health care practitioner or specified person has violated this prohibition, the Attorney General must issue a notice and conduct a hearing in accordance with R.C. Chapter 119. If, after the hearing, the Attorney General determines that a violation occurred, the Attorney General must impose a fine of \$5,000 for each violation. If the Attorney General determines that a health care practitioner or specified person has committed a subsequent violation, the Attorney General must impose a fine of \$25,000 for each violation.

After determining that a health care practitioner or specified person has committed a violation on three separate occasions, and if that health care practitioner or specified person holds a license, the Attorney General must notify the licensing agency in writing. After receiving that notice, the agency must suspend the health care practitioner's or specified person's license without a prior hearing and must afford the health care practitioner or specified person a hearing on request in accordance with R.C. 119.06.

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## AUDITOR OF STATE

### Costs of audits

- Allows the Auditor of State to determine which costs of an audit of a state agency or local public office will be charged to the agency or office.
- Specifies that costs of an audit include both direct and indirect costs.
- Allows the Auditor of State to offset charges billed to a local public office using resources from the Local Government Audit Support Fund, the General Revenue Fund, or other state sources the Auditor has for this purpose.

### Local Government Audit Support Fund

- Creates the Local Government Audit Support Fund to be used by the Auditor of State to offset the cost of audits of local public offices.
- Requires the OBM Director to credit monthly a portion of total tax revenue credited to the General Revenue Fund equal to  $\frac{1}{12}$  of the annual fiscal appropriation from the Local Government Audit Support Fund.
- Requires the Director to develop a schedule identifying the specific tax revenue sources to be used to make the monthly transfers.

### Costs of audits

(R.C. 117.13)

The bill allows the Auditor of State to determine which audit costs to recover from a state agency or local public office. Currently, the Auditor collects the “costs of all audits” from a state agency and certain, specified costs (compensation paid to assistant auditors and their expenses, costs of experts, and others) from a local public office. The bill also specifies that the costs of an audit include both direct and indirect costs. The Auditor may offset the costs of audits of local public offices using resources from the Local Government Audit Support Fund (created under the bill – see below), GRF dollars, or other state sources provided to the Auditor for this purpose.

Regarding the rates to be charged to state agencies and local public offices for an audit, the bill requires the Auditor to determine and publish those rates annually instead of establishing those rates by rule as under current law. The bill also requires the rates to take into consideration federal cost recovery guidelines.

Instead of charging a local public office’s audited funds as under current law, the bill allows the public office’s fiscal officer to allocate money from appropriate funds using a methodology provided by the Auditor.

## **Local Government Audit Support Fund**

(R.C. 131.511 and 5747.461)

The bill creates the Local Government Audit Support Fund in the state treasury to be used by the Auditor to offset the costs of audits of local public offices. On a monthly basis, the Director of OBM must credit a portion of total tax revenue credited to GRF equal to  $\frac{1}{12}$  of the annual fiscal appropriation from the Local Government Audit Support Fund. The Director must develop a schedule identifying the specific tax revenue sources to be used to make the monthly transfers and may revise the schedule as necessary.

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## OFFICE OF BUDGET AND MANAGEMENT

- Provides that records or documents received by the Office of Internal Audit in the Office of Budget and Management (OBM) for the purpose of conducting internal audits of state agencies that are otherwise exempt from disclosure under state or federal law are not public records.
- Clarifies that infrastructure records that are an internal audit report or work paper of the Office are exempt from disclosure as a public record.
- Changes terminology in the Controlling Board law governing the expenditure of excess money from certain state funds.

### OBM internal audit and confidential documents

(R.C. 126.48)

The bill provides that any internal audit report produced by the Office of Internal Audit in the Office of Budget and Management (OBM), and all work papers of the internal audit, are confidential and not public records until the final report of the findings and recommendations has been submitted. The bill adds that any record or document necessary for the performance of an internal audit received by OBM's Office of Internal Audit, that is otherwise exempt from disclosure as a public record under state or federal law, is also exempt from disclosure by the Office. Current law provides only that a preliminary or final report of an internal audit's findings and recommendations is not a public record until the final report is submitted. The bill also clarifies that any internal audit report or work paper that meets the definition of a security record or infrastructure record under current law is not a public record.

### Expenditure of excess revenue

(R.C. 131.35)

The bill changes terminology in the law governing the expenditure of excess money received into certain state funds from which the Controlling Board may make transfers. Current law requires that excess "funds" received into those state "funds" be spent according to certain requirements, including when an appropriation can be increased or transferred. Because the term "fund" is defined in R.C. Chapter 131 and to clarify the terms used in the amended statute, under the bill, these requirements would apply to "revenue" received into these state funds.

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## **CAPITAL SQUARE REVIEW AND ADVISORY BOARD**

- Exempts buildings that are under the management and control of the Capitol Square Review and Advisory Board from the Ohio Facilities Construction Commission's authority.

### **OFCC authority**

(R.C. 123.21)

The bill exempts from the Ohio Facilities Construction Commission's (OFCC) authority buildings that are under the management and control of the Capitol Square Review and Advisory Board (CSRAB). Under continuing law, OFCC administers the design and construction improvements for state agency facilities. CSRAB is responsible for maintaining and operating the Capitol Square complex and its facilities.<sup>10</sup>

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<sup>10</sup> R.C. 105.41 and 123.20, not in the bill.

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## DEPARTMENT OF COMMERCE

### Division of Financial Institutions: multistate licensing system

- Authorizes the Superintendent of Financial Institutions to participate in a multistate licensing system for all license or registration types overseen by the Superintendent.

### Division of Securities: intrastate equity crowdfunding

- Permits *intrastate* equity crowdfunding, to be known as “OhioInvests offerings,” under certain circumstances.
- Specifies eligibility requirements for persons conducting an OhioInvests offering.
- Prohibits an unaccredited investor from purchasing more than \$10,000 in securities in a 12-month period in connection with OhioInvests offerings.
- Requires that the offerings be made exclusively through an intermediary consisting of a website operated by a “portal operator.”
- Requires portal operators to provide certain disclosures to investors.
- Requires portal operators to maintain and make available to the Division of Securities specified records.
- Subjects portal operators to regulation and enforcement, including the same regulation and enforcement by the Division that exists for licensees in Ohio that hold individual dealer, salesperson, investment advisor, or an investment advisor representative license.
- Authorizes the Division to order payment of an administrative penalty for violations of the Securities Law related to OhioInvests offerings and purchasers of the securities to bring an individual or class action to recover specified penalties for those violations.
- Expressly authorizes port authorities and community improvement corporations to act as portal operators for the offering of securities through such crowdfunding.

### Division of Securities: financial statements – audit requirement

- Provides for a hardship exemption from the current requirement that a financial statement required to be filed under the Securities Law be audited.

### Unclaimed funds electronic notification

- Explicitly authorizes a notice of unclaimed funds to be published electronically.

### Real estate services for medical marijuana licensees

- Provides that licensed real estate brokers and salespersons are not subject to professional discipline solely because they provide real estate services to medical marijuana licensees.

## **Real estate license fees**

- Increases several fees related to the licensing of real estate brokers and salespersons paid to the Superintendent of the Division of Real Estate and Professional Licensing.
- Establishes a three-year renewal fee for real estate brokers and real estate salespersons paid to the Superintendent.
- Eliminates the annual renewal fee for real estate brokers and real estate salespersons.

## **Real Estate Recovery and Real Estate Appraiser Recovery Funds**

- Replaces the current tiered assessments to fund the Real Estate Recovery Fund that the Real Estate Commission imposes on real estate broker and salesperson license renewals with a required assessment, up to \$10, if the fund falls below \$250,000.
- Authorizes the OBM Director, upon a request from the Director of Commerce during the biennium, to transfer funds, with Controlling Board approval, from the Real Estate Recovery Fund to the Division of Real Estate Operating Fund to reduce the former fund's balance to no less than \$250,000.
- Reduces from \$500,000 to \$200,000 the threshold balance in the Real Estate Recovery Fund that triggers the Director of Commerce's authority to request money be moved from the Real Estate Appraiser Operating Fund to the Real Estate Appraiser Recovery Fund and requires Controlling Board approval for such transfers.
- Authorizes the OBM Director, upon a request from the Director of Commerce during the biennium, to transfer funds, with Controlling Board approval, from the Real Estate Appraiser Recovery Fund to the Real Estate Appraiser Operating Fund to reduce the former fund's balance to no less than \$200,000.

## **Appraisers' removal from appraiser panels**

- Requires an appraisal management company that wishes to remove an appraiser from its appraiser panel to provide the appraiser with a written explanation and an opportunity to respond in all cases, instead of only when the appraiser has been on the panel for more than 30 days.

## **Manufacturing Mentorship Program**

- Creates the Manufacturing Mentorship Program to expose minors who are 16- or 17-years old to manufacturing occupations in Ohio through temporary employment with an employer.
- Requires an employer employing a minor under the Mentorship Program to assign the minor a mentor, provide the minor with required training unless the minor has completed the training during the six-month period before beginning employment, and take other specified actions.
- Requires the Director of Commerce to specify a list of tools that a minor employed under the program may operate.

- Prohibits an employer from either (1) permitting a minor from operating a tool described above unless the minor is employed under the Mentorship Program, or (2) permitting a minor who is employed under the Mentorship Program from operating a tool prohibited for use by minors of that age under federal and state law.
- Establishes a civil penalty for whoever violates the bill's prohibitions.

### **Hazardous occupations prohibited for minors**

- Prohibits the Director from adopting any rule to prohibit a 16- or 17-year old minor employed by an employer under the program from being employed in a manufacturing occupation if the minor's employment in the occupation is permitted under federal law.

### **Division of Industrial Compliance: building code**

- Authorizes the Superintendent of the Division of Industrial Compliance to administer and enforce the building code on behalf of political subdivisions, pursuant to contract.

### **Oil and gas land professionals: civil penalties**

- Expands the civil enforcement authority of the Superintendent of Real Estate and Professional Licensing relative to oil and gas land professionals.

### **Mesh crib liners**

- Removes a prohibition on the manufacture sale, delivery, or possession of mesh crib liners in the absence of safety standard promulgated by the U.S. Consumer Product Safety Commission.

### **Structural steel welding and inspection requirements**

- Requires a contractor, subcontractor, or project manager who is responsible for the structural steel welding on a construction project to ensure that standards related to welding and welding inspections be met in construction projects.
- Exempts from the bill's structural steel welding requirements certain buildings and any welding that is required by the American Society of Mechanical Engineers to have its own certification.
- Authorizes the Superintendent of Industrial Compliance to certify municipal, township, and county building departments or private third parties to inspect structural steel welding projects to determine that the welding complies with the bill's requirements.
- Requires the Superintendent to adopt rules for the purpose of implementing and administering the bill's structural steel welding provisions.

## **Division of Financial Institutions: multistate licensing system**

(R.C. 1181.23, 1321.73, 1349.43, 4712.02, 4727.03, and 4728.03)

The bill authorizes the Superintendent of Financial Institutions to require persons licensed or registered by the Division of Financial Institutions<sup>11</sup> to participate in a multistate licensing system. If the Superintendent chooses to use the system, the Superintendent may establish, by rule, regulation, or order, any requirements necessary to enable all statutorily required licensing and registration information to be submitted to the Superintendent through the system. Persons engaged in activity that requires licensure or registration are to utilize the system to apply for, renew, amend, or surrender their license or registration, and for any other activity determined by the Superintendent. They are also required to pay any related user fees.

The requirements established by the Superintendent cannot conflict with any statutory provision, but may add to the existing requirements that relate to:

- The manner of obtaining required criminal history records, civil or administrative records, or credit history records;
- The payment of fees required for the use of the multistate licensing system;
- The amending or surrender of a license or registration;
- The setting or resetting as necessary of renewal or reporting dates.

In light of this authority, the bill expressly allows the Superintendent to set an annual renewal date that is different from the date provided in current law for licenses or registrations issued under the Insurance Premium Finance Company Law, Credit Services Organization Law, Pawnbrokers Law, and Precious Metals Dealers Law. If necessary for participation in the system, the Superintendent may also require annual license renewal for those pawnbrokers that currently renew every other year.

The Superintendent is permitted to establish relationships or contacts with the multistate licensing system or other entities designated by the system to collect and maintain records and process transaction fees or other fees related to licensees and registrants. The Superintendent may use the materials or other information made available through the system in furtherance of any action brought by the Superintendent.

Under the bill, any confidentiality or privilege arising under federal or state law relative to any information or material provided to the system continues to apply after it is provided to the system. That information or material may be released to any state or federal regulatory official with oversight authority without the loss of confidentiality or privilege protections provided by federal or state law.

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<sup>11</sup> These persons include licensees and registrants under the Check-cashing Businesses Law, Small Loan Law, Short-term Loan Law, General Loan Law, Consumer Installment Loan Act, Insurance Premium Finance Company Law, Residential Mortgage Loan Act, Credit Services Organization Law, Pawnbrokers Law, and Precious Metals Dealers Law.

Finally, the Department of Commerce is permitted to use the multistate licensing system to fulfill the Department's ongoing obligations to establish and maintain an electronic database accessible through the Internet that contains information on (1) the enforcement actions taken by the Superintendent under the Residential Mortgage Lending Act (RMLA), (2) the enforcement actions taken by the Attorney General under the Consumer Sales Practices Act (CSPA) against loan officers, mortgage brokers, and nonbank mortgage lenders, and (3) all judgments by Ohio courts finding a violation of the RMLA or finding that specific acts or practices by a loan officer, mortgage broker, or nonbank mortgage lender are unfair or deceptive trade practices under the CSPA.<sup>12</sup>

## **Division of Securities: intrastate equity crowdfunding**

(R.C. 1707.05 to 1707.058, 1707.03, 1707.17, 1707.20, 1707.44, 1707.50; Section 717.10, and conforming changes in numerous R.C. sections)

### **Overview**

The bill provides an exemption from registration under the Ohio Securities Law (R.C. Chapter 1707) for certain securities offered or sold through equity crowdfunding. "Crowdfunding" is an evolving method of using the Internet to raise capital for startups and small businesses. An entity or individual raising funds through crowdfunding typically seeks small individual contributions from a large number of people.

Equity crowdfunding implicates both state and federal security laws, requiring registration under both sets of laws unless an exemption applies. Federal law contains an exemption from registration for *intrastate* offerings. As stated above, the bill provides an intrastate crowdfunding exemption from registration under the Ohio Securities Law. To qualify for the Ohio exemption, an offering and sale of securities must meet the bill's requirements for an "OhioInvests offering." It must also qualify for the federal exemption for intrastate offerings. As such, there are limitations as to the issuers that can participate, the offerings that can be made, the individuals that can invest, and the intermediaries that can act as portal operators for purposes of conducting the transactions.

### **The issuer**

The bill requires that the issuer be an **OhioInvests issuer** on the date its securities are first offered for sale in the offering and continuously through the closing of the offering.<sup>13</sup> An "**OhioInvests issuer**" is an entity organized under Ohio law, other than a general partnership, that satisfies the requirements under the federal exemption for intrastate offers and sales of securities and, in addition, meets **ALL** of the following requirements:

- The entity meets at least one of the following conditions:
  - a. The principal office of the entity is located in Ohio;

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<sup>12</sup> R.C. 1345.02, 1345.03, and 1345.031, not in the bill.

<sup>13</sup> R.C. 1707.051(A).

- b. As of the last day of the most entity's recent semiannual fiscal period, at least 80%, as described under federal law, of the entity's assets were located in Ohio; or
  - c. The entity derived at least 80%, or other threshold permitted under federal law, of its gross revenues from the operation of a business in Ohio during the previous fiscal year, if the OhioInvests offering begins during the first six months of the entity's fiscal year, or during the 12 months ending on the last day of the sixth month of the entity's current fiscal year, if the offering begins following the last day. This condition does not apply, however, if the entity's gross revenue during the most recent 12-month period did not exceed \$5,000.
- As to itself or any other person, the entity does not attempt to limit any liability under, or avoid any prohibition in, the Securities Law.
  - The entity is not:
    - a. Engaged in the business of investing, reinvesting, owning, holding, or trading in securities, but it may hold securities of one class in an entity that is not itself engaged in the business of investing, reinvesting, owning, holding, or trading in securities;
    - b. Subject to the reporting requirement under federal security laws;
    - c. Issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights, or engaging primarily in petroleum, gas, or hydraulic fracturing exploration, production, mining, or other extractive industries;
    - d. Issuing life settlement interests;
    - e. Engaged as a substantial part of its business in the purchase, sale, or development of commercial paper, notes, or other indebtedness, financial instruments, securities, or real property; purchasing, selling, or holding for investment commercial paper, notes, or other indebtedness, financial instruments, securities, or real property; or otherwise making investments; or
    - f. A commodity pool, equipment leasing program, or a real estate investment trust.

## Ineligibility

Certain issuers, however, are not eligible to use the exemption provided by the bill. The following are some of the disqualifying factors:

***Felony or misdemeanor conviction:*** An issuer is not eligible for the OhioInvests exemption if the issuer or any “**affiliated party**” (see “**Definition – affiliated party**,” below) has been convicted within ten years before the offering of any felony or misdemeanor (1) in connection with the purchase or sale of any security, (2) involving the making of any false filing with the Securities and Exchange Commission (SEC) or a state securities commissioner, or (3) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities.

**Other court order, judgment, or decree:** An issuer is not eligible for the OhioInvests exemption if the issuer or affiliated party was subject to a court order, judgment, or decree within *five* years before the sale, that, at the time of the sale, prohibits the person from engaging in any conduct or practice described in the preceding paragraph.

**Final order:** An issuer is not eligible for the OhioInvests exemption if the issuer or affiliated party was subject to a final order of a state or federal agency (1) that at the time of the offering, prohibits the person from engaging in the business of securities, insurance, or banking or (2) that is based on a violation of a law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before the offering.

**SEC or state securities commissioner order:** An issuer is not eligible for the OhioInvests exemption if the issuer or affiliated party is subject to an SEC order or an order from a state securities commissioner that, at the time of the offering, does any of the following:

- Suspends or revokes the person’s license or registration as a broker, dealer, municipal securities dealer, or investment adviser;
- Places limitations on the activities, functions, or operations of the person;
- Bars the person from being associated with any entity or from participating in the offering of any penny stock.

In addition, an issuer is not eligible for the OhioInvests exemption if the issuer or affiliated party was subject to an SEC order or a state securities commissioner order entered within ten years before the sale that, at the time of the sale, orders the person to *cease and desist* from committing or causing a violation or future violation of any intent-based federal security laws related to antifraud or interstate sales of securities, any state securities law involving fraudulent, manipulative, or deceptive conduct, or any state securities law requiring the registration of securities or state registration as a broker dealer, agent, salesperson, investment adviser, or OhioInvests portal.

An issuer also is not eligible for the OhioInvests exemption if the issuer or affiliated party filed as a registrant or issuer, or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the SEC or a state securities commissioner that, within five years before the sale, was the subject of a *refusal order, stop order, or order suspending* the Regulation A exemption or, if at the time of the sale, was the subject of an investigation or proceeding to determine whether a stop order or a suspension order should be issued.

**Trade group association suspension or debarment:** An issuer is not eligible for the OhioInvests exemption if the issuer or affiliated party was subject to a suspension, expulsion, or debarment from membership or association with a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade.

**U.S. Postal Service action:** An issuer is not eligible for the OhioInvests exemption if the issuer or affiliated party is subject to:

- A U.S. Postal Service false representation order entered within five years before the offering;
- A temporary restraining order or preliminary injunction with respect to conduct alleged by the U.S. Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

### **Limitation on ineligibility**

The disqualifying factors stated above do not apply:

- With respect to any conviction, order, judgment, decree, suspension, expulsion, or bar that occurred or was issued *before the provision's effective date*;
- If, upon a showing of good cause and without prejudice to any other action, the Division of Securities determines that it is not necessary under the circumstance that an exemption be denied;
- If, before the relevant offering, the court that entered the relevant order, judgment, or decree advises in writing that the disqualification should not be a consequence of that court action; or
- If the issuer establishes to the Division that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed.

Events relating to any affiliated issuer that occurred before the affiliation arose is not to be considered disqualifying if the affiliated entity is not in control of the issuer or is not under common control with the issuer by a third party that was in control of the affiliated entity at the time of the events.

### **Definition – affiliated party**

As used in this context, “**affiliated party**” means any (1) predecessor to the issuer, (2) affiliated issuer, (3) director, executive officer, other officer participating in the offering, general partner, or managing member of the issuer, (4) beneficial owner of 20% or more of the issuer’s outstanding voting equity securities, calculated on the basis of voting power, (5) promoter connected with the issuer in any capacity at the time of the sale, (6) investment manager of an issuer that is a pooled investment fund, (7) general partner or managing member of any investment manager participating in the offering, (8) director, executive officer, or other officer participating in the offering of any investment manager or general partner or managing member of the investment manager participating in the offering.

### **The offering**

An “**OhioInvest offering**,” defined as an offer, or an offer and sale, of securities by an OhioInvests issuer that is exempt from registration under the bill, must meet the requirements under the federal exemption for intrastate offerings and all of the following conditions:

- It expires within 12 months.

- In any 12-month period, the issuer does not raise more than \$5 million in connection with one or more OhioInvests offerings.
- The issuer uses at least 80% of the offering's net proceeds in connection with the operation of its business in Ohio.
- All payments for the purchase of securities are held in escrow until the aggregate capital deposited into escrow from all purchasers is equal to or greater than the stated minimum offering amount. If the minimum offering amount is not raised by the stipulated expiration date, all purchasers receive a return of all their subscription funds.
- The offering meets other requirements that the Division prescribes for the protection of investors and the public interest.

Not less than ten days before the beginning of an OhioInvests offering, the issuer must provide the Division with (1) a notice of a claim of exemption from registration, (2) a copy of the disclosure document that will be given to prospective purchasers (see below), (3) a \$50 filing fee, and (4) any other information the Division requires from the issuer or portal for the protection of investors and to enable the Division to determine that the sale of securities is entitled to an exemption.

### **Advertisement**

An OhioInvests offering can be advertised only if the advertisement complies with all Ohio and federal laws and contains disclaiming language clearly stating that the advertisement is not the actual offering, the offering is being made in reliance on the exemption provided under the bill, the offering is directed only to Ohio residents, and all offers and sales are made through an OhioInvests portal (see below). The only other information that can be included in the advertisement is (1) the issuer's name and contact information, (2) a brief description of the type of business conducted by the issuer, (3) the minimum offering amount the issuer is attempting to raise, (4) a description of how the funds raised will be used, (5) how long the offering will remain open, (6) the issuer's logo, and (7) the OhioInvests portal through which the offer is being made.

### **The investors**

*Only Ohio residents* can purchase securities offered in an OhioInvests offering. In addition, no single purchaser can purchase more than \$10,000 in the aggregate in a 12-month period of securities in connection with OhioInvests offerings unless the purchaser is an accredited investor under the federal securities law. An accredited investor may purchase from all OhioInvests offerings in a 12-month period up to \$10,000 or a greater amount that does not exceed 10% of the accredited investor's annual income or net worth, whichever is less. All investors are allowed to cancel the investment commitment for any reason for a period of time specified in the issuer's offering materials. That period of time must be at least five business days after the date of commitment. However, an investment commitment cannot be cancelled during the 48-hours prior to the offering deadline identified in the issuer's offering materials.

## The intermediary; the OhioInvests portal

The sale of the securities must be conducted exclusively through an OhioInvests portal. An “**OhioInvests portal**” is defined as a website that is operated by a portal operator for the offer or sale of securities of an OhioInvests issuer. The website cannot, however, use the word “OhioInvests” in its Internet address.

A “**portal operator**” is an entity, including an issuer, that (1) is authorized to do business in Ohio and (2) is licensed with the Division in accordance with the bill or is a licensed dealer under the Ohio Securities Law. Portal operators under the bill are subject to the same regulation and enforcement by the Division of Securities that exists for licensees in Ohio that hold individual dealer, salesperson, investment advisor, or an investment advisor representative license, which include criminal penalties the degree of which depends on the value of the funds or securities involved. In addition, the bill permits the Division to prescribe reasonable rules regarding the acts and practices of a portal operator for the protection of investors.

A person, other than a licensed dealer, is prohibited from offering or selling securities pursuant to an OhioInvests offering or otherwise acting as a portal operator unless the person is licensed as a portal operator by the Division or is transacting business through a portal operator licensed by the Division. A license application for a portal operator license must be filed with the Division and include the information, materials, and forms specified in rules adopted by the Division, a \$100 filing fee, and a copy of the articles of incorporation or other documents that indicate the entity’s form of organization. If the Division approves the application, it will issue a license, valid for one year. The entity may submit a renewal application annually with a \$100 renewal fee.

When conducting an OhioInvests offering, the portal must implement steps to limit website access to only Ohio residents and must make reasonable efforts to verify that purchasers do not exceed the purchase limitations. Additionally, it cannot allow the offering to be viewed by a prospective purchaser until (1) the portal operator verifies, through its exercise of reasonable steps, that the prospective purchaser is an Ohio resident and (2) the prospective purchaser makes an affirmative acknowledgment, electronically through the portal, of the following:

I am an Ohio resident.

The securities and investment opportunities listed on this web site involve high-risk, speculative business ventures. If I choose to invest in any securities or investment opportunity listed on this web site, I may lose all of my investment, and I can afford such a loss.

The securities and investment opportunities listed on this web site have not been reviewed or approved by any state or federal securities commission or division or other regulatory authority, and no such person or authority has confirmed the

accuracy or determined the adequacy of any disclosure made to prospective investors relating to any offering.

If I choose to invest in any securities or investment opportunity listed on this web site, I understand that the securities I will acquire may be difficult to transfer or sell, that there is no ready market for the sale of such securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment at any price, and that, accordingly, I may be required to hold this investment indefinitely.

## **Disclosures**

The portal operator must make available to each prospective purchaser through the portal a copy of the issuer's balance sheet and income statement and a downloadable disclosure document that contains certain information, including:

--Specific information about the issuer, such as the type of entity it is, the address and telephone number of its principal office, formation history for the previous five years, the identity of all persons owning more than 10% of any class of equity interest in the issuer, the identity and experience of its members and executive management, the material facts of its business plan and capital structure, any material risks, and its intended use of the offering proceeds;

--Specific information regarding the securities being offered, such as the terms and conditions of the securities; the price per share, unit, or interest of the securities; a description of any outstanding securities of the issuer; the minimum and maximum amount being offered; any restrictions on the transfer of the securities; and the date on which the offering will expire;

--Either the percentage of economic ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities;

--The identity of and consideration payable to any person who has been retained by the issuer to assist in conducting the offering and sale, including a portal operator;

--A description of any pending material litigation or regulatory action involving the issuer;

--A copy of the escrow agreement between the escrow agent, the issuer, and, if applicable, the portal operator;

--A statement that the securities have not been registered under federal or state securities law, that the securities are subject to limitation on resale, and that any future issuance of securities might dilute the value of the securities being offered;

--A statement, printed in boldface type of the minimum size of ten points, as follows (for reference, the statement below is in ten point type, rather than the normal 12 point type used in analyses):

IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY 17 C.F.R. 230.147(e) AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

--All material information necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading and such other information as the Division may require.

### **Certification**

The portal operator must obtain from each prospective purchaser a certification that is either in written or electronic form and that, at a minimum, states:

I UNDERSTAND AND ACKNOWLEDGE THAT:

If I make an investment in an offering through this OhioInvests portal, it is very likely that I am investing in a high-risk, speculative business venture that could result in the complete loss of my investment, and I need to be able to afford such a loss.

This offering has not been reviewed or approved by any state or federal securities commission or division or other regulatory authority and that no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

If I make an investment in an offering through this OhioInvests portal, it is very likely that the investment will be difficult to transfer or sell and, accordingly, I may be required to hold the investment indefinitely.

By entering into this transaction with the company, I am affirmatively representing myself as being an Ohio resident at the

time that this contract is formed, and if this representation is subsequently shown to be false, the contract is void.

### **Investment advice; compensation; fees**

The bill prohibits a portal operator that is *not* a licensed dealer under the Ohio Securities Law from:

--Offering investment advice or recommendations, or soliciting the purchase or sale of securities. This does not include selecting, or performing due diligence with respect to, issuers or offerings to be listed or providing general investor education materials.

--Providing transaction-based compensation to employees, agents, or other persons for securities sold unless those persons are licensed under the Ohio Securities Law and are permitted to receive such compensation;

--Charging a fee to the issuer for an offering of securities on the portal unless the fee is (1) a fixed amount for each offering, (2) a variable amount based on the length of time the securities are offered on the portal, or (3) a combination of such fixed or variable amounts;

--Handling purchaser funds or securities, unless the portal operator is the issuer; or

--Allowing its officers, directors, partners, or any other person with similar status or function, to have a financial interest in an OhioInvests issuer using the services of the portal operator, or receive such a financial interest as compensation for services provided to or for the benefit of the OhioInvests issuer, in connection with the offer and sale of its securities.

### **Fraudulent, deceptive, or manipulative acts**

The bill prohibits a portal operator from knowingly employing any device, scheme, or artifice to defraud or engaging in any act, practice, or course of business that operates as a fraud or deceit or that is fraudulent, deceptive, or manipulative. A person who violates this prohibition is guilty of a felony ranging from a fifth degree felony to a first degree felony, depending on the value of the funds or securities involved. The Division may adopt rules that are reasonably designed to prevent these acts, practices, or courses of business.

### **Examination of records; recordkeeping**

A portal operator must provide the Division with read-only access to the administrative sections of its OhioInvests portal. It must also furnish, upon the Division's request, any of the records the bill requires the portal operator to maintain in relation to issuers, purchasers, and offerings. However, failure of a portal operator that is not the issuer to comply with the recordkeeping requirements *does not* affect the OhioInvests issuers' exemption from registration under the bill.

A portal operator must maintain and preserve records, for a period of at least five years, in a way that (1) allows for the immediate location of the document, (2) retains the documents exclusively in a nonrewriteable, nonerasable format, (3) verifies automatically the quality and accuracy of the storage recording process, (4) serializes the originals, and (5) allows indexes and records preserved to be downloaded to an acceptable medium. If the records retention system

commingled records required to be retained with other records, the Division can review all of the commingled records.

The following records must be maintained in the manner described above:

- The name of each issuer whose securities have been listed on its OhioInvests portal and the full name, residential address, Social Security number, date of birth, and copy of a state-issued identification of all owners with greater than 10% voting equity in the issuer;
- Copies of all offering materials that have been displayed on its OhioInvests portal;
- The names and other personal information of each purchaser who has registered at its OhioInvests portal. (Except when disclosing to the Division, a portal operator is prohibited from disclosing personal (identifying) information without the written or electronic consent of the prospective purchaser or purchaser. This confidentiality requirement does not apply with respect to records required to be furnished to the Division under the bill or to the disclosure of personal information to an OhioInvests issuer relating to its OhioInvests offering or to the extent required under other law.)
- Any agreements and contracts between the portal operator and an issuer;
- Any information used to establish that a prospective purchaser or purchaser of securities through its OhioInvests portal is a resident of Ohio and that an issuer whose securities are listed on the portal has its principal office in Ohio; and
- Any other records the Division requires by rule to be maintained and preserved.

### **Escrow agent and agreement**

The escrow agent used for holding payments for the purchase of securities must be a financial institution or trust company authorized to do business in Ohio. The escrow agent's duty is only to the party establishing the account unless set forth in the escrow agreement or other contract. Before contracting with an issuer, the escrow agent must search the issuer and its executive management against the Specifically Designated Nationals List (SDN) maintained by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. Under existing federal law, the OFAC publishes a list of SDNs, which are individuals and companies owned or controlled by terrorists and narcotics traffickers. SDN's assets are blocked and U.S. persons are generally prohibited from dealing with SDNs.

### **Penalties; private right of action**

#### **Division of Securities**

If the Division finds, after notice and an opportunity for a hearing, that a person has committed a violation of the Securities Law in connection with securities sold through an OhioInvests offering (hereinafter referred to as "violation"), the Division may order the payment of an administrative penalty *in addition to or in lieu of* any other remedy provided by law. The maximum penalty per violation is \$1,000. The total penalty, however, cannot exceed the total amount of the OhioInvests offering or offerings involved in the violation. The penalties

are to be deposited into the existing Securities Investor Education and Enforcement Expense Fund.

The Division also may intervene as of right on behalf of the state in any private action or appeal brought by a purchaser of the securities (see below).

### **Purchasers**

In addition, a purchaser of securities may commence an individual or class action to recover specific civil penalties for an alleged violation if the purchaser or the purchaser's representative:

- Brings the action within two years after the violation was committed or within two years after the purchaser discovered or should have discovered the ground for the violation, whichever is later;
- Mails to the Division, not later than ten days after the action is commenced, a file-stamped copy of the complaint; **and**
- Mails to the Division, not later than ten days from a judgment and any subsequent appeals becoming final, a file-stamped copy of the final judgment and appellate decisions.

The civil penalty authorized by the bill is based on the total amount raised in the OhioInvests offering *as of the time of the violation*. If that amount is less than \$25,000, the penalty per violation is \$100. If that amount is \$25,000 or more, the penalty per violation is \$250. In either case, the total penalty cannot exceed the total amount of the OhioInvests offering or offerings involved in the violation. A court may, however, award a lesser amount if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."

Purchasers that prevail in an action receive 75% of the total amount awarded. The other 25% is to be deposited into the GRF for payment of debt service on direct obligations of the state. The purchasers are also entitled to reasonable attorney's fees and costs as determined by the court. The bill does not preclude purchasers from also proceeding with any other cause of action available to them.

The bill prohibits any person from knowingly engaging in any act, practice, or course of business that would interfere with a purchaser's ability to bring such an individual or class action.

The bill states that, in enacting the private cause of action described above, the General Assembly finds:

- While adequate financing of essential investor protection enforcement is necessary to achieve maximum compliance with state law, to ensure an effective disincentive for businesses that raise money via crowdfunding to engage in unlawful, fraudulent, and anticompetitive business practices, and to provide appropriate regulation of an emerging and quickly evolving industry.

- Although self-policing efforts by industry watchdog groups may have some success in educating some fundraisers about their obligations under state consumer and investor laws, in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties.
- It is in the public interest to provide that civil penalties for violations of law may also be assessed and collected by aggrieved crowdfunding investors acting as private attorneys general enforcement.

### **Local government entities as portal operators**

The bill expressly permits port authorities and community improvement corporations to act as portal operators for purposes of an OhioInvests offering.

### **Division of Securities: financial statements – audit requirements**

(R.C. 1707.20)

Under current law, the Division may prescribe whether any required financial statements must “be certified by independent or certified public accountants.” The bill refers instead to “be audited by independent certified public accountants” and allows the Division to determine by rule the criteria necessary for a filer to be granted a hardship exemption from this audit requirement. It also requires that the financial statements comply with other requirements specified by rule adopted or order issued under the Securities Law.

### **Unclaimed funds electronic notification**

(R.C. 169.06)

Under continuing law, holders of unclaimed funds must file reports with the Director of Commerce when they are in possession of items that qualify as unclaimed funds. Based on these reports, the Director must then publish a notice of unclaimed funds in a local newspaper in an attempt to notify the owner of the whereabouts of the owner’s unclaimed funds. The Director also may publish additional notices. The bill explicitly allows both of these notices to be published electronically.

### **Real estate services to medical marijuana licensees**

(R.C. 4735.18)

The bill explicitly states that a licensed real estate broker or salesperson is not subject to disciplinary action by the Ohio Real Estate Commission solely for the reason that the broker or salesperson is providing services for a sale, purchase, exchange, lease, or management of real estate that is or will be used in the cultivation, processing, dispensing, or testing of medical marijuana under the Medical Marijuana Control Program, or for receiving, holding, or disbursing funds from a real estate brokerage trust account in connection with such a transaction.

## Real estate license fees

(R.C. 4735.06, 4735.09, 4735.13, 4735.15, 4735.182, 4735.27, and 4735.28)

The bill increases by 35% (rounded to the nearest dollar) several fees related to the licensing of real estate brokers and real estate salespersons. The fee changes are as follows:

Fee	Current Law	The Bill
Real estate broker license application	\$100	\$135
Real estate salesperson license application	\$60	\$81
Transfer from broker license to salesperson license	\$25	\$34
Notice of intention by real estate broker to join a business entity	\$25	\$34
Reactivation or transfer of a broker's license into or out of business entity	\$25	\$34
Reactivation or transfer of a salesperson's license	\$25	\$34
Branch office license	\$15	\$20
Foreign real estate salesperson's license and renewal	\$50	\$68
Additional fee for an education course provider or course provider applicant whose fee was returned	\$100	\$135
Foreign real estate dealer examination	\$75	\$101
Foreign real estate salesperson examination	\$50	\$68
Cap of foreign real estate dealer's fee for each salesperson employed by the dealer	\$150	\$203

In addition, the bill replaces the annual renewal fee for real estate brokers and salespersons with a three-year renewal fee. The three-year fees likewise reflect a 35% increase, as follows:

Fee	Current – Annual	The Bill – 3-Year
Renewal of 3-year real estate broker’s license	\$60	\$243
Renewal of 3-year real estate salesperson’s license	\$45	\$182
Additional 50% penalty for late renewal of real estate broker’s license	\$30	\$121.50
Additional 50% penalty for late renewal of real estate salesperson’s license	\$22.50	\$91

## Real Estate Recovery, Real Estate Appraiser Recovery Funds

(R.C. 4735.12 and 4763.16; Section 243.30)

### Real Estate Recovery Fund assessments and transfers

Under continuing law, the Real Estate Recovery Fund is maintained to satisfy judgments against real estate brokers and salespeople who engage in professional misconduct. To support the fund, existing law requires the Real Estate Commission to impose special assessments on brokers and salespersons renewing their licenses based on the fund’s balance on the July 1 preceding the renewal. If the balance is less than \$500,000, the assessment can be \$10 or less. If the balance is between \$1 million and \$2 million, the assessment can be \$5 or less. No assessments are permitted if the balance exceeds \$2 million.

The bill eliminates this tiered structure by requiring an assessment, up to \$10, if the Real Estate Appraiser Recovery Fund’s balance is less than \$250,000 on the July 1 preceding the license renewal and prohibiting assessments if the balance exceeds \$250,000 on that date. The bill also grants the Director of Commerce authority to request, during the biennium, that the OBM Director transfer funds from the Real Estate Recovery Fund to the Real Estate Operating Fund if the Recovery Fund’s balance exceeds \$250,000. Such a transfer may reduce the Recovery Fund’s balance to no less than \$250,000 and must receive Controlling Board approval.

## Real Estate Appraiser Recovery Fund transfers

Under continuing law, the Real Estate Appraiser Recovery Fund is maintained to satisfy judgments against real estate appraisers who violate the Real Estate Appraiser Law. The Superintendent of Real Estate is required to ascertain the fund's balance on October 1, every year.

Under existing law, if the Real Estate Appraiser Recovery Fund's balance is less than \$500,000, the Superintendent may request that the OBM Director transfer funds from the Real Estate Appraiser Operating Fund to the Real Estate Appraiser Recovery Fund to reestablish that balance. The bill reduces the threshold at which a request may be made, and to which the balance may be restored, to \$200,000, and specifies that the request may be made if the threshold is met at any time.

The bill also grants the Director of Commerce authority, during the biennium, to request that the OBM Director transfer funds in the opposite direction, from the Real Estate Appraiser Recovery Fund to the Real Estate Appraiser Operating Fund if the Recovery Fund's balance exceeds \$200,000. Such a transfer may reduce the Recovery Fund's balance to no less than \$200,000.

Finally, the bill requires Controlling Board approval before any transfers can be made between the Real Estate Appraiser Recovery Fund and Real Estate Appraiser Operating Fund.

## Appraisers' removal from appraiser panels

(R.C. 4768.09)

If an appraisal management company wishes to remove an appraiser from its appraiser panel, the bill requires the company to provide the appraiser with written notice that explains the reasons for removal and an opportunity to respond in all cases. Existing law limits this requirement to the removal of appraisers who have been on the panel for more than 30 days.

## Manufacturing Mentorship Program

(R.C. 4109.22 and 4109.99)

The bill creates the Manufacturing Mentorship Program to expose minors who are 16- or 17-years old to manufacturing occupations in Ohio through temporary employment with an employer (a person who employs any individual in a manufacturing occupation). An employer employing a minor under the Mentorship Program must:

- Determine the duration of the minor's employment;
- Assign a mentor to provide direct and close supervision to the minor while the minor is engaged in any workplace activity;
- Provide the minor with the training described under "**Training**," below;
- Encourage the minor to participate in a career-technical education program if the minor is not participating in such a program when the minor begins employment;

- Comply with all state and federal laws and regulations relating to the employment of minors.

A minor who is employed by an employer under the Mentorship Program may work in any manufacturing occupation that is not prohibited for minors of that age by Ohio's Minor Labor Law<sup>14</sup> or rules adopted under the Law.

For purposes of the bill, a "manufacturing occupation" is employment consisting of the mechanical, physical, or chemical transformation of materials, substances, or components into new products for sale, and includes assembling component parts into a finished product.

## **Training**

The bill requires an employer to provide a 16- or 17-year old minor employed in a manufacturing occupation under the Mentorship Program with training that includes all of the following:

- A ten-hour course in general industry safety and health hazard recognition and prevention approved by the U.S. Department of Labor's Occupation Safety and Health Administration (OSHA) (the minor may participate in an OSHA-approved 30-hour course if the minor has already successfully completed a ten-hour course);
- Instructions on how to operate the specific tools the minor will use during the minor's employment;
- The general safety and health hazards that the minor may be exposed to at the minor's workplace;
- The value of safety and management commitment; and
- Information on the employer's drug testing policy.

The employer must pay any costs associated with providing a minor with the training. The employer is not required to provide the training if the minor shows proof of completing the training during the six-month period before beginning employment.

## **List of approved tools**

The bill requires the Director of Commerce, in consultation with employers, to adopt rules in accordance with the Administrative Procedures Act listing the tools that a minor employed under the Mentorship Program may operate. The Director must use the "Field Operations Handbook" issued by the U.S. Department of Labor for guidance. Nothing in the bill requires the Director to include a tool on the list if the federal Fair Labor Standards Act<sup>15</sup> (FLSA) hazardous occupation orders and Ohio's Minor Labor Law or rules adopted under it specifically permit 16- or 17- year olds to operate the tool.

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<sup>14</sup> R.C. Chapter 4109.

<sup>15</sup> 29 Unites States Code (U.S.C.) 201 *et seq.*

## Prohibitions

The bill prohibits an employer from:

- Permitting a 16- or 17-year old minor to operate a tool a minor of that age is permitted to operate under the rules unless the minor is employed by the employer under the Mentorship Program;
- Permitting a 16- or 17-year old minor employed under the program to operate a tool that a minor of that age is prohibited from using by the FLSA and Ohio's Minor Labor Law or rules adopted under it.

## Penalty for violation

Under continuing law, the Director is required to designate enforcement officials to enforce Ohio's Minor Labor Law. An enforcement official who discovers a violation of the Law is required to file a complaint against an offending employer in any court of competent jurisdiction after providing notice to the employer of the violation. An employer found to have violated the Law by the court may be assessed a penalty, which is paid into the fund of the school district in which the violation was committed.<sup>16</sup>

Under the bill, an employer who violates the bill's prohibitions is assessed a civil penalty of up to \$1,730 for each violation.

## Hazardous occupations prohibited for minors

(R.C. 4109.05)

Continuing law requires the Director, after consulting with the Director of Health, to adopt rules prohibiting the employment of minors in occupations that are hazardous or detrimental to the health and well-being of minors. The Director of Commerce must consider the hazardous occupation orders issued pursuant to the FLSA when adopting the rules. The bill prohibits the Director from adopting any rule that would prohibit a minor who is 16- or 17-years old and employed by an employer under the Manufacturing Mentorship Program from being employed in a manufacturing occupation if the hazardous occupation orders issued pursuant to the FLSA permit the minor's employment in the manufacturing occupation.

## Interaction between federal and state minor labor laws

An employer or employee may be subject to the FLSA or Ohio's Minor Labor Law, or both laws, depending on the employer type and size and whether the employer or employee engages in interstate commerce. Where an employer or an employee is subject to both and the laws differ, the law that provides the most protection for the minor applies.<sup>17</sup> For example, federal and Ohio law prohibit a minor from using hammering machines such as a power

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<sup>16</sup> R.C. 4109.13, not in the bill.

<sup>17</sup> 29 U.S.C. 218 and 29 Code of Federal Regulations (C.F.R.) 570.50.

hammer.<sup>18</sup> If Ohio law were amended to permit the minor to use a hammering machine that is prohibited under the FLSA, the federal law would control because it is more restrictive of the minor's activity. Therefore, it appears that a minor's employment would be limited in certain occupations that are prohibited under the federal law, even if Ohio law were amended to permit the minor's employment in those occupations.

## **Division of Industrial Compliance: building code**

(R.C. 121.083 and 3781.10)

The bill grants the Superintendent of the Division of Industrial Compliance new authority to contract with health districts and certified building departments to administer and enforce the building code on their behalf. It also adds certified officers and employees of the Division to the list of persons upon whom local governmental entities may rely for administration and enforcement.

Under continuing law, enforcement authority for the state's building codes, that is, authority to approve plans and specifications and to conduct inspections, is granted to townships, municipal corporations, and county building departments certified by the Division, as well as certain health districts. Also under continuing law, those governmental bodies may rely on specifically listed persons and entities, who have also been certified by the Division, to administer and enforce the codes.

## **Oil and gas land professionals: civil penalties**

(R.C. 4735.023 and 4735.052; R.C. 4735.01(I)(1)(h) and (i), not in the bill)

The bill permits the Superintendent of the Division of Real Estate and Professional Licensing to investigate and begin disciplinary proceedings against independent oil and gas land professionals who commit a violation of the law's requirements for them.

An "**oil and gas land professional**" is someone who regularly engages in the preparation and negotiation of agreements for exploring for, transporting, producing, or developing oil and gas mineral interests, including oil and gas leases and pipeline easements. Employee oil and gas land professionals are not considered real estate brokers and, as a result, are exempt from licensing under the Real Estate Brokers Law.

Oil and gas land professionals working as independent contractors (i.e., not as employees) can also be exempt from real estate broker licensing under continuing law if they meet certain requirements, including registration with the Superintendent and membership in a qualifying professional organization. Existing law states that independent contractor oil and gas land professionals who fail to register with the Superintendent, or to notify the Superintendent of a lapse in necessary membership, are subject to penalties for unlicensed practice. The bill maintains these provisions, but corrects two cross-references to reference the

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<sup>18</sup> 29 C.F.R. 570.59 and Ohio Administrative Code (O.A.C.) 4101:9-2-11.

appropriate enforcement provisions – the oil and gas land professional enforcement provisions, rather than the general provisions.

## **Mesh crib liners**

(R.C. 3713.022 and 3713.99)

The bill removes a prohibition on the manufacture sale, delivery, or possession of mesh crib liners in the absence of safety standard promulgated by the U.S. Consumer Product Safety Commission. The prohibition was originally scheduled to take effect April 6, 2020.

## **Structural steel welding and inspection requirements**

(R.C. 3781.40, 3781.41, 3781.42, 3781.43, 3781.44, 3781.03, 3781.06, 3781.061, and 3781.10)

The bill requires a contractor, subcontractor, or project manager who is responsible for the structural steel welding on a construction project to ensure that:

- All welders performing structural steel welding for the project have been tested by and hold a valid certification from a facility that has been accredited by the American Welding Society (AWS) to test and certify welders and welding inspectors.
- All structural steel welding performed for the project meets specifications, guidelines, tests, and other methods used to ensure that all structural steel welds meet, at minimum, the codes and standards for those welds established in the AWS Structural Steel Welding Code D1.1 and the Ohio Building Code (which governs commercial buildings).
- All structural steel welding inspections listed in the project’s job specifications are completed by a certified welding inspector (a person who has been certified by AWS to inspect structural steel welding projects and conduct welder qualification tests).

Except as described below, the requirements listed above apply to all construction projects that involve structural steel welding which, under the bill, is structural welds, weld repair, the structural system, and the welding of all primary steel members of a structure in accordance with the AWS Code D1.1.

## **Exempt welds and structures**

The welding and inspection requirements do not apply to welding that is required by the American Society of Mechanical Engineers (ASME) to have its own certification. For example, ASME provides its own certification governing the design, fabrication, assembly, and inspection of boiler and pressure vessel components.<sup>19</sup>

The bill’s requirements also do not apply to:

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<sup>19</sup> American Society of Mechanical Engineers, *Boiler and Pressure Vessel Certification*, <https://www.asme.org/shop/certification-accreditation/boiler-and-pressure-vessel-certification>.

- A building or structure that is incidental to the agricultural use of the land on which the building or structure is located, provided the building or structure is not used to conduct retail business;
- An existing single-family, two-family, or three-family home for which the owner has applied to the ODJFS Director for a license to operate a type A family day-care home as defined in continuing law; or
- Any building or structure for which a county zoning inspector or a township zoning inspector has issued a zoning certificate declaring the building or structure to be for agriculture use.

### **Other laws**

The welding and inspection requirements may not be construed to limit the Division of Industrial Compliance's power to adopt rules governing manufactured home parks under the Manufactured Homes Law.

### **Inspections and enforcement**

Under the bill, and in accordance with rules described below, the Superintendent of Industrial Compliance may certify municipal, township, and county building departments and the personnel of those departments, or any private third party, to inspect structural steel welding projects to determine that the welding complies with the bill. The Superintendent or the building inspector or building commissioner from a certified building department is responsible for enforcing the bill's requirements within the department's jurisdiction.

The bill allows a municipality, township, or county that does not have a certified building department to adopt a resolution or ordinance designating a certified building department or a certified, private third party to inspect structural steel welding on behalf of the uncertified municipality, township, or county. The designation is effective when it is accepted by the building department or the third party named in the resolution or ordinance. The owner of a structural steel welding project or a contractor, subcontractor, or project manager of the project may request an inspection and obtain an approval from any certified building department or private third party that has been designated by a municipal corporation, township, or county in which the project is located.

The Superintendent may investigate a municipal, township, or county building department, the personnel of those departments, and any private, third party certified under the bill. The Superintendent may revoke or suspend a certification if the investigation and a finding of facts support the suspension or revocation. The Superintendent may launch an investigation on the Superintendent's own motion or on the petition of a person affected by an inspection.

The Board of Building Standards, the body that certifies local building departments to enforce the state building codes under continuing law, does not have jurisdiction over certifications relating to structural steel welding inspections.

## Administrative rules

The bill requires the Superintendent to adopt rules, in accordance with the Administrative Procedure Act, that:

- Govern the inspection of structural steel welding;
- Require the Division of Industrial Compliance, any building department or personnel of any department, or any private third party, certified to conduct inspections of structural steel welding to determine compliance with the bill's structural steel welding requirements;
- Establish fees for conducting inspections to determine compliance with the bill's structural steel welding requirements;
- Govern the investigation of complaints concerning any contractor, subcontractor, or project manager who fails to comply with those requirements;
- Establish the requirements and procedures for the certification of building departments, building department personnel, and private third parties;
- Establish fees to be charged to building departments, building department personnel, and private third parties applying for certification and renewal; and
- Develop a policy regarding the maintenance of records for any inspection authorized or conducted pursuant to the bill.

## Penalty

A person who recklessly fails to comply with the bill's structural steel welding requirements or a rule adopted by the Superintendent is subject to the following penalty:

- If the violation is not detrimental to the health, safety, or welfare of any person, a fine of not more than \$100;
- If the violation is detrimental to the health, safety, or welfare of any person, a minor misdemeanor.<sup>20</sup>

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<sup>20</sup> R.C. 3781.99, not in the bill.

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## COSMETOLOGY AND BARBER BOARD

- Allows an individual to practice a branch of cosmetology without a license or registration if the individual does so for free for the purpose of researching or developing a cosmetic.

### Research and development exemption

(R.C. 4713.16)

The bill allows an individual to practice a branch of cosmetology without a license or registration if the individual does so for free for the purpose of researching or developing a cosmetic. A “cosmetic” is an article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to any human body part for cleansing, beautifying, promoting attractiveness, or altering appearance. It includes an article that is intended for use as a component of any of those articles but it does not include soap.<sup>21</sup>

Currently, if an individual engages in the practice of esthetics, which is the application of cosmetics, tonics, antiseptics, creams, lotions, or other preparations for the purpose of skin beautification, that individual must have a license under the Cosmetology Law. If an individual practices makeup artistry, which is the application of cosmetics for the purpose of skin beautification, the individual must be registered under that Law.<sup>22</sup>

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<sup>21</sup> R.C. 3715.01, not in the bill.

<sup>22</sup> R.C. 4713.14 and R.C. 4713.01 and 4713.69, not in the bill.

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

- Permits an applicant for a professional clinical counselor's license or a professional counselor's license to have a degree from any counseling program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), rather than from specified CACREP programs as under current law.
- Requires an applicant for a professional clinical counselor's license or a professional counselor's license to participate in a clinical counseling internship rather than a counseling internship as required under current law.
- Allows the Counselors Professional Standards Committee of the Counselor, Social Worker, and Marriage and Family Therapist Board to issue a license by endorsement to a person who does not have a graduate degree in counseling if the person is authorized to practice in another state and meets specified requirements.
- Requires the Board to establish a schedule of deadlines for biennially renewing a license or certificate of registration.
- Eliminates a requirement that a counselor, social worker, or marriage and family therapist prominently display the person's license in a particular location and manner.

### **Licensure of counselors**

(R.C. 4757.18, 4757.22, 4757.23, and 4757.25)

#### **Degree requirement**

The bill allows an applicant for a professional clinical counselor license or a professional counselor license to have a graduate degree from a counseling program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) instead of specific types of counseling programs as under current law. Under current law, if an applicant has a graduate degree from a mental health counseling program in Ohio, it must be either temporarily approved by the Counselor, Social Worker, and Marriage and Family Therapist Board in accordance with rules adopted by the Board or be from one of the following CACREP programs:

- A clinical mental health counseling program;
- A clinical rehabilitation counseling program;
- An addiction counseling program.

Under continuing law, an applicant also must satisfy additional requirements to receive a license, including completing specialized counselor classwork, participating in an internship, and passing an examination.

## Clinical internship

Under continuing law an applicant for a professional clinical counselor license or a professional counselor license must complete specified training. The bill requires an applicant to include participation in a “*clinical* counseling internship” as part of those training requirements. Currently, an applicant must participate in a “counseling internship.”

## Licensure by endorsement

The bill allows the Board’s Counselors Professional Standards Committee to issue a license by endorsement to a person who does not have a graduate degree in counseling if the person is authorized to practice in another state and meets all of the following requirements:

- The person has a graduate degree that demonstrates an education in the diagnosis and treatment of mental and emotional disorders with coursework comparable to that which is required for a clinical mental health counseling degree from a CACREP accredited program;
- The person has continuously engaged in the practice of professional counseling in the other state and has not been disciplined by the state regulatory authority for a period of five years or more immediately preceding the application date;
- The person engaged in a scope of practice in the other state comparable to the scope of practice associated with the license the person is requesting;
- The person’s authorization to practice in the other state is in good standing;
- The person achieves a passing score on the examination required by the Board for licensure as a professional clinical counselor or a professional counselor.

In the case of an out-of-state applicant seeking a professional clinical counselor’s license, the bill requires the applicant to complete at least 750 hours of supervised experience approved by the committee.

Under current law, the Board may enter into a reciprocal agreement with any state that regulates individuals practicing in the same professions regulated by Ohio law, if it finds that the state has requirements substantially equivalent to Ohio’s. Under a reciprocal agreement, the Board grants a license or certificate to a resident of the other state whose practice is currently authorized by that state, and that state’s regulatory body agrees to authorize the appropriate practice of any Ohio resident who is authorized to practice in Ohio. The Board’s professional standards committees also may, by endorsement, issue the appropriate license or certificate of registration to a resident of a state with which the Board does not have a reciprocal agreement, if the person submits satisfactory proof that the person is licensed, certified, registered, or otherwise authorized to practice by that state.

## Renewal schedule

(R.C. 4757.10 and 4757.32; Section 747.20)

The bill requires the Board to establish a schedule of deadlines for biennially renewing the licenses and certificates of registration it issues. (Currently, a license or certificate expires

two years after it is issued.) The bill specifies that a license or certificate is valid without further recommendation or examination until it is revoked or suspended or until it expires for failure to renew in accordance with the Board's schedule.

A license or certificate in effect on the provision's effective date continues in effect until the first biennial renewal date established in the Board's rules. No license or certificate in effect on the provision's effective date is valid for more than three years after the effective date.

## **License display**

(R.C. 4757.13)

The bill eliminates a requirement that a counselor, social worker, or marriage and family therapist prominently display the person's license in an easy to see and read manner and in a conspicuous place either in the person's office or the place where the person conducts a major portion of the person's practice.

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## **DEVELOPMENT SERVICES AGENCY**

### **Opportunity zones and business investment credits**

- Authorizes a nonrefundable tax credit equal to 10% of a taxpayer's investment in an Ohio Opportunity Zone fund.
- Limits individual credits to \$1 million per fiscal biennium and total credits to \$50 million per biennium.
- Reduces the total biennial cap on the existing small business investment credit from \$100 million to \$50 million and otherwise modifies that credit.

### **Motion picture tax credit**

- Repeals the refundable motion picture tax credit beginning in FY 2020, but allows credits certified before then to continue to be claimed.

### **Community reinvestment areas**

- Specifies that an amendment that adds affordable housing requirements to the terms of a community reinvestment area (CRA) in existence on July 21, 1994, will not subject the CRA to state law requirements that subsequently became effective.

### **Rural Industrial Park Loan Fund**

- Reinstates the Rural Industrial Park Loan Fund, which was repealed in 2015 and has not received appropriations since FY 2010-2011.
- Requires the fund to support the Rural Industrial Park Loan Program.
- Appropriates \$25 million to the fund.

### **Opportunity zone investment credit**

(R.C. 107.036, 122.84, 122.86, 5747.82, and 5747.98)

The bill authorizes a nonrefundable income tax credit for taxpayers that invest in Ohio opportunity zones. The credits enhance existing federal and Ohio tax benefits for investments in such zones.

#### **Opportunity zone background**

Beginning in 2018, federal law allows states to designate economically distressed areas that meet certain criteria as "opportunity zones."<sup>23</sup> Once the zone is certified by the Secretary

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<sup>23</sup> 26 U.S.C. 1400Z-1. The Opportunity Zone law was enacted in December of 2017 by the federal "Tax Cut and Jobs Act." A map of opportunity zones designated in Ohio is available at [https://development.ohio.gov/bs/bs\\_censustracts.htm](https://development.ohio.gov/bs/bs_censustracts.htm).

of the Treasury, certain investments made to benefit the zone are eligible for preferential federal tax treatment. Specifically, when a taxpayer reinvests capital gains (i.e., income from the sale of stock or other asset) in an “opportunity zone fund” – an investment fund that holds at least 90% of its assets in property, stock, or ownership interests that benefit opportunity zones – the tax on those capital gains is deferred until the investment is sold or exchanged from the fund.<sup>24</sup>

Moreover, if the investment is held in the opportunity zone fund for five years, the investment’s basis is increased by 10% of such deferred gain (effectively a 10% decrease in tax on the original gain). If held for at least seven years, the basis is increased by 15%. If held for ten years, not only is the basis increased by 15%, but any capital gains accrued while the investment was held in the opportunity zone fund is exempt from tax.<sup>25</sup>

Because Ohio law uses federal adjusted gross income as a starting point for Ohio income tax liability, the federal deferral and reduction in capital gain taxes also defers or reduces a taxpayer’s Ohio income tax. These federal and Ohio tax benefits are available regardless of where the zone is located.

### **Ohio income tax credit**

The bill adds to these existing incentives a new Ohio income tax credit for investments that entirely benefit Ohio-designated zones. To qualify for the credit, a taxpayer must invest in an opportunity zone fund that in turn holds 100% of its invested assets in opportunity zones in Ohio (referred to in the bill as an “Ohio qualified opportunity fund”). Unlike the federal tax incentives, the bill’s credit is available even for investors that do not have capital gains to reinvest.

The credit equals 10% of the taxpayer’s investment. The taxpayer may claim the credit in the year in which the Ohio qualified opportunity fund invests the taxpayer’s investment in a project located in an Ohio opportunity zone, or in the following year (in case the taxpayer’s credit is approved after the tax filing deadline for the year in which the investment was made).

The credit is nonrefundable, but any unused credit can be carried forward for up to five subsequent taxable years. The total amount allowed to a particular taxpayer in any fiscal biennium is limited to \$1 million. The total amount of credits available for all taxpayers is limited to \$50 million per biennium. Because of this limit, investors must apply for the credit.

### **Application process**

The taxpayer must apply to the Development Services Agency (DSA) between January 1 and February 1 following the year in which an investment is made. The taxpayer must include in the application (1) the total investment the taxpayer made in Ohio qualified opportunity funds and (2) a statement from an employee or officer of each fund certifying the amount the

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<sup>24</sup> 26 U.S.C. 1400Z-2. To qualify, the capital gains must be reinvested in the fund within 180 days after the gain is realized.

<sup>25</sup> 26 U.S.C. 1400Z-2.

taxpayer invested in that fund, the amount of that investment that the fund directed to opportunity zone projects, and a description of each project funded by the investment.

DSA must consider applications in the order in which they are received. If the taxpayer qualifies for the credit, DSA will issue the taxpayer a credit certificate that lists the amount of the credit. The taxpayer must file a copy of the certificate with the taxpayer's return.

### **Qualifying Ohio opportunity zones**

The bill provides details for determining whether an opportunity zone fund's assets are invested in an Ohio-designated zone for the purposes of the credit. In the case of assets in the form of tangible property, the property must be used exclusively in the opportunity zone during the fund's holding period of the property. In the case of assets in the form of stock or partnership interests in a business, all of the business' tangible property must be used exclusively in the Ohio zone during the fund's holding period of the stock or interest. (These are stricter investment standards than those that federal law requires for an investment to qualify for the federal tax [and Ohio flow-through tax] benefits: federal law requires only 90% of a fund's investments to be in an opportunity zone, and requires "substantially all," instead of all, of a business' tangible property to be used in a zone during "substantially all" of the time the fund holds its investment in the property or business. Under the proposed Treasury regulations, "substantially all," when used in reference to the percentage of a business' tangible property it uses in an opportunity zone, may be as little as 70%.)

### **Transfer of credits**

A credit certificate may be transferred once to another person, but the credit must be claimed within the original five-year carryforward period even if transferred.

### **Annual report**

The bill requires DSA to issue an annual report that includes information about the number of taxpayers that applied for, and were awarded, credits during the preceding year; the amount of credits awarded; the projects funded by taxpayer investments; and the opportunity zones in which those projects are located.

### **Biennial forecast of foregone revenue**

Continuing law requires that every main biennial budget bill include detailed estimates of the state revenue that will be foregone due to "business incentive" tax credits in the current biennium and future biennia. The bill adds the new opportunity zone investment credit to the list of tax credits that are included in these estimates.

### **Small business investment credit**

(R.C. 122.86)

The bill modifies an existing income tax credit for investments in smaller businesses, principally by reducing the total biennial limit on the credit allotment. Currently, the amount of the credits awarded each fiscal biennium is limited to \$100 million; the bill reduces the limit to \$50 million.

The bill also modifies qualifications a business must satisfy in order for a taxpayer's investment to qualify for the credit. Whereas current law requires a business to employ at least 50 full-time equivalent employees, the bill specifies that this requirement is to be satisfied throughout the two-year period leading up to a taxpayer's investment.

Current law also requires the business to incur costs for payroll or for one or more of four different categories of assets in an amount equal to, or more than, the taxpayer's investment amount for which the credit is granted, and to do so within six months of the taxpayer's investment. The categories include real property, tangible personal property, vehicles used primarily in the business, and intangible property (e.g., royalties, trademarks, licenses).

The bill modifies these qualifications as follows:

- Eliminates the requirement that the business' costs equal the amount of the investment for which the credit is claimed, requiring only that some such costs be incurred.
- Modifies the payroll qualification by permitting increased pay for owners, officers, or managers to count toward payroll, and by disallowing pay for retained employees to count toward payroll. Only the pay of employees hired after the investment would count. (Under current law, the payroll qualification refers to the pay of "new employees," but expressly allows pay for retained employees to count as pay for new employees. The bill removes reference to retained employees' pay.)
- Allows the business to count installation costs toward the cost of tangible personal property.
- Replaces the cost of intangible property with the cost of leasehold improvements or construction.

The bill also modifies the administration of the credit. As under current law, taxpayers must apply to DSA to qualify for the credit, or the business may apply on a taxpayer's behalf. The bill specifies that, in either case, the application must be made within 60 days after the investment is made and within the same fiscal biennium in which the investment is made. And, whereas under current law the right to claim a credit is represented by a "certificate," which may be used to claim the tax credit once the investment's required two-year holding period concludes, the bill refers to this right as an "allocation," which may be converted to a certification once the holding period is over, allowing the credit to be claimed thereafter. Credit allocations are made only once an applicant provides DSA with all documentation needed to demonstrate that a business satisfies the qualifications.

Under both current law and the bill, the credit is available for investments in businesses having assets of \$50 million or less, or annual sales of \$10 million or less, and employing no more than 50 full-time-equivalent employees or employing more than 50% of their U.S. employees in Ohio.

The bill's changes apply to investments made on or after July 1, 2019.

## **Motion picture tax credit repeal**

(R.C. 122.85; Section 812.20)

The bill repeals a tax credit for motion picture production expenditures beginning in FY 2020. Under current law, a motion picture production company may apply to DSA to certify its motion picture as eligible for the credit. Then, after production concludes, the company may reapply for a credit equal to 30% of the company's Ohio-based production expenditures. The refundable credit may be claimed against the commercial activity tax, income tax, or financial institutions tax.

The bill prohibits DSA from certifying productions as eligible for the tax credit after FY 2019, thus prohibiting future productions from qualifying. However, the bill continues to allow a credit on the basis of productions already certified as tax credit-eligible before FY 2020.

## **Community reinvestment areas**

(R.C. 3735.661)

Under continuing law, a municipal corporation or county may amend the ordinance or resolution governing a Community Reinvestment Area (CRA) that was in existence on July 21, 1994, in specified ways, without subjecting the CRA to state law requirements that became effective after that date. The bill adds to the list of specified amendments that will not bring a CRA under the newer state law requirements. Specifically, the bill allows municipal corporations and counties to require that developers and property owners agree to provide affordable housing as a condition of receiving tax benefits through a CRA that existed on July 21, 1994, without bringing that CRA under the law's subsequently enacted requirements.

## **Rural Industrial Park Loan Fund**

(R.C. 122.26; Sections 259.10 and 259.50)

The bill reinstates the Rural Industrial Park Loan Fund and appropriates \$25 million to it from the Facilities Establishment Fund. Under the bill, the Director of Development Services must use the Rural Industrial Park Loan Fund to support the Rural Industrial Park Loan Program, which allows loans and loan guarantees for the development and improvement of industrial parks in rural areas of Ohio. There have been no appropriations to the program since FY 2011. The Rural Industrial Park Loan Fund was repealed in 2015. It had a zero balance at the time of its repeal.<sup>26</sup>

Under current law, the Director of Development Services must adopt rules governing the program, including rules governing criteria for evaluating applications for assistance and reporting and monitoring procedures. The Director also must establish fees, interest rates, payment schedules, and local match requirements; require each applicant for assistance to develop a project marketing plan and management strategy; inform local governments of the

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<sup>26</sup> See Am. Sub. H.B. 1, 128th General Assembly (2009) and Am. Sub. H.B. 64, 131st General Assembly (2015).

availability of the program; and issue an annual report regarding program activities. Generally, an applicant, as a condition of receiving assistance under the program, must agree, for a period of five years, not to relocate jobs from inside Ohio to a site that is developed or improved with assistance from the program.<sup>27</sup>

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<sup>27</sup> R.C. 122.24, not in the bill.

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## **DEPARTMENT OF DEVELOPMENTAL DISABILITIES**

### **County DD board projections and plans**

- Requires each county board of developmental disabilities (county DD board) to annually submit to the Department of Developmental Disabilities a five-year projection of revenues and expenditures.
- Authorizes the Department to conduct additional reviews to assess a county DD board's fiscal condition.
- Requires each county DD board to develop an annual plan, instead of a three-calendar year plan, and generally limits the information in the annual plan to information regarding waiting lists and home and community-based services.

### **Quality assurance reviews**

- Eliminates a requirement that county DD board service and support administrators perform quality assurance reviews as a distinct function of service and support administration.

### **Residential facility vacancy database**

- Requires the Director of Developmental Disabilities (DD Director) to establish and maintain on the Department's website a searchable database of vacancies in licensed residential facilities.

### **Criminal records checks for conditionally employed applicants**

- Requires the Department, or other hiring entity, to request a criminal records check before conditionally employing an applicant.

### **Ohio STABLE Account Program**

- Changes the name of Ohio's ABLE Account Program to the STABLE Account Program.

### **Adjudication orders against supportive living certificates**

- Permits the DD Director, for good cause, to suspend a supported living certificate holder's authority to expand or add supported living services.
- Expands the DD Director's authority to issue a summary suspension of a supported living certificate holder's authority to continue to provide supported living if there is a danger of immediate and serious harm.

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

- Provides that the mean FY 2020 and FY 2021 Medicaid rates for all intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) in peer groups 1-B and 2-B as determined under an older formula after certain modifications are made cannot exceed \$290.10.

- Requires the Department to reduce the FY 2020 and FY 2021 Medicaid rates for ICFs/IID in peer groups 1-B and 2-B as determined under an older formula if the federal government requires that the ICF/IID franchise permit fee be reduced or eliminated.

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

- Requires the DD Director to establish a methodology to estimate in FY 2020 and FY 2021 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

### **County subsidies used for nonfederal share**

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

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

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

### **Direct support professional rate increase**

- Requires that the Medicaid rate for homemaker/personal care services provided during the period beginning January 1, 2020, and ending July 1, 2021, by direct support professionals under a Medicaid waiver administered by the Department of Developmental Disabilities be \$13 per hour.

### **Developmental center services**

- Permits a developmental center to provide services to persons with developmental disabilities living in the community or to providers of services to those persons.

### **Central intake/referral system for home visiting programs**

- Excludes services provided under Part C of the federal Individuals with Disabilities Education Act from the central intake and referral system used to refer families to those services as well as home visiting programs.

### **Specialized treatment units for minors**

- Permits the managing officer of an institution, with the concurrence of the chief program director, to admit into a specialized treatment unit children ages 10-17 who are in behavior crisis and have serious behavioral challenges.
- Requires a child's parent or legal guardian to enter into a memorandum of understanding with the county DD board and the Department specifying each party's responsibilities and the duration of admission.
- Limits the initial duration of admission to 180 days, but permits the child's parent or guardian to petition the Department to extend admission to a maximum of one year.

## **Citizen's advisory council**

- Reduces the membership of a citizen's advisory council appointed for an institution under the Department's control to seven members (from 13).
- Increases the term of advisory council officers and permits a member to serve as an officer until no longer a council member.
- Designates an institution's managing director as the individual responsible for nominating persons to fill council vacancies.

## **Employment first task force**

- Requires, rather than permits, the DD Director to establish an employment first task force.
- Removes the sunset provisions that would, on January 1, 2020, eliminate the task force.

## **Interagency Workgroup on Autism**

- Requires, rather than permits, the DD Director to establish an interagency workgroup on autism.

## **Reimbursement for workgroup members' travel expenses**

- Permits the DD Director to provide for reimbursement for travel expenses for a workgroup's official members who represent families or are advocates of individuals with developmental disabilities if certain conditions are met.
- Provides that the amount of reimbursement cannot exceed the rates the Director of Budget and Management establishes in rules for the travel expenses of officers, members, employees, and consultants of state agencies.

## **Protection and advocacy system and client assistance program**

- Requires the Senate President and Speaker of the House to establish every two years a joint committee to examine whether a new entity should be designated to serve as the state's advocacy and protection system and client assistance program for persons with disabilities.
- Requires the joint committee to submit to the Senate President, Speaker, and Governor a report containing its recommendations every two years.

## **Adult day support and nonmedical transportation workgroup**

- Requires the DD Director to establish a workgroup regarding adult day support and nonmedical transportation services provided under the Medicaid waivers administered by DD.
- Requires the workgroup to recommend changes to the payment system for adult day support and nonmedical transportation services.

- Prohibits the Department from implementing changes to the current payment system for adult day support and nonmedical transportation services until the workgroup submits its report.

## **ICF/IID and home and community-based services**

- Specifies what information a county DD board must provide to an individual inquiring about residential services.
- Requires a county DD board to inform an individual about alternative services that are available, including the list of providers maintained on the Department's website, before placing the individual on a waiting list for DD-administered home and community-based services.
- Codifies in state law a federal requirement that individuals with developmental disabilities who are eligible to receive ICF/IID services have the right to receive the services from any willing and qualified provider.
- Requires the Department to determine whether county boards violate this right.
- Permits individuals with developmental disabilities who are eligible for both DD-administered home and community-based services and ICF/IID services to choose which services to receive.
- Provides that a county board's duty to establish a waiting list for DD-administered home and community-based services applies when available resources are insufficient to enroll all individuals who are assessed as needing them and have requested them.

## **County DD boards' projections and plans**

(R.C. 5126.053 and 5126.054 with conforming changes in 5123.046, 5126.056, and 5166.22)

### **Five-year projection of revenues and expenditures**

Beginning April 1, 2020, the bill requires each county board of developmental disabilities (county DD board) to annually submit to the Department of Developmental Disabilities a five-year projection of revenues and expenditures. Each projection must be both in the format established by the Department (in consultation with the Ohio Association of County Boards of Developmental Disabilities) and approved by the superintendent of the county DD board. Projections must be submitted by April 1 each year.

The Department must review each five-year projection and may require a county DD board to do any of the following:

- Submit additional information or a revised projection;
- Permit the Department to visit the county DD board to review documents and other relevant records;
- Complete other actions as the Director considers necessary.

If a county DD board fails to submit a five-year projection, the Department may withhold funds, conduct further reviews to complete the projection at full cost to the board, and revoke the superintendent's certification or the board's accreditation. If a county DD board willfully provides erroneous, inaccurate, or incomplete data as part of its projection, the Department may complete the projection at full cost to the board and may revoke the superintendent's certification or the board's accreditation.

### **Additional assessments of a board's fiscal condition**

The bill permits the Department, or another entity designated by or under contract with it, to conduct additional reviews as necessary to assess any county DD board's fiscal condition. Prior notice of an additional review must be provided to the board.

The Department may issue recommendations to discontinue or correct fiscal practices or budgetary conditions that prompted, or were discovered by, an additional review. The superintendent of a county DD board must respond in writing to any recommendations within the timeframe specified by the Department.

### **Annual plans**

The bill requires county DD boards to develop and submit to the Department annual plans, instead of three-year plans. Under current law, a board must develop a three-calendar year plan that must include three components: (1) an assessment related to wait-listed individuals who need care provided by an intermediate care facilities for individuals with intellectual disabilities (ICF/IID) and may seek home and community-based services, and the sources of funds available to pay the nonfederal share of certain Medicaid expenditures, (2) a preliminary implementation for the first year the plan is in effect, and (3) an implementation of Medicaid case management services and home and community-based services after the plan is approved. The bill replaces the three-calendar year plan with an annual plan requirement and largely eliminates the components that were required in the three-calendar year plan.

Annual plans required under the bill must be submitted by December 31 and specify: (1) the number of individuals with developmental disabilities in the county who are placed on the board's waiting list, the service needs of those individuals, and the projected annualized cost for services, (2) the projected number of individuals to whom the county DD board intends to provide home and community-based services based on available funding as projected in the five-year projection discussed above, and (3) how the services are to be phased in over the period the plan covers.

The bill generally applies other provisions of existing law pertaining to the three-year plans to the annual plans, such as permitting the Department to take action against a county DD board if the plan is not submitted, is disapproved, or is not implemented.

### **Quality assurance reviews**

(R.C. 5126.15, primary; R.C. 5126.055)

The bill eliminates a requirement that a service and support administrator perform quality assurance reviews as a distinct function of service and support administration. It also

eliminates a requirement that a service and support administrator incorporate the results of those reviews into amendments of an individual's service plan.

County DD boards employ or contract for the services of service and support administrators. Continuing law requires a service and support administrator to perform only those duties that are specified in the law.

### **Residential facility vacancy database**

(R.C. 5123.193)

The bill requires the Director of Developmental Disabilities (DD Director) to establish a searchable database of vacancies in licensed residential facilities and maintain it on the Department's website. Every person or governmental entity that operates a licensed residential facility is required to provide the Department with current and accurate vacancy information in accordance with procedures that the Director is required to establish.

### **Criminal records checks for conditionally employed applicants**

(R.C. 5123.081)

The bill requires the Department, a county DD board, providers, and subcontractors to request a criminal records check on an applicant before conditionally employing the applicant to a position with the Department or a county DD board. Current law requires a criminal records check, but does not require the hiring entity to request it before the conditional employment begins.

### **Ohio STABLE Account Program**

(R.C. 113.50, 113.51, 113.53, 113.55, and 113.56)

The bill changes the name of Ohio's ABLE Account Program to the STABLE Account Program. Under federal law, eligible individuals with disabilities may be designated as a beneficiary of an ABLE account. Amounts in the account can be used by a beneficiary for qualified disability expenses and are excluded from consideration in determining eligibility for means-tested public assistance programs, such as SSI, Medicaid, and food assistance. The Department already refers to these accounts as STABLE accounts, and the bill makes conforming changes to the Revised Code.

### **Adjudication orders against supportive living certificates**

(R.C. 5123.166 and 5123.0414)

Current law requires a person to have a certificate issued by the DD Director in order to provide supported living services to an individual with a developmental disability.<sup>28</sup> The Director may, for good cause, take action against a certificate, including refusing to issue or renew a certificate, revoking a certificate, or suspending the certificate holder's authority to continue to

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<sup>28</sup> R.C. 5123.16, not in the bill.

provide supported living or begin to provide supported living. The bill adds that the DD Director also may suspend a certificate holder's authority to expand or add supported living.

Generally, action against a certificate must be taken in accordance with the Administrative Procedure Act (R.C. Chapter 119); however, current law specifies limited circumstances under which the DD Director may summarily suspend (i.e., take action without affording notice and opportunity for a hearing) an existing certificate holder's authority to provide supported living. As described in the table below, the existing summary suspension authority applies only if the provider has failed to continue to meet certification standards and if several additional conditions are met. The bill expands the summary suspension for other misconduct, not just a failure to continue to meet certification standards, so long as there is clear and convincing evidence of the misconduct and a danger of immediate and serious harm.

Summary suspension of authority to continue providing supported living		
	Existing law	The bill
Authority to summarily suspend an existing provider's authority to continue to provide supported living	The DD Director may issue the order if (1) the Director determines that the provider has failed to continue to meet certification standards, (2) the Director determines the failure represents a pattern of serious noncompliance or creates a substantial risk to the health or safety of an individual who receives supported living from the provider, (3) the Director makes the individual or the individual's guardian aware of the Director's determination, (4) the individual or guardian does not select another provider, and (5) a county DD board has filed a complaint with the probate court describing related abuse or neglect of the individual and the probate court does not issue an order authorizing the board to arrange services for the individual pursuant to an individualized service plan.	Same, but adds that the DD Director also may issue the order if (1) there is clear and convincing evidence that the provider has engaged in conduct described below and (2) allowing the provider to continue to provide supported living would present a danger of immediate and serious harm.  The Director must find clear and convincing evidence of one of the following: (1) failure to meet or continue to meet certification standards, (2) the provider also provides the individual a residence in violation of existing law, (3) noncompliance with existing criminal records check provisions or abuse and neglect registry provisions, (4) misfeasance, malfeasance, or nonfeasance, (5) confirmed abuse or neglect, (6) financial irresponsibility, (7) other conduct the Director determines would be injurious to individuals receiving supported living from the provider.

Current law specifies procedures under the Administrative Procedure Act that apply to summary suspensions. The bill generally maintains those provisions and applies them to a

summary suspension issued under the bill's expanded authority to issue summary suspensions, except as follows:

--The bill requires the DD Director to send the provider notice of the order by certified mail, instead of registered mail as under current law;

--The bill requires the DD Director to approve, modify, or disapprove a referee or examiner's report and recommendation not later than ten days after it is sent to the provider, instead of not later than 15 days, as under current law;

--The bill provides for a more expeditious hearing in the case of a summary suspension issued under the bill's expanded authority. Under the existing authority, the hearing must be set within 30 days. For a summary suspension issued under the bill's expanded authority, the hearing must be set within 15 days, but not earlier than seven days, after the provider timely requests a hearing, unless both parties agree to another time.

The bill specifies that a summary suspension issued under the expanded authority in the bill is generally effective until a final adjudication order issued pursuant to the Administrative Procedure Act becomes effective. The final adjudication order must be issued within ten days of completion of the hearing. If the order is not issued in that time, the summary suspension is dissolved, but it does not invalidate any subsequently issued final adjudication order. A final adjudication order cannot be suspended by a court during pendency of an appeal filed under the Administrative Procedure Act.

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

(Sections 601.03 to 601.05, amending Section 261.168 of H.B. 49 of the 132<sup>nd</sup> G.A.)

The bill makes two revisions to the law that requires the Department to make certain modifications to the older of the two formulas used to determine the FY 2020 and FY 2021 Medicaid payment rates for ICFs/IID in peer groups 1-B and 2-B.<sup>29</sup> Under current law, an ICF/IID's Medicaid rate for services provided during those fiscal years is the higher of the rates determined under the two formulas. The older formula predates H.B. 24 of the 132<sup>nd</sup> General Assembly, which enacted the newer one. The older formula expires beginning with FY 2022.<sup>30</sup>

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<sup>29</sup> Peer group 1-B consists of ICFs/IID with a Medicaid-certified capacity exceeding eight. Peer group 2-B consists of ICFs/IID with a Medicaid-certified capacity not exceeding eight, other than ICFs/IID in peer group 3-B. Peer group 3-B consists of each ICF/IID (1) that was certified as an ICF/IID after July 1, 2014, (2) that has a Medicaid-certified capacity not exceeding six, (3) that has a contract with the Department that is for 15 years and includes a provision for the Department to approve all admissions to, and discharges from, it, and (4) whose residents are admitted directly from a developmental center or have been determined by the Department to be at risk of admission to a developmental center. (R.C. 5124.01(OO)(2).) The modifications to the older formula do not apply when determining the Medicaid payment rate of an ICF/IID in peer group 3-B.

<sup>30</sup> R.C. 5124.15.

The first revision concerns the target amount. The Department must adjust the total per Medicaid day rate for all ICFs/IID in peer groups 1-B and 2-B if the mean total rate for those facilities is other than a target amount. The target amount is \$290.10 or, at the Department's sole discretion, a larger amount. If an adjustment is to be made, it must equal the percentage by which the mean total per Medicaid day rate is greater or less than the target amount. The bill sets the target amount at \$290.10, thereby eliminating the Department's authority to use a larger target amount and requiring it to make the adjustment if the mean total rate as determined under the older formula after the modifications are made is greater than that amount.

The second revision concerns the franchise permit fee that continuing law requires ICFs/IID to pay. The bill provides that if the U.S. Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated, the Department must reduce the Medicaid payment rate for ICFs/IID in peer groups 1-B and 2-B as determined under the older formula after the modifications are made. The reduction in the rate is to reflect the loss to the state of the revenue and federal Medicaid funds generated from the franchise permit fee.

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

(Section 261.130)

The bill requires the DD Director to establish a methodology to estimate in FY 2020 and FY 2021 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, continuing law requires the board to pay this share for waiver services provided to an individual who the board determines is eligible for its services. Each quarter, the DD Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

## **County subsidies used for nonfederal share**

(Section 261.200)

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

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

(Section 261.210)

The bill requires that the total Medicaid payment rate for each 15 minutes of routine homemaker/personal care services that a Medicaid provider provides to a qualifying enrollee of

the Individual Options Medicaid waiver program be 52¢ higher than the rate for services that are provided to an enrollee who is not a qualifying enrollee. The higher rate is to be paid only for the first 12 months, consecutive or otherwise, that the services are provided during the period beginning July 1, 2019, and ending July 1, 2021.

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

- The enrollee resided in a developmental center, converted ICF/IID,<sup>31</sup> or public hospital immediately before enrolling in the Individual Options Medicaid waiver program.
- The enrollee did not receive before July 1, 2011, routine homemaker/personal care services from the Medicaid provider that is to receive the higher Medicaid rate.
- The DD Director has determined that the enrollee's special circumstances (including diagnosis, service needs, or length of stay at the developmental center, converted ICF/IID, or public hospital) warrant paying the higher Medicaid rate.

## **Direct support professional rate increase**

(Section 261.220)

The bill requires that the Medicaid payment rate for homemaker/personal care services provided during the period beginning January 1, 2020, and ending July 1, 2021, by direct support professionals under a Medicaid waiver administered by the Department of Developmental Disabilities be \$13 per hour. Homemaker/personal care services are the coordinated provision of a variety of services, supports, and supervision that (1) are necessary to ensure the health and welfare of an individual with a developmental disability who lives in the community, (2) advance the individual's independence within the individual's home and community, and (3) help the individual meet daily living needs. A direct support professional is an individual who works directly with people with developmental disabilities.

## **Developmental center services**

(Section 261.150)

The bill permits a residential center for persons with developmental disabilities operated by the Department (i.e., a developmental center) to provide services to persons with developmental disabilities living in the community or to providers of services to these persons. The Department may develop a method for recovery of all costs associated with the provision of the services.

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<sup>31</sup> A converted ICF/IID is an ICF/IID, or former ICF/IID, that converted some or all of its beds to providing services under the Individual Options Medicaid waiver program.

## Central intake/referral system for home visiting programs

(R.C. 3701.611)

Under law enacted in 2016 by S.B. 332 of the 131<sup>st</sup> General Assembly, which enacted recommendations of the Commission on Infant Mortality, the Departments of Health and Developmental Disabilities were required to create a central intake and referral system to serve as a single point of entry for access, assessment, and referral of families to appropriate home visiting services and services provided under Part C of the federal Individuals with Disabilities Education Act (IDEA). Part C of IDEA is also known as the “Program for Infants and Toddlers with Disabilities” and is a federal grant program that assists states in operating a comprehensive statewide program of early intervention services for infants and toddlers (ages birth through age 2) with disabilities and their families.<sup>32</sup> The Department of Developmental Disabilities is the lead agency that administers this federal grant program in Ohio.<sup>33</sup>

The bill excludes early intervention services from the central intake and referral system. Associated with this change, it eliminates the requirement that the two departments share any funding available to each for local outreach and child find efforts.

## Specialized treatment units for minors

(R.C. 5123.691)

The bill permits the managing officer of an institution, with the concurrence of the chief program director, to admit children ages 10-17 into a specialized treatment unit within an institution. To be admitted, a child must be in behavior crisis, have serious behavioral challenges, and have either an intellectual disability or autism spectrum disorder. Admission is based on the availability of beds and the clinical treatment needs of the child.

Before a child may be admitted into a specialized treatment unit, the child’s parent or legal guardian is required to enter into a memorandum of understanding with the county DD board and the Department. The memorandum must specify each party’s responsibilities regarding the care and treatment of the child and the duration of admission.

The bill limits the initial duration of a child’s admission into a specialized treatment unit to 180 days, but permits the child’s parent or legal guardian to petition the Department to extend the child’s length of stay. The Department may grant or deny a petition for extension, but the total duration of admission cannot exceed one year.

The managing officer of an institution has the power to discharge a child from a specialized treatment unit if the chief program director conducts a comprehensive examination

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<sup>32</sup> Early Childhood Technical Assistance Center, *Part C of IDEA*, available at <http://ectacenter.org/partc/partc.asp>.

<sup>33</sup> Ohio Department of Developmental Disabilities, *About Ohio Early Intervention*, available at <https://ohioearlyintervention.org/about>.

of the child and concludes that institutionalization is no longer advisable or that a discharge would be the most effective use of the institution.

## **Citizen's advisory council membership**

(R.C. 5123.092; Section 751.10)

The bill reduces the number of members serving on a citizen's advisory council to seven (from 13). Current law requires that a citizen's advisory council exist for every institution under the Department's control. The bill's reduction in membership is achieved by not filling vacancies on advisory councils as those vacancies arise.

Terms for advisory council officers are increased to three years under the bill and members are permitted to serve as an officer for as long as they are on the council. Currently, officers serve one-year terms and are limited to serving no more than two consecutive one-year terms.

The bill designates an institution's managing director as the individual responsible for nominating persons to fill vacancies on a council. Under current law, nominations are made by the remaining council members.

The bill eliminates a current law provision that permits a member's removal from the council based on several successive, unexcused absences from council meetings.

## **Employment First Task Force**

(R.C. 5123.023)

The bill requires the DD Director to establish an Employment First Task Force for the purpose of improving the coordination of the state's efforts to address the needs of individuals with developmental disabilities who seek community employment. Under current law, the Director is permitted but not required to establish this Task Force.

The bill also removes sunset provisions from current law that would, on January 1, 2020, eliminate the Task Force.

## **Interagency Workgroup on Autism**

(R.C. 5123.0419)

The bill requires the DD Director to establish an Interagency Workgroup on Autism for the purpose of improving the state's efforts to address the service needs of individuals with autism spectrum disorders and their families. Under current law, the Director is permitted but not required to establish this Workgroup.

## **Reimbursement for workgroup members' travel expenses**

(R.C. 5123.0424)

The bill permits the DD Director to provide for an official member of an official workgroup to be reimbursed for actual and necessary travel expenses the member incurs in the performance of the member's duties on the workgroup, including attending the workgroup's meetings, if certain conditions exist. The conditions are:

- The official member must serve on the official workgroup as a representative of the families of, or advocates for, individuals with developmental disabilities.
- The official member cannot receive reimbursement for the travel expenses from any other source.
- The official member cannot receive wages or other compensation from any other source for performing the member's duties on the workgroup.
- No statute prohibits the workgroup's official members from being reimbursed for travel expenses.

The amount the DD Director provides for an official member to be reimbursed cannot exceed the rates the Director of Budget and Management, under continuing law, establishes in rules for the travel expenses of officers, members, employees, and consultants of state agencies.

To be an official member of an official workgroup, a member must have been appointed by the DD Director. An official workgroup is a workgroup, task force, council, committee, or similar entity that has been established by the Director under the Director's express or implied statutory authority.

## **Protection and advocacy system and client assistance program**

(R.C. 5123.603)

The bill requires the Senate President and Speaker of the House to establish every two years a joint committee to examine whether a new entity should be designated to serve as the state's protection and advocacy system and client assistance program for persons with disabilities. The joint committee is to consist of a number of members of the Senate appointed by the Senate President and an equal number of members of the House appointed by the Speaker. The Senate President and Speaker are to determine the total number of members and the dates on which members' terms are to begin and end. Vacancies are to be filled in the manner of the original appointments.

Every two years, the Senate President and Speaker must specify a deadline for the joint committee to complete a new report containing its recommendations. The joint committee is to submit the report to the Senate President, Speaker, and Governor by the deadline.

Federal law authorizes allotments of federal funds to states to support protection and advocacy systems for individuals with developmental disabilities. A state must satisfy a number of requirements to be eligible for its allotment, including certain requirements regarding the state protection and advocacy system.<sup>34</sup> The federal requirements generally describe the types of entities that may serve as the state protection and advocacy system and the criteria for redesignation.

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<sup>34</sup> 42 U.S.C. 15041 to 15045.

## **Adult day support and nonmedical transportation workgroup**

(Section 261.230)

The bill requires the DD Director to establish a workgroup to advise the Department on the payment system for adult day support and nonmedical transportation services available under the Medicaid waivers it administers. The workgroup is to consist of:

- A representative from the Department;
- A representative from the Ohio Health Care Association;
- A representative from the Ohio Provider Resource Association;
- A representative from the Arc of Ohio;
- A representative from the Values and Faith Alliance;
- A representative from the Ohio Association of County Boards of DD;
- A representative from the Ohio Waiver Network;
- A representative from a company that provides nonmedical transportation services in multiple counties in this and other states;
- A parent advocate;
- A resident of a county that has a population of less than 65,000 and a geographical area between 520 and 620 square miles;
- Two representatives from private agency providers of adult day support that are located in counties with populations of at least 750,000 and that each serve more than 200 consumers and operate their own nonmedical transportation system;
- Two members of the Senate, one from each party;
- Two members of the House, one from each party.

The workgroup must submit a report to the DD Director before June 30, 2020. The report is to include recommendations for changes to the payment system for adult day support and nonmedical transportation services. When making recommendations, the workgroup must consider (1) whether payments for adult day support and nonmedical transportation services should be combined into a single payment and (2) whether there are any quality measures for providers of adult day support services. The bill prohibits the Department from implementing any changes to the current payment system for adult day support and nonmedical transportation services until the workgroup submits its report.

## **ICF/IID and home and community-based services**

(R.C. 5126.042, 5126.046, 5126.047, conforming changes 5123.01, 5123.044, and 5126.01)

The bill requires a county DD board to provide to an individual inquiring about available residential services information about the different types of available residential services. This includes information about home and community-based services available under a Medicaid

waiver component administered by the Department, non-Medicaid residential services, and ICF/IID services. When informing an individual about available residential services, a county DD board must both:

- Provide the individual with a written explanation of residential services, including ICF/IID services, developed by the Department;
- Inform the individual about the list of providers that the Department maintains on its website.

The bill also specifies that before a county DD board may place an individual on a waiting list for home and community-based services provided under Department-administered Medicaid waiver components, it must inform the individual of the availability of alternative services as well as the list of providers that the Department maintains on its website. Alternative services are defined as “various programs, funding mechanisms, and services and supports, other than home and community-based services, that exist as part of the developmental service system and other service systems.” The bill clarifies that a county DD board’s duty to establish a waiting list for Department-administered Medicaid waiver component services applies when the board determines that available resources are insufficient to enroll all individuals who have been assessed as needing home and community-based services and have requested the services.

The bill codifies a federal requirement specifying that an individual with developmental disabilities who is eligible to receive ICF/IID services has the right to receive those services from any willing and qualified provider. Additionally, an individual who is eligible to receive both home and community-based services and ICF/IID services has the right to choose whether to receive home and community-based services or ICF/IID services. It requires the Department to determine whether a county DD board violates these rights.

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## DEPARTMENT OF EDUCATION

### I. School financing

#### Funding for FY 2020 and FY 2021

- Requires the Department of Education to pay each city, local, exempted village, and joint vocational school district an amount equal to the district's aggregate annualized payments for FY 2019, as of the second payment in June 2019.
- Requires the Department, for each student enrolled in a community school or STEM school, to deduct from the amount computed for the student's resident district and pay to the school the amount prescribed by current law.
- Specifies that, for purposes of computing other payments for FY 2020 and FY 2021 for which a district's "state share index" or "state share percentage" is a factor, the Department must use the state share index or state share percentage computed for the district for FY 2019.
- Specifies that, for purposes of open enrollment, College Credit Plus, and any other payments for which the "formula amount" is used, the formula amount for FY 2020 and FY 2021 equals the formula amount for FY 2019 (\$6,020).

#### Student wellness and success funding

- Provides student wellness and success funds on a per pupil basis to city, local, and exempted village school districts based on quintiles of the percentages of children residing in the districts with family incomes below 185% of the Federal Poverty Guidelines.
- Provides student wellness and success funds, on a full-time equivalency basis, to joint vocational school districts, community schools that are not Internet- or computer-based community schools (e-schools), and STEM schools based on the per-pupil amount of this funding that is paid to each student's district of residence.
- Specifies that each school district, community school that is not an e-school, and STEM school must receive a minimum payment of student wellness and success funds of \$25,000 for FY 2020, and \$36,000 for FY 2021.
- Provides student wellness and success funds to each e-school in an amount equal to \$25,000 for FY 2020, and \$36,000 for FY 2021.
- Provides student wellness and success enhancement funds on a per-pupil basis to city, local, and exempted village school districts that received supplemental targeted assistance funding for FY 2019.
- Provides student wellness and success enhancement funds, on a full-time equivalency basis, to joint vocational school districts, community schools that are not e-schools, and STEM schools based on the per-pupil amount of enhancement funding that is paid to each student's district of residence.

- Requires each district and school to spend wellness and success funds and enhancement funds for specified purposes and to develop a plan for utilizing the funding in coordination with one or more specified organizations.
- Requires each district and school to submit a report to the Department at the end of each fiscal year describing the initiatives on which the district's or school's student wellness and success funds and enhancement funds were spent.

### **Funding adjustments for districts with TPP value changes**

- Eliminates the requirement that the Department deduct funds from a school district with more than a 10% increase in the taxable value of utility tangible personal property (TPP) subject to taxation in the preceding tax year when compared to the second preceding tax year.
- Requires the Department to credit districts for funds deducted due to such valuation increases between tax years 2017 and 2018.

### **Innovative Shared Services at Schools Program**

- Creates the Innovative Shared Services at Schools Program to provide grants to school districts, community schools, STEM schools, education consortia, and partnering private and government entities for projects that aim to achieve significant advancement in student achievement in the use of a shared services delivery model.

### **School Climate Grants**

- Creates School Climate Grants for FY 2020 and FY 2021 to provide grants to school districts, community schools, or STEM schools to implement positive behavior intervention and support frameworks or social and emotional learning initiatives.

### **Quality Community School Support Program**

- Establishes the Quality Community School Support Program, under which "community schools of quality" receive an additional \$1,750 or \$1,000 per year for each full-time student.

### **Department of Education performance audit**

- Requires the Auditor of State, in consultation with the Joint Education Oversight Committee, to conduct a performance audit of selected offices or programs within the Department of Education by October 1, 2020.

### **Report on partnership with educational service centers**

- Requires the Department submit annual reports to the General Assembly describing the manner in which the Department partnered with educational service centers in the delivery of certain services during previous fiscal year.

## **Study of e-school funding models**

- Requires the Department to study and make recommendations on the feasibility of new funding models for Internet- or computer-based community schools (e-schools) by December 31, 2019.

## **School financing studies**

- Requires the Department to conduct separate studies of special education, economically disadvantaged students, preschool education, English language learners, and the cost of community school operations.
- Requires the Joint Education Oversight Committee to conduct separate studies of gifted services, an incentive program for rural districts serving identified gifted children, and educational service centers.
- Requires the Office of Budget and Management (OBM) to create an inventory of all state budget line items that, in OBM's determination, provide funding services to children.
- Requires all of the studies to be submitted by December 31, 2020, to the Superintendent of Public Instruction, the President of the State Board, and the chairs, vice-chairs, and ranking members of the House and Senate standing committees and subcommittees regarding K-12 education.

## **II. Interventions for low-performing schools**

### **Academic distress commissions dissolved**

- Dissolves all current academic distress commissions (ADCs) and repeals the law on the establishment of new commissions.

### **Progressive interventions**

- Requires a school district board of education previously subject to an ADC to establish an improvement team for each school building under the board's control that also received an overall grade of "F" for the previous school year, beginning July 1, 2019.
- Requires a district board not previously subject to an ADC to establish an improvement team for each school building under a board's control when a school receives an overall grade of "F" for previous school year, beginning July 1, 2020.
- Requires the Superintendent of Public Instruction, using criteria developed by the State Board of Education, to review when a school may leave "in need of improvement status."
- Requires the state Superintendent, in conjunction with the State Board, to convene a meeting of stakeholders, beginning July 1, 2019, to determine methods of support for low-performing school buildings and submit a report to the General Assembly by January 1, 2020.

- Repeals a current provision on school restructuring.

### **III. State report cards**

#### **Effects of changes in report card calculations**

- Specifies that if there is any change made to the calculation or determination of grades or graded measures on the state report card, the grades for the first year those changes are in effect and for previous years must not be considered when determining if a school district or school is subject to certain sanctions or penalties.

#### **Value-added progress and performance index score grades**

- Specifies that the calculation of the value-added progress dimension must use not more than one academic year's worth of growth data.
- Specifies that for the overall grade on the state report card and for any sanction or penalty based on the measures, other than for determining Ed Choice eligibility or defining a "challenged school district" that either the performance index score measure or the value-added progress dimension measure be used, whichever is higher.
- Prohibits the use of both performance index score and value-added progress dimension measures for purposes of the overall grade on the state report card and certain sanctions and penalties.

#### **Preliminary data and community schools at risk of closure**

- Requires the Department of Education to annually submit preliminary data for state report cards and community schools at risk of closure.

#### **Report card and community sponsor evaluation deadlines**

- Specifies that if the Department fails to assign letter grades on the state report card for a school district or school by the current September 15 deadline, the Department must assign the same grade for each measure assigned for the previous school year or a "B," whichever is higher, with some exceptions.
- Requires that if the Department fails to assign a rating for a community school sponsor by the current law November 15 deadline, the Department must assign the sponsor the same rating as the previous year or an "effective" rating, whichever is higher.
- Specifies that, if the Department fails to assign report card or sponsor ratings by current law deadlines, that those ratings, as well as any from previous years, will not be considered in determining whether a school district, building, or sponsor is subject to most sanctions or penalties.

## **IV. Community schools**

### **Community school mergers**

- Establishes a procedure by which two or more community schools may merge that includes adopting a resolution, notifying the Department, and entering into a new contract with the surviving community school's sponsor.
- Clarifies that participating in a merger does not exempt a community school from the issuance of report card ratings or the laws regarding permanent closure.
- Makes ineligible to participate in a merger a community school that (1) has received certain failing grades on one of two most recent report cards or (2) has been notified of the for-cause termination or nonrenewal of the school's sponsorship contract.

### **Teachers and paraprofessionals employed by community schools**

- Exempts community schools from the prohibition against employing teachers of a core subject area unless they are "properly certified or licensed teachers," or hiring paraprofessionals to provide support in a core subject area unless they are "properly certified paraprofessionals."

### **Community school sponsors**

- Decreases the frequency of the Department of Education's evaluation of any community school sponsor rated "effective" for three or more consecutive years to once in each five-year period.
- Permits a community school sponsor to review the information used to determine its "academic performance" component of its evaluation at the same time it reviews that used to determine "adherence to quality practices" and "compliance with laws and rules" under current law.
- Repeals a community school sponsor's required annual verification that no finding for recovery exists against any individual proposing to create a community school or against any operator, individual governing authority members, or individual employees of each of its existing schools.
- Reduces the filing frequency for sponsor opening assurances from to once each year to once prior to the opening of a school's first year of operation and, for brick-and-mortar schools only, once more prior to the opening of operations from any new building.
- Re-classifies as a "start-up" community school a "conversion" community school that later enters into a sponsorship contract with an entity that is not a school district or educational service center.
- Specifies that, if a contract between a sponsor and the governing authority of a community school provides for the sponsor to receive a portion of the total amount of funding calculated to be paid to the school, the Department (rather than the governing authority) must pay the portion of the funds to the sponsor.

## **Community school closure criteria**

- Changes the criteria for community school closure for a school receiving grades of “F” in certain specified graded measures from receiving those grades two of three most recent school years to three consecutive school years.
- Removes an overall grade of “F” and an “F” for the value-added progress dimension as criteria for closure of community schools serving certain grades.

## **Dropout recovery school report cards**

- Changes the dropout recovery school report card measure of percentage of 12th grade students who have attained the “designated” passing score on all applicable high school assessments to those who have attained the “cumulative” performance score on the end-of-course exams.

## **Study committee on dropout recovery schools**

- Requires the State Board to coordinate a committee to conduct a study of the classification, authorization, and report card ratings of community schools that primarily serve students enrolled in dropout prevention and recovery programs that offer two or more of the following models: blended learning, portfolio learning, or credit flexibility.
- Requires the State Board to submit the committee’s recommendations to the General Assembly within six months after the bill’s effective date.

## **Report card suspended pending study report**

- Prohibits the Department from issuing report cards for such community schools until the General Assembly takes legislative action that addresses the classification, authorization, and report card ratings of those schools.

## **Annual e-school reports**

- Requires each Internet- or computer-based community school (e-school) to prepare and submit an annual report to the Department on classroom size, teacher – student ratios, and in-person meetings with a student.
- Requires the Department to submit to the State Board a report regarding the information received by e-schools.

## **Lists of community school closures and “challenged” districts**

- Requires the Department, by August 31 each year, to publish separate lists regarding community school closures, community schools at risk of closure, and “challenged” school districts.

## **V. Other provisions**

### **Accredited nonpublic schools**

- Establishes a category of nonpublic schools called “accredited nonpublic schools” for private schools that are accredited by the Independent Schools Association of the Central States.
- Requires accredited nonpublic schools to comply with minimum education standards adopted by the State Board of Education, but prohibits the State Board from prescribing additional operating standards for them.
- Exempts accredited nonpublic schools from the state minimum high school curriculum and chartering requirements.
- Creates a joint committee of the General Assembly to study the effects of the creation of accredited nonpublic schools and submit a report to the General Assembly not later than two years after the bill’s effective date.

### **Assessment requirements for chartered nonpublic schools**

- Permits chartered nonpublic schools that participate in state scholarship programs to administer an alternative assessment rather than the state achievement assessments for grades 3-8.
- Permits a chartered nonpublic school to develop a written plan to excuse a student with a disability from taking state assessments if certain conditions apply.

### **Cleveland scholarship applications**

- Requires the Department of Education, beginning with the 2020-2021 school year, to conduct two application periods for the Cleveland Scholarship Program.
- Specifies that the Department need not conduct a second application period if the scholarships awarded in the first period used the entire amount appropriated for a school year.

### **Educational service centers**

- Specifically permits an ESC to apply for state or federal grants on behalf of school districts and community schools with which it has voluntary service agreements.
- Permits an ESC to enter into a contract to purchase supplies, materials, equipment, and services on behalf of a school district or political subdivision.
- Permits ESCs to participate in the school component of the Medicaid Program.

### **School breakfast programs**

- Requires the Department to establish a program under which qualifying higher-poverty public schools must offer breakfast to all enrolled students during the school day and make efforts to increase participation in their breakfast programs.

- Requires the Department to submit a report on the breakfast program to the General Assembly and the Governor annually by December 31.
- Requires the Department to publish a list of qualifying public schools annually by December 31, to monitor participating schools, and to offer assistance in implementing and administering the program.

### **Industry-recognized credentials at CTPDs**

- Requires the business advisory committee of each career-technical planning district (CTPD) to submit to the board of education of the lead district a point value for the purposes of high school graduation for each industry-recognized credential offered by the CTPD.
- Permits the lead district board to approve the credential point value, in which case the district board must submit the credential point value and a copy of the district board's minutes to the Department.
- Provides that the State Board, by a two-thirds vote, may override a lead district board's approved point value, although the effective date of the override depends on when the vote occurs.
- Permits a CTPD student to attain the industry-recognized credential points required to qualify for graduation under continuing law using the credential point value approved by the student's lead district board.

### **Student transportation**

- Prohibits a school district board of education from reducing the transportation it provides to students the district is not required to transport after the first day of the school year.
- Specifies that, for students attending a nonpublic or community school, a school district's bus drop-off time may be up to 30 minutes prior to the start of the school day and the pick-up time may be up to 30 minutes after the end of the school day.
- Specifies that the annual medical examination for school bus drivers required under rules adopted by the State Board of Education may be performed by the same individuals who may perform medical examinations for school bus drivers who are subject to State Highway Patrol rules.

### **Transportation study**

- Establishes a joint legislative task force consisting of six members, three each appointed by the Speaker of the House and the Senate President, to study the transportation of community school and nonpublic school students and to determine methods to create greater efficiency and minimize costs in transporting those students.
- Requires the task force to work in consultation with the state Superintendent, the Auditor of State, and other stakeholders.

- Requires the task force to report its findings by December 31, 2020, to the Speaker and the Senate President.

### **Transfer of school district territory**

- Permits electors residing in school district territory located within a township that is split between two or more school districts to petition for the transfer of territory to another adjacent school district.
- Requires an election on the proposed transfer if the petition is signed by at least 10% of electors within the territory voting in the last general election.
- Stipulates the board of trustees of the township and the board of education of the school district gaining territory must enter into a formal agreement regarding the terms of the territory transfer if approved by the voters.
- Requires the district boards affected by the territory transfer and the board of trustees to execute an equitable division of the funds and indebtedness between the districts and specifies that legal title to school property in the territory shall be transferred to the district gaining territory.

### **Involuntary lease or sale of school district property**

- Requires a school district to offer to lease or sell to community schools, STEM schools, and college-preparatory boarding schools located in the district real property that the district has not used for school operations for one year (rather than two years as under current law).

### **State minimum teacher salary schedule**

- Increases the minimum base salary for beginning teachers with a bachelor's degree from \$20,000 to \$30,000 and proportionally increases the minimum salaries for teachers with different levels of education and experience.

### **Alternative resident educator licenses**

- Replaces the option to satisfy the training prerequisite for alternative resident educator licensure by completing a summer training institute offered by a nonprofit organization with the option to complete preservice training approved by the Chancellor of Higher Education.

### **Bright New Leaders for Ohio Schools**

- Eliminates the provision of law that establishes the nonprofit corporation that initially created and implemented the Bright New Leaders for Ohio Schools Program and, instead, establishes the Ohio State University Fisher College of Business and College of Education and Human Ecology as the administrators for the program.
- Requires the State Board to issue a professional administrator license for grades pre-kindergarten through 12 to individuals who complete the program.

## **Licenses for substitute teaching**

- Establishes a process whereby a licensed long term substitute who does not hold a degree in education or other subject area directly related to the class being taught becomes a “properly certified or licensed” teacher for purposes of providing substitute instruction in a core subject area for an unlimited number of days.

## **School child day-care programs**

- Clarifies that child day-care centers that serve preschool children and child day-care centers that serve school-age children must meet or exceed the standards adopted by the Director of Job and Family Services.

## **FAFSA completion incentives**

- Requires 12<sup>th</sup> grade public school students applying to participate in the College Credit Plus Program to complete the Free Application for Federal Student Aid (FAFSA) and provide proof of completion in a manner prescribed by the Chancellor of Higher Education.
- Requires the Department to establish a program that awards grants to educational service centers or city, exempted village, local, or joint vocational school districts to organize activities that encourage and assist high school seniors to complete the FAFSA.

## **Behavioral prevention initiatives**

- Requires public schools to annually report to the Department on the types of behavioral prevention initiatives being used to promote healthy behavior and decision-making by students.
- Permits the Department to use these reports as a factor in distribution of funding for prevention-focused behavioral initiatives.

## **Computer coding as a foreign language**

- Requires a public school or chartered nonpublic school that requires a foreign language for high school graduation to accept one unit of computer coding instruction toward satisfying that requirement.
- Specifies that, if a student applies more than one course of computer coding toward the requirement, they must be sequential and progressively more difficult.

## **Show choir as physical education**

- Permits a school district board of education or governing authority of a chartered nonpublic school to substitute two full seasons of show choir to fulfill high school physical education requirements.

## **International students in interscholastic athletics**

- Permits any international student attending an Ohio elementary or secondary school and who holds an F-1 U.S. visa to participate in interscholastic athletics, regardless of

whether the student's school began operating a dormitory prior to 2014 (as provided under current law).

## English learners

- Changes references of "limited English proficient student" to "English learner" to align with federal law.

## I. School financing

(R.C. 3314.088, 3317.0219, 3317.163, 3317.26, and 3326.42; Sections 265.210, 265.215, 265.220, 265.225, 265.230, and 265.235)

The current school funding 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 some districts, on median income), to calculate a district's base payment (called the "opportunity grant"). The system also includes payments for targeted assistance (based on a district's property value and income) and supplemental targeted assistance (based on a district's percentage of agricultural property), categorical payments, a capacity aid payment, and payments for a graduation bonus, a third-grade reading bonus, and student transportation.

The bill retains the current school financing system, but it suspends use of that formula for school districts for FY 2020 and FY 2021 and, instead, provides for payments to be made based on FY 2019 funding. The bill also provides for deductions and transfers for community school and STEM school students as prescribed under current law. For a more detailed description of the bill's school financing system, see the LBO Redbook for the Department of Education and the LSC Comparison Document for the bill. From the LSC home page, [www.lsc.ohio.gov](http://www.lsc.ohio.gov), click on "Budget Central," then on "Main Operating – H.B. 166," and then on "EDU" under "Redbooks" or on "Comparison Document."

## Funding for FY 2020 and FY 2021

(Sections 265.210, 265.215, 265.220, 265.225, 265.230, and 265.235)

### School districts

For FY 2020 and FY 2021, the bill requires the Department of Education to pay each city, local, exempted village, and joint vocational school district an amount equal to the district's aggregate annualized payments for FY 2019, as of the second payment in June 2019.

### Community schools and STEM schools

For FY 2020 and FY 2021, the bill requires the Department, for each student enrolled in a community school or STEM school, to deduct from the amount computed for the student's resident district under the bill's provisions and pay to the school an amount for the student in the manner prescribed by current law. For this purpose, the bill specifies that (1) the "formula amount," which is used to calculate the "opportunity grant" for each school, equals the formula amount for FY 2019 (\$6,020) and (2) the amounts deducted and paid for targeted assistance and economically disadvantaged funds, which are computed based on an amount calculated for

a student's resident district, must be the same per-pupil amounts deducted and paid for FY 2019.

Additionally, for FY 2020 and FY 2021, the bill requires the Department to pay each community school and STEM school graduation and third-grade reading bonuses equal to the school's payments for those bonuses for FY 2019.

### **Other payments**

The bill specifies that, for purposes of computing other payments for FY 2020 and FY 2021 for which a district's "state share index" or "state share percentage" is a factor, the Department must use the state share index or state share percentage computed for the district for FY 2019.

Additionally, the bill specifies that, for purposes of open enrollment, College Credit Plus, and any other payments for which the "formula amount" is used, the formula amount for FY 2020 and FY 2021 equals the formula amount for FY 2019 (as with payments for community schools and STEM schools under the bill).

## **Student wellness and success funding**

(R.C. 3314.088, 3317.0219, 3317.163, 3317.26, and 3326.42; Section 265.210)

The bill requires the Department to make a new payment for student wellness and success to all school districts, community schools, and STEM schools. These funds must be spent for specified purposes that are outlined below. The Department must pay half of these funds by October 31 of the fiscal year for which the payment is calculated and the other half by February 28 of that fiscal year. The Department is prohibited from later reconciling or adjusting the payment.

### **Student wellness and success funds**

#### **City, local, and exempted village school districts**

The bill requires the Department to pay student wellness and success funds to city, local, and exempted village school districts on a per pupil basis. For purposes of this payment, a district's total student count is the total number of students who were enrolled in the district at the time of the second school funding payment in June of the preceding fiscal year.

The per-pupil amounts for this payment range from \$20 to \$250 for FY 2020, and \$30 to \$360 for FY 2021. To determine each district's per pupil amount, the Department must group the districts into quintiles each fiscal year based on the percentages of children residing in the districts with family incomes below 185% of the Federal Poverty Guidelines, using the most recent five-year estimates published by the U.S. Census Bureau in the American Community Survey as the resource. Districts in the highest quintile are paid the highest per-pupil amount, and districts in the other four quintiles are paid a smaller per pupil amount based on a sliding scale calculation. Each district must, however, receive a minimum aggregate payment of \$25,000 for FY 2020, and \$36,000 for FY 2021 (unless the district has fewer than five enrolled students).

## **Joint vocational school districts, community and STEM schools**

The bill requires the Department to pay student wellness and success funds, on a full-time equivalency basis, to joint vocational school districts, community schools that are not Internet- or computer-based community schools (e-schools), and STEM schools. This payment is calculated by determining, for each student enrolled in the district or school at the time of the school funding payment in June of the preceding fiscal year, the per-pupil amount of student wellness and success funds paid to the student's district of residence and multiplying that amount by the student's full-time equivalency. Each district or school must receive a total minimum aggregate payment of \$25,000 for FY 2020, and \$36,000 for FY 2021.

The bill does not provide a per-pupil payment for e-schools. Instead, it requires the Department to pay each e-school \$25,000 for FY 2020, and \$36,000 for FY 2021.

## **Student wellness and success enhancement funds**

### **City, local, and exempted village school districts**

The bill requires the Department to pay student wellness and success enhancement funds to city, local, and exempted village school districts that received supplemental targeted assistance funding for FY 2019. Again, for purposes of this payment, a district's total student count is the total number of students who were enrolled in the district at the time of the second school funding payment in June of the preceding fiscal year.

This payment is equal to the product of:

- \$50, for FY 2020, or \$75, for FY 2021; times
- The square of the quotient of the district's percentage of children residing in the district with family incomes below 185% of the Federal Poverty Guidelines (using the most recent five-year estimates published by the U.S. Census Bureau in the American Community Survey as the resource) for the fiscal year for which the calculation is made divided by 36%; times
- The district's total student count.

### **Joint vocational school districts**

The bill requires the Department to pay student wellness and success enhancement funds, on a full-time equivalency basis, to joint vocational school districts, community schools that are not e-schools, and STEM schools. This funding is calculated by determining, for each student enrolled in the district or school at the time of the school funding payment in June of the preceding fiscal year, the per-pupil amount of student wellness and success enhancement funds paid to each student's district of residence (provided that district is eligible for enhancement funding) and multiplying that amount by the student's full-time equivalency.

## **Spending requirements**

The bill requires districts and schools to spend student wellness and success funds and enhancement funds for any of the following initiatives or a combination of any of them:

- Mental health services;

- Services for homeless youth;
- Services for child welfare involved youth;
- Community liaisons;
- Physical health care services;
- Mentoring programs;
- Family engagement and support services;
- City Connects programming;
- Professional development regarding the provision of trauma informed care; and
- Professional development regarding cultural competence.

The bill also specifies that they must develop plans for utilizing student wellness and success funding and enhancement funding in coordination with at least one of the following community partners: a board of alcohol, drug, and mental health services; an educational service center; a county board of developmental disabilities; a community-based mental health treatment provider; a board of health of a city or general health district; a county board of job and family services; a nonprofit organization with experience serving children; or a public hospital agency.

Finally, the bill requires each district and school, at the end of each fiscal year, to submit a report to the Department describing the initiative or initiatives on which the district's or school's student wellness and success funds and enhancement funds were spent.

## **Payments prior to the bill's effective date**

(Section 265.210)

As with the past three biennial budget acts, the bill requires the Superintendent of Public Instruction, prior to the bill's effective date, to make operating payments in amounts "substantially equal" to those made in the prior year, "or otherwise," at the Superintendent's discretion.

## **Funding adjustments for districts with TPP value changes**

(R.C. 3317.028)

The bill eliminates the requirement that the Department deduct funds from a school district with more than a 10% increase in the taxable value of utility tangible personal property (TPP) subject to taxation in the preceding tax year when compared to the second preceding tax year.

Currently, the Department must recompute, for each fiscal year, the state aid of each district with such an increase by replacing the "three-year average valuations" used throughout the school funding formula with the "total taxable value for the preceding tax year." It then must deduct from the district's state aid for that fiscal year the *lesser* of:

- The difference between the district’s state aid prior to the recomputation and the district’s recomputed state aid; or
- The increase or decrease in taxes charged and payable on the district’s total taxable value for the preceding tax year and the second preceding tax year.

The bill does not, however, make any changes to the existing requirement that the Department make a payment to a school district with more than a 10% decrease in the taxable value of utility TPP subject to taxation in the preceding tax year when compared to the second preceding tax year.

## **Innovative Shared Services at Schools Program**

(Section 265.270)

The bill creates, for FY 2020 and FY 2021, the Innovative Shared Services at Schools Program to provide grants to school districts, community schools, STEM schools, education consortia, and private or governmental entities partnering with one or more of those educational entities. The grants are to fund projects that aim to achieve significant advancement in the use of a shared services delivery model that demonstrates increased efficiency and effectiveness, long-term sustainability, and scalability.

### **Grant application process**

#### **Grant proposal**

The bill requires each grant applicant to submit a proposal that includes:

- A description of the project, including a description of how it will have substantial value and lasting impact;
- A description of quantifiable results of the project that can be benchmarked; and
- A description of administrative efficiencies created by the project.

If an education consortium applies for a grant, the lead applicant must be the school district, school building, community school, or STEM school that is a member of the consortium. The lead applicant must indicate on the application which entity is the lead applicant.

#### **Evaluation system**

The bill requires the Department to establish, with the approval of the governing board (see “**Grant decision**” below), an evaluation and scoring system for awarding grant applications.

#### **Grant decision**

The bill requires grant decisions to be made by a “governing board” consisting of five members: the state Superintendent, or the Superintendent’s designee, two members appointed by the Governor, one member appointed by the Speaker of the House, and one member appointed by the President of the Senate. The board must create a grant application and publish on the Department’s website the application and a timeline for the submission, review, notification, and awarding of grant proposals.

The governing board must issue a “timely” decision on the application of “yes,” “no,” “hold,” or “edit.” If the board issues a “hold” or “edit” decision for an application, it must, upon returning the application to the applicant, specify the process for reconsideration of the application. An applicant may work with the grant advisors and staff to modify or improve a grant application (see “**Grant advisors**” below).

### **Grant amount**

The bill specifies that a grant may not exceed \$100,000 in each fiscal year.

The state Superintendent may make recommendations to the Controlling Board that these maximum amounts be exceeded.

### **Grant agreement**

Upon deciding to award a grant to an applicant, the board must enter into a grant agreement with the applicant that includes:

- The content of the applicant’s proposal;
- The project’s deliverables and a timetable for their completion;
- Conditions for receiving grant funding;
- Conditions for receiving funding in future years if the contract is a multi-year contract;
- A provision specifying that funding will be returned to the governing board if the applicant fails to implement the agreement; and
- A provision specifying that the agreement may be amended by mutual agreement between the board and the applicant.

Each grant awarded to an applicant must be subject to approval by the Controlling Board prior to execution of this agreement.

Recipients may use grant awards for grant-related expenses incurred for a period no longer than two years from the date of the award.

### **Annual report**

The bill requires the governing board to issue an annual report to the Governor, the Speaker of the House, the Senate President, and the chairpersons of the House and Senate Education committees regarding the types of grants awarded, the grant recipients, and the effectiveness of the program.

### **Grant advisors**

The bill requires the governing board to select grant advisors with fiscal expertise and education expertise. These advisors must evaluate proposals from grant applicants and advise the staff administering the program. As in the case of the governing board, grant advisors may not be compensated for their services.

### **Appropriation**

The bill appropriates \$1 million in each of FY 2020 and FY 2021 for the program.

## **School Climate Grants**

(Section 265.325)

For FY 2020 and FY 2021, the bill creates a School Climate Grants program to provide grants to school districts, community schools, and STEM schools to implement positive behavior intervention and support frameworks, social and emotional learning initiatives, or both, in school buildings that serve any of grades K-3.

### **Grant application**

The bill requires the state Superintendent to prescribe an application form, establish procedures for consideration and approval of grant applications, and determine the amount of the grant awards.

### **Grant distribution**

The state Superintendent must award grants based on the following order of priority:

First, to eligible applicants whose proposal serves one or more eligible school buildings whose percentage of economically disadvantaged students, as determined by the state Superintendent, is greater than the statewide average percentage of economically disadvantaged students;

Second, to eligible applicants whose grant proposal serves one or more eligible school buildings with high suspension rates, as determined by the state Superintendent; and

Third, to eligible applicants who have yet to receive a School Climate Grant in the order in which the application was received.

If the amount appropriated in a fiscal year is insufficient to provide grants to eligible applicants with the top priority level, the state Superintendent must first award grants within that level to eligible applicants whose proposal serves one or more eligible schools that previously have not been served through a School Climate Grant.

### **Grant amount**

The bill specifies a maximum grant amount of \$5,000 may be awarded in each fiscal year for each eligible school building in an applicant's grant proposal, for up to ten schools per proposal.

### **Grant agreement**

The state Superintendent may enter into a grant agreement with a grant recipient that includes terms and conditions governing the use of the funds. The Superintendent may monitor a recipient's use of the funds to ensure the award is used in accordance with the agreement.

Grant recipients may use grant awards for grant-related expenses incurred for a period no longer than two years from the date of the award.

### **Appropriation**

The bill appropriates \$2 million in each of FY 2020 and FY 2021 from the Lottery Profits Education Fund for grants under the program.

## Quality Community School Support Program

(Section 265.335)

The bill creates for FY 2020 and FY 2021 the Quality Community School Support Program. Under the program, the Department must pay each “community school of quality” \$1,750 in each fiscal year for each student identified as economically disadvantaged and \$1,000 in each fiscal year for each student who is not identified as economically disadvantaged.

### “Community school of quality” designation

The bill designates four separate types of “community schools of quality,” each with its own indicators. A school designated as a “community school of quality” maintains that designation for two fiscal years. The indicators for type of community school of quality are described in the table below.

Indicators of quality	Type 1	Type 2	Type 3	Type 4
School’s sponsor is rated “exemplary” or “effective” on sponsor’s most recent evaluation.	✓	✓	✓	✓
School’s two most recent performance index scores are higher than the school district in which school is located.	✓			
School’s most recent overall grade for value added is “A” or “B” or school is in its first or second year of operation and did not receive a value-added grade.	✓			
At least 50% of enrolled students are economically disadvantaged.	✓			✓
The school is in its first year of operation.		✓		
The school replicating the operational and instructional model used by a <b>Type 1</b> school of quality.		✓		
School contracts with an operator that operates schools in separate states.			✓	✓
One of the operator’s schools received funding through the Federal Charter School Program or the Charter School Growth Fund.			✓	
One of the operator’s out-of-state schools performed better than the school district in which the in-state school is located, as determined by the Department.				✓

Indicators of quality	Type 1	Type 2	Type 3	Type 4
Operator is in good standing in all states.				✓
Operator does not have financial viability issues preventing it from effectively operating a community school in Ohio.				✓

## Payment calculation

With one exception, the payment must be calculated using the final adjusted full-time equivalent number of students enrolled in a community school for the previous fiscal year. For a school in its first year of operation, the payment must be calculated using the adjusted full-time equivalent number of students enrolled in the school as of the date the payment is made.

The Department must make the payment to each community school of quality by January 31 each year.

## Appropriation

The bill appropriates \$30 million from the Lottery Profits Education Fund for each of FY 2020 and FY 2021 for the program.

## Study of e-school funding models

(Section 265.470)

The bill requires the Department to study and make recommendations on the feasibility of new funding models for Internet- or computer-based community schools (e-schools). In doing so, the Department must consider (1) models based on student subject matter competency and course completion and (2) models of other states, including Florida and New Hampshire. The Department must submit the study to the General Assembly by December 31, 2019. Currently, an e-school's per-pupil funding is calculated by comparing the total number of hours of learning opportunities offered to a student with the number of documented hours the student actually spent participating in learning activities.<sup>35</sup>

Law enacted in August of 2018, created a legislative committee to study and make recommendations regarding a payment system for e-schools based on student subject matter competency by November 15, 2018. That committee also was required to examine the funding models of other states when compiling its results.<sup>36</sup>

<sup>35</sup> See R.C. 3314.08 and 3314.27, not in the bill; Page 11 of the Community School Full Time Equivalency (FTE) Review Manual, Office of School Finance.

<sup>36</sup> Section 10 of S.B. 216 of the 132<sup>nd</sup> General Assembly.

## **Department of Education performance audit**

(Section 701.50)

The bill requires the Auditor of State, in consultation with the Joint Education Oversight Committee, to conduct a performance audit of selected offices or programs within the Department of Education by October 1, 2020.

## **Report on partnership with educational service centers**

(Section 265.505)

The bill requires the Department, by December 31, 2020, and 2021, to submit reports to the General Assembly describing the manner in which the Department partnered with educational service centers (ESCs) in delivery of services regarding academic standards, accountability and report cards, literacy improvement, and educator preparation for which state funding was provided to ESCs for the previous fiscal year.

## **School financing studies**

(R.C. 3317.60 and 3317.61; Section 265.215)

The bill requires several state agencies to conduct studies regarding specific topics related to school financing, as described below. All of these studies must be submitted by December 31, 2020, to:

- The chair, vice-chair, and ranking minority member of the finance committees of the House and Senate;
- The chair, vice-chair, and ranking minority member of the finance subcommittees regarding primary and secondary education of the House and Senate;
- The chair, vice-chair, and ranking minority member of the standing committees of the House and Senate that consider legislation regarding primary and secondary education;
- The state Superintendent; and
- The President of the State Board.

## **Studies by the Department of Education**

The bill requires the Department to conduct all of the following studies and submit each of them by December 31, 2020, to the individuals specified above.

The bill states that it is the intent of the General Assembly that the recommendations developed under the special education, economically disadvantaged students, and preschool education studies be the basis of legislation enacted by the General Assembly to take effect for FY 2022, and that the recommendations developed under the English language learners study be the basis of legislation enacted by the General Assembly to take effect for FY 2023.

### **1. Special education**

The Department must, in consultation with the Joint Education Oversight Committee (JEOC), conduct an evaluation of the following topics regarding special education:

- The categories of special education students specified in the Revised Code and the funding amounts corresponding to those categories;
- Best practices for providing education to special education students;
- Protocols for providing treatment to special education students;
- Technology to enhance the provision of special education; and
- Costs of providing special education.

## **2. Economically disadvantaged students**

The Department, in consultation with JEOC, must conduct a study that both:

- Evaluates and determines the essential types and amounts of resources needed to provide economically disadvantaged students the emotional, social, and academic services necessary to ensure adequate opportunities for success; and
- Evaluates and revises the current definition of “economically disadvantaged.”

## **3. Preschool education**

The Department, in consultation with JEOC, the Department of Job and Family Services, and the Auditor of State, must conduct an evaluation of the following topics regarding preschool education:

- The cost effectiveness of continuing the existing multiple provider system;
- Ways in which the existing system may be better coordinated and cost efficient; and
- Alternative ways in which the state can supply high quality preschool, especially for economically disadvantaged students.

## **4. English language learners**

The Department, in consultation with JEOC, must evaluate the funding amounts and required services for all categories of English language learners described in the Revised Code.

## **5. Community school operations cost**

The Department, in consultation with community school governing authorities and other appropriate stakeholders, must evaluate the cost of operating community schools on a per-pupil or other reasonable basis as a replacement for the discontinuance of a fixed per-pupil formula amount.

## **Studies by JEOC**

The bill requires JEOC to conduct the following studies and submit each of them by December 31, 2020, to the individuals specified above.

The bill states that it is the intent of the General Assembly that the recommendations developed under the studies described below be the basis of legislation enacted by the General Assembly to take effect for FY 2022.

### **1. Gifted services**

JEOC, in collaboration with the Department of Education, the Auditor of State, and a workgroup established by JEOC that consists of educators, auditors, and Department employees, must review the funding reporting protocols and requirements for gifted services with the intention of recommending improvements regarding accountability for spending of gifted funds paid to city, local, and exempted village school districts.

### **2. Incentives for rural districts serving identified gifted children**

JEOC must, in consultation with the Department, develop recommendations for an incentive program for school districts in rural areas of the state that provide services to students identified as gifted under current law.

### **3. Educational service centers**

JEOC must, in collaboration with the Department, the Auditor, and the Ohio Educational Service Center Association, conduct an evaluation of educational service centers (ESCs), including all of the following:

- Services provided;
- Cost of existing services;
- The ability to generate revenue for providing nonmandatory services and offset fixed costs with that revenue;
- The average operating cost per pupil; and
- The effectiveness and efficiency of all ESCs.

### **Study by OBM**

The bill requires the Office of Budget and Management (OBM), in consultation with the Department, to create an inventory of all state budget line items that, in OBM's determination, provide funding services to children. This inventory must be submitted by December 31, 2020, to the individuals specified above.

The inventory must include:

- The FY 2018 funding for each line item;
- A brief description of services provided by each line item;
- Estimates of funding and program descriptions of all line items that are also used to fund other types of programs, including a description explaining how those different programs interact and for whom they are provided; and
- A preliminary analysis of policy implications regarding the potential creation and funding of "wrap-around" services, as defined by OBM, including health clinics provided in educational settings.

This data must be disaggregated into three categories based on students' age ranges: (1) students receiving special education services for a disability specified in current law

between ages 0 and 21, (2) students not receiving special education services between ages 0 and 4, and (3) students not receiving special education services between ages 5 and 21.

Additionally, this data must be disaggregated into service categories that may be provided by multiple agencies, funds, and line items, such as children's mental health, children's physical health, child nutrition, early childhood education, primary and secondary education, special education, juvenile detention services, and any other categories that receive significant state and federal funding.

## **II. Interventions for low-performing schools**

### **Academic distress commissions dissolved**

(New R.C. 3302.10(A); Repealed R.C. 3302.10; Repealed Sections 4, 5, and 6 of H.B. 70 of the 131<sup>st</sup> General Assembly; Conforming changes in R.C. 133.06(G)(1) and (2), 3302.036(B)(3), 3302.042(F), 3302.11, 3310.03(E) and (G)(4), 3311.29(D), and 3314.102)

The bill dissolves all current academic distress commissions for persistently low-performing school districts and repeals the law on the establishment of new commissions.

Current law, enacted in 2015, requires the Superintendent of Public Instruction to establish an academic distress commission for certain school districts with persistently low academic performance to guide actions to improve their performance. The law requires each commission to appoint a chief executive officer who has substantial powers to manage the operation of a qualifying district and prescribes progressive consequences for the district, including possible changes to collective bargaining agreements and eventual mayoral appointment of the district board. Currently, Youngstown, Lorain, and East Cleveland have academic distress commissions.

Under the repealed law, students in a school district subject to an academic distress commission are eligible for an Educational Choice (Ed Choice) scholarship. The bill clarifies that a student is eligible for an Ed Choice scholarship if the student's resident school district "was" subject to the former section of law and the student continues to use the scholarship to attend a nonpublic school, provided that the student maintains other eligibility requirements. However, the bill retains an element of current law specifying that the Department of Education must cease awarding first-time scholarships under the repealed academic distress commission provision when the commission ceases to exist.

For a detailed description of current law on academic distress commissions, see pp. 10-23 of the LSC Final Analysis of H.B. 70 of the 131<sup>st</sup> General Assembly at: <https://www.legislature.ohio.gov/download?key=2653&format=pdf>.

### **Progressive interventions**

(New R.C. 3302.10 and 3302.17)

The bill requires a school district board of education to establish an improvement team for each school building under the board's control that received an overall grade of "F" for the previous school year. Districts previously subject to an academic distress commission must commence the improvement team process beginning July 1, 2019, and districts not previously

subject to an academic distress commission must begin the improvement team process beginning July 1, 2020. The Superintendent of Public Instruction must designate such school buildings as “in need of improvement.”

### **Establishment of an improvement team**

A school improvement team during the school’s first year with “in need of improvement status,” must comprise administrators and teachers, and may include community stakeholders, with oversight from the district board. The bill does not specify how many individuals comprise a team.

Each school improvement team must:

- Conduct a performance audit, reviewing the needs of students, parents, teachers, and administrators of the school building. As part of the audit, the team must convene a group of parents and community stakeholders within the attendance zone of the school building to seek input on student needs and improvement strategies.
- Develop a school improvement plan based on a multi-tiered, evidence-based model. The plan may, but is not required to, include measurable benchmarks for improvement in (1) parent and family engagement, (2) creating a culture of academic success among students, (3) building a culture of student support among school faculty and staff, (4) student attendance, (5) dismissal and exclusion rates, (6) student safety and discipline, and (7) student promotion and graduation and dropout rates.
- Submit the improvement plan to the district board for approval by the final day of the school year in which the school building is first designated as “in need of improvement.”

Additionally, school improvement teams may request technical support from the Department of Education during the development of the improvement plan. The team also may recommend that the district board voluntarily initiate a community learning center model process for the school building.

### **Implementation of improvement plans**

School buildings that receive an overall grade of “F” for a second consecutive year retain “in need of improvement status” and must begin implementing the improvement plan developed by the improvement team. The improvement team must monitor the progress of the implementation, with oversight from the district board. The improvement team may hire an academic coordinator or request technical support from the Department during implementation.

School buildings that receive an overall grade of “F” for a third consecutive year retain “in need of improvement status” and must continue implementing the improvement plan, with oversight from the district board. The Department, during a school building’s third year of “in need of improvement status,” may perform a mid-year and end-of-year review of the measurable benchmarks included in the school building’s improvement plan and provide feedback to the school building’s improvement team, district board, and district superintendent.

School buildings that receive an overall grade of “F” for a fourth consecutive year retain “in need of improvement status” and must continue implementing the improvement plan, with oversight from the district board. The state Superintendent, during a school building’s fourth year of “in need of improvement status,” must review the progress made under the school’s improvement plan and, using the State Board of Education’s criteria, determine if the school building may move out of “in need of improvement status.”

The bill does not specify consequences for school buildings that receive an overall grade of “F” after the fourth year.

### **State Superintendent and State Board duties**

The bill requires the State Board of Education to adopt rules establishing the criteria for the state Superintendent to consider when a school building may move out of “in need of improvement status.”

The bill also requires the state Superintendent, in conjunction with the State Board, beginning July 1, 2019, to convene a meeting of stakeholders to determine the best method to support school buildings that fail to meet improvement benchmarks under the improvement plan. The Superintendent, by January 1, 2020, must report these recommendations to the House and Senate Education committees.

### **Existing school restructuring provision repealed**

(Repealed R.C. 3302.12)

The bill repeals the 2011 law that requires a school district to restructure any building that is ranked in the lowest 5% of all public schools by performance index score for three consecutive school years, and for which any combination of the following applies for three consecutive school years: (1) the school is in academic watch or academic emergency under former law, (2) the school has received a grade of “F” for the value-added progress dimension, or (3) the school has received an overall grade of “F.”

Under that law, a district must choose one of the following restructuring actions for an affected building:

- Close the school and reassign the school’s students to other schools with higher academic achievement;
- Contract with another school district or a nonprofit or for-profit entity with a record of effectiveness to operate the school;
- Replace the school’s principal and teaching staff, exempt the school from any specified district regulations regarding curriculum and instruction at the request of the new principal, and allocate at least the per-pupil amount of state and local (that is, nonfederal) revenues to the school for each of its students; or
- Reopen the school as a conversion community school.

### **III. State report cards**

#### **Effects of changes in report card calculations**

(R.C. 3302.037)

The bill specifies that if any change is made to the calculation or determination of grades or to the graded measures on the state report card for school districts or buildings, the ratings for the year the changes become effective must not be considered in determining if a district or school is subject to certain sanctions or penalties. Further, it specifies that the report card ratings from previous years must not be considered, either. Thus, any change in report card calculations or grade determinations creates a new starting point for determinations that are based on ratings over multiple years.

Specifically, the rating resets apply to:

- Any restructuring provisions under R.C. Chapter 3302;
- The Columbus City School Pilot Project;
- Academic distress commissions (the law on which the bill repeals in separate provisions); and
- Community school closure requirements.

The rating resets do not apply to:

- Designations of eligible school buildings for the Ed Choice Scholarship; and
- The definition of “challenged school district” for purposes of where new start-up community schools may be located.

#### **Value-added progress and performance index score grades**

(R.C. 3302.021, 3302.03, and 3302.038; conforming changes in R.C. 3301.52, 3302.042, 3302.12, 3310.03, 3314.02, 3314.034, and 3314.35)

The bill changes how value-added progress dimension data is calculated for purposes of the state report card, and how that component and the performance index score are used in the calculation of the overall grade for the state report card and for triggers for sanctions and penalties in the Revised Code. Instead of using both measures, the bill specifies that only the measure with the higher grade be used. Furthermore, the bill requires the State Board to prohibit, by rule, the calculation of the overall grade for purposes of the state report card to include both the performance index score and the value-added progress dimension measures. The rules also must ensure that a district or building receives the highest overall grade possible using the appropriate higher measure.

Further, the bill states that any time a district or school’s grade for performance index score or value-added progress dimension is used to determine whether a district or school is subject to sanctions or penalties, the Department must apply only the higher grade of the two measures, regardless of which measure is specified. Again, the bill clearly states that both measures may not be used.

Sanctions and penalties for which the bill's changes apply include the Columbus Parent Trigger Pilot Project, eligibility for community schools to change sponsors, and community school closure. The bill's changes do not apply for the purposes of prescribing new buildings where students are eligible for the Ed Choice scholarship or defining "challenged school districts" in which new start-up community schools may be located. Both grades are to be used pursuant to current law.

The application of the higher grade also applies to a provision allowing a community school to operate a preschool program.

### **Preliminary data and community schools at risk of closure**

(R.C. 3302.03, 3314.017, and 3314.354)

The bill requires the Department of Education to annually submit both of the following by July 31:

- Preliminary state report card data for overall academic performance and for each separate performance measure for each school district, each school building, and each community school;
- Preliminary data on community schools at risk of becoming subject to permanent closure (see "**IV. Community Schools**," below).

### **Report card and community sponsor evaluation deadlines**

(R.C. 3302.03, 3302.037, and 3314.016)

If the Department fails to assign letter grades on the state report card for a school district or school by the deadline required under current law, the bill requires the Department to assign the same grade for each measure under the report card that a district or school was assigned in the previous school year or a grade of "B" for each measure, whichever is higher. The deadline by which the Department must issue grades under the state report card is September 15, or the preceding Friday if that day falls on a Saturday or Sunday. However, this does not apply for the purposes of prescribing new buildings where students are eligible for the Ed Choice scholarship or defining "challenged school districts" in which new start-up community schools may be located. The actual calculated grades a district or building receives are to be used for those purposes.

The bill also specifies that if the Department fails to assign a rating for a community school sponsor by the deadline under current law, the Department must assign the same rating for each component that the sponsor was assigned for the previous year or an "effective" rating for all components, whichever is higher per component rating. The Department must publish sponsor ratings between October 1 and November 15.

Finally, if the Department fails to assign report card or sponsor ratings by the deadlines specified in current law, those ratings and any ratings from previous years will not be considered in determining whether a district, school, or sponsor is subject to sanctions or penalties. This does not apply for the purposes of prescribing new buildings where students are eligible for the Ed Choice scholarship or defining "challenged school districts" in which new

start-up community schools may be located. Previous ratings continue to be used for those purposes. In other words, failure to meet the report card or sponsor evaluation ratings creates a new starting point for most sanctions or penalties for schools that are based on either state report card grades or sponsor evaluation ratings.

## **Background on report cards**

The Department issues an annual report card for each school district and each public school building on the basis of state achievement assessment scores and other performance criteria. The main report card format applies to school districts and their individual buildings, community schools except those primarily serving dropout students, and STEM schools. A separate type of report card is issued for dropout prevention and recovery community schools (see “**IV. Community schools,**” below) and another separate one for joint vocational school districts.

The report card for school districts, buildings, community schools, and STEM schools includes graded and ungraded individual measures. The grade for overall performance of the school must be assigned by the Department based on specified components and performance measures and a performance criteria and method for assigning grades prescribed by the State Board.

Letter grades for the metrics and the overall grade are issued under this system, with the following meanings:

- A – making excellent progress;
- B – making above average progress;
- C – making average progress;
- D – making below average progress;
- F – failing to meet minimum progress.

The method for assigning overall grades must group individual performance measures into the following six larger components:

- Gap Closing, which includes only the annual measurable objective performance measure. This measure determines if a district or building is making “adequate yearly progress” in closing achievement gaps between students of different subgroups;
- Achievement, which includes the measures for the performance index score (under the performance index system established by the Department) and performance indicators met (these indicators are established by the State Board);
- Progress, which includes the overall value-added progress dimension measure (a measure of academic gain for a student or group of students over a specific period of time that is calculated using data from student achievement assessments) and the performance measure for the three separate value-added subgroups (gifted students, students with disabilities, and students whose achievement places them in the lowest quintile on a statewide basis);

- Graduation, which includes the four- and five-year adjusted cohort graduation rates;
- Kindergarten through Third-Grade Literacy, which includes the progress a district or building is making in improving literacy in kindergarten through third grade; and
- Prepared for Success, which includes the performance measures that assess high school student career or college readiness.

Building-level report cards are issued for community schools regardless of how long they have been in operation; however, a school's ratings for its first two years of operation may not be considered in the imposition of sanctions.<sup>37</sup>

## **IV. Community schools**

### **Community school mergers**

(R.C. 3314.0211)

The bill establishes a procedure by which two or more community schools may merge that includes adopting a resolution, notifying the Department, and entering into a new contract with the surviving community school's sponsor. However, the bill prohibits use of the procedure by a community school that has (1) met the performance criteria specified for automatic closure for at least one of the two most recent school years or (2) been notified of the sponsor's intent to terminate or not renew the school's contract.

#### **Procedure**

The governing authorities of the merging community schools must adopt a resolution and, within 60 days prior to its effective date, provide a copy of the resolution to the school's sponsor and inform the Department of the merger. Notice to the Department must include the effective date of the merger, the name of the surviving school, and the name of the surviving school's sponsor. The merger must take effect on July 1 of the year specified in the resolution.

The bill specifies the governing authority of the surviving community school must enter into a new contract with the school's sponsor. The school must comply with this requirement regardless of any law, rule, or contractual right that might waive the need to enter into a new contract.

#### **Assignment or assumption of existing contract prohibited**

Except in the case of the Department's Office of Ohio School Sponsorship, the bill prohibits a sponsor from (1) assigning its existing contract with a merging community school to the sponsor of the surviving school or (2) assuming an existing contract from the sponsor of a school involved in a merger.

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<sup>37</sup> R.C. 3314.012(B), not in the bill.

## **Report card ratings of a surviving school**

The bill clarifies that participating in a merger does not exempt a community school from automatic closure and requires the Department to issue report cards for the surviving school in accordance with continuing law. To that end, the Department must use all report card ratings associated with the surviving school, including those issued before the merger, when determining any matter that is based on report card ratings or measures, including whether the school has met the criteria for automatic closure.

## **Conditions triggering ineligibility**

A community school that has met the performance criteria for permanent closure for at least one of the two most recent school years is ineligible to participate in a merger.

In addition, the bill makes ineligible to participate in a merger any community school that has been notified of the sponsor's intent to terminate or not renew the sponsorship contract for cause.

## **Teachers and paraprofessionals employed by community schools**

(R.C. 3314.03(A)(11)(d))

The bill exempts community schools from the prohibition against employing teachers of a core subject area unless they are “properly certified or licensed teachers,” or hiring paraprofessionals to provide support in a core subject area unless they are “properly certified paraprofessionals.” The bill retains the prohibition, enacted in 2018 by S.B. 216 of the 132<sup>nd</sup> General Assembly, for teachers and paraprofessionals employed by school districts or STEM schools. S.B. 216 repealed the requirement that teachers of core subject areas be “highly qualified” (as under former federal law) and replaced it with the new state designation “properly certified or licensed.”<sup>38</sup> (See also “**Licenses for substitute teaching**,” below.)

Under continuing law, community school teachers and paraprofessionals must have a license, permit, or certification to provide instruction or academic support,<sup>39</sup> but under the bill they will not be required to be “properly certified” in any specific subject areas or grade levels.

## **Community school sponsors**

(R.C. 3314.02, 3314.016, and 3314.19)

### **Sponsor evaluations**

#### **Less frequent evaluations for “effective” sponsors**

The bill directs the Department to conduct evaluations for any sponsor rated “effective” for three or more consecutive years only once in a five-year period. Currently, all sponsors must be evaluated annually; however, the Department may elect to evaluate the adherence to

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<sup>38</sup> See R.C. 3319.074(A) and (B) and 3326.13, latter section not in the bill.

<sup>39</sup> R.C. 3314.03(A)(10).

quality practices component once in a three-year period for sponsor rated “effective” or higher on its most recent evaluation.

### **Advance notice and review of information used to rate a sponsor**

Under the bill, a sponsor may review information used by the Department to calculate the “academic performance” component of the sponsor’s evaluation using the same process under current law for review of “adherence to quality practices” and “compliance with laws and rules” components.

In accordance with that process, the Department must not publish final sponsor ratings until it has established a review period of at least ten business days. If during that period, a sponsor discerns what it believes is an error in the evaluation of one or both of those components, the sponsor can request adjustments based on documentation previously submitted as part of the evaluation. To support the requested adjustments, a sponsor must provide any necessary evidence or information.

The Department must review the evidence and information, determine whether an adjustment is valid, and promptly notify the sponsor of its determination and reasons. If adjustments could result in a change to the component ratings or the overall rating, the Department must recalculate the applicable ratings prior to publication of the final ratings.

### **Finding for recovery database verification**

The bill repeals a provision enacted in 2015 that requires a community school sponsor to annually verify that the Auditor of State has issued no findings for recovery against (1) any individual proposing to create a community school or (2) any existing school’s operator, individual governing authority members, or employees.

### **Opening assurances**

Under the bill, a sponsor must provide the list of assurances specified in current law to the Department only once at least ten business days prior to the opening of each community school’s first year of operation, and once at least ten days prior to the opening of the first year any brick-and-mortar school operates from a different building. Under current law, sponsors must provide a list of assurances *annually* to the Department at least ten days prior to the opening of the school, regardless of the school being brick-and-mortar or an Internet- or computer-based community school (e-school).

### **New contracts with existing conversion community schools**

The bill re-classifies as a “start-up” community school a “conversion” community school that later enters into a sponsorship contract with an entity that is not a school district or educational service center (ESC). As described in the background below, a “conversion” community school is created by converting an existing school and may be located in and sponsored only by a school district or ESC.

## Payments to community school sponsors

(R.C. 3314.03, 3314.08, 3314.085, and 3314.089)

The bill specifies that, if a contract between a sponsor and the governing authority of a community school provides for the sponsor to receive a portion of the total amount of funding calculated to be paid to the school, the Department must pay the portion of the funds to the sponsor. Currently, the governing authority of a community school must pay this amount to the school's sponsor after the school has received payments for operating expenses from the Department. Continuing law limits that amount to 3% of the total state funds calculated for the school.

## Community school closure criteria

(R.C. 3314.35; conforming changes in R.C. 3302.03, 3313.413, 3314.016, 3314.017, and 3314.03)

The bill changes the number of years of underperformance and some of the graded measures to trigger the closure of community schools. First, the bill changes the number of times a community school must receive state report card grades of "F" on specified graded measures before it must close from two of the three most recent school years to the three most recent school years. In other words, under the bill, a community school must receive an "F" on specified measures for three consecutive years before closing instead of receiving those grades for two out of three years.

Second, the bill changes which graded measures are used to determine community school closure for schools that offer any of grades 4 through 8 and schools that offer any of grades 10 through 12 by removing the overall grade of "F" and an "F" for the value-added progress dimension as criteria for closure. The bill does not make changes to the graded measures used to determine closure of community schools that do not offer a grade level higher than three.

As the following table illustrates, under the bill, community schools that offer grades 4 to 8 that receive a grade of "F" in performance index score and the value-added progress dimension for three consecutive years must close. The bill removes the current law criteria of an overall grade of "F" and an "F" for the value-added progress dimension. Community schools that offer any of grades 10 through 12 must close if for three consecutive years they receive an "F" for performance index score and do not meet their annual measurable objectives. Again, the bill removes the current law criteria of an overall grade of "F" and an "F" for the value-added progress dimension.

Grades levels	Current law criteria (2 out of 3 years)	The bill criteria (3 consecutive years)
Kindergarten through 3	"F" in improving literacy in grades kindergarten through three OR overall grade of "F"	Same as current law

Grades levels	Current law criteria (2 out of 3 years)	The bill criteria (3 consecutive years)
Any of grades 4 through 8	"F" in performance index score and the value-added progress dimension OR overall grade of "F" and an "F" for the value-added progress dimension	"F" in performance index score and the value-added progress dimension
Any of grades 10 through 12	"F" for performance index score and has not met annual measurable objectives OR overall grade of "F" and an "F" for the value-added progress dimension	"F" for performance index score and has not met annual measurable objectives

The bill also removes references to obsolete criteria and makes related cross-reference changes.

## Dropout recovery school report cards

(R.C. 3314.017)

The bill changes the dropout recovery school report card measure of percentage of 12th grade students who have attained the designated passing score on all applicable high school assessments to those who have attained the cumulative performance score on the end-of-course exams. The bill also removes a reference to receiving a designated score on the Ohio Graduation Test (OGT). It is unclear if this means students formerly subject to the OGT (which ended with the class of 2016) would now be subject to end-of-course exams instead.

Under current law, report cards for dropout recovery schools are separate from those for other schools. The State Board must prescribe rules for the report cards which must include a performance indicator that rates the percentage of 12th grade students currently enrolled in the school who have attained the designated passing score on all of the applicable high school achievement assessments. The performance indicator also must include the percentage of other students enrolled in the school who are within three months of their 22nd birthday, regardless of their grade level, who have attained the designated passing score on such assessments.

For purposes of one of the state's three main graduation pathways, a student must earn at least 18 cumulative points on the end-of-course exams. A student earns between one and five points for each exam depending on performance level – a "proficient" (or passing) level earns three points. The bill parallels this 18-point structure by requiring a cumulative score, instead of the Department's current practice of requiring 21 points (a designated passing score of three on seven end-of-course exams). (According to the Department of Education's website, a student subject to the OGT must do one of the following: (1) score in the proficient range on

all five tests in the OGT, (2) use one of the three main graduation pathways, or (3) score within a certain range on one of a variety of tests by subject.<sup>40</sup>)

A dropout recovery school is a community school in which a majority of the students are enrolled in a dropout prevention and recovery program that is operated by the school.

Note, the bill also temporarily suspends issuance of dropout recovery school report cards pending a study required by the bill (see below).

## **Study committee on dropout recovery schools**

(R.C. 3314.017)

The bill requires the State Board to coordinate a committee to study the classification, authorization, and report card ratings of community schools that primarily serve students enrolled in dropout prevention and recovery programs that offer two or more of the following: (1) blended learning, (2) portfolio learning, or (3) credit flexibility (basing credit on demonstration of subject area competency).

The committee must consist of:

- One member of the Senate appointed by the Senate President;
- One member of the House appointed by the Speaker;
- One representative of the Governor's office;
- One school district superintendent, and one chief administrator of a community school, each appointed by the State Board.

The State Board must submit the committee's recommendations to the General Assembly within six months after the bill's effective date.

## **Report card suspended pending study report**

The bill prohibits the Department from issuing report cards for dropout recovery schools until the General Assembly enacts the committee's recommendations or takes other legislative action on those issues.

## **Annual e-school reports**

(R.C. 3314.21)

The bill requires each Internet- or computer-based community school (e-school) to prepare and submit to the Department, in a time and manner prescribed by the Department, a report that contains information about:

- Classroom size;

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<sup>40</sup> <http://education.ohio.gov/Topics/Ohio-s-Graduation-Requirements/Graduation-Requirements-2014-2017/New-Testing-Pathways-for-Students-Required>.

- The ratio of teachers to students per classroom;
- The number of student-teacher meetings conducted in person or by video conference; and
- Any other information determined necessary by the Department.

The bill also requires the Department to annually prepare and submit to the State Board a report that contains the information received by the Department.

## **Lists of community school closures and “challenged” districts**

(R.C. 3314.353)

The bill requires the Department, by August 31 each year, to publish separate lists of the following:

- Community schools that have become subject to permanent closure as required by law;
- Community schools that are at risk of becoming subject to permanent closure for academic underperformance;
- All “challenged” school districts as defined in section 3314.02 of the Revised Code in which new start-up community schools may be located.

## **Background on community schools**

### **Generally**

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 “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 score, value-added progress dimension, or overall ratings on the state report card, or (3) a school district in the original community school pilot project area (Lucas County).

### **Sponsorship of start-up schools**

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

- The school district in which the school is located;
- A school district located in the same county as the district in which the school is located has a major portion of its territory;
- 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;
- An educational service center;

- The board of trustees of a state university (or designee) under specified conditions;
- A federally tax-exempt entity under specified conditions; or
- 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 and cannot be triggered now without further legislation.

### **Direct authorization**

The Department'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. Any individual, group, or entity may apply directly to the Department for authorization to establish a new community school. In addition, the governing authority of an existing community school may apply to the Department, upon the expiration or termination of the current contract with its sponsor, for direct authorization to continue operating the school.

### **Governance**

A community school's "governing authority" is a group of individuals selected by the proposing person or group to carry out and ensure the performance of school functions and to contract with the sponsor of the community school.

### **Operators**

Many, but not all, community school governing authorities contract with operators to run the day-to-day operations of their schools. A school's contract with the operator is separate from the school's contract with its sponsor.

An "operator" is defined by continuing 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.

### **Sponsor evaluation system**

Continuing law, effective January 2015, requires the Department to develop and implement an evaluation system that rates each community school sponsor. Under this system, each sponsor receives an annual rating based on a combination of three components: (1) the academic performance of students enrolled in community schools that it sponsors, (2) the sponsor's adherence to quality practices, which must be specified by the Department, and (3) the sponsor's compliance with laws and administrative rules as measured by standards

adopted by rule of the State Board. It replaced a former system that ranked sponsors based on composite performance index scores.

## **V. Other provisions**

### **Accredited nonpublic schools**

(R.C. 3301.165; conforming changes in 921.06, 955.43, 3301.07, 3301.071, 3301.0711, 3301.16, 3301.162, 3301.164, 3301.52, 3301.541, 3302.07, 3302.41, 3310.01, 3312.01, 3312.04, 3312.05, 3312.09, 3313.41, 3313.48, 3313.481, 3313.482, 3313.536, 3313.539, 3313.5311, 3313.603, 3313.62, 3313.716, 3313.717, 3313.718, 3313.719, 3313.7111, 3313.7112, 3313.7114, 3313.813, 3313.86, 3313.976, 3317.024, 3317.03, 3317.06, 3317.062, 3317.063, 3317.13, 3319.311, 3319.313, 3319.314, 3319.317, 3319.39, 3319.391, 3319.392, 3319.40, 3319.52, 3321.01, 3326.01, 3326.03, 3326.032, 3326.04, 3326.09, 3327.07, 3327.10, 3365.01, 3365.02, 3701.133, 3781.106, 3781.11, 4729.513, 4729.541, 5104.01, 5104.02, and 5139.18; Sections 130.10, 130.11, and 130.13)

The bill establishes a category of nonpublic schools called “accredited nonpublic schools” for private schools that are accredited by the Independent Schools Association of the Central States (ISACS). These schools must comply with minimum education standards adopted by the State Board of Education, as under current law, but the bill prohibits the State Board from prescribing additional operating standards for them. The bill does not affect the requirements for other chartered nonpublic schools.

The bill requires accredited nonpublic schools to continue to comply with most provisions of law that apply to chartered nonpublic schools. Those include requirements when the schools participate in the Ed Choice and Cleveland Scholarship programs and criminal records checks for school employees. Accredited nonpublic schools also continue to qualify for administrative cost reimbursement, Auxiliary Services funding, and transportation services, as under continuing law. However, the bill specifically exempts such schools from the state minimum high school curriculum and chartering requirements.

Under current law, the State Board charters all public and chartered nonpublic schools and, in doing so, establishes operating standards for them. The bill exempts accredited schools from the requirement to attain a State Board charter. Instead, accredited nonpublic schools attain their charters to operate by meeting the standards of and being accredited by ISACS.

The bill permits the Department to exercise limited oversight over accreditation by ISACS by allowing the Department to: (1) send a representative to accompany an ISACS accrediting team on any school site visit, and (2) to request a copy of the ISACS report issued as part of the accreditation. Moreover, accredited nonpublic schools must cooperate with the Department in its oversight, and the Department may revoke a school’s designation if it fails to do so. However, the school still may operate as a chartered nonpublic school so long as it complies with operating standards for schools established by the State Board or maintains accreditation from a State Board-approved association other than ISACS. Also, schools that lose full accreditation from ISACS may operate as chartered nonpublic schools so long as they meet applicable requirements.

Finally, the bill prohibits the Department from creating ratings or any type of report card for accredited nonpublic schools. Under current law, nonpublic schools are not included in the state report card system.

### **Exemptions for accredited nonpublic schools**

Under the bill, accredited nonpublic schools must comply with the minimum education standards adopted by the State Board under current law. These are not the same as operating standards which are more detailed. Rather, they are minimum standards, such as subjects that must be included in the curriculum (not the content of courses) and the minimum school year, that apply to all schools, chartered or nonchartered.

On the other hand, the bill prohibits the State Board from prescribing additional operating standards for accredited nonpublic schools. The bill also states that they are exempt from any requirement to which a chartered nonpublic school is subject unless otherwise specifically prescribed for them. While most of the chartered nonpublic school requirements still apply to accredited nonpublic schools, the bill expressly exempts them from, certain provisions as discussed in further detail below.

#### **High school curriculum**

(R.C. 3313.603)

The bill exempts accredited nonpublic schools from the state minimum high school curriculum. Current law prescribes 20 units of study in specified subject areas as the minimum high school curriculum for a diploma from a public school or a chartered nonpublic school. (Each unit is a minimum of 120 hours of instruction, except a laboratory course for which one unit is a minimum of 150 hours of instruction.) This includes: 4 units in English language arts, 4 units in math, one-half unit each in health and physical education, 3 units in science, 1 unit in American history and government, 2 units in social studies, and 5 units in electives.

#### **Testing**

(R.C. 3301.0711)

The bill maintains current law exemptions from state achievement testing for nonstate scholarship high school students attending ISACS-accredited schools (“accredited nonpublic schools”), and an exemption for state scholarship students attending such schools from the testing requirements if such students take an approved alternative assessment or have received remediation-free scores on nationally standardized assessments.

#### **Teacher licenses**

(R.C. 3301.071 and 3319.39)

Chartered nonpublic teachers must comply with the requirements of state law in order to receive a license to teach. Essentially, current law requires a person to have a bachelor’s degree to teach in subjects other than a foreign language, music, religion, computer technology, or fine arts. Instead, accredited nonpublic school teachers must meet the standards set by ISACS for educator qualifications. Nonetheless, teachers of accredited nonpublic schools still are subject to the criminal records checks.

## **College Credit Plus**

(R.C. 3365.02)

While chartered nonpublic schools may choose to participate in the College Credit Plus program (CCP), the bill specifically exempts accredited nonpublic schools from the College Credit Plus program as long as parents are notified at enrollment (or re-enrollment) that the school does not participate. If an accredited nonpublic school so notifies the enrolled student's parents, the bill states that the school is not subject to any law or rule governing CCP.

## **Requirement to post information on school website**

(R.C. 3301.164)

The bill exempts an accredited nonpublic school from the requirement to post on its website the number of students enrolled in the school and the school's policy regarding background checks for teaching and nonteaching employees and for volunteers who have direct contact with students.

## **Study committee**

(Section 130.13)

The bill creates a joint committee to study the effects of creating accredited nonpublic schools. The committee consists of six members, as follows:

- The chairpersons of the standing committees of the House and Senate principally responsible for primary and secondary education policy;
- Two members of the House, appointed by the Speaker, one from each party; and
- Two members of the Senate, appointed by the Senate President, one from each party.

The committee must compare data from accredited nonpublic schools from before and after the bill's effective date. It also must compare data from accredited nonpublic schools to data from public schools and private school associations as available. It must compare aggregate data on remediation rates, SAT and ACT test scores, college acceptance and attendance rates, and results of other standardized tests for lower grade levels.

The committee must submit a report to the General Assembly not later than two years after the bill's effective date. The report must include recommendations on expanding the designation of "accredited nonpublic schools" to chartered nonpublic schools not accredited by ISACS and the criteria that should be used to qualify such schools for that designation.

## **Background – ISACS**

According to its website, "the Independent Schools Association of the Central States (ISACS) is a membership organization of more than 230 independent schools from 13 states of the Midwest region."<sup>41</sup> Its goal is to support independent education and provides services such

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<sup>41</sup> [http://www.isacs.org/page/47212\\_Mission.asp](http://www.isacs.org/page/47212_Mission.asp).

as accreditation of schools and professional development. The accreditation process requires compliance with ISACS standards that range from safety, administration and governance, personnel, and programs, activities, and student services.<sup>42</sup>

## **Assessment requirements for chartered nonpublic schools**

(R.C. 3301.0711(K), as amended in Section 101.01)

The bill permits chartered nonpublic schools that participate in state scholarship programs to administer an alternative assessment to the state achievement assessments for students in grades 3-8. The alternative standardized assessment must be approved by the Department of Education, and each chartered nonpublic school must report the results of each assessment administered to students to the Department. Presumably, this includes the results of both the state achievement assessment and any alternative assessment determined by the Department.

Current law requires chartered nonpublic schools for which at least 65% of its total enrollment is made up of students participating in state scholarship programs (Ed Choice, Cleveland, Autism, and Jon Peterson scholarship programs) to administer the state achievement assessments to all students enrolled in the school. Parents of those students who are not participating in a scholarship may choose to not have their children take the assessments. (High school students still are required to take high school end-of-course examinations.)

### **Students with disabilities**

(R.C. 3301.0711(C)(1)(c), as amended in Section 101.01)

The bill permits a chartered nonpublic school to develop a written plan to excuse a student with a disability from taking state assessments if the following apply:

- The school, in consultation with the student's parents, determines that an assessment or alternative assessment with accommodations does not accurately assess the student's academic performance;
- The plan includes an academic profile of the student's performance;
- The plan is reviewed annually to determine if the student's needs continue to require excusal from taking the assessments.

### **Cleveland scholarship applications**

(R.C. 3313.978)

The bill requires the Department, beginning with the 2020-2021 school year, to conduct two application periods for the Cleveland Scholarship Program. The first period begins on February 1 for the following school year and must last at least 75 days. The second period

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<sup>42</sup> <http://www.isacs.org/uploads/file/Standards%20for%20Membership.pdf>.

begins on July 1 of the school year for which a scholarship is sought and must last at least 30 days.

## **Educational service centers**

### **Application for grants**

(R.C. 3312.01)

The bill adds applying for state or federal grants on behalf of a school district to the list of services an educational service center (ESC) may provide to school districts and community schools by way of a voluntary service agreement. It also clarifies an ESC's status as a "school district," which makes the ESC eligible to apply for those grants.

### **Contracting for districts and other political subdivisions**

(R.C. 3313.843)

The bill permits an ESC to contract on behalf of school districts and other political subdivisions, with which it has service agreements under continuing law, to purchase supplies, materials, equipment, and services on their behalf. The bill further states that any school district, community school, or STEM school that has a service agreement with an ESC "shall be in compliance with federal law and exempt from competitive bidding requirements for personnel-based services pursuant to the authority granted to the Ohio Department of Education under federal law," as long as the ESC:

- Has posted on its website a list of all of the services that it provides and the corresponding cost for each of those services, as required under continuing law;
- Has been designated as "high performing" under rule of the State Board;<sup>43</sup>
- Has been found to be substantially in compliance with audit rules and guidelines in its most recent audit by the Auditor of State.

The bill specifies that purchases made under this provision by a school district or political subdivision that has an agreement with an ESC are in compliance with federal competitive bidding requirements for personnel-based services and exempt from any similar state statutes. Additionally, the bill prohibits a political subdivision from making purchases under this provision if the subdivision has received bids for a purchase, unless the same terms, conditions, and specifications at a lower price can be made for the purchase. Note, current state law requires school districts and ESCs to use complete bids only for the purchase or demolition of a school building valued over \$50,000 and the purchase of school buses.<sup>44</sup>

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<sup>43</sup> See O.A.C. 3301-105-01.

<sup>44</sup> R.C. 3313.46 and 3327.08, neither in the bill.

## Ohio Medicaid school component

(R.C. 5162.01 and 5162.364)

The bill permits ESCs to participate in the school component of the Medicaid program. The component permits participating qualified school providers to submit claims to the Department of Medicaid for Medicaid recipients. Schools may participate by obtaining a Medicaid provider agreement and meeting other conditions for participation.

### Background on ESCs

ESCs are regional public entities that offer a broad spectrum of services, including supervisory teachers, curriculum development, professional development, purchasing, publishing, human resources, special education services, and counseling services, to public schools in their regions. Provision of services is (1) statutorily required in the case of school districts with enrollment of 16,000 or fewer students and (2) statutorily permitted in the case of larger districts, all community schools, and political subdivisions. An ESC may also provide services not already required by law or service agreement to school districts and schools on a fee-for-service basis.<sup>45</sup>

### School breakfast programs

(R.C. 3313.813, 3313.818, and 3314.18)

The bill requires the Department to establish a program, under which qualifying higher-poverty public schools must offer breakfast to all enrolled students during the school day. It applies to schools operated by school districts, community schools (except e-schools), and STEM schools. Each qualifying school must “make efforts” to increase participation rates to at least 70% of the school’s free or reduced-price lunch participation rate. The bill requires a school district superintendent or a building principal, in consultation with building staff, to determine the model for serving breakfast under the program. Each breakfast must comply with federal meal patterns and state and federal nutritional standards. The school may charge students for meals, based on family income in accordance with federal requirements, to cover all or part of the costs incurred in operating the program.

The bill phases in the program over three years, gradually lowering the threshold under which schools qualify for the program based on the percentage of enrolled students that qualify for free or reduced-price meals under federal requirements as follows:

School year after the bill’s effective date	Percentage of students that qualify for free or reduced-price meals
First	70%
Second	60%

<sup>45</sup> R.C. 3313.843, 3314.844, and 3314.845, latter two sections in the bill.

School year after the bill's effective date	Percentage of students that qualify for free or reduced-price meals
Third, and each subsequent year	50%

The bill requires the Department to publish a list of schools that qualify for the program annually by December 31. The Department also must provide statistical reports on its website specifying the number and percentage of students participating in breakfast programs, disaggregated by district and individual schools. The Department must monitor each school participating in the program to ensure compliance with the program's provisions and offer assistance to schools and school districts, including technical assistance in submitting claims for reimbursement under federal law.

In any school year for which participation in a school's breakfast program has not increased by 10% from the previous year or total participation is less than 70%, the Department must provide written notice of its findings to that school by May 31 of that school year. The school then must submit a plan for increased participation to the Department within 30 days after receiving the notice.

Additionally, the Department annually must prepare a report on the implementation and effectiveness of the program and submit it to the General Assembly and the Governor, by December 31. The report must include the following:

- The number of students and participation rates in the breakfast program for each school building;
- The type of breakfast model used by each building; and
- The number of students and participation rates in free or reduced-price lunch for each building.

## Industry-recognized credentials at CTPDs

(R.C. 3313.618, 3313.912, and 3317.023)

The bill stipulates the business advisory committee of each career-technical planning district (CTPD) must determine and submit to the board of education of the CTPD's lead district an appropriate point value for each industry-recognized credential offered by the district. The point value is for the purposes of allowing a student to qualify for high school graduation under continuing law.

The lead district board must vote on each point value submitted by the business advisory committee. If the lead district board approves the point value, the district board must then submit a notice of the approval and a copy of the district board's meeting minutes to the Department using either mail or an email. The district board's approval takes effect 30 calendar days after the postage stamp date of a mail notice or the date of an email notice.

However, the State Board, by a two-thirds vote, is permitted to override a district board's approved credential point value. The override takes effect immediately, unless the vote occurs after the effective date of the approval; in that case the override takes effect the following school year.

The bill specifies that a lead district board's approval is only valid in its CTPD, and that the lead district board may revoke any approved credential point value. The bill also permits a student to use a credential point value approved by the student's lead district to attain the industry-recognized credential points necessary to qualify for high school graduation under current law.

## **Background**

Industry-recognized credentials are approved by a committee established under continuing law by the Superintendent of Public Instruction in collaboration with the Governor's Office of Workforce Transformation and representatives of business organizations. Among other things, industry-recognized credentials are used to qualify students for high school graduation using the workforce graduation pathway.

Under the workforce graduation pathway, in addition to the student's district or school curriculum requirements, a student must attain a score selected by the State Board on the WorkKeys assessment and attain either an industry-recognized credential or a license that requires an examination and is issued by a state agency or board. However, the committee that approves industry-recognized credentials appears to assign different point values to different credentials, and according to the Department's website a student must earn at least 12 points worth of credentials to qualify for graduation.<sup>46</sup>

## **Student transportation**

### **No reduction in school district transportation**

(R.C. 3327.015)

The bill prohibits a school district board of education from reducing the transportation it provides to students the district is not required to transport after the first day of the school year.

## **Background**

Under current law, school districts must provide transportation to a resident student in grades kindergarten through 8 that live more than two miles from the school to which they are assigned or the nonpublic, STEM, or community school the student attends. Districts may provide transportation to a resident student in grades 9 through 12 but are not required to.

However, current law provides that a school district may determine that it is impractical to transport a pupil who is eligible for transportation to and from school due to time and

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<sup>46</sup> <http://education.ohio.gov/Topics/Ohio-s-Graduation-Requirements/Earning-an-Ohio-High-School-Diploma-for-the-Class>.

distance, number of pupils to be transported, the cost of providing transportation, whether similar equivalent service is provided to other pupils eligible for transportation, whether and to what extent the additional service unavoidably disrupts current transportation schedules, and whether other reimbursable types of transportation are available. If a board determines it is impractical to provide transportation, the board must make a payment in lieu of transportation to the student's parent.

A district need not provide any transportation or payment in lieu of it for a nonpublic, STEM, or community school student, if the direct drive time by school bus is more than 30 minutes.<sup>47</sup>

### **Students attending nonpublic or community schools**

(R.C. 3327.01)

The bill specifies that, for students attending a nonpublic or community school, a city, local, or exempted village school district's drop-off time may be up to 30 minutes prior to the start of the school day and the pick-up time may be up to 30 minutes after the end of the school day.

### **Medical examinations for school bus drivers**

(R.C. 3327.10)

The bill permits all of the following to perform the annual medical examination for school bus drivers required under rules adopted by the State Board of Education:

- Persons licensed to practice chiropractic in Ohio or another state;
- Medical professionals listed on the National Registry of Certified Medical Examiners; and
- All of the medical professionals currently authorized to perform this examination under State Board rules (persons licensed to practice medicine or osteopathic medicine in Ohio or another state, physician assistants, certified nurse practitioners, clinical nurse specialists, and certified nurse-midwives).

Under current law, these same individuals may perform medical examinations for school bus drivers who are subject to State Highway Patrol rules rather than those of the State Board.

### **Transportation study**

(R.C. 3317.62; Section 265.215)

The bill establishes a joint legislative task force to examine transportation of community school and nonpublic school students. The task force must consist of six members, with three appointed by the Speaker of the House and three appointed by the Senate President. The Speaker and the President must appoint a chairperson and vice-chairperson, or co-chairpersons, for the task force.

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<sup>47</sup> R.C. 3327.01, not in the bill.

The task force, in consultation with the state Superintendent, the Auditor of State, and other stakeholders, must study the transportation of community school and nonpublic school students and determine methods to create greater efficiency and minimize costs in transporting those students.

The task force must report its findings to the Speaker and the President by December 31, 2020.

## **Transfer of school district territory**

(R.C. 3311.242)

The bill creates a new process for transferring territory between school districts in addition to the other processes prescribed under continuing law. Under the bill, electors residing in a school district's territory that is located within a township split between two or more school districts may petition for the transfer of territory to another adjacent school district. The board of education that is losing territory must file the proposal, including a map of the territory's boundaries, with the State Board and certify the proposal to the county board of elections. The petition must be signed by at least 10% of electors residing within the territory that voted in the last general election.

Upon receiving a certified proposal, the board of elections must submit the proposal to electors within the territory to vote on in the next general or primary election, or in a special election specified in the certification. Any election must be at least 90 days after the date of the proposal's certification. The election must be held in the same manner as a regular board of education election and the proposal must be approved by a majority vote of qualified electors voting.

If a proposal is approved by the electors, the district board losing territory must notify the State Board of the election results, and the board of trustees of the eligible township must enter into negotiations with the district board gaining territory regarding terms of the transfer. The board of trustees and the district board gaining territory must enter into a formal agreement regarding the transfer's terms to execute the transfer, but the district board is not required to enter into any agreement. Upon entering into a formal agreement, the district board gaining territory must file the proposal and copy of the agreement with the State Board. The State Board must approve the filed proposal and provide written notification of that approval to both districts affected by the territory transfer. The bill does not appear to give the State Board the discretion to reject the proposal.

The district board gaining territory, upon receiving notification of the State Board's approval, must file a map showing the boundaries of the territory being transferred with the county auditor. Additionally, both district boards affected by the territory transfer, as well as the township board of trustees, must execute an equitable distribution of funds and indebtedness between the districts. The transfer shall then be complete, and legal title of the school property in the territory shall be vested in the district board of the district gaining territory.

## **Involuntary lease or sale of school district property**

(R.C. 3313.411)

The bill stipulates that a school district with real property that has been used for school operations since July 1, 1998, but has not been used for that purpose for one year, must offer to lease or sell that property to community schools, STEM schools, and college-preparatory boarding schools located in the district. Under current law, the district must offer to lease or sell that property if it has not been used for school operations for two years.<sup>48</sup>

## **State minimum teacher salary schedule**

(R.C. 3317.13, as amended in Section 101.01)

The bill amends the statutory minimum teacher salary schedule to increase the minimum base salary for beginning teachers with a bachelor's degree from \$20,000 to \$30,000 and to increase proportionally the minimum salaries for teachers with different levels of education and experience.

### **Background**

State law provides a schedule for minimum salaries that must be paid to teachers based on level of education attained and years of experience. Currently, the base salary, unchanged since 2001, is \$20,000 for a teacher with zero years of service and a bachelor's degree. All of the other salaries on the schedule are increments upward (or downward in some cases, if a teacher does not have a bachelor's degree) as a teacher gains experience and education. The schedule prescribes a 3.8% annual increase (step) for a teacher with a bachelor's degree.

Each school district board of education and each educational service center governing board must adopt an annual teacher salary schedule that complies with the statutory base minimum. That schedule must be either merit based or contain provisions for increments based on training and years of service. In practice, however, the compensation rate is generally set by way of collective bargaining between the employing board and the organization representing the teachers.

## **Alternative resident educator licenses**

(R.C. 3319.26)

The bill replaces a teacher preparation program summer training institute offered by a nonprofit organization with a teacher preparation program preservice training approved by the Chancellor of Higher Education as one of the two methods by which an applicant for an alternative resident educator license may satisfy training requirements. The bill maintains the second method, which includes successful completion of the pedagogical training institute.

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<sup>48</sup> A school district also must offer the right of first refusal to purchase district real property it voluntarily decides to sell to community schools, STEM schools, and public college-preparatory boarding schools. The bill does not affect the right to first refusal in a voluntary sale.

The other prerequisites to alternative resident educator licensure are not affected by the bill. They include a bachelor's degree and passing a test in the subject area for which the application is being made. While teaching under an alternative resident educator license, an individual must complete further coursework and pass further written tests and observational evaluations. Holders of the alternative license also must complete the Ohio Teacher Residency Program.

## **Bright New Leaders for Ohio Schools Program**

(R.C. 3317.25, 3319.271 (repealed), and 3319.272)

Initially created in 2013 by H.B. 59 of the 130<sup>th</sup> General Assembly, the Bright New Leaders Program provides an alternative path for individuals to receive training, earn degrees, and obtain licenses in public school administration. The bill eliminates the law establishing the nonprofit corporation that initially created and implemented the program and, instead, establishes the Ohio State University Fisher College of Business and College of Education and Human Ecology as the administrators for the program. It adds a requirement that the State Board issue a professional administrator license for grades pre-K through 12 to individuals who complete the program, instead of an alternative principal or administrator license as under current law.

## **Licenses for substitute teaching**

(R.C. 3319.074 and 3319.226)

The bill reinstates a practice effectively repealed in 2018 by S.B. 216 of the 132<sup>nd</sup> General Assembly whereby the holder of a long term substitute license with a degree not in education or directly related to the subject being taught is "qualified" or "certified" to provide instruction in a core subject area without satisfying additional licensure requirements.

Prior to the enactment of S.B. 216, all teachers of core subject areas were required to be "highly qualified" as previously required by federal law. By rule and practice, an individual was "highly qualified" for purposes of teaching at a community school if the individual (1) held a bachelor's degree in any field, (2) held a teaching certificate or license other than a short term substitute license, and (3) had the ability to demonstrate subject area expertise in the core academic subjects taught.<sup>49</sup> In other words, the holder of a long-term substitute license was "highly qualified" to teach any community school general education courses designated on that license. S.B. 216 changed this procedure in two distinct ways: (1) replacing "highly qualified" with the requirement that a core subject area teacher be "properly certified or licensed" (which is a new state designation not required by federal law) and (2) limiting the duration in which a licensed substitute whose post-secondary degree is not related to the subject area taught may work in the same school to one full semester. As such, under current law, the holder of a long term substitute license who holds a degree in a field unrelated to the subject to be taught is not

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<sup>49</sup> Ohio Department of Education, Community Schools Guidance Letter #2010I3, "Licensure and HQT Requirements for Community Schools," updated March 2018, available for download at <http://education.ohio.gov/Topics/Community-Schools> by scrolling to the end of the page under "Reports, Guidance and Public Documents" and clicking on "HQT Requirements."

a “properly certified or licensed teacher” and, without more, cannot teach in a core subject area.

Using the pre- S.B. 216 criteria for long-term substitute licensure, the bill designates as “properly certified or licensed” to teach a specified core subject area for a period of longer than 60 days the holder of a substitute license (regardless of the date of issuance) with the following educational experience:

- 12 semester hours in professional education leading to a license in any of grades pre-k to three, provided the substitute will be teaching in one of those grades; or
- 20 semester hours in the subject area directly related to the course the substitute will teach.

Finally, the bill permits a school district, community school, or STEM school to provisionally employ for the purpose of providing substitute instruction in a core subject area an unlicensed individual for whom long term substitute licensure application has been submitted, for a period not to exceed 60 days, provided the individual satisfies the semester hour requirements described above. The Department, under the bill, must grant an application made in accordance with that provision within 30 days of its submission.

## **School child day-care programs**

(R.C. 3301.53)

The bill clarifies that child day-care centers that serve preschool children and child day-care centers that serve school-age children must meet or exceed the standards adopted by the Director of Job and Family Services.

Under current law, the standards adopted by the Director must include safety standards of the interior and in the surrounding area of the child day-care facility; standards for a program of activities, play equipment, materials, and supplies; healthcare, first aid, and vaccination requirement policies; procedures for screening employees; and other standards that pertain to the well-being and safety of children who attend child day-care centers.

## **FAFSA completion incentives**

### **College Credit Plus**

(R.C. 3365.03)

The bill requires 12<sup>th</sup> grade public school students applying to participate in the College Credit Plus (CCP) Program to complete the Free Application for Federal Student Aid (FAFSA) and provide proof of completion in a manner prescribed by the Chancellor of Higher Education.

The CCP Program allows high school students to enroll in nonsectarian college courses to receive high school and college credit. The courses may be taken at any state institution of higher education or participating private or out-of-state college or university. Under current law, each public secondary school student participating in the CCP Program must apply to a public or participating private college or university, be remediation-free, have a cumulative grade point average of at least 3.0 on a 4.0 scale or receive a recommendation from a

counselor, principal, or advisor, and meet the university's or college's established standards for admission, enrollment, and course placement.

### **FAFSA Completion Program**

(Sections 265.10, 265.20, and 733.20)

The bill requires the Department to establish a program for FY 2020 and FY 2021 that awards grants to educational service centers or city, exempted village, local, or joint vocational school districts to organize activities that encourage and assist high school seniors to complete the FAFSA. The maximum award for a recipient is \$5,000 per fiscal year. The bill appropriates \$75,000 for each of FY 2020 and FY 2021 for the program. If the amount appropriated by the General Assembly for the program is insufficient, the bill requires the Department to prioritize awarding grants to lower-wealth districts.

The bill requires the Department to adopt guidelines and procedures to administer the program, including a process and timeline for soliciting, reviewing, and approving proposals, a metric to gauge district wealth, and criteria for approving proposals. Proposals must include how the recipient will work with a public or private community partner and a description of at least one activity such as "a training session or a fair."

### **Behavioral prevention initiatives**

(R.C. 3313.6024, 3314.03, 3326.11, and 3328.24)

The bill requires each public school to annually report to the Department on the types of prevention-focused programs, services, and supports it uses to promote healthy behavior and decision-making by students and their understanding of the consequences of risky behaviors, such as substance abuse and bullying. The report must include the following:

- Curriculum and instruction provided during the school day;
- Programs and supports provided outside of the classroom or outside of the school day;
- Professional development for teachers, administrators, and other staff;
- Partnerships with community coalitions and organizations to provide prevention services and resources to students and their families;
- School efforts to engage parents and the community; and
- Activities designed to communicate with and learn from other schools or professionals with expertise in prevention education.

The bill also permits the Department to use these reports as a factor to determine the distribution of any funding for prevention-focused behavioral initiatives.

### **Computer coding as a foreign language**

(R.C. 3313.603(E))

Under current law, a minimum of 20 specified units of academic credit is required for high school graduation. (One unit is 120 hours of instruction.) However, school districts and

chartered nonpublic schools have the authority to require more challenging minimum requirements for graduation. The bill stipulates that if a school district or chartered nonpublic school requires a foreign language as an additional requirement for high school graduation, the district or school must accept one unit of computer coding instruction toward satisfying that requirement.

The bill also specifies that, if a student applies more than one course of computer coding toward the requirement, they must be sequential and progressively more difficult.

The provision also applies to STEM schools.<sup>50</sup> However, it may or may not apply to community schools even though they generally must comply with the minimum high school curriculum.<sup>51</sup>

## **Show choir as physical education**

(R.C. 3313.603)

The bill permits a school district board of education or governing authority of a chartered nonpublic school to substitute two full seasons of show choir to fulfill high school physical education requirements in the same way that interscholastic athletics, marching band, and cheerleading are permitted under current law.

## **International students in interscholastic athletics**

(R.C. 3313.5315)

The bill permits any international student who attends an Ohio elementary or secondary school to participate in interscholastic athletics at that school on the same basis as students who are Ohio residents if the student holds an F-1 U.S. visa. The student cannot be denied the opportunity to participate in interscholastic athletics solely because the student's parents do not reside in this state.

Current law specifically permits an international student with an F-1 visa to participate in interscholastic athletics regardless of the residency of the student's parents only if the student attends a school that began operating a dormitory on its campus prior to 2014.

The bill, thus, removes the exclusionary provision and permits all properly credentialed international students to participate in interscholastic athletics.

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<sup>50</sup> See R.C. 3326.15, not in the bill.

<sup>51</sup> R.C. 3314.03(A)(11)(f) regarding community school curriculum requirements does not specifically reference division (E) of R.C. 3313.603.

## English learners

(R.C. 3301.07, 3301.0710, 3301.0711, 3301.0714, 3302.01, 3302.03, 3302.061, 3302.18, 3313.608, 3313.61, 3313.611, 3313.612, 3314.08, 3317.016, 3317.02, 3317.022, 3317.03, 3317.06, 3317.16, 3317.40, 3326.31, 3326.32, and 3326.33)

The bill changes all references of “limited English proficient student” in the Revised Code to “English learner” to align with recent amendments to federal law.<sup>52</sup>

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<sup>52</sup> See 20 U.S.C. 7801(20).

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## **JOINT EDUCATION OVERSIGHT COMMITTEE**

- Adds two members of the State Board of Education to the Joint Education Oversight Committee.

### **Membership**

(R.C. 103.50)

The bill adds two members of the State Board of Education to the Joint Education Oversight Committee (JEOC), to be appointed by the President of the State Board. The new members may not be of the same political party.

JEOC is a legislative committee, with its own full-time staff, that examines education policy issues and may review and evaluate education programs at school districts, other public schools, and state institutions of higher education. Currently, the committee consists of five members of the House, appointed by the Speaker, and five members of the Senate, appointed by the Senate President.

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## **BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

- Increases all license and permit fees by \$50.
- Replaces embalmer and funeral director registration with certification of apprenticeship subject to a \$35 fee.

### **Authorization and fees**

(R.C. 4717.03, 4717.05, 4717.07, and 4717.41)

The bill increases fees for the following licenses and permits by \$50: embalmer's license, funeral director's license, license to operate an embalming facility, license to operate a funeral home, license to operate a crematory facility, and crematory operator permit.

The bill also amends the process of obtaining a license. Under current law, a person who wishes to obtain an embalmer's or funeral director's license must first register with the Ohio Board of Embalmers and Funeral Directors and subsequently complete an apprenticeship program. The registration fee is \$25 and the fee for filing a certificate of apprenticeship is \$10. The bill removes the registration requirement and specifies that an applicant need only obtain a certificate of apprenticeship subject to a \$35 fee.

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## ENVIRONMENTAL PROTECTION AGENCY

### Extension of E-Check

- Authorizes the extension of the motor vehicle inspection and maintenance program (E-Check) through June 30, 2025, in counties for which a program is federally mandated.
- Retains all statutory requirements governing the program, including the following:
  - The new contract must ensure that the program achieves at least the same emissions reductions as achieved by the program under the contract that was extended;
  - The Director of Administrative Services must use a competitive selection process when entering into a new contract with a vendor;
  - E-Check must be a decentralized program and include a new car exemption for motor vehicles up to four years old.

### Local air pollution control authority

- Modifies the list of agencies that qualify as a local air pollution control authority under the law governing air pollution by eliminating the Mahoning-Trumbull Air Pollution Control Authority, City of Youngstown.

### Post-use polymers and recoverable feedstocks

- Excludes post-use polymers (plastics) and recoverable feedstocks from the laws governing solid waste disposal under certain circumstances.

### Asbestos abatement

- Makes changes to the law governing asbestos abatement, including:
  - Expanding the scope of activities that are subject to regulation by applying the law to activities involving more than three linear or square feet of asbestos-containing material, rather than more than 50 linear or square feet as in current law;
  - Authorizing the Ohio Environmental Protection Agency (OEPA) to take certain enforcement actions against a contractor licensee or certificate holder if either is violating or threatening to violate specified federal regulations adopted under the Federal Toxic Substances Control Act; and
  - Eliminating the Director's authority to approve, on a case-by-case basis, alternatives to the existing worker protection requirements for a project conducted by a public entity.

### Extension of various fees

- Extends all of the following for two years:
  - The sunset of the annual emissions fees for synthetic minor facilities;

- The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works;
- The sunset of the annual discharge fees for holders of National Pollutant Discharge Elimination System (NPDES) permits under the Water Pollution Control Law;
- The sunset of license fees for public water system licenses;
- A higher cap on the total fee due for plan approval for a public water supply system and the decrease of that cap at the end of the two years;
- The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;
- The levying of higher fees, and the decrease of those fees at the end of the two years, for applications to take examinations for certification as operators of water supply systems or wastewater systems;
- The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control and Safe Drinking Water Laws;
- The sunset of the fees levied on the transfer or disposal of solid wastes; and
- The sunset of the fees levied on the sale of tires.

### **George Barley Water Prize**

- Appropriates \$125,000 in FY 2020 to OEPA to support the final stage of the awards process for the Everglades Foundation's George Barley Water Prize.
- If the \$125,000 is not expended in its entirety in FY 2020, authorizes the Director of Environmental Protection to certify to the Director of Budget and Management an amount up to the unexpended, unencumbered balance of the \$125,000 to be reappropriated in FY 2021.
- Requires the Director of Environmental Protection, prior to disbursing any money to the Foundation, to enter into a memorandum of understanding with the Foundation that specifies certain requirements regarding Ohio's involvement in the George Barley Water Prize process.

### **Extension of E-Check**

(R.C. 3704.14)

The act authorizes the extension of the motor vehicle inspection and maintenance program (E-Check) in Ohio counties where this program is federally mandated by:

- Authorizing the Director of Environmental Protection to request the Director of Administrative Services to extend the existing contract (with the contractor that

conducts the program) beginning June 30, 2019, for a period of up to 24 months through June 30, 2021;

- Requiring the EPA Director, before the contract extension expires, to request the DAS Director to enter into a contract (with a vendor to operate a decentralized program) through June 30, 2023, with an option to renew the contract for a period of up to 24 months through June 30, 2025.

The bill retains the requirement that the new contract ensure that the program achieves at least the same emissions reductions achieved under the contract that was extended. It also retains the requirement that the DAS Director must use a competitive selection process when entering into a new contract with a vendor. Last, the bill retains all statutory requirements governing the program, including requirements that E-Check be a decentralized program and include a new car exemption for motor vehicles up to four years old.

## **Local air pollution control authority**

(R.C. 3704.01 and 3704.111)

The bill modifies the list of agencies that qualify as a local air pollution control authority under the law governing air pollution by eliminating the Mahoning-Trumbull Air Pollution Control Authority, City of Youngstown. Current law requires the OEPA Director to enter into delegation agreements with local air pollution control authorities listed in current law. As part of the agreement, the local air pollution control authority agrees to perform on behalf of Ohio Environmental Protection Agency (OEPA) air pollution control regulatory services within the political subdivision represented by the local air pollution control authority.

## **Post-use polymers and recoverable feedstocks**

(R.C. 3734.01)

The bill excludes post-use polymers and recoverable feedstocks from the laws governing solid waste disposal if all of the following apply:

- The post-use polymers or recoverable feedstocks are stored for fewer than 90 days;
- The post-use polymers or recoverable feedstocks remain retrievable and substantially unchanged physically and chemically;
- The storage of post-use polymers or recoverable feedstocks does not cause a nuisance;
- The storage of post-use polymers or recoverable feedstocks does not pose a threat from vectors (e.g., insects or vermin);
- The storage of post-use polymers or recoverable feedstocks does not adversely impact public health, safety, or the environment; and
- Prior to the end of the 90-day or less storage period, the post-use polymers or recoverable feedstocks are converted using gasification or pyrolysis.

The following table describes each scientific term as used in the bill.

Term	Scientific description
Post-use polymer	<p>A plastic polymer to which both of the following apply:</p> <ul style="list-style-type: none"> <li>▪ It is derived from any sources and is not being used for its original intended purpose; and</li> <li>▪ It is used or intended to be used to manufacture crude oil, fuels, other raw materials, intermediate products, or final products using pyrolysis or gasification.</li> </ul> <p>May contain incidental contaminants or impurities, such as paper labels or metal rings.</p>
Recoverable feedstock	<p>One or more of the following materials, derived from nonrecycled waste, that have been processed for use as a feedstock in a gasification facility:</p> <ul style="list-style-type: none"> <li>▪ Post-use polymers; or</li> <li>▪ Materials for which the U.S. Environmental Protection Agency has made a nonwaste determination or has otherwise determined are not solid waste.</li> </ul>
Pyrolysis	<p>A process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and are then cooled, condensed, and converted into one of the following:</p> <ul style="list-style-type: none"> <li>▪ Crude oil, diesel, gasoline, home heating oil, or another fuel;</li> <li>▪ Feedstocks;</li> <li>▪ Diesel and gasoline blendstocks;</li> <li>▪ Chemicals, waxes, or lubricants;</li> <li>▪ Other raw materials, intermediate products, or final products.</li> </ul>
Gasification	<p>A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere, and the mixture is converted into fuel, including ethanol and transportation fuel, chemicals, or other chemical feedstocks.</p>

## Asbestos abatement

(R.C. 3710.01, 3710.04, 3710.05, 3710.051, 3710.06, 3710.07, 3710.08, and 3710.12)

The bill makes the following changes to the law governing asbestos abatement, which is administered by OEPA:

- Expands the scope of activities that are subject to regulation by applying the law to activities involving more than three linear or square feet of asbestos-containing material, rather than more than 50 linear or square feet as in current law. (For example, if an activity involves four linear feet, a person will now need to meet certain certification and training requirements that previously would not have applied.)
- Adds the maintenance of asbestos-containing materials as one of the activities subject to regulation;
- Adds the operations of asbestos-containing materials as one of the activities subject to regulation;
- Authorizes OEPA to take certain enforcement actions against a contractor licensee or certificate holder if either is violating or threatening to violate specified federal regulations adopted under the Federal Toxic Substances Control Act as amended by the Asbestos Hazard Emergency Response Act;
- Requires OEPA to deny a contractor license application if the applicant or any of the applicant's officers or employees has been found liable in a civil proceeding under any state or federal environmental law. (Currently, denial is limited to felony convictions.)
- Eliminates the Director's authority to approve, on a case-by-case basis, alternatives to the existing worker protection requirements for a project conducted by a public entity;
- Adds both of the following to the list of activities that require a person to be certified as an asbestos hazard evaluation specialist:
  - Inspections; and
  - Assessments of suspect asbestos-containing materials.
- Adds the oversight of an asbestos hazard abatement activity to the list of activities that require certification as an asbestos hazard abatement project designer;
- With regard to the certification of an asbestos hazard abatement air-monitoring technician (responsible for environmental monitoring or work area clearance air sampling), eliminates the exemption from certification that applies to industrial hygienists-in-training since the American Board of Industrial Hygiene no longer certifies those hygienists; and
- Requires a contractor to notify the Director at least ten working days, rather than at least ten days as under current law, before beginning an asbestos hazard abatement project (the change makes Ohio law consistent with federal law).

## Extension of various fees

(R.C. 3745.11, 3734.57, and 3745.901)

The bill extends the time period for charging various OEPA fees under the laws governing air pollution control, water pollution control, and safe drinking water. The following table sets forth each fee, its purposes, and the time period OEPA is authorized to charge the fee under current law and the bill:

Type of fee	Description	Sunset under current law	Sunset under the bill
Synthetic minor facility: emission fee	Each person who owns or operates a synthetic minor facility must pay an annual fee in accordance with a fee schedule that is based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant source at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under continuing law.	The fee is required to be paid through June 30, 2020.	The bill extends the fee through June 30, 2022.
Wastewater treatment works: plan approval application fee	A person applying for a plan approval for a wastewater treatment works is required to pay one of the following fees depending on the date: --A tier one fee of \$100 plus 0.65% of the estimated project cost, up to a maximum of \$15,000; or --A tier two fee of \$100 plus 0.2% of the estimated project cost, up to a maximum of \$5,000.	An applicant is required to pay the tier one fee through June 30, 2020, and the tier two fee on and after July 1, 2020.	The bill extends the tier one fee through June 30, 2022; the tier two fee begins on or after July 1, 2022.
Discharge fees for holders of NPDES permits	Each NPDES permit holder that is a public discharger or an industrial discharger with an average daily discharge flow of 5,000 or more gallons per day must pay an annual discharge fee based on the average daily discharge flow. There is a	The fees were due by January 30, 2018, and January 30, 2019.	The bill extends the fees and the fee schedules to January 30, 2020, and January 30, 2021.

Type of fee	Description	Sunset under current law	Sunset under the bill
Surcharge for major industrial dischargers	<p>separate fee schedule for public and industrial dischargers.</p> <p>A holder of an NPDES permit that is a major industrial discharger must pay an annual surcharge of \$7,500.</p>	The surcharge was required to be paid by January 30, 2018, and January 30, 2019.	The bill extends the fee to January 30, 2020, and January 30, 2021.
Discharge fee for specified exempt dischargers	One category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180.	The fee was due by January 30, 2018, and January 30, 2019.	The bill extends the fee to January 30, 2020, and January 30, 2021.
License fee for public water system license	A person is prohibited from operating or maintaining a public water system without an annual license from OEPA. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems.	The fee for an initial license or a license renewal applies through June 30, 2020, and is required to be paid annually in January.	The bill extends the initial license and license renewal fee through June 30, 2022.
Fee for plan approval to construct, install, or modify a public water system	Anyone who intends to construct, install, or modify a public water supply system must obtain approval of the plans from OEPA. The fee for the plan approval is \$150 plus 0.35% of the estimated project cost. However, current law sets a cap on the fee.	The cap on the fee is \$20,000 through June 30, 2020, and \$15,000 on and after July 1, 2020.	The bill extends the cap of \$20,000 through June 30, 2022; the cap of \$15,000 applies on and after July 1, 2022.
Fee on state certification of laboratories and laboratory personnel	<p>In accordance with two schedules, OEPA charges a fee for evaluating certain laboratories and laboratory personnel.</p> <p>An additional provision states that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the</p>	<p>The schedule with higher fees applies through June 30, 2020, and the schedule with lower fees applies on and after July 1, 2020.</p> <p>The \$1,800 additional fee applies through</p>	<p>The bill extends the higher fee schedule through June 30, 2022; the lower fee schedule applies on and after July 1, 2022.</p> <p>The bill extends the additional fee through June 30,</p>

Type of fee	Description	Sunset under current law	Sunset under the bill
Fee for examination for certification as an operator of a water supply system or wastewater system	<p>person must pay \$1,800 for each additional survey requested.</p> <p>A person applying to OEPA to take an examination for certification as an operator of a water supply system or a wastewater system (class A and classes I-IV) must pay a fee, at the time an application is submitted, in accordance with a statutory schedule.</p>	<p>June 30, 2020.</p> <p>A schedule with higher fees applies through November 30, 2020, and a schedule with lower fees applies on and after December 1, 2020.</p>	<p>2022.</p> <p>The bill extends the higher fee schedule through November 30, 2022; the lower fee schedule applies on and after December 1, 2022.</p>
Application fee for a permit (other than an NPDES permit), variance, or plan approval	<p>A person applying for a permit (other than an NPDES permit), a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law must pay a nonrefundable fee.</p>	<p>If the application is submitted through June 30, 2020, the fee is \$100. If the application is submitted on or after July 1, 2020, the fee is \$15.</p>	<p>The bill extends the \$100 fee through June 30, 2022; the \$15 fee applies on and after July 1, 2022.</p>
Application fee for an NPDES permit	<p>A person applying for an NPDES permit must pay a nonrefundable application fee.</p>	<p>If the application is submitted through June 30, 2020, the fee is \$200. If the fee is submitted on or after July 1, 2020, the fee is \$15.</p>	<p>The bill extends the \$200 fee through June 30, 2022; the \$15 fee applies on and after July 1, 2022.</p>
Fees on the transfer or disposal of solid wastes	<p>A total of \$4.75 in state fees is levied on each ton of solid waste disposed of or transferred in Ohio.</p> <p>The fees are used for administering the hazardous waste (90¢), solid waste (75¢), and other OEPA programs (\$2.85), and for soil and water conservation districts (25¢).</p>	<p>The fees apply through June 30, 2020.</p>	<p>The bill extends the fees through June 30, 2022.</p>
Fees on the sale of tires	<p>A base fee of 50¢ per tire is levied on the sale of tires to assist in the cleanup of scrap tires.</p>	<p>Both fees are scheduled to sunset on June 30, 2020.</p>	<p>The bill extends the fees through June 30, 2022.</p>

Type of fee	Description	Sunset under current law	Sunset under the bill
	An additional fee of 50¢ per tire is levied to assist soil and water conservation districts.		

## George Barley Water Prize

(Sections 277.10, 277.20, and 737.30)

The bill appropriates \$125,000 in FY 2020 to OEPA to support the final stage of the awards process for the Everglades Foundation's George Barley Water Prize. If the \$125,000 is not expended in its entirety in FY 2020, the Director of Environmental Protection may certify to the Director of Budget and Management an amount up to the unexpended, unencumbered balance of the \$125,000 to be reappropriated in FY 2021. The George Barley Water Prize recognizes groundbreaking innovation in removing excess phosphorus from freshwater sources.<sup>53</sup>

Prior to disbursing any money to the Foundation, the Director of Environmental Protection must enter into a memorandum of understanding with it. The Director, a representative from any entity that the OEPA contracts with for purposes of the George Barley Water Prize, and a representative from the Foundation, must sign the memorandum, which must specify all of the following:

- That the money will be used to support the final stage of the awards process for the Everglades Foundation's George Barley Water Prize;
- That the state of Ohio or OEPA will be listed as a sponsor of the George Barley Water Prize;
- That OEPA, and any other entity that OEPA contracts with for purposes of the George Barley Water Prize, may assist in the development of testing parameters for data collection in the Grand Challenge testing stage of the competition;
- That OEPA, and any other entity that OEPA contracts with for purposes of the George Barley Water Prize, will have access to all data collected during the George Barley Water Prize's campaign as well as access to the data and technologies developed during the George Barley Water Prize process; and
- That OEPA, and any other entity that OEPA contracts with for purposes of the George Barley Water Prize, will enter into a nondisclosure agreement with the Everglades Foundation for data collected in the Grand Challenge testing stage of the competition.

<sup>53</sup> <https://www.barleyprize.org>.

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## **OHIO FACILITIES CONSTRUCTION COMMISSION**

### **Executive Director powers**

- Eliminates the law stating that the Executive Director of the Ohio Facilities Construction Commission must exercise all powers that the Commission possesses.

### **Classroom Facilities Assistance Program (CFAP)**

- Requires the Commission to give first priority for Classroom Facilities Assistance Program (CFAP) projects to a city, local, or exempted village school district that intends to build a new school building on land originally owned by a state community college with the intention of collaboratively working with that institution on workforce development programs and curriculum.
- Permits the Commission to reduce such a district's portion of the total cost of the project by up to 25 percentage points and up to an additional ten percentage points, provided the district's portion is at least 5%.

### **CFAP for Expedited Local Partnership districts**

- Specifies that a city, local, or exempted village school district retains its percentile ranking that was determined at the time of its initial agreement under the Expedited Local Partnership Program (ELPP) if the district intends to build new classroom facilities on land originally owned by a state community college and satisfies other conditions.
- Specifies that the Commission must give first priority for funding for a CFAP project to districts that satisfy these conditions as such funds become available.
- Specifies that those districts' portions of the basic project cost of CFAP projects must be the same percentage of the basic project cost as under their initial ELPP agreements.

### **Expedited Local Partnership Program**

- Permits a school district that has already received assistance under CFAP and has divided its CFAP project into segments to participate in ELPP for a discrete portion of one or more of its future segments of the project.

### **School bus purchase program**

- Requires the Commission, in partnership with the Departments of Administrative Services and Public Safety, to develop a program to provide school bus purchase assistance to school districts beginning in FY 2021.
- Requires this assistance to be provided in a manner comparable to the method by which school facilities assistance is provided under the Classroom Facilities Assistance Program.
- Requires the Commission and the Departments to submit a report to the General Assembly by January 31, 2020, describing how the program will operate.

- Appropriates \$20 million in FY 2021 for the program's implementation.

## **Executive Director powers**

(R.C. 123.21)

The bill eliminates the law stating that the Executive Director of the Ohio Facilities Construction Commission exercises all powers that the Commission possesses. Under continuing law, the Executive Director supervises the Commission's operations, employs and fixes the compensation of its employees, and performs other duties delegated by the Commission.

## **Classroom Facilities Assistance Program**

(R.C. 3318.036)

The bill specifies that the Commission must give first priority for Classroom Facilities Assistance Program (CFAP) projects to a city, local, or exempted village school district that intends to build a new school building on land originally owned by a state community college with the intention of collaboratively working with the college on workforce development programs and curriculum. The Commission may reduce that district's portion of the total cost of the project by up to 25 percentage points and up to an additional ten percentage points, provided the district's portion is at least 5% of the total project cost.

CFAP is a graduated, cost-sharing program that provides each city, local, and exempted village school district with partial funding to address all of its classroom facilities needs. Because priority for state funding is based on a district's relative wealth, poorer districts were served first and received a greater amount of state assistance than wealthier districts will receive when it is their turn to be served. Each year, all districts are ranked into percentiles according to the three-year average adjusted tax valuations per pupil. A school district may divide the district's entire classroom facilities project under CFAP into discrete segments.<sup>54</sup>

## **CFAP for Expedited Local Partnership districts**

(R.C. 3318.037)

Separately, the bill specifies that a city, local, or exempted village school district retains its percentile ranking that was determined at the time the district entered into its initial agreement under the Expedited Local Partnership Program (ELPP) if the district satisfies all of the following conditions:

- The district intends to build new classroom facilities on land originally owned by a state community college with the intention of collaboratively working with the state community college on workforce development programs and curriculum;

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<sup>54</sup> R.C. 3318.01 to 3318.20, none in the bill.

- The district has previously participated in ELPP but did not construct any new facilities as part of that program;
- The district reapplies for ELPP between January 1, 2019, and July 1, 2020, and subsequently enters into a new agreement for that program.

ELPP is a program that permits most school districts that have not been served under CFAP to apply the advance expenditure of district money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for CFAP.<sup>55</sup>

The bill further specifies that the Commission must give first priority for funding for a CFAP project to districts that satisfy the conditions described above as such funds become available and that those districts' portions of the basic project cost of CFAP projects must be the same percentage of the basic project cost as under their initial agreements under ELPP.

## **Expedited Local Partnership Program**

(R.C. 3318.36)

The bill permits a school district that has already received assistance under CFAP and has divided its CFAP project into segments to participate in the ELPP for a discrete portion of one or more of its future segments of the project.<sup>56</sup> Currently, a district may not participate in ELPP if it is reasonably expected to receive CFAP assistance within two fiscal years.

## **School bus purchase program**

(Section 287.30)

The bill requires the Commission, in partnership with the Departments of Administrative Services and Public Safety, to develop a program to provide school bus purchase assistance to school districts beginning in FY 2021. The method for providing this assistance must be comparable to the method in which school facilities assistance is provided under CFAP. The Commission and Departments of Administrative Services and Public Safety must submit a report to the General Assembly by January 31, 2020, describing how the program will operate.

The bill appropriates \$20 million in FY 2021 for the program's implementation.

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<sup>55</sup> R.C. 3318.36.

<sup>56</sup> A district that received assistance for only a partial project prior to 1997 or a district that becomes eligible for CFAP after 2008, may segment its project (R.C. 3318.034, not in the bill). Also the large urban districts participating in the Accelerated Urban Program can segment their projects but the bill's ELPP provisions do not apply to them (R.C. 3318.38, not in the bill).

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## OHIO GENERAL ASSEMBLY

- Allows the same-party members of a standing committee of the House or Senate to meet without violating the General Assembly Open Meetings Law.
- Authorizes the Ohio Government Telecommunications Service to broadcast and record any committee meeting in the Senate or House of Representatives, as directed by the presiding officer of the respective house.
- Specifies when members of the Cystic Fibrosis Legislative Task Force must be appointed and how long they serve, including as chairperson.

### Committee caucus

(R.C. 101.15)

The bill allows the same-party members of a standing committee of the House or Senate to meet privately to discuss actions related to the committee without violating the General Assembly Open Meetings Law. Effectively, the bill allows the majority party members of a standing committee to caucus without violating the Law, which requires any “meeting” to be open to the public; a “meeting” is any prearranged discussion of the public business of a committee *by a majority of its members*.

### Broadcast committee meetings

(R.C. 3353.07)

The bill authorizes the Ohio Government Telecommunications Service (OGT) to broadcast and record any committee meeting in the Senate or House, as directed by the presiding officer of the respective chamber. Under this provision, “committee” means any committee of either chamber, a joint committee of both chambers, including a conference committee, or a subcommittee of any committee. A “meeting” means any prearranged discussion of the public business of a committee by a majority of its members.

OGT provides the state government and affiliated organizations with multimedia support, including audio, visual, Internet services, multimedia streaming, and hosting multimedia programs.

### Cystic Fibrosis Legislative Task Force

(R.C. 101.38)

The bill modifies the appointment procedures for members to the Cystic Fibrosis Legislative Task Force. It requires that appointments be made within 15 days after the first regular session of each General Assembly. Under the bill, members of the Task Force serve for two years until appointments are made for the next General Assembly. However, a member of the Task Force who is also a member of the General Assembly is permitted to serve on the Task Force until no longer a member of the General Assembly.

The bill also repeals the existing restriction that the chairperson of the Task Force may serve as chairperson for only one year.

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## OFFICE OF THE GOVERNOR

- Repeals state laws that establish duties for the Office of Health Transformation.
- Repeals state law regarding the exchange of protected health information between certain state agencies.

### Elimination of Office of Health Transformation

(R.C. 191.01, 191.02, 191.04, 191.06, 191.08, 191.09, and 109.10, all repealed; R.C. 103.41, 3701.36, 3701.68, 3701.95, 3798.01, 3798.10, 3798.14, 3798.15, 3798.16, 5101.061, 5162.12, and 5164.01)

The bill eliminates all of the statutory duties of the Office of Health Transformation and all other references to the Office in the Revised Code. Governor Kasich created the Office pursuant to an executive order issued in 2011.<sup>57</sup>

Specifically, the bill repeals state laws that require the Executive Director of the Office to:

- Identify each government program providing public benefits for the purpose of state law that permits state agencies to exchange protected health information with other state agencies for certain purposes;
- Adopt strategies that prioritize employment as a goal for individuals participating in government programs providing public benefits;
- Establish goals for continuous quality improvement pertaining to episode-based payments for prenatal care;
- Identify best practices pertaining to family planning options, strategies for reducing poor pregnancy outcomes, and health professional instruction on cultural competency.

Eliminating all other references to the Office from the Revised Code has the following effects:

- Eliminates the Joint Medicaid Oversight Committee's authority to investigate the Office;
- Removes the Office's Executive Director from the officials who are to receive a copy of the Palliative Care and Quality of Life Interdisciplinary Council's annual report regarding recommendations for improving palliative care;
- Removes the Executive Director from the Commission on Infant Mortality;
- Eliminates a requirement that the Medicaid Director consult with the Executive Director when adopting rules regarding the exchange of protected health information;

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<sup>57</sup> Executive Order No. 2011-02K.

- Eliminates a requirement that the Executive Director assist the Director of Job and Family Services with leadership and organizational support for the Office of Human Services Innovation.

## **Exchange of protected health information**

(R.C. 191.01, 191.02, and 191.04, all repealed)

The bill repeals state laws that permit certain state agencies to exchange protected health information relating to eligibility for or enrollment in a health plan or participation in a government program providing public benefits, if the exchange is necessary for (1) operation of a health plan or (2) coordination, or improvement of the administration or management, of the health care-related functions of at least one government program providing public benefits. An exchange of protected health information must be done in accordance with federal law governing the confidentiality of individually identifiable health information. This authority applies to the following state agencies:

- The Department of Administrative Services;
- The Department of Aging;
- The Development Services Agency;
- The Department of Developmental Disabilities;
- The Department of Education;
- The Department of Health;
- The Department of Insurance;
- The Department of Job and Family Services;
- The Department of Medicaid;
- The Department of Mental Health and Addiction Services;
- The Department of Rehabilitation and Correction;
- The Department of Taxation;
- The Department of Veterans Services;
- The Department of Youth Services;
- The Opportunities for Ohioans with Disabilities Agency.

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## H2OHIO FUND

- Creates the H2Ohio Fund in the state treasury.
- Directs a portion of FY 2019 GRF surplus revenue to the fund.
- Requires fund money to be used for water quality purposes, including awarding grants, issuing loans, funding cooperative research, and encouraging cooperation with governmental and private entities.
- Requires the Directors of Agriculture, Natural Resources, and Environmental Protection to each prepare an annual plan for H2Ohio Fund money expenditures by March 1 each year.
- Creates the H2Ohio Advisory Council and requires it to:
  - Review and approve or disapprove the annual plans submitted by the Directors; and
  - Adopt bylaws governing its operation.
- Specifies that an agency cannot expend H2Ohio money appropriated to it until the Agency's plan has been approved.
- Requires the Ohio Lake Erie Commission, Department of Agriculture, and Environmental Protection Agency to provide administrative support to the Council.
- Requires the Council, in coordination with the Ohio Lake Erie Commission, to submit an annual report to the General Assembly and the Governor, beginning August 31, 2020.

### H2Ohio Fund

(R.C. 126.60; Sections 211.10, 211.20, 277.10, 277.20, 343.10, 343.30, and 513.10)

The bill creates the H2Ohio Fund in the state treasury and directs a portion of FY 2019 GRF surplus revenue to the fund. It appropriates a total of \$85.2 million from the fund for FY 2020 among the Departments of Agriculture (\$30.3 million) and Natural Resources (\$46.2 million) and the Environmental Protection Agency (\$8.7 million), and reappropriates for FY 2021 any unencumbered money remaining from FY 2020.

The fund also may include money from donations, bequests, and other sources.

For a more detailed description of the H2Ohio Fund's financing, see the LBO budget support documents. From the LSC home page, [www.lsc.ohio.gov](http://www.lsc.ohio.gov), click on "Budget Central," then on "Main Operating – H.B. 166."

The fund is to be used for any of the following purposes:

- Awarding or allocating grants or money, issuing loans, or making purchases for the development and implementation of projects and programs, including remediation projects, that are designed to address water quality priorities;

- Funding cooperative research, data gathering and monitoring, and demonstration projects related to water quality priorities;
- Encouraging cooperation with and among leaders from state legislatures, state agencies, political subdivisions, business and industry, labor, agriculture, environmental organizations, institutions of higher education, and water conservation districts; and
- Other purposes, policies, programs, and priorities identified by the Ohio Lake Erie Commission in coordination with state agencies or boards responsible for water protection and water management, provided they align with a statewide strategic vision and comprehensive periodic water protection and restoration strategy.

### **Annual plan, approval by Advisory Council**

The bill requires the Directors of Agriculture, Natural Resources, and Environmental Protection to each prepare an annual plan for H2Ohio Fund money expenditures that, at a minimum, describes the following:

- Funding priorities;
- The specific programs, projects, or entities proposed to receive funding; and
- The internal controls and external accountability measures that will be put in place to ensure that the funding is properly used.

Each Director must deliver their respective annual plan to the H2Ohio Advisory Council, created by the bill, by March 1 each year. Each agency cannot spend money appropriated from the fund unless the Council approves the plan submitted by the agency's Director.

### **H2Ohio Advisory Council**

(R.C. 126.60, 126.61, and 126.62)

The bill creates the H2Ohio Advisory Council, to which the three directors must submit, and receive approval for, their annual plans to spend money from the H2Ohio Fund. The Council consists of 18 members:

- The Director of Agriculture (or the Director's designee);
- The Director of Environmental Protection (or the Director's designee);
- The Director of Natural Resources (or the Director's designee);
- The Executive Director of the Ohio Lake Erie Commission (who serves as a nonvoting, ex officio member);
- Two members appointed by the Senate President (one from each party);
- Two members appointed by the Speaker of the House (one from each party); and
- Ten members appointed by the Governor with the advice and consent of the Senate (one who represents counties, one who represents townships, one who represents municipal corporations, one who represents public health, two who represent business

or tourism, two who represent agricultural interests, and two who represent statewide environmental advocacy organizations).

The ten members appointed by the Governor must reflect the demographic and economic diversity of Ohio. They must be from geographically diverse areas so that all areas of Ohio have representation.

The Ohio Lake Erie Commission, Department of Agriculture, and Environmental Protection Agency must provide administrative support to the Council, and the Commission must provide the location for council meetings.

The Governor must appoint a member of the Council to serve as Chairperson. The Executive Director of the Ohio Lake Erie Commission, unless appointed to be Chairperson, serves as the Vice-Chairperson. If the Executive Director is the Chairperson, the Council annually selects a member to serve as Vice-Chairperson.

All Council members must file a disclosure statement with the Ohio Ethics Commission. Members serve without compensation for attending Council meetings, but receive their actual and necessary traveling and other expenses in accordance with rules of the Office of Budget and Management.

### **Bylaws**

The Council must adopt bylaws governing its operation, including bylaws that establish:

- The frequency of meetings;
- Procedures for reviewing annual plans submitted by the Directors of Agriculture, Natural Resources, and Environmental Protection;
- Procedures for approving or disapproving annual plans submitted by the Directors, including a process for resubmitting disapproved plans; and
- Any other policy or procedure that the Council determines is necessary to carry out its duties.

### **Annual report**

The Council, in coordination with the Ohio Lake Erie Commission, must submit a report to the General Assembly and the Governor annually, beginning August 31, 2020. The report must address activities undertaken with respect to the H2Ohio Fund during the preceding fiscal year, and revenues and expenses for that year.

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## **DEPARTMENT OF HEALTH**

### **Pregnancy-associated Mortality Review (PAMR) Board**

- Establishes in the Ohio Department of Health (ODH) a Pregnancy-associated Mortality Review (PAMR) Board to identify and review all pregnancy-associated deaths for the purpose of reducing the incidence of those deaths.
- Prohibits the Board from reviewing deaths under investigation or prosecution unless the prosecuting attorney agrees.
- Describes Board membership and operations, and requires the ODH Director to adopt rules concerning how the Board conducts pregnancy-associated death reviews.
- Specifies that information the Board possesses is confidential and not a public record and that Board meetings are exempt from the Open Meetings Law.
- Specifies that those who submit information to the Board, as well as Board members, are immune from civil liability in connection with their responsibilities.

### **Central intake/referral system for home visiting services**

- Authorizes the central intake and referral system to include referrals to home visiting programs that use home visiting contractors who provide services within a community HUB that fully or substantially complies with the certification standards developed by the Pathways Community HUB Institute.

### **Ohio Home Visiting Consortium**

- Includes as members of the Ohio Home Visiting Consortium (1) a home visiting contractor who provides services within one or more community HUBs through a contract, grant, or agreement with the Commission on Minority Health and (2) an individual who receives home visiting services through such a contractor.

### **Identification of infant mortality programs**

- Eliminates the requirement that a government program provide training to program participants in order to be identified by the ODH Director as a program that has the goal of reducing infant mortality or the goal of reducing disparities among pregnant women who belong to a racial or ethnic minority.

### **Substance use disorder professionals**

- Authorizes ODH to establish a loan repayment program for professionals who provide treatment and other related services to individuals with substance use disorders.
- Authorizes ODH to establish a program in which a physician who provides medication-assisted treatment in a health resource shortage area may be eligible for financial assistance.

## **Dental Hygiene Resource Shortage Area Fund**

- Eliminates the Dental Hygiene Resource Shortage Area Fund and specifies that donations for the benefit of the Dental Hygienist Loan Repayment Program instead be paid to the Dental Hygienist Loan Repayment Fund.

## **Examination fees**

- Requires ODH to post on its website the fee amounts for examinations administered by other entities on the Department's behalf.

## **Child lead poisoning advisory council**

- Revises the membership of the advisory council appointed by the ODH that assists in development and implementation of the child lead poisoning prevention program by adding four new members and updating two member association names.

## **Lead abatement: order to vacate**

- Requires the ODH Director or a board of health to issue an order to vacate, prohibiting the owner or manager of a residential unit, child-care facility, or school from using that property for any purpose if the owner or manager is out of compliance with a lead hazard control order.
- Authorizes the Director or a board of health to request a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer to commence a civil action for injunctive and other equitable relief against any person who violates an order to vacate.

## **Ambulatory surgical facility licensure**

- Modifies the criteria used in determining whether a facility must be licensed as an ambulatory surgical facility, and extends the licensing requirement to any facility located within an inpatient care building if the facility is operated by a separate entity.

## **Health care facility payments**

- Expresses the General Assembly's intent to not have licensure requirements or exemptions affect any third-party payments that may be available for certain health care facilities.

## **Newborn screening for Krabbe disease**

- Repeals the law that limits newborn screening for Krabbe disease to a process known as "first tier testing."

## **Occupational disease reporting**

- Eliminates the requirement that physicians report suspected occupational diseases and ailments to the ODH Director.

## **Diabetes action plan reporting cycle**

- Lengthens to three years (from two) the reporting cycle for the ODH Director to submit to the General Assembly a report detailing the prevalence of diabetes.

## **ODM access to Social Security numbers accompanying vital statistics records**

- Requires ODH's Office of Vital Statistics to make available to the Department of Medicaid, for the purpose of medical assistance eligibility determinations, Social Security numbers that accompany birth certificates or death certificates.

## **Area training centers for nursing home employees**

- Repeals the law requiring the ODH Director to establish and supervise centers for the training of nursing home employees and to contract with other entities to operate the centers.

## **Breast and Cervical Cancer Project**

- Adds certain providers to those eligible to receive payments for services from the Breast and Cervical Cancer Project Income Tax Contribution Fund.

## **Public Health Priorities Fund**

- Changes the name of Ohio's Public Health Priorities Trust Fund to Ohio's Public Health Priorities Fund, eliminates the purposes for which money credited to the fund must be used, and instead requires the ODH Director to use the money to address pressing public health needs and implement innovative programs and prevention strategies.
- Eliminates the prohibition on transferring money from GRF to the fund.

## **Utility Radiological Safety Board**

- Specifies that the Utility Radiological Safety Board (URSB), based on the utilities' decommissioning budgets, may make assessments for URSB operations against Ohio nuclear electric utilities that have stopped producing electricity.
- Expands the definition of "nuclear electric utility" under URSB law to include persons within Ohio engaged in the storage of spent nuclear fuel arising from the production of electricity using nuclear energy.

## **Cancer Incidence Surveillance Advisory Board**

- Abolishes the Ohio Cancer Incidence Surveillance System Advisory Board.

## **Certificates of Need**

- Requires the ODH Director to determine whether a certificate of need (CON) application is complete not later than 180 days after receiving the initial CON application.

- Eliminates two circumstances in which the ODH Director may make a decision regarding a CON application that deviates from the decision that otherwise would result from considering a particular county's long-term care bed need.
- Eliminates the second phase of the four-year CON comparative review period, when beds that were surrendered by long-term care facilities may be considered for redistribution.
- Eliminates a provision authorizing the relocation of long-term care beds to a county that is contiguous to the county from which the beds are to be relocated.
- Replaces the right of an affected person (other than a CON applicant) to receive an adjudication hearing under the Administrative Procedure Act when appealing a CON decision with a right to receive an administrative review, which is final and not appealable.
- Reduces to 14 (from 30) the number of days a person has to appeal a CON reviewability ruling, a CON application decision, or a determination that the CON laws have been violated.
- Authorizes a nursing home to assign or transfer the right to operate a home if that home filed a CON application before being notified that the ODH Director is or may be revoking the home's license.
- Eliminates the ODH Director's authority to remove the prohibition on assigning or transferring nursing home beds after a home has been notified that the Director is or may be revoking the home's license.
- Permits a CON application from the owner of a nursing home to be accepted for review if ODH did not provide the applicant with copies of an inspection or survey report that gave rise to a proposed license revocation during the 60-month period before the application was filed.
- Requires the ODH Director to reverse the denial of a CON application if the denial was appealed and was based on the applicant or principal participant receiving a notice of proposed license revocation during the 60-month period before the application was filed if ODH did not provide the applicant with the copies described above.

### **Transfer of nursing home ownership**

- Imposes disclosure requirements on an individual who is assigned or transferred operation of a nursing home.
- Requires that before the Director of Health can issue a license authorizing the person to operate the nursing home, the person must submit to the Director documentation including the individual's financial solvency, experience, insurance coverage, and prior nursing home ownership interest.

## **Freestanding emergency departments**

- Requires a freestanding emergency department that is separate and distinct from a hospital to provide certain notices regarding the facility's participation in provider networks established by health benefit plans.
- Requires a freestanding emergency department to use its national provider identifier on all claims for payment for health care services or goods.

## **Commission on Infant Mortality**

- Requires the Governor or the Governor's designee to serve on the Commission on Infant Mortality instead of the Executive Director of the Office of Health Transformation or the Executive Director's designee.
- Allows the co-chairpersons of the Commission, upon mutual agreement, to appoint additional members.

## **Radon mitigation specialists**

- Prohibits the Director of Health from requiring a licensed radon mitigation specialist to be physically present for supervision purposes when radon mitigation is performed, but allows the Director to require such a specialist to be physically present immediately before and after radon mitigation is performed.

## **Wishes for Sick Children Income Tax Contribution Fund**

- Reduces (from \$1 million to \$250,000 per year in the prior three years) the amount a nonprofit corporation must spend for granting wishes of minors with life-threatening illnesses to qualify for funds from the Wishes for Sick Children Income Tax Contribution Fund.

## **Solemn Covenant of the States to Award Prizes for Curing Disease**

### **Compact establishment**

- Enacts into law the Solemn Covenant of the States to Award Prizes for Curing Diseases ("Compact"), an interstate compact.
- Provides that the Compact becomes effective and binding upon enactment into law by two states.
- Provides that upon enactment by six states, the governing Solemn Covenant of States Commission ("Commission") is established and the Compact becomes binding and effective as to any other state that enacts it into law.
- Grants the Commission the power to review treatments for the cure of diseases specified by the Commission, to award prizes for successful cures, and to make treatments widely available for use.

## **Cure prize process**

- Requires the Commission to establish criteria for defining and classifying diseases for which prizes will be awarded, which must include at least ten major diseases, determined by its severity, survival rate, and public health and treatment expenses.
- Requires the Commission to adopt criteria for a successful treatment, which generally must include approval for manufacture and distribution in the United States, a significant increase in survival rate, and no less than one year of treatment.
- Requires the list of diseases to be updated every three years.
- Requires the five-year public health savings that would result from a cure, which must be equal to the five-year public health expenses for each disease in each compacting state to be published and updated every three years.
- Requires the prize amount for each cure to be equal to (1) the most recent estimated total five-year savings in public health expenses for the disease in all compacting states, (2) money donated by others intended for the prize, and (3) any other factors the Commission finds appropriate.
- Requires the Compact to adopt and publish rules that establish a common set of ethical standards that embodies the laws and restrictions in each of the 50 states.
- Requires that in order for an entity to be eligible to claim a prize, the entity must not have violated any of the ethical standards in any one of the 50 states that are in effect at the time that the research is done, regardless of whether the states have joined the Compact.
- Requires the Compact to annually review all state laws to determine if any additional ethical standards have been enacted by any of the 50 states and the federal government.
- Requires the Compact to adopt and publish updated ethics rules to reflect new state laws.
- Provides that updated rules must not take effect in cure criteria for a period of three years, in order to allow researchers to have sufficient notice.
- Requires an opportunity for rejected cure submissions to be appealed not later than 30 days after rejection.
- Requires the Commission to continue to monitor and review a treatment even after it has been accepted.
- Allows the Commission to modify or withdrawal approval of a treatment, or to rescind a prize offer, for not meeting cure criteria.
- Requires a two-thirds favorable vote from all members for a cure approval to be effective.

- Requires the prize winner to transfer the patent and all related intellectual property for the manufacture and distribution of the treatment or therapeutic protocol to the Commission in exchange for the prize.
- Requires the Commission, upon acceptance of a cure, to obtain a loan that is equal to the most recently calculated total estimated five-year public health expenses for the disease in all compacting states.
- Requires each compacting state to annually pay its actual one-year savings in public health expenses for the disease for which a cure has been accepted, until it has fulfilled its prize responsibility.
- Allows a state to meet its prize responsibility by any method including the issuance of (1) revenue bonds and obligations or (2) general obligation bonds and other debt.
- Declares that revenue bonds and obligations are not a debt of the issuing state.
- Provides that a state entering into the Compact, except to the extent authorized by the compacting state's laws, does not (1) commit the full faith and credit or taxing power of the compacting state for the payment of prizes or (2) make prize payment responsibilities a debt of the compacting state.
- Grants the Commission the power to make a cure treatment or therapeutic protocol widely available, including arranging for its manufacture, production, or provision of the treatment, once a prize winner claims a prize and transfers any intellectual property necessary for the manufacture and distribution of the cure.
- Allows the Commission to establish and collect royalty fees on manufacturers, producers, or providers in noncompacting states or foreign countries, as long as the fees are not more than the estimated five-year savings in public health expenses for that state or country.
- Allows the Commission to establish a selling price for the cure, which must not be more than the expenses for the cure's manufacture and distribution, licensing, and any other necessary governmental requirements for compacting states, or those expenses and royalty fees for noncompacting states.
- Allows the Commission to pay or reimburse expenses related to payment of the prize with royalty fees collected, which include hiring actuaries and making interest payments.

### **General powers**

- Establishes several powers of the Commission, including the ability to adopt bylaws and rules, make hiring decisions, manage property, enforce compliance by compacting states, make amendments to the Compact, and more.

## **Organization**

- Requires the Commission to establish bylaws providing for various administrative procedures, including voting, appointing and electing members, committees, election of officers, personnel policies, and more.

## **Membership**

- Allows any state, district, or territory of the United States and the federal government to become a compacting state.
- Allows foreign countries or its subdivisions to join as nonvoting liaison members.
- Provides that each compacting state is represented by one member, with each state determining its member's qualifications and period of service.
- Requires each compacting state to pay annual dues.
- Provides that compacting states have no claim to property held by the Commission.

## **Meetings and voting**

- Requires the Commission to have meetings and take actions consistent with the Compact, with a majority of members constituting a quorum.
- Provides that each member has the right to cast one vote regarding the Commission's actions or matters, and to participate in the business and affairs of the Commission.
- Allows members to vote in person or by other means, which may include telephone.
- Requires the Commission to meet at least once per year, with additional meetings to be held pursuant to the bylaws.
- Requires the bylaws to provide a list of matters about which the Commission may enter into executive session.

## **Finances**

- Requires the Commission to establish an annual budget and grants the Commission the power to make expenditures, borrow money, establish annual dues, and allocate a portion of these funds (other than the dues, which must be used for the Commission's daily expenses) towards prize amounts.
- Allows the Commission to accept contributions to fund initial operations, as long as the independence of the Commission's performance is not compromised.
- Grants the Commission the power to accept donations, as long as it avoids the appearance of impropriety.
- Requires donations to be kept in a separate, interest-bearing account.
- Exempts the Commission from taxation in and by the compacting states.

- Provides for the Commission to undergo an annual financial audit and a management and performance audit at least every three years.

## **Committees**

- Grants the Commission the power to appoint committees, including management, legislative, and advisory committees, which may include members, state legislators (or their representatives), medical professionals, and other interested persons.
- Provides that the management committee may consist of no more than 14 members when 26 states enact the Compact, and must consist of members representing states whose total public health expenses of all the established diseases are the highest.
- Requires the management committee to exercise various managerial responsibilities, including managing day-to-day affairs, overseeing the Commission's offices, and coordinating with other governmental entities.
- Requires the Commission to annually elect officers for the management committee, and allows the committee to hire an executive director to assist the committee and to serve as the Commission's secretary.
- Grants the Commission the ability to appoint advisory committees to monitor all operations related to the Compact's purposes and to make recommendations to the Commission.
- Requires the Commission to consult with an advisory committee before approving cure criteria, amending, enacting, or repealing the bylaws or rules, adopting an annual budget, or addressing any other significant matter.

## **Compliance and default**

- Requires the Commission to notify any compacting state of any noncompliance of Compact bylaws and rules.
- Provides that any state that fails to fix its noncompliance will be deemed in default, which triggers notice and hearing.
- Provides that if the Commission determines that the state is in default, after the hearing, the state would be suspended from the Compact.
- Provides that if a compacting state fails to cure the default within a specified amount of time, the state would be expelled from the Compact.
- Requires the expelled state to re-enact the Compact to become a compacting state.

## **Withdrawal**

- Allows compacting state to withdraw from the Compact by: (1) repealing the Compact law, and (2) notifying the Commission in writing of the intent to withdraw on a date that is (a) at least three years after the date the notice is sent, and (b) after the repeal takes effect.

- Provides that a withdrawing state remains liable for all responsibilities incurred through the effective date of the withdrawal.
- Allows reinstatement by a withdrawing state by re-enacting legislation for the Compact.

### **Dissolution**

- Provides that the Compact dissolves on the effective date the (1) withdrawal or expulsion of a compacting state, which action reduces Compact membership to one state, or (2) Commission votes to dissolve the Compact.
- Requires the Commission, through its bylaws, to adopt a mechanism for winding up Compact operations and provide for equitable distribution of surplus funds remaining after payment of debts and obligations.

### **Records**

- Requires the Commission to prescribe bylaws and rules regarding records, including public inspection and copying of information and procedures for sharing records otherwise exempt from disclosure and guidelines for entering into agreements with federal and state agencies to receive or exchange records subject to nondisclosure.
- Requires the Commission to keep, in accordance with its bylaws and rules, complete and accurate accounts of its internal receipts, including grants and donations, and disbursement of all funds.
- Provides that any compacting state's laws regarding confidentiality and nondisclosure do not relieve any member of its duty to disclose records relevant to the Commission (with an exception for privileged records).
- Provides that confidential information that the Commission holds remains confidential after it is provided to any member and that all cure submissions are confidential.

### **Annual report to governors/legislatures**

- Requires the Commission to make an annual report to the governors and legislatures of the compacting states, which report must include a report of the independent audit.

### **Legal actions and disputes**

- Grants the Commission the power to bring and prosecute legal proceedings in its name, and to issue subpoenas.
- Grants the Commission the power to provide for dispute resolution among compacting states or between the Commission and those who submit cures for consideration.
- Requires as part of its dispute resolution proceedings, administrative review by a review panel, judicial review of decisions issued after an administrative review, qualifications to be appointed to a panel, and due process requirements.

- Provides that the venue for any judicial proceedings by or against the Commission must be brought in the court of competent jurisdiction for the geographical area in which the Commission's principle offices are located.
- Provides for the following regarding the Commission's members and staff for claims arising out of actual or alleged actions occurring within the scope of that person's official duties, as long as claims are not caused by intentional or willful and wanton misconduct:
  - They are immune from liability;
  - That the Commission must defend them in any civil action arising out of such actions;
  - That the Commission will indemnify them and hold them harmless for the amount of any settlement or judgment obtained against that person.

### **Amendments, severability, and construction**

- Provides that the Commission may propose any amendment to the Compact and that no amendment will become effective until all compacting states have enacted it into law.
- Provides that the Compact's provisions are severable and that they must be liberally construed to effectuate its purpose.

### **Compact binding effect and other laws**

- Specifies that nothing in the Compact's provisions prevents the enforcement of any other law of a compacting state, provided that all agreements between the Commission and compacting states and all lawful actions by the Commission are binding.
- Allows the Commission to issue advisory opinions in a dispute over the meaning or interpretation of Commission actions, upon the request of a party and a majority vote of compacting states.
- Provides that if any provision of the Compact is unconstitutional in any compacting state, that provision becomes ineffective for that state.

## **Pregnancy-associated Mortality Review (PAMR) Board**

(R.C. 121.22, 3738.01, 3738.02, 3738.03, 3738.04, 3738.05, 3738.06, 3738.07, 3738.08, and 3738.09)

### **Operation and duties**

The bill establishes in the Ohio Department of Health (ODH) a Pregnancy-associated Mortality Review (PAMR) Board. The Board is to identify and review all pregnancy-associated deaths statewide for the purpose of reducing the incidence of those deaths.

“Pregnancy-associated death” is defined as the death of a woman while pregnant or within one year of pregnancy regardless of cause.

### **No reviews during criminal investigation**

The bill prohibits the PAMR Board from conducting a review of a pregnancy-associated death while an investigation of a death or prosecution of a person for causing the death is pending, unless the prosecuting attorney agrees to allow the review. The law enforcement agency conducting the criminal investigation, on the investigation’s conclusion, and the prosecuting attorney prosecuting the case, on the prosecution’s conclusion, must notify the Board’s chairperson of the conclusion.

### **Membership; technical assistance**

All of the following apply to the PAMR Board:

Members: The ODH Director must appoint the Board’s members and make a good faith effort to select members who represent all regions of Ohio and multiple areas of expertise and constituencies concerned with the care of pregnant and postpartum women.

Chairperson: The Board, by a majority vote of a quorum of its members, must select a chairperson. It may replace a chairperson in the same manner.

Terms: An appointed member holds office until a successor is appointed, and the ODH Director must fill a vacancy as soon as practicable.

Compensation: Board members are to receive no compensation or reimbursement for any expenses associated with their service.

Meeting times: The Board must meet at the call of its chairperson as often as that individual considers necessary for timely completion of pregnancy-associated death reviews. The reviews must be conducted in accordance with rules the bill requires the ODH Director to adopt.

Technical assistance: ODH must provide meeting space, staff services, and other technical assistance required by the Board.

### **Purpose**

The PAMR Board must seek to reduce the incidence of pregnancy-associated deaths in Ohio by:

--Promoting cooperation, collaboration, and communication between all groups, professions, agencies, and entities that serve pregnant and postpartum women and families;

--Recommending and developing plans for implementing service and program changes, as well as changes to the groups, professions, agencies, and entities that serve pregnant and postpartum women and families;

--Providing ODH with aggregate data, trends, and patterns regarding pregnancy-associated deaths using data and other relevant information specified in rules; and

--Developing effective interventions to reduce the mortality of pregnant and postpartum women.

### **Submission of information; family member participation**

Notwithstanding state confidentiality laws, the bill requires an individual, government entity, agency that provides services specifically to individuals or families, law enforcement agency, health care provider, or other public or private entity that provided services to a woman whose death is being reviewed by the PAMR Board to submit to the Board a copy of any record it possesses that the Board requests. In addition, the individual or entity may make available to the Board additional information, documents, or reports that could be useful to the Board's investigation. An exception to this requirement applies when a person is under investigation or being prosecuted for causing the death unless the prosecuting attorney agrees to allow the death review.

The bill permits a family member of the deceased to decline to participate in an interview as part of the review process. In that case, the review must continue without that individual's participation.

### **Confidentiality**

The bill specifies that any record, document, report, or other information presented to the PAMR Board, as well as all statements made by Board members during Board meetings, all Board work products, and data submitted to ODH by the Board (other than the triennial reports described below), are confidential. These materials must be used by the Board and ODH only in the exercise of their proper functions. In addition, Board meetings are not public meetings subject to Ohio's Open Meetings Law.

The bill prohibits the unauthorized dissemination of this confidential information. A violation of this prohibition is a misdemeanor of the second degree.

### **Immunity**

The bill grants immunity from civil liability, as follows:

--An individual or public or private entity providing records, documents, reports, or other information to the PAMR Board is not liable for injury, death, or loss to person or property that might otherwise be incurred or imposed as a result of providing these materials to the Board; and

--Each Board member is not liable for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the member's participation on the Board.

## Report

The bill requires the PAMR Board to prepare and submit to the Governor, General Assembly, and ODH Director a triennial report<sup>58</sup> that:

- Summarizes the Board's findings from the reviews completed in the preceding three calendar years, including any trends or patterns identified by the Board;
- Makes recommendations on how pregnancy-associated deaths may be prevented, including changes that should be made to policies and laws; and
- Includes any other information related to pregnancy-associated mortality the Board considers useful.

The initial report must be submitted by March 1, 2020, and subsequent reports must be submitted by March 1 every two years.<sup>59</sup> The reports are public records, and the ODH Director must make a copy of each report available on ODH's website.

## Rules

The ODH Director must adopt rules in accordance with the Administrative Procedure Act<sup>60</sup> that are necessary for the PAMR Board's operations, including rules that do all of the following:

- Establish a procedure for the Board to follow in conducting pregnancy-associated death reviews;
- Specify the data and other relevant information the Board must use when conducting pregnancy-associated death reviews; and
- Establish guidelines for the Board to follow to prevent an unauthorized dissemination of confidential information.

## Central intake/referral system for home visiting services

(R.C. 3701.611)

Current law requires ODH to create a central intake and referral system to serve as a single point of entry for access, assessment, and referral of families to appropriate home visiting services. The bill authorizes the system to include referrals to home visiting programs that use home visiting contractors who provide services within a community HUB that fully or substantially complies with the Pathways Community HUB certification standards developed by the Pathways Community HUB Institute.

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<sup>58</sup> The reference to a triennial report is erroneous; the report is to be done biennially. A corrective amendment could be prepared to correct this error.

<sup>59</sup> A corrective amendment is necessary to coordinate the timing of subsequent reports with the bill's general requirement for issuance of triennial reports.

<sup>60</sup> R.C. Chapter 119.

According to the institute, the Pathways Community HUB model focuses on the comprehensive identification and reduction of risk in a culturally connected pay-for-performance approach. Community-based care coordination organizations employ community health workers to reach out to those at greatest risk of poor health outcomes. The community health workers complete a comprehensive assessment of health, social, and behavioral health risk factors for the individuals they serve. Working with a team of social workers and medical personnel, a risk reduction plan of care is developed. Each risk factor identified in the assessment is assigned a specific “pathway,” which is tracked and can provide confirmation that the risk factor is addressed. Pathways and the related reduction of risks span access to health care, housing, food stability, education, employment, and other areas of concern. Programs delivering nationally certified Pathways Community HUB services are paid when each Pathway (risk reduction) is completed. The HUB represents a network of agencies that provide evidence-focused care coordination and the professional work needed to identify and address risk factors. The HUB, as the quality center of the network, assures that care coordinators and programs collaborate in their approach to identify and address risk, reduce service duplication, and increase the effectiveness of systems of care.<sup>61</sup>

## **Ohio Home Visiting Consortium**

(R.C. 3701.612)

The Ohio Home Visiting Consortium exists to ensure that home visiting services are high-quality and delivered through evidenced-based or innovative, promising home visiting models. The bill adds as members of the Consortium (1) a home visiting contractor who provides services within one or more community HUBs described above through a contract, grant, or other agreement with the Commission on Minority Health and (2) an individual who receives home visiting services through such a contractor. Among the 14 existing members are a home visiting contractor who provides services within the Help Me Grow Program through a contract, grant, or other agreement with ODH and an individual who receives home visiting services from the Help Me Grow Program.

## **Identification of infant mortality programs**

(R.C. 3701.95)

Under law not modified by the bill, the ODH Director must identify each government program providing benefits, other than the Help Me Grow Program, that has the goal of reducing infant mortality and negative birth outcomes or the goal of reducing disparities among pregnant women or women capable of becoming pregnant and who belong to a racial or ethnic minority. Currently, a program is identified only if it provides education, training, and support services related to those goals to program participants in their homes. Once identified, the program is required to report data to the ODH Director on program performance indicators that are then used to assess progress toward achieving program goals.

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<sup>61</sup> Pathways Community HUB Institute, Pathways Community HUB Model Overview, available at <https://pchi-hub.com/hubmodeloverview>.

The bill eliminates the requirement that a program provide training to be identified by the ODH Director. Accordingly, under the bill, the program need only provide education and support services to be identified and subject to assessment.

## **Substance use disorder professionals**

(Sections 737.10 and 737.11)

The bill authorizes ODH to establish a loan repayment program for professionals who provide treatment and other related services to individuals with substance use disorders. Under the program, ODH may agree to repay all or part of the principal or interest of an educational loan taken by a substance use disorder professional. In return, the participating professional must commit to serving in an area of the state with limited access to addiction treatment and related services.

The bill also authorizes the Department to establish a program in which a physician who provides medication-assisted treatment to patients with substance use disorders in a health resource shortage area may be eligible for financial assistance. Eligible physicians are those participating in the Department's existing Physician Loan Repayment Program.

## **Dental Hygiene Resource Shortage Area Fund**

(R.C. 3702.967)

The ODH operates a Dental Hygienist Loan Repayment Program in cooperation with the Dentist Loan Repayment Advisory Board. The purpose of the program is to provide student loan repayment for dental hygienists who agree to provide dental hygiene services in areas designated as dental health resource shortage areas.

Law unchanged by the bill authorizes the ODH Director to accept donations for the program's operations. Currently, the Director must deposit those donations into the state treasury to the credit of the Dental Hygiene Resource Shortage Area Fund. According to ODH staff, no donations have been received in nearly four years. The bill therefore eliminates this fund and instead requires that any donations be deposited to the credit of the Dental Hygienist Loan Repayment Fund. Currently, this latter fund holds money that dental hygienists who fail to fulfill their obligations under the program must pay back to ODH. The bill continues to require that money in this fund be used for program operations.

## **Examination fees**

(R.C. 3701.044)

When an entity other than ODH administers an examination or evaluation on behalf of the Department for the purpose of issuing a license, certificate, or registration or determining competency and the entity collects and retains an examination or evaluation fee, the bill requires ODH to post on its website the dollar amount of the fee. If the entity changes the fee amount, then ODH must post the change to its website at least 30 days before the change becomes effective.

## Child lead poisoning advisory council

(R.C. 3742.32)

The bill adds the following four members to the advisory council appointed by the ODH Director to assist in developing and implementing the child lead poisoning prevention program:

- A representative from Ohio Realtors;
- A representative of the Ohio Housing Finance Agency;
- A physician knowledgeable in lead poisoning prevention; and
- A representative of the public.

It also updates the names of two associations represented on the advisory council, as follows:

- The reference to Ohio Help end Lead Poisoning Coalition is changed to the Ohio Healthy Homes Network; and
- The reference to the National Paint and Coatings Association is changed to the American Coatings Association.

## Lead abatement: order to vacate

(R.C. 3742.18 and 3742.40)

The bill requires the ODH Director or a board of health to issue an order to vacate that prohibits the owner or manager of a residential unit, child-care facility, or school from using the property for *any purpose*, under the following circumstances:

- The owner or manager has failed to comply with a lead hazard control order; and
- The residential unit, child-care facility, or school has not passed a lead hazard clearance examination.

Under current law, the Director or the board may only issue an order to vacate that prohibits the owner or manager from using the property as a residential unit, child-care facility, or school.

The bill authorizes the Director or a board of health to request a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer to commence a civil action for injunctive and other equitable relief against any person who violates the order to vacate or is about to violate that order. It specifies that the court must grant injunctive relief on a showing that the person has violated or is about to violate the order. Under current law, the Director may only request the Attorney General bring a civil action for civil penalties and injunctive and other equitable relief against any person who violates any provision of the Lead Abatement Law and rules adopted under it. Current law does not specifically provide for injunctive relief for violations of a lead hazard control order.

## **Ambulatory surgical facility licensure**

(R.C. 3702.30 with conforming changes in R.C. 111.15, 2317.54, 3702.12, 3702.13, and 3711.12)

The bill modifies the criteria to determine whether a facility must be licensed as an ambulatory surgical facility.

### **Current law**

Under existing law, the licensing requirement applies to a facility located in a building that is distinct from another in which inpatient care is provided, if any of the following is the case:

--Outpatient surgery is routinely performed and the facility functions separately from a hospital's inpatient surgical services and offices of private physicians, podiatrists, and dentists;

--Anesthesia is administered in the facility by an anesthesiologist or certified registered nurse anesthetist, and the facility functions separately from a hospital's inpatient surgical service and from the offices of private physicians, podiatrists, and dentists;

--The facility applies to be Medicare-certified as an ambulatory surgical center;

--The facility applies to be certified as an ambulatory surgical center by a national accrediting body approved by Medicare;

--The facility bills or receives from any third-party payer, government health care program, or other person or government entity any ambulatory surgical facility fee that is billed or paid in addition to any fee for professional services.

### **The bill**

The bill eliminates the licensure criteria, above, pertaining to anesthesia services, Medicare certification, and receipt of facility fees. Instead, it bases the licensing requirement on the provision of surgical services to patients who do not require hospitalization for inpatient care and who do not receive services for more than 24 hours after admission.

With respect to the location of a facility subject to licensure, the bill retains provisions that require licensure when the facility is separate from an inpatient care facility. In addition, the bill extends the licensure requirement to any facility operated by a separate entity within an inpatient care facility. Specifically, the licensing requirement applies under the bill as follows:

- To a facility that is separate from an inpatient care building, regardless of whether the separate building is part of the same organization as the inpatient care building;
- To a facility located within an inpatient care building, if the facility is not operated by the entity that operates the remainder of the building.

The bill maintains a provision of current law specifying that the licensing requirement applies to any facility that is held out to any person or government entity as an ambulatory surgical facility or similar facility by signage, advertising, or other promotional efforts. In a manner similar to current law, the bill also specifies that the licensing requirement does not extend to the offices of physicians, podiatrists, or dentists.

## **Health care facility payments**

(R.C. 3702.30(E))

Under law unchanged by the bill, ODH licenses ambulatory surgical facilities, freestanding dialysis centers, freestanding inpatient rehabilitation facilities, freestanding birthing centers, freestanding radiation therapy centers, and freestanding or mobile diagnostic imaging centers. The bill expresses the General Assembly's intent to not have licensure requirements or exemptions from such requirements affect any third-party payments that may be available for these facilities.

## **Process for screening newborns for Krabbe disease**

(R.C. 3701.501)

Existing statutory law requires newborns to be screened for Krabbe disease. The bill repeals the law that limits the screening process to "first tier testing," or testing accomplished by measuring galactocerebrosidase activity using mass spectrometry. The bill neither requires nor specifies a particular screening process for Krabbe disease.

## **Occupational disease reporting**

(R.C. 3701.25, 3701.26, and 3701.27, repealed, with conforming changes in R.C. 3701.571, 3701.99, 3742.03, and 3742.04)

The bill eliminates the requirement that a physician who suspects that a patient is suffering from poisoning from lead, cadmium, phosphorus, arsenic, brass, wood alcohol, mercury, or another occupational disease or ailment submit a report to ODH. ODH no longer manages data related to occupational diseases or ailments.

## **Diabetes action plan reporting cycle**

(R.C. 3701.139)

The bill modifies the reporting cycle for the ODH Director to submit to the General Assembly a report detailing the prevalence of diabetes in the state. Under current law, the Director is required to submit the report by January 31 of each even numbered year. The bill instead requires that this report be submitted to the General Assembly every third year beginning in 2021.

## **ODM access to Social Security numbers accompanying vital statistics records**

(R.C. 3705.07, 3705.09, and 3705.10; R.C. 3705.16, not in the bill)

The bill requires ODH's Office of Vital Statistics to make Social Security numbers accompanying birth and death certificates available to the Department of Medicaid for medical assistance eligibility determinations.

Under existing law, every birth certificate filed in Ohio generally must be accompanied by the Social Security numbers of the child's parents. (The numbers are not, however, recorded on the birth certificate.) Similarly, every death certificate filed in Ohio must contain the

decedent's Social Security number. Under current law, Office of Vital Statistics must make these Social Security numbers in its possession available to the Department of Job and Family Services' Division of Child Support for child support enforcement.

## **Nursing home employees and area training centers**

(R.C. 3721.41 and 3721.42)

The bill repeals the law requiring the ODH Director to establish and supervise centers in appropriate locations throughout the state for the training of nursing home employees. It also repeals the law requiring the Director to enter into contracts with local public or nonprofit entities for the operation of the training centers.

## **Providers under the Breast and Cervical Cancer Project**

(R.C. 3701.601)

The bill adds the following providers to those eligible to receive payments for services from the Breast and Cervical Cancer Project Income Tax Contribution Fund: free clinics, mammography services providers, radiology services providers, and rural health centers. Under current law, the ODH Director must distribute money from the fund to pay for breast and cervical cancer screening, diagnostic, and outreach services provided to uninsured and under-insured women as part of the Ohio Breast and Cervical Cancer Project. Existing law limits the providers eligible for payments to federally qualified health centers, other community health centers, and health departments operated by local boards of health.

## **Ohio's Public Health Priorities Fund**

(R.C. 183.18 and 183.33)

The bill changes the name of Ohio's Public Health Priorities Trust Fund to Ohio's Public Health Priorities Fund. It also eliminates the purposes for which money credited to the fund must be used. The bill instead requires the ODH Director to use the money to:

- Conduct public health awareness and educational campaigns;
- Address any pressing public health issue identified by the Director or described in the State Health Improvement Plan or a successor document prepared for ODH;
- Implement and administer innovative public health programs and prevention strategies;
- Improve the population health of Ohio.

It also authorizes the Director to collaborate with one or more nonprofit entities, including a public health foundation, in order to meet the bill's requirements.

At present, all investment earnings of the fund must be credited to the fund. The bill authorizes the Director of Budget and Management to credit to the fund any money received by the state, ODH Director, or ODH as part of a settlement agreement relating to a pressing public health issue. The bill also eliminates the prohibition on transferring or appropriating money from GRF to the fund.

## Utility Radiological Safety Board

(R.C. 4937.01 and 4937.05)

For purposes of funding Utility Radiological Safety Board (URSB) operations after the only nuclear facilities in Ohio (Davis-Besse Nuclear Power Station and Perry Nuclear Power Plant<sup>62</sup>) cease operation, the bill does the following regarding the current URSB operating assessment on those facilities:

- Expands the definition of “nuclear electric utility” to include every person, their agents, assignees, or trustees, within Ohio engaged in the storage of spent nuclear fuel arising from the production of electricity using nuclear energy, instead of just including those persons engaged in the business of producing electricity using nuclear energy.
- Provides that the assessment may be made based on the nuclear electric utility’s decommissioning budget for the year of the assessment, if the utility is not engaged in the business of producing electricity using nuclear energy. This is in addition to the continuing law requirement that the URSB assessment be made in proportion to the intrastate gross receipts of the utility, excluding receipts from sales to other public utilities for resale, for the calendar year next preceding the year in which the assessments are made.

The bill’s changes do not, however, alter the limitation in continuing law that the URSB assessment may only be made against nuclear electric utilities that are subject to the Public Utilities Commission (PUCO) operating assessment law. Under that law, the public utilities that may be assessed include electric utilities and electric services companies (such as a nuclear electric utility), electric cooperatives, and governmental aggregators to the extent that they are certified and supply or arrange to supply retail electric service.<sup>63</sup> If a nuclear electric utility is only in the business of the *storage of spent nuclear fuel* arising from nuclear electricity production and no longer in the business of *producing electricity using nuclear energy*, it is not clear that the utility would continue to be an electric services company against which assessments may be made for URSB.

The bill is unclear as to how the assessment is to be paid if the nuclear electric utility is no longer producing electricity. It provides that the assessment is to be made *based on* the decommissioning budget. Under Nuclear Regulatory Commission (NRC) regulations, a nuclear plant decommissioning trust fund may not be used for, or diverted to, any purpose other than to fund the costs of decommissioning the nuclear power plant to which the fund relates, and to pay administrative costs and other incidental expenses, including taxes, of the fund.<sup>64</sup>

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<sup>62</sup> U.S. NRC, “Facilities (by NRC Region or State),” available at: <https://www.nrc.gov/info-finder/region-state/>, <https://www.nrc.gov/info-finder/reactors/davi.html>, and <https://www.nrc.gov/info-finder/reactors/perr1.html>.

<sup>63</sup> See R.C. 4905.10, not in the bill.

<sup>64</sup> 18 C.F.R. 35.32(a)(6) and 35.33(b), not in the bill.

## Background

### URSB membership and duties

The URSB is composed of the Chairperson of PUCO, the Director of Environmental Protection, the Directors of the Departments of Agriculture, Commerce, and Health, and the Executive Director of the Emergency Management Agency. The purpose of URSB is to develop a comprehensive state policy regarding nuclear power safety. Its objectives include to promote safe, reliable, and economical power and to establish agreements with state agencies, the NRC, and the federal Emergency Management Agency.<sup>65</sup> Assessments against nuclear electric utilities must be used by URSB member agencies to fulfill their duties related to URSB, nuclear safety, or agreements with NRC.

### Davis-Besse and Perry shutdown

The Davis-Besse Nuclear Power Station and the Perry Nuclear Power Plant are operated by FirstEnergy Nuclear Operating Company (FENOC). FENOC and First Energy Solutions and its subsidiaries are subject to bankruptcy proceedings, and the plan is to shut the facilities down (Davis-Besse, 5/31/2020; Perry, 5/31/2021).<sup>66</sup> Upon the facilities' shut down, spent nuclear fuel may remain in storage at the facility for some time.<sup>67</sup>

## Ohio Cancer Incidence Surveillance System Advisory Board

(R.C. 3701.264, repealed)

The bill abolishes the Ohio Cancer Incidence Surveillance System Advisory Board, but maintains the Ohio Cancer Incidence Surveillance System in ODH. Under existing law, the Board oversees the collection and analysis of data by the Surveillance System and advises the ODH Director and the Ohio State University in the System's implementation.

## Certificates of Need

Under the Certificate of Need (CON) Program, activities involving long-term care facilities can be conducted only through a CON issued by the ODH Director. The bill modifies a number of the procedures used in the CON program.

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<sup>65</sup> R.C. 4937.02, not in the bill.

<sup>66</sup> *In re: First Energy Solutions Corp., et al.*, Case No. 18-50757 (U.S. Bankruptcy Court, Northern Dist. Ohio, Eastern Division); *Generation Deactivation Notification Update*, <https://www.pjm.com/-/media/committees-groups/committees/teac/20180503/20180503-teac-generation-deactivation-notification.ashx>.

<sup>67</sup> Storage of Spent Nuclear Fuel, U.S. Nuclear Regulatory Commission, <https://www.nrc.gov/waste/spent-fuel-storage.html>.

## **Deadline for determining CON application completeness**

(R.C. 3702.52 and 3702.57)

Under current law, the ODH Director must review each CON application and determine whether it is complete. Two requests may be made for additional information from the applicant.

The bill requires the ODH Director to make a final determination regarding a CON application's completeness not later than 180 days after the Director receives the initial application. The Director must adopt rules specifying procedures for making the determination in accordance with the 180-day deadline.

## **Exceptions to a county's bed need determination**

(R.C. 3702.593(C))

Current law requires the ODH Director to determine (1) the long-term care bed supply for each county, (2) the long-term care bed occupancy rate for the state, and (3) each county's bed need based on the number of beds that would be needed to have a statewide occupancy rate of 90% when considering persons aged 65 and older. The determinations must be made every four years.

In general, the Director's consideration of a CON that would increase the number of beds in a county must be consistent with the bed need that has been determined for that county. The bill eliminates the following exceptions that apply to this general requirement:

- If a county's occupancy rate is less than 85%, the county is considered to have no need for additional beds;
- Even if a county is determined not to need additional beds, the Director may approve an increase of up to 10% of the county's bed supply if the county's occupancy rate is greater than 90%.

## **Two-phase review period**

(R.C. 3702.593(D), (I), (J), and (K))

Currently, the CON Program may use a comparative review process consisting of two phases during a four-year review period. The most recent four-year review period ended June 30, 2016.

In the first phase of the review process, the ODH Director accepts CON applications from the first month of the review period through April 30 of the next year. If the Director determines that additional CON applications will be accepted, the second phase of the review process begins on July 1 of the third year of the review period. The second phase is limited to the review of CON applications for the redistribution of beds that were made available by facilities that relocated their beds and, in turn, were required to reduce their bed capacity by at least 10% as a condition of the CON authorizing the relocation.

The bill eliminates the second phase of the CON comparative review process. However, it establishes a single, one-month period (January 2020) during which the ODH Director is required to accept CON applications for review.

### **CONs for bed relocation to a contiguous county**

(R.C. 3702.51, 3702.59, and 3702.594 (repealed))

The bill eliminates a provision that requires the ODH Director to accept a CON application for review when the proposed activity involves the relocation of long-term care beds from an existing long-term care facility to another existing facility in a contiguous county.

### **Administrative review of appeals**

(R.C. 3702.60 (primary) and 3702.57)

Current law authorizes an appeal to be made by any person affected by the ODH Director's actions in doing the following: (1) ruling on whether a proposed activity is reviewable under the CON Program or (2) granting or denying a CON application. The appeal, and the subsequent adjudication hearing, must be conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

For affected persons other than a CON applicant, the bill eliminates the process of using the Administrative Procedure Act for appeals and their associated adjudication hearings. Instead, the bill requires the ODH Director to provide an administrative review. The administrative review must be conducted in accordance with rules the bill requires the Director to adopt.

In an administrative review, the bill requires the affected person to prove by a preponderance of the evidence that the ODH Director's ruling or decision does not comply with the CON statutes or rules. The Director's administrative review decision must be made not later than 60 days after receiving notice of the affected person's appeal. The bill specifies that the Director's decision is final and not subject to appeal.

### **Deadline for appeals**

(R.C. 3702.60)

Current law permits a CON applicant, holder, or violator to appeal a decision, ruling, or determination by the ODH Director to the Tenth District Court of Appeals. A notice of appeal must be filed not later than 30 days after the Director's adjudication order was mailed. The bill reduces the time period for filing the appeal to 14 days.

### **Effects of nursing home license revocation**

(R.C. 3721.03)

Under current law, once the ODH Director provides notice that a nursing home license may or will be revoked, the nursing home generally is prohibited from assigning or transferring the right to operate the home to another person. The prohibition generally remains in effect until proceedings under the Administrative Procedure Act are concluded. The bill modifies these procedures, as follows:

- Permits the nursing home to assign or transfer the right to operate the home to another person if a CON application has been filed before the Director provided the notice regarding license revocation;
- Eliminates a provision authorizing the Director to lift the prohibition against assigning or transferring the right to operate the nursing home.

## **CONs denied due to proposed license revocation**

(R.C. 3702.59; Section 737.20)

Under current law, the ODH Director cannot approve a CON application to add long-term care beds to an existing facility or to develop a new facility if certain conditions apply. For example, an application cannot be accepted if, during the 60-month period before a CON application was filed, a notice of proposed license revocation was issued for the existing facility in which the beds are being placed or a nursing home owned or operated by the applicant or a principal participant involving the applicant.

The bill modifies the condition of CON eligibility involving a notice of proposed license revocation issued during the 60-month period before applying for a CON, as follows:

- Permits a CON application to be accepted if ODH did not provide the owner of the nursing home with copies of the inspection or survey reports giving rise to the proposed license revocation before the notice was issued;
- Specifies that if the ODH Director has denied a CON application only because of the above-described condition involving a notice of proposed license revocation but the application would not have been denied if the bill were in effect because ODH failed to provide the copies described above, the Director must reverse the decision and grant the CON not later than ten days after the effective date of this provision of the bill.

## **Transfer of nursing home ownership**

(R.C. 3721.026)

The bill imposes disclosure requirements on an individual who is assigned or transferred operation of a nursing home. In that situation, before the Director of Health can issue a license authorizing the person to operate the nursing home, the person must submit to the Director documentation showing all of the following:

- If the assignment or transfer is done by means other than a lease, the person has financial resources that the Director determines are sufficient to cover any reasonable anticipated revenue shortfall for at least 12 months after the assignment or transfer.
- If the assignment or transfer is done by a lease, that (1) the person has obtained a bond for a term of at least 12 months, subject to annual renewal, for not less than \$1 million or (2) if the person cannot obtain a bond at a reasonable cost, that the person has financial resources that the Director determines are sufficient to cover any anticipated revenue shortfall for at least 12 months after the assignment or transfer.

- The person has at least five years' experience as a nursing home operator, manager, or administrator.
- The person has plans for quality assurance and risk management for the nursing home.
- The person has general and professional insurance coverage of at least \$1 million per occurrence and \$3 million aggregate.

The documentation must include (1) projected financial statements for the nursing home for the 12-month period after the assignment or transfer and (2) a list of each currently or previously licensed nursing home in which the person has or had any percentage of ownership. These requirements are in addition to any other nursing home operation requirements.

## **Freestanding emergency departments**

(R.C. 3727.49)

### **Notice regarding insurance participation**

The bill requires a freestanding emergency department, which is a facility that provides emergency care and is structurally separate and distinct from a hospital, to do one of the following regarding providing notice of insurance participation:

- Post, in a conspicuous place in an area of the facility accessible to the public, a notice that: identifies the facility as a freestanding emergency department, specifies that the facility or a health care professional providing services may not be a participating provider in the provider network established by the patient's health benefit plan, specifies that a health care professional may charge separately from the facility for the services provided to the patient, and lists each health benefit plan in which the facility is a participating provider in the provider network established by the plan or states that the facility is not a participating provider in any provider network.
- Post a notice on the facility's website listing health benefit plans in which the facility is a participating provider in the plan's provider network and provide each patient with written confirmation specifying whether the facility is a participating provider in the provider network established by the patient's health benefit plan.

### **Billing**

Under the bill, a freestanding emergency department must use its national provider identifier on all claims for payment for health care services or goods. A national provider identifier is a unique identification number assigned to a health care provider by the National Provider System pursuant to federal regulations.

### **Enforcement**

The bill authorizes the ODH Director to apply to a court of common pleas for a temporary or permanent injunction restraining a freestanding emergency department from failure to comply with the provisions described above.

## **Commission on Infant Mortality**

(R.C. 3701.68)

The bill requires the Governor or the Governor's designee to serve on the Commission on Infant Mortality, instead of the Executive Director of the Office of Health Transformation or the Executive Director's designee. The Commission consists of 16 members from various government agencies, medical associations, and community-based programs. Additionally, the bill allows the co-chairpersons of the Commission, upon mutual agreement, to appoint additional members to the Commission. Under continuing law, the Senate President and Speaker of the House appoint two members of the Commission to serve as co-chairpersons.

The Commission's purpose is to conduct a complete inventory of services provided or administered by the state that are available to address the infant mortality rate, and to track and analyze, with the assistance from academic medical centers, infant mortality rates by county to determine the impact of state and local initiatives to reduce those rates.

## **Radon mitigation specialist**

(R.C. 3723.081)

The bill prohibits the ODH Director from requiring a licensed radon mitigation specialist to be physically present for supervision purposes when radon mitigation is performed. However, it allows the Director to require a specialist to be physically present immediately before and after radon mitigation is performed. Under current rules adopted by the Director, a licensed radon mitigation specialist must be physically present during radon mitigation.

## **Wishes for Sick Children Income Tax Contribution Fund**

(R.C. 3701.602)

The bill reduces the amount that a nonprofit corporation must spend for granting wishes of minors with life-threatening illnesses to qualify for funds from the Wishes for Sick Children Income Tax Contribution Fund. The bill requires a nonprofit corporation to spend \$250,000 per year for the last three years granting wishes of minors who have been diagnosed with a life-threatening medical condition. Currently, the spending requirement is \$1 million per year for each of the last three years.

Under ongoing current law, to be eligible to receive money from the fund, the nonprofit organization also must (1) be exempt from the federal income tax as a 501(3)(c) organization under the Internal Revenue Code and (2) have been, as its primary purpose, granting such wishes for at least ten years before the fund's creation.

The fund consists of contributions made directly to the fund and contributions from taxpayers who indicate on their Ohio income tax returns that they would like to donate to the fund. The amount indicated on the taxpayer's tax form is subtracted from the taxpayer's tax refund and deposited into the fund.

# **Solemn Covenant of the States to Award Prizes for Curing Diseases**

(R.C. 3799.01)

## **Compact establishment**

The bill enacts into law, in section 3799.01 of the Revised Code, the Solemn Covenant of the States to Award Prizes for Curing Diseases (“Compact”), which is an interstate compact intended to award prizes for curing diseases. The Compact becomes effective and binding upon enactment into law by two Compacting states. Once six states enact the Compact, the governing Solemn Covenant of States Commission (“Commission”) is established and the Compact becomes binding and effective on any other state that enacts the Compact into law. The Commission is a body corporate and politic and an instrumentality of each of the compacting states. The Commission is also solely responsible for the Compact’s liabilities.

Generally, the Commission has the power to receive and review in an expeditious manner treatments and therapeutic protocols for the cure of diseases specified by the Commission, and to award prizes for submissions that meet the Commission’s standards for a successful cure treatment and therapeutic protocol. Upon acceptance of a successful cure treatment or therapeutic protocol, the Commission will make the treatment widely available. (See “**Cure prize process**,” below.)

## **Cure prize process**

### **Prize creation**

The Commission must adopt rules establishing criteria for defining and classifying the diseases for which prizes will be awarded. In doing so, the Commission may define and classify subsets of diseases, such as tubular carcinoma of the breast. A subset of a disease is to be considered as one disease for purposes of determining the diseases for which to create prizes. In defining and classifying diseases, the Commission may consult the most recent edition of the International Classification of Disease, as published by the World Health Organization, or other definitions agreed to by a two-thirds vote of the Commission.

The Commission must adopt rules regarding prizes for curing diseases that establish the following:

- At least ten major diseases for which to create prizes, which must be determined by (1) the severity of the diseases to an individual’s overall health and well-being, (2) the survival rate or severity of impact of the disease, and (3) the public health expenses and treatment expenses for the disease.
- The criteria for a treatment or therapeutic protocol to be considered a cure for any of the diseases for which a prize may be awarded, which must include all of the following requirements:
  - It has been approved by the federal Food and Drug Administration or has otherwise obtained legal status for the Compact to immediately contract to manufacture and distribute in the United States.

- It yields a significant increase in survival with respect to the disease if early death is the usual outcome. However, the commission may award a prize for a treatment or therapeutic protocol that yields a survival rate that is less than what is established in the cure criteria through at least five years after the treatment or protocol has ended. In this case, the prize amount awarded for that treatment or protocol must be reduced from the amount originally determined for that disease. The reduction must be proportionate to the survival rate yielded by that treatment or protocol as compared to the survival rate established in the cure criteria.
- It requires less than one year of the treatment or protocol to completely cure the disease.
- The procedure for determining the diseases for which to award prizes, which includes the option to award prizes for more than ten diseases that meet the above criteria, if agreed to by two-thirds of the Commission;
- A requirement to update the list every three years;
- The submission and evaluation procedures and guidelines, including filing and review procedures, a requirement that the person or entity submitting the cure bears the burden of proof in demonstrating that the treatment or therapeutic protocol meets the Commission's criteria, and limitations preventing public access to treatment or protocol submissions;
- The estimated five-year public health savings that would result from a cure, which must be equal to the five-year public health expenses for each disease in each compacting state, and a procedure to update these expenses every three years. The savings must be calculated, estimated, and publicized every three years by actuaries employed or contracted by the Commission.
- The prize amount for cures to each disease, which must be equal to the most recent estimated total five-year savings in public health expenses for the disease in all compacting states, amounts donated by charities, individuals, and any other entities intended for the prize, and any other factors the Commission deems appropriate.

“Public health expenses” is defined as the amount of all costs paid by taxpayers in a specified geographic area relating to a particular disease.

### **Ethical standards**

The Compact, recognizing that its goal is to pool the potential savings of as many states and countries as possible to generate sufficient financial incentive to develop a cure for many of the world's most devastating diseases, must also adopt rules that establish a common set of ethical standards that embody the laws and restrictions in each state of the United States. The Compact must publish these common ethical standards along with the specific criteria for a cure for each of the diseases that the Compact has targeted.

In order to be eligible to claim a prize, the entity submitting a cure must not have violated any of the ethical standards in any one of the 50 states, regardless of whether the

states have joined the Compact. As long as a researcher follows the common ethical standards in effect at the time that the research is done, an entity presenting a cure will be deemed to have followed the standards.

On or before January 1 of each year, the Compact must review all state laws to determine if any additional ethical standards have been enacted by any of the 50 states and the federal government. Any changes to the common ethical standards rules based on new state laws must be adopted and published by the Compact, but must not take effect in cure criteria for a period of three years, so that researchers have sufficient notice.

The ethical standards requirement is unclear in two ways: (1) while the Compact must review federal laws, there is no requirement that federal laws must be adopted in the Compact's rules, and (2) it is not clear how the rules will establish common ethical standards if, for example, one state's medical research ethics laws conflict with those of another state.

### **Review of submissions and selection of winner**

The Commission must adopt rules that provide a process for the Commission to review submitted treatments and therapeutic protocols for curing diseases that includes the following:

- An opportunity for appeal, not later than 30 days after a rejection of a treatment or protocol for prize consideration, to a review panel established under the Commission's dispute resolution process (see "**Dispute resolution,**" below);
- Commission monitoring and review of treatment and protocol effectiveness consistent with cure criteria established by the Commission for the particular disease;
- Commission reconsideration, modification, or withdrawal of approval of a treatment or protocol for prize consideration for failure to continue to meet the cure criteria established by the Commission for the particular disease.

A decision regarding the approval of an award for a successful treatment or therapeutic process will be effective only if two-thirds of all members vote in favor of approval.

The Compact also requires the adoption of rules that require a prize winner to transfer to the Commission the patent and all related intellectual property for the manufacture and distribution of the treatment or therapeutic protocol in exchange for the prize. A prize will be awarded only to the first person or entity that submits a successful cure for a particular disease.

### **Awarding the prize**

The rules must also provide that, upon the acceptance of a cure, the Commission must obtain a loan from a financial institution that is equal to the most recently calculated total estimated five-year public health expenses for the disease in all compacting states in order to award the prize amount. Each compacting state must then annually pay the compacting state's actual one-year savings in public health expenses for the disease for which a cure has been accepted. The compacting state must continue to make annual payments until it has fulfilled its prize responsibility. Each compacting state's payment responsibility begins one year after the date the cure becomes widely available. The Commission must employ or contract with actuaries to calculate each state's actual one-year savings in public health expenses at the end

of the year to determine each state's responsibilities for the succeeding year. In addition, the Commission retains the right to continuously evaluate the cure in the interim and rescind a prize offer if the Commission finds the cure no longer meets the Commission's criteria.

### **Issuing debt to pay prize**

The rules must also provide that a compacting state can meet its prize responsibility by any method, including the issuance of bonds or other obligations (described below).

#### ***Revenue debt***

If revenue bonds or obligations are issued to pay the prize responsibility, repayment of the principal and interest of those bonds or obligations must be made from revenue derived from the estimated public health expense savings from a cure to the disease. If the compacting state does not make such revenue available to repay some or all of the revenue bonds or obligations issued, the owners or holders of those bonds or obligations have no right to have excises or taxes levied to pay the principal or interest on them. The revenue bonds and obligations are not a debt of the issuing state.

#### ***General obligation debt***

A compacting state may issue general obligation bonds or other debt that are general obligations, under which the full faith and credit, revenue, and taxing power of the state is pledged to pay the principal and interest under those obligations, only if authorized by the compacting state's constitution or, if constitutional authorization is not required, by other law of the compacting state.

### **Payment limitations**

The Compact provides that, except to the extent authorized by the compacting state's constitution or, if constitutional authorization is not required, by other law of the compacting state, the state, by entering into the compact, does not: (1) commit the full faith and credit or taxing power of the compacting state for the payment of prizes or other obligations under the Compact, or (2) make prize payment responsibilities or other obligations under the compact a debt of the compacting state. This provision exists to prevent states from incurring debt in a manner that violates the state's constitution.

### **Licensing, dispensing, and royalty fees**

Once a prize winner claims a prize and transfers any intellectual property necessary for the manufacture and distribution of the cure in accordance with the Compact, the Commission has the power to make a cure treatment or therapeutic protocol widely available, including by arranging or contracting for the manufacturing, production, or provision of any drug, serum, or other substance, device, or process. However, the Commission may not market the cure or conduct any other activity regarding the cure that is not specifically authorized in the Compact.

With regard to noncompacting states and foreign countries, the Commission may also establish and collect royalty fees imposed on manufacturers, producers, and providers of any drug, serum, or other substance, device, or process used for a cure treatment or therapeutic protocol. However, royalty fees must cumulatively not be more than the estimated five-year

savings in public health expenses for that state or country, as calculated by actuaries employed or contracted by the Commission.

The Commission may establish a selling price for the cure, which must not be more than the expenses for the cure's manufacture and distribution, licensing, and any other necessary governmental requirements for compacting states, or those expenses plus any royalty fees, for non-compacting states. The price cannot include the expenses of any other activities.

The Commission may pay or reimburse expenses related to the payment of a prize with collected royalty fees. These expenses include employing or contracting actuaries to calculate annual taxpayer savings amounts in compacting states, and payment of interest and other expenses related to a loan obtained for prize payment. The Commission may also annually disburse any amounts remaining after making payments or reimbursements as refunds to compacting states based on the percent of the state's prize obligation in relation to the total obligation amount of all compacting states.

### **General powers**

The Compact establishes several powers of the Commission. Among them includes the ability to adopt bylaws and rules, which have the force and effect of law and would be binding in the compacting states. Bylaws must be approved by a majority vote of all Commission members. Notwithstanding any civil service or other similar laws of a compacting state, the Commission's bylaws must exclusively govern the Commission's personnel policies and programs.

Rules must be adopted to: (1) effectively and efficiently achieve the purposes of the Compact, and (2) govern the methods, processes, and any other aspect of the research, creation, and testing of a treatment or therapeutic protocol for each disease for which a prize may be awarded. The Model State Administrative Procedure Act of 1981 by the Uniform Law Commissioners, as amended, governs rulemaking procedures, to the extent the Model Act is appropriate to Commission operations. Rules that exceed the Commission's rule-making authority will be invalid. Rules may be amended as the Commission sees necessary.

The Commission also has the following powers:

- To establish and maintain offices;
- To borrow, accept, or contract for personnel services, including personnel services from a compacting state's employees;
- To determine qualifications of and hire employees, professionals, or specialists; and elect or appoint officers;
- To fix compensation, define duties, and provide appropriate authority for employees, professionals, specialists, and officers to carry out the purposes of the Compact;
- To establish personnel policies and programs relating to conflict of interest, rates of compensation, qualifications of personnel, and other related policies;

- To lease, purchase, or accept appropriate gifts or donations, or hold, own, improve, or use any real or personal property, as long as the Commission strives to avoid any appearance of impropriety;
- To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property;
- To monitor compacting states for compliance with the Commission’s bylaws and rules;
- To enforce compliance by compacting states with the Commission’s bylaws and rules;
- To adopt a corporate seal;
- To perform other functions necessary or appropriate to carry out the Compact’s purposes.

The Commission has the power to propose amendments to the Compact for enactment by the compacting states. An amendment becomes effective only if all of the compacting states enact it into law.

## **Organization**

The Commission must establish organization bylaws for the following:

- Guidelines and voting requirements for decisions, other than award approvals, of the Commission;
- Reasonable procedures for appointing and electing members, as well as holding meetings of the management committee (see “**Committees**,” below);
- Reasonable standards and procedures for (1) establishment and meetings of other committees, (2) governing general or specific delegation of any authority or function of the Commission, and (3) voting guidelines and procedures for Commission decisions;
- Titles, duties, authority, and reasonable procedures for the election of the Commission’s officers;
- Reasonable standards and procedures for establishing personnel policies and programs of the Commission;
- A code of ethics to address permissible and prohibited activities of members and employees;
- The maintenance of the Commission’s books and records.

## **Membership**

Under the Compact, any state (defined as any state, district, or territory of the United States) is eligible to become a compacting state. The bylaws must also establish a mechanism to allow the federal government to join as a compacting state, and for foreign countries or its subdivisions to join as liaison members. Foreign countries or subdivisions, however, have no voting power or the power to bind the Commission in any way.

Each compacting state is to be represented by one member, as selected by the compacting state. The compacting state must determine its member's qualifications and period of service, and must be responsible for any action to remove or suspend its member or to fill the member's position if it becomes vacant. The Compact provides that nothing in the Compact should be construed to affect a compacting state's authority regarding the qualification, selection, or service of its own member.

Each compacting state is responsible for paying annual dues established under Commission rules (see "**Financial responsibilities of the Commission,**" below). No compacting state will have any claim to or ownership (1) of any property held by or vested in the Commission or (2) to any Commission funds held under the Compact's terms.

### **Meetings and voting**

The Commission must meet and take actions consistent with the Compact, bylaws, and rules. The Commission must meet at least once per year, with additional meetings to be held as set forth in the bylaws. The bylaws must also provide reasonable procedures for calling and conducting meetings, ensuring reasonable advance notice of each meeting, and providing for the right of citizens to attend each meeting with enumerated exceptions designed to protect the public's interest and the privacy of individuals. A majority of the Commission members constitutes a quorum necessary to conduct business or take actions at meetings. Each member has the right and power to cast one vote regarding matters or actions of the Commission and to participate in the business and affairs of the Commission. Members may vote in person or by other means as provided in the bylaws, which may provide for participation by telephone or other means.

The bylaws must also provide a list of matters about which the Commission may go into executive session. Entering such a session would require a majority vote of all Commission members. The Commission is required to make public as soon as practicable: (1) a copy of the vote to go into executive session, revealing the vote of each member with no proxy votes allowed, and (2) the matter requiring executive session, without identifying the actual issues or individuals involved.

### **Finances**

#### **Financial responsibilities of the Commission**

Under the Compact, the Commission must annually establish a budget to pay its reasonable expenses. The Commission also has the power to make expenditures, borrow money, and establish annual membership dues for compacting states, which dues must be used for daily expenses of the Commission and not for interest or prize payments. The Commission must prescribe bylaws establishing the fiscal year of the Commission, as well as governing the acceptance of and accounting for donations, annual member dues, and other sources of funding. The bylaws must also set the proportion of these funds to be allocated to prize amounts for treatments and therapeutic protocols that cure disease. The Commission must also adopt rules that establish and impose annual dues on compacting states, which are to be calculated based on the percentage of each compacting state's population in relation to the population of all compacting states.

To fund initial operations, the Commission may accept contributions from compacting states and other sources, as long as the independence of the Commission's performance of its duties is not compromised.

### **Fundraising**

Under the Compact, the Commission has the power to accept, use, and dispose of all appropriate donations and grants of money, equipment, supplies, materials, and services. However, the Commission must, at all times, strive to avoid any appearance of impropriety. To this end, the Commission may establish bylaws governing any fundraising efforts in which the Commission wishes to engage. Commission rules must require all donation amounts going towards a prize to be kept in a separate, interest-bearing account maintained by the Commission. This account is the only account in which prize money is to be kept.

### **Exemption from taxation**

The Compact provides that the Commission is to be exempt from taxation in and by the compacting states.

### **Financial audits**

The financial accounts and reports, including the Commission's system of internal controls and procedures are to be audited annually by an independent certified public accountant. On the Commission's determination, but not less frequently than every three years, the auditor's review shall include a management and performance audit of the Commission.

### ***Sharing Commission account information***

The Commission's internal accounts are not confidential and such materials may be shared with any compacting state upon request. But, any work papers related to any internal or independent audit and any information subject to the compacting states' privacy laws, must remain confidential.

### **Committees**

Under the Compact, the Commission has the power to appoint committees, including management, legislative, and advisory committees comprised of members, state legislators or their representatives, medical professionals, and such other interested persons as the Commission chooses to designate.

### **Management committee**

The Commission may establish a management committee comprised of no more than 14 members when 26 states enact the Compact. The committee must consist of members representing compacting states whose total public health expenses of all of the established diseases are the highest. The committee will have the authority and duties established in the Commission's rules and bylaws, which include:

- Managing authority over the day-to-day affairs of the Commission, consistent with the bylaws, rules, and purposes of the Compact;

- Overseeing the offices of the Commission;
- Planning, implementing, and coordinating communications and activities with state, federal, and local government organizations in order to advance the goals of the Compact.

The Commission must annually elect officers for the committee, with each having authority and duties as specified in the bylaws and rules. The committee, subject to Commission approval, may also appoint or retain an executive director for a designated period, with terms, conditions, and compensation determined by the committee. The executive director will serve as the Commission's secretary, but cannot be a member of the Commission. The executive director may hire and supervise other staff as authorized by the committee.

### **Advisory Committees**

The Commission may also appoint advisory committees to monitor all operations related to the purposes of the Compact and make recommendations to the Commission, as long as the manner of selection and term of any committee member is established in the bylaws and rules. The Commission must consult with an advisory committee, pursuant to the bylaws and rules, before doing any of the following:

- Approving cure criteria;
- Amending, enacting, or repealing any bylaw or rule;
- Adopting the Commission's annual budget;
- Addressing any other significant matter or taking any other significant action.

### **Compliance**

If any compacting state is in noncompliance with the Compact's bylaws and rules, the Commission must notify the state in writing. If a compacting state fails to remedy the noncompliance within the time specified in the written notice, the compacting state will be deemed in default.

### **Default**

Grounds for default include failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in the rules. Once the Commission determines that a state has defaulted in the performance of any obligations or responsibilities, it must provide notice and hearing on the default. If after such notice and hearing it is determined that the compacting state is in default, then all rights, privileges, and benefits conferred by the Compact on the defaulting state will be suspended from the effective date of default, as fixed by the Commission. The Commission must immediately notify the defaulting state in writing of the suspension pending cure of the default, along with the conditions and time period within which the defaulting state must cure the default. If the defaulting state fails to cure the default within the specified time period, the defaulting state will be expelled, and all rights, privileges, and benefits conferred by the Compact will be terminated. An expelled state

must reenact the Compact in order to become a compacting state again. Any state that is expelled remains liable for any cure prize for three years after its removal.

## **Withdrawal**

A compacting state may withdraw from the compact by doing both of the following: (1) repealing the law enacting the Compact in that state, and (2) notifying the Commission in writing of the intent to withdraw on a date that is (a) at least three years after the date the notice is sent, and (b) after the repeal takes effect. This date is the effective date of the withdrawal.

The member representing the withdrawing state must immediately notify the management committee (or the Commission, if a management committee has not yet been established) in writing upon introduction of legislation in that state to repeal the Compact. The Commission or management committee must notify the other compacting states of the introduction of legislation within ten days after it receives notice.

The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of the withdrawal, including any obligations, the performance of which extend beyond the effective date of the withdrawal. The Commission's actions must continue to be effective and be given full force and effect in the withdrawing state. The Commission must take appropriate legal action to ensure that any compacting state that withdraws from the Compact remains liable for its responsibility towards a prize for a cure that was accepted. A state that has withdrawn from the Compact can reinstate its membership on legislative re-enactment of the Compact by that state. Reinstatement is effective on the effective date of re-enactment.

## **Dissolution**

The Compact will dissolve effective on the date the (1) withdrawal or expulsion of a compacting state reduces Compact membership to one compacting state, or (2) Commission votes to dissolve the Compact.

On dissolution, the Compact becomes null and void and shall be of no further force or effect. The business and affairs of the Commission must be wound up and any surplus funds distributed under the bylaws. The Commission must pay, however, all outstanding prizes awarded before dissolution, as well as any other outstanding debts and obligations incurred during the Compact's existence. Any unawarded funds donated to be a part of a prize must be returned to the donor, along with any interest earned on the amount.

Under its bylaws, the Commission must provide a mechanism for winding up its operations. The bylaws must also provide for the equitable distribution of any surplus funds after the payment and reserving of all Commission debts and obligations.

## **Records**

Under the bill, the Commission must prescribe bylaws providing for the maintenance of the Commission's books and records. The Commission is also required to adopt the following rules regarding records:

- Conditions and procedures for public inspection and copying information and official records (however, records and information involving the privacy of individuals or that would otherwise violate federal and compacting states' privacy laws are exempt);
- Procedures for sharing records and information otherwise exempt from disclosure with federal and state agencies, including law enforcement;
- Guidelines for entering into agreements with federal and state agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

### **Financial records**

The Commission must keep complete and accurate accounts of all of its internal receipts, including grants and donations, and disbursements of all funds under its control. The Commission's internal financial accounts are to be subject to the accounting procedures established under the Commission's bylaws or rules.

### **Confidentiality**

The Compact also provides that, with the exception of privileged records, data, and information, any compacting state's laws regarding confidentiality or nondisclosure do not relieve any member of its duty to disclose any relevant records, data, or information to the Commission. However, disclosure to the Commission is not to be deemed to waive or affect any confidentiality requirement. Additionally, the Commission is not subject to the compacting state's laws regarding confidentiality and nondisclosure with respect to records, data, and information in its possession, except as otherwise provided in the Compact. Confidential information that the Commission holds must remain confidential after such information is provided to any member. The Compact also provides that all cure submissions that the Commission receives are confidential.

### **Annual report to governors/legislatures**

The Commission must also make an annual report to the governors and legislatures of the compacting states, which report must include a report of the independent audit.

### **Legal actions and disputes**

The Compact provides that the Commission has the power to bring and prosecute legal proceedings or actions in its name as the Commission and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. It also provides procedures for dispute resolution, venue, immunity, defenses, and indemnification.

### **Dispute resolution**

The Commission has the power to provide for dispute resolution among compacting states or between the Commission and those who submit treatments and therapeutic protocols for the cure of disease for consideration. The Commission must establish in its rules, as part of this process, the following:

- Administrative review by a review panel appointed by the Commission;
- Judicial review of decisions issued after an administrative review;

- Qualifications to be appointed to a panel;
- Due process requirements, including notice and hearing procedures, and other procedures, requirements, or standards necessary to provide adequate dispute resolution.

### **Venue**

The Compact provides that venue for any judicial proceedings by or against the Commission must be brought in the court of competent jurisdiction for the geographical area in which the Commission's principle office is located.

### **Qualified immunity, defense, and indemnification**

The Compact provides for the following regarding the Commission's members, officers, executive director, employees and representatives, for claims arising out of actual or alleged actions occurring within the scope of that person's official duties, provided that the claims are not caused by intentional or willful and wanton misconduct:

- They are immune from liability, either personally or in their official capacity;
- That the Commission must defend them in any civil action arising out of such actions (although that person may also retain his or her own counsel);
- That the Commission will indemnify them and hold them harmless for the amount of any settlement or judgment obtained against that person.

### **Amendments to Compact**

The Commission is authorized to propose amendments to the Compact. No amendment becomes effective, however, until all compacting states enact the amendment into law.

### **Severability and construction**

The Compact provides that its provisions are severable. Therefore, if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions will remain enforceable. The Compact also provides that it must be liberally construed to effectuate its purposes.

### **Binding effect of Compact and other laws**

The Compact provides that nothing in its provisions prevents the enforcement of any other law of a compacting state. However, all agreements between the Commission and the compacting states are binding in accordance with their terms. Moreover, all of the Commission's lawful actions, including its rules, are binding upon the compacting states.

Under the Compact, the Commission may issue advisory opinions in a dispute over the meaning or interpretation of Commission actions, upon request of a party and a majority vote of the compacting states.

Finally, if any provision of the Compact violates the constitution of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision will be ineffective as to that compacting state. But, those obligations, duties, powers, or

jurisdiction must remain in the compacting state and be exercised by the agency to which they are delegated by law in effect at the time the Compact becomes effective. Requiring the ineffective provision to “remain” appears, however, to create a conflict: the compacting state is required to recognize law that is unconstitutional and ineffective within that state.

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## DEPARTMENT OF HIGHER EDUCATION

### Restriction on instructional fee increases

- For the 2019-2020 and 2020-2021 academic years, permits state universities, including the Northeast Ohio Medical University, and university branch campuses to increase instructional and general fees by not more than 2% over what was charged in the previous academic year.
- For the 2019-2020 and 2020-2021 academic years, permits community colleges, state community colleges, and technical colleges to increase instructional and general fees by not more than \$5 per credit hour over what was charged in the 2018-2019 academic year.
- Requires the Chancellor of Higher Education to approve any increase of all other special fees, including new created ones.
- Excludes from the fee restrictions: room and board, student health insurance, auxiliary goods or services fees provided to students at cost, pass-through fees for licensure and certification exams, study abroad fees, elective service charges, fines, voluntary sales transactions, fees to offset the cost of providing textbooks to students, and, subject to the approval of the Chancellor, fees for mental health and substance abuse support services.
- Permits the Chancellor to establish a differential tuition program, including the development of participation criteria that may require generated revenues to support student services and needs-based financial aid, in which eligible institutions may offer the program to eligible undergraduate students.

### Tuition guarantee program

- Requires each state university to establish a tuition guarantee program.
- Stipulates that a state university must use a three-year average rate of inflation in calculating an increase in the rate of instructional and general fees for cohorts subsequent to the first one, rather than a five-year average rate of inflation as under current law.

### Student debt collection

- Specifies that a state institution of higher education must certify to the Attorney General, for the purposes of debt collection, any amounts owed by a student not less than 45 days after the amount is due or the 10<sup>th</sup> day of the next academic term, whichever is later; after whichever date applies, the institution must certify the debt within 15 days.
- Requires the Chancellor, in consultation with state institutions of higher education, to conduct a study regarding past-due fees incurred by students and, among other things,

the best practices for collecting fees prior to their certification to the Attorney General for collection.

- Requires the Chancellor, in consultation with state institutions, to submit to the General Assembly a report based on the study, including recommendations on best practices for fee collection and for changes to the Revised Code or Administrative Code, by December 31, 2019.

### **Ohio innovation partnership award repayment**

- Specifies that the Chancellor may require a state university or the Northeast Ohio Medical University to repay a student's award under the Choose Ohio First Scholarship Program (Ohio Innovation Partnership), plus interest, after it violates its agreement governing awards only as the award and any interest due are collected from a student for repayment.
- Prohibits the Chancellor from holding the state university responsible for repayment until it obtains repayment from the student.
- Prohibits the Chancellor from holding the university responsible for repayment if it has (1) certified collection of repayment to the Attorney General and (2) sent a copy of the certification to the Chancellor.

### **Project-based learning program models**

- Specifies the Chancellor must work with state institutions of higher education, Ohio Technical Centers, and industry partners in developing program models that include project-based learning.

### **High School STEM Innovation and Ohio College Scholarship and Retention Program**

- Establishes for FY 2020 and FY 2021 the High School STEM Innovation and Ohio College Scholarship and Retention Program for the continuing development and implementation of recommendations for an innovation pathway between K-12 education and higher education and career-technical education.

### **Community College Acceleration Program**

- Requires the Chancellor, with the assistance of the Department of Job and Family Services, to establish the Community Acceleration Program.
- Provides that the program must enhance support services to students in need of support from local social service agencies and identify the services and resources available to assist eligible students in an institution of higher education.

### **Eligibility of regionally accredited nonprofit institutions**

- Prohibits the Chancellor from granting or renewing a certificate of authorization for a regionally accredited private nonprofit institution of higher education that was created by the governors of several states.

- Removes such an institution from the list of eligible institutions that the Chancellor may recognize or endorse to provide competency-based education programs.

## War Orphans Scholarship

- Changes the name of the Ohio War Orphans Scholarship to the Ohio War Orphans and Severely Disabled Veterans' Children Scholarship.

As used in this chapter of the analysis:

A **state institution of higher education** means any of the 13 state universities, the Northeast Ohio Medical University, and each community college, state community college, technical college, and university branch campus. The state universities are the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.

**Ohio technical centers** are career-technical centers and schools that provide adult education and are recognized as such by the Chancellor of Higher Education.

## Restriction on instructional fee increases

(Section 381.160)

For FYs 2020 and 2021 (the 2019-2020 and 2020-2021 academic years), the bill limits each state university, including the Northeast Ohio Medical University, and university branch campus to not more than a 2% increase in its in-state undergraduate instructional and general fees over what the institution charged in the prior academic year.

For those same years, each community college, state community college, and technical college is limited to increasing its instructional and general fees to not more than \$5 per credit hour over what it charged in the 2018-2019 academic year. Increases for all other special fees, including newly created ones, are subject to the approval of the Chancellor of Higher Education.

However, the bill's limits on fee increases explicitly *exclude* the following:

- Room and board;
- Student health insurance;
- Fees for auxiliary goods or services provided to students at the cost incurred to the institution;
- Fees assessed to students as a pass-through for licensure and certification exams;
- Fees in elective courses associated with travel experiences;
- Elective service charges;
- Fines;

- Voluntary sales transactions;
- Fees to offset the cost of providing textbooks to students, which may appear directly on a student's tuition bill as assessed by the institution's bursar; and
- Subject to the approval of the Chancellor, fees for student mental health and support services.

As in previous biennia when the General Assembly capped tuition increases, the bill's provisions do not apply to increases required to comply with institutional covenants related to the institution's obligations or to meet unfunded legal mandates or legally binding prior obligations or commitments. Further, the Chancellor, with Controlling Board approval, may approve an increase to respond to exceptional circumstances as the Chancellor identifies.

Additionally, the bill specifies that institutions that participate in an undergraduate tuition guarantee program may increase fees in accordance with that separate provision (see below).

### **Differential tuition program**

Finally, the bill permits the Chancellor to establish a differential tuition program for undergraduate students. If the Chancellor establishes the program, eligible institutions are permitted to offer it to eligible students. The Chancellor must develop criteria for participation in the program, which may include requiring that revenues generated by the program support student services and needs-based financial aid.

### **Undergraduate tuition guarantee**

(R.C. 3345.48)

The bill requires each state university to establish an undergraduate tuition guarantee program whereby each entering cohort of undergraduate students pays an immediate increased rate for instructional and general fees, but that rate is guaranteed not to increase again for that particular cohort for the next four years. Under continuing law, a university may increase the rates by up to 6% for the first cohort under a university's program. For all subsequent cohorts, the bill permits a university to increase the rates one time by the sum of the three-year average rate of inflation and the amount the General Assembly permits increases on in-state undergraduate instructional and general fees for the fiscal year. As noted above, that permitted increase under the bill is 2%.

Under current law, a state university is permitted, not required, to establish an undergraduate tuition guarantee program and for subsequent cohorts the university is required to calculate the one time rate increase for each subsequent cohort using the five-year average rate of inflation, rather than a three-year average rate of inflation.

### **Student debt collection**

(R.C. 131.02)

The bill stipulates that a state institution of higher education must certify to the Attorney General, for the purposes of debt collection, any amounts payable by a student not

less than 45 days after the amount is due or the 10<sup>th</sup> day of the next academic term, whichever is later; after whichever date applies, the institution must certify the debt within 15 days. This stipulation extends the timeframe provided under current law, which requires the institution to certify the debt “within” the later of 45 days after the amount is due or the 10<sup>th</sup> day of the next academic term.

## **Study regarding past-due fees**

(Section 381.165)

The bill stipulates that the Chancellor, in consultation with state institutions of higher education, must conduct a study regarding the best practices for collecting past-due general and special fees incurred by students prior to the institutions’ certifying the fees to the Attorney General for debt collection. While conducting the study, the Chancellor must review the June 2017 Report of the Attorney General’s Student Debt Advisory Group.

The Chancellor also must investigate:

- State institutions’ obtaining prior consent from students to allow institutions, and third parties collecting on behalf of institutions, to contact students using the most effective forms of communication;
- The adoption of statewide uniform standards for fees, penalties, and certification practices for student debts;
- State institutions notifying students that past-due fees will be transferred to the Attorney General for collection; and
- An amnesty program for past-due fees, including the feasibility of the program, criteria under which a student may qualify, and any other program component determined appropriate by the Chancellor.

The Chancellor, in consultation with state institutions, must submit a report based on the study to the General Assembly by December 31, 2019. The report must include recommendations regarding the best practices for past-due general and special fee collection prior to the certification of the fees to the Attorney General. The report also must include recommendations for any changes to the Revised Code or the Administrative Code that may be needed for a uniform statewide policy regarding the collection of past-due fees.

## **Ohio innovation partnership award repayment**

(R.C. 3333.65)

The bill specifies that the Chancellor may require a state university or the Northeast Ohio Medical University (NEOMU) to repay a student’s award under the Ohio Innovation Partnership, plus interest, if the university violates its agreement governing those awards only as the awards and any interest due are collected from a student for repayment. Student awards under the Partnership are those under the Choose Ohio First Scholarship Program.

Furthermore, under the bill, the Chancellor also is prohibited from holding the university responsible for repayment either (1) until it obtains repayment from the student or (2) if the

university certifies collection of repayment to the Attorney General and sends a copy of that certification to the Chancellor. Under current law, the decision to require repayment of awards is left to the discretion of the Chancellor.

The Ohio Innovation Partnership, established and administered by the Chancellor under continuing law, consists of two programs: the Choose Ohio First Scholarship Program and the Ohio Research Scholars Program. Subject to the approval of the Controlling Board, the Chancellor generally makes awards under both programs for initiatives that recruit students and scientists in STEM fields of study (science, technology, engineering, mathematics, medicine, and dentistry). Specifically, the Choose Ohio First assigns scholarships to state universities or NEOMU to recruit Ohio residents as undergraduate, or in some cases graduate, students in STEM or STEM education fields, whereas the Ohio Research Scholars Program awards grants to use in recruiting scientists to the institutions.

### **Project-based learning program models**

(Section 381.590)

The Chancellor must work with state institutions of higher education, Ohio Technical Centers, and industry partners to develop program models that include project-based learning. The models are intended to increase continuing education and noncredit program offerings that lead to a credential in order to help meet the Ohio's in-demand job needs.

### **High School STEM Innovation and Ohio College Scholarship and Retention Program**

(Sections 381.10 and 381.370)

The bill establishes for FY 2020 and FY 2021 the High School STEM Innovation and Ohio College Scholarship and Retention Program. The program must continue development and implementation of recommendations, previously made by the Board of Regents, for an innovation pathway between K-12 education and higher education and career-technical education.<sup>68</sup> It appropriates \$1 million in each fiscal year to the Chancellor to be distributed to Ohio Academy of Science, in collaboration with Entrepreneurial Engagement Ohio for this purpose.

Specifically, the program must (1) conduct STEM innovation and entrepreneurship forums at universities and colleges for high school students and educators, (2) develop an in-school STEM innovation and entrepreneurship program and commercialization plan and STEM business plan competitions, (3) conduct a statewide competition, open to the winners of related local high school competitions, that includes scholarships to attend any Ohio college, university, or post-secondary career center, and (4) conduct a statewide scholarship program that awards at least one scholarship to attend any Ohio college in each Ohio Senate and House district.

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<sup>68</sup> The bill's provision uses the term "vocational schools."

## **Community College Acceleration Program**

(R.C. 3333.052)

The Chancellor, with the assistance of the Department of Job and Family Services, must establish the Community College Acceleration Program to enhance financial, academic, and personal support services to students in need of support from local social service agencies. The program must identify the services and resources available to assist eligible students enrolled in a community college, state community college, technical college, or university branch campus. The Chancellor also must adopt rules to administer the program, including specifying the types of services provided, which may include the following:

- Comprehensive and personalized advisement;
- Career counseling;
- Tutoring;
- Tuition waivers;
- Financial assistance to defray transportation and textbook costs.

## **Eligibility of regionally accredited nonprofit institutions**

(R.C. 1713.032 and 3333.45)

The bill prohibits the Chancellor of from granting or renewing a certificate of authorization to offer higher education courses in Ohio after December 31, 2019, for a regionally accredited private nonprofit institution of higher education that was created by the governors of several states.

The bill also removes “regionally accredited private nonprofit institution of higher education that is created by the governor of several states” from the list of eligible institutions that the Chancellor may recognize or endorse to provide competency-based education programs. (Under the description under current law, the Chancellor recognizes Western Governors University as an eligible institution.)

## **War Orphans Scholarship**

(R.C. 3333.26, 5910.01, 5910.02, 5910.031, 5910.032, 5910.04, 5910.05, 5910.06, 5910.07, and 5910.08; Sections 381.10 and 381.180)

The bill changes the name of the Ohio War Orphans Scholarship to the Ohio War Orphans and Severely Disabled Veterans’ Children Scholarship. Under continuing law, the Ohio War Orphans Scholarship Program awards tuition assistance to the children of deceased and severely disabled veterans who served in the armed forces during a period of declared war or conflict. The bill does not affect the administration of the program, the distribution of scholarships, or the eligibility of any children.

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## DEPARTMENT OF INSURANCE

### Reimbursement for out-of-network care

- Requires an insurer to reimburse an out-of-network provider for emergency services when those services are performed at an in-network facility.
- Prohibits an out-of-network provider from balance billing a patient for nonemergency services when those services are performed at an in-network facility unless certain conditions are met.
- Requires the Superintendent of Insurance to establish alternate dispute resolution procedures to address disputes between the provider and insurer.

### Minimum charges for health services

- Declares void any provision in a contract that requires health care providers to charge minimum amounts for health care services.
- Declares void any provision in a contract that prohibits providers from advertising their rates.

### Pharmacy copayments

- Prohibits health plan issuers and third party administrators from requiring or directing pharmacies to collect cost-sharing beyond a certain amount from individuals purchasing prescription drugs.
- Prohibits issuers and administrators from retroactively adjusting pharmacy claims other than as a result of a technical billing error or a pharmacy audit.
- Prohibits issuers and administrators from charging claim-related fees unless those fees can be determined at the time of claim adjudication.
- Requires pharmacists, pharmacy interns, and terminal distributors of dangerous drugs to inform patients if the cost-sharing required by the patient's plan exceeds the amount that may otherwise be charged and prohibits those persons from charging patients the higher amount.
- Provides for license or certificate of authority suspension or revocation and monetary penalties for failure to comply with the bill.
- Requires the Department of Insurance to create a web form for consumers to submit complaints relating to violations of the bill.

### Direct primary care agreements not insurance

- Provides that certain agreements to provide health care do not constitute insurance.

## **Health care price transparency**

- Adds to current health care price transparency requirements that apply to health care products, services, and procedures.
- Generally requires that certain health care providers and health plan issuers provide to patients or their representatives a cost estimate for nonemergency health care products, services, or procedures before each is provided.
- Requires that cost estimates be provided within certain time limits and in accordance with all laws pertaining to the privacy of patient-identifying information.
- Requires the Department of Insurance to create or procure a connector portal that health care providers may use to transmit information to health plan issuers for their use in generating cost estimates.
- Grants qualified immunity from civil liability to a health care provider or health plan issuer that provides cost estimates in accordance with the bill.
- Authorizes the Superintendent of Insurance, the Department of Health, the Department of Medicaid, or the relevant regulatory board to impose administrative remedies on a health plan issuer or health care provider who fails to comply with the bill's health care price transparency provisions.
- Specifies that a contract clause prohibiting a health care provider or health plan issuer from providing patients with quality or cost information is invalid and unenforceable.
- Authorizes any member of the General Assembly to intervene in litigation that challenges the bill's health care price transparency provisions or the existing law pertaining to price transparency.
- Specifies that it is the General Assembly's intent in enacting the bill's health care price transparency provisions to provide patients with the information they need to make informed choices regarding their health care, to maximize health care cost savings for all Ohio residents, and to reduce the burden of health care expenditures on government entities, including Medicaid.

## **Motor vehicle tire or wheel road hazard contracts**

- Excludes motor vehicle tire or wheel road hazard contracts from the provisions governing motor vehicle ancillary product protection contracts.
- Maintains a motor vehicle tire or wheel road hazard contract as a consumer transaction for the purposes of the Consumer Sales Practices Act.

## Reimbursement for out-of-network care

(R.C. 3902.50 and 3902.51)

### Emergency services

The bill requires a health plan issuer to reimburse an out-of-network health care practitioner for emergency services when the services are provided to a person covered by a health benefit plan at a hospital that is in the health benefit plan's provider network. A provider network might include a hospital but not certain individual health care practitioners at that hospital. In emergency care situations, covered persons are not always able to request only in-network practitioners give them care. Under existing law, if a person receives emergency care at an in-network hospital by an out-of-network practitioner, the health plan issuer might not reimburse the practitioner (some plans allow for such reimbursement, but others do not), meaning the covered person must pay the entire cost of the services. Under the bill, the issuer must reimburse the practitioner the greater of the following:

- The average contracted rate for the same service delivered by an in-network health care practitioner in the same or similar specialty in the same geographic area; or
- The amount the health plan issuer would pay under the covered person's health benefit plan for out-of-network emergency services.

The bill further provides that a covered person's cost-sharing amount for the services described above cannot be greater than if the services were provided by an in-network practitioner.

As used in this provision, "**emergency services**" means all of the following:

- Medical screening examinations undertaken to determine whether an emergency medical condition exists;
- Treatment necessary to stabilize an emergency medical condition;
- Appropriate transfers undertaken prior to an emergency medical condition being stabilized.

### Nonemergency services

The bill prohibits an out-of-network health care practitioner from billing a covered person for the difference between the health plan issuer's out-of-network reimbursement and the practitioner's charge for nonemergency services provided at an in-network hospital (balance billing) unless all of the following conditions are met:

- The practitioner informs the person that the practitioner is not in the person's plan network.
- The practitioner provides the person a good faith estimate of the cost of the services, including the practitioner's charge, the estimated reimbursement by the health plan issuer, and the covered person's responsibility. This estimate must contain a disclaimer

that the covered person is not required to obtain the health care service at that location or from that practitioner.

- The person affirmatively consents to receive the services.

For any nonemergency services described above, the bill explicitly allows the health plan issuer to reimburse the practitioner at either of the following rates at the issuer's discretion:

- The average contracted rate for the same service delivered by an in-network health care practitioner in the same or similar specialty in the same geographic area; or
- The amount the health plan issuer would pay under the covered person's health benefit plan for out-of-network emergency services.

### **Alternative dispute resolution**

The bill requires the Superintendent of Insurance to adopt alternative dispute resolution (ADR) procedures for complaints brought by health care practitioners against health plan issuers relating to reimbursement for the emergency and nonemergency services described above. The Superintendent must require that parties pursue mediation before arbitration. The bill allows a practitioner to request ADR if it believes that the health plan issuer's offer of reimbursement is less than the amount the issuer would reimburse an in-network practitioner in the same or similar specialty in the same geographic area.

### **Minimum charges for health services**

(R.C. 3902.31)

The bill declares void any provision in a contract between a third-party payer (any person that reimburses another for covered health services, such as an insurer or third-party administrator) and a provider (a facility or individual that provides health care services) that does either of the following:

- Establishes a minimum amount that the provider is required to charge an individual for a health service when that individual pays in full for the service; or
- Prohibits a provider from advertising the provider's rates for a service.

Under the bill, such a contract may, however, prohibit a provider from disclosing or advertising contractually agreed upon reimbursement rates.

The bill's requirements apply to all new contracts between a third-party payer and a provider entered into on or after the section's effective date. For contracts in existence prior to and continuing through the section's effective date, the requirements apply three years after that effective date or at the expiration or renewal of the contract, whichever occurs first.

### **Pharmacy copayments**

(R.C. 1739.05, 1751.92, 3923.87, 3959.12, 3959.20, and 4729.48)

The bill prohibits a health plan issuer, a term that includes pharmacy benefit managers and other third-party administrators, from requiring cost-sharing in an amount greater than the lesser of the following from an individual purchasing a prescription drug:

- The amount an individual would pay if the drug were purchased without coverage under a health benefit plan;
- The net reimbursement paid to the pharmacy by the health plan issuer.

Under the bill, a health plan issuer also is prohibited from directing a pharmacy to collect cost-sharing in an amount greater than the lesser of those amounts in relation to prescription drugs.

The following table describes how this requirement might work in practice for a health benefit plan having default cost-sharing in the form of a copay of \$10 (amounts are for illustrative purposes only):

Health benefit plan default contractual copay	Pharmacy's net reimbursement for drug	"Without insurance" price for drug	Maximum amount patient would be required to pay for drug
\$10	\$200	\$300	\$10
\$10	\$8	\$2	\$2
\$10	\$4	\$6	\$4

## Prohibited adjustments and fees

The bill prohibits a health plan issuer from retroactively adjusting a pharmacy claim for reimbursement for a prescription drug unless the adjustment resulted from either a technical billing error or a pharmacy audit.

Also, under the bill, a health plan issuer is prohibited from charging a fee related to a claim unless the amount of the fee can be determined at the time of claim adjudication.

## Duties of pharmacists, interns, and terminal distributors

When filling a prescription, if a pharmacist, pharmacy intern, or terminal distributor of dangerous drugs has information indicating that the cost-sharing amount required by the patient's health benefit plan exceeds the amount that may otherwise be charged for the same drug, this person must inform the patient of this fact and the patient must not be charged the higher amount.

## Enforcement

### Health plan issuers

The bill provides that if a pharmacy benefit manager or other administrator knowingly violates its provisions, its license may be suspended for a period not to exceed two years, revoked, or not renewed by the Superintendent.

If a health insuring corporation or a multiple employer welfare arrangement fails to comply with the bill's provisions, the Superintendent may suspend or revoke its certificate of authority.

It appears that if a sickness and accident insurer or, possibly, public employee benefit plan, fails to comply with the bill, the insurer or plan would be subject to a forfeiture of \$1,000 to \$10,000.

The Insurance Law contains a catchall penalty that requires, in the absence of any other penalty, an association, company, or corporation to forfeit and pay not less than \$1,000 nor more than \$10,000 to the Superintendent of Insurance for violating any law relating to the Superintendent or any Insurance Law. It appears that R.C. 3923.87, enacted by the bill, would constitute an Insurance Law. But, it is uncertain whether this provision applies to public employee benefit plans.

### **Pharmacists, interns, and terminal distributors**

If a pharmacist or pharmacy intern violates the bill's provisions, the State Board of Pharmacy may take any of the following actions against that individual:

- Revoke, suspend, restrict, limit, or refuse to grant or renew a license;
- Reprimand or place the license holder on probation; or
- Impose a monetary penalty or forfeiture not to exceed \$500.

If a terminal distributor of dangerous drugs violates the bill's provisions, the State Board of Pharmacy may take any of the same actions against the distributor as it may take against a pharmacist or pharmacy intern, except that a monetary penalty or forfeiture may not exceed \$1,000.

### **Web-based complaint form**

The bill requires the Department of Insurance to create a web form that consumers can use to submit complaints relating to violations of the bill.

### **Affected plans**

The bill's requirements apply to contracts for pharmacy services and to health benefit plans entered into or amended on or after the bill's effective date.

### **Direct primary care agreements not insurance**

(R.C. 3901.95)

The bill provides that an agreement that meets all of the following conditions is not insurance and is not subject to the insurance laws of Ohio:

- The agreement is in writing.
- It is between a patient, or that patient's legal representative, and a health care provider and is related to services to be provided in exchange for the payment of a fee to be paid on a periodic basis.

- It allows either party to terminate the agreement, as specified in the agreement, through written notification.
- It permits termination to take effect immediately upon the other party's receipt of the notification or not more than 60 days after receipt.
- It does not impose a termination penalty or require payment of a termination fee.
- It describes the health care services to be provided under the agreement and the basis on which the periodic fee is to be paid.
- It specifies the periodic fee required and any additional fees that may be charged and authorizes those fees to be paid by a third party.
- It prohibits the health services provider from charging or receiving any fee other than the fees prescribed in the agreement for the services prescribed in the agreement.
- It conspicuously and prominently states that the agreement is not health insurance and does not meet any individual health insurance mandate that may be required under federal law.

## **Health care price transparency**

(R.C. 3962.01 to 3962.15 and 5164.65; Section 751.30)

### **Cost estimate requirement**

The bill generally requires that a patient or the patient's representative be given a reasonable, good faith cost estimate for each health care product, service, or procedure a patient is to receive from a health care provider. This requirement does not apply when a patient seeks emergency services, a health care provider believes that a delay in care associated with fulfilling this requirement could harm the patient (see "**Delay in care,**" below), or if any of the following are the case:

- When the only service a health care provider will provide is an office visit;
- When the patient was scheduled for only an office visit but during the visit it was determined that the patient needs a product, service, or procedure during that single visit; or
- When the patient seeks care without an appointment and without a prescription or order from another provider.

In the event a patient schedules or presents for health care products, services, or procedures in addition to an office visit but the health care provider is unable to estimate the level of office visit to be provided, or under the circumstances described in (3), above, the provider may enter a general designation for an unknown level of office visit. The estimate must list the general designation and price range for all levels of office visits.

The bill's requirements concerning price transparency apply notwithstanding current law<sup>69</sup> requiring specified health care facilities and professionals to provide a reasonable, good faith estimate of various costs before nonemergency products, services, or procedures are provided.

### **Scope**

The bill's requirements concerning price transparency apply to health care providers and health plan issuers. "Health care provider" is any individual or facility licensed, certified, or accredited under the following laws:

- Nursing Home and Residential Care Facility Law;
- Hospital Law;
- Dentist and Dental Hygienist Law;
- Optometrist and Optical Dispenser Law;
- Physician and Limited Practitioner Law;
- Psychologist Law;
- Chiropractor Law;
- Hearing Aid Dealer Law;
- Speech-Language Pathologist and Audiologist Law;
- Occupational Therapist, Physical Therapist, and Athletic Trainer Law;
- Counselor, Social Worker, and Marriage and Family Therapist Law; and
- Orthotist, Prosthetist, and Pedorthist Law.

Hospitals, hospital systems, and health care providers owned by a hospital or hospital system are subject to the bill's requirements beginning on the bill's effective date. All other health care providers are subject to the requirements beginning on March 1, 2020.

"Health plan issuer" is an entity that is subject to Ohio insurance laws and rules or to the jurisdiction of the Superintendent of Insurance and that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including a sickness and accident insurance company, a health insuring corporation, a Medicaid managed care organization, and, if the services are to be provided on a fee-for-service basis, the Medicaid program.

### **Who provides a cost estimate**

Under the bill, a health care provider must provide the cost estimate if the patient is uninsured. If the patient is insured, the health care provider may elect to provide the estimate or defer to the patient's health plan issuer to provide the estimate. In any case, the provider

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<sup>69</sup> R.C. 5162.80.

must notify the patient or the patient's representative who will provide the cost estimate. The provision of a cost estimate by the provider does not preclude the issuer from also providing a cost estimate to the patient or the patient's representative.

Each health care provider or health plan issuer that provides a cost estimate must ensure that the estimate is provided in a manner that complies with all applicable state and federal laws pertaining to the privacy of patient-identifying information.

## **When cost estimate is provided by the health care provider**

### **Content**

The bill requires a cost estimate provided by a health care provider to contain all of the following:

- **Total amount to be charged:** The total amount the provider will charge the patient (if the patient is paying out-of-pocket) or the patient's health plan issuer for each health care product, service, or procedure the patient is to receive, inclusive of facility, professional, and other fees, along with a short description and the applicable CPT code<sup>70</sup> for the product, service, or procedure or, if no CPT code exists, another identifier the health plan issuer requires;

- **Reimbursement from health plan issuer:** If the patient is insured under a health benefit plan, both of the following:

--A notation of whether the provider is in-network or out-of-network for the patient;

--The amount the health care provider expects to receive from the health plan issuer for the product, service, or procedure. The amount specified in the estimate must be the amount the health plan issuer has agreed to reimburse the provider for the product, service, or procedure under a contract with the provider or the applicable government pay scale, if any.

- **Patient's responsibility:** The difference, if any, that the patient or other party responsible for the patient's care would be required to pay to the provider for the product, service, or procedure;
- **Uninsured out-of-pocket rate:** If the patient is not insured under a health benefit plan, the total amount the provider will charge the patient if the patient is paying out-of-pocket for each product, service, or procedure the patient is to receive, inclusive of facility, professional, and other fees, along with a short description and the applicable CPT code for the product, service, or procedure or, if no CPT code exists, another identifier that a health plan issuer would normally require.

However, if a patient is to receive a health care product, service or procedure in a hospital, the hospital is responsible for providing one comprehensive cost estimate to the

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<sup>70</sup> "CPT code" stands for "current procedural terminology code," which is the code assigned to a product, service, or procedure and published by the American Medical Association in its CPT code set.

patient or the patient's representative within the applicable time frame (see "**Timing**," below). The comprehensive cost estimate must contain all information in (1) through (4), above, associated with products, services, or procedures to be provided by the hospital or its employees, as well as by providers who are independent contractors of the hospital. A health care provider who is an independent contractor must submit to the hospital all CPT codes or other identifiers the hospital needs to fulfill its responsibility to provide a cost estimate.

The bill also requires that a cost estimate be based on information provided at the time the appointment is made for the health care product, service, or procedure. The bill defines "the time that an appointment is made" as generally meaning any of the following:

--The point in time that an appointment for a health care product, service, or procedure is made;

--The point in time that a health care provider receives a prescription or order from another provider to provide a health care product, service, or procedure to the patient; or

--The point in time that a patient, pursuant to a prescription or order from the patient's health care provider, presents at the office or facilities of another provider to receive, on a walk-in basis, the product, service, or procedure.

(If, however, the point in time in which an event described above occurs is before 9 a.m. on a particular business day, the point in time may, instead, be considered to be 9 a.m. that same day. If the point in time in which an event described above occurs is after 5 p.m. on a particular business day, or occurs on a day that is not a business day, the point in time must, instead, be considered to be 9 a.m. on the next business day.)

The estimate need not take into account any information that subsequently arises, such as unknown, unanticipated, or subsequently needed health care products, services, or procedures provided for any reason after the initial appointment. Only one estimate is required per visit.

If specific information, such as the health care provider who will be providing the health care product, service, or procedure, is not readily available at the time the appointment is made, the provider may base the "total amount to be charged" (described in (1), above) on either (a) an average estimated charge for the product, service, or procedure that is submitted to the patient's health plan issuer or (b) the average out-of-pocket price for the product, service, or procedure paid by patients who are uninsured.

## **Timing**

In general, the bill requires that a cost estimate be provided not later than 24 hours after the time the appointment for the health care product, service, or procedure is made<sup>71</sup> or, if the product, service, or procedure is to be provided less than 24 hours after the appointment is made, at the time the patient presents to receive the product, service, or procedure.

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<sup>71</sup> "The time that an appointment is made" has a specific meaning that is defined in R.C. 3962.011 (see "**Content**," above).

If, however, the health care product, service, or procedure is to be provided by one or more independent contractors of the provider, the cost estimate must be provided not later than 36 hours after the time the appointment for the product, service, or procedure is made or, if the product, service, or procedure is to be provided less than 36 hours after the appointment, at the time the patient presents to receive the product, service, or procedure.

A provider may elect to send the cost estimate to the patient or the patient's representative by regular mail if the health care product, service, or procedure will be provided more than three days from the time the estimate is generated. If this election is made, the provider must mail the cost estimate not later than the following, as applicable:

--If the provider would otherwise, as described above, be required to provide the estimate not later than 24 hours after the time the appointment is made or at the time the patient presents to receive the product, service, or procedure, the estimate must be mailed not later than 24 hours after the time the appointment is made;

--If the provider would otherwise, as described above, be required to provide the estimate 36 hours after the time the appointment is made or at the time the patient presents to receive the product, service, or procedure, the estimate must be mailed not later than 36 hours after the time the appointment is made.

### **Transmission of necessary information to the health plan issuer**

If the patient is insured, the bill requires that the health care provider, not later than 24 hours after an appointment is made, transmit to the patient's health plan issuer all of the following: the patient's name; the patient's identification number (if one is assigned); the CPT code or other identifier the issuer requires for each health care product, service, or procedure the patient is to receive; the provider's identification number; the provider's charge for each product, service, or procedure the patient has scheduled that will be delivered by a provider is not in-network for the patient's health benefit plan; notification that the provider is providing the cost estimate to the patient or the patient's representative; and any other information the issuer requires from the provider.

If the provider is to provide a product, service, or procedure pursuant to a prescription or order from another provider, the provider who received the prescription or order must transmit the information described above to the patient's health plan issuer not later than 24 hours after the receiving the prescription or order or, if received when the provider's office or facility is closed, 24 hours after the office or facility reopens.

### **Health plan issuer's responsibility to respond to the provider**

The bill requires a health plan issuer, not later than five minutes after receiving the information transmitted from the provider, as described, to give to the provider all information the provider needs to generate a cost estimate.

If a health plan issuer does not provide the necessary information, the health care provider must notify the patient of this fact. The provider may note in the estimate that health plan issuer information was not provided as required by law. In this case, the provider may specify only the "total amount to be charged" (see (1) in "**Content**," above) and, at the

provider's discretion, the "reimbursement from health plan issuer" (see (2) in "**Content**," above). If the information necessary to complete the estimate is subsequently received and an updated estimate can be provided within the applicable time limit (see "**Timing**," above), the provider must provide the updated estimate.

### **Disclaimer**

Under the bill, the cost estimate must contain a disclaimer that the information is only an estimate based on facts available at the time it was prepared and that the amounts estimated could change as a result of unknown, unanticipated, or subsequently needed health care products, services, or procedures; changes to the patient's health benefit plan; or other changes. The provider has discretion in how the disclaimer is expressed.

### **Updated estimate**

If the patient's responsibility or the uninsured out-of-pocket rate (see (3) and (4) in "**Content**," above) changes by more than 10% before the patient initially presents for the health care product, service, or procedure, the health care provider must supply to the patient an updated estimate within the applicable time limit (see "**Timing**," above).

### **Form**

A cost estimate may be provided verbally or in electronic or written form and must be easy to understand. If the estimate is provided in electronic or written form, all of the following apply:

- It must be provided in large font;
- Unless the estimate contains more than nine CPT codes or other identifiers, it must be limited to one page; and
- The subject line of the communication containing the estimate must state, "Your Ohio Healthcare Price Transparency Estimate."

### **Option to decline**

The bill authorizes a patient to decline to receive a cost estimate from a health care provider.

### **Patient's responsibility for payment**

The bill specifies that none of the price transparency provisions prohibit a health care provider or health plan issuer from collecting payment from a patient for an administered health care product, service, or procedure regardless of whether the patient does or does not receive a cost estimate before the product, service, or procedure is received.

### **Election for health plan issuer to provide estimate**

If a health care provider elects for a patient's health plan issuer to provide the cost estimate in lieu of the provider, the provider must notify the issuer of this election through the

issuer's portal required by existing law<sup>72</sup> or, beginning January 1, 2020, the connector portal that the Department of Insurance must establish under the bill (see "**Connector portal**," below). In addition, the provider generally must also transmit to the health plan issuer through the appropriate portal all of the following:

- The patient's name;
- The patient's identification number, if one has been assigned;
- The CPT code or other identifier the health plan issuer requires for each health care product, service, or procedure the patient is to receive;
- The provider's identification number;
- The charge for each product, service, or procedure the patient has scheduled that will be delivered by a provider who is out-of-network for the patient's health benefit plan; and
- Any other information the health plan issuer requires from the provider.

The portal must also be able to transmit a copy of this information directly to the patient to whom the information pertains. (A health plan issuer must modify its portal as necessary to accommodate the information transmission.) Generally, the transmission must occur not later than 24 hours after the time the appointment for the health care product, service, or procedure is made. If, however, the product, service, or procedure is to be provided by one or more independent contractors of the provider, the transmission must occur not later than 36 hours after the time the appointment is made.

If a health care provider attests to the Department of Insurance that it is unable to transmit information through a health plan issuer's portal or through the connector portal, the bill authorizes the provider to transmit the information by facsimile or telephone call to the Department. The Department must enter the information on the provider's behalf in the relevant portal. Under these circumstances, the provider may compile patient information and transmit it to the Department in a batch once every business day.

## **When cost estimate is provided by the health plan issuer**

### **Content**

When a health plan issuer is to provide a cost estimate to the patient or the patient's representative, that cost estimate must contain (1) the same information that is to be included in a cost estimate provided by a provider (see "**When cost estimate is provided by the health care provider**," "**Content**," above) and (2) the average rate the health plan issuer reimburses in-network providers for the same health care product, service, or procedure.

The cost estimate must be based on information provided at the time the appointment is made. In addition, the estimate need not take into account any information that subsequently arises, such as unknown, unanticipated, or subsequently needed health care

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<sup>72</sup> R.C. 1751.72, 3923.041, or 5160.34, none in the bill.

products, services, or procedures provided for any reason after the initial appointment. Only one estimate is required per visit.

If specific information, such as the health care provider who will be providing the health care product, service, or procedure, is not readily available at the time the appointment is made, the provider may transmit that a provider is unknown and the health plan issuer may base the estimate on an average estimated charge submitted to the health plan issuer for the product, service, or procedure at that facility or location.

### **Form**

The bill requires the health plan issuer to ask the patient or the patient's representative whether the patient would prefer to receive cost estimates by electronic mail or other electronic means or by regular mail. The issuer must send cost estimates by the means elected.

The cost estimate must be provided in large font, be easy to understand, and, unless the estimate contains more than nine CPT codes or other identifiers, be limited to one page. The subject line of the communication containing the estimate must state, "Your Ohio Healthcare Price Transparency Estimate."

### **Timing**

If the patient or the patient's representative elects to receive cost estimates by electronic mail or other electronic means, the estimate must be sent automatically, but not later than five minutes after the health plan issuer has received the necessary information from the health care provider. If the means selected is by regular mail, the estimate must be mailed not later than 48 hours after the issuer has received the necessary information from the health care provider if the health care product, service, or procedure will be provided more than three days from the time the estimate is generated. For purposes of calculating the 48 hours, hours on a Saturday, Sunday, or legal holiday are excluded.

If no election is made, the estimate must be sent as follows:

--If the health care product, service, or procedure will be provided more than three days from the time the estimate is generated, by regular mail;

--If the health care product, service, or procedure will be provided less than three days from the time the estimate is generated and the electronic mail address of the patient or the patient's representative is on file with the issuer, by electronic mail.

The bill specifies that a health plan issuer must be held harmless if the electronic mail address of the patient or the patient's representative on file with the issuer is incorrect, invalid, or no longer used.

### **Health care provider's responsibility to respond to the issuer**

The bill specifies that if a health care provider does not transmit to the health plan issuer the information necessary to generate the cost estimate, the issuer must send to the patient or the patient's representative, by the same means used to send estimates, a notice that the provider failed to transmit the necessary information as required by law and, consequently, a cost estimate could not be generated. This action must be taken in the event a

provider gives the issuer any indication that receipt of a health care product, service, or procedure is scheduled, such as through precertification.

### **Disclaimer**

A cost estimate must contain both of the following:

- A disclaimer that the information is only an estimate based on facts available at the time it was prepared and that the amounts estimated could change as a result of other factors; unknown, unanticipated, or subsequently needed health care products, services, or procedures; or changes to the patient's health benefit plan. (The health plan issuer has discretion in how the disclaimer is expressed.)
- If applicable, a notation that a specific health care provider is out-of-network for the enrollee.

### **Updated estimate**

If the amount in a cost estimate changes by more than 10% before the patient presents for the health care product, service, or procedure, the health plan issuer must supply to the patient or patient's representative an updated estimate by the means the patient or the patient's representative has elected and within the applicable time limit (see "**Timing**," above).

### **Option to decline**

The bill authorizes a patient to decline to receive a cost estimate from a health plan issuer.

### **Patient's responsibility for payment**

The bill specifies that a patient is responsible for payment for an administered health care product, service, or procedure even if the patient does not receive a cost estimate from the health plan issuer before the product, service, or procedure is received.

### **CPT codes and charge information**

The bill requires a health care provider, regardless of who provides the cost estimate to the patient or the patient's representative, to give the patient or representative the CPT code or other identifier the patient's health plan issuer requires for each health care product, service, or procedure the patient is to receive along with the "total amount to be charged" (see "**When cost estimate is provided by the health care provider**," "**Content**," above) associated with each code or other identifier. The provider has the following options for fulfilling this requirement:

--The provider may send this information to the patient or the patient's representative through electronic means.

--The provider may send this information to the patient or the patient's representative by regular mail if the health care product, service, or procedure will be provided more than three days from the time the appointment for the product, service, or procedure is made.

--The provider may provide to the patient or the patient's representative a website address where that individual may enter each code or identifier and retrieve the charge information. If this option is elected and the provider transmits the codes or identifiers to the patient's health plan issuer through the issuer's portal, the provider may have the portal generate an automatic electronic mail message to the individual with instructions on how to retrieve charge information through the website.

--If the product, service, or procedure is to be provided less than three days from the time the appointment for the product, service, or procedure was made, the provider may give the information to the patient or the patient's representative at the time the patient presents for the product, service, or procedure to be received.

Regardless of the manner in which the provider has elected to fulfill this requirement, the provider must fulfill the requirement in accordance with all applicable state and federal laws pertaining to the privacy of patient-identifying information.

The bill requires that the CPT codes or other identifiers and charge information generally be given to the patient or the patient's representative not later than 24 hours after the time the appointment is made or, if the product, service, or procedure is to be provided less than 24 hours after the appointment is made, at the time the patient presents to receive the product, service, or procedure.

If, however, the health care product, service, or procedure is to be provided by one or more independent contractors of the provider, the CPT codes or other identifiers and charge information must be given to the patient or the patient's representative not later than 36 hours after the time the appointment for the product, service, or procedure is made or, if that item is to be provided less than 36 hours after the appointment is made, at the time the patient presents to receive the product, service, or procedure.

### **Delay in care**

In the event a health care provider believes that a delay in care associated with fulfilling the cost estimate requirement could harm the patient, the bill requires the provider to inform the patient or the patient's representative of this fact and provide the health care product, service, or procedure to the patient. After the product, service, or procedure is provided, the provider must submit to the Department of Insurance a report, in the form and manner prescribed by the Department, detailing why the provider believed that a delay in care could harm the patient. Annually, the Department must analyze the reports and prepare a summary of findings. Each summary must be submitted to the Governor and General Assembly.

### **Connector portal**

The bill requires the Department of Insurance, not later than January 1, 2020, to create or procure a connector portal that health care providers may use to transmit information required by the health care price transparency provisions of the bill to health plan issuers. The Department must ensure that the computer systems and software used in operating the connector portal are compatible with the computer systems and software manufactured by various vendors and used by health care providers and health plan issuers. In doing so, the

Department must engage in active efforts to share with those vendors any information necessary to operate the connector portal in a manner that accomplishes both of the following, while also ensuring that the portal maintains the privacy of patient-identifying information in accordance with all applicable state and federal laws:

--Grants health care providers a means by which they may instantly transmit information and populate data fields that health plan issuers need to generate cost estimates; and

--Grants health plan issuers a means by which they may retrieve information directly from the connector portal in a seamless manner.

### **Qualified immunity**

The bill specifies that a health care provider or health plan issuer that provides a cost estimate in accordance with the bill's price transparency provisions is not liable in a civil action for injury, death, or loss to person or property that allegedly arises from an act or omission associated with providing the estimate if the provider or issuer made a good faith effort to collect the information necessary to generate the estimate and a good faith effort to provide the estimate to the patient or the patient's representative.

### **Sanctions for noncompliance**

#### **Alternatives**

If, after completing an examination, the Superintendent of Insurance, Department of Health, Department of Medicaid, or appropriate regulatory board, as applicable, finds that a health plan issuer or health care provider has committed a series of violations that, taken together, constitute a consistent pattern or practice of violating the bill's requirements to provide cost estimates to patients or their representatives, the bill permits the Superintendent or relevant department or board to levy a monetary penalty in a certain amount (see "**Fine amounts**," below), order the issuer or provider to cease and desist from engaging in violations, or both.

Before imposing an administrative remedy, the Superintendent or relevant department or board must give written notice to the issuer or provider informing that party of the reasons for the finding, the administrative remedy that is proposed, and the opportunity to submit a written request for an administrative hearing regarding the finding and proposed remedy. If a hearing is requested, the Superintendent or relevant department or board must conduct it in accordance with the Administrative Procedure Act.

#### **Fine amounts**

The bill specifies that a finding by the Superintendent or relevant department or board that a health plan issuer or health care provider has committed a series of violations that, taken together, constitutes a consistent pattern or practice of violating the bill's requirements to provide cost estimates to patients or their representatives constitutes a single offense for purposes of levying fines.

Fine Amounts for Cost Estimate Violations		
	When Imposed by Superintendent or Department	When Imposed by a Regulatory Board
First Offense	Not more than \$100,000	Not more than \$10,000
Second Offense	Not more than \$150,000	Not more than \$15,000
Third or Subsequent Offense	Not more than \$300,000	Not more than \$30,000

In determining the amount of a fine to be levied within the limits specified in the table, the Superintendent or relevant department or board must consider the following factors:

- The extent and frequency of the violations;
- Whether the violations were due to circumstances beyond the control of the health plan issuer or health care provider;
- Any remedial actions taken by the health plan issuer or health care provider;
- The actual or potential harm to others resulting from the violations;
- If the health plan issuer or health care provider knowingly and willingly committed the violations;
- The financial condition of the health plan issuer or health care provider;
- Any other factors the Superintendent or relevant department or board considers appropriate.

The amounts collected from levying fines must be paid into the state treasury to the credit of the General Revenue Fund.

### **Invalid and unenforceable contract clauses**

The bill specifies that a contract clause that does any of the following is invalid and unenforceable:

- Prohibits a health care provider or health plan issuer from providing a patient with information that facilitates the patient's ability to choose a health care provider based on quality or cost, including providing a patient with cost and quality information for alternative providers when the patient demonstrates an intention to see a particular provider;
- Prohibits a health plan issuer from excluding any particular health care provider from a list or other resource that ranks providers based on quality or cost and is intended to help patients make decisions regarding their care; or
- Restricts patient access to quality or cost information provided by a health care provider or health plan issuer.

## Rules

The bill authorizes all of the following to adopt rules necessary to carry out the bill's price transparency provisions:

--The Superintendent of Insurance;

--The Director of Health;

--The Medicaid Director; and

--Any other relevant department, agency, board, or other entity that regulates, licenses, or certifies a health care provider or health plan issuer.

All rules must be adopted in accordance with the Administrative Procedure Act.

## Applicability to Medicaid

The bill requires the Medicaid program to comply with the bill's price transparency provisions in the same manner as a health plan issuer. This requirement extends to Medicaid managed care organizations.

## Intervening in litigation

The bill authorizes any member of the General Assembly to intervene in litigation that challenges the bill's price transparency provisions as well as provisions on price transparency in existing law (R.C. 5162.80). The existing law requirements never went into effect because the statute establishing the requirements has been the subject of ongoing litigation.<sup>73</sup>

## Motor vehicle tire or wheel road hazard contracts

(R.C. 3905.426)

The bill excludes motor vehicle tire or wheel road hazard contracts from the definition of "motor vehicle ancillary product protection contract," thereby exempting motor vehicle tire or wheel road hazard contracts from the requirements imposed on motor vehicle ancillary product protection contracts.

A motor vehicle ancillary product protection contract is a contract or agreement for the repair of specific components of a vehicle when such a contract is paid for via a means other than the purchase of a vehicle and is effective only for a specified period of time. An example of such a contract would be a two-year agreement regarding the replacement of lost key fobs that is purchased after the purchase of the vehicle in question. A motor vehicle tire or wheel road hazard contract is an agreement to replace or repair tires damaged because of a road hazard.

Under current law, motor vehicle ancillary product protection contracts are subject to certain requirements, including being covered by a separate reimbursement insurance policy. A

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<sup>73</sup> See Kaitlyn Schroeder, "State Appeals Judge's Decision to Block Health Price Law," *Dayton Daily News* (March 18, 2019), available at <https://www.daytondailynews.com/news/state-appeals-judge-decision-block-health-price-law/rmm2FzohEvSZpXTcS37ELK/>.

reimbursement insurance policy is a policy of insurance where the covered individual must seek reimbursement from the insurer for a covered loss, as opposed to the insurer paying the loss directly.

The bill also maintains motor vehicle tire or wheel road hazard contracts as a consumer contract for purposes of the Consumer Sales Practices Act (CSPA). Under current law, motor vehicle ancillary product protection contracts are considered to be consumer transactions under the CSPA, which provides certain protections to consumers against unfair or deceptive practices.

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## DEPARTMENT OF JOB AND FAMILY SERVICES

### Child Support

#### Child support changes

- Modifies the quadrennial review of the basic child support schedule by the Child Support Guideline Advisory Council, including enacting new economic factors that must be considered, requiring online publication of Council reports and information, and permitting public input.
- Prohibits a court or child support enforcement agency (CSEA) from determining voluntary unemployment or underemployment of, or imputing income to, an incarcerated parent.
- Increases the amount the Ohio Department of Job and Family Services (ODJFS) must claim from the processing charge imposed for Title IV-D child support cases to \$35 (from \$25), if it collects at least \$550 (up from \$500) of child support for an obligee who never received Title IV-A assistance.
- Makes various changes to the provisions of law on health care coverage for a child who is the subject of a child support order.
- Requires ODJFS to adopt rules to align support order establishment and modification requirements with federal law and to establish criteria for CSEAs to initiate contempt of court actions in Title IV-D cases.

### Child Care

#### Background checks

- Revises existing child care background check requirements by requiring the ODJFS Director (rather than other persons) to request criminal records checks before licensure, certification, approval or employment and every five years thereafter for various providers.
- Requires the ODJFS Director to search the uniform statewide automated child welfare information system for reports of abuse or neglect regarding those providers.
- Requires the ODJFS Director to inspect the state and national registries of sex offenders for those providers.
- Repeals the authority of a licensed child care provider to conditionally employ an individual while awaiting the results of a criminal records check.

#### Provider licensing

- Separates homeless child care from protective child care.
- Authorizes the provision of special needs child care until age 18.

- Specifies that a license may be suspended without prior hearing if ODJFS determines that the owner or licensee does not meet criminal records check requirements.
- Authorizes a child day-care center or family day care home whose license was suspended without prior hearing to request an adjudicatory hearing before ODJFS, rather than appeal the suspension to a county court of common pleas as under current law.
- Eliminates the requirement that, when ODJFS initiates the revocation of a license suspended without prior hearing, the suspension must continue until the revocation process is complete.
- Adds family day-care homes, approved day camps, and employees to the law prohibiting discrimination in the enrollment of children in child care on the basis of race, color, religion, sex, or national origin and prohibits discrimination on the basis of disability.

### **Publicly funded child care**

- Requires that a child day camp **both** meet ODJFS standards and be certified by the American Camp Association to be approved to provide publicly funded child care.
- Increases to two years (from one year) the length of time that a certificate to provide publicly funded child care as an in-home aide remains valid.
- Prohibits the following from certification as an in-home aide: (1) the owner of child day-care center or family day care home whose ODJFS-issued license was revoked within the five years prior to seeking certification and (2) an in-home aide whose certificate was revoked within the five years prior to seeking certification.
- Eliminates the requirement that the ODJFS Director establish hourly reimbursement ceilings for certified in-home aides.
- Removes the requirement that ODJFS contract with a third party to conduct a market rate survey for use in establishing child care provider reimbursement ceilings and payments.
- Eliminates from statute eligibility requirements for child care administrators and staff members and instead requires the ODJFS Director to establish those qualifications in rule.
- Exempts certain providers, including certified in-home aides and approved child day camps, from the requirement that, beginning July 1, 2020, publicly funded child care be provided only by a provider rated through the Step Up to Quality Program.
- Specifies that the percentages of early learning and development programs that must be rated at the third highest tier or above in the Step Up to Quality Program do not apply to specified licensed child care programs, including those operating only during summer breaks or evening and weekend hours.

## **Child Welfare**

### **Criminal records checks, out-of-home care**

- Requires that criminal records checks for entities that employ persons responsible for a child's care in out-of-home care include FBI fingerprint checks.
- Removes such an entity's authority to employ an applicant conditionally while the criminal records check is pending.

### **Background check expansion for child welfare employment**

- Requires a search or report, or request for a search, of prospective specified officers and administrators in the following databases: the Uniform Statewide Automated Child Welfare Information System (SACWIS), the System for Award Management, the Findings for Recovery, and the U.S. Department of Justice National Sex Offender (NSO) website.
- Requires a search of prospective foster and adoptive parents, and all persons 18 years old or older residing with the prospective foster and adoptive parents, to be conducted in the NSO website.
- Requires a search of prospective staff to be conducted in the NSO website and SACWIS.
- Grants the ODJFS Director authority to adopt rules to implement and execute the background check expansion.
- Prohibits ODJFS from compensating a recommending agency for a foster caregiver's foster home certification training that the private child placing agency or a private noncustodial agency requires, if it is in addition to the minimum continuing training required by ODJFS rules under the bill.

### **Foster caregiver as mandatory reporter**

- Makes foster caregivers mandatory reporters of child abuse or neglect.

### **Preteen placement in children's crisis care facility**

- Eliminates the 72-hour placement limit and 14-consecutive-day waiver in favor of a 14-consecutive-day limit for a public children services agency or private child placing agency to place a preteen in a children's crisis care facility.

### **Juvenile court hearings**

- Applies the law governing juvenile court hearings and reviews to a kinship caregiver with custody or with whom a child has been placed, instead of a nonparent relative with custody.
- Specifies that foster caregivers, kinship caregivers, and prospective adoptive parents have the right to be heard, instead of the right to present evidence, at juvenile court hearings and reviews.

## **Adoption and foster care assistance**

- Makes various changes to the eligibility requirements for Title IV-E adoption assistance for a child who is adopted and then turns 18, including the following:
  - Requires the agreement to be effective/entered into after the child's 16<sup>th</sup> birthday;
  - Designates a child who meets the changed eligibility requirements as "adopted young adult" (AYA);
  - Prohibits AYAs from being eligible for Title IV-E foster care payments.
- Makes various changes to the eligibility requirements for Title IV-E foster care assistance regarding a child who reaches 18 while in custody or care, including the following:
  - Permits the child to be in either a planned permanent living arrangement (PPLA) or in the Title-IV-E-eligible care and placement responsibility of a juvenile court or other governmental agency providing Title IV-E reimbursable placement services;
  - Provides that the PPLA or care and placement by the juvenile court terminate on or after the child's 18<sup>th</sup> birthday;
  - Designates a child who meets the changed eligibility requirements and "emancipated young adult" (EYA).
- Provides that a person eligible for a dispositional order for temporary or permanent custody until age 21 is not eligible for foster care assistance as an EYA or adoption assistance as an AYA.
- Makes changes to the terminating events and juvenile court oversight of the voluntary participation agreement an EYA must sign to be eligible for Title IV-E foster care assistance.
- Establishes juvenile court jurisdiction and procedures determining an EYA's best interests regarding his or her care and placement and whether reasonable efforts are being made regarding preparation for independence.
- Applies scope of practice and training requirements under adoption and foster care assistance established by ODJFS rules under the Ohio Child Welfare Training Program to case managers and supervisors (instead of foster care workers and their supervisors as under current law).

## **County maintenance of effort**

- Requires each county to contribute local funds, in an amount to be determined under rules adopted by the ODJFS Director, to the county's Children Services Fund.

## **Multi-system youth action plan**

- States that it is the intent of Ohio and the General Assembly that custody relinquishment for the sole purpose of gaining access to child-specific services for multi-system children and youth must cease.

- Requires the Ohio Family and Children First Cabinet Council to develop a multi-system youth action plan that implements the full final recommendations of the Joint Legislative Committee for Multi-System Youth and addresses strategies, processes, responsibilities, and spending for multi-system children.
- Requires the Cabinet Council to submit its final action plan to the General Assembly by the end of 2019.

## **Workforce Development**

### **Comprehensive Case Management and Employment Program**

- Prohibits an assistance group from participating in the Comprehensive Case Management and Employment Program until fraudulent assistance is repaid.

## **Unemployment Compensation**

### **SharedWork Ohio covered employment**

- Limits the “normal weekly hours of work” considered for purposes of the SharedWork Ohio program to those hours of work in employment covered under Ohio’s Unemployment Compensation Law.

### **Unemployment compensation debt collection**

- Exempts unemployment compensation debts resulting from benefit overpayments collected by the Attorney General from a requirement that collected overpayments first be proportionately credited to improperly charged employers’ accounts and then to the mutualized account within the Unemployment Compensation Fund.

## **Child Support**

### **Child support changes**

(R.C. 3119.023, 3119.05, 3119.27, 3119.29, 3119.30, and 3125.25 with conforming changes in R.C. 3119.23, 3119.302, 3119.31, and 3119.32; Section 815.10)

### **Child Support Guideline Advisory Council**

The bill makes changes to the existing quadrennial review of the basic child support schedule. Under continuing law, the Ohio Department of Job and Family Services (ODJFS), with the assistance of a Child Support Guideline Advisory Council (Council) that ODJFS establishes, must conduct a review every four years of the basic child support schedule and issue a report on any recommendations for statutory changes to the General Assembly.

The bill repeals certain factors that ODJFS and the Council may consider, and enacts new factors that each review must include.

### **New review factors**

Under the bill, each review must include all of the following:

- Consideration of:
  - Economic data on the cost of raising children;
  - Labor market data, such as unemployment rates, hours worked, and earnings, by occupation and skill level for the state and local job markets;
  - The impact of guidelines, policies, and amounts on custodial and noncustodial parents who have family incomes below 200% of the federal poverty level;
  - Factors that influence employment rates among noncustodial parents and compliance with child support orders.
- Analysis of all of the following, to be used to ensure that deviations from the basic child support schedule are limited and that support amounts are appropriate based on current law criteria:
  - Case data on the application of and deviations from the basic child support schedule, as gathered through sampling or other methods;
  - Rates of default, child support orders with imputed income, and orders determined using low-income adjustments, such as a self-sufficiency reserve or another method as determined by the state;
  - A comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.
- Meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives.

### **Eliminated review factors**

The following are the optional factors that the bill repeals:

- The adequacy and appropriateness of the current schedule;
- Whether there are substantial and permanent changes in household consumption and savings patterns, particularly those resulting in substantial and permanent changes in the percent of total household expenditures on children;
- Whether there have been substantial and permanent changes to the federal and state income tax code other than inflationary adjustments to such things as the exemption amount and income tax brackets;
- Other factors when conducting review.

### **Reports and information**

Additionally, ODJFS must publish on the Internet and make accessible to the public, all of the following:

- All reports of the Council;

- The membership of the Council;
- The effective date of new or modified guidelines adopted after the review;
- The date of the next review.

### **Income of incarcerated parent**

The bill requires that when a court or agency calculates the income of a parent, it must not determine a parent to be voluntarily unemployed or underemployed and must therefore not impute income to that parent, if the parent is incarcerated. The bill defines a parent as “incarcerated” if that parent is confined under a sentence imposed for an offense or serving a term of imprisonment, jail, or local incarceration, or other term under a sentence imposed by an authorized government entity.

The bill, in adopting the above requirement, repeals the current law requirement for calculating income of an incarcerated parent. The current law provides, unless it would be unjust or inappropriate and therefore not in the best interests of the child, an incarcerated parent with no other available assets could not be considered voluntarily unemployed or underemployed or have imputed income. But, this current law exception is not available if the incarceration is for an offense: (1) related to the abuse or neglect of the child who is the subject of the order, or (2) under Ohio’s Criminal Code against the obligee or the child that is the subject of the order.

### **Processing charge for child support orders**

The bill increases the amount that ODJFS must claim annually from the processing charge imposed for Title IV-D child support cases to \$35 for federal reporting purposes, if it collects at least \$550 of child support for an obligee who never received Title IV-A assistance. Under current law, the amounts are \$25 and \$500, respectively.

Under continuing law, a court or a child support enforcement agency (CSEA) that issues or modifies an order must impose on the obligor a processing charge that is 2% of the support payment to be collected under the order.

### **Health care changes**

#### **Definition changes**

##### ***“Family coverage”***

The bill makes definitional changes with regard to the provisions of law on health care coverage for a child who is the subject of an order. First, it repeals the definition of “family coverage.”

##### ***“Health care coverage”***

Second, it replaces the term, “health care,” with “health care coverage.” Under current law “health care” is defined as medical support that includes coverage under a health insurance plan, payment of costs of premiums, copayments, and deductibles, or payment for medical expenses incurred on behalf of a child. The bill changes the term to “health care coverage,” changes “coverage under a health insurance plan” to “health insurance coverage” (which is

currently a defined term in the law), and adds that a public health care plan may also be considered medical support coverage under the newly altered definition. Under continuing law, “health insurance coverage” means accessible private health insurance that provides primary care services within 30 miles of the child’s residence.

### **“Reasonable cost”**

Third, it removes the following elements from being a part of the definition of “reasonable cost”:

- That for purposes of reasonable cost, the cost of health insurance is an amount equal to the difference in cost between self-only and family coverage;
- Requires U.S. Department of Health and Human Services (HHS) term for “reasonable cost” to prevail if HHS issues a regulation redefining that term or clarifies the elements of cost, and if those changes are substantively different from the definitions and terms under the definition section that applies to the health care.

The bill makes changes to various other sections of the Child Support Enforcement Law addressing health care by replacing existing terms of “private health insurance,” “private health care insurance,” “health care,” and “health insurance” with the new terms “health care coverage” and “health insurance coverage.”

### **Health care coverage by both parents**

The bill also states that both parents may be ordered to provide health care coverage and pay cash medical support if the obligee is a nonparent individual or agency that has no duty to provide medical support.

### **Rule-making authority**

The bill requires ODJFS to adopt rules requiring the investigation and documentation of the factual basis for establishment and modification of support obligations in accordance with Title IV-D law. ODJFS must also adopt rules establishing criteria for CSEAs to initiate contempt of court proceedings in any Title IV-D child support case.

## **Child care**

### **Regulation of child care: background**

(R.C. 3301.51 to 3301.59; R.C. Chapter 5104)

ODJFS and county departments of child and family services 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
<b>Child day-care center</b>	Any place that is not the permanent residence of the provider in which child care is provided for 7 or more children at one time.	A child day-care center must be licensed by ODJFS, regardless of whether it provides publicly funded child care.
<b>Family day-care home</b>	<p><b>Type A home</b> – a permanent residence of an administrator in which child care is provided as follows:</p> <p>--For 7-12 children at one time; or</p> <p>--For 4-12 children at one time if 4 or more are under age 2.</p> <p><b>Type B home</b> – a permanent residence of the provider in which child care is provided as follows:</p> <p>--For 1-6 children at one time; and</p> <p>--No more than 3 children at one time under age 2.</p>	<p>A type A home must be licensed by ODJFS, regardless of whether it provides publicly funded child care.</p> <p>To be eligible to provide publicly funded child care, a type B home must be licensed by ODJFS.</p>
<b>In-home aide</b>	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 county department of job and family services.

## Background checks

### Criminal records checks

(R.C. 5104.013, primary; R.C. 2950.08, 5104.01, 5104.211, and 5104.99; R.C. 2151.861, repealed; Section 815.10)

Under current law, the ODJFS Director must request the Superintendent of BCII to conduct a criminal records check for each of the following individuals: an owner, licensee, and administrator of a child day-care center, type A family day-care home, and licensed type B family day-care home and any person 18 or older residing in a type A or licensed type B home. In the case of an applicant for employment with a center or home, the center's or home's administrator must request BCII to conduct the check. With respect to an in-home aide, a county department of job and family services must request BCII to conduct the check. And in the case of a child day camp, the appointing or hiring entity of the camp must request the check.

The bill makes numerous changes to existing criminal records checks to conform Ohio law to federal requirements (see “**Federal law background**,” below). The following table compares who is required to request criminal records checks under current law and the bill.

Person subject to criminal records check	Current law	The bill
Owner or licensee of a child day-care center, type A home, or licensed type B home, or an adult residing in a type A or licensed type B home	ODJFS Director	Same
In-home aide	County director	ODJFS Director
Applicant or employee of a child day-care center, type A home, or licensed type B home	Administrator	ODJFS Director
Director, applicant, or employee of a licensed preschool or licensed school child program that provides publicly funded child care	N/A <sup>74</sup>	ODJFS Director
Owner, applicant, or employee of an approved child day camp (one that provides publicly funded child care)	Appointing or hiring officer of the camp	ODJFS Director
Applicant or employee (including an administrator) of a child day camp	Appointing or hiring officer of the camp	Administrator of the camp

The ODJFS Director is required to request the criminal records checks at the time of initial application for licensure, certification, approval, or employment and every five years thereafter. As a part of a check, BCII must obtain information from the FBI for the person, including fingerprint-based checks of certain national crime information databases.

Technically, the bill restructures the background check section for child care and, since child day camps are now subject to background checks as child care providers rather than as persons responsible for a child’s care in out-of-home care, relocates to the Child Care Law a section regarding the ODJFS Director’s authority to conduct a random sampling of day camps to determine compliance with criminal records check requirements.

### **Checks of child welfare and sex offender registries**

With respect to licensed type B family day-care homes, current law requires that the ODJFS Director search, as part of the licensure process, the uniform statewide automated child welfare information system (SACWIS) for reports of abuse or neglect pertaining to the

<sup>74</sup> These persons are not currently subject to background checks under the Child Care Law, but are subject to a different background check under R.C. 3319.39.

applicant, any other adult residing in the home, and any adult designated by the applicant as an emergency or substitute caregiver. Additionally, when a PCSA has determined that child abuse or neglect occurred and that abuse or neglect involves a person who has applied for licensure as a type A family day-care home or type B family day-care home, the agency must give ODJFS any information it determines to be relevant for the purpose of evaluating the fitness of the person. If the JFS Director determines that the information received from SACWIS or a PCSA, when viewed within the totality of the circumstances, reasonably leads to the conclusion that the applicant may endanger the health, safety, or welfare of children, the ODJFS Director must deny the application for licensure. The bill repeals those provisions and instead requires the ODJFS Director to search SACWIS for reports of abuse or neglect pertaining to all of the following individuals before licensure, certification, approval, or employment and every five years thereafter: child day-care center owners or licensees, family day-care home owners or licensees, approved child day camp owners, directors of licensed preschool programs and school child programs providing publicly funded child care, in-home aides, and applicants for employment with and employees of those entities.

The bill also requires the ODJFS Director to inspect the state registry of sex offenders (SORN) and the national sex offender registry for the same individuals described above before licensure, certification, approval, or employment and every five years thereafter. It does not, however, require that SACWIS and SORN be searched with respect to employees of day camps that do not provide publicly funded child care.

### **Out-of-state searches**

Under the bill, whenever the ODJFS Director, as part of a criminal records check, SACWIS search, or SORN inspection, determines that a person has resided in another state during the previous five years, the ODJFS Director must request the following about the person from the other state: a criminal records check and information from its SACWIS and sex offender registry. The bill also requires the ODJFS Director to provide that information when requested by another state for the purposes of child care regulation and the provision of publicly funded child care.

### **Eligibility determinations and notice**

If the results of a records check, SACWIS search, and SORN inspection demonstrate that a person has been convicted of or pleaded guilty to a specified criminal offense; endangers the health, safety, or welfare of a child; or is registered or required to be registered as a sex offender, then the bill requires the ODJFS Director to determine the person ineligible for licensure, certification, approval, or employment. In the case of a child day camp other than an approved camp, the camp's administrator must determine a person ineligible for employment if the person has been convicted of or pleaded guilty to a specified criminal offense. Any person who refuses to submit to a criminal records check also must be determined ineligible.

In the case of an applicant or employee, the bill requires the ODJFS Director to notify the employer as soon as practicable of that determination. With the exception of child day camps other than approved child day camps, licensees and administrators will no longer review the results of criminal records checks.

## Conditional employment

The bill eliminates the law authorizing a licensed child care provider to conditionally employ an individual while awaiting the results of a criminal records check. A child day camp that does not provide publicly funded child care, however, remains authorized to conditionally employ applicants until the check is completed.

## Attestations

Current law requires owners, licensees, and administrators of child day-care centers, type A homes, and licensed type B homes; an adult residing in a type A home or licensed type B home; or an individual seeking certification as an in-home aide or employment with a child care licensee to sign a statement that the person has not been convicted of or pleaded guilty to a disqualifying offense and that no child has been removed from the person's home pursuant to a child welfare adjudication. Type A home and type B home licensees also had to attest that no child in the home has been adjudicated a delinquent child for committing one of those offenses. The bill repeals these requirements.

## Federal law background

Enacted under the federal Omnibus Budget Reconciliation Act of 1990, the Child Care and Development Block Grant Act (CCDBG Act) authorized the Child Care and Development Fund (CCDF), which serves as a significant source of Ohio's child care funding.<sup>75</sup> The CCDBG Act of 2014 reauthorized the CCDF for the first time since 1996, and made several changes to the law governing the fund, including changes regarding background checks. Ohio must comply with these federal requirements to continue to receive federal funds.

Background checks must now include Federal Bureau of Investigation (FBI) fingerprint checks and searches of state criminal registries, state and national sex offender registries, and state-based child abuse and neglect registries or databases. Checks must be performed on most staff members, including those who do not directly care for children.

## Provider licensing

### Child care definitions

(R.C. 3301.52, 3301.53, 5104.01, 5104.34, 5104.38, and 5104.41)

The bill modifies existing definitions and creates new definitions related to child care. It removes from the law governing the regulation of child care definitions that are no longer used (school-age child care center, school-age type A home, and state median income).

### New definitions

**"Authorized representative"** is an individual authorized by the owner of a child day-care center, type A family day-care home, or approved child day camp to do all of the following on

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<sup>75</sup> 42 U.S.C. § 9857 *et seq.*

the owner's behalf: communicate, submit applications for licensure or approval, and enter into provider agreements for publicly funded child care.

**"Homeless child care"** is defined as child care provided to a child who is homeless under federal law, resides temporarily in a facility providing emergency shelter for homeless families, or is determined by a county department of job and family services to be homeless. Current law includes child care provided to families determined to be homeless within the category referred to as protective child care. The bill separates homeless child care from protective child care.

**"Special needs child care"** is child care provided to a child who is less than 18 years of age and either has a chronic health condition or does not meet age appropriate expectations in certain areas of development and that may include on a regular basis services and adaptations needed to assist in the child's development (see **"Eligibility period,"** below).

### **Modified definitions**

Under current law, an **"administrator"** is the person responsible for the daily operation of a child day-care center, type A home, or type B home. The bill removes the reference to a type B home and instead refers to an approved child day camp. The bill clarifies that a **"child day camp"** operates for no more than 12 hours a day and no more than 15 weeks during the summer. Under current law, a child day camp operates for no more than seven hours a day during regular school vacation periods or for no more than 15 weeks in the summer and provides for outdoor activities.

The bill removes from the definition of **"child day-care center"** a requirement that children under age six who are related a licensee, administrator, or employee and who are on the premises of the center be counted.

The bill includes staff members, employees, and employers of licensed type B homes and approved child day camps in the definitions of **"child-care staff member," "employee,"** and **"employer."** It also clarifies that an owner or authorized representative may be a child-care staff member when not involved in other duties. The bill adds a reference to licensed type B homes to the definition of **"license capacity."**

The bill removes from the definition of **"protective child care"** references to a child or child's caretaker parent residing in a homeless shelter or being determined homeless.

The bill adds children ages 15 to 18 receiving special needs child care to the definition of a **"school-age child."**

### **Child care and exempt providers**

(R.C. 5104.01 and 5104.02)

The bill clarifies that "child care" refers to care by a provider required to be licensed or approved by ODJFS or under contract to provide publicly funded child care. It makes conforming changes to references to exempt providers by referring to "care" rather than "child care."

The bill also makes numerous changes to existing descriptions and requirements for programs that provide care for children but are exempt from child care licensure, including the following:

- Exempts a program that operates for two consecutive weeks or less and not more than six weeks total each year rather than two or less consecutive weeks;
- Exempts supervised training, instruction, or activities of children in specified areas (such as the arts or sports) that a child does not attend for more than eight hours per week rather than that a child attends no more than one day a week for no more than six hours;
- Clarifies that a program in which a parent is on the premises is exempt only if the parent is not an employee engaged in employment duties while care is provided;
- Removes requirements that programs that provide care and are regulated by a department other than ODJFS or ODE submit to the ODJFS Director a copy of the rules governing the program and an annual report;
- Removes an exemption for child care programs conducted by boards of education or chartered nonpublic schools for school-age children;
- Removes certain restrictions for programs operated by youth development programs outside of school hours, including that the program be operated by a community-based center and be eligible for participation in the Child and Adult Care Food Program (a federally funded program administered by ODE).

### **Child care licenses and inspections**

(R.C. 5104.015, 5104.03, and 5104.04)

Under current law, the initial license issued to a child day-care center or family day-care home is designated as provisional. Following an investigation and inspection, if the JFS Director determines that a provisional license holder meets statutory requirements, the Director will issue to the center or home a new license. The bill refers to this new license as a continuous license. It also specifies that a provisional license is valid for at least 12 months and until the continuous license is issued or the provisional license is revoked or suspended. It removes the requirement that the ODJFS Director adopt rules requiring the ODJFS toll free telephone number to be included on each provisional license issued to a child day-care center.

Existing law requires a child day-care center or type A or licensed type B family day-care home that holds a license to notify the ODJFS Director when the center's or home's administrator changes. Under the bill, the center or home also must notify the ODJFS Director of any changes to the center's or home's address or license capacity. The bill further requires all of these notifications to be made in writing.

Under current law, when the ODJFS Director revokes a child care license, the Director is prohibited from issuing another license to the center's or home's owner until five years have elapsed from the date of revocation. The bill removes from law provisions specifying that if, during the application process, the Director determines that the owner's license had been

earlier revoked, then the Director's investigation must cease and that action is not subject to appeal under the Administrative Procedure Act.

Existing law provides that, in general, when the ODJFS Director takes action with respect to a child care license, the Director must do so in accordance with the Administrative Procedure Act. Certain actions, however, are exempt from the Administrative Procedure Act. The bill adds to this list of exemptions, by specifying that the Director's closing of a child care license when the licensee is no longer operating is not subject to the Administrative Procedure Act.

The bill removes the requirement that a licensee display its most recent inspection report in a conspicuous place.

### **Summary suspensions**

(R.C. 5104.042)

The bill makes several changes to the law authorizing the ODJFS Director to suspend without prior hearing a child care license under certain conditions (referred to as a summary suspension). These changes include the following:

- Specifying that a license issued to a child day-care center or family day care home may be suspended without prior hearing if ODJFS determines that the owner or licensee does not meet criminal records check requirements, rather than if the owner, licensee, or administrator is charged with fraud as under current law;
- Requiring ODJFS to issue a written order of summary suspension by certified mail or in person;
- Permitting a child day-care center or family day care home whose license was suspended without prior hearing to request an adjudicatory hearing before ODJFS, rather than appeal the suspension to a county court of common pleas as under current law;
- Eliminating the requirement that, when ODJFS initiates the revocation of a license suspended without prior hearing, the suspension must continue until the revocation process is complete;
- Clarifying that ODJFS's authority to suspend a license without prior hearing does not limit its authority to revoke a license generally.

### **Minimum qualifications for administrators and staff**

(R.C. 5104.015 and 5104.016; R.C. 5104.35 and 5104.36, repealed)

Current statutory law establishes eligibility requirements for child care administrators and staff members, including age, experience, and educational requirements. The bill eliminates these requirements from statute and instead requires the ODJFS Director to establish in rule the minimum qualifications for these individuals.

## **Discrimination prohibition**

(R.C. 5104.09)

The bill adds family day-care homes, approved child day camps, and employees to current law that prohibits child care licensees, administrators, and staff members from discriminating in the enrollment of children in a child day-care center on the basis of race, color, religion, sex, or national origin. It also prohibits all of these individuals and entities from discriminating on the basis of disability.

## **Publicly funded child care**

(R.C. 5104.04, 5104.29, 5104.30, 5104.31, 5104.32, and 5104.34 with conforming changes in 3119.05 and 3119.23)

By providing publicly funded child care, ODJFS assists parents who are working or in school in paying for child care. ODJFS also administers the Step Up to Quality Program, a five-star quality rating and improvement system for early learning and development programs.

## **Approval of child day camps**

(R.C. 5104.22)

Under current law, in order to provide publicly funded child care, a child day camp must be approved by the ODJFS Director. To be eligible for approval, a child day camp must either be approved by ODJFS or accredited by the American Camp Association (ACA) or a nationally accredited organization that uses standards substantially similar to the ACA. A camp can be approved for up to two years. Under the bill, before an approval will be granted, (1) ODJFS must inspect the day camp and determine if it meets standards for day camps established in ODJFS rules and (2) the camp must be accredited by the ACA or a nationally recognized organization with comparable standards. The approval period is shortened to a one-year period.

## **In-home aides**

(R.C. 5104.12 and 5104.30)

As described above, in-home aides provide publicly funded child care in a child's own home. Under existing law, an in-home aide must be certified by a county department of job and family services, and the certificate is valid for 12 months. The bill increases that period to two years.

The bill prohibits the following from certification as an in-home aide: (1) the owner of child day-care center or family day care home whose ODJFS-issued license was revoked within the previous five years and (2) an in-home aide whose certificate was revoked within the previous five years. The bill also eliminates the requirement that the JFS Director establish in rule hourly reimbursement ceilings for certified in-home aides.

## **Step Up to Quality**

Under current law, beginning July 1, 2020, publicly funded child care may be provided only by a child care provider that is rated through Step Up to Quality. Existing law also requires ODJFS to ensure that the following percentages of early learning and development programs

that are not type B family day-care homes and that provide publicly funded child care are rated in the third highest tier or above in the Step Up to Quality Program:

- By June 30, 2019, 40%;
- By June 30, 2021, 60%;
- By June 30, 2023, 80%;
- By June 30, 2025, 100%.

The bill makes several changes to the foregoing provisions. First, it exempts certain providers from the requirement to be rated through Step Up to Quality by July 1, 2020. These include the following: programs operating only during the summer and for not more than 15 consecutive weeks, only during school breaks, or only on weekday evenings, weekends, or both; programs holding provisional licenses; programs whose Step Up to Quality ratings were removed by ODJFS within the previous 12 months; and programs that are the subjects of revocation actions but whose licenses have not yet been revoked by ODJFS. Second, the bill also provides that these programs are exempt from the percentages of early learning and development programs that must be rated in the third-highest tier or above for Step Up to Quality.

### **Certificates to purchase publicly funded child care**

The bill eliminates the law requiring county departments of job and family services to offer individuals eligible for publicly funded child care the option of obtaining certificates to purchase child care services from eligible child care providers.

### **Automated child care payment and tracking system**

Current law requires ODJFS to establish the Ohio electronic child care system to track attendance and calculate payments for publicly funded child care. The bill renames the system the automated child care system. It also removes a reference to an electronic child care card and instead refers to a personal identification number or password. The bill prohibits a child care provider from knowingly seeking or accepting payment for child care provided to a child who resides in the provider's own home.

### **Eligibility period**

At present, publicly funded child care may be provided only to children under age 13. The bill permits a child to receive special needs child care until age 18. Additionally, if a child turns 13 or a child receiving special needs child care turns 18 during the child's 12-month eligibility period, the caretaker parent may continue to receive publicly funded child care until the end of that 12-month period.

### **Market rate surveys**

The bill removes from statute a requirement that ODJFS contract with a third party every October 1 of even-numbered years to conduct a child care market rate survey for use in

establishing child care provider reimbursement ceilings and payments.<sup>76</sup> The third party is required to compile the information and report it to ODJFS by December 1 of each even-numbered year. Although this requirement is repealed, ODJFS remains required under federal law to develop and conduct either a statistically valid and reliable survey of market rates for child care services or an alternative methodology (such as a cost estimation model).<sup>77</sup>

## **Child Welfare**

### **Criminal records checks, out-of-home care**

(R.C. 2151.86 with conforming changes in R.C. 3107.14 and 5103.0328)

With respect to existing criminal records checks that apply to an entity that employs a person responsible for a child's care in out-of-home care (such as foster caregivers, child care providers, residential facilities, overnight and day camps, and schools), when the entity's appointing or hiring officer requests BCI to conduct a criminal records check, the request **must** (rather than **may**) include an FBI fingerprint check. The bill requires that the request be made at the time of initial application for appointment or employment and every four years thereafter. It also removes an entity's authority to conditionally employ a person while awaiting the results of a criminal records check.

The bill also provides that, in addition to prospective adoptive parents and foster caregivers and adults who reside in the same household, current adoptive parents and foster caregivers and adults who reside in the same household are persons subject to a criminal records check under this provision. It does not, however, specify who is to request criminal records checks for these persons.

### **Background check for child welfare employment**

(R.C. 3107.035, 5103.02, 5103.037, 5103.0310, and 5103.181)

#### **Officers and administrators**

The bill requires an institution or association, prior to employing or appointing a person as board president, or as an administrator or officer, to do the following regarding the person:

- Request a summary report of a search of the Uniform Statewide Automated Child Welfare Information System (SACWIS);
- Request a certified search of the Findings for Recovery database;
- Conduct a database review at the federal website known as the System for Award Management;
- Conduct a search of the U.S. Department of Justice National Sex Offender (NSO) public website.

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<sup>76</sup> The information is also used in establishing the child support guidelines.

<sup>77</sup> 45 C.F.R. 98.45.

The bill permits an institution or association to refuse to hire or appoint the person based solely on the results of the findings of the SACWIS summary report or the results of the NSO website search. Additionally, an institution or association may refuse to hire or appoint the person based on the results of the certified search of Findings for Recovery or database review of the System for Award Management.

### **Prospective foster and adoptive parents**

The bill requires, prior to certification or recertification of a foster home, a recommending agency to conduct a search of the NSO website regarding the prospective or current foster caregiver and all persons 18 years of age or older who reside with the caregiver. Certification or recertification may be denied based solely on the results of the search.

Under the bill, the agency or attorney that arranges an adoption for a prospective adoptive parent must conduct a search of the NSO website regarding the prospective adoptive parent, and all persons 18 years old or older who reside with the prospective adoptive parent, as follows: (1) at the time of the initial home study, and (2) every two years after the initial home study, if the home study is updated, and until it becomes part of the final decree of adoption or an interlocutory order of adoption.

The bill permits a petition for adoption to be denied based solely on the results of the search of the NSO website.

### **Prospective staff of institutions or associations**

Under the bill, prior to employing a person, an institution or association must do the following regarding the person:

- Request a summary report of a search of SACWIS;
- Conduct a search of the NSO website.

The bill permits an institution or association to refuse to hire or appoint the person based solely on the results of the findings of the SACWIS summary report or the results of the NSO website search.

For the purpose of this requirement, the bill limits an “institution” or “association” to any incorporated or unincorporated organization, society, association, or agency, public or private, that receives or cares for children for two or more consecutive weeks.

### **ODJFS rules**

The bill requires the ODJFS Director to adopt rules, in accordance with the Administrative Procedure Act, necessary for the implementation and execution of the background check expansion requirements for child welfare employment described above.

### **Foster caregiver as mandatory reporter**

(R.C. 2151.421)

The bill adds foster caregivers to the list of persons who, acting in a professional or official capacity, must report known or suspected child abuse or neglect. Under continuing law,

a mandatory reporter must make the report to the PCSA or a peace officer in the county where the child resides or where the abuse or neglect is occurring or has occurred. Individuals who are not listed as mandatory reporters may, but are not required to, make a report. The PCSA must investigate each report of child abuse or neglect that it receives within 24 hours.

## **Preteen placement in children's crisis care facility**

(R.C. 5103.13)

The bill eliminates the 72-hour placement limit and 14-consecutive-day waiver in favor of a 14-consecutive-day limit for a PCSA or PCPA to place a preteen in a children's crisis care facility. Under current law, the ODJFS Director or the Director's designee can grant the waiver from the 72-hour limit.

## **Juvenile court hearings**

(R.C. 2151.424)

The bill modifies the law governing juvenile court hearings and reviews by doing both of the following:

- Applying the law to a kinship caregiver with custody or with whom a child has been placed, instead of a nonparent relative with custody;
- Specifying that foster caregivers, kinship caregivers, and prospective adoptive parents have the right to be heard, instead of the right to present evidence.

Under continuing law, a kinship caregiver is any of the following who is at least 18 years old and is caring for a child in place of the child's parents:<sup>78</sup>

- If related by blood or adoption: grandparents, siblings, aunts, uncles, nephews, nieces, first cousins, and first cousins once removed;
- Stepparents and stepsiblings;
- Spouses and former spouses of the above individuals;
- Legal guardians and legal custodians.

These changes apply to a variety of juvenile court hearings and reviews governing child placement, case plans, treatment, and care.

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<sup>78</sup> R.C. 5101.85.

## Adoption and foster care assistance

(R.C. 2151.23, 2151.353, 2151.45, 2151.451, 2151.452, 2151.453, 2151.454, 2151.455, 5101.141, 5101.1411, 5101.1412, 5101.1414, 5101.1415, and 5103.30)

### Adoption assistance eligibility

#### Adopted young adult (AYA)

Under the bill, Title IV-E adoption assistance is available to a parent who adopted a person who is an “adopted young adult” (AYA) and (1) the parent entered into an adoption assistance agreement while the AYA was 16 or 17, and (2) the AYA meets other eligibility requirements (see “**Other eligibility requirements for AYAs and EYAs,**” below). The bill defines an AYA as a person:

- Who was in the temporary or permanent custody of a PCSA;
- Who was adopted at the age of 16 or 17 and attained the age of 16 before a Title IV-E adoption assistance agreement became effective;
- Who has attained the age of 18; and
- Who has not yet attained the age of 21.

Under continuing law, adoption assistance eligibility also requires that the parent maintain parental responsibility for the AYA.

Under current law, an adopted person had to meet the same requirements as listed above, except that the adoption assistance agreement did not have to be effective/entered into while the person was 16 or 17.

#### AYA not eligible for foster care assistance

The bill states that an AYA who is eligible to receive adoption assistance payments is not considered an emancipated young adult (EYA) and is therefore not eligible to receive Title IV-E foster care payments.

### Foster care assistance eligibility

#### Emancipated young adult (EYA)

Under the bill, Title IV-E foster care payments are available to, or on behalf of, any EYA who signs a voluntary participation agreement and who meets other eligibility requirements (see “**Other eligibility requirements for AYAs and EYAs,**” below). The bill defines an EYA as a person:

- Who was in the temporary or permanent custody of a PCSA, a PPLA, or in the Title-IV-E-eligible care and placement responsibility of a juvenile court or other governmental agency that provides Title IV-E reimbursable placement services (instead of just in the temporary or permanent custody of a PCSA, as under current law);
- Whose custody, arrangement, or care and placement was terminated on or after the person’s 18<sup>th</sup> birthday; and

- Who has not yet attained the age of 21.

Under current law, a person who signed a voluntary participation agreement and met the other eligibility requirements would be eligible for foster care assistance if the person (1) had reached age 18 but not 21, and (2) was in PCSA custody on reaching age 18.

### **Persons ineligible**

The bill provides that a person eligible for a dispositional order for temporary or permanent custody until age 21 is not eligible for foster care assistance as an EYA or adoption assistance as an AYA.

### **Other eligibility requirements for AYAs and EYAs**

Under continuing law, an AYA or EYA must meet certain other eligibility requirements to receive adoption assistance or foster care assistance, respectively. Those requirements consist of educational or work related criteria. Under the bill, an AYA or EYA is not required to meet those requirements if he or she is incapable due to a physical or mental incapacity supported by regularly update information in his or her case record or plan. Under current law, this exception is limited only to medical conditions.

### **Definition of child for foster care and adoption assistance**

The bill defines “child” for purposes of Ohio’s law governing foster care and adoption assistance to mean any of the following:

- Any person under eighteen years of age or a mentally or physically handicapped person, as defined by ODJFS rule, under twenty-one years of age;
- An AYA;
- An EYA.

Current law defines a child to include the persons who were between 18 and 21 who met the requirements under current law to receive foster care and adoption assistance.

### **Voluntary participation agreement**

The bill permits an EYA who receives foster care assistance payments, or on whose behalf such payments are received, to enter into a voluntary participation agreement, without court approval, with ODJFS, or its representative, for the EYA’s care and placement. The agreement must stay in effect until one of the following occurs:

- The EYA enrolled in the program notifies ODJFS, or its representative, that they want to terminate the agreement;
- The EYA becomes ineligible for the program.

The bill requires that, during the 180-day period after the agreement becomes effective (rather than prior to the agreement’s expiration, which was 180 days after the agreement was entered into, as under current law), ODJFS or its representative must seek approval from the juvenile court that the EYA’s best interest is served by continuing care and placement with ODJFS or its representative.

Under the bill, in order to maintain Title IV-E eligibility for the EYA, ODJFS or its representative must petition the court for, and obtain, a judicial determination that ODJFS or its representative has made reasonable efforts to finalize a permanency plan that addresses ODJFS' or its representative's efforts to prepare the EYA for independence. The petition and determination must occur not later than 12 months after the effective date of the voluntary participation agreement and at least every 12 months thereafter.

Under the bill, a "representative," (which replaces the term "designee" under current law) means a person with whom ODJFS has entered into a contract to carry out the duties required under a state plan to administer federal payments of foster care and adoption assistance.

## **Juvenile court jurisdiction**

### **Exclusive, original jurisdiction**

The bill requires the juvenile court of the county in which an EYA resides to have exclusive original jurisdiction over the EYA for the purpose of determining the following regarding the EYA:

- Not later than 180 days after the voluntary participation agreement becomes effective, make a determination as to whether the EYA's best interest is served by continuing the care and placement with ODJFS or its representative. The bill prohibits an EYA from being eligible for continued care and placement if it is not in the EYA's best interest;
- Not later than 12 months after the date that the voluntary participation agreement is signed, and annually thereafter, make a determination as to whether reasonable efforts have been made to prepare the EYA for independence.

The bill permits the juvenile court, on its own motion, or the motion of any party, to transfer a proceeding described above to another juvenile court because the EYA resides in the county served by the other juvenile court.

### **Suspension of foster care payments**

If the initial and subsequent 12-month determinations are not timely made, the bill requires the EYA's federal foster care payments to be suspended. The payments resume on a subsequent determination that reasonable efforts have been made to prepare the EYA for independence, but only if both of the following apply:

- The EYA continues to meet requirements described in the bill for eligibility for federal foster care payments;
- There has been a timely determination of best interest of the child under the voluntary participation agreement.

### **ODJFS and representative court appearance**

The bill permits, for purposes of making the 180-day and the 12-month determinations regarding an EYA, ODJFS or its representative to file any documents and appear before the court in relation to such filings.

## **Legal representation of EYA**

Under the bill, an EYA is entitled to representation by legal counsel at all stages of proceedings regarding the 180-day and 12-month determinations, and nothing in the bill governing those determinations prohibits an EYA from obtaining legal representation for such purposes. If, as an indigent person, the EYA is unable to employ counsel, the EYA is entitled to have a public defender provided under Ohio's Public Defender Law. If an EYA appears without counsel, the court must determine whether the EYA knows of the right to counsel, and to be provided with counsel, if indigent. The court may continue the case to enable an EYA to obtain counsel, to be represented by the county public defender or the joint county public defender, or to be appointed counsel on request. On written request, prior to any hearing involving the EYA, any report concerning an EYA that is used in, or is pertinent to, a hearing, must for good cause shown be made available to any attorney representing the EYA and to any attorney representing any other party to the case.

## **Scope of practice and training for case managers**

The bill requires ODJFS rules governing adoption and foster care assistance to establish the scope of practice and training necessary for case managers and supervisors caring for EYAs for purposes of the Ohio Child Welfare Training Program. Under current law those practice and training requirements applied to foster care workers and their supervisors.

## **County maintenance of effort**

(R.C. 5101.14)

The bill requires each county to contribute local funds to the county's Children Services Fund. The ODJFS Director must adopt rules, in accordance with R.C. 111.15, determining the amount of local funds to be contributed by each county.

## **Multi-system youth action plan**

(R.C. 121.374)

The bill states that it is the intent of Ohio and the General Assembly that custody relinquishment for the sole purpose of gaining access to child-specific services for multi-system children and youth must cease.

Under the bill, the Ohio Family and Children First Council must develop a comprehensive multi-system youth action plan that does the following:

- Defines and establishes shared responsibility between county and state child-serving systems for providing and funding multi-system youth services;
- Provides recommendations for flexible spending at the state level within the cabinet council;
- Defines the model and process by which the flexible spending may be accessed to pay for services for multi-system youth;
- Identifies strategies to assist with reducing custody relinquishment for the sole purpose of gaining access to services for multi-system children and youth;

- Implements the full final recommendations of the Joint Legislative Committee for Multi-System Youth.

The bill requires, not later than December 31, 2019, the Cabinet Council to submit its final action plan to the General Assembly.

## **Workforce Development**

### **Comprehensive Case Management and Employment Program**

(R.C. 5101.83)

The Comprehensive Case Management and Employment Program (CCMEP) is an existing program administered by ODJFS, through which employment and training services are made available to certain individuals in accordance with an assessment of their needs.<sup>79</sup> The bill provides that if a county director of job and family services determines that an assistance group has received fraudulent assistance, the group is ineligible to participate in CCMEP until that assistance is repaid. Existing law contains a similar provision regarding fraudulent assistance provided under Ohio Works First (cash assistance) and the Prevention, Retention, and Contingency Program (short-term help with employment barriers or crises).

## **Unemployment Compensation**

### **SharedWork Ohio covered employment**

(R.C. 4141.50)

The bill limits the “normal weekly hours of work” considered for purposes of the SharedWork Ohio program to those hours of work in employment covered under Ohio’s Unemployment Compensation Law. SharedWork Ohio is a voluntary layoff aversion program that provides prorated unemployment benefits to eligible employees who have their normal weekly hours of work reduced under an approved shared work plan.

### **Unemployment compensation debt collection**

(R.C. 4141.35)

Under continuing law, if an individual receives unemployment benefits to which the individual was not entitled, the ODJFS Director must issue an order demanding repayment and take additional actions to recover the overpayment. If an overpayment is not repaid within 45 days after repayment is due, the ODJFS Director must certify the amount owed to the Attorney General and notify the Director of Budget and Management of the amount. The Attorney General must collect the amount or sue the individual for the amount and issue an execution for its collection.<sup>80</sup> The bill exempts any overpayment collected by the Attorney General from a continuing law requirement that the amount first be proportionately credited to

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<sup>79</sup> R.C. 5116.01 *et seq.*, not in the bill.

<sup>80</sup> R.C. 131.02.

improperly charged employers' accounts and then to the mutualized account created within the Unemployment Compensation Fund.

Under continuing law, the following sources of recovered overpayments are not subject to that requirement:

- Federal and state tax refund offsets;
- Lottery award offsets;
- Recoveries from unclaimed funds.

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## JUDICIARY/SUPREME COURT

- Requires the Ohio Supreme Court to pay any compensation that is owed as specified under Ohio law to a retired assigned judge in a municipal or county court and provides for the procedure to pay that compensation.
- Removes the requirement that Montgomery County pay the salaries of the part-time county court judges in excess of a specified amount during the transition from a part-time county court to a municipal court.
- Provides that nature or any ecosystem does not have standing to participate in or bring an action in a common pleas court.
- Prohibits any person, on behalf of nature or an ecosystem, from bringing, or intervening in, an action in such court.
- Prohibits any person from bringing an action against a person who is acting on behalf of nature or an ecosystem.

### **Paying retired assigned judges**

(R.C. 141.16, 1901.123, and 1907.143)

The bill requires the Ohio Supreme Court, instead of a county treasurer under existing law, to pay any compensation to which an assigned retired municipal court or county court judge is entitled. Annually on August 1, the Administrative Director of the Supreme Court must issue a billing to the county treasurer of any county to which a retired judge was assigned to a municipal court or county court for reimbursement of the county or local portion of the compensation previously paid by the state for the 12-month period preceding June 30. The county or local portion of the compensation is that part of each per diem paid by the state that is proportional to the county or local shares of the total compensation of a resident judge of that municipal or county court. The county treasurer must forward the payment within 30 days and then seek reimbursement from the local municipalities as appropriate.

### **Judicial salary – Montgomery County**

(R.C. 141.04)

The bill removes the requirement that the Chief Administrator of the Ohio Supreme Court, on or before December 1 of each year, notify the administrative judge of the Montgomery County Municipal Court, the Montgomery County Board of County Commissioners, and the state treasurer of the yearly salary cost of five part-time county court judges as of that date. The bill also removes the requirement that, if the total yearly salary costs of all of the Montgomery County Municipal Court judges as of December 1 of that same year exceeds the amount described above, the Administrative Judge cause payment of the excess between those two amounts less any reduced amount paid for the health care costs of the Montgomery County Municipal Court Judges in comparison to the health care costs of the five part-time county court judges.

## **Prohibition against court action by nature or ecosystem**

(R.C. 2305.011)

The bill provides that “nature” or any “ecosystem” does not have standing to participate in or bring an action in any common pleas court. It prohibits any person:

- From bringing, or intervening in, an action in such court on behalf of or representing nature or an ecosystem;
- From bringing an action in such court against a person acting on behalf of or representing nature or an ecosystem.

The bill defines “nature” as the phenomena of the physical world collectively, including plants, animals, the landscape, other earth features and products, the natural environment, and generally areas that are not human or human creations, have not been substantially altered by humans, or that persist despite human intervention. It defines “ecosystem” as a complex community of living organisms in conjunction with their physical environments, all interacting and linked together as a system through nutrient cycles and energy flows in a particular unit of space.

The bill provides that its provisions must not be construed to prevent the state or any of its agencies from enforcing laws dealing with environmental pollution, conservation, wild animals, or other natural communities or ecosystems.

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## JOINT LEGISLATIVE ETHICS COMMITTEE

- Eliminates the \$10 filing fee for certain former state officials and employees who are required to file periodic financial disclosure statements for two years after leaving their positions.

### Filing fees

(R.C. 102.021)

The bill eliminates the \$10 filing fee for certain former state officials and employees who are required to file financial disclosure statements with the Joint Legislative Ethics Committee (JLEC) in January, May, and September for two years after leaving their positions.

Under continuing law, that filing requirement applies only to a former state elected official or employee who was required to file financial disclosure statements while the person held that position and, after leaving the person's position, either (1) receives income from a legislative agent (lobbyist) or executive agency lobbyist, from the employer of a lobbyist, other than a state agency or political subdivision, or from any entity that, during the last two calendar years, bid on or was awarded state contracts worth \$100,000 or more, or (2) makes any expenditure for transportation, lodging, or food or beverages for the benefit of a public officer or employee, if the expenditure would be required to be reported under the Lobbying Law if the person were a lobbyist.

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## STATE LIBRARY BOARD

- Reduces from 100 to 50 the number of copies of printed state government publications that must be delivered to the State Library.
- Requires a state government body to notify the State Library of documents or other publications that are made available electronically on its website and requires the State Library to retain those publications and provide permanent access and records to each depository library.
- Clarifies that certain print and electronic publications provided to the State Library must be considered already prepared and available for inspection and reproduction at the State Library and each depository library.

### State Library; public records

(R.C. 149.11)

The bill reduces from 100 to 50 the number of copies of printed state government publications that must be delivered to the State Library. Under continuing law, each department, division, bureau, board, or commission of the state government must deliver copies of any report, pamphlet, document, or other publication intended for general public use and distribution, and which is reproduced by duplicating processes.

The bill also requires those state government bodies to notify the State Library of the availability of documents or other publications, intended for general public use and distribution, which are made available electronically on its website. And, the State Library must retain those electronic publications in the State Library digital archive and provide permanent access and records to each public or college library in the state designated by the State Library Board to be a depository for state publications.

The bill clarifies that the print and electronic publications described above must be considered already prepared and available for inspection and reproduction by any person at all reasonable times during regular business hours at the State Library and each depository library.

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## STATE LOTTERY COMMISSION

- Exempts internal audit reports and work papers produced by the State Lottery Commission from disclosure as public records until a final report is submitted.
- Provides that any internal audit report or work papers produced by Commission staff that is a security record or infrastructure record under the Public Records Law exemption regarding such records, is not a public record.

### Internal audit and confidential documents

(R.C. 3770.06)

Under the bill, any internal audit reports and all work papers produced by State Lottery Commission staff are confidential and not public records until the final internal audit report is submitted to the Commission Director or chairperson. Additionally, the bill clarifies that any internal audit report or work paper that meets the definition of a security record or infrastructure record under current Public Records Law is not a public record.

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## **DEPARTMENT OF MEDICAID**

### **Suspension of provider agreements and payments**

- Generally conforms the terms and procedures for suspending a Medicaid provider agreement because of a disqualifying indictment to those for suspending a provider agreement because of a credible allegation of fraud.
- Requires, with certain exceptions, that the provider agreement of a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities (ICF/IID) be suspended when a disqualifying indictment is issued against the provider or the provider's officer, authorized agent, associate, manager, or employee.
- Requires, with certain exceptions, that the provider agreement of an independent provider be suspended when an indictment charges the provider with a felony or misdemeanor regarding furnishing or billing for Medicaid services or performing related management or administrative services.
- Requires that all Medicaid payments for services rendered be suspended, regardless of the date of service, when the provider agreement is suspended because of a credible allegation of fraud or disqualifying indictment.
- Permits the Department of Medicaid to suspend, without prior notice, a provider agreement and all Medicaid payments to the provider if there is evidence that the provider presents a danger of immediate and serious harm to the health, safety, or welfare of Medicaid recipients.

### **Performance indicators for children's hospitals**

- Requires the Medicaid Director to adopt performance indicators to measure the quality of services provided by children's hospitals.

### **Rates for nonemergency medical services**

- Prohibits Medicaid rates for nonemergency medical services provided in hospital emergency departments from exceeding payment rates for such services when provided in another health care setting.

### **Rates for federally qualified health centers**

- Specifies the Medicaid rates for federally qualified health centers located on the same campus as a hospital emergency department.

### **Rates for nursing facility services**

- Provides for a nursing facility's Medicaid payment rate to be \$115 per day for services provided to low resource utilization residents regardless of whether the nursing facility cooperates with the Long-Term Care Ombudsman Program in efforts to help those residents receive the services that are most appropriate for their level of care needs.

- Revises the law governing the quality payments that nursing facilities earn under Medicaid for satisfying quality indicators.
- Provides for nursing facilities to earn a quality incentive payment under Medicaid beginning with the second half of FY 2020.
- Provides for the budget reduction adjustment factor to be, for the second half of FY 2020, 2.4%.
- Provides for the budget reduction adjustment factor to be, for FY 2021, equal to the Medicare skilled nursing facility market basket for federal FY 2020.

### **Rate for Vagus Nerve Stimulation**

- Requires that the Medicaid payment rate for Vagus Nerve Stimulation during FY 2020 and FY 2021 equal 75% of the Medicare rate for the service.
- Requires that the Medicaid rates for other services selected by the Medicaid Director be reduced to avoid an increase in Medicaid expenditures.

### **Rates for community behavioral health services**

- Permits the Department to establish Medicaid rates for community behavioral health services provided during FYs 2020 and 2021 that exceed the Medicare rates paid for the services.

### **Home-delivered meals under Medicaid waivers**

- Establishes the payment rates for home-delivered meals provided under the MyCare Ohio and Ohio Home Care waiver programs during FYs 2020 and 2021.
- Requires each home and community-based services Medicaid waiver program that covers home-delivered meals to provide for (1) the meals to be delivered in a format and frequency consistent with individuals' needs and (2) the individual who delivers the meals to meet face-to-face with the individual to whom the meals are delivered.

### **Post-hospital extended care agreements**

- Prohibits the Department from entering into a Medicaid provider agreement with, or revalidating the provider agreement of, a hospital unless requirements regarding post-hospital extended care agreements with nursing homes are met.

### **MyCare Ohio standardized claim form**

- Requires the Medicaid Director to develop a standardized claim form and standardized claim codes to be used under the Integrated Care Delivery System (MyCare Ohio).
- Specifies that any claim that is properly submitted on the standardized claim form is a clean claim and must be paid not later than 30 days after its submission.

## **Medicaid managed care**

### **Behavioral health services**

- Permits, instead of requiring, the Department to include behavioral health services in the Medicaid managed care system.
- Stipulates that the Joint Medicaid Oversight Committee is required to periodically monitor the Department's inclusion of behavioral health services in the Medicaid managed care system only if the Department includes the services in the system and eliminates the monitoring requirement altogether on July 1, 2020.

### **Reprocurement of Medicaid MCO contracts**

- Requires, not later than July 1, 2020, the Director to complete a reprocurement process for Medicaid MCOs and to enter into new Medicaid MCO contracts.
- Specifies that an entity that meets the eligibility criteria established by the Director can contract with the Department to become a Medicaid MCO and that there is no limit on the number of Medicaid MCOs.

### **State pharmacy benefit manager**

- Requires Medicaid MCOs to use the state pharmacy benefit manager (PBM) selected and contracted with by the Director of Administrative Services, pursuant to the terms of that contract.
- Specifies that the state PBM is responsible for processing all pharmacy claims under the care management system.
- Permits a Medicaid MCO to contract directly with a pharmacy regarding the practice of pharmacy.

### **Prescribed drug formulary**

- Requires the state PBM, in consultation with the Medicaid Director, to develop a Medicaid prescribed drug formulary that it will use under the care management system.
- If the U.S. Centers for Medicare and Medicaid Services (CMS) adopts rules to establish an international pricing index model for drugs covered under Medicare Part B, requires the Director to use that model as the Medicaid prescribed drug formulary instead of the one described above.
- Specifies that the Medicaid prescribed drug formulary is not effective until it is approved by the Director.
- Requires the state PBM to immediately disclose in writing to the Director any changes to the formulary and permits the Director to disapprove any changes.
- Requires the state PBM to negotiate prices for and price prescribed drugs at the lowest prices possible to maximize the health of Medicaid recipients and promote the efficiency of the Medicaid program.

### **Reporting requirements**

- Requires the state PBM to report certain information to the Director quarterly.
- Requires the Director to make findings based on those reports and report those findings to the General Assembly, and testify before the General Assembly or the Joint Medicaid Oversight Committee, upon request.
- Specifies that any document or information marked “confidential” or “proprietary” is to remain confidential and must be redacted as necessary, except that the Director can share that information with other state agencies or entities.

### **Civil penalty**

- Prohibits any person from violating these provisions and subjects violators to a civil penalty in an amount to be determined by the Director.

### **Rule-making authority**

- Permits the Director to adopt rules as necessary to effect these provisions, including identifying the information that must be disclosed by the state PBM, specifying the civil penalty amount for violations.

### **Home visits and cognitive behavioral therapy**

- Eliminates a requirement that Medicaid MCOs cover certain home visits and cognitive behavioral therapy for Medicaid recipients who are enrolled in the Help Me Grow program and either pregnant or the birth mother of a child under three years of age.

### **Shared Savings Bonus Program**

- Requires the Department to establish the Shared Savings Bonus Program under which a Medicaid MCO earns a bonus if its three-year average per recipient capitated payment rate is less than the three-year average per recipient cost of certain other states’ Medicaid programs.
- Conditions implementation of the program on the U.S. Secretary of Health and Human Services entering into an enforceable agreement with the Medicaid Director that provides for no federal Medicaid funds to be withheld because of the program.

### **Quality Incentive Program**

- Requires the Department to establish the Quality Incentive Program under which the Department randomly assigns certain Medicaid recipients to MCOs participating in the program based on the MCOs’ points earned for meeting health and quality metrics.
- Conditions implementation of the program on the U.S. Secretary entering into an enforceable agreement with the Medicaid Director that provides for no federal Medicaid funds to be withheld because of the program.

## **Employment connection incentive programs**

- Requires each Medicaid MCO to establish an employment connection incentive program to assist Medicaid recipients in obtaining and maintaining employment.
- Makes participation in a program voluntary for the recipients.
- Provides for Medicaid MCOs to earn incentive payments based on their successes with their programs.

## **Enrollee incentive programs**

- Requires each Medicaid MCO to establish a program that incentivizes enrollees to obtain covered health care from high quality and efficient providers.

## **Regional hospital networks**

- Permit regional networks consisting of hospitals to become Medicaid MCOs if they accept a capitated payment that is not more than 90% of the lowest capitated payment made to a Medicaid MCO that is a health insuring corporation.
- Conditions implementation of this provision on the U.S. Secretary entering into an enforceable agreement with the Medicaid Director that provides for no federal Medicaid funds to be withheld because of the provision.

## **Medicaid MCO provider requirements**

- Requires a Medicaid MCO, if it establishes a rate for a service that is greater than the fee-for-service rate for the service, to require providers of the service to enter into value-based contracts as a condition of joining the MCO's provider panel.
- Prohibits a Medicaid MCO from permitting a provider to be part of the MCO's provider panel unless the provider assures the MCO that it will comply with a requirement regarding cost estimates.

## **Hospital value-based purchasing**

- Requires Medicaid MCOs to implement a hospital value-based purchasing program under which participating hospitals receive incentive payments based on their successes in meeting measures used for the Medicare Hospital Value-Based Purchasing Program.

## **Noncontracting hospitals**

- Requires, with a certain exception, a hospital to accept as payment in full from a Medicaid MCO an amount equal to 90% of the fee-for-service rate for a nonemergency service provided to a Medicaid recipient if the hospital does not have a contract with the MCO and the MCO refers the recipient to the hospital.

## **Medicaid MCO information from Pharmacy Board**

- Allows a Medicaid managed care organization to submit a bulk request to the State Board of Pharmacy for information about all Medicaid recipients enrolled in the

organization's Medicaid MCO plan and requires the Board to provide the requested information in a single electronic file or format.

### **Recoupment of payments**

- Prohibits a Medicaid managed care organization from initiating a recoupment of an overpayment made to a Medicaid services provider later than one year after the payment was made.
- Requires a Medicaid managed care organization to give a provider all of the details of a recoupment.

### **Prior authorization for home health services**

- Prohibits a Medicaid managed care organization from requiring a Medicaid recipient to obtain prior authorization for the first ten days of home health services if a physician, nursing facility, or hospital referred the recipient.
- Prohibits a Medicaid managed care organization from requiring a Medicaid recipient to obtain prior authorization for any home health services if the recipient is a hospice patient.

### **Medicaid managed care waiver**

- Requires the Medicaid Director to establish a Medicaid waiver program under which Medicaid managed care organization plans may cover any service or product that would have a beneficial effect on enrollees' health and is likely to reduce the costs under the plan within three years.

### **Medicaid prompt payment waiver**

- Repeals the requirement that the Medicaid Director apply for a waiver from the federal Medicaid prompt payment requirements that would instead require health insuring corporations to submit claims in accordance with requirements established by the Department of Insurance.

### **Duties of area agencies on aging**

- Requires the Department, if it adds to the Medicaid managed care system during FYs 2020 and 2021 more Medicaid recipients who are aged, blind, disabled, or also enrolled in Medicare, to take certain actions regarding the duties of area agencies on aging relative to home and community-based waiver services.

### **Integrated Care Delivery System performance payments**

- For FYs 2020 and 2021, requires the Department to continue to (1) make performance payments to Medicaid MCOs that provide care to participants of the Integrated Care Delivery System and (2) withhold a percentage of their premium payments for the purpose of providing the performance payments.

### **Performance metrics**

- Requires the Department to post on its website the metrics it uses to determine a Medicaid MCO's performance.

### **Medicaid MCO financial health**

- Requires the Department, not later than January 1, 2020, to evaluate and benchmark the financial health of Medicaid MCOs.

### **Medicaid waiver, social determinants of health**

- Requires the Medicaid Director to establish a Medicaid waiver component that addresses social determinants of health, including housing, transportation, food, interpersonal safety, and toxic stress.

### **Automatic designation of authorized representative**

- Specifies that, for a Medicaid applicant who resides in a facility participating in the Assisted Living Program, the facility will automatically be designated as the person's primary authorized representative at the time of the application for purposes of allowing disclosure of information by a county department of job and family services.

### **Care Innovation and Community Improvement Program**

- Requires the Medicaid Director to continue the Care Innovation and Community Improvement Program for the FY 2020-2021 biennium.

### **Hospital Care Assurance Program, franchise permit fee**

- Continues, for two additional years, the Hospital Care Assurance Program and the franchise permit fee imposed on hospitals under Medicaid.

### **Health information exchanges**

- Eliminates all provisions regarding approved health information exchanges in statutes governing protected health information, including provisions that require the Medicaid Director to adopt rules regarding such exchanges.

### **Health Care/Medicaid Support and Recoveries Fund**

- Requires that money credited to the Health Care/Medicaid Support and Recoveries Fund additionally be used for (1) programs that serve youth involved with multiple government agencies and (2) innovative programs that promote access to health care or help achieve long-term cost savings.

### **Abolished funds**

- Abolishes the Integrated Care Delivery Systems Fund.
- Abolishes the Managed Care Performance Payment Fund.
- Abolishes the Medicaid Administrative Reimbursement Fund.

- Abolishes the Medicaid School Program Administrative Fund in the state treasury.

### **340B Study Committee**

- Creates a 340B Study Committee within the Department and requires the committee to collect data from 340B covered entities that are hospitals and Medicaid providers.
- Requires the committee to make recommendations based on the data and, not later than January 1, 2020, outline its findings in a report submitted to the General Assembly.
- Terminates the committee upon submission of the report.

### **HHS Efficiencies and Alignment Study Committee**

- Establishes the Health and Human Services Efficiencies and Alignment Study Committee to examine the alignment and administrative efficiencies within the state's health and human services agencies.

### **Extended authority regarding employees**

- Extends through July 1, 2021, the Medicaid Director's authority to establish, change, and abolish positions for the Department and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote employees who are not subject to collective bargaining.

### **Updating references**

- Updates references to the former U.S. Health Care Financing Administration with references to the U.S. Centers for Medicare and Medicaid Services.

## **Suspension of provider agreements and payments**

(R.C. 5164.36, primary; R.C. 173.391 and 5164.37, repealed)

### **Suspensions because of disqualifying indictments**

The bill makes the terms and procedures for suspending a Medicaid provider agreement because of certain types of indictments, which the bill refers to as disqualifying indictments, generally the same as those for suspending a provider agreement because of a credible allegation of fraud. The bill also makes the following revisions to the law governing the suspension of provider agreements because of a disqualifying indictment:

- Under current law, the Department of Medicaid is required to suspend a provider agreement of a noninstitutional provider, other than an independent provider, if the provider or its owner, officer, authorized agent, associate, manager, or employee is indicted for an act that would be a felony or misdemeanor under Ohio law and the act relates to or results from furnishing or billing for Medicaid services or participating in the performance of management or administrative services relating to furnishing Medicaid services. The bill is generally the same except that (a) the provider agreement of an independent provider or an institutional provider also is to be suspended in this situation (unless, in the case of an institutional provider, the owner is indicted) and (b)

the indictment may be for an act that would be a felony or misdemeanor under the laws of the jurisdiction within which the act occurred rather than only under Ohio law. An independent provider is a person who has a provider agreement to provide home and community-based services as an independent provider in a Medicaid waiver program that the Department administers. Hospitals, nursing facilities, and ICF/IIDs are institutional providers.

- Current law requires the Department to terminate Medicaid payments to a provider when the provider agreement is suspended because of a disqualifying indictment. The termination applies only to payments for Medicaid services rendered after the date the Department sends notice of the suspension. Claims for payment for Medicaid services rendered before that date may be subject to prepayment review procedures under which the Department reviews claims to determine whether they are supported by sufficient documentation, in compliance with state and federal law, and otherwise complete. Under the bill, the Department must suspend, rather than terminate, the Medicaid payments, and the suspension applies to payments for all services regardless of the date the services are rendered.

The following table compares the provisions of current law and the bill regarding the suspension of Medicaid provider agreements because of disqualifying indictments.

Current law	The bill
<b>Medicaid providers subject to suspension</b>	
<p>Noninstitutional providers when the Department receives notice and a copy of an indictment that charges any of the following with committing certain acts:</p> <ol style="list-style-type: none"> <li>1. The provider;</li> <li>2. The provider's owner, officer, authorized agent, associate, manager, or employee. (<i>R.C. 5164.37(C).</i>)</li> </ol>	<p>Any provider, when the Department determines that an indictment has been issued that charges any of the following with committing certain acts:</p> <ol style="list-style-type: none"> <li>1. The provider;</li> <li>2. The provider's officer, authorized agent, associate, manager, or employee;</li> <li>3. If the provider is a noninstitutional provider, the provider's owner. (<i>R.C. 5164.36(A)(5) and (6) and (B)(1).</i>)</li> </ol>

Current law	The bill
<b>Indictments that require suspension</b>	
<p>1. Except for an independent provider, an act that would be a felony or misdemeanor under Ohio law that relates to or results from furnishing or billing for Medicaid services or participating in management or administrative services related to furnishing Medicaid services;</p> <p>2. For an independent provider, an offense that continuing law specifies is cause to deny or terminate a provider agreement. (<i>R.C. 5164.37(E).</i>)</p>	<p>1. Regardless of whether the provider is an independent provider, an act that would be a felony or misdemeanor under Ohio law or the law where the act occurred and that relates to or results from the furnishing or billing for Medicaid services or management or administrative services relating to furnishing Medicaid services;</p> <p>2. Same. (<i>R.C. 5164.36(A)(2), (3), and (4).</i>)</p>
<b>Stopping Medicaid payments</b>	
<p>The Department must terminate Medicaid payments to a suspended provider for Medicaid services rendered after the date when the Department sends the provider notice of the suspension. Claims for services rendered before the notice is sent may be subject to prepayment review procedures. (<i>R.C. 5164.37(C) and (D)(2).</i>)</p>	<p>The Department must suspend all Medicaid payments to a suspended provider for services rendered, regardless of the date of service. (<i>R.C. 5164.37(B)(2).</i>)</p>
<b>Exceptions</b>	
<p>No suspension or payment termination if:</p> <p>1. The provider or owner submits written evidence that the provider or owner did not directly or indirectly sanction the act that resulted in the indictment;</p> <p>2. Circumstances that may be specified in rules apply. (<i>R.C. 5164.37(D)(1) and (H).</i>)</p>	<p>Same. (<i>R.C. 5164.36(C) and (I).</i>)</p>

Current law	The bill
<b>When suspension is lifted</b>	
<p>1. The proceedings in <i>the criminal case</i> are completed through dismissal of the indictment, conviction, entry of a guilty plea, or finding of not guilty;</p> <p>2. If the Department commences a process to terminate the suspended provider agreement, the termination process is concluded. (R.C. 5164.37(C).)</p>	<p>1. The proceedings in <i>any related case</i> are completed through dismissal of the indictment, conviction, entry of a guilty plea, or finding of not guilty;</p> <p>2. Same. (R.C. 5164.36(B)(3).)</p>
<b>Restricted Medicaid activities</b>	
<p>A provider, owner, officer, authorized agent, associate, manager, or employee cannot do any of the following during the suspension:</p> <p>1. Own or provide Medicaid services to any other Medicaid provider or risk contractor;</p> <p>2. Arrange for, render, or order Medicaid services;</p> <p>3. Receive direct payments under Medicaid or indirect payments of Medicaid funds in the form of a salary, shared fees, contracts, kickbacks, or rebates from or through any other Medicaid provider or risk contractor. (R.C. 5164.37(C).)</p>	<p>A provider; officer, authorized agent, associate, manager, or employee (if suspension results from an action taken by that person); or owner (if the provider is a noninstitutional provider and the suspension results from an action of the owner) cannot do any of the following during the suspension:</p> <p>1. Own services provided, or provide services, to any other Medicaid provider or risk contractor;</p> <p>2. Arrange for, render to, or order services (a) to any other Medicaid provider or risk contractor or (b) for Medicaid recipients;</p> <p>3. Same. (R.C. 5164.36(B)(4).)</p>

Current law	The bill
<b>Notice of suspension</b>	
<p>The Department must send notice of a provider agreement suspension to the provider or owner not later than five days after suspending the provider agreement. <i>(R.C. 5164.37(F).)</i></p>	<p>The Department must send notice of a provider agreement suspension to the provider or, if the provider is a noninstitutional provider, the owner:</p> <ol style="list-style-type: none"> <li>1. Not later than five days after the suspension unless a law enforcement agency makes a written request to temporarily delay the notice;</li> <li>2. If such a request is made, not later than 30 days after the suspension. A law enforcement agency may request up to two renewed delays, but the notice must be issued not more than 90 days after the suspension. <i>(R.C. 5164.36(D) and (E).)</i></li> </ol>
<b>Content of suspension notice</b>	
<p>A notice of a provider agreement suspension must:</p> <ol style="list-style-type: none"> <li>1. Describe the indictment that was the cause of the suspension, without necessarily disclosing specific information concerning any ongoing civil or criminal investigation;</li> <li>2. State how long the suspension will continue;</li> <li>3. Inform the provider or owner of the opportunity to request a reconsideration. <i>(R.C. 5164.37(F).)</i></li> </ol>	<p>A notice of a provider agreement suspension must:</p> <ol style="list-style-type: none"> <li>1. Describe the conduct leading to the suspension (without disclosing information concerning an ongoing investigation), the type of Medicaid claims or business units affected by the suspension, and that payments are being suspended;</li> <li>2. Same;</li> <li>3. Same. <i>(R.C. 5164.36(F).)</i></li> </ol>

Current law	The bill
<b>Reconsideration</b>	
<p>A suspended provider or owner may request a reconsideration within 30 days of receiving the suspension notice. The reconsideration is not subject to an adjudication hearing under the Administrative Procedure Act. The provider or owner must submit to the Department written information about whether (1) the suspension determination was based on a mistake of fact, (2) the indictment resulted from an offense for which the Department is authorized to suspend provider agreements, or (3) the provider or owner can demonstrate that they did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the indictment. The Department must review the information and documents. After the reviews, the information, the suspension may be affirmed, reversed, or modified, in whole or in part. The review and notification of its results must be completed not later than 45 days after the information and documents are received. (R.C. 5164.37(G).)</p>	<p>Same, except an owner may request a reconsideration only if the provider is a noninstitutional provider. (R.C. 5164.36(G) and (H).)</p>

## **Suspensions because of credible allegations of fraud**

(R.C. 5164.36)

Current law requires the Department to terminate Medicaid payments to a provider when the provider agreement is suspended because of a credible allegation of fraud for which an investigation is pending under the Medicaid program. The termination applies only to payments for Medicaid services rendered after the date the Department sends the provider notice of the suspension. Claims for payment for Medicaid services rendered before that date may be subject to prepayment review procedures under which the Department reviews claims to determine whether they are supported by sufficient documentation, are in compliance with state and federal statutes and rules, and are otherwise complete. Under the bill, the Department must suspend, rather than terminate, the Medicaid payments, and the suspension applies to payments for all services regardless of the date the services are rendered.

## Summary suspensions, danger of immediate and serious harm

(R.C. 5164.37 and 5164.38)

The bill permits the Department to suspend, without prior notice, a Medicaid provider agreement if there is evidence that the provider presents a danger of immediate and serious harm to the health, safety, or welfare of Medicaid recipients. When the Department suspends a provider agreement for this reason, it must:

- Suspend all Medicaid payments to the provider for services rendered, regardless of the date that the services were rendered;
- Not later than five days after suspending the provider agreement, notify the provider of the suspension; and
- Not later than ten business days after suspending the provider agreement, notify the provider that the Department intends to terminate the provider agreement.

The notice that the Department sends regarding the intention to terminate a provider agreement must include the allegation that the provider presents a danger of immediate and serious harm to the health, safety, or welfare of Medicaid recipients. It may also include other grounds for terminating the provider agreement. When terminating the provider agreement, continuing law that requires the Department to issue an order pursuant to adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119) applies.

The suspension of a provider agreement and Medicaid payments is to cease at the earliest of:

- The Department's failure to provide within the required time a notice regarding the suspension or intent to terminate the provider agreement;
- The Department rescinds its notice to terminate the provider agreement;
- The Department issues an order regarding the termination of the provider agreement pursuant to an adjudication.

The bill states that this provision does not limit the Department's authority to suspend or terminate a provider agreement or Medicaid payments under any other provision of the Revised Code.

Current law provides that the Department is not required to issue an order pursuant to an adjudication when it refuses to enter into or revalidate a Medicaid provider agreement or suspends or terminates a provider agreement if the provider agreement and Medicaid payments are suspended because of a credible allegation of fraud or disqualifying indictment. The bill provides that an adjudication order also is not required if the provider agreement and Medicaid payments are suspended because the provider presents a danger of immediate and serious harm to the health, safety, or welfare of Medicaid recipients.

## Performance indicators for children's hospitals

(R.C. 5164.724)

The bill requires the Medicaid Director to adopt performance indicators to measure the quality of services provided by children's hospitals. Each children's hospital is required to submit a report annually to the Department on each of the performance indicators. The first report is due not later than January 1, 2021.

## Rates for nonemergency medical services

(R.C. 5164.722 (primary) and 5164.38)

When a hospital emergency department provides to a Medicaid recipient medical services beyond those needed to comply with the federal Emergency Medical Treatment and Labor Act (EMTALA), the bill prohibits the Medicaid payment rates for those services from exceeding the payment rates for the same services when provided in the most appropriate health care setting. Under the bill, the Department or its designee must determine what would have been the most appropriate health care setting. (EMTALA requires an emergency department to stabilize and treat an individual's emergency medical condition, regardless of the individual's ability to pay.<sup>81</sup>)

The bill requires the Department to conduct fiscal audits of hospital emergency departments to ensure that payment rates do not exceed the limits established by the bill. The Department may reduce a hospital emergency department's Medicaid payments by up to half and for up to five years if the hospital does not cooperate with a final fiscal audit.

## Rates for federally qualified health centers

(R.C. 5164.723 (primary), 5164.01, and 5164.05)

The bill addresses Medicaid payment rates for federally qualified health centers (FQHCs) that are located on the same campus as hospital emergency departments and provide medical services to Medicaid recipients referred by the emergency departments. Under these circumstances, the Medicaid payment rate to the FQHC equals either of the following:

- For the first five years that the FQHC participates in Medicaid, the FQHC's Medicaid payment rate plus the emergency room facility fee that the hospital emergency department would have been paid had the emergency department provided the medical services;
- For the five-year period immediately following the FQHC's first five-year period, the FQHC's Medicaid payment rate plus 50% of the emergency room facility fee.

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<sup>81</sup> See <<https://www.cms.gov/regulations-and-guidance/legislation/emtala/>>.

## **Rates for nursing facility services**

### **Low resource utilization residents**

(R.C. 5165.152)

The bill revises the Medicaid payment rate for nursing facility services provided to low resource utilization residents. A low resource utilization resident is a Medicaid recipient residing in a nursing facility who, for purposes of calculating the nursing facility's Medicaid payment rate, is placed in either of the two lowest resource utilization groups, excluding any resource utilization group that is a default group used for residents with incomplete assessment data.

Under current law, the rate is the following:

- \$115 per day if the Department is satisfied that the nursing facility is cooperating with the Long-Term Care Ombudsman Program in efforts to help its low resource utilization residents receive the services that are most appropriate for their level of care needs;
- \$91.70 per day if the Department is not satisfied.

The bill provides for the rate to be \$115 per day regardless of whether the nursing facility cooperates with the Long-Term Care Ombudsman Program.

### **Quality payment rates**

(R.C. 5165.25)

The bill revises the law governing the quality payments that nursing facilities earn under Medicaid for satisfying quality indicators, as follows:

- Eliminates as a quality indicator a nursing facility's use of the nursing home version of the Preferences for Everyday Living Inventory for all of its residents;
- Establishes as a quality indicator a nursing facility's obtaining at least a target score on the Department of Aging's resident satisfaction survey (for even-numbered state fiscal years) or the family satisfaction survey (for odd-numbered state fiscal years);
- Requires the Department to specify the target score for the satisfaction surveys;
- Eliminates a requirement that the Department, when determining the percentages of a nursing facility's short-stay residents who newly received an antipsychotic medication and long-stay residents who newly or otherwise received an antipsychotic medication, exclude residents who received the medication in conjunction with hospice care;
- Provides for a nursing facility that undergoes a change of operator to receive, for the state fiscal year following the one during which the change of operator occurs, the mean quality payment regardless of whether the change of operator occurred before or during the last quarter of a calendar year.

## **Quality incentive payments**

(R.C. 5165.26 (primary) and 5165.15)

### **Addition of quality incentive payment**

The bill adds a quality incentive payment to nursing facilities' Medicaid payment rates beginning with the second half of FY 2020. A nursing facility's quality incentive payment is to be based on the score it receives for meeting certain quality metrics regarding its residents who have resided in the nursing facility for at least 100 days (i.e., long-stay residents).

### **Nursing facility's score on quality metrics**

With certain adjustments, a nursing facility's score for a state fiscal year is to be the sum of the total number of points that the U.S. Centers for Medicare and Medicaid Services (CMS) assigned to the nursing facility under CMS's nursing facility five-star quality rating system for the following quality metrics:

- The percentage of the nursing facility's long-stay residents at high risk for pressure ulcers who had pressure ulcers during the calendar year preceding the calendar in which the fiscal year begins (i.e., the measurement period);
- The percentage of the nursing facility's long-stay residents who had a urinary tract infection during the measurement period;
- The percentage of the nursing facility's long-stay residents whose ability to move independently worsened during the measurement period;
- The percentage of the nursing facility's long-stay residents who had a catheter inserted and left in their bladder during the measurement period.

In determining a nursing facility's score for a fiscal year, the Department must make the following adjustments to the number of points that CMS assigned to the nursing facility for each quality metric:

- Unless CMS assigned the nursing facility the lowest percentile for the quality metric, divide the number of the nursing facility's points for the quality metric by 20;
- If CMS assigned the nursing facility the lowest percentile for the quality metric, reduce the nursing facility's points for the quality metric to zero.

A nursing facility's score is to be zero for a fiscal year if it is not to receive a quality incentive payment for that fiscal year because it does not satisfy the licensed occupancy condition.

### **Quality incentive conditioned on licensed occupancy**

A nursing facility is not to receive a quality incentive payment for a fiscal year if:

- In the case of the payment for the second half of FY 2020, the nursing facility's licensed occupancy percentage is less than 80%.

- In the case of the payment for FY 2021 and each fiscal year thereafter, the nursing facility's licensed occupancy percentage is less than the statewide average licensed occupancy percentage.

A nursing facility's licensed occupancy percentage for a fiscal year is to be determined as follows:

- Multiply the nursing facility's licensed occupancy on the last day of the measurement period by the number of days in that measurement period;
- Divide the product determined under (1) by the number of the nursing facility's inpatient days for the measurement period.

### **Quality incentive payment amount**

A nursing facility's per Medicaid day quality incentive payment rate for a fiscal year is to be determined as follows:

1. Determine the sum of the scores on the quality metrics for all nursing facilities.
2. Determine the average score by dividing the sum determined under (1) by the number of nursing facilities for which a score was determined.
3. Determine the following:
  - For the second half of FY 2020, the sum of the total number of Medicaid days for the second half of calendar year 2018 for all nursing facilities for which a score was determined.
  - For all of FY 2021 and each fiscal year thereafter, the sum of the total number of Medicaid days for the measurement period for all nursing facilities for which a score was determined.
4. Multiply the average score determined under (2) by the sum determined under (3).
5. Determine the value per quality point by dividing the total amount to be spent on quality incentive payments for the fiscal year by the product determined under (4).
6. Multiply the value per quality point by the nursing facility's score on the quality metrics.

### **Total amount spent on quality incentive payments**

The bill specifies the total amount that is to be spent on quality incentive payments for each fiscal year.

For the second half of FY 2020, the amount is to be the sum of the following for all nursing facilities, including those that are not to receive a quality incentive payment because they do not meet the licensed occupancy condition:

1. The amount that is 2.4% of the portion of each nursing facility's Medicaid payment rate regarding its ancillary and support, capital, direct care, and tax costs and the critical access incentive payment (i.e., the base rate) on January 1, 2020;

2. Multiply the amount determined under (1) by the number of each nursing facility's Medicaid days for the second half of calendar year 2018.

For all of FY 2021 and each fiscal year thereafter, the amount is to be the sum of the following for all nursing facilities, including those that are not to receive a quality incentive payment because they do not meet the licensed occupancy condition:

1. The amount that is 2.4% of each nursing facility's base rate on the first day of the fiscal year;

2. Multiply the amount determined under (1) by the number of each nursing facility's Medicaid days for the measurement period.

### **Budget reduction adjustment factor**

(Section 333.270)

Continuing law provides for nursing facilities' Medicaid rates to be increased beginning with FY 2020 by the difference between (1) the Medicare skilled nursing facility market basket index for the federal fiscal year that begins during the state fiscal year preceding the state fiscal year for which the rate is being determined and (2) the budget reduction adjustment factor for the state fiscal year. This increase is applied when determining a nursing facility's total rate and when determining the rates for its ancillary and support, capital, direct care, and tax costs. The General Assembly has stated its intent to specify in statute the amount that is to be used as the budget reduction adjustment factor for specific fiscal years. If the General Assembly fails to specify the amount of the budget reduction adjustment factor for a fiscal year, the amount is to be zero.<sup>82</sup>

The bill provides that the budget reduction adjustment factor for the second half of FY 2020 is to be 2.4%. For FY 2021, it is to be an amount equal to the Medicare skilled nursing facility market basket index determined for all of federal fiscal year 2020.

### **Rate for Vagus Nerve Stimulation**

(Section 333.185)

The bill requires that the Medicaid payment rate for the Vagus Nerve Stimulation (VNS) service provided under the outpatient hospital benefit during FY 2020 and FY 2021 equal 75% of the Medicare payment rate for the service in effect on the date that the service is provided.

The bill requires that the Medicaid payment rates for other Medicaid services selected by the Medicaid Director be less than the amount of the rates for those services in effect on June 30, 2019, so that the cost of the rate for the VNS service does not increase Medicaid expenditures. The Director may not select for rate reduction any Medicaid service for which the rate is determined in accordance with state statutes.

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<sup>82</sup> R.C. 5165.361, not in the bill.

## **Rates for community behavioral health services**

(Section 333.180)

The bill permits the Department to establish Medicaid payment rates for community behavioral health services provided during FY 2020 and FY 2021 that exceed the authorized rates paid for the services under the Medicare program. This does not apply, however, to such services provided by hospitals on an inpatient basis, nursing facilities, or ICF/IIDs.

## **Home-delivered meals under Medicaid waivers**

(R.C. 5166.04, 5166.122, and 5166.162; Section 333.160)

The bill requires a Medicaid waiver that covers home-delivered meals to provide for the format in which the meals are delivered to an individual and the frequency of the deliveries to be consistent with the individual's needs as specified in the individual's written plan of care or individual service plan. Such a waiver also must prohibit an individual who delivers the meals from leaving the meals with the individual to whom they are delivered unless the individuals meet face-to-face at the time of the delivery.

An entity that provides home-delivered meals to individuals enrolled in the MyCare Ohio or Ohio Home Care waiver is prohibited by the bill from offering snacks in addition to the breakfast, lunch, or dinner meals provided to the enrollees unless the entity (1) offers an enrollee not more than five snack choices at a time, (2) provides an enrollee with the amount of calories in, and the sugar and sodium contents of, each snack offered to the enrollee, and (3) provides an enrollee not more than one snack per each breakfast, lunch, and dinner meal that is provided to the enrollee at the same time as the snacks. "Snack" is defined as a small portion of food or drink or a light meal that is usually consumed before or after a breakfast, lunch, or dinner meal.

The bill sets the payment rates for home-delivered meals provided under the MyCare Ohio and Ohio Home Care waivers during FYs 2020 and 2021 at the following amounts:

- For each meal delivered daily on a per-meal delivery basis by a volunteer or employee of the provider, \$7.19;
- For each meal delivered in a chilled or frozen format on a weekly delivery basis by a volunteer or employee of the provider, \$6.99;
- For each meal delivered in a chilled or frozen format on a weekly basis by a common carrier used by the provider, \$6.50.

## **Post-hospital extended care agreements**

(R.C. 5164.302)

The bill prohibits the Department from entering into a provider agreement with, or revalidating the provider agreement of, a hospital if any of the following applies:

1. The hospital has a post-hospital extended care agreement with a nursing home that does any of the following:

- Permits the hospital to (a) negotiate with a third-party payer the rates the nursing home is paid for providing extended care under the agreement or (b) receive payment for the services the nursing home provides under the agreement.
- Requires, incentivizes, or coerces the nursing home to do any of the following:
  - ❖ Use or make referrals to the hospital's staff, including physicians, medical directors, and nurses;
  - ❖ Use a specific technology or software program unless (a) the technology or software program is standardized, uniform, and compatible with the technology or software programs used by all hospitals in Ohio and (b) unless the nursing home already has and uses the technology or software program, the hospital compensates the nursing home for the costs associated with acquiring the technology or software program, subscription payments for the technology or software program, and training individuals to use the technology or software program.
  - ❖ Provide a service without prior authorization from a managed care organization if the organization requires the nursing home to obtain prior authorization for the service as a condition of being paid for the service.
- Permits the hospital to do either of the following regarding a service the nursing facility provides if prior authorization from a managed care organization is needed for the nursing home to receive payment for the service:
  - ❖ Obtain prior authorization; or
  - ❖ Represent the nursing home in obtaining the prior authorization.
- Supersedes, negates, or otherwise interferes with a contract between the nursing home and a third-party payer.

2. Either of the following applies when the hospital selects a nursing home with which to enter into a post-hospital extended care agreement:

- The hospital fails to (a) include quality measures and other necessary outcome measures and define thresholds for the measures as part of the selection process or (b) ensure that the nursing home can meet the needs of persons admitted to the nursing home under the agreement.
- The hospital (a) uses referrals or patient utilization of services as part of the selection process or (b) considers the use of any of the hospital's staff, resources, or downstream services, as defined in rules, that create revenue for the hospital.

3. The hospital fails to make either of the following available to a nursing home or the Department on request:

- The hospital's process for selecting nursing homes with which to enter into post-hospital extended care agreements;

- An explanation of how the hospital complied with (2), above, when selecting nursing homes for such agreements.

## **MyCare Ohio standardized claim form**

(R.C. 5164.91)

The bill requires the Medicaid Director to develop a standardized claim form and standardized claim codes that can be used by medical providers providing medically necessary health care services under the Integrated Care Delivery System (known as MyCare Ohio). The forms and codes must allow a medical provider to use the same forms and codes for a medically necessary health care service, regardless of the payor.

The bill also establishes time frames by which a claim made on the standardized claim form and with the standardized claim codes must be paid by the Department or its designee. It (1) specifies that a claim for a medically necessary health care service that is properly submitted using the standardized claim form and claim codes is a clean claim and (2) requires the claim to be paid by the Department not later than 30 days after the claim's submission. If the Department fails to pay the claim within 35 calendar days, it must pay interest on the claim equal to 1% per month, calculated from the expiration of the time period. Interest accrues until the claim and interest are paid in full to the provider.

## **Medicaid managed care**

### **Behavioral health services**

(R.C. 5167.04, primary; R.C. 103.416)

The bill provides that the Department is permitted, instead of required, to include alcohol, drug addiction, and mental health services in the Medicaid managed care system. Under current law, the Department is required to include the services in the system. They have been included in the system since July 1, 2018.

Current law requires the Joint Medicaid Oversight Committee to periodically monitor the Department's inclusion of the services in the system. The bill provides that this requirement applies only if the Department includes them in the system and eliminates the monitoring requirement altogether on July 1, 2020.

### **Home visits and cognitive behavioral therapy**

(R.C. 5167.16, repealed; R.C. 5167.03)

The bill repeals a requirement that Medicaid managed care organizations (MCOs) provide or arrange the following services to certain Medicaid recipients:

- Home visits, including depression screenings, for which federal Medicaid funds are available under the targeted case management benefit;
- Cognitive behavioral health therapy that is provided by a community mental health services provider and determined to be medically necessary through a depression screening conducted as part of a home visit.

The cognitive behavioral health therapy must be provided in a Medicaid recipient's home if requested by the recipient. Medicaid MCOs are required to inform Medicaid recipients of this right and how to request that the therapy be provided at home.

To qualify for the services, a Medicaid recipient must be (1) enrolled in the Department of Health's Help Me Grow program, (2) either pregnant or the birth mother of an infant or toddler under three, and (3) enrolled in the Medicaid MCO providing or arranging the services.

### **Shared Savings Bonus Program**

(R.C. 5167.35 (primary), 5162.138, and 5166.50; Section 333.195)

#### **Program established**

The Department is required by the bill to establish the Shared Savings Bonus Program if the U.S. Secretary of Health and Human Services enters into an enforceable agreement with the Medicaid Director that provides for no federal Medicaid funds to be withheld because of the program. The Medicaid Director must request that the Secretary enter into such an agreement.

#### **Calculations of three-year averages**

Under the program, the Department must make calculations before the beginning of each fiscal year. The first calculation is to determine the average of the per recipient capitated payment rate, excluding any shared savings bonus, for each Medicaid MCO for the three fiscal years preceding the fiscal year for which the determination is made. The second calculation is to determine the average per recipient cost to Medicaid in Illinois, Indiana, Michigan, Ohio, Pennsylvania, and West Virginia for the eligibility groups that are designated in the Medicaid managed care system for the three fiscal years preceding the fiscal year for which the determination is made. In making these calculations, the Department is to include only the costs that all states' Medicaid programs must cover and the costs for those optional services that are covered by Medicaid in Illinois, Indiana, Michigan, Ohio, Pennsylvania, and West Virginia.

#### **Amount of shared savings bonus**

The amount of a Medicaid MCO's shared savings bonus for a fiscal year is to be determined as follows:

1. Subtract the MCO's three-year average per recipient capitated payment rate determined under the first calculation from the three-year average per recipient cost of the specified states' Medicaid programs determined under the second calculation;
2. Subtract that MCO's three-year average per recipient capitated payment rate determined for the fiscal year from the MCO's three-year average per recipient capitated payment rate determined for the first of the fiscal years for which the determination is made;
3. Determine the sum of the differences determined under (1) and (2) above;
4. Multiply the sum determined under (3) above by 20%.

### **Consequence of having a negative number**

If the sum determined for a Medicaid MCO under (3) above for the first or second fiscal year for which the determination is made is a negative number, the MCO's shared saving bonus for that fiscal year is to be zero. If the amount of that sum determined for a Medicaid MCO for the third or subsequent fiscal year for which the determination is made is a negative number, the Department must terminate the MCO's contract and enter into a contract with another MCO for purposes of the Medicaid managed care system. The effective date of the contract termination must be the same as the effective date of the contract with the other MCO so as to avoid a disruption in Medicaid recipients' access to services under the Medicaid managed care system.

### **Terms of Medicaid MCO contracts**

The bill requires that each contract the Department enters into with a Medicaid MCO during the periods that the program is operated must include terms about the program that are consistent with the provisions of the bill governing the program.

### **Report**

The Department is required to complete a report about the program at the end of each year. The report is to detail the Department's findings and recommendations regarding the program. The report must be submitted to the Governor and General Assembly.

### **Quality Incentive Program**

(R.C. 5167.35 (primary), 5162.139, 5166.50, and 5167.01; Section 333.195)

#### **Program established**

The bill requires the Department to establish the Quality Incentive Program if the U.S. Secretary of Health and Human Services enters into an enforceable agreement with the Medicaid Director that provides for no federal Medicaid funds to be withheld because of the program. The Medicaid Director must request that the Secretary enter into such an agreement.

#### **Participating Medicaid MCOs**

Each Medicaid MCO that has a contract with the Department on the effective date of this provision of the bill is to participate in the program. Other MCOs that become Medicaid MCOs after that date are to participate also if selected by the Department for participation.

#### **Random assignment of Medicaid recipients to plans**

Under the program, if a Medicaid recipient participating in the Medicaid managed care system does not select a Medicaid MCO plan in which to enroll, the Department must randomly assign the recipient to enroll in a Medicaid MCO plan offered by one of the participating Medicaid MCOs. The number of recipients randomly assigned to enroll in each participating Medicaid MCO's plan is to be determined in accordance with the MCO's assignment share percentage for the year the enrollment takes place.

### **Amount of assignment share percentage**

All participating Medicaid MCOs are to have the same assignment share percentage during the first calendar year that the program is operated. Each year thereafter, each participating Medicaid MCO is to be ranked according to the number of points it is awarded for meeting health and quality metrics and each of the participating MCO's assignment share percentage is to be adjusted as follows:

- The assignment share percentage of the participating MCO ranked at the top is to be increased by 25%.
- The assignment share percentage of the participating MCO ranked at the bottom is to be decreased by 25%.
- The assignment share percentage of all of the other participating MCOs is to be increased or decreased in a corresponding, linear, and proportional manner based on their ranks.

If a Medicaid MCO begins to participate in the program after the other participating MCOs' assignment share percentage have been assigned, the Department is required to do both of the following:

- Assign to the new participating MCO an initial assignment share percentage which is to be the percentage determined by dividing 100 by the total number of participating MCOs;
- Adjust the assignment share percentages of all of the other participating MCOs proportionally.

### **Points awarded for health and quality metrics**

The Department is required to award points annually to each participating Medicaid MCO based on health and quality metrics taken from the previous calendar year. The Department is to determine how points are to be awarded. The number of points awarded to a participating Medicaid MCO based on quality metrics cannot be more than 20% of the total number of points awarded to the MCO.

The health metrics must include the following measurements for the group of Medicaid recipients who have been randomly assigned to enroll in a participating Medicaid MCO's plan:

- Smoking rate;
- Infant mortality rate;
- Hemoglobin alc levels;
- Obesity rate;
- Incidence of relapse of alcohol or drug addiction;
- Health measurements developed by the Department in consultation with groups representing individuals with developmental disabilities.

The quality metrics are to include the following measurements as measured through a survey established by the Department:

- How promptly the participating Medicaid MCO pays claims for services rendered to enrollees;
- The participating MCO's responsiveness to provider and enrollee requests;
- Provider user satisfaction;
- The effectiveness of the participating MCO's enrollee incentive program (see "**Enrollee incentive programs**" below);
- Any other measures the Department considers appropriate.

The Department is required to publish each participating Medicaid MCO's point totals annually and provide the information to Medicaid recipients before they enroll in a Medicaid MCO plan.

### **Medicaid MCO's termination from the program**

If, for the second or a subsequent calendar year that the program is operated, a participating Medicaid MCO's assignment share percentage is decreased to an amount that is equal to or less than 50% of its assignment share percentage for the first calendar year that the program is operated, the Department must terminate the MCO's participation in the program.

### **Prohibition against different treatment of Medicaid recipients**

A participating Medicaid MCO is prohibited from treating Medicaid recipients who are randomly assigned to the MCO's plan under the program differently than how the MCO treats Medicaid recipients who select the plan on their own.

### **Terms of Medicaid MCO contracts**

The bill requires that each contract the Department enters into with a Medicaid MCO during the periods that the program is operated must include terms about the program that are consistent with the provisions of the bill governing the program.

### **Report**

The Department is required to complete a report about the program at the end of each year. The report is to detail the Department's findings and recommendations regarding the program. The report must be submitted to the Governor and General Assembly.

### **Employment connection incentive programs**

(R.C. 5167.28)

The bill requires that each Medicaid MCO establish an employment connection incentive program to assist Medicaid recipients enrolled in a Medicaid MCO plan in obtaining and maintaining employment. An enrollee is permitted to volunteer to participate but is not required to. If an enrollee volunteers to participate, a Medicaid MCO must do both of the following:

- Identify the barriers that the enrollee has to achieving greater financial independence, including education, employment, physical and behavioral health care, transportation, child care, housing, legal problems (including criminal records), and other barriers identified for the enrollee;
- Assist the enrollee in overcoming the barriers, including assistance in obtaining and maintaining meaningful employment.

Assistance in obtaining and maintaining meaningful employment must include all of the following as appropriate for the enrollee:

- Education programs, including English as a second language, literacy, programs designed to lead to the equivalent of a high school diploma, and post-secondary education;
- Job training, placement, and retention programs;
- Apprenticeship programs;
- Mentoring programs;
- Other activities the Department specifies.

The Department must establish criteria to determine the success that Medicaid MCOs have with their employment connection incentive programs. The criteria must include the length of time that an enrollee who participated in the program has ceased to be eligible for Medicaid due to increased earnings resulting from employment that the program helped the enrollee obtain or maintain. The Department must provide incentive payments to Medicaid MCOs according to their successes. The Department is to determine the amount of each payment and the times at which Medicaid MCOs earn payments. The amount of a payment to be made to a Medicaid MCO must be based on the savings in the nonfederal share of the per recipient per month cost of the capitation payments to the Medicaid MCO resulting from its success with its program.

## **Enrollee incentive programs**

(R.C. 5167.29 (primary) and 5167.01)

### **Requirement to establish programs**

The bill requires each Medicaid MCO to establish and implement a program that incentivizes Medicaid recipients who enroll in the MCO's plan to obtain covered health care from high quality and efficient providers on the MCO's provider panel. The incentives are to be in the form of points awarded to enrollees which can be redeemed for merchandise available through the MCO's website.

### **Quality metrics**

As part of an enrollee incentive program, a Medicaid MCO must rate the members of the MCO's provider panel based on quality metrics. The metrics for hospitals must be the measures used for the Medicare Hospital Value-Based Purchasing Program. The Department must establish the metrics for other types of providers. In rating providers, the MCO must award providers between one and five stars based on their scores on the metrics.

## **Enrollee ratings and comments**

Another part of creating an enrollee incentive program provides for Medicaid MCOs to establish on their websites a system under which enrollees rate and provide comments about providers after appointments. The system must be similar to websites that enable consumers to rate and provide comments about commercial products. A Medicaid MCO is required to encourage enrollees to use the system after each appointment. The system must enable all enrollees to see the ratings and comments that other enrollees have made for each provider.

### **Information to be given to enrollees**

A Medicaid MCO is required to provide an enrollee all of the following before any covered health care, other than an emergency service, is furnished to the enrollee by a provider on the MCO's provider panel with which the enrollee has scheduled an appointment:

- A reasonable, good faith cost estimate for the covered health care that meets the bill's price transparency requirements, regardless of whether the provider also provides the cost estimate to the enrollee or the enrollee's representative (see "**Health care price transparency**" in the Department of Insurance parts of this analysis);
- The provider's quality rating and average enrollee rating under the program;
- The address of the MCO's website at which the enrollee may access the enrollee rating system so that the enrollee can read the ratings and comments made by other enrollees about the provider and other providers on the MCO's provider panel;
- A list of high quality and efficient providers on the MCO's provider panel who could furnish the covered health care to the enrollee and the providers' quality ratings and average enrollee ratings under the program.

### **Points awarded to enrollees**

A Medicaid MCO is required to award points to an enrollee if the enrollee cancels an appointment for covered health care with a provider that is not a high quality and efficient provider and instead obtained the care from a high quality and efficient provider. To be considered to be a high quality and efficient provider, both of the following must apply: (1) the provider must have a high quality rating under the program and (2) the cost to the Medicaid MCO for covered health care the provider furnishes to an enrollee must be less than the cost than the MCO would have incurred if the enrollee had obtained the care from another provider with which the enrollee initially scheduled an appointment. The number of points to be awarded to an enrollee must be sufficient to incentivize the enrollee to cancel the initial appointment and obtain the covered health care from the high quality and efficient provider.

A Medicaid MCO must monitor enrollees' behavior under the program to thwart abuse. An enrollee found to have abused or attempted to abuse the program is not to be awarded points.

### **Monitoring of Medicaid MCOs**

The Department must monitor each Medicaid MCO as the MCO establishes and implements the program and determine the effectiveness of the MCO's program.

## **Regional hospital networks**

(R.C. 5167.10 (primary) and 5166.50)

The bill permits the Department to contract with a regional network consisting of hospitals to serve as a Medicaid MCO if certain conditions are met. First, the regional network must accept a capitated payment from the Department that is not more than 90% of the lowest capitated payment made to a Medicaid MCO that is a health insuring corporation. Second, the U.S. Secretary of Health and Human Services must have entered into an enforceable agreement with the Medicaid Director that provides for no federal Medicaid funds to be withheld because of this. The Medicaid Director must request that the Secretary enter into such an agreement.

## **Medicaid MCO provider requirements**

(R.C. 5167.104 and 5167.105)

The bill requires a Medicaid MCO, if it establishes a payment rate for a service covered by its plan that is greater than the payment rate for the service under the fee-for-service component of Medicaid, to require any provider of the service that seeks to be part of the MCO's provider panel to enter into a value-based contract with the MCO.

A Medicaid MCO is prohibited by the bill from permitting a provider to be part of the MCO's provider panel unless the provider assures the MCO that the provider, once a member of the provider panel, will provide to the MCO required by the bill's provisions regarding price transparency if the provider chooses to have the MCO provide to enrollees the reasonable, good faith estimate required by the price transparency provisions. (See "**Health care price transparency**" in the Department of Insurance parts of this analysis.)

## **Hospital value-based purchasing**

(R.C. 5167.19)

The bill requires each Medicaid MCO to implement a hospital value-based purchasing program that is generally identical to the Medicare Hospital Value-Based Purchasing Program. Under the program, a Medicaid MCO must make incentive payments to participating hospitals based on their successes in meeting the measures used for the Medicare version of the program. A participating hospital is a hospital under contract with a Medicaid MCO to provide inpatient hospital services to Medicaid recipients enrolled in a Medicaid MCO plan.

Each Medicaid MCO is required to reduce each participating hospital's base operating DRG payment amount for each discharge in a year by an amount equal to a certain percentage of the hospital's base operating DRG payment amount for the discharge for that year. The Medicaid Director is to adopt rules defining "base operating DRG payment amount." The percentage by which a participating hospital's base operating DRG payment amount is to be reduced to be 2% for the first year that the reduction is made, 4% for the second year, and 6% for each subsequent year. The reduction must be made for all participating hospitals each year regardless of whether a participating hospital has earned an incentive payment for that year.

The total amount that a Medicaid MCO is to make available for the incentive payments for a year must be equal to the total amount of the savings achieved for that year due to the reduced hospital payments the Medicaid MCO makes to participating hospitals under the bill.

### **Noncontracting hospitals**

(R.C. 5167.20 and 5167.201)

Under current law and with a certain exception, a hospital that participates in Medicaid but does not have a contract with a particular Medicaid MCO must provide a service, other than an emergency service, for which the MCO refers an enrollee and accept as payment in full the amount derived from the Medicaid fee-for-service payment rate paid to other hospitals of the same type for providing the same service. The bill requires that the hospital accept as payment in full an amount equal to 90% of the fee-for-service rate for the service. A hospital continues to be exempt from the requirement if all of the following apply:

- The hospital is located in a county in which Medicaid recipients participating in the Medicaid managed care system are required before January 1, 2006, to be enrolled in a Medicaid MCO plan;
- The hospital entered into a contract before January 1, 2006, with at least one health insuring corporation serving such Medicaid recipients;
- The hospital remains under contract with at least one health insuring corporation serving Medicaid recipients who are required to enroll in a Medicaid MCO plan.

With respect to the provision of emergency medical services to Medicaid recipients enrolled in Medicaid MCO plans, if the medical services provider is not under contract with the Medicaid MCO, current law limits the payment rate that provider receives to the amount a provider would collect if the recipient were enrolled in Medicaid fee-for-service. Under the bill, a provider is exempt from this payment rate limit when providing nonemergency medical services to a Medicaid recipient enrolled in an MCO plan if both of the following apply:

- Before providing the service, the provider discloses to the patient that (1) the medical service is not necessary for the patient's immediate health or welfare and can be completed at a later date and (2) the patient may be liable for payment if the patient does not obtain prior approval from the MCO plan.
- After disclosing the foregoing information, the provider obtains the patient's consent for the nonemergency medical services.

### **Medicaid MCO information from Pharmacy Board**

(R.C. 4729.801)

Continuing law authorizes the State Board of Pharmacy to establish a drug database to monitor the misuse and diversion of controlled substances, medical marijuana, and other dangerous drugs. The Board must provide the medical or pharmacy director of a Medicaid MCO information from the database relating to a Medicaid recipient enrolled in a plan offered by the

MCO if the director requests the information and the MCO has entered into a data security agreement with the Board.

The bill provides a Medicaid MCO may submit a request to the Board for information about all Medicaid recipients enrolled in a plan offered by the MCO and the Board must provide the information in a single electronic file or format.

### **Recoupment of payments**

(R.C. 5167.22)

The bill prohibits a Medicaid MCO from initiating recoupment of an overpayment made to a Medicaid services provider later than one year after the date that the payment was made. The bill requires a Medicaid MCO, when it seeks to recoup such an overpayment, to provide the provider all of the details of the recoupment, including all of the following information:

- The name, address, and Medicaid identification number of the Medicaid recipient to whom the agency provided the services;
- The date or dates that the services were provided;
- The reason for the recoupment;
- The method by which the provider may contest the proposed recoupment.

### **Prior authorization for home health services**

(R.C. 5167.221 (primary) and 5167.01)

A Medicaid MCO is prohibited by the bill from doing either of the following:

- Requiring a Medicaid recipient to obtain prior authorization for the first ten days of home health services if a physician, nursing facility, or hospital referred the recipient to the services;
- Requiring a Medicaid recipient to obtain prior authorization for home health services if the recipient is a hospice patient.

These requirements and prohibitions apply only if the Medicaid managed care system covers home health services provided by home health agencies.

### **State pharmacy benefit manager**

(R.C. 5162.137, 5167.01, 5167.24, 5167.241, 5167.242, 5167.243, and 5167.244)

If prescribed drugs are covered under the care management system and if the Department contracts with Medicaid MCOs, the bill requires Medicaid MCOs to use the state pharmacy benefit manager (PBM) selected and contracted with by the Director of Administrative Services, pursuant to the terms of that contract. Once contracted, the state PBM is responsible for processing all pharmacy claims under the care management system.

A Medicaid MCO can, however, still contract directly with a pharmacy regarding the practice of pharmacy, such as interpreting prescriptions, dispensing drugs, counseling individuals about their drugs, performing drug regimen reviews or utilization reviews, advising

an individual regarding the individual's drug therapy, acting under a consult agreement with a physician, or administering immunizations or drugs as authorized by Ohio law.

### **Prescribed drug formulary**

(R.C. 5167.241)

The bill requires the state PBM, in consultation with the Medicaid Director, to develop a Medicaid prescribed drug formulary that it will use under the care management system. At minimum, the formulary must list prescribed drugs and specify the per unit price for each drug. The formulary price under the bill is the total price ceiling for the prescribed drug and includes any supplemental rebates or discounts received for the drug. The state PBM must price the drugs at the cheapest rate for Ohio. The state PBM cannot make any payment for a formulary drug in an amount that exceeds the per unit price as listed in the formulary.

If the U.S. Centers for Medicare and Medicaid Services (CMS) adopts rules to include the international pricing index model, as described in its advance notice of proposed rulemaking issued on October 30, 2018,<sup>83</sup> the Director must apply for a waiver component as needed and amend the state Medicaid plan to implement the international pricing index model as the Medicaid prescribed drug formulary instead of the standards described above. At minimum, the formulary must contain all Medicare Part B drugs that CMS includes in the international pricing index model. The per unit price for formulary drugs cannot exceed the target price for that drug as derived from the international pricing index model. The state PBM must review the formulary at least monthly and update it based on changes that the CMS makes to the drugs included in the international pricing index model.

The Medicaid prescribed drug formulary is not effective until approved by the Director. The state PBM must immediately disclose in writing to the Director any changes to the formulary, and the Director can disapprove any changes. In developing the formulary, the state PBM must negotiate prices for and price prescribed drugs at the lowest prices possible to maximize the health of Medicaid recipients and promote the efficiency of Medicaid.

### **State pharmacy benefit manager quarterly reports**

(R.C. 5167.42)

Under the bill, the state PBM must provide to the Director a written quarterly report containing the following information from the preceding quarter:

- The prices the state PBM negotiated for prescribed drugs under the care management system, including any rebates received from the drug manufacturer;
- The prices the state PBM paid to pharmacies for prescribed drugs;
- Any rebate amounts the state PBM passed on to individual pharmacies;

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<sup>83</sup> 83 Federal Register 54546-54561.

- The percentage of savings in drug prices that were passed on to care management system participants;
- All common ownership, members of a board of directors, managers, or other control of the PBM (or any of the PBM's affiliated companies) with (1) a Medicaid MCO and its affiliated companies, (2) an entity that contracts on behalf of a pharmacy or any pharmacy services administration organization and its affiliated companies, (3) a drug wholesaler or distributor and its affiliated companies; (4) a third-party payer and its affiliated companies, (5) a pharmacy and its affiliated companies;
- Any direct or indirect fees, charges, or any kind of assessments imposed by the PBM on pharmacies licensed in this state with which the PBM shares common ownership, management, or control, or that are owned, managed, or controlled by any of the PBM's affiliated companies;
- Any direct or indirect fees, charges, or any kind of assessments imposed by the PBM on pharmacies licensed in Ohio that operate more than 11 locations;
- Any direct or indirect fees, charges, or any kind of assessments imposed by the PBM on pharmacies licensed in Ohio that operate 11 or fewer locations;
- Any financial terms and arrangements between the PBM and a prescription drug manufacturer or labeler, including formulary management, drug substitution programs, educational support claims processing, or data sales fees.
- Any other information required by the Director.

The bill permits the Director to ask the state PBM to provide additional information as necessary. It also requires the Department to modify the reporting requirements under its Medicaid managed care organization contracts at the time of contract execution, renewal, or modification as necessary to comply with the bill's reporting requirements.

### **Medicaid Director quarterly reports**

(R.C. 5162.137)

The bill requires the Director to make findings based on the state PBM's quarterly reports. The Director must complete a report detailing the findings not later than 60 days after receiving the state PBM quarterly report. The Director must submit the report to the General Assembly and, upon request, testify about the findings before either chamber of the General Assembly or the Joint Medicaid Oversight Committee. While testifying, the Director must keep confidential any document marked as "confidential" or "proprietary" and must redact any information as necessary before it becomes public, except that the Director may share the document or information with other state agencies or entities.

### **Civil penalty**

(R.C. 5167.43)

The bill prohibits any person from violating these provisions. Violations are subject to a civil penalty in an amount to be determined by the Director.

## **Rule-making authority**

(R.C. 5167.44)

The bill requires the Director to adopt rules as necessary to implement these provisions, including:

- Specifying the information that must be disclosed to the Department by the state PBM;
- Establishing the amount of civil penalties for violations of these provisions;
- Adjusting its capitation payments to Medicaid MCOs as necessary, as a result of the state PBM processing all pharmacy claims under the care management system;
- Consulting with the State Board of Pharmacy to develop a definition of “specialty drug” and “specialty pharmacy” and to prohibit the state PBM from requiring a Medicaid recipient to obtain a specialty drug from a specialty pharmacy owned or otherwise associated with the state PBM.

## **Medicaid managed care waiver**

(R.C. 5166.43)

The bill requires the Medicaid Director to establish a Medicaid waiver program under which Medicaid MCO plans may cover any service or product that would have a beneficial effect on enrollees and, because of the beneficial effect, is likely to reduce the per recipient per month costs under the plan by the end of the first three years that the service or product is covered.

## **Medicaid prompt payment waiver**

(R.C. 5167.25, repealed, with conforming changes in R.C. 3901.3814)

The bill repeals the requirement that the Medicaid Director apply to CMS for a waiver from the federal Medicaid prompt payment requirements that would instead require health insuring corporations to submit claims in accordance with requirements established by the Department of Insurance.

## **Duties of area agencies on aging**

(Section 333.190)

The bill requires the Department, if it expands the inclusion of the aged, blind, and disabled Medicaid eligibility group or Medicaid recipients who are also eligible for Medicare in the Medicaid managed care system during the FY 2020-2021 biennium, to do both of the following for the remainder of the biennium:

- Require area agencies on aging to be the coordinators of home and community-based waiver services that the recipients receive and permit Medicaid MCOs to delegate to the agencies full-care coordination functions for those and other health care services;
- In selecting Medicaid MCOs, give preference to organizations that will enter into subcapitation arrangements with area agencies on aging under which the agencies

perform, in addition to other functions, network management and payment functions for services that those recipients receive.

### **Integrated Care Delivery System performance payments**

(Section 333.60)

The Department 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. It may be better known as MyCare Ohio.

The bill continues for FYs 2020 and 2021, a requirement that the Department provide performance payments to Medicaid MCOs that provide care under the Integrated Care Delivery System. The Department has been required to provide such performance payments since FY 2014.<sup>84</sup>

If participants receive care through Medicaid MCOs under the system, the Department must both:

- Develop quality measures designed specifically to determine the effectiveness of the health care and other services provided to participants by Medicaid MCOs; and
- Determine an amount to be withheld from the Medicaid premium payments paid to Medicaid MCOs for participants.

For purposes of the amount to be withheld from premium payments, the Department must establish a percentage amount and apply the same percentage to all Medicaid MCOs providing care to participants of the Integrated Care Delivery System. Each organization must agree to the withholding as a condition of receiving or maintaining its Medicaid provider agreement. The bill provides that a Medicaid managed care organization providing care under the system is not subject to withholdings under the Medicaid Managed Care Performance Payment Program for premium payments attributed to participants of the system during FYs 2020 and 2021.

### **Performance metrics**

(R.C. 5167.103)

The bill requires the Department to post on its website the metrics that it uses to determine how well Medicaid MCOs perform. The Department must update its website quarterly to reflect any changes it makes to these metrics.

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<sup>84</sup> Section 323.300 of H.B. 59 of the 130<sup>th</sup> General Assembly.

## **Medicaid MCO financial health**

(Section 333.65)

Not later than January 1, 2020, the bill requires the Department to evaluate and benchmark the financial health of Medicaid MCOs against other MCOs providing services under the Medicaid programs of other states in the Midwest. After conducting its evaluation and benchmarking, the Department is required to publish its findings on its website. The bill also requires the Department to adopt rules addressing the financial health of MCOs in the state.

### **Clarification and simplification of statutes**

(R.C. 5167.01, primary; R.C. 3701.612, 4729.80, 5166.01, 5167.03, 5167.04, 5167.05, 5167.051, 5167.10, 5167.101, 5167.102, 5167.11, 5167.12, 5167.13, 5167.14, 5167.17, 5167.171, 5167.172, 5167.18, 5167.20, 5167.201, 5167.26, 5167.41, and 5168.75)

The bill clarifies and simplifies statutes governing the Medicaid managed care system. For the sake of clarity, the bill provides for Medicaid recipients to enroll in Medicaid MCO plans rather than, as under current law, enrolling in Medicaid managed care organizations. “Medicaid MCO plan” is defined as a plan that a Medicaid MCO, pursuant to its contract with the Department, makes available to Medicaid recipients participating in the Medicaid managed care system. For the sake of simplicity, the bill requires Medicaid MCOs to comply with various requirements rather than, as under current law, requiring the contracts that the Department enters into with Medicaid MCOs to include the requirements. For the sake of simplicity, the bill uses the term “enrollee,” which is defined as a Medicaid recipient who participates in the Medicaid managed care system and enrolls in a Medicaid MCO plan.

## **Medicaid waiver, social determinants of health**

(R.C. 5166.42)

The bill requires the Medicaid Director to establish a Medicaid waiver component that addresses social determinants of health, including housing, transportation, food, interpersonal safety, and toxic stress.

## **Automatic designation of authorized representative**

(R.C. 5160.01 and 5160.48)

Under current law, the Department and county departments of job and family services are authorized to disclose information regarding a medical assistance applicant or recipient to the person’s authorized representative. Additionally, authorized representatives may authorize the disclosure of information to an applicant or recipient’s attorney or a health information or health records management entity. The Medicaid Director may adopt rules defining who is an authorized representative.

The bill specifies that, for an applicant who is a resident of a nursing facility or residential care facility that participates in the Assisted Living Program, a county department of job and family services must automatically designate the facility as the applicant’s primary authorized representative at the time of the application for medical assistance. The facility is to

be considered an authorized representative for purposes of the existing law discussed above, and accordingly, a county department of job and family services may communicate with the facility regarding the application. The facility is subject to all rules regarding authorized representatives. The bill also provides that the facility may resign as an authorized representative, and the applicant may designate additional authorized representatives.

## **Care Innovation and Community Improvement Program**

(Section 333.220)

The bill requires the Medicaid Director to continue the Care Innovation and Community Improvement Program for the FY 2020-2021 biennium. The Director was originally required to establish the program for the FY 2018-2019 biennium.<sup>85</sup>

Any nonprofit hospital agency affiliated with a state university and any public hospital agency may volunteer to participate if it operates a hospital that has a Medicaid provider agreement. The nonprofit and public hospital agencies that participate in the program are responsible for the state share of the program's costs and must make or request the appropriate government entity to make intergovernmental transfers to pay for the costs. The Director must establish a schedule for making the transfers.

Each participating hospital agency must undertake at least one of the following tasks in accordance with strategies, and for the purpose of meeting goals designed to benefit Medicaid recipients, the Director is to establish:

- Sustain and expand community-based patient centered medical home models;
- Expand access to community-based dental services;
- Improve the quality of community care by creating and sharing best practice models for emergency department diversions, care coordination at discharge and during transitions of care, and other matters related to community care;
- Align community health improvement strategies and goals with the State Health Improvement Plan and local health improvement plans;
- Expand access to ambulatory drug detoxification and withdrawal management services;
- Train medical professionals on evidence-based protocols for opioid prescribing and drug addiction risk assessments;
- In collaboration with other nonprofit and public hospital agencies that also do this task, create and implement a plan to assist rural areas to (a) expand access to cost-effective detoxification, withdrawal management, and prevention services for opioid addiction and (b) disseminate evidence-based protocols for opioid prescribing and drug addiction risk assessment.

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<sup>85</sup> Section 333.320 of H.B. 49 of the 132<sup>nd</sup> General Assembly.

If a hospital agency chooses the task to expand access to ambulatory drug detoxification and withdrawal management services, or the task to create and implement a plan to assist rural areas, it must give priority to the areas of the community it serves with the greatest concentration of opioid overdoses and deaths. Regardless of the task chosen, a hospital agency must submit annual reports to the Joint Medicaid Oversight Committee summarizing its work on the task and progress in meeting the program's goals.

Each participating hospital agency is to receive supplemental Medicaid payments for physician and other professional services that are covered by Medicaid and provided to Medicaid recipients. The payments must equal the difference between the Medicaid rate and average commercial rates for the services. The Director may terminate, or adjust the amount of, the payments if funding for the program is inadequate.

The Director must establish a process to evaluate the work done under the program by nonprofit and public hospital agencies and their progress in meeting the program's goals. The process must be established by January 1, 2020. The Director may terminate a hospital agency's participation if the Director determines that it is not performing at least one of the tasks discussed above or making progress in meeting the program's goals.

The bill establishes in the state treasury the Care Innovation and Community Improvement Program Fund and requires that all intergovernmental transfers made under the program be deposited into the existing Care Innovation and Community Improvement Program Fund. Money in the fund and the corresponding federal funds must continue to be used to make the supplemental payments to hospital agencies under the program.

### **Hospital Care Assurance Program, franchise permit fee**

(Sections 601.22 and 601.23, amending Sections 125.10 and 125.11 of H.B. 59 of the 130<sup>th</sup> G.A.)

The bill continues the Hospital Care Assurance Program (HCAP) for two additional years. The program is scheduled to end October 16, 2019, but under the bill is to continue until October 16, 2021. Under HCAP, hospitals are annually assessed an amount based on their total facility costs, and government hospitals make annual intergovernmental transfers. The Department distributes to hospitals money generated by the assessments and intergovernmental transfers along with federal matching funds. A hospital compensated under the program must provide (without charge) basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty line.

The bill also continues for two additional years another assessment imposed on hospitals; that assessment is to end on October 1, 2021, rather than October 1, 2019. The assessment is in addition to HCAP, but like that program, it raises money to help pay for the Medicaid program. To distinguish the assessment from HCAP, the assessment is sometimes called a hospital franchise permit fee.

## Health information exchanges

(R.C. 3798.01 and 3798.07; R.C. 3798.06, 3798.08, 3798.14, 3798.15, and 3798.16, all repealed)

The bill eliminates all provisions regarding approved health information exchanges in statutes governing protected health information.<sup>86</sup> Current law defines “approved health information exchange” as a health information exchange that has been approved by the Medicaid Director or that has been certified by the Office of the National Coordinator for Health Information Technology in the U.S. Department of Health and Human Services. A health information exchange is any person or government entity that provides a technical infrastructure to connect computer systems or other electronic devices used by covered entities to facilitate the secure transmission of health information.<sup>87</sup>

Specifically, the bill repeals statutes that do the following:

- Require the Medicaid Director to adopt rules that establish (a) standards and processes for approving health information exchanges, (b) processes for the Director to investigate and resolve concerns and complaints regarding approved health information exchanges, and (c) processes and content for agreements under which covered entities participate in approved health information exchanges (participation agreements);
- Permit a covered entity to disclose an individual’s protected health information to a health information exchange without a valid authorization if (a) the exchange is an approved health information exchange, (b) the covered entity is a party to a valid participation agreement with the exchange, (c) the disclosure is consistent with all procedures established by the exchange, and (d) the covered entity, before making the disclosure, furnishes written notice to the individual or the individual’s personal representative;
- Give covered entities and approved health information exchanges immunity to civil and criminal liability for actions authorized by the statutes governing approved health information exchanges.

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<sup>86</sup> “Protected health information” is defined in a federal regulation generally as individually identifiable health information that is transmitted by or maintained in electronic media or any other form or medium. (45 C.F.R. 160.103.) “Individually identifiable health information” is defined in the same federal regulation as health information, including demographic information collected from an individual, that (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse, (2) relates to (a) the past, present, or future physical or mental health or condition of an individual, (b) the provision of health care to an individual, or (c) the past, present, or future payment for the provision of health care to an individual, and (3) identifies the individual or reasonably could be used to identify the individual.

<sup>87</sup> “Covered entity” is defined in federal regulations as a health plan, health care clearinghouse, or health care provider that transmits any health information in electronic form in connection with a transaction covered by federal rules governing the privacy of personal health information (the HIPAA Privacy Rule). (45 C.F.R. 160.103.)

The bill also eliminates a requirement that a covered entity, when it discloses an individual's protected health information to a health information exchange, restrict disclosure in a manner that is consistent with a written request from the individual or the individual's personal representative concerning specific categories of protected health information to the extent the Medicaid Director's rules require the covered entity to comply with such a request. The Director's duty to adopt such rules is eliminated as part of the bill's repeal of the statute that requires the Director to adopt rules establishing the content of participation agreements.

## **Health Care/Medicaid Support and Recoveries Fund**

(R.C. 5162.52)

The bill establishes two additional purposes for which the ODM is to use money credited to the Health Care/Medicaid Support and Recoveries Fund. Specifically, the money is to be used to pay for (1) programs that serve youth involved with multiple government agencies and (2) innovative programs that ODM has the statutory authority to implement and that promote access to health care or help achieve long-term cost savings to the state.

Under continuing law, ODM must use money credited to the fund to pay for Medicaid services and costs associated with the administration of Medicaid.

## **Abolished funds**

### **Integrated Care Delivery Systems Fund**

(R.C. 5162.58, repealed; R.C. 5162.01)

The bill abolishes the Integrated Care Delivery Systems Fund, which is part of the state treasury. Under current law, a portion of the amounts that the Integrated Care Delivery System saves the Medicare program must be deposited into the fund if the terms of an agreement with the federal government provide for the state to receive those amounts. The Department must use money in the fund to further develop integrated delivery systems and improved care coordination for individuals eligible for both Medicare and Medicaid (dual eligible individuals).

The purpose of the Integrated Care Delivery System is to test and evaluate the integration of care that dual eligible individuals receive under Medicare and Medicaid.<sup>88</sup> The system is commonly called MyCare Ohio.

### **Managed Care Performance Payment Fund**

(R.C. 5162.60, repealed)

The bill abolishes the Managed Care Performance Payment Fund. The fund, which is part of the state treasury, consists of:

- Amounts transferred to it for the Managed Care Performance Payment Program;

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<sup>88</sup> R.C. 5164.91, not in the bill.

- All fines imposed on and collected from Medicaid managed care organizations for failure to meet performance standards or other requirements specified in provider agreements with the Department of Medicaid or rules adopted by the Medicaid Director;
- All of the fund's investment earnings.

Current law requires that the fund be used to do the following:

- Make performance payments to Medicaid managed care organizations under the Managed Care Performance Payment Program;
- Meet obligations specified in Medicaid provider agreements;
- Pay for Medicaid services provided by Medicaid managed care organizations;
- Reimburse a Medicaid managed care organization that has paid a fine for failure to meet performance standards or other requirements if the organization comes into compliance.

### **Medicaid Administrative Reimbursement Fund**

(R.C. 5162.62, repealed)

The bill abolishes the Medicaid Administrative Reimbursement Fund. The balance of this fund was transferred to a different fund in FY 2018, and it currently has a zero cash balance.

### **Medicaid School Program Administrative Fund**

(R.C. 5162.64, repealed)

The bill repeals the law establishing the Medicaid School Program Administrative Fund in the state treasury. The law requires Medicaid to use money in the fund to pay for the school component of Medicaid, including refunding a Medicaid school provider any overpayment the provider made to Medicaid. Although the fund was authorized in 2013, it was never created.

### **340B Study Committee**

(Section 333.260)

The bill creates within the Department a study committee regarding the federal 340B Drug Pricing Program, which requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices. The committee consists of members whom the Governor must appoint no later than 90 days after the bill's effective date. Members serve without compensation, unless serving on the committee is part of the member's regular employment duties. But they will be reimbursed for actual and necessary expenses incurred in the performance of official duties.

From 340B covered entities that are both hospitals and Medicaid providers, the committee must collect data on (1) the cost of the prescribed drug to the hospital and (2) the amount the patient was billed by the hospital for the drug. The committee must study the information and prepare a report outlining its findings related to:

- Whether the 340B Drug Pricing Program federal regulations and the program's intent are being followed by the hospitals;
- Whether the hospitals are passing along to patients the drug discounts under the program;
- Ways Ohio can control prescription drug costs under the program and ensure that the discounts are used for their intended purpose.

Not later than January 1, 2020, the committee must submit a report detailing its findings to the General Assembly. The committee ceases to exist after submitting the report.

## **HHS Efficiencies and Alignment Study Committee**

(Section 751.20)

The bill creates the Health and Human Services Efficiencies and Alignment Study Committee to examine the alignment and administrative efficiencies within the state's health and human services agencies.

### **Committee membership and organization**

The following members serve on the Committee:

- Two members from the House, one of whom the Speaker must appoint as co-chairperson, as designated below:
  - The chairperson of the House Finance Subcommittee on Health and Human Services;
  - The chairperson of the House Aging and Long Term Care Committee.
- Two members from the Senate, one of whom the Senate President must appoint as the other co-chairperson, as designated below:
  - The chairperson of the Senate Finance Subcommittee on Health and Medicaid;
  - The chairperson of the Senate Health, Human Services, and Medicaid Committee.
- The following members of the administration or their designees:
  - The Medicaid Director;
  - The Job and Family Services Director;
  - The Development Disabilities Director;
  - The Mental Health and Addiction Services Director;
  - The Aging Director;
  - The Recovery Ohio Director;
  - The Director of the Governor's Office of Children Initiatives; and
  - The Director of Innovate Ohio.

The committee members serve without compensation, except to the extent that committee work is part of their usual job duties.

### **Committee responsibilities**

The committee has the following duties:

- Identifying areas of administrative duplication among the state's HHS agencies' services and programs;
- Recommending administrative efficiencies and alignment opportunities among those programs;
- Assessing how data can be aligned among the services and programs, including eligibility requirements, application processes, and assessments, and how data can be accessed by partners working within and across programs; and
- Inviting stakeholder participation in the committee's work.

The committee must submit a report of its findings to the Governor and General Assembly by December 31, 2020. The report must include recommendations regarding costs, benefits, and policies. After submitting the report, the committee ceases to exist.

### **Temporary authority regarding employees**

(Section 333.20)

The bill extends until July 1, 2021, the Medicaid Director's authority to establish, change, and abolish positions for the Department, and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote employees who are not subject to the state's public employees collective bargaining law.

The Director has had this authority since July 1, 2013. It is currently scheduled to expire July 1, 2019.<sup>89</sup>

The authority includes assigning or reassigning an exempt employee to a bargaining unit classification if the Director determines that the bargaining unit classification is the proper classification for that employee.<sup>90</sup> The Director's actions must comply with a federal regulation establishing standards for a merit system of personnel administration. If an employee in the E-1 pay range is assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a lower classification, the Director, or for a transfer outside the Department, the Director of Administrative Services, must assign the employee to the appropriate classification

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<sup>89</sup> Section 323.10.30 of H.B. 59 of the 130<sup>th</sup> General Assembly, Section 327.20 of H.B. 64 of the 131<sup>st</sup> General Assembly, and Section 333.20 of H.B. 49 of the 132<sup>nd</sup> General Assembly.

<sup>90</sup> An exempt employee is a permanent full-time or permanent part-time employee paid directly by warrant of the Director of Budget and Management whose position is included in the job classification plan established by the Director of Administrative Services, but who is not subject to the collective bargaining law. (R.C. 124.152, not in the bill.)

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 either Director takes under this provision are not subject to appeal to the State Personnel Board of Review.

### **Updating references**

(R.C. 3901.381, 5168.03, 5168.05, 5168.06, and 5168.08)

The bill updates Revised Code references to the former U.S. Health Care Financing Administration with references to the U.S. Centers for Medicare and Medicaid Services. The federal government announced this name change in 2001.

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## STATE MEDICAL BOARD

### Licenses to practice

- Eliminates statutory references to certificates to practice issued by the State Medical Board and, instead, refers to licenses to practice for the following: massage therapists, cosmetic therapists, anesthesiologist assistants, acupuncturists, Oriental medicine practitioners, and radiologist assistants.
- Eliminates remaining statutory references to certificates to practice issued to physicians and physician assistants and, instead, refers to licenses to practice.

### Procedures for license issuance

- Eliminates a requirement under which an affirmative vote of at least six members of the Board is necessary to determine whether various license types may be issued by the Board to an applicant.

### Expedited license eligibility – malpractice claims

- Modifies an eligibility requirement that applies to a physician seeking an expedited license by endorsement by specifying that the applicant must not have been the subject of more than two malpractice claims resulting in a finding of liability in the ten years preceding the date of application.

### Limited branches of medicine – prior licensure eligibility

- Modifies an eligibility requirement that applies to a person seeking licensure to practice a limited branch of medicine based on holding a license in another state, by specifying that the applicant must have held a license to practice massage therapy or cosmetic therapy during the five-year period preceding the date of application.

### License renewal dates

- Eliminates dates established in statute for the renewal of licenses issued by the Board and, instead, provides that each license is valid for a two-year period, expires on the date that is two years after the date of issuance, and may be renewed for additional two-year periods.

### Continuing education

- Reduces to 50 (from 100) the number of hours of continuing education that a physician or podiatrist must complete every two years to be eligible to renew the physician's or podiatrist's license to practice.
- Reduces the number of hours of continuing education that a physician or podiatrist may earn providing health care services as a volunteer.
- Eliminates the requirement that a physician assistant complete at least 100 hours of continuing education every two years and, instead, requires the physician assistant to

complete the continuing education necessary to maintain certification from the National Commission on Certification of Physician Assistants.

- Authorizes the Board to impose on the holder of a license to practice cosmetic therapy, massage therapy, dietetics, or respiratory care or a limited permit to practice respiratory care a civil penalty of not more than \$5,000 if the holder fails to complete the continuing education required to maintain a license or limited permit.

### **Fitness to practice – license issuance and restoration**

- Authorizes the Board to impose terms and conditions regarding an applicant's fitness to practice, as follows: (1) when seeking issuance of a license without having been engaged in practice or participating in a training or educational program for more than two years and (2) when seeking restoration of a license suspended for more than two years.

### **Elimination of certificates**

- Eliminates telemedicine certificates and requires the Board to convert existing certificates into standard physician licenses.
- Eliminates limited certificates, which authorize the practice of medicine in hospitals operated by the state by individuals who are not U.S. citizens.

### **Training certificates**

- Allows an individual in an internship, residency, or clinical fellowship program seeking to renew a training certificate to apply for renewal not more than 30 days after the certificate's expiration date if the individual pays a \$150 reinstatement fee.

### **Clinical fellowship programs**

- Specifies that an accredited clinical fellowship program constitutes (1) graduate medical education recognized by the Board and (2) a program that an individual may participate in by obtaining a training certificate.

### **Physician assistants**

- Limits a physician assistant's existing authority to personally furnish samples of drugs and therapeutic devices to the drugs and devices included in the physician assistant's physician-delegated prescriptive authority.
- Requires that medical care provided by an out-of-state physician assistant at a charitable event in Ohio be supervised by the event's medical director or another physician authorized to practice in Ohio.
- Requires a physician assistant to retain a copy of the physician assistant's supervision agreement with a physician in the records maintained by the physician assistant.
- Authorizes the Board, if it finds that a supervision agreement has not been maintained in the records of a physician or physician assistant, to permit the individual in violation to correct the violation and pay a civil penalty.

## **License to practice**

(R.C. Chapters 4731, 4760, 4762, and 4774, generally; Section 747.40; conforming changes in numerous other R.C. sections)

With respect to massage therapists, cosmetic therapists, anesthesiologist assistants, acupuncturists, Oriental medicine practitioners, and radiologist assistants, who are authorized to practice by the State Medical Board, the bill eliminates references to certificates to practice issued by the Board and, instead, refers to licenses to practice. The bill also eliminates remaining references in the Revised Code to certificates to practice issued by the Board to physicians and physician assistants and, instead, refers to licenses to practice.

The bill authorizes the Board to take any action it considers necessary to rename the certificates that have been issued as licenses.

## **Board procedures for issuance of licenses**

(R.C. 4730.12, 4731.05, 4731.14, 4731.17, 4731.56, 4760.03, 4762.03, 4774.03, and 4778.03)

The bill eliminates an existing law requirement under which an affirmative vote of not fewer than six Board members is needed to determine if any of the following license types may be issued to an applicant: physician assistant; medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery; limited branches of medicine; anesthesiologist assistant; Oriental medicine practitioner; acupuncturist; radiologist assistant; and genetic counselor.

The bill specifies instead that the Board must adopt internal management rules regarding the issuance of licenses.

## **Expedited license eligibility – malpractice claims**

(R.C. 4731.299)

The bill modifies an eligibility requirement that applies to individuals seeking an expedited license by endorsement to practice medicine and surgery or osteopathic medicine and surgery. Under current law, an applicant for an expedited license must certify to the Board that the applicant has not had more than two malpractice claims filed against the applicant within a period of ten years. The bill clarifies that the applicant must certify that they have not had more than two malpractice claims resulting in a finding of liability in the ten-year period preceding the date of application.

## **Limited branches of medicine – prior licensure eligibility**

(R.C. 4731.19)

The bill specifies that an applicant for licensure to practice a limited branch of medicine may receive a license upon evidence that the applicant has held a license to practice massage therapy or cosmetic therapy in another state during the five-year period preceding the date of application. Current law does not specify when the five years of practice must have occurred.

## License renewal dates

(R.C. 4730.14, 4731.15, 4731.281, 4759.06, 4760.04, 4761.06, 4762.04, 4762.06, 4774.04, 4774.06, 4778.05, and 4778.06)

The bill eliminates dates established in statute for the renewal of licenses issued by the Board to the following practitioners: physicians, podiatrists, physician assistants, massage therapists, cosmetic therapists, dietitians, anesthesiology assistants, respiratory care professionals, acupuncturists, Oriental medicine practitioners, radiologist assistants, and genetic counselors. The bill instead provides that each license is valid for a two-year period, expires on the date that is two years after the date of issuance, and may be renewed for additional two-year periods.

## Continuing education

(R.C. 4730.14, 4730.49, 4731.155, 4731.282, 4731.293, 4745.04, 4759.06, 4761.06, and 4778.06)

With respect to physicians and podiatrists, the bill reduces to 50 (from 100) the number of hours of continuing education that must be completed every two years to be eligible to renew a license to practice. The bill includes a corresponding change for the three-year renewal period that applies to clinical research faculty physicians.

The bill also reduces the number of hours of continuing education that a physician or podiatrist may earn by providing health care services as a volunteer. Currently, up to one-third of the continuing education requirement may be met by providing volunteer services to indigent and uninsured persons. The bill limits the number of hours that may be earned in this manner to three.

In the case of physician assistants, the bill eliminates the requirement that a physician assistant complete at least 100 hours of continuing education every two years. Instead, it requires the physician assistant to complete the continuing education necessary to maintain certification from the National Commission on Certification of Physician Assistants. Although the bill eliminates the 100-hour requirement, it maintains the current requirement that a physician assistant complete at least 12 hours of continuing education in advanced pharmacology every two years.

## Failure to complete continuing education

Under current law, if a physician or podiatrist fails to complete continuing education requirements, the Board may take disciplinary action against the physician or podiatrist, impose a civil penalty, or permit the physician or podiatrist to agree in writing to complete the requirements and pay the civil penalty. The bill extends to the Board this same authority with respect to physician assistants, cosmetic therapists, massage therapists, dietitians, respiratory care professionals, or genetic counselors who fail to satisfy continuing education requirements. In such instances, the bill permits the Board to do either of the following:

- Take disciplinary action against the practitioner, impose a civil penalty, or both;

- Permit the practitioner to agree in writing to complete the continuing education and pay a civil penalty.

If the Board takes disciplinary action, its finding must be made pursuant to an adjudication under the Administrative Procedure Act and by an affirmative vote of at least six of its 12 members. A civil penalty, whether paid voluntarily by a practitioner or imposed by the Board, must be in an amount specified by the Board, not exceeding \$5,000.

In the case of a physician assistant, under current law, the Board is authorized to impose a civil penalty of not more than \$5,000, in addition to or instead of disciplinary action, if it finds that a physician assistant failed to complete continuing education requirements. But current law provides that, if the Board imposes only a civil penalty and takes no other action, it cannot conduct an adjudication under the Administrative Procedure Act. Also, existing law does not expressly provide for a physician assistant to agree in writing to a civil penalty.

### **Fitness to practice – license issuance and restoration**

(R.C. 4730.28, 4731.222, 4759.063, 4760.061, 4761.061, 4762.061, 4774.061, and 4778.071)

Current law authorizes the Board to impose terms and conditions related to fitness to practice on a physician, podiatrist, cosmetic therapist, and massage therapist under the following circumstances:

- When the practitioner seeks issuance of a license or certificate and the practitioner has neither been engaged in practice nor participating in a training or educational program for more than two years;
- When the practitioner seeks restoration of a license or certificate that has been suspended or inactive for any reason for more than two years.

The bill extends to the Board this same authority as part of its regulation of anesthesiology assistants, Oriental medicine practitioners, acupuncturists, radiation assistants, genetic counselors, dietitians, respiratory care professionals, and physician assistants. Current law already authorizes the Board to impose terms and conditions on a genetic counselor, dietitian, and respiratory care professional when such an individual seeks to restore a license suspended for more than two years as a result of a failure to renew the license. Existing law also already authorizes the Board to impose terms and conditions on a physician assistant seeking to restore a license that has been suspended or inactive for more than two years for any cause.

The terms and conditions related to fitness to practice that may be imposed include the following:

- Requiring an applicant to pass an oral or written examination, or both;
- Requiring an applicant to obtain additional training and to pass an examination on the completion of the training;
- Requiring an assessment of the applicant's physical skills;

- Requiring an assessment of the applicant's skills in recognizing and understanding diseases and conditions;
- Requiring an applicant to undergo a physical examination;
- Restricting or limiting the applicant's extent, scope, or type of practice.

## **Elimination of telemedicine certificates**

(R.C. 4731.296 (repealed) and 109.572, 4731.14, and 4731.294; Section 747.40)

The bill eliminates the Board's issuance of telemedicine certificates. Under existing law, a telemedicine certificate authorizes the practice of medicine in Ohio through the use of any communication by a physician located outside of the state. The bill requires the Board to convert all existing telemedicine certificates to licenses to practice medicine and surgery or osteopathic medicine and surgery.

## **Elimination of limited certificates**

(R.C. 4731.292 (repealed))

The bill eliminates the Board's issuance of limited certificates. Under current law, a limited certificate authorizes an individual who is not a U.S. citizen to practice medicine in hospitals that are operated by the state. According to representatives of the Board, no one currently holds such a certificate and the Board has not issued one in a number of years.

## **Training certificates**

(R.C. 4731.291 and 4731.573)

The bill allows an individual seeking to renew a training certificate to submit an application for renewal not less than 30 days after the certificate's expiration date if the individual includes with the application a \$150 reinstatement fee.

Under current law, a training certificate may be granted to an unlicensed individual seeking to pursue an internship, residency, or clinical fellowship program related to the practice of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery. A training certificate is valid for an initial period of three years, but may be renewed for one additional three-year period.

## **Clinical fellowship programs**

(R.C. 4731.04, 4731.291, and 4731.573)

The bill clarifies, for purposes of physician licensure and regulation, that a clinical fellowship program constitutes graduate medical education if it is either accredited or conducted at an institution with an accredited residency program.

Similarly, regarding issuance of a training certificate to allow an individual to pursue a clinical fellowship program, the bill clarifies that the applicant must provide evidence that the individual will be participating in a clinical fellowship program that is either accredited or conducted at an institution with an accredited residency program.

## **Physician assistants**

### **Furnishing of sample**

(R.C. 4730.43)

The bill limits a physician assistant's existing authority to personally furnish samples of drugs and therapeutic devices to those that are included in the physician assistant's physician-delegated prescriptive authority. This limitation was in prior law, but was eliminated by S.B. 259 of the 132<sup>nd</sup> General Assembly (effective March 20, 2019). The bill restores the limitation that was eliminated by S.B. 259.

### **Volunteering at charitable events**

(R.C. 4730.02)

Current law permits an out-of-state physician assistant to practice as a volunteer during an Ohio charitable event that lasts not more than seven days. The bill requires that the medical care provided at such an event be supervised by the event's medical director or by another physician authorized to practice in Ohio.

### **Supervision agreements**

(R.C. 4730.19)

In order to practice as a physician assistant, current law requires a supervision agreement with a supervising physician. The supervising physician must keep a copy of the agreement in the physician's records. The bill requires that a physician assistant also keep a copy of the agreement in the physician assistant's records.

If the Board finds that the agreement is not maintained in records as described above, the bill authorizes the Board to permit the individual to correct the violation and pay a civil penalty. Alternatively, the bill maintains current law that authorizes the Board to take disciplinary action against the individual.

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## **DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES**

### **Stabilization centers**

- Requires alcohol, drug addiction, and mental health services (ADAMHS) boards to establish and administer, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, six mental health crisis stabilization centers.
- Requires the establishment and administration, in collaboration with the other boards that serve the same state psychiatric hospital region, acute substance use disorder stabilization centers.

### **Substance use disorder treatment in drug courts**

- Creates a medication-assisted drug court program to provide addiction treatment to persons with substance use disorders.
- Requires community addiction services providers to provide specified treatment to the participants in the program based on the individual needs of each participant.

### **Psychotropic Drug Reimbursement Program**

- Clarifies that the psychotropic drugs for which counties may receive reimbursement under the Psychotropic Drug Reimbursement Program include those administered or dispensed in a long-acting injectable form.
- Requires counties to ensure that inmates have access to all psychotropic drugs covered by Medicaid's fee-for-service system.

### **Former Bureau of Recovery Services**

- Maintains preexisting responsibilities regarding recovery services that were given to the Department of Mental Health and Addiction Services (MHAS) when the Bureau of Recovery Services in the Department of Rehabilitation and Correction was abolished.

### **Family and Children First Flexible Funding Pool**

- Permits a county family and children first council to create a flexible funding pool to assure access to services by families, children, and seniors in need of protective services.

### **Clinician Recruitment Program**

- Expands the program that recruits physicians to provide services at MHAS-operated institutions to also include the recruitment of physician assistants and advanced practice registered nurses.

### **Criminal records checks for residential facility staff**

- Requires that criminal records checks for residential facility staff be conducted under the BCII criminal records check procedures.

## **Court costs for mental health adjudications**

- Requires MHAS to reserve a portion of its appropriations to cover court costs for mental health adjudications in counties that did not receive an allocation for adjudication-related expenses.

## **Suicide study**

- Requires MHAS and the Department of Veteran Services to jointly conduct a study on the rates of suicide in the state.

## **Medication-Assisted Treatment Drug Reimbursement Program**

- Creates in MHAS the Medication-Assisted Treatment (MAT) Drug Reimbursement Program to reimburse counties for the costs of MAT for substance use disorders among inmates of county jails.

## **Stabilization centers**

(Sections 337.50(C) and 337.150)

### **Mental health crisis stabilization centers**

The bill requires the Department of Mental Health and Addiction Services (MHAS) to allocate among the alcohol, drug addiction, and mental health services (ADAMHS) boards, in each of FY 2020 and FY 2021, \$1.5 million for six mental health crisis stabilization centers. Each board must use its allocation to establish and administer a stabilization center in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region. One center is to be located in each of the six state psychiatric hospital regions established by the Department.

ADAMHS boards must ensure that each mental health crisis stabilization center complies with all of the following:

- It must admit individuals before and after they receive treatment and care at hospital emergency departments or freestanding emergency departments.
- It must admit individuals before and after they are confined in state correctional institutions, local correctional facilities, or privately operated and managed correctional facilities.
- It must have a Medicaid provider agreement.
- It must be located in a building previously constructed for another purpose.
- It must admit individuals who have been identified as needing the stabilization services provided by the center.
- It must connect individuals when they are discharged from the center with community-based continuum of care services and supports.

## **Substance use disorder stabilization centers**

The bill requires the establishment and administration, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, acute substance use disorder stabilization centers. There must be one center in each state psychiatric hospital region.

## **Substance use disorder treatment in drug courts**

(Section 337.70)

The bill requires MHAS to conduct a program to provide substance use disorder treatment, including medication-assisted treatment and recovery supports, to persons who are eligible to participate in a medication-assisted treatment (MAT) drug court program. MHAS's program is to be conducted in a manner similar to programs that were established and funded by the previous three main appropriations acts.

In conducting the program, MHAS must collaborate with the Ohio Supreme Court, the Department of Rehabilitation and Correction, and any state agency that may be of assistance in accomplishing the objectives of the program. MHAS also may collaborate with the ADAMHS board that serves the county in which a participating court is located and with the local law enforcement agencies serving that county.

MHAS must conduct its program in collaboration with any counties in Ohio that are conducting MAT drug court programs. MHAS also may conduct its program in collaboration with any other court with a MAT drug court program.

## **Selection of participants**

A MAT drug court program must select the participants for MHAS's program. The participants are to be selected because of having a substance use disorder. Those who are selected must be either (1) criminal offenders, including offenders under community control sanctions, or (2) involved in a family drug or dependency court. They must meet the legal and clinical eligibility criteria for the MAT drug court program and be active participants in that program. The total number of participants in MHAS's program at any time is limited to 1,500, subject to available funding. MHAS may authorize additional participants in circumstances it considers appropriate. After being enrolled, a participant must comply with all of the MAT drug court program's requirements.

## **Treatment**

Only a community addiction services provider is eligible to provide treatment and recovery supports under MHAS's program. The provider must:

- Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the provider;
- Assess potential program participants to determine whether they would benefit from treatment and monitoring;
- Determine, based on the assessment, the treatment needs of the participants;

- Develop individualized goals and objectives for the participants;
- Provide access to long-lasting antagonist therapies, partial agonist therapies, or full agonist therapies, that are included in the program's medication-assisted treatment;
- Provide other types of therapies, including psychosocial therapies, for both substance abuse disorder and any co-occurring disorders;
- Monitor program compliance through the use of regular drug testing, including urinalysis, of the participants; and
- Provide access to time-limited recovery supports that are patient-specific and help eliminate barriers to treatment, such as assistance with housing, transportation, child care, job training, obtaining a driver's license or state identification card, and any other relevant matter.

In the case of medication-assisted treatment, the following conditions apply:

--A drug may be used only if the drug has been federally approved for use in treating dependence on opioids, alcohol, or both, or for preventing relapse.

--One or more drugs may be used, but each drug that is used must constitute a long-acting antagonist therapy or partial or full agonist therapy.

--If a partial or full agonist therapy is used, the program must provide safeguards, such as routine drug testing of participants, to minimize abuse and diversion.

## **Planning**

To ensure that funds appropriated to support MHAS's program are used in the most efficient manner, with a goal of enrolling the maximum number of participants, the bill requires the Medicaid Director to develop plans in collaboration with major Ohio health care plans. However, there can be no prior authorizations or step therapy for medication-assisted treatment for program participants. The plans must ensure:

- The development of an efficient and timely process for review of eligibility for health benefits for all program participants;
- A rapid conversion to reimbursement for all health care services by the participant's health care plan following approval for coverage of health care benefits;
- The development of a consistent benefit package that provides ready access to and reimbursement for essential health care services, including primary health care, alcohol and opioid detoxification services, appropriate psychosocial services, and medication for long-acting injectable antagonist therapies and partial or full agonist therapies; and
- The development of guidelines that require the provision of all treatment services, including medication, with minimal administrative barriers and within time frames that meet the requirements of individual patient care plans.

## **Psychotropic Drug Reimbursement Program**

(R.C. 5119.19)

The main appropriations act for the FY 2018-FY 2019 biennium (H.B. 49 of the 132<sup>nd</sup> General Assembly) created the Psychotropic Drug Reimbursement Program. The program's purpose is to provide state reimbursement through MHAS to counties for the cost of psychotropic drugs that are dispensed to inmates of county jails. Under current law, "psychotropic drug" generally means a drug that has the capability of changing or controlling mental function or behavior through direct pharmacological action. Examples include antipsychotic medications, antidepressant medications, anti-anxiety medications, and mood-stabilizing medications. It does not include a stimulant prescribed for attention deficit hyperactivity disorder.

The bill clarifies that "psychotropic drug" includes an antipsychotic medication administered or dispensed in a long-acting injectable form. It requires that each county ensure that county jail inmates have access to all psychotropic drugs covered by the fee-for-service component of Medicaid.

## **Former Bureau of Recovery Services**

(Section 337.80)

H.B. 64 of the 131<sup>st</sup> General Assembly abolished the Bureau of Recovery Services in the Department of Rehabilitation and Correction on June 30, 2015, and transferred its functions, assets, and liabilities to MHAS. The bill maintains these preexisting provisions regarding the transfer.

Under the bill, MHAS must continue to complete any business regarding recovery services that the Department of Rehabilitation and Correction started before, but did not complete by, July 1, 2015. Rules, orders, and determinations pertaining to the former Bureau continue in effect until MHAS modifies or rescinds them, and any reference to the former Bureau continues to be deemed to refer to MHAS or its director, as appropriate. All of the former Bureau's employees continue to be transferred to MHAS and retain their positions and benefits, subject to the layoff provisions pertaining to state employees under continuing law. Rights, obligations, and remedies continue to exist unimpaired despite the transfer, and MHAS must continue to administer them.

## **Family and Children First Flexible Funding Pool**

(Section 337.180)

The bill permits a county family and children first council to establish and operate a flexible funding pool to assure access to needed services by families, children, and older adults who need protective services. A county council that desires such a pool must abide by all of the following:

--The pool must be created and operate according to formal guidance issued by the Family and Children First Cabinet Council.

--The county council must produce an annual report on its use of the pooled funds. The report must conform to guidance issued by the Family and Children First Cabinet Council.

--Unless otherwise restricted, the pool may receive transfers of state general revenues allocated to local entities to support services to families and children.

--The pool may receive only transfers of amounts that can be redirected without hindering the objective for which the initial allocation is designated.

--The director of the local agency that originally received the allocation must approve the transfer to the pool.

## **Clinician Recruitment Program**

(R.C. 5119.85)

The bill changes the name of MHAS's Physician Recruitment Program to the Clinician Recruitment Program and expands the program to include physician assistants and advanced practice registered nurses. Under the current program, the Department may agree to repay all or part of a physician's educational loans in exchange for the physician providing health care services at institutions operated by the Department. The bill authorizes MHAS to enter into agreements with physician assistants and advanced practice registered nurses.

## **Criminal records checks for residential facility staff**

(R.C. 109.572)

The bill requires that criminal records checks for residential facility staff be conducted under BCII criminal records check procedures. Current law, unchanged by the bill, tasks the MHAS Director with establishing in rules procedures for conducting background investigations for residential facility operators, employees, volunteers, and others who may have direct access to facility residents.<sup>91</sup>

## **Court costs for mental health adjudications**

(R.C. 5122.43; R.C. 2101.11, not in the bill)

Under law unchanged by the bill, each county must pay for the costs of personnel involved in mental health adjudications in that county, including police and health officers, sheriffs, physicians, and attorneys appointed for the indigent. Each fiscal year, however, the MHAS must allocate an amount from its appropriations to reimburse counties for these costs. The amount that MHAS allocates to a particular county is based on past allocations, historical utilization, and other factors that MHAS considers appropriate.

The bill specifies that a county's allocation may be zero. If one or more counties receive a zero allocation, MHAS must reserve an amount of its appropriations to cover the court costs of mental health adjudications in those counties.

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<sup>91</sup> R.C. 5119.34(L)(3), not in the bill.

## **Suicide study**

(Section 337.30(B))

The bill requires MHAS to allocate up to \$500,000 in each of FY 2020 and FY 2021 for supporting suicide prevention efforts. As part of this allocation, the bill requires MHAS, in coordination with the Department of Veterans Services (DVS), to conduct a study on the rates of suicide in the state for the previous ten calendar years. The study is required to examine the rates of suicide for the general population as a whole and suicide rates for veterans of the U.S. armed forces as a subgroup. The bill requires MHAS and DVS to complete and submit a report to the General Assembly within one year of the effective date of the bill. The report is required to include the Departments' conclusions regarding the causes of suicides and recommendations for reducing the rates of suicide in the state.

## **Medication-Assisted Treatment Drug Reimbursement Program**

(R.C. 5119.39)

The bill creates in MHAS the Medication-Assisted Treatment (MAT) Drug Reimbursement Program to reimburse counties for the costs of MAT for substance use disorders among inmates of county jails. MHAS must allocate funds to each county for reimbursement based on factors it considers appropriate. The drugs used for MAT must be approved by the U.S. Food and Drug Administration for use in MAT, including full opioid agonists, partial opioid agonists, and injectable long-acting or extended-release opioid antagonists.

To be eligible for reimbursement under the program, counties must establish procedures to minimize the risk of inmates abusing or diverting full or partial opioid agonists. When such drugs are prescribed or furnished to an inmate as a part of MAT, a county must (1) establish a baseline for the inmate's drug use through a urine drug test, (2) monitor the inmate's adherence to treatment, including through periodic urine drug tests, and (3) if necessary, order more definitive drug testing for the inmate.

The MHAS Director may adopt rules in accordance with the Administrative Procedure Act as necessary to implement the program.

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## **DEPARTMENT OF NATURAL RESOURCES**

### **Hunting and fishing license fees**

- Authorizes the Chief of the Division of Wildlife to adopt rules, with the approval of the Director of Natural Resources and the Wildlife Council, establishing fees (in lieu of the statutorily imposed fees) for certain recreational hunting and fishing licenses and permits.

### **Transfers from the Waterways Safety and Wildlife Funds**

- Authorizes the Controlling Board, at the request of the Director, to approve the expenditure of the federal revenue received in the Waterways Safety Fund or Wildlife Fund for purposes for which the federal revenue was granted.
- Eliminates the Controlling Board's authority to make transfers of nonfederal revenue received into those funds.

### **Scenic Rivers Protection Fund**

- Authorizes the Department of Natural Resources to collect donations for the protection and enhancement of Ohio's scenic rivers and deposit those donations into the Scenic Rivers Protection Fund.

### **“Ohio Geology” License Plate Fund**

- Eliminates the “Ohio Geology” License Plate Fund and transfers the money from that fund to the Geological Mapping Fund.
- Specifies that the contributions from “Ohio Geology” license plates must still be used primarily for grants to state college and university geology departments and secondarily for providing geological kits to state elementary and secondary school, as specified in current law.

### **Mine Safety Fund**

- Eliminates the defunct Mine Safety Fund.

### **Oil and Gas Leasing Commission administrative costs**

- Authorizes the existing Geological Mapping Fund to be used for the administration of the Oil and Gas Leasing Commission.

### **Stream flow monitoring program**

- Requires the Chief of the Division of Water Resources and the Director of Environmental Protection to jointly establish a program to study the impact of oil and gas production operations on stream flow using stream flow monitoring technology in nine specific creeks.
- Requires the Chief and the Director to jointly adopt rules for the administration and implementation of the program.

## Oil and gas

- Prohibits a person from operating an oil and gas well without first registering with and obtaining an identification number from the Chief of the Division of Oil and Gas Resources Management.
- Requires an assignee or transferee of an oil and gas lease that includes a well to notify the Division of that assignment or transfer if:
  - The assignor or transferor failed to provide the notice as required by current law; and
  - The assignor or transferor is deceased, dissolved, cannot be found, or is otherwise incapable of providing the notice.
- Specifies that when the assignee or transferee provides the notice to the Division, the assignee or transferee must attest to ownership of the lease and is not required to pay a notice fee.
- Eliminates the \$100 nonrefundable fees that must be paid by the assignor or transferor of an oil and gas lease when notifying the Division of the assignment or transfer and when submitting an application for the assignment or transfer of a well.
- Includes an owner's entire interest in a tract of land in the proposed unit area, including any divided, undivided, partial, fee, or other interest, when calculating the percentage of land overlying a pool that is necessary to form a drilling unit.
- Alters the manner by which the quarterly oil and gas regulatory cost recovery assessment is calculated for well owners.
- Clarifies when an appeal of a Chief's order must be made to the Oil and Gas Commission by specifying that a person to whom the order is issued must make the appeal within 30 days after receiving the order.
- Eliminates the requirement that the Chief's order be sent via certified mail.

## Hunting and fishing license fees

(R.C. 1533.09, 1533.10, 1533.11, 1533.111, 1533.112, 1533.32, and 1533.321 and makes conforming changes to R.C. 1533.09, renumbered as R.C. 1533.06)

The bill authorizes the Chief of the Division of Wildlife to adopt rules, with the approval of the Director of Natural Resources and the Wildlife Council, establishing fees (in lieu of the statutorily imposed fees) for all of the following:

- Hunting licenses, including small game hunting licenses;
- Deer and wild turkey permits;
- Fur taker permits;
- Wetland habitat stamps;

- Fishing licenses; and
- Multi-year fishing and hunting licenses.

The bill increases the fees for all of the following until the Chief adopts rules establishing alternative fees:

- An annual fishing license fee from \$18 to \$24 for an Ohio resident;
- An annual fishing license fee from \$18 to \$24 for a nonresident who is a resident of a state with which Ohio has an agreement to charge resident fee rates (reciprocal state);
- A three-day tourist fishing license from \$18 to \$24 for a nonresident who is not a resident of a reciprocal state;
- A one-day fishing license fee from \$10 to \$13 (55% of the three-day tourist fishing license);
- An annual deer permit fee from \$23 to \$30 for an Ohio resident;
- An annual youth deer permit fee from \$11.50 to \$15 for an Ohio resident under 18;
- An annual wild turkey permit fee from \$23 to \$30 for an Ohio resident; and
- An annual wild turkey permit fee from \$28 to \$37 for a nonresident.

The bill decreases the fees for both of the following until the Chief adopts rules establishing alternative fees:

- An annual deer permit fee from \$74 to \$15 for a nonresident youth under 18 (the same as Ohio resident youths under the bill); and
- An annual wild turkey permit fee from \$28 to \$15 for a nonresident youth under 18 (the same as Ohio resident youths under the bill).

The bill also specifies that except for the \$9.00 nonresident youth hunting license fee, the annual fee for nonresidents applying for a hunting license, fishing license, or deer permit through December 31, 2019, is the fee specified in the fee schedule established in H.B. 49 of the 132<sup>nd</sup> General Assembly as follows:

License or permit type	Cost in 2019
Hunting license – nonresident, and not a resident of a reciprocal state	\$157
Apprentice hunting license – nonresident, and not a resident of a reciprocal state	\$157

License or permit type	Cost in 2019
Fishing license – nonresident, and not a resident of a reciprocal state	\$46
Deer permit – nonresident	\$57

## Transfers from Waterways Safety and Wildlife funds

(R.C. 131.35)

The bill authorizes the Controlling Board, at the request of the Director, to approve the expenditure of the federal revenue received in the Waterways Safety Fund or Wildlife Fund for purposes for which the federal revenue was granted. Current law puts stipulations on the expenditure of federal revenue received by the state.

The bill also eliminates the Controlling Board’s authority to make transfers of nonfederal revenue received into those funds. Current law authorizes the Controlling Board to make transfers of nonfederal revenue received into the funds.

## Scenic Rivers Protection Fund

(R.C. 4501.24 and 4503.56, not in the bill)

The bill authorizes the Department of Natural Resources to collect donations for the Scenic Rivers Protection Fund to be used to help finance conservation efforts, education, corridor protection, restoration, and habitat enhancement and clean-up projects along the wild, scenic, and recreational river areas. Under current law, the fund’s only source of revenue comes from contributions collected from the sale of “Scenic Rivers” License Plates. The contribution amount for those license plates is \$40 each time a person voluntarily applies for or renews a motor vehicle registration.

## “Ohio Geology” License Plate Fund

(R.C. 1505.09 and 4503.515, not in the bill; R.C. 1505.12 and 1505.13, repealed)

The bill eliminates the “Ohio Geology” License Plate Fund and transfers the money currently directed to it to the Geological Mapping Fund. The bill does not change the current contribution amount or purposes of the contribution, only the fund into which the contributions are directed.

The “Ohio Geology” License Plate cannot be requested in a new application for motor vehicle registration. It can only be renewed because fewer than 25 individuals currently have and consistently renew the plates. The plate has a \$15 annual contribution, which are used primarily for annual grants to state college and university geology departments for research conducted at locations of geological interest in the state. The Director of Natural Resources also may use contributions to provide materials such as rock and mineral kits to elementary and secondary schools to assist students in geological studies.

## **Mine Safety Fund**

(R.C. 1561.24, repealed, makes conforming changes in R.C. 1561.011)

The bill eliminates the Mine Safety Fund. Current law authorizes money to be transferred to the fund from the Coal-Workers Pneumoconiosis Fund by the Administrator of Workers' Compensation to be used for mine safety purposes. However, the Mine Safety Fund has not received any transfers since 2012.

## **Oil and Gas Leasing Commission administrative costs**

(R.C. 1505.09)

The bill authorizes the existing Geological Mapping Fund, which is administered by the Chief of the Division of Geological Survey, to be used for the administration of the Oil and Gas Leasing Commission. Currently, only the Oil and Gas Leasing Commission Administration Fund may be used for that purpose. However, that fund does not have any money in it. In addition, the Chief of the Division of Geological Survey serves as the chairperson of the Oil and Gas Leasing Commission.

## **Stream flow monitoring program**

(R.C. 1521.08)

The bill requires the Chief of the Division of Water Resources and the Director of Environmental Protection to jointly establish a program to study the impact of oil and gas production operations on stream flow using stream flow monitoring technology in all of the following creeks:

- Yellow Creek, Short Creek, and Cross Creek in Jefferson County;
- Wheeling Creek, McMahan Creek, Wegee Creek, and Pipe Creek in Belmont County;
- Sunfish Creek and Opossum Creek in Monroe County.

The Chief and the Director must jointly adopt rules to administer and implement the program.

## **Oil and gas**

### **Registration and identification and transfer and assignment**

(R.C. 1509.31)

The bill prohibits a person from operating an oil and gas well without first registering with and obtaining an identification number from the Chief of the Division of Oil and Gas Resources Management. Thus, if a person transfers or assigns a well to another person, that other person (the assignee or transferee) is prohibited from operating the well until the assignee or transferee registers and obtains the identification number.

The bill also alters the procedures associated with the assignment or transfer of an oil and gas lease. Under current law, whenever the entire interest of an oil and gas lease is assigned or otherwise transferred, the assignor or transferor (person who sold or transferred

the lease) must notify the holders of the royalty interests and, if a well or wells exist on the lease, the Division. The notice must:

- Include specified information, including the name and address of the assignee or transferee;
- Be sent on a form prescribed by the Division by certified mail, return receipt requested, within 30 days of the assignment or transfer;
- Be accompanied with a \$100 nonrefundable notice fee.

The bill eliminates the \$100 nonrefundable notice fee that must be paid by the assignor or transferor of an oil and gas lease (the bill also eliminates a \$100 nonrefundable application fee that must be paid by the assignor or transferor of a well). It also requires an assignee or transferee of an oil and gas lease to notify the Division of the assignment or transfer if (1) the assignor or transferor fails to submit the notice, and (2) the assignor or transferor is deceased, dissolved, cannot be located, or is otherwise incapable of complying with the notification requirement.

The bill specifies that when the assignee or transferee is the individual or entity providing the notice, the assignee or transferee must attest to ownership of the lease. It further specifies that the Division may not charge a fee when the assignee or transferee submits the notice.

### **Oil and gas regulatory cost recovery assessment**

(R.C. 1509.50)

Under current law, the owner of an oil and gas well is subject to an oil and gas cost recovery assessment that is paid quarterly and is based on the amount of oil and gas produced by the well. The bill alters the manner in which the oil and gas regulatory cost recovery assessment is calculated from a formula to a flat rate assessment as follows:

Sub. H.B. 166 flat rate assessment	
Natural gas produced	Oil produced
\$0.005 per 1,000 cubic feet of natural gas for all of the wells of the owner	10¢ per barrel of oil for all of the wells of the owner

Under current law, the assessment is calculated using the following formula:

Current law calculation of the assessment

10¢ per barrel of oil for all the wells of the owner

+

\$0.005 per 1,000 cubic feet of natural gas for all of the wells of the owner

+

Severance tax levied on each severer for all of the wells of the owner

TOTAL

<p>If the TOTAL is greater than the sum of \$15 for each well owned by the owner, the assessment is <u>the sum of 10¢ per barrel of oil for all of the wells of the owner and \$0.005 per 1,000 cubic feet of natural gas for all of the wells of the owner.</u></p>	<p>If the TOTAL is less than the sum of \$15 for each well owned by the owner, the assessment is <u>the sum of \$15 for each well owned by the owner minus the amount of the severance tax levied on each severer for all of the wells of the owner.</u></p>
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## Unit operation calculation

(R.C. 1509.28)

Under current law, the owners of 65% of the land area overlying a pool (underground reservoir of oil, gas, or both) may apply to the Chief to consider the need for the operation of the entire pool or part of a pool as a unit. The bill specifies that when calculating the land area necessary to form a drilling unit by unit operation, an owner's entire interest in each tract in the proposed unit area, including any divided, undivided, partial, fee, or other interest in the tract, must be included to the fullest extent of that interest.

## Oil and gas appeal process

(R.C. 1509.36)

Under current law, any person adversely affected by an order of the Chief may appeal the order to the Oil and Gas Commission. The appeal must be filed within 30 days after the date on which the appellant received notice of the order by certified mail. Current law presumes that the appellant is the person who received the order. Thus, the bill clarifies that the person to whom the order is issued must file an appeal to the Commission within 30 days after receiving the order. It retains current law that provides that any other adversely affected person must file the appeal within 30 days after the date of the order. It also eliminates the requirement that notice of the Chief's order be sent to the appellant via certified mail.

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## **BOARD OF NURSING**

- Eliminates obsolete references to certificates of authority held by advanced practice registered nurses.

### **Certificates of authority**

(R.C. 4723.08 and 4723.28)

The bill removes obsolete references to the certificates of authority that used to be issued by the Ohio Board of Nursing to advanced practice registered nurses. Effective in 2017, H.B. 216 of the 131<sup>st</sup> General Assembly established an advanced practice registered nurse license that, like the certificate of authority it replaced, authorizes a registered nurse with advanced education and training to practice as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, and certified nurse practitioner.

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## STATE BOARD OF PHARMACY

- Expands the State Board of Pharmacy’s existing exemption from the Open Meetings Law to apply to all determinations made by the Board through a telephone conference call related to (1) summary suspensions and (2) adding substances to schedule I through emergency rule.
- Authorizes the Board to provide information from its Ohio Automated Rx Reporting System (OARRS) to a prescriber or pharmacist from, or participating, in a prescription monitoring program operated by a federal agency, but only under certain conditions.
- Requires the Board to adopt rules to define “specialty drug” and “specialty pharmacy” for purposes of the contract between the Director of Administrative Services, the Medicaid Director, and the state pharmacy benefit manager.

### Open meetings exemption

(R.C. 121.22)

Current law provides an exemption from the state’s Open Meetings Law for the State Board of Pharmacy when determining whether to suspend a pharmacist’s or pharmacy intern’s license without a prior hearing (a “summary suspension”) by using a telephone conference call. The bill expands the exemption to (1) all summary suspension determinations made by the Board through a telephone conference call under the laws governing the Medical Marijuana Control Program, controlled substances, distributors of dangerous drugs, pharmacy technicians, and providers of home medical equipment services (R.C. Chapters 3719, 3796, 4729, and 4752) and (2) determinations made through a telephone conference call regarding whether a substance should be added to schedule I through an emergency rule, as authorized by existing law.<sup>92</sup>

### OARRS access, federal monitoring programs

(R.C. 4729.80; conforming change in R.C. 4729.86)

Existing law authorizes the Board to establish a drug database to monitor the misuse and diversion of medical marijuana, controlled substances, naltrexone, and other prescription drugs.<sup>93</sup> The Board’s database, known as the Ohio Automated Rx Reporting System (OARRS), provides information about drug use to prescribers, pharmacists, and others.

In addition to the OARRS information the Board is authorized or required under current law to provide, the bill authorizes the Board to provide information requested by a prescriber

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<sup>92</sup> R.C. 3719.45, not in the bill.

<sup>93</sup> R.C. 4729.75.

or pharmacist from, or participating in, a prescription drug monitoring program operated by a federal agency. The Board may provide this information only if both of the following apply:

- The Board has approved the federal agency’s prescription drug monitoring program;
- There is a written agreement between the Board and agency under which the information is to be used and disseminated according to Ohio law.

## **Specialty drugs and specialty pharmacies**

(R.C. 4729.261)

The bill requires the Board, not later than July 1, 2020, to adopt rules in accordance with the Administrative Procedure Act to define “specialty drug” and “specialty pharmacy” for purposes of the state pharmacy benefit manager (PBM) contract. The Board can consult with the Department of Medicaid in adopting the rules. (Other provisions of the bill require the Director of Administrative Services to select and, along with the Department of Medicaid, contract with a state PBM. The state PBM is prohibited from requiring a Medicaid recipient to obtain a specialty drug from a specialty pharmacy owned or otherwise associated with the state PBM. See “**State pharmacy benefit manager,**” under “**DEPARTMENT OF MEDICAID.**”)

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## STATE PUBLIC DEFENDER

- Authorizes the State Public Defender to enter into agreements to license, lease, sell, or market for sale intellectual property it owns, and use the payments for operations of the Office of the Public Defender and indigent defense programs.
- Changes how much a county is required to pay the State Public Defender for the provision of legal representation of an indigent defendant such that the county must pay 100% of the legal fees and expenses, but may submit the combined cost to the State Public Defender for up to full reimbursement.
- Requires the State Public Defender to reimburse county governments up to 100% of the total cost they incur in providing indigent defense in cases other than capital cases, and 100% of the costs and expenses incurred for indigent defense in capital cases.
- Eliminates the allowance for proportional reduction of reimbursement if the General Assembly's appropriation to the State Public Defender is insufficient to cover the counties' costs for indigent defense.
- Creates a 16-member task force to study Ohio's indigent defense system and provide recommendations to the General Assembly regarding the delivery, structure, and funding of indigent defense.
- Changes the name of the Ohio Legal Assistance Foundation to the Ohio Access to Justice Foundation.

### State Public Defender powers

(R.C. 120.04)

The bill authorizes the State Public Defender to enter into agreements to license, lease, sell, and market for sale intellectual property owned by the Office of the Public Defender and receive payments from those agreements for the operation of the Office and programs for indigent persons' defense. All funds received under the agreements must be deposited to the credit of the existing Public Defender Gifts and Grants Fund.

### State Public Defender billing practices

(R.C. 120.04)

The bill provides that, when (1) the State Public Defender is designated by a court or requested by a county or joint county public defender to provide legal representation for an indigent person, other than pursuant to a contract, and (2) the State Public Defender sends the involved county a bill for the actual cost of the representation that itemizes the legal fees and expenses so involved, the county must pay the State Public Defender 100% of the legal fees and expenses itemized in the bill. But the county may submit the combined cost of the legal fees and expenses to the State Public Defender for up to full reimbursement under R.C. 120.33, as amended by the bill and described below.

Currently, in this situation, the county: (1) must pay 100% of the amount identified in the State Public Defender's submitted bill that is identified as legal fees, less a calculated state reimbursement rate reduction, and 100% of the amount identified as expenses, and (2) may submit the cost of the expenses, excluding legal fees, to the State Public Defender for reimbursement.

## **Reimbursement for indigent defense**

(R.C. 120.18, 120.28, 120.33, 120.34, 120.35, and 2941.51)

The bill requires the State Public Defender to reimburse county governments up to 100% of the costs they incur in providing indigent defense in cases other than capital cases, and 100% of the costs and expenses incurred for indigent defense in capital cases. Current law requires 50% reimbursement for indigent defense in capital and noncapital cases, but the reimbursement percentage may be reduced by an equal amount for all counties if the General Assembly's appropriation to the State Public Defender is insufficient to cover the counties' costs for indigent defense. The bill eliminates this allowance for a proportional reduction of the state's reimbursement to the counties. The bill also eliminates a provision that the amount to be reimbursed for indigent defense in capital cases in any fiscal year cannot exceed the total amount appropriated by the General Assembly for that year.

## **Task force to study indigent defense**

(Section 371.10)

The bill creates a 16-member task force, with its members to be appointed no later than October 15, 2019, to study Ohio's indigent defense system and provide recommendations to the General Assembly regarding the delivery, structure, and funding of indigent defense. The Legislative Service Commission must assist the task force as needed, and the task force must report its recommendations to the General Assembly by August 1, 2020. The task force may reimburse the travel expenses of any experts invited to present to the task force. The bill specifies that, of GRF appropriation item 109401, State Legal Defense Services, \$9,100 in FY 2020 and \$900 in FY 2021 is to be used for this purpose.

The task force is to consist of the following voting members: (1) the State Public Defender, (2) the Ohio Public Defender Commission's Chair, (3) the Governor or a designee, (4) the Ohio Supreme Court Chief Justice or a designee, (5) one judge appointed by the Ohio Judicial Conference, (6) one attorney appointed by the Ohio State Bar Association, (7) one public defender appointed by the Ohio Public Defender Commission, (8) one attorney who participates in the assigned counsel system, appointed by the Ohio Public Defender Commission, (9) one county commissioner appointed by the president of the County Commissioners' Association of Ohio, (10) the Attorney General or a designee, (11) three members of the Senate, with two from the majority party appointed by the President and one from the minority party appointed by the Minority Leader, and (12) three members of the House, with two from the majority party appointed by the Speaker and one from the minority party appointed by the Minority Leader. The task force will be co-chaired by one Senate member and one House member, both from the majority party and appointed by their respective leaders.

## **Legal Assistance Foundation name change**

(R.C. 120.52, 120.521, 120.53, 1901.26, 1907.24, 2303.201, 3953.231, and 4705.10; Section 371.10)

The bill changes the name of the Ohio Legal Assistance Foundation to the Ohio Access to Justice Foundation.

Under continuing law, the Foundation is a nonprofit organization that supports the delivery of civil legal services to indigent clients. The Foundation is created in statute, and receives much of its funding from local court fees and the Interest on Lawyers Trust Accounts (IOLTA) and Interest on Trust Accounts (IOTA) programs.

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## DEPARTMENT OF PUBLIC SAFETY

### Vision screenings

- Permits a person renewing a driver's license to have the required vision screening conducted at a licensed optometrist's or ophthalmologist's office within 90 days prior to license renewal, instead of at the deputy registrar office, as under current law.
- Permits a person who fails the vision screening at the driver examiner's office (after failing it at a deputy registrar office) to have a vision screening at a licensed optometrist's or ophthalmologist's office.

### Disabled veteran vehicle registration

- Requires the Registrar of Motor Vehicles to allow a disabled veteran to receive a license plate that recognizes military service or valor without paying any registration taxes or fees, for up to two motor vehicles.

### State Fire Marshal CDL exemption

- Exempts a qualified person who operates fire equipment for the State Fire Marshal from the requirement to hold a commercial driver's license (the same exemption applies to a qualified person who operates fire equipment for a local fire department).

### Salvage certificate of title notary exemption

- Exempts a power of attorney (or other appropriate document) from notarization and verification requirements when an insurance company, under certain circumstances, applies for a salvage certificate of title.

### Abolished funds

- Eliminates the Multi-Agency Radio Communications System Fund, which has been in disuse by the Department of Public Safety (DPS) since 2010. DPS previously used the fund for MARCS-related equipment maintenance, which is now conducted by the Department of Administrative Services.
- Eliminates the Public Safety Investigative Unit Salvage and Exchange Fund and redirects money received by the DPS Investigative Unit from the sale of excess motor vehicles and other equipment from that fund to the Ohio Investigative Unit Fund.

### Infrastructure Protection Fund

- Permits DPS to use the funds deposited into the Infrastructure Protection Fund for the Department's operating expenses.

### Nonopioid directives

- Requires the State Board of Emergency Medical, Fire, and Transportation Services to develop a nonopioid directive form for use by a patient who does not want to be offered, prescribed, or administered an opioid analgesic.

- Generally grants immunity to the following for administering, dispensing, or prescribing an opioid analgesic to a patient who is the subject of a nonopioid directive: emergency medical services personnel, firefighters, volunteer firefighters, law enforcement officers, pharmacists, and prescribers.

## Vision screenings

(R.C. 4507.12)

The bill creates alternative ways for a person to certify that he or she meets the vision standards required for obtaining a driver's license. Under current law, the vision screening must take place at a deputy registrar office. Specifically, the bill permits a person to have a vision screening at a licensed optometrist's or ophthalmologist's office at both of the following times:

- Within 90 days prior to license renewal if the person applying knows that he or she meets the vision standards, but that person is not capable of passing the vision screening conducted at a deputy registrar office; and
- After a person fails the vision screening at both the deputy registrar office and the driver examiner's office.

The bill requires the Registrar of Motor Vehicles to create forms to be filled out at the optometrist or ophthalmologist's office. A person must then bring the filled-out forms to the Registrar or deputy registrar to verify that the vision screening results meet the vision standards required for licensing. If the results meet the vision standards, the Registrar or deputy registrar is then permitted to renew the driver's license or issue a driver's license to the person.

If a person fails all of the vision screenings, the Registrar and any deputy registrar is prohibited from issuing a license to the person until the person's vision is corrected to meet the vision standards.

## Disabled veteran vehicle registration

(R.C. 4503.29)

Under current law, a disabled veteran with a service connected disability rated at 100% by the federal Veterans' Administration may register one motor vehicle without paying any registration taxes and fees, and receive the "Disabled Veteran" license plates (printed with the word "VETERAN" across the bottom and the International Symbol of Access on the side).<sup>94</sup> The bill permits such a disabled veteran, as an alternative, to receive military license plates under another existing administrative program, with the same benefit of not paying registration taxes and fees, for up to two motor vehicles. Thus, the veteran could have license plates that recognize a specific military branch, a particular combat zone, or a medal that the veteran was awarded, instead of the standard "Disabled Veteran" plates. Under the bill, the two-vehicle

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<sup>94</sup> R.C. 4503.41, not in the bill.

limit includes any motor vehicles registered under the “Disabled Veteran” license plate section. Thus, if a veteran has one vehicle registered with “Disabled Veteran” plates, the veteran may register only one additional vehicle with another military plate.

A veteran who requires the accessibility permitted by a license plate or windshield placard displaying the International Symbol of Access may apply for a temporary removable windshield placard without any service fee. This benefit is already established in current law.<sup>95</sup>

## **State Fire Marshal CDL exemption**

(R.C. 4506.03)

Under current law, generally, no person may operate a commercial motor vehicle unless the person has a valid commercial driver’s license or permit. However, there are several exemptions, which include qualified persons who operate fire equipment for a fire department, volunteer or nonvolunteer fire company, fire district, or joint fire district.

The bill adds the State Fire Marshal to this exemption – that is, a qualified person who operates fire equipment for the State Fire Marshal is not required to hold a commercial driver’s license or permit.

## **Salvage certificate of title notary exemption**

(R.C. 4505.11)

Generally, when an insurance company (1) comes into possession of a salvage motor vehicle, (2) declares it economically impractical to repair, (3) has paid for the vehicle, and (4) a physical certificate of title was not issued for the vehicle, the insurance company may nonetheless apply for a certificate of title. This application for a certificate of title must be accompanied by a properly executed power of attorney (or other appropriate document) from the motor vehicle owner. Under current law, these documents must be notarized and verified.

The bill exempts the accompanying power of attorney (or other appropriate document) from notarization and verification requirements. Under current law, only the application, and not the accompanying documents, for the salvage certificate of title is so exempt.

A similar notarization and verification exemption for a power of attorney exists in current law when (1) to (3) above apply but the insurance company obtains the physical certificate of title.

## **MARCS Fund**

(R.C. 4501.16)

The bill eliminates the Multi-Agency Radio Communications System (MARCS) Fund, which consisted of money the State Highway Patrol received from MARCS users. DPS previously used the fund to provide maintenance for MARCS-related equipment located at both MARCS facilities and tower sites. This maintenance is now conducted by DAS.

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<sup>95</sup> R.C. 4503.44, not in the bill.

## Ohio Investigative Unit Fund

(R.C. 125.13, 4501.10, and 5502.132, not in the bill)

The bill eliminates the Public Safety Investigative Unit Salvage and Exchange Fund and redirects money from that fund to the Ohio Investigative Unit Fund. The redirected money comes from money received by the Department of Public Safety (DPS) Investigative Unit from the sale of excess motor vehicles and other equipment. Under current law, unchanged by the bill, the money derived from such sales must be used to purchase replacement motor vehicles and other equipment for the DPS Investigative Unit.

## Infrastructure Protection Fund

(R.C. 4737.045)

The bill permits DPS to use the funds deposited into the Infrastructure Protection Fund for DPS's operating expenses. Under current law, the money in the fund may only be used for developing and maintaining the Scrap Metal Dealer Registry. Any person who engages in the business of a scrap metal dealer or a bulk merchandise container dealer in Ohio must register annually with the Director of Public Safety to be included in the Registry. An initial registration costs \$200 and a renewal costs \$150. The registration fees along with any fees paid to recover an impounded vehicle that was used in the theft or illegal transportation of metal, a special purchase article, or bulk merchandise container are deposited into the Infrastructure Protection Fund.

## Nonopioid directives

(R.C. 4765.60 to 4765.609)

### Form development

The bill requires the State Board of Emergency Medical, Fire, and Transportation Services, which is part of DPS, to develop a nonopioid directive form. The form must specify that the patient who is the subject of it desires not to be offered, prescribed, administered, personally furnished, or otherwise provided with an opioid analgesic.

The Board must develop the form within one year after the provision takes effect. When developing the form, the Board must seek input on the form's content from prescribers, pharmacists, emergency medical services personnel, firefighters, law enforcement officers, addiction treatment professionals, nursing homes, hospitals, ambulatory surgical facilities, and any other constituency that the Board determines to be appropriate.

The Board must make the form available on its website and be in a format that can be downloaded free of charge and reproduced.

### When form becomes effective

The bill specifies that a patient's decision to sign a nonopioid directive form is voluntary. A form does not become effective until it is signed by the patient to whom it pertains, or that individual's representative, and is placed in the patient's medical record. In the case of a patient who is a minor, the patient's representative is the patient's parent, guardian, or legal custodian.

An individual who places a patient's nonopioid directive form in the patient's medical record, or that individual's delegate, must notify the State Board of Pharmacy that the patient has signed a nonopioid directive form and where the form is maintained.

### **Form distribution**

A nonopioid directive form must be distributed to both of the following:

--Each individual who has completed treatment with a community addiction services provider, at the time of discharge from treatment; and

--Each individual who served a prison term for a drug offense, at the time of release from prison.

The bill prohibits an individual who receives a nonopioid directive form from being pressured to sign it.

### **Rules**

The bill requires the State Board of Emergency Medical, Fire, and Transportation Services to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) to do all of the following:

--Specify procedures to ensure that a signed nonopioid directive form is properly filed in the medical record of the patient to whom it pertains and that a notification of its existence is sent to the State Board of Pharmacy;

--Specify a marker or other form of notification that must be included in the State Board of Pharmacy's drug database known as OARRS<sup>96</sup> under the name and patient identifier of the patient who has signed a nonopioid directive form;

--Specify a procedure for the transmission, sharing, and distribution of a patient's nonopioid directive form between health care providers, health care facilities, emergency medical services personnel, firefighters, and law enforcement officers that ensures that protected health information is disclosed only in a manner that is consistent with state and federal laws on the use and disclosure of such information; and

--Specify the circumstances under which a patient may authorize another individual, including an attorney-in-fact under a durable power of attorney for health care, to override a patient's nonopioid directive form, and a procedure to accomplish an override.

### **Revocation**

The patient who is the subject of a nonopioid directive form, the patient's representative, or, if the patient is under age 18, the patient's parent, guardian, or legal

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<sup>96</sup> Under current law, operation of a drug database by the State Board of Pharmacy is optional. The Board has exercised that authority, and its existing drug database is called the Ohio Automated Rx Reporting System (State Board of Pharmacy, *OARRS (Ohio Automated Rx Reporting System)*, available at <https://www.ohiopmp.gov/>).

custodian, may revoke a nonopioid directive form at any time and in any manner that communicates the intent to revoke.

## **Health care provider and first responder duties; immunity**

### **Emergencies**

The bill specifies that in an emergency situation, emergency medical service personnel, firefighters, and law enforcement officers are not required to inquire about the existence of a nonopioid directive form for a patient or determine if the patient is the subject of a form. The bill grants to the foregoing persons immunity from civil liability, criminal prosecution, or professional disciplinary action associated with offering, prescribing, administering, personally furnishing, or otherwise providing an opioid analgesic to the patient if doing so is otherwise in accordance with law. The immunity applies in the following circumstances: if a patient is the subject of a form, if the persons provide care to the patient in an emergency, and if, at that time, those persons do not know that the patient is the subject of a form or if they believe based on their professional judgment that the patient's chances of recovery would be substantially improved through the use of an opioid analgesic.

### **Pharmacists**

The bill specifies that a pharmacist or pharmacy intern to whom a valid prescription for an opioid analgesic is presented for dispensing is neither required to inquire about the existence of a nonopioid directive form for the patient who is the subject of the prescription nor is required to determine if the patient is the subject of a nonopioid directive form.

Except when there is evidence that a pharmacist or pharmacy intern knowingly failed to comply with a patient's nonopioid directive form, the bill grants immunities as follows:

--The pharmacist or intern is not subject to criminal prosecution associated with dispensing the opioid analgesic;

--Unless the pharmacist or pharmacy intern failed to comply with the form in a manner that is willful or wanton, the pharmacist or intern is not subject to civil liability or professional disciplinary action associated with dispensing an opioid analgesic.

### **Prescribers**

Except when there is evidence that a prescriber, employee, or contractor or delegate of a prescriber knowingly failed to comply with a nonopioid directive form signed by a patient or the patient's representative, the bill grants immunities as follows:

--The person is not subject to criminal prosecution associated with offering, prescribing, administering, personally furnishing, or otherwise providing an opioid analgesic to a patient who has an effective nonopioid directive form;

--Unless the person failed to comply with the form in a manner that is willful or wanton, the person is not subject to civil liability or professional disciplinary action associated with offering, prescribing, administering, personally furnishing, or otherwise providing an opioid analgesic to a patient who has an effective nonopioid directive form.

## **Insurance**

The bill prohibits the existence or nonexistence of a nonopioid directive form from:

--Affecting in any manner the sale, procurement, issuance, or renewal of a life insurance policy or annuity;

--Modifying in any manner or invalidating the terms of a life insurance policy or annuity that is in effect on the bill's effective date; and

--Impairing or invalidating a life insurance policy or annuity or any health benefit plan.

### **No requirement to have nonopioid directive form**

All of the following are prohibited under the bill from requiring that (1) an individual be the subject of a nonopioid directive form or (2) an individual revoke or refrain from being the subject of a nonopioid directive form: prescribers, health care facilities, other health care providers, insurers, government entities, and other persons.

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## PUBLIC UTILITIES COMMISSION

- Adds that where current law requires the Public Utilities Commission (PUCO) to determine whether an electric distribution utility had or is likely to have significantly excessive earnings, for affiliated utilities that operate under a joint electric security plan, the total of the utilities' earned return on common equity must be used.
- Permits the PUCO, in making its determination of whether a utility had significantly excessive earnings, to consider the revenue, expenses, or earnings of any affiliate that is an Ohio electric distribution utility.
- Adds to the competitive retail electric service policy of the state certain rights and responsibilities regarding a customer's electric usage data, including sharing rights and standardization of customer data, in order to promote customer choice and grid modernization, spur economic investment, and improve energy options.

### **Electric distribution utility significantly excessive earnings**

(R.C. 4928.143)

The bill adds that where current law requires the Public Utilities Commission (PUCO) to determine whether an electric distribution utility had or is likely to have significantly excessive earnings, for affiliated utilities that operate under a joint electric security plan, the total of the utilities' earned return on common equity must be used. Current law requires the PUCO to make these determinations in two cases:

1. Following the end of each annual period of an electric security plan, the PUCO must determine if certain adjustments to the plan resulted in excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies that face comparable business and financial risk.

2. If an electric security plan has a term of more than three years, then the PUCO must, in the fourth year, determine if the plan will be substantially likely to provide the electric distribution utility with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies that face comparable business and financial risk.

The bill also permits the PUCO, in making its determination under (1), above, to consider the revenue, expenses, or earnings of any affiliate that is an Ohio electric distribution utility. Current law prohibits the PUCO, in making its determination under (1), above, from considering, directly or indirectly, the revenue, expenses, or earnings of "any affiliate or parent company." Current law does not restrict the PUCO in this regard for making its determination under (2), above.

## **Consumer rights regarding electric usage data**

(R.C. 4928.02)

The bill adds the following two provisions regarding customer electric usage data to Ohio's competitive retail electric service policy:

- Encourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization;
- Ensure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers.

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## STATE RACING COMMISSION

- Allows a person to own more than two horse racing facilities or more than two casino facilities, provided that the person is not the operator of any additional facility and is not a management company for the operator.

### **Racetrack and casino operators and landowners**

(R.C. 3769.07 and 3772.19)

The bill allows a person to own more than two horse racing facilities or more than two casino facilities, provided that the person is not the operator of any additional facility and is not a management company for the operator. Existing law prohibits a person from holding a majority interest in, or being a management company for, more than two horse racing facilities or more than two casino facilities. Under the bill, a person may exceed that limit as long as the person is a passive landowner.

The bill also clarifies and reorganizes provisions of continuing law that:

- Prohibit a person from operating more than two horse racing facilities or more than two casino facilities;
- Prohibit a person from being a management company for operators licensed to operate more than two horse racing facilities or more than two casino facilities;
- Prohibit a person from conducting thoroughbred horse racing meetings at more than one facility.

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## **DEPARTMENT OF REHABILITATION AND CORRECTION**

### **Probation and parole services**

#### **Supervision of offenders serving community control sanctions**

- Clarifies that when a county lacks a probation department, a sentencing court may place offenders subject to community control sanctions under supervision of the Adult Parole Authority (APA) if the court has entered an agreement with the APA for its services.
- Specifies that an offender's violation of a community control sanction, condition of release, or law, or departure from the state without permission, must be reported to the APA if the court has entered into an agreement with the APA for its services.

### **Targeted community alternatives to prison**

- Removes references in the targeted community alternatives to prison program to "target counties," continuing the program only for counties that elect to participate.

### **F4 and F5 presumption against prison sentence**

- In the Felony Sentencing Law mechanism establishing a presumption in favor of a community control sanction, instead of a prison term, for most F4s and F5s, repeals a criterion for the presumption to apply that pertains to the Department of Rehabilitation and Correction (DRC) providing the court with a list of available community control sanctions.

### **Minimum standards for jails**

- Modifies an action by the Director of DRC to enjoin compliance with the minimum standards and minimum renovation, modification, and construction criteria for minimum security jails by expanding the applicable standards and criteria to those for jails instead of only for minimum security jails.

### **DRC authority to provide laboratory services**

- Repeals DRC's authority to provide laboratory services.

### **Community-based correctional facility awards**

- Modifies the effectivity of financial award agreements between DRC and the governing board of a community-based correctional facility from a period of one year from the date of the agreement to not longer than the state fiscal biennium in which the assistance is to be awarded.

### **Ohio Penal Industries**

- Requires the Office of Enterprise Development Advisory Board to solicit business proposals offering job training, apprenticeship, education programs, and employment opportunities for Ohio Penal Industries.

## **Probation and parole services**

### **Supervision of offenders serving community control sanctions**

(R.C. 2929.15)

The bill clarifies when a sentencing court may place offenders subject to community control sanctions under the supervision of the Adult Parole Authority (APA). If a county lacks a probation department, offenders serving a community control sanction may be supervised by the APA if the court has entered into an agreement with the APA for its services.

Similarly, the bill clarifies that if an offender violates a community control sanction, condition of release, or law, or leaves the state without permission, the violation or departure must be reported to the APA if the court has entered into an agreement with the APA for its supervisory services.

### **Targeted community alternatives to prison**

(R.C. 2929.34 and 5149.38)

The bill removes a requirement that certain prison terms imposed for a fifth degree felony be served in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, in a community alternative sentencing center or district community alternative sentencing center, or in a community-based correction facility if the court that imposed the fifth degree felony term was a common pleas court of a “target county.” The “target counties” are: Franklin, Cuyahoga, Hamilton, Summit, Montgomery, Lucas, Butler, Stark, Loran, and Mahoning.

Under continuing law, in any county, the board of county commissioners and the administrative judge of the general division of the common pleas court may agree to have the county participate in these local confinement provisions. These counties are referred to in continuing law as “voluntary counties.”

### **F4 and F5 presumption against prison sentence**

(R.C. 2929.13)

A Felony Sentencing Law mechanism establishes a presumption in favor of a community control sanction, instead of a prison term, for an offender convicted of an F4 or F5 that is not exempt from the mechanism. The presumption applies if four specified criteria are satisfied. The sentencing court may impose a prison term, notwithstanding the presumption, if any of 11 specified circumstances apply. Offenses of violence and a few assault offenses are exempt from the mechanism.

The bill repeals one of the criteria that must be satisfied for the presumption to apply, and a related circumstance that authorizes a court to impose a prison term if that criterion is not satisfied. The repealed criterion and circumstance pertain to the Department of Rehabilitation and Correction (DRC) providing the court, upon its request, with a list of available community control sanctions. Specifically, the bill repeals the provisions that: (1) require the

sentencing court to request from DRC a detailed list of community control sanctions available for offenders it sentences, if it believes that no appropriate community control sanction is available, (2) require DRC to provide such a list to the requesting court within a specified period of time after the request, (3) specify that if DRC timely provides the requesting court with such a list, the presumption applies, and (4) specify that if DRC does not timely provide the requesting court with such a list, the court has discretion to impose a prison term.

### **Minimum standards for jails**

(R.C. 5120.10 with conforming changes in R.C. 341.34 and 753.21)

The bill modifies the DRC Director's authority to initiate an action in the court of common pleas to enjoin compliance with the minimum standards for jails or with the minimum standards and minimum renovation, modification, and construction criteria for jails by eliminating the specific reference to *minimum security* in regard to those minimum standards and minimum renovation, modification, and construction criteria, thus expanding those standards and criteria to apply for all jails. It makes conforming changes in the laws establishing minimum security jails in municipal corporations and counties to references to minimum standards and minimum renovation, modification, and construction criteria for jails instead of for *minimum security* jails.

### **DRC authority to provide laboratory services**

(R.C. 5120.135, repealed, with conforming changes in R.C. 5119.44)

The bill repeals DRC's authority to provide laboratory services to certain state departments, federal, state, county, or local agencies, public or private entities, and private persons. Under current law, these "laboratory services" include the performance of medical laboratory analysis; professional laboratory and pathologist consultation; the procurement, storage, and distribution of laboratory supplies; and the performance of phlebotomy services.

### **Community-based correctional facility awards**

(R.C. 5120.112)

The bill modifies the effectivity of state financial agreements between the Director of DRC and the Deputy Director of the Division of Parole and Community Services on the part of the state, and the facility governing board of a community-based correctional facility and program or a district community-based correctional facility and program that outline the agreement's terms and conditions, from an annual basis or a period of one year from the date of the agreement under current law to not longer than the state fiscal biennium in which the financial assistance is to be awarded.

### **Ohio Penal Industries**

(R.C. 5145.162)

The Office of Enterprise Development Advisory Board advises and assists DRC with the creation of training programs and jobs for inmates and releasees through partnerships with private sector businesses. Among the duties of the Board is to solicit business proposals

offering job training, apprenticeship, education programs, and employment opportunities for inmates and releasees. The bill requires the Board to also solicit these business proposals for Ohio Penal Industries.

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## SECRETARY OF STATE

- Eliminates the Election Reform/Health and Human Services Fund.

### **Election Reform/Health and Human Services Fund**

(R.C. 111.28; Section 516.10)

The bill eliminates the Election Reform/Health and Human Services Fund (Fund 3AH0). Currently, that fund exists in the state treasury to receive grants from the U.S. Department of Health and Human Services under the federal Help America Vote Act of 2002 for assuring voting access for persons with disabilities.<sup>97</sup>

Continuing law requires the Secretary of State to deposit any federal grant moneys the Secretary receives, other than those that must be deposited in a specific fund, in the Miscellaneous Federal Grants Fund. As a result, the bill would not affect the Secretary's ability to receive any grant moneys that previously would have been deposited in the Election Reform/Health and Human Services Fund.

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<sup>97</sup> 52 U.S.C. 21021 through 21025.

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## DEPARTMENT OF TAXATION

### Income taxes

- Reduces income tax rates by 6.6%.
- Eliminates the lowest two income tax brackets, thereby reducing the number of brackets from seven to five.
- Reduces the amount of the business income tax deduction, from \$250,000 to \$100,000.
- Eliminates the special 3% flat tax on business income.
- Requires that income excluded under the business income deduction be “added back” when determining a taxpayer’s eligibility for means-tested tax benefits.
- Reduces the rate of a tax paid by certain pass-through entities on a percentage of its nonresident investors’ distributive income.
- Authorizes a pass-through entity to avoid withholding the tax if the investor affirms that it will remit state income tax as required by law.
- Extends, from 60 to 180 days, the time in which an individual must file an amended state return after an adjustment is made to the individual’s federal tax return.
- Modifies the timeline in which the Tax Commissioner must issue an assessment, or a taxpayer must apply for a refund, after an amended return is filed.
- Establishes reporting and payment procedures for pass-through entity owners whose state tax liability is affected by an IRS partnership level audit.
- Requires that, for purposes of school district income taxes that use “earned income” as the tax base, earned income includes business income that a taxpayer deducts under the special deduction for business income under the state income tax law.
- Repeals the income tax credit for contributions to campaigns for statewide office.
- Repeals the income tax credit for a pass-through entity investor’s share of the financial institutions tax (FIT).
- Authorizes a nonrefundable tax credit for a taxpayer that claims a federal work opportunity tax credit on the basis of employing an ex-felon.
- Authorizes the Director of Health to award nonrefundable income tax credits for up to \$10,000 in costs incurred to abate lead in an Ohio residence constructed before 1978.
- Limits the amount of credits that may be awarded to \$5 million per fiscal year.

### Municipal income taxes

- Requires a municipal corporation to pay money to the Treasurer of State if the net distribution amount for the municipal corporation’s state-administered municipal income tax accounts is less than zero in any month.

- Allows the Tax Commissioner to recover unpaid amounts by reducing a delinquent municipal corporation's various state administered tax distributions.
- Requires the Director of Budget and Management to transfer money from the GRF to the Municipal Income Tax Fund in the event that the balance of the Municipal Income Tax Fund is not sufficient to cover the required monthly distributions from that fund.
- Creates a separate Municipal Net Profit Tax Fund to receive revenue solely from the state-administered municipal tax on business income.

## **Sales and use taxes**

- Modifies the set of activities sufficient to create a presumption that an out-of-state seller has substantial nexus with Ohio, thus requiring the seller to collect and remit use tax.
- Requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated ("marketplace facilitators") to register as a seller and collect and remit the use tax due on all transactions facilitated through that marketplace.
- Changes the phrasing of three nexus-related references in current law involving sellers of tobacco products from "nexus in this state" to "substantial nexus with this state" in order to obtain consistency with use tax law.
- Repeals several sales tax exemptions relating to the sale of flight simulators, shares of a fractionally owned aircraft, and services and parts used to maintain an aircraft.
- Repeals the sales tax exemption for sales of investment bullion and coins.
- Repeals the sales tax exemption for sales of vehicles, parts, and repair services to a professional motor racing team.
- Exempts from sales and use tax sales of equipment and supplies used to clean equipment that is used to produce or process food for people.
- Exempts from sales and use tax sales of supplies or services to clean machinery in a manufacturing facility.
- Specifies the manner by which transportation network company services, i.e., services rendered when a rider uses a digital network to arrange transportation with a driver, are subject to sales and use tax.
- Allows counties and transit authorities to levy their local sales and use taxes in increments of 0.05%.
- Requires a hotel intermediary – i.e., an online booking company – to collect and remit sales and lodging taxes based on the amount the hotel would have charged the customer for the same lodging.

- Specifies that a person is not a hotel intermediary if the person charges a customer for the service of arranging a hotel reservation but separately lists that charge on the customer's bill or invoice.
- Allows for the extension of an existing county lodging tax that is levied by a county that hosts, or that has an independent agricultural society that hosts, an annual harness horse race with at least 40,000 one-day attendees.

## **Property taxes**

- Requires a school board or the legislative authority of a county, municipal corporation, or township, before filing a property tax complaint or counter-complaint, to pass a resolution approving the complaint or counter-complaint at a public meeting.
- Modifies the circumstances under which a county auditor must notify the property owner or a school board that a property tax complaint has been filed against a property.
- Disallows local tax issues and certain other local tax-implicated issues from being submitted to voters at August special elections.
- Allows school districts to submit property or income tax levies at August elections if the purpose of the tax is to avoid the conditions that would trigger a fiscal emergency.
- Authorizes the board of trustees of a state community college district to levy a property tax for permanent improvements, or a combination bond issuance and tax levy for that purpose.
- Authorizes the board of education of a school district to propose a tax levy for school safety and security and give some of the revenue to chartered nonpublic schools located in the district to be used for that purpose.
- Exempts from property tax the value of unimproved land subdivided for residential development in excess of the fair market value of the property from which that land was subdivided, apportioned according to the relative value of each subdivided parcel.
- Authorizes the exemption for up to three years or until construction begins or the land is sold.
- Modifies the calculation of rental income when determining eligibility for existing tax exemptions for property held or occupied by a fraternal or veterans' organization.
- Authorizes a partial real property tax exemption for child care centers that serve children from households that receive public assistance.
- Excuses community schools from the requirement to file annual applications with the Tax Commissioner as a condition of obtaining a property tax exemption.
- Restores a prior law allowing county developmental disabilities boards to request that the board of county commissioners establish a county developmental disabilities Medicaid reserve fund.

- Establishes a temporary procedure by which a municipal corporation may apply for tax exemption and the abatement of unpaid taxes, penalties, and interest due on certain municipal property.

### **Financial institutions tax**

- Limits the tax base upon which the financial institutions tax (FIT) is computed for institutions that report total equity capital in excess of 14% of total assets.

### **Commercial activity tax**

- Reduces the percentage of commercial activity tax (CAT) revenue devoted to offset the Department of Taxation's administrative expenses from 0.75% to 0.65% beginning July 1, 2019.
- Extends by two years a provision temporarily authorizing owners of a historic rehabilitation tax credit certificate to claim the credit against the CAT if the owner cannot claim the credit against another tax.

## **Income taxes**

The bill includes several changes to Ohio's income tax, principally: a reduction in income tax rates, the elimination of the two lowest income tax brackets, a reduction in the business income deduction, and the elimination of the special 3% flat tax on business income.

### **Tax bracket elimination**

Current law prescribes seven tiered tax brackets, with increasingly greater rates assigned to higher income brackets. For 2018, the lowest bracket begins at \$10,500 of adjusted gross income and the highest applies to income of \$210,600 or more. Individuals with an adjusted gross income of less than \$10,500 are exempt from the tax.<sup>98</sup>

The bill eliminates the first two tax brackets (\$10,500-\$15,800 and \$15,800-\$21,000 for the 2018 taxable year). Beginning in 2019, individuals with an adjusted gross income of less than \$22,250 would be exempt from the tax. (Similar to current law, individuals with income of more than \$22,250 would still pay the tax on their first \$22,250 of income. That tax is reflected as a dollar amount added to the remaining tax brackets.)<sup>99</sup>

### **Reduction in tax rates**

The bill reduces the tax rates applicable to the remaining five tax brackets by 6.6%. Currently, the rates in those five brackets range from 2.969% to 4.997%. Under the bill, those rates would range from 2.773% to 4.667%.<sup>100</sup>

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<sup>98</sup> These income amounts reflect inflation-indexing adjustments for the 2018 taxable year.

<sup>99</sup> R.C. 5747.02(A)(3) and Section 757.150.

<sup>100</sup> R.C. 5747.02(A)(2) and (3) and Sections 757.150 and 757.160.

## **Taxation of business income**

### **Business income deduction**

The bill reduces the amount of the business income deduction. Under current law, a taxpayer may deduct the first \$250,000 of the taxpayer's business income from the taxpayer's adjusted gross income. The bill lowers the deduction to \$100,000. (For married taxpayers that file separate returns, the deduction is reduced from \$125,000 to \$50,000 for each spouse.)<sup>101</sup>

### **Elimination of 3% flat tax**

Under current law, a 3% flat tax applies to all business income in excess of the amount excluded under the business income deduction. The bill eliminates this flat tax, and instead subjects business income to the same tiered tax rates that apply to nonbusiness income (i.e., the same tiered rates that the bill reduces by 6.6%).<sup>102</sup>

### **Eligibility for tax benefits**

The bill requires that income excluded under the business income deduction be "added back" when determining a taxpayer's eligibility for means-tested tax benefits. The affected benefits include the homestead exemption, personal and dependent exemptions, \$20 personal and dependent credit, joint filer credit, retirement income credits, and senior citizen credit.

As an example: Consider Business Owner, a taxpayer with total business income of \$275,000, and Nurse, a taxpayer with nonbusiness income of \$50,000. Under current law, after taking the \$250,000 business income deduction, Business Owner's Ohio AGI is \$25,000. Nurse's Ohio AGI is \$50,000.

Under current law, Business Owner would be eligible for several means-tested benefits, while Nurse would not. Such benefits include the homestead exemption (which has an income threshold of \$32,000 for 2018) and several income tax exemptions and credits, such as the \$20 personal exemption (which has an income threshold of \$30,000).

Under the bill, Business Owner would be required to add-back any amount taken as a business income deduction when determining eligibility for means-tested benefits. Consequently, for the purposes of those benefits, Business Owner's AGI would be considered to be \$250,000 and Business Owner would not be eligible for any of the means-tested benefits.<sup>103</sup>

### **Reporting of business income tax revenue**

The bill repeals a requirement that the Department of Taxation report to OBM the tax liability (before tax credits) attributable to the taxation of business income versus the amount

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<sup>101</sup> R.C. 5747.01(A)(31) and Section 757.150.

<sup>102</sup> R.C. 5747.01(HH) and 5747.02(A)(4) and Section 757.150.

<sup>103</sup> R.C. 323.151, 5747.01(JJ), 5747.022, 5747.025, 5747.05, 5747.054, 5747.055, and 5748.01 and Section 757.150.

attributable to nonbusiness income. OBM then must separately list these figures when reporting revenue estimates to the Governor and General Assembly.<sup>104</sup>

### **Pass-through entity withholding tax**

(R.C. 5733.40, 5733.41, and 5747.41; Section 757.50)

Under continuing law, the Ohio income tax applies to income received by an owner or investor in a pass-through entity (PTE) from the PTE's business activities in the state. (Pass-through entities include S corporations, partnerships, and limited liability companies treated for federal income tax purposes like partnerships.) Under current law, in order to ensure collection of the tax from nonresident individuals and entities – which, aside from their ownership of the PTE, would not be required to file an individual tax return – a PTE is required to withhold the income tax due from its nonresident investors. This “withholding tax” is imposed directly on the PTE, even though the underlying tax liability belongs to the investors.

The bill makes two changes to the withholding mechanism for collecting tax on PTE investor income. First, the bill lowers the rates at which PTEs remit taxes on investor income from 5% to 3% for individual investors and from 8.5% to 3% for nonindividual investors. The bill does not change an existing alternative means for a PTE to report and pay income taxes owed by its noncorporate investors: a PTE may file a composite return (Form 4708) covering its investors and pay tax for them at the highest of the graduated tax rates for nonbusiness income (4.997% currently, reduced to 4.667% by the bill).

Second, the bill expands the set of circumstances under which a PTE may be excused from the withholding tax for an investor. Under the bill, a PTE does not have to pay tax on the basis of a nonresident individual who has filed a statement with the PTE irrevocably agreeing that they are subject to the state's tax jurisdiction and will make a good faith effort to comply with all applicable tax reporting and payment requirements on their own behalf. Currently, a PTE may be excused from the withholding tax for a nonresident individual investor only if the PTE itself agrees to report and pay tax on the investor's behalf by filing the composite return, Form 4708.

The bill also adds a “catch-all” category of investors for which a PTE need not pay the withholding tax. The category includes any investor not otherwise covered by any other withholding tax exemption that irrevocably agrees, in a statement filed with the PTE, that it is subject to the state's taxing jurisdiction and will make a good faith effort to comply with the investors tax reporting and payment requirements on their own behalf.

This pass-through entity withholding tax modifications apply to a PTE's taxable years beginning on or after January 1, 2019.

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<sup>104</sup> R.C. 5747.031.

## **Individual amended returns**

(R.C. 5747.10; Section 757.70)

The bill extends, from 60 to 180 days, the time in which an individual must file an amended state return after an adjustment is made to the individual's federal tax return.

Under continuing law, if an individual's state tax liability will change due to adjustments made on the individual's federal tax return – whether by the individual or by the IRS – the individual is required to file an amended return.

### **Timeline for assessments**

If the changes result in more tax due, a payment must accompany the amended return. If the individual does not pay the additional tax, the Tax Commissioner may issue an assessment to collect the tax.

Under current law, the Commissioner must generally issue an assessment within four years after the date the amended return was filed or was due, whichever is later. The bill adds that, if a taxpayer fails to file an amended return or federal adjustments report (see below, "**Partnership level audits**"), omits information on a report, or understates the tax due on a report, the Commissioner has six years to issue an assessment. As under current law, an exception applies if the taxpayer's actions were fraudulent – in such cases, there is no time limit on issuing an assessment.

### **Timeline for refunds**

Under current law, when the changes on an amended return result in a refund, the application for refund must be filed by the same deadline prescribed for the amended return (currently, 60 days) or, if still applicable, before the general deadline to apply for refunds (four years from the date of the overpayment).

Under the bill, a taxpayer is required to file a refund application either before the general deadline to apply for refunds (four years from the date of the overpayment) or one year after the date the taxpayer was required to file the amended return, whichever is later.

## **Partnership level audits**

The bill also prescribes reporting and payment procedures for pass-through entity owners whose state tax liabilities are affected by an IRS audit. The procedures apply to partnerships and to LLCs that are taxed as partnerships under federal law (hereinafter, simply referred to as "partnerships").

### **Federal partnership level audit changes**

The new procedures are in response to changes in federal law governing the payment and collection of taxes when a partnership is audited. The new rules, enacted in the "Bipartisan Budget Act of 2015" (BBA), apply to federal returns filed for 2018 and thereafter.

Under continuing law, partnerships file a federal tax return on their partners' behalf, but each partner separately reports and pays the partner's share of the entity's tax liability on the partner's own return. Before the BBA, audits functioned similarly – a partnership could be

audited at the entity level, but, generally, any increase or decrease in tax liability was “passed through” to each partner’s return and taxes were collected at the partner level.

Under the BBA, the IRS will audit partnerships at the partnership level and, if additional tax is due, the partnership will generally pay that tax, rather than pass the tax through to its partners.

Partnerships may elect to “push out” the tax liability to individual partners, in which case the liability shifts from the entity level to the individual partner level. In addition, certain partnerships may elect to “opt out” of the new BBA rules, and instead operate under the rules in place before the BBA.<sup>105</sup>

### **New state procedures**

The bill prescribes new procedures in response to this change in federal law. The new procedures closely mirror those drafted in a model statute adopted by the Multistate Tax Commission.<sup>106</sup>

Under the bill, the default method for reporting changes in state tax liability arising from a federal audit is similar to the federal “push out” procedure. First, the audited partnership must report the changes in federal liability (“adjustments”) to the Tax Commissioner, notify each partner of the partner’s share of the adjustments, and submit an amended return that includes any additional tax that would have been due with the entity’s return if the items requiring adjustment had been reported correctly. Each partner is then responsible for filing a separate report and paying any additional tax due (less any amount already paid by the partnership on the partner’s behalf).

However, a partnership may elect to pay the additional tax liability directly, at the partnership level. Under this election, the partnership pays an amount “in lieu of” the taxes due from its partners: the amount generally equals the portion of the partnership’s federal adjustments that can be apportioned to Ohio (but includes a resident direct partner’s entire share of the adjustments), multiplied by the state’s highest income tax rate (currently, 4.997%).

Under this election, a partnership might pay more than the actual tax due from each partner as a result of the federal adjustments, but the partners avoid the administrative burden of each filing a separate report with the Department of Taxation. If the election is made, a partner may not, later, file an amended return to receive a refund of the difference between the amount paid on the partner’s behalf and the amount actually due from that partner. In addition, the election is irrevocable, unless the Tax Commissioner determines otherwise.

The bill also allows a partnership to request an alternative reporting and payment method, which the Tax Commissioner may approve at his or her discretion.

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<sup>105</sup> Internal Revenue Code Subtitle F, Chapter 63, Subchapter C. Generally, to opt out, the partnership must have fewer than 100 partners and each partner must be a qualifying individual or entity.

<sup>106</sup> The model statute is available at <http://www.mtc.gov/Uniformity/Adopted-Uniformity-Recommendations>.

## Partnership representative

Federal law requires a partnership to designate a “partnership representative” to act on the partnership’s behalf during a federal audit. Individual partners are bound by the representative’s actions.

The bill requires that the partnership also designate a state partnership representative. By default, the state representative is the same individual designated during the federal audit. However, the bill allows partnerships to designate a different individual as the state representative, in accordance with rules adopted by the Department of Taxation.

## Application date

The new procedures apply to final federal adjustments made on or after October 1, 2019.

## School district income tax base

(R.C. 5748.01(E)(1)(b); Section 757.150)

The bill requires that, for purposes of school district income taxes that use “earned income” as the tax base, amounts a taxpayer deducts under the state business income deduction must be added back when computing a taxpayer’s earned income.

Under continuing law, school districts that levy an income tax may use Ohio adjusted gross income (OAGI) or “earned income” as a tax base. “Earned income” includes compensation and self-employment earnings, but only to the extent that such income is included in OAGI. In computing their OAGI, taxpayers may deduct up to \$100,000 of their business income (the current deduction is up to \$250,000; see “**Business income deduction**,” above). Under current law, the deducted amount must be added back when computing the taxable income of taxpayers in school districts that use OAGI as a base, but not in districts that have an earned income tax base.

This change applies beginning for taxable years commencing in 2019.

## Tax credit repeal

The bill repeals two income tax credits: (1) the credit for campaign contributions and (2) the credit for a pass-through entity investor’s share of the financial institutions tax (FIT).

The campaign contribution tax credit is a nonrefundable credit for contributions made to the campaign committees of candidates for a statewide office (e.g., governor or member of the General Assembly). The credit cannot exceed \$50 per individual taxpayer.<sup>107</sup>

The second credit repealed by the bill allows a taxpayer that owns a pass-through interest in a financial institution to claim an income tax credit that offsets the owner’s share of

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<sup>107</sup> R.C. 5747.29.

the institution's FIT tax payments. The refundable credit equals the owner's proportionate share of the lesser of the FIT due or paid during the taxable year.<sup>108</sup>

The credits are repealed for taxable years beginning in 2019 or thereafter.<sup>109</sup>

### **Income tax credit for hiring ex-felons**

(R.C. 5747.73 and 5747.98; Section 757.120)

The bill authorizes a nonrefundable income tax credit for a taxpayer that is eligible for the federal work opportunity tax credit (WOTC) for employing a qualified ex-felon, i.e., an individual convicted of a felony that is hired by the employer within one year after the individual is released from prison. The federal WOTC equals 40% of the first-year wages, up to \$6,000, paid to that employee.<sup>110</sup> Thus, the maximum federal credit equals \$2,400. The new state credit equals 30% of the taxpayer's federal WOTC, making the maximum state credit \$720 per ex-felon employed. Any unclaimed balance may be carried forward for seven years.

### **Lead abatement income tax credit**

(R.C. 3742.50, 5747.02, 5747.08, 5747.26, and 5747.98; Section 757.10)

The bill authorizes a nonrefundable income tax credit for expenses incurred by a taxpayer to abate lead in an Ohio residence constructed before 1978. Specifically, the credit is based on the sum of the following "lead abatement costs" incurred in a taxable year, up to \$10,000 per taxpayer:

- Costs for a licensed specialist to conduct a lead risk assessment, lead abatement project, or clearance examination (a test conducted to verify that the lead hazard has been abated);
- Costs to relocate the dwelling's occupants to protect them during the lead abatement process.

The credit is not available on the basis of any lead abatement cost for which the taxpayer is reimbursed or that the taxpayer deducted or intends to deduct for federal or state income tax purposes.

To obtain a credit, the taxpayer submits an application to the Director of Health listing the taxpayer's lead abatement costs incurred during the taxable year. After verifying those costs and that the dwelling was constructed before 1978 and has passed a clearance examination, the Director issues a certificate authorizing the applicant to claim a nonrefundable income tax credit equal to the lesser of the costs listed on the application, the actual costs verified by the Director, or \$10,000.

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<sup>108</sup> R.C. 5747.65.

<sup>109</sup> R.C. 5747.01, 5747.02, and 5747.98; Section 757.150.

<sup>110</sup> Internal Revenue Code section 51.

The Director may not issue credit certificates lead abatement costs incurred in taxable years beginning before 2020, nor may the Director issue more than \$5 million in certificates in a fiscal year. The Director may adopt rules for the administration of the lead abatement credit program, in consultation with the Tax Commissioner.

The taxpayer may claim, for the taxable year in which the certificate is issued, a nonrefundable income tax credit equal to the amount stated on the certificate. Any unclaimed balance may be carried forward for up to seven years. Upon request, the taxpayer must furnish the Commissioner with documentation verifying the taxpayer's credit eligibility.

### **State administration of municipal income taxes**

Beginning in 2018, continuing law allows businesses (other than sole proprietors) to choose between filing a separate tax return for each municipal corporation in which the business operates and filing a single return with the Department of Taxation that covers the business' total tax liability to all municipalities. Each municipality continues to administer its tax on businesses that choose to file separate returns. The Department assumes all aspects of administering the taxes of businesses that choose to file a single return. The Tax Commissioner is required to distribute municipal income tax revenue on a monthly basis, after deducting 0.5% of such revenue to cover the Department's administrative expense.

#### **Net distribution deficiency**

(R.C. 718.83, 321.24, and 5747.05; Sections 812.20 and 815.10)

The bill addresses negative cash-flow issues with the state's Municipal Income Tax Fund that arise when a municipal corporation's net distribution of revenue from tax accounts administered by the Department is less than zero. This might happen if audit adjustments and refunds exceed collections in a given month. In such cases, the bill requires the municipal corporation to remit payment to the Treasurer of State within 30 days of receiving a notice of deficiency from the Department. If a municipal corporation does not reimburse the state in a timely manner, the bill authorizes the Commissioner to recover the deficiency by reducing the municipal corporation's future municipal income tax distributions, electric light and telephone company income tax distributions, and property tax distributions.

The bill exempts the provision from the referendum, causing the provision to take effect immediately upon becoming law.

#### **Municipal Net Profit Tax Fund**

(R.C. 718.83, 718.85, and 718.90; Section 701.20)

The Department of Taxation currently administers two income taxes on behalf of municipal corporations. Beginning in 2018, businesses may file their municipal income taxes centrally with the Department. In addition, the Department administers a separate municipal income tax on electric and telephone companies.

Under current law, revenue from both taxes is deposited into a single Municipal Income Tax Fund. The bill creates a separate fund – the Municipal Net Profit Tax Fund – to receive revenue from the state-administered municipal tax on business income. Revenue from

municipal taxes on electric and telephone companies will continue to be credited to the Municipal Income Tax Fund.

Amounts credited to both funds are returned to the municipal corporations that levy the underlying taxes, after an allowance for the Department's administrative costs.

## **Sales and use taxes**

### **Use tax collection**

The bill modifies the set of activities sufficient to create a presumption that an out-of-state seller has substantial nexus with Ohio, thus requiring the seller to collect and remit use tax. The bill also requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated on behalf of other sellers (i.e., "marketplace facilitators") to register as a seller with the Tax Commissioner and collect and remit the use tax due on all transactions facilitated through that marketplace. (For example, a company operates an Internet-accessible platform permitting third-party sellers to use the platform to offer products for sale; the company is therefore a marketplace facilitator.)

Continuing law imposes use tax on tangible personal property and certain taxable services purchased outside of, but used, consumed, or stored in Ohio. Use taxes are levied at the same rate as state and local sales taxes, and all revenue from the tax is credited to the General Revenue Fund.

### **Substantial nexus**

(R.C. 5741.01(I); Sections 757.80 and 812.20)

### **Background**

The authority of states to require out-of-state sellers to collect and remit taxes is limited by the Commerce Clause of the U.S. Constitution. The U.S. Supreme Court held in *Complete Auto Transit v. Brady* that taxation of interstate commerce is permissible only if (1) the seller has a substantial nexus with the taxing state, (2) the tax is fairly apportioned, (3) the tax does not discriminate against interstate commerce, and (4) the tax is related to the services the state provides.<sup>111</sup>

The first component of the *Complete Auto Transit* test, requiring a substantial nexus with the taxing state, is the subject of frequent litigation. In the abstract, "substantial nexus" is a connection or link between a seller and the taxing state that is sufficient to justify requiring the seller to collect and remit use tax to that state. Until recently, the controlling precedent on the subject was *Quill Corp. v. North Dakota*. In that case, the U.S. Supreme Court reaffirmed a standard that requires a physical presence by the seller in the taxing state to establish substantial nexus.<sup>112</sup> Most states, including Ohio, tailored their sales and use tax collection requirements for out-of-state sellers in conformance with the *Quill* standard.

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<sup>111</sup> 430 U.S. 274, 279 (1977).

<sup>112</sup> 504 U.S. 298 (1992).

The U.S. Supreme Court overturned the *Quill* standard in a 2018 case, *South Dakota v. Wayfair, Inc.* In that case, the Court determined that substantial nexus is not established by physical presence, but instead when the seller avails itself of the privilege of carrying on business in the taxing state. In its decision, the Court declined to strike down South Dakota's substantial nexus standard which requires out-of-state sellers that engage in a high volume of sales into the state to collect and remit the state's sales tax irrespective of whether the sellers have a physical presence in the state.<sup>113</sup>

### **Ohio's standard**

Ohio law requires out-of-state sellers to collect and remit use tax on sales into the state to the maximum extent permissible under the Commerce Clause of the U.S. Constitution. An Ohio-based consumer is required to report and remit directly to the state any use tax not collected and remitted by a seller.<sup>114</sup>

Continuing law prescribes several examples of activities that, if conducted by an out-of-state seller, create a presumption that the seller has substantial nexus with Ohio. For example, an out-of-state seller is presumed to have substantial nexus with Ohio if the seller uses an Ohio warehouse or regularly uses agents in Ohio to conduct business. In general, these presumptions may be overcome if the seller demonstrates that those activities are not significantly associated with the seller's ability to establish or maintain the seller's Ohio market.

The bill modifies the activities sufficient to establish a presumption of substantial nexus with Ohio so that they are more closely aligned with the South Dakota nexus standard that withstood the scrutiny of the U.S. Supreme Court in the *Wayfair* case. The bill adds a presumption that a seller has substantial nexus with Ohio if the seller (1) has gross receipts in excess of \$100,000 from sales into Ohio, or (2) engages in 200 or more separate sales transactions into Ohio, during the current or preceding calendar year. As a conforming change, the bill eliminates an existing, but narrower, presumption of substantial nexus for a seller that has gross receipts in excess of \$500,000 from sales into Ohio and that (1) uses computer software stored or distributed in Ohio to make Ohio sales, or (2) provides, or enters into an agreement with a third party to provide, content distribution networks in Ohio to accelerate or enhance the delivery of the seller's website to Ohio consumers. This existing presumption is subsumed by the bill's new presumption of substantial nexus for sellers with more than \$100,000 in gross receipts from sales into Ohio.

The bill also eliminates an existing presumption of substantial nexus for a seller that has a "click-through" agreement with an Ohio resident that referred more than \$10,000 in sales to the seller in the preceding 12 months. A click-through agreement is an agreement where the Ohio resident receives a commission or other form of compensation for referring potential customers to the seller (e.g., by including a link on a website, in-person communication, or telemarketing).

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<sup>113</sup> \_\_\_\_ U.S. \_\_\_\_, 138 S.Ct. 2080.

<sup>114</sup> R.C. 5741.12(B), not in the bill.

## **Marketplace facilitators**

(R.C. 5741.01, 5741.04, 5741.05, 5741.07, 5741.11, 5741.13, and 5741.17; Sections 757.80 and 812.20)

The bill requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated on behalf of other sellers (“marketplace facilitators”) to collect and remit use tax on all transactions facilitated through that marketplace. A marketplace facilitator’s use tax collection and remission duties begin the first day of the first month that begins at least 30 days after the marketplace facilitator first has substantial nexus with Ohio. For the most part, marketplace facilitators have the same rights and obligations as other sellers under the administrative provisions of the use tax such as the requirements to register with the Tax Commissioner and file returns.

After a marketplace facilitator’s use tax collection and remission duties begin, the marketplace facilitator is treated as the seller for all sales it facilitates regardless of whether the “marketplace seller” for whom the sale is facilitated has substantial nexus with Ohio and irrespective of the amount of the price paid by the consumer that is retained by the marketplace facilitator. Marketplace sellers that are otherwise required to collect and remit use tax in Ohio retain that duty for all sales other than those for which a marketplace facilitator is treated as the seller.

### **Substantial nexus**

The general standard for determining whether a marketplace facilitator has substantial nexus with Ohio is the same as for other sellers (i.e., to the fullest extent allowable under the Commerce Clause of the U.S. Constitution). However, the bill prescribes only two examples of activities that, if done in the current or preceding calendar year, are sufficient to establish a presumption of substantial nexus for a marketplace facilitator: (1) obtaining gross receipts in excess of \$100,000 from sales made or facilitated into Ohio, or (2) making or facilitating 200 or more separate sales into Ohio. These presumptions are identical to the presumptions added by the bill for other sellers except that, for marketplace facilitators, direct sales and sales facilitated on behalf of marketplace sellers are treated cumulatively. As with other sellers, the presumption of substantial nexus may be overcome if the marketplace facilitator demonstrates that the activities are not significantly associated with the marketplace facilitator’s ability to establish or maintain the Ohio market.

### **Meaning of “facilitated”**

The bill establishes criteria for determining whether a sale is “facilitated” by a marketplace facilitator thereby activating the marketplace facilitator’s use tax collection and remission duties. In general terms, the duties apply when a marketplace facilitator (1) supports or enables a marketplace seller in establishing a connection with a consumer through the provision of advertising, communication, infrastructure, software research and development, fulfillment or storage services, price-setting, customer service, or brand identification, and (2) collects payment from the consumer, provides payment processing services, charges fees for its role in facilitating the sale, or provides virtual currency used by the consumer in the sale.

Sales of hotel lodging are expressly excluded from the types of transactions that activate a marketplace facilitator's use tax collection and remission duties. Therefore, as under current law, any use tax due on sales of hotel lodging must either be remitted by the seller or by the consumer.

### **Destination-based sourcing**

The bill requires marketplace facilitators to use destination-based sourcing to determine the amount of use tax to collect and remit for each facilitated sale. Continuing law prescribes rules for assigning where a sale is deemed to have occurred. Determining the appropriate taxing jurisdiction (i.e., state and county or transit authority) under these rules is instrumental in ensuring that the tax is collected at the appropriate rate and that the proper taxing authority receives the revenue.

Applying the destination-based method means that a sale will generally be deemed to have occurred where the goods or services are received by the consumer. Under destination-based sourcing, the following rules are applied, in order, to determine the location of the sale:

- The location where the consumer receives the tangible personal property or service;
- The address of the consumer according to the marketplace facilitator's business records;
- An address obtained from the consumer during the consummation of the sale (e.g., a billing address associated with the consumer's credit card);
- The address from which the tangible personal property was shipped or the service was provided.

### **Liability relief**

Generally, a seller is personally liable for any use tax the seller is required, but fails, to collect and remit. The bill relieves a marketplace facilitator from personal liability if the marketplace facilitator was unable to obtain accurate information regarding the terms of the sale from an unaffiliated marketplace seller despite reasonable efforts. This liability relief applies only to a marketplace facilitator's failure to collect the tax. Once the tax is collected, the marketplace facilitator is fully liable for any amount that is not remitted as required by law.

If the marketplace facilitator is relieved of personal liability, the marketplace seller and the purchaser remain liable for the unpaid use tax.

### **Audits**

The bill prohibits the Tax Commissioner from auditing any person other than the marketplace facilitator respecting sales for which the marketplace facilitator is required to collect and remit use tax. Under current law, the Commissioner may audit either the seller or the consumer if the Commissioner has information that indicates that the amount of use tax paid is less than what is due. The bill specifies that marketplace sellers and consumers remain personally liable for unpaid use tax if the marketplace facilitator is relieved of liability for a particular transaction.

## **Class action lawsuits**

The bill prohibits any person from filing a class action lawsuit related to an overpayment of use tax against a marketplace facilitator on behalf of consumers. Under continuing law, consumers may seek a refund of overpaid use tax from the Tax Commissioner.<sup>115</sup>

## **Tobacco products tax**

The bill changes the phrasing of three nexus-related references in current law involving sellers of tobacco products from “nexus in this state” to “substantial nexus with this state” in order to obtain consistency with R.C. 5741.01. The current tobacco products language expressly references the definition of “nexus” in R.C. 5741.01, so the distinction between the two standards was likely unintentional. However, logic suggests that demonstrating a seller has “nexus” in Ohio is a lower bar to clear than demonstrating that the seller has “substantial nexus” with the state. So the change is substantive rather than technical.

## **Repeal of sales tax exemptions**

The bill repeals the following sales tax exemptions, beginning October 1, 2019:

- An exemption for sales of flight simulators used for pilot or flight crew training. The exemption also includes sales of repair or maintenance parts and services for such simulators.
- An exemption for sales of investment bullion and coins.
- An exemption for services and parts used to maintain and repair an aircraft.
- An \$800 cap on the sales tax that may be charged on sales of shares of a fractionally owned aircraft (e.g., NetJets).
- An exemption for the sale of services and parts used to maintain and repair a fractionally owned aircraft.
- An exemption for sales of vehicles, parts, and repair services to qualified motor racing teams. To qualify, the racing team must employ at least 25 full-time employees and conduct its business with the purpose of competing in at least ten professional racing events per year.<sup>116</sup>

## **Sales tax exemption for food manufacturing equipment**

(R.C. 5739.011)

The bill expands a sales tax exemption for equipment and supplies used to clean other equipment that is used to produce or process food for people. The existing exemption applies only if the food being produced or processed is a dairy product.

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<sup>115</sup> R.C. 5741.10, not in the bill.

<sup>116</sup> R.C. 122.175, 5739.01, 5739.02(B)(38), (44), (49), (50), and (54), 5739.025, and 5739.05; Section 757.140.

## **Exemption for manufacturing cleaning supplies and services**

(R.C. 5739.011(B)(14); Section 757.140)

The bill exempts from sales and use tax any supplies or janitorial services purchased to clean machinery in a manufacturing facility by categorizing those supplies and services with other exempt purchases used primarily in manufacturing operation to produce items for sale. These cleaning supplies and services are not currently categorized as exempt manufacturing operation purchases, except for equipment used to clean dairy processing equipment.

The exemption applies on and after October 1, 2019.

## **Taxation of transportation network company services**

(R.C. 5739.01(B)(3)(r), (C), (H)(5), and (RRR); Sections 757.60, 757.130, and 757.140)

Current law subjects to sales and use tax sales of services by which a person is transported by motor vehicle or aircraft within Ohio. The bill specifies how sales and use tax applies to a subcategory of these “transportation services.” Specifically, the bill prescribes the manner by which sales and use tax is assessed against “transportation network company services,” which are rendered when a rider uses a digital network to arrange transportation with a driver, e.g., a ride-hailing application such as Uber or Lyft.

First, the bill specifies that the company furnishing the digital network, e.g., Uber or Lyft, is the vendor required to collect and remit sales and use taxes, rather than the driver. Second, the bill specifically excludes from the taxable price of such services any fees charged for the service other than base fares or fees based on distance or time. Excluded fees include airport access fees, booking fees, and tolls.

Finally, the bill provides that such services are only subject to sales or use tax if the rider is picked up and dropped off in Ohio. Under current law, such services are subject to tax only if the transportation occurs entirely within Ohio.

These modifications apply beginning October 1, 2019.

## **Local sales and use tax rate increments**

The bill allows counties and transit authorities to levy their local sales and use taxes in rate increments of 0.05%. Currently, a county or transit authority may levy or increase a rate only in increments of 0.1% or 0.25%.<sup>117</sup>

Continuing law authorizes counties and transit authorities to levy local sales and use taxes that “piggyback” on the state sales and use tax. All of Ohio’s counties, plus eight transit authorities, levy sales and use taxes. Counties and transit authorities each may levy a tax of up to 1.5%.

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<sup>117</sup> R.C. 5739.021, 5739.023, and 5739.026. The 0.1% increment was authorized recently, in H.B. 69 of the 132nd General Assembly. Before July 1, 2018, rates could only be levied in increments of 0.25%.

## **Taxation of hotel intermediaries**

(R.C. 5739.01(H)(6), (SSS), and (TTT))

Under continuing law, state, county, and transit authority sales and use taxes apply to hotel stays of less than 30 consecutive days. For the purposes of those taxes, a hotel includes any place having at least five rooms available for sleeping accommodations. Generally, the taxes are collected from a customer at the time the customer pays for the room and are remitted to the state by the hotelier. The bill prescribes a method by which sales and use taxes are collected and remitted when the customer arranges for the hotel stay through a “hotel intermediary.”

The bill requires a hotel intermediary to collect sales or use taxes from a customer based on the price the hotel itself would have charged for the same lodging. Under current law, sales and use tax is based on the “total amount of consideration . . . for which . . . [the lodging] services are sold.”

A hotel intermediary is defined as a person that enters into arrangements to sell hotel reservations. “Hotel intermediary” does not include a hotel or a person receiving a commission from a hotel to arrange a reservation (e.g., travel agent). In addition, a person is not considered a hotel intermediary if the person charges a customer for arranging a reservation but separately lists that charge on the customer’s bill or invoice.

### **Local lodging taxes**

(R.C. 351.021, 353.06, 5739.082, and 5739.09(O))

The bill similarly modifies the law authorizing lodging taxes to be levied by local subdivisions. Under continuing law, counties, townships, municipal corporations, convention facilities authorities, and lake facilities authorities have limited authority to levy “lodging” or “bed” taxes on hotel stays. The local lodging taxes apply to the same hotel transactions the state, county, and transit authority sales and use taxes apply to, except that a county lodging tax can be applied to hotels with fewer than five rooms and to separate cabin-type accommodations spread among several structures.

Similar to the bill’s change to sales and use taxes on lodging, the bill requires a hotel intermediary to collect lodging taxes from a customer on the basis of the price the hotel would have charged for the same lodging.

The bill also specifies that a hotel intermediary must collect from the customer and remit local lodging taxes to the subdivision levying the tax.

### **Application date**

(Section 757.180)

The bill’s hotel intermediary provisions apply beginning on the first day of the first month after the bill’s 90-day effective date.

## **Lodging tax**

Counties, townships, municipal corporations, and certain convention facilities authorities are authorized to levy lodging taxes. In general, the maximum lodging tax rate permitted in any location is 6%. Municipalities and townships may levy a lodging tax of up to 3%, plus an additional 3% if they are not located, wholly or partly, in a county that already levies a lodging tax. Counties may levy a lodging tax of up to 3%, but only in municipalities or townships that have not already enacted an additional 3% levy. On occasion, the General Assembly has authorized certain counties to levy additional lodging taxes for special purposes.

Unless specifically authorized otherwise, a county that levies a lodging tax must return up to one-third of its net lodging tax revenue to the municipalities and townships within the county that do not levy a lodging tax. The remaining revenue must be used to support a convention and visitors' bureau. The bureau must generally use the revenue for tourism sales, marketing, and promotion.

### **For county agricultural societies**

(R.C. 5739.09(L))

Continuing law authorizes an additional lodging tax of up to 3% for a county that hosts, or that has an independent agricultural society that hosts, an annual harness horse race with at least 40,000 one-day attendees. The additional lodging tax revenue must be used by the county to pay for the construction, maintenance, and operation of permanent improvements at sites where the agricultural society conducts fairs or exhibits. The additional tax is proposed by resolution of the board of county commissioners and is subject to voter approval. The county is not required to return any portion of the additional tax revenue to townships or municipal corporations.

Under current law, the term of the additional lodging tax may not exceed five years. The bill allows the board of county commissioners to extend the term of the tax for an additional period not exceeding 15 years. The extension could be approved by resolution of the board and would not be subject to voter approval, but it would be subject to referendum.

## **Property taxes**

### **Local government challenges to property tax assessments**

(R.C. 5715.19; Section 757.190)

#### **Filing of property tax complaints**

The bill requires that, before a school district or other political subdivision may file a property tax complaint or counter-complaint with respect to property the political subdivision does not itself own, the school board or legislative authority must first adopt a resolution authorizing the complaint or counter-complaint. The bill also modifies the circumstances under which a county auditor must notify the property owner or a school board that a property tax complaint has been filed against a property.

Under continuing law, property tax complaints may be initiated by property owners, an owner's spouse, certain agents of the owner or spouse, a county treasurer or prosecuting attorney, the mayor of a municipal corporation, a school board, or the board or legislative authority of a county, township, or municipal corporation. Such complaints may challenge a property's value as assessed for tax purposes or its classification as residential/agricultural or commercial/industrial for "H.B. 920" tax reduction purposes, as agricultural property eligible for current agricultural use valuation (CAUV), or as nonbusiness property eligible for the 10% rollback. Complaints also may challenge recoupment charges imposed for conversion of CAUV land to nonagricultural use. The vast majority of property tax complaints challenge a property's assessed value.

Complaints are heard before the county board of revision. Generally, a party may initiate a complaint with respect to a particular parcel only once in each three-year period between a reappraisal or assessment update (the "interim period") unless certain events have occurred in the meantime, such as the property having been sold.

Once a complaint has been initiated, a counter-complaint may be filed in response by a school board or, if the owner did not initiate the complaint, by the owner, spouse, or their authorized agent. For example, if a property owner initiates a complaint to reduce the assessed value of the property, a school board may respond with a counter-complaint defending the assessed value or alleging a different value.

### **Approval of complaints**

Under the bill, before filing a property tax complaint or counter-complaint, a school board or legislative authority that is permitted by law to file a complaint or counter-complaint must first adopt a resolution approving the action at a public meeting. Similarly, before a complaint may be filed by a mayor, the municipal legislative authority must first adopt such a resolution. The resolution must identify the parcel number and, if available in the county auditor's online records, the address of the parcel that is the subject of the complaint or counter-complaint, include the name of an owner, and, if the board or legislative authority is initiating a complaint, the basis for that complaint (e.g., assessed value, tax classification, CAUV status). A single resolution is confined to identifying a single parcel or multiple parcels under common ownership.

Before adopting such a resolution, the board or legislative authority must send written notice by certified mail to one of the property owner's last known property tax-mailing address and, if different, to the property's street address. Alternatively, the notice may be sent to the owner by ordinary mail if it is also sent electronically to the owner. The notice must declare the intent of the board or legislative authority to adopt the resolution and state the proposed date of adoption and, if the resolution is initiating a complaint, the basis for the complaint. The notice must be postmarked at least 14 days before the resolution is scheduled to be adopted.

The board or legislative authority may adopt one or more of these resolutions by a single vote, provided no other type of resolution addressing a different matter is adopted pursuant to that same vote. A copy of the resolution must be filed with the board of revision no later than 30 days after the last day the complaint or counter-complaint against that property

may be filed. (The general deadline for filing complaints is March 31; counter-complaints are generally required to be filed no later than 60 days later.) If the resolution is not timely filed, the board of revision does not have jurisdiction and must dismiss the complaint or counter-complaint, although the board retains jurisdiction and may not dismiss the complaint if the sole error is that the resolution or notice fails to correctly identify the property's owner or the street address. (Continuing law similarly prohibits a board of revision from dismissing a complaint that fails to correctly identify a property's owner.)

### **Complaint form**

The bill requires any property tax complaint form prescribed by a board of revision or the Tax Commissioner to include a box that a board, legislative authority, or mayor filing the complaint may check to certify that the board or legislative authority or, in the case of a mayor, the municipal legislative authority, has adopted a resolution authorizing the complaint and provided notice of the resolution to the property owner, when applicable under the bill's new requirements.

### **Counter-complaint threshold**

Under continuing law, when a property owner initiates a complaint to reduce the assessed value of the owner's property, a school board may respond with a counter-complaint defending the assessed value or alleging a different value, or vice versa. The county auditor must notify a school board or property owner whenever a property owner or school board, respectively, alleges a change in value of at least \$50,000 in fair market value (\$17,500 in taxable value). However, a school board or property owner can file a counter-complaint against any initial complaint, regardless of the change in value alleged, but will not be notified of the initial complaint by the auditor. (However, the property's owner will eventually receive notice from the board of revision that a complaint has been filed against the property ten days or more before the scheduled hearing.)

The bill specifies that multiple complaints filed with respect to parcels that are part of the same "economic unit" must be treated as a single complaint and aggregated for purposes of calculating this \$17,500 taxable value notice threshold. An "economic unit" is property that includes multiple parcels, but that is united by an economic function such that it would normally be sold as a single property. The property need not be contiguous, nor owned by the same person, but must be managed and operated on a unitary basis.

### **Effective date**

The bill's requirements apply to any complaint or counter-complaint filed for tax year 2019 or any later tax year.

### **Local issues at August special elections**

(R.C. 3501.022, 133.06, 133.18, 306.32, 306.321, 306.322, 306.70, 307.695, 307.697, 323.17, 349.14, 505.14, 505.20, 505.47, 511.27, 511.28, 511.34, 703.20, 707.30, 715.38, 715.691, 715.70, 715.71, 715.72, 718.04, 718.09, 718.10, 1545.041, 1545.21, 3311.21, 3311.213, 3311.22, 3311.231, 3311.26, 3311.50, 3313.38, 3313.911, 3318.06, 3318.061, 3318.063, 3318.361, 3354.02, 3354.12, 3357.02, 3357.11, 3381.03, 4301.421, 4301.424, 5705.191,

5705.192, 5705.194, 5705.199, 5705.21, 5705.211, 5705.212, 5705.213, 5705.217, 5705.218, 5705.219, 5705.2111, 5705.2112, 5705.221, 5705.222, 5705.23, 5705.233, 5705.24, 5705.25, 5705.251, 5705.261, 5705.55, 5705.72, 5739.021, 5739.026, 5739.028, 5739.09, 5743.021, 5743.024, 5743.026, 5748.02, 5748.021, 5748.08, and 5748.09; Section 130.23)

The bill prohibits tax and certain other issues proposed by local governments from being placed on an August special election ballot, with one exception for school districts, described below. The bill does not prohibit those questions from appearing on the ballot at a November general election or a primary election. (Primary elections – elections to nominate candidates for public and political offices – are held in May or, in a presidential election year, March.) Any tax-related question currently authorized to be proposed at either or both of those elections may continue to be proposed at those elections. The bill’s prohibitions on August special elections apply to all of the following issues proposed by a local government:

- A property tax levy proposed by a taxing authority, including any proposal to renew or replace an existing levy. (Under current law, some, but not all, types of voted property tax issues may appear on the August special election ballot.)
- Certain sales taxes proposed by a county.
- A sales tax proposed by a transit authority.
- An income tax proposed by a school district, including a combined income tax and property tax.
- An income tax proposed by a municipal corporation.
- County lodging tax proposals that require voter approval.
- A liquor or alcoholic beverage tax levied by a county.
- A cigarette excise tax levied by a county.
- Whether to create a subdivision in which a tax may be levied or to add territory to an existing taxing subdivision, including a referendum to oppose the subdivision’s creation or expansion.
- Whether to dissolve a village, as proposed by the village or a petition submitted by residents, or to dissolve a new community authority.
- Whether to extend a municipal corporation’s income tax to a Joint Economic Development Zone (JEDZ) or Joint Economic Development District (JEDD).

This prohibition applies to any election held on or after the 100th day after the bill’s 90-day effective date.

## **Exception: school district tax levies**

(R.C. 5705.214 and 5748.07)

School boards would continue to be permitted to submit property or income tax issues to voters at an August special election if the purpose of the levy is to prevent the conditions that would qualify the school district for fiscal emergency status.

Under continuing law (R.C. 3316.03(B)), the Auditor of State may declare a school district to be in fiscal emergency if the Auditor finds that any of the following conditions exist:

- The forecasted operating deficit for the current fiscal year exceeds 15% of the school district's general fund revenue for the preceding fiscal year, and the district has not passed a levy to eliminate the deficit in the succeeding fiscal year.
- A school district in fiscal watch fails to submit a recovery plan that is acceptable to the Department of Education (ODE).
- A school district in fiscal watch is not materially complying with the provisions of an original or updated recovery plan and the ODE has determined that declaration of a fiscal emergency is necessary to prevent further fiscal decline.
- A school district in fiscal watch has restructured certain debt and the school district further experiences an operating deficit, fails to satisfactorily comply with the terms of the recovery plan, or fails to submit an acceptable updated plan when required.
- The forecasted operating deficit for the current fiscal year is between 10% and 15% of the school district's general fund revenue for the preceding fiscal year, the district has not passed a levy to eliminate the deficit in the succeeding fiscal year, and the Auditor determines that declaring a fiscal emergency is necessary to correct the district's fiscal problems and to prevent further fiscal decline.

## **State community college permanent improvements levy**

(R.C. 3358.11, 3333.59, 3358.02, and 3358.06)

The bill authorizes the board of trustees of a state community college district to propose a property tax levy for permanent improvements, or a combination bond issuance and tax levy for permanent improvements. In either case, the issue is subject to voter approval. In the case of a tax levy without bond issuance, the tax may be levied for any specified number of years, or for a continuing period of time, and may be renewed or replaced before its expiration.

Under continuing law, a state community college district is a political subdivision created by the Ohio Board of Regents upon receiving a proposal from a technical college district or a state university or upon a proposal by boards of county commissioners or initiative petition. The purpose of the district is to establish, own, and operate a state community college. It is governed by a board of trustees consisting of nine members appointed by the

Governor. The territory of the district is composed of the territory of a county, or of two or more contiguous counties. The district must have a population of at least 150,000.<sup>118</sup>

The tax levy and bond issuance authorized by the bill are nearly identical to the tax levy and bond issuance authorized under continuing law for community college districts, except that the existing community college district levy may also be used for operating expenses. Community college districts and state community college districts perform similar functions but there are some administrative differences between the two, such as how they are formed and how trustees are appointed.

### **Tax levy for safety and security of private schools**

(R.C. 5705.21(F))

Continuing law allows the board of education of a school district to propose a property tax levy in excess of the ten-mill limitation exclusively for school safety and security purposes. Such purposes include funding permanent improvements to provide or enhance security, employing or contracting with safety personnel, providing mental health services and counseling, or providing training in safety and security practices and responses. The tax may be levied for a term of up to five years.

The bill allows the board of education of a school district to share the proceeds of a school safety and security levy with private schools that hold a valid charter issued by the state board of education (“chartered nonpublic schools”). The resolution and ballot language proposing the levy must specify the portion of the proceeds that will be allocated to chartered nonpublic schools. If approved by the voters of the school district, the chartered nonpublic school portion of the proceeds would be divided proportionally among all such schools located within the territory of the school district based on the number of resident students enrolled in each chartered nonpublic school.

The bill specifies that a “resident student” is a student who is entitled to attend school in the district levying the tax. Every chartered nonpublic school that is located within the territory of the school district and that enrolls one or more resident students would receive its statutorily prescribed portion of the levy proceeds. The bill requires the school district to pay each chartered nonpublic school its portion of the proceeds at least twice each year, after the February and August tax settlements. All such revenue received by chartered nonpublic schools must be used for school safety and security purposes.

### **Exemption of residential development property**

(R.C. 5709.54)

The bill exempts from property tax a portion of the value of land subdivided for residential development for up to five years (see “**Exempted portion,**” below). Specifically, the exemption applies to any unimproved parcel subdivided pursuant to a plat and on which

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<sup>118</sup> R.C. 3358.01, not in the bill.

construction of residential buildings, e.g., single- or multi-family dwellings, is planned but has not started (referred to in the bill as “pre-residential development property”). The exemption applies beginning with the tax year in which the subdivided parcel first appears on the tax list, but no sooner than the tax year that includes the provision’s effective date.

The exemption applies for at least three, but no more than five, tax years; the exemption ends at the end of three years unless a reappraisal year does not occur in that three-year period, in which case the exemption continues until the next sexennial reappraisal. However, if the parcel is sold or construction of a residential building begins during the exemption period, the exemption ceases to apply to the tax year following the year in which either event occurs. The bill specifies that residential construction is not deemed to have begun solely on the basis of streets, sidewalks, curbs, driveways, or water, sewer, or other utility lines having been constructed or installed. Also, if title to the parcel is transferred without payment of any money or other consideration, the transfer would not be considered a sale that terminates the exemption.

### **Exempted portion**

The bill exempts the value of each subdivided parcel in excess of a portion of the “true,” or fair market value of the parcel from which each such parcel was subdivided (in the bill’s terms, the larger parcel is the “original property”).

Under continuing law, real property is valued according to its “fair market value,” which, generally, is the unconditioned price the property would sell for in an arm’s length sale, or the price for which it has in fact been sold recently in such a sale. However, certain agricultural land may alternatively be valued according to the land’s current agricultural use value (CAUV), which is the estimated value of the land based on its income-producing potential as farmland. County auditors must appraise the fair market value of CAUV land even though the land is taxed according to its CAUV.

Regardless of whether the original property was valued according to its fair market value or CAUV, the bill attributes a base, taxable value to each parcel resulting from the subdivision since a subdivided parcel would not have had its own individual assessed value before it was subdivided. This base value (“unexempted value” in the bill’s terms) equals the original property’s fair market value apportioned to each subdivided parcel according to the parcel’s appraised value once the subdivision occurs in proportion to the total of the appraised values of all parcels resulting from the subdivision.

For example, if original property having a CAUV of \$46,000 and an appraised fair market value of \$100,000 is subdivided into two residential development parcels that, once the subdivision occurs, are assessed at a fair market value of \$50,000 and \$75,000, the unexempted values are \$40,000 and \$60,000, respectively, since the first parcel’s assessed value is two-thirds of the second’s value. The bill would exempt the value of the first parcel in excess of \$40,000 and the value of the second parcel in excess of \$60,000, which combined equals the original property’s \$100,000 fair market value. If the exemption continues until another reappraisal or assessment update occurs – i.e., no construction has begun and the property has

not been sold in the meantime – the new assessed value of each parcel would be exempted to the extent that it exceeded the parcel’s unexempted value of \$40,000 or \$60,000.

The bill accounts also for how the exemption applies if a residential development parcel that resulted from a prior subdivision is itself further subdivided. In such a case, the exemption continues to apply to the new parcels resulting from the later subdivision, with each of the new parcels having an unexempted value that is a proportion of the unexempted value of the larger parcel from which it was most recently subdivided; the proportion is based on each new parcel’s appraised value relative to the total appraised value of all the new parcels.

The bill specifies that the partial exemption does not create a new method for valuing property for tax purposes and reaffirms that fair market value and CAUV are the only two authorized valuation methods.

### **Real property tax valuation, generally**

Under continuing law, the value of each parcel of real property is appraised for tax purposes and is entered as a separate entry on the tax list. The appraisal is supposed to approximate the fair market value or, if applicable, the CAUV of the parcel.<sup>119</sup> Each parcel is so valued as of January 1 of each year (the “tax lien date”). When a parcel is subdivided into several parcels, each new parcel is then valued as a separate unit.

The subdivision of land itself might cause the aggregate appraised true values of the new parcels to exceed the appraised true value of the original parcel before it was subdivided, because the subdivision itself might influence the market value of the land or make the land ineligible for CAUV. Also, the appraised value of any parcel, subdivided or not, may change because of market factors or changes in the CAUV formula without the parcel itself undergoing any construction or other physical change.

### **Exemption application**

A parcel’s owner is required to apply annually to the Tax Commissioner for the bill’s exemption, as with other property tax exemptions. However, as part of an exemption application for pre-residential development property, the owner must expressly certify that the parcel qualifies as such.

### **Fraternal and veterans’ organization exemptions**

(R.C. 5709.17; Section 757.90)

The bill modifies existing tax exemptions for property held or occupied by a fraternal or veterans’ organization. Under continuing law, property that generates more than \$36,000 in rental income in a year does not qualify for either exemption. For purposes of determining this rental-income threshold for fraternal organizations, the bill excludes rent received from other

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<sup>119</sup> R.C. 5713.01, 5713.03, and 5713.31, not in the bill; Article II, Section 36 and Article XII, Section 2, Ohio Constitution; see also *State, ex rel. Park Investment Co. v. Board of Tax Appeals*, 175 Ohio St. 410 (1964).

fraternal organizations. Similarly, for purposes of qualifying for the veterans' organization exemption, the bill excludes rent received from other veterans' organizations in determining whether or not the rental income produced by the property exceeds that limit.

These modifications apply beginning in tax year 2019.

### **Partial property tax exemption for child care centers**

The bill authorizes a partial property tax exemption for child care centers that serve children from households that receive public assistance.

To qualify for the partial exemption, a child care center must meet the following requirements:

- The center must be licensed by the Department of Job and Family Services (JFS).
- The center may only serve children who are 5 years old or younger.
- At least 25% of the children that attend the center must reside in a household that receives public assistance. Such assistance may include Medicaid, Ohio Works First (Ohio's TANF program), SNAP (food stamps), WIC (the supplemental nutrition program for women, infants, and children), or state child care benefits.
- The center cannot be operated from the administrator's primary residence or from a location that is used for a separate commercial purpose.

If a child care center meets these requirements, the partial exemption will equal a percentage reduction in the taxes levied on the property. If at least 25%, but less than 50%, of the children that attend the center reside in a household that receives public assistance, the reduction equals 25% of the taxes imposed. If more than 50% of the children that attend the center reside in such households, the reduction equals 75% of the taxes imposed.

To obtain the exemption, the owner of the child care center must file an annual application with the county auditor. The application is due on or before the last day of the tax year for which the exemption is sought (December 31), and the auditor must approve or deny an application within 30 days. Applicants who are initially denied may appeal the denial to the Board of Tax Appeals.

Local governments are not reimbursed by the state for revenue lost as a result of the partial exemption.<sup>120</sup>

### **Community school property tax applications**

(R.C. 5713.08 and 5715.27)

The bill excuses community schools from filing annual tax exemption applications with and obtaining the approval of the Tax Commissioner as a condition of obtaining a property tax exemption.

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<sup>120</sup> R.C. 319.302, 323.155, and 323.16; Section 757.100.

Under continuing law, property used for an educational purpose, including such community school property qualifies for a property tax exemption.<sup>121</sup> Current law, with only a few exceptions, requires property owners to apply annually to either the Tax Commissioner or the county auditor to obtain an exemption for the tax year.<sup>122</sup> The Commissioner or county auditor evaluates and decides whether to approve the exemption.

The bill changes the exemption process for community schools. Instead of obtaining the Tax Commissioner's approval every year, community schools applying for an "educational purpose" exemption will only need to obtain the Commissioner's approval in the first tax year for which the exemption is sought. Then, the property will continue to be exempt for all future tax years, provided the community school submits an annual statement to the Commissioner attesting that its property continues to qualify for the educational purpose exemption. But the Commissioner may order the exemption removed if the Commissioner discovers, in any tax year, that the community school's property does not actually qualify for that exemption.

Public school districts and other noncommunity schools seeking the educational purpose exemption would still be required to file for and obtain annual approval from the Commissioner.

### **County developmental disabilities Medicaid reserve fund**

(R.C. 5705.091)

The bill allows county developmental disabilities boards to request that the board of county commissioners establish a county developmental disabilities Medicaid reserve fund, which may be used for providing services to individuals with developmental disabilities, or to ensure the availability of adequate funds in the event a county property tax levy for developmental disabilities services fails.

Such revenue funds were authorized under a prior law until 2006, when the authority was eliminated.

### **Property tax abatement for certain municipal property**

(Section 757.170)

The bill establishes a temporary procedure by which a municipal corporation may apply for a tax exemption and the abatement of unpaid property taxes, penalties, and interest due on certain municipal property.

To qualify, the property must be owned by a municipal corporation that, within the past 25 years (1) was part of a federal disaster area declared due to severe storms or flooding and (2) following that declaration, obtained the title to property pursuant to the terms of a hazard

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<sup>121</sup> R.C. 5709.07(A).

<sup>122</sup> The current exemption application, prescribed by the Department of Taxation, is DTE 23, which may be accessed online at [https://www.tax.ohio.gov/portals/0/forms/real\\_property/DTE\\_DTE23.pdf](https://www.tax.ohio.gov/portals/0/forms/real_property/DTE_DTE23.pdf).

mitigation grant from the Federal Emergency Management Agency (FEMA). The property must also currently be used for an exempt purpose.

The application for exemption and abatement must be filed with the Tax Commissioner within 12 months of the provision's effective date.

Under continuing law, municipally owned property is tax-exempt if it is used "exclusively for a public purpose," but such property may not be exempted if more than three years' worth of taxes remain unpaid.

## **Financial institutions tax**

The bill limits the tax base of the financial institutions tax (FIT) for certain highly capitalized institutions.

The FIT is a tax on banks and other kinds of financial institutions. The tax is based on the portion of an institution's equity capital attributable to its Ohio operations, as measured by the relative amount of its gross receipts that arise from activities in Ohio. The rate of the tax is tiered according to an institution's Ohio equity capital, as follows: 0.8% on the first \$200 million, 0.4% on the next \$1.1 billion, and 0.25% for equity capital in excess of \$1.3 billion. The minimum tax is \$1,000. All revenue from the tax is credited to the General Revenue Fund.

### **Limitation on tax base**

For tax years beginning in 2020 or thereafter, the bill limits the tax base upon which the FIT is computed for any financial institution having total equity capital in excess of 14% of its total assets. Total equity capital in excess of 14% of an institution's total assets would not be included in the FIT base. In other words, if total equity capital exceeds 14% of total assets, only the amount of equity capital equal to 14% of assets would be apportioned to Ohio on the basis of the institution's gross receipts and multiplied by the applicable tax rates.

An institution's total assets are derived from information that must be filed with federal regulatory authorities (i.e., FR Y-9 or call reports), as is an institution's total equity capital.

### **Technical amendment**

The bill strikes language in the FIT law that is no longer operative. This language is part of the original enactment of the FIT, and provided for offsetting adjustments in the initial top-tier tax rate if revenue proved to be substantially more or less than specified targets at two junctures within the first few years the tax was in effect. (No rate adjustments were necessary.)

## **Commercial activity tax**

### **CAT administrative expense earmark**

(R.C. 5751.02; Section 812.20)

The bill reduces the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from prior law's 0.75% to 0.65%, beginning July 1, 2019. The fund is used to defray the Department of Taxation's expenses in administering the CAT and "implementing tax reform measures." H.B. 49 of the 132<sup>nd</sup> General Assembly previously reduced the earmark from 0.85% to 0.75% beginning July 1, 2017.

## **Temporary historic rehabilitation CAT credit**

(Section 757.40)

The bill extends, to July 1, 2021, the temporary authorization for owners of a historic rehabilitation tax credit certificate to claim the credit against the commercial activity tax (CAT) if the owner cannot claim the credit against another tax and the certificate becomes effective after 2013 but before June 30, 2021 (“qualifying certificate owner”). Additionally, the bill authorizes a qualifying certificate owner that is not a CAT taxpayer to file a CAT return for the purpose of claiming the historic rehabilitation tax credit. This enables a business with less than \$150,000 in taxable gross receipts that is not a sole proprietor or a pass-through entity composed solely of individual owners, or that is a nonprofit organization, to claim a tax “credit” as if the business or organization were a CAT taxpayer.

Uncodified law enacted in 2014 by H.B. 483 of the 130th General Assembly authorized certificate owners to claim a similar credit against the CAT only for tax periods ending before July 1, 2015. Two subsequent acts extended the authorization for tax periods ending between July 1, 2015, and June 30, 2019. Except for these prior temporary provisions, a certificate holder may claim the credit against the personal income tax, financial institutions tax, or foreign or domestic insurance company premiums tax.

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## DEPARTMENT OF TRANSPORTATION

### ODOT business plan

- Removes the requirement that the Director of Transportation adopt a rule every two years that establishes both:
  - A business plan outlining the Department of Transportation's (ODOT's) mission, business objectives, and strategies; and
  - A procedure for certain professional employees' performance accountability.

### Maritime Commission Study Committee

- Creates the Ohio Maritime Commission Study Committee, composed of a chairperson experienced in maritime matters, ten members representing the Ohio River region, and ten members representing the Lake Erie region.
- Requires the committee to examine whether Ohio would benefit from creating a maritime commission, by examining a variety of factors.
- Requires the committee to submit a report to the Governor and certain members of the General Assembly, not later than six months after the bill's effective date.

### Maritime Assistance Program

- Creates the Ohio Maritime Assistance Program, to be administered by ODOT.
- Permits port authorities to apply for grants to construct or improve marine cargo terminals and other maritime structures located on the shores of Lake Erie, a Lake Erie tributary, or the Ohio River.
- Requires a grant recipient to provide dollar-for-dollar matching funds for the state funding received.

### ODOT business plan

(R.C. 5501.20)

The bill removes the requirement that the Director of Transportation adopt a rule every two years that establishes both:

- A business plan outlining ODOT's mission, business objectives, and strategies; and
- A procedure for certain professional employee's performance accountability.

Current law requires the Director to adopt the business plan by July 1 of every odd-numbered year. That business plan is used in evaluating both a newly hired professional employee's performance during that employee's initial four-month review and all professional employees' performance during their yearly written performance reviews. Professional employees currently are expected to work to fulfill the mission, business objectives, and

strategies stated in the plan and can be suspended, demoted, or removed for performance that hinders or restricts fulfillment of the plan.

While the bill removes the requirement that the Director adopt a business plan and the employee performance expectations related to the plan, it retains current provisions for the yearly performance review. Professional employees are considered employees in the classified civil service and so are held to those standards for good behavior and efficient service. Failure to keep up with those standards will still result in a possible six-month period to improve performance, or a suspension, demotion, or removal.

## **Maritime Commission Study Committee**

(Section 755.20)

The bill creates the Ohio Maritime Commission Study Committee to examine whether Ohio would benefit from creating a maritime commission. The committee consists of:

- A consultant experienced in maritime matters to act as chairperson, appointed by the Director of Transportation;
- Ten members representing the Ohio River region, five from the private sector and five from the public sector, appointed by the Speaker of the House; and
- Ten members representing the Lake Erie region, five from the private sector and five from the public sector, appointed by the Senate President.

The committee must examine and gather information regarding:

- The roles and responsibilities of maritime commissions in other states;
- The benefits and structure of similar commissions currently in Ohio;
- The need in the Ohio River and Lake Erie regions for a commission to oversee maritime activities; and
- Input from private businesses and the public sector in those regions that would be impacted by the creation of a maritime commission.

The Study Committee must submit a report summarizing the information and making recommendations regarding whether a maritime commission would benefit Ohio. It must submit the report to the Governor, the President of the Senate, the Speaker of the House, and the majority and minority leadership of the General Assembly within six months after the bill's effective date. After submitting the report, the committee ceases to exist.

## **Maritime Assistance Program**

(R.C. 5501.91; Section 411.20)

The bill creates the Ohio Maritime Assistance Program, to be administered by ODOT. Under the program, a port authority may apply to ODOT for a grant to construct or improve an existing marine cargo terminal. The planned or existing terminal must be located on the shores of Lake Erie or the Ohio River or on a Lake Erie tributary.

Along with the grant application, a port authority must submit a written business justification for the investment, specifically indicating the operational and market need for the project. ODOT must evaluate all applications according to the following criteria:

- The degree to which the project will increase the efficiency or capacity of maritime cargo terminal operations;
- Whether the project will result in handling new types of cargo or an increase in cargo volume;
- Whether the project will meet an identified supply chain need or benefit the Ohio firms that export goods to foreign markets or that import goods to Ohio for manufacturing or value-added distribution; and
- Any other criteria the Director determines appropriate.

The second and third criteria are particularly important, since no grants may be given to an applicant that does not meet them.

A port authority that receives a grant must use it only for the following purposes:

- Land acquisition and site development for the marine cargo terminal and associated uses (including demolition and environmental remediation);
- Construction of structures and improvements directly related to maritime commerce and harbor infrastructure (e.g., wharves, quay walls, bulkheads, jetties, revetments, breakwaters, shipping channels, dredge disposal facilities, and projects for the beneficial use of dredge material);
- Construction, repair, and improvements of the terminal and associated uses (e.g., warehouses, transit sheds, railroad tracks, roadways, gates and gatehouses, fencing, bridges, offices, and shipyards);
- Acquisition of cargo handling equipment (including mobile shore cranes, stationary cranes, tow motors, fork lifts, yard tractors, craneways, conveyer and bulk material handling equipment, and all types of ship loading and unloading equipment);
- Planning and design services and other services associated with construction.

Finally, a port authority must pay a dollar-for-dollar matching amount for the grant money. The bill appropriates \$10 million each fiscal year of the FY 2020-FY 2021 biennium for the program, through the Ohio Maritime Assistance Fund, created by the bill.

The Director must adopt rules governing the program, the grant application, the evaluation and award processes, and how the grant money may be spent by a port authority recipient.

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## TREASURER OF STATE

- Expands the current Pay for Success Contracting Program and requires the Treasurer of State to administer it.
- Allows the Treasurer to enter into pay for success contracts with service intermediaries for delivery of specified services that benefit the state, a political subdivision, or a group of political subdivisions, such as programs addressing education, public health, criminal justice, or natural resource management.
- Permits the Treasurer to enter into a pay for success contract upon receiving an appropriation or a federal grant for that purpose, or at the request of another state agency, political subdivision, or group of them.
- Specifies required terms for a pay for success contract, including a requirement that the service intermediary be paid only if the performance targets are met.
- Requires the Treasurer to adopt certain administrative rules to administer the program.
- Establishes funds in the state treasury to hold the moneys the Treasurer will use to make payments to service intermediaries.
- Continues the current Pay for Success Contracting Program administered by the Director of Administrative Services, allowing the Director and the Department of Health to continue to administer certain pilot projects intended to reduce infant mortality.

### Pay for Success Contracting Program

(R.C. 113.60, 113.61, and 113.62; Sections 601.30 and 601.31)

#### Generally

The bill expands the current Pay for Success Contracting Program, described below under “**Continuation of current program,**” and requires the Treasurer of State to administer it. Under the bill, the Treasurer may enter into pay for success contracts with service intermediaries for delivery of specified services that benefit the state, a political subdivision, or a group of political subdivisions, such as programs addressing education, public health, criminal justice, or natural resource management. The service intermediary receives payment for providing those services only if the intermediary meets certain performance targets specified in the contract. If the program operated by the service intermediary is unsuccessful, the government is not required to pay the service intermediary.

The Treasurer may enter into a pay for success contract upon receiving an appropriation from the General Assembly for that purpose or upon receiving federal grant moneys for that purpose. Additionally, the Treasurer may enter into a pay for success contract on behalf of another state agency, a political subdivision, or a group of state agencies or political subdivisions at their request. In that case, the requesting entity must deposit the cost of the

contract with the Treasurer, and the Treasurer is responsible for making payments to the service intermediary.

### **Service intermediaries and service providers**

Any person or entity may be a service intermediary. The service intermediary may act as the service provider that delivers services under the contract or may contract with a separate service provider. Under the current program, only a nonprofit organization or a wholly owned subsidiary of a nonprofit organization may enter into a pay for success contract.

### **Contract terms**

The bill requires a pay for success contract to include provisions that:

- Require the Treasurer, in consultation with the requesting state agency, political subdivision, or group of them, to specify performance targets to be met by the service provider;
- Requires those performance targets to include greater than average improvement compared to other geographical areas if appropriate data exist to make that comparison (see “**Measurement of improvement**,” below);
- Appoint an independent evaluator – who must be a person or government entity, other than an agency, subdivision, or group that requested the Treasurer to enter into the contract – to evaluate the service provider’s progress toward meeting each performance target. The evaluator must be independent from the intermediary and the provider and must not have common owners or administrators, managers, or employees with the intermediary or provider.
- Specify the process or methodology the independent evaluator must use to evaluate the provider’s progress toward meeting each performance target;
- Require the Treasurer to pay the intermediary in installments at times determined by the Treasurer that are specified in the contract and are consistent with state law;
- Require the installment payments to the service intermediary to be based on the provider’s progress toward achieving each performance target, as determined by the independent evaluator;
- Specify the maximum amount a service intermediary may earn for the provider’s progress toward achieving the performance targets;
- Require a state agency, political subdivision, or group that requested the Treasurer to enter into the contract to ensure, in accordance with applicable laws, that the service intermediary has access to any data in the possession of the state agency, political subdivision, or group, including historical data, that the intermediary requests for the purpose of fulfilling the contract.

These contract requirements are substantially the same as under current law, except that the bill requires the state agency, political subdivision, or group that requested the contract to ensure the service intermediary’s access to relevant data, instead of requiring the

Treasurer to ensure that access. And, the bill clarifies that a state agency, political subdivision, or group that requested the contract may not serve as the independent evaluator.

### **Administrative rules**

The Treasurer must adopt rules in accordance with the Administrative Procedure Act to administer the Pay for Success Contracting Program. The rules must include the procedure for a state agency, political subdivision, or group of them to request the Treasurer to enter into a contract and to deposit the cost of the contract with the Treasurer. The rules also must address the types of services that are appropriate for a service provider to provide under a pay for success contract and the process by which the Treasurer may award and administer a contract.

### **Measurement of improvement**

At least 75% of the contracts under the program must specify performance targets that, based on available regional or national data, the improvement in the status of Ohio or the relevant area, with respect to the issue the contract addresses, exceeds the average improvement in other geographical areas. The Treasurer must adopt a process to ensure that any regional or national data used to determine whether a service provider has met its performance targets are scientifically valid.

For example, if a pay for success contract intended to reduce Ohio's three-year recidivism rate among offenders released from prison, the contract's performance targets must include requirements, based on scientifically valid data about other states' recidivism rates during the contract period, because those data are available. If Ohio began with a three-year recidivism rate of 30%, and at the end of the contract term, Ohio's rate was 20% (a 10% reduction), the service intermediary would have met the performance target if the average of other states' three-year recidivism rates went down by less than 10% during that period, suggesting that Ohio's program was more effective than the average effort in other states.

### **Funds**

The bill establishes three separate funds in the state treasury to hold the moneys the Treasurer will use to make payments to service intermediaries: the State Pay for Success Contract Fund, the Federal Pay for Success Contract Fund, and the Local Government Pay for Success Contract Fund.

The state fund consists of any money transferred to the Treasurer by state agencies for pay for success contracts and any money appropriated to the fund by the General Assembly. The federal fund consists of any money the Treasurer receives from federal agencies pursuant to grant agreements that require the Treasurer to enter into pay for success contracts. And, the local government fund consists of any money paid to the Treasurer by political subdivisions for pay for success contracts.

The Treasurer must use the money in the appropriate fund to make payments to service intermediaries under a pay for success contract. Any investment earnings on the funds are credited to them, and the Treasurer may use those investment earnings to pay the costs of administering the Pay for Success Contracting Program.

When the term of a pay for success contract expires, the Treasurer must transfer any remaining unencumbered funds received from a state agency, political subdivision, or group of them to the appropriate agency, political subdivision, or group. The Treasurer must dispose of any excess federal grant funds in accordance with the grant agreement.

### **Continuation of current program – infant mortality initiatives**

The bill also continues the current Pay for Success Contracting Program administered by the Director of Administrative Services for a limited purpose. Currently, the Director administers a narrower version of the program, under which the Director may enter into contracts with social service intermediaries to achieve certain social goals. A social service intermediary must be either a nonprofit organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or a wholly owned subsidiary of a nonprofit organization, that delivers or contracts for the delivery of social services, raises capital to finance the delivery of social services, and provides ongoing project management and investor relations for those activities.

The required terms of a pay for success contract with the DAS Director are largely the same as under the bill. However, current law does not establish particular funds from which the DAS Director must make contract payments and does not require the Director to adopt administrative rules

The bill transfers general authority to administer the Pay for Success Contracting Program from the DAS Director to the Treasurer of State, but allows the Director to continue to contract with social service intermediaries, in consultation with the Department of Health, to administer one or two pilot projects established in H.B. 49 of the 132<sup>nd</sup> General Assembly (the FY 2018-FY 2019 operating budget act). The pilot projects are intended to reduce the incidence of infant mortality, low-birthweight births, premature births, and stillbirths in the communities identified as having the highest infant mortality rates and to promote equity in birth outcomes among infants of different races. Under the bill, the current version of the law continues to apply to those pilot project contracts, instead of the bill's new version.<sup>123</sup>

### **Background on social impact bonds**

Pay for success contracts allow the state to use a financing model known as social impact bonds to fund government programs. Under this model, a private entity contracts to operate a program on behalf of the government, and the government pays the private entity only if the program achieves the desired results. In order to obtain up-front funding to operate the program, the private entity may seek investors, who provide that funding in exchange for the right to a share of the money the private entity will receive from the government if the

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<sup>123</sup> See R.C. 3701.142, not in the bill.

program is successful. As a result, under this model, the private entity or its investors, instead of the government, bear the financial risk that a program will be unsuccessful.<sup>124</sup>

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<sup>124</sup> National Conference of State Legislatures, *Social Impact Bonds*, available at [ncsl.org/research/labor-and-employment/social-impact-bonds.aspx](https://ncsl.org/research/labor-and-employment/social-impact-bonds.aspx).

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## **TURNPIKE AND INFRASTRUCTURE COMMISSION**

### **Audits and reports**

- Eliminates the requirement that the Auditor of State make an unannounced annual audit of the Ohio Turnpike and Infrastructure Commission's accounts and transactions.
- Requires the Commission to annually submit a comprehensive annual financial report, including audited financial statements for the preceding calendar year, to the Governor, General Assembly, and Director of Budget and Management.

### **Competitive bidding and advertising**

- Authorizes the Commission to enter into contracts via a competitive proposal process, when the Commission determines that competitive bidding is not practical or advantageous to the Commission.
- Authorizes the Commission to use a value-based selection process for projects that involve both design and construction elements in a single contract.
- Authorizes the Commission to enter into contracts for certain temporary or emergency purchases and services without public advertising.
- Authorizes the Commission to use a shorter form of public notice, available to state agencies and political subdivisions under current law, and removes the restriction that all notices occur in a Franklin County newspaper.
- Raises the threshold for when a bond is required for goods and service contracts from \$150,000 to \$500,000.

### **Audits and reports**

(R.C. 5537.17)

The bill eliminates the requirement that the Auditor of State make an unannounced annual audit of the Ohio Turnpike and Infrastructure Commission's accounts and transactions. The Commission is still subject to an audit of its books and accounts by certified public accountants (CPAs), as under current law, however, the bill specifies that such CPAs must be approved by the Auditor of State.

Additionally, under the bill, the Commission must annually submit a comprehensive annual financial report, including audited financial statements for the preceding calendar year, to the Governor, General Assembly, and Director of Budget and Management. Under current law, the Commission must make an annual report of its activities, including a complete operating and financial statement, to the Governor and General Assembly. This report is eliminated in favor of the comprehensive financial report.

## **Competitive bidding and advertising**

(R.C. 5537.07 and 5537.13)

### **Competitive bidding**

The bill authorizes the Commission, when entering into contracts, to forgo the competitive bidding process and to use a competitive proposal process instead, when the Commission determines that competitive bidding is not practical or advantageous to the Commission. In doing so, the Commission is authorized to conduct discussions with anyone that submits a competitive proposal to ensure that the person submitting the proposal understands and is responsive to the project's requirements. The Commission is then allowed to award the contract to the person that submits the best proposal, as determined by the Commission. The Commission must consider multiple factors, including price and the evaluation criteria set forth in the request for competitive proposals.

Under current law, generally the Commission is required to use competitive bidding and to enter into a contract with the "lowest responsive and responsible bidder." The Commission is exempt from this requirement when the contract is with a governmental agency, is based on a contract originally entered into by another state agency or political subdivision, the contract is for the acquisition of real property or compensation for professional or other personal services, or the contract is for less than \$50,000.

### **Design/build – construction contracts**

The bill also authorizes the Commission to use a value-based selection process for projects that involve both design and construction elements in a single contract. Current law permits the Commission to expedite special turnpike projects by combining the design and construction elements of any public improvement project into a single contract. However, the Commission needs to award the final project to the lowest responsive and responsible bidder. The bill allows the Commission to award the final project to the contractor it considers to be the best value.

### **Public advertising**

The bill makes changes to the Commission's public advertising requirements, specifically by authorizing the Commission to use a shorter form of public notice for advertising for contracts. The shortened form of public notice requires the advertisement to exist in its entirety for the first notice, but permits the second or subsequent notices to be abbreviated provided certain requirements are met. The bill also removes the requirement that all public advertising occur in a newspaper of general circulation in Franklin County.

Additionally, the bill permits the Commission to enter into contracts for the purchase of equipment, materials, and services without public advertising for all of the following:

- Construction of a temporary bridge;
- Making temporary emergency repairs to a highway or bridge after a storm, flood, landslide, or other natural disaster; and

- While responding to circumstances created by an extraordinary emergency, as determined by the Commission.

### **Bonds for goods and service contracts**

Finally, the bill increases the threshold for when a bond is required for goods and service contracts entered into by the Commission from \$150,000 to \$500,000.

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## DEPARTMENT OF YOUTH SERVICES

### Juvenile Justice and Delinquency Prevention Fund

- Consolidates and renames the Federal Juvenile Justice Programs Funds into a single Juvenile Justice and Delinquency Prevention Fund administered by the Department of Youth Services (DYS).
- Eliminates the requirements that a separate federal juvenile justice program fund be established each federal fiscal year and the crediting of investment earnings on the fund's cash balance be for the appropriate federal fiscal year.
- Requires DHS to maintain a financial activity report of each individual grant in the fund.
- Removes the provision that rules, orders, and determinations of the Office of Criminal Justice Services regarding administration of federal juvenile justice grants in effect on that provision's effective date continue in effect as those of DHS.

### Juvenile Justice and Delinquency Prevention Fund

(R.C. 5139.87)

The bill provides that the Department of Youth Services (DYS) serves as the state agent for the administration of federal, instead of *all* federal, juvenile justice grants to the state, and eliminates the requirement that a separate federal juvenile justice programs fund be established each federal fiscal year. It consolidates the Federal Juvenile Justice Programs *funds* into a single Juvenile Justice and Delinquency Prevention Fund (the fund). All federal grants and moneys received for federal juvenile programs must be deposited into the fund and receipts deposited in the fund must be used for federal juvenile programs. The bill provides that all investment earnings on the cash balance in the fund must be credited to the fund and eliminates the provision that they be credited for the appropriate federal fiscal year.

The bill requires DHS to maintain a financial activity report of each individual grant within the fund, including expenses and revenue credited to those individual grants.

The bill eliminates the provision that all rules, orders, and determinations of the Office of Criminal Justice Services regarding the administration of federal juvenile justice grants in effect on September 26, 2003, must continue in effect as rules, orders, or determinations of DHS.

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## LOCAL GOVERNMENT

### Tax increment financing

- Authorizes a local government, under certain circumstances, to extend the term of a tax increment financing exemption for up to 30 additional years.

### County family and children first councils

- Requires each county family and children first council to include a representative of the Department of Youth Services (DYS) or its designee, instead of a representative of the regional office of DHS.

### Metropolitan housing authority

- Specifies that a metropolitan housing authority (MHA) may redevelop slum areas within the district in which the authority is created.
- Authorizes an MHA to make available, acquire, construct, improve, manage, lease, or own mixed-use and mixed-income developments.
- Permits an MHA to participate in partnerships or joint ventures relating to the development of housing or projects with other public or private entities.
- Permits an MHA to rent or lease to nonresidential tenants and persons of varying incomes within a project, mixed-use development, or mixed-income development.
- Authorizes an MHA to provide, consult, sell, license, or transfer to organizations and government agencies housing-related technology, innovations, and expertise for specified purposes.

### Two-year window to amend local subdivision rules

- Enacts a new two-year window of time in which planning authorities may amend their local rules concerning approvals of proposed divisions of parcels of land without a plat and in which they may define an “original tract” for purposes of the limitation on approving not more than five lots without a plat.

### Board of elections compensation

- Increases the minimum compensation of a member of a board of elections by 1.75% annually through 2028.

### Municipal garbage fees

- Authorizes all municipalities providing for garbage collection to have unpaid garbage fees charged as a lien against real property.

## **Township construction projects**

- Allows the board of township trustees of an urban township to choose to approve contracts and the issuance of securities for construction by a majority vote rather than by unanimous vote as required under current law.

## **County auditor issue warrants**

- Specifies that the county auditor must issue a warrant for money payable from the county treasury upon presentation of a proper court order asserting a proper public purpose for the expenditure without the necessity for evidentiary material.
- Specifies that the county auditor has no liability for an expenditure if such an order is presented.

## **Municipal corporation as portion of fire district**

- Allows a township fire district or a joint fire district to include a portion of a municipal corporation.

## **Insurance role of regional council of governments**

- Specifies that a program operated by a regional council of governments and a nonprofit corporation to administer and coordinate a self-funded health benefit program does not constitute engaging in the business of insurance or the business of an administrator and is not subject to Ohio's insurance laws.

## **Filing electronically notarized documents**

- Replaces existing law's requirement that printed copies of electronically executed and notarized documents be accepted on the same terms as documents submitted electronically with a requirement that they be accepted so long as they are properly authenticated.
- Requires county officials who electronically accept documents for recording to also accept digital copies of electronically executed and notarized documents on the same terms.

## **Tax increment financing exemption extensions**

(R.C. 5709.51, 5709.40, 5709.41, 5709.73, and 5709.78; Section 757.20)

Under current law, a county, township, or municipal corporation may adopt a resolution exempting certain property in a township from property taxation through a method known as tax increment financing (TIF). There are currently two types of TIF resolutions that a local government may adopt – either exempting individual parcels or groups of parcels, or exempting a collection of parcels in an “incentive district” (these are often referred to as a “project TIF” or an “incentive district TIF,” respectively).

All or a portion of the increased value of real property subject to a TIF is exempt from property tax for up to ten years or, with the approval of the school district, up to 30 years. School districts may condition their approval on receiving payments from the property owner compensating the district for forgone property taxes. In lieu of property taxes, the owner of TIF property is generally required to make service payments to the local government that designated the TIF, which generally uses those service payments to pay for infrastructure improvements related to the development of the TIF property.

The bill authorizes a county, township, or municipal corporation to extend the term of a project TIF exemption for up to 30 additional years, if certain conditions apply. Specifically, (1) service payments generated by the project TIF must have exceeded \$1.5 million in the year before the extension is adopted, and (2) the ordinance or resolution extending the term must provide for compensation to the affected school district for the amount of forgone taxes. In addition, for extensions approved after 2020, service payments must not have exceeded \$1.5 million in any year before the year preceding the extension. (When coupled with (1), above, this means that, for extensions approved after 2020, the TIF service payments must have increased to \$1.5 million in the year before the extension is approved from some lesser amount paid in each preceding year.) The bill authorizes an extension only for project TIF exemptions in effect for tax year 2019 or later.

Within 15 days after approving an extension, the county, township, or municipal corporation must send a copy of the local extension legislation to the Director of Development Services. (Under continuing law, local governments are required to certify new TIF legislation to the Director within the same amount of time.)

## **County family and children first councils**

(R.C. 121.37)

Current law requires each board of county commissioners to establish a county family and children first council. Regarding council membership, the bill requires there be a representative of the Department of Youth Services (DYS) or an individual designated by DHS. This replaces a representative of the regional office of DHS, as required under current law.

## **Metropolitan housing authority**

(R.C. 3735.31, 3735.33, 3735.40, and 3735.41)

The bill expands the authority of metropolitan housing authorities (MHAs) in relation to the type of activities the MHA may conduct in order to further its purpose. Existing law, unchanged by the bill, authorizes an MHA to clear, plan, and rebuild slum areas within its district. The bill adds the MHA may also redevelop slum areas within its district and make available, acquire, construct, improve, manage, lease, or own mixed-use or mixed-income developments, or a combination of these developments. In addition, the MHA may participate in partnerships or joint ventures relating to the development of housing or project with other public or private entities. "Mixed-use development" means a development that is both residential and nonresidential in character, and "mixed-income development" is a development that includes decent, safe, and sanitary urban or rural living accommodations for persons or

families of varying incomes. The bill permits an MHA to rent or lease to nonresidential tenants and persons of varying incomes within a project, mixed-use development, or a mixed-income development.

The bill also authorizes an MHA and its subsidiaries to provide, consult, sell, license, transfer, or contract to provide to other entities, such as other MHAs, public housing authorities, or other organizations formed inside or outside of Ohio, or to government agencies, housing-related knowledge, technology, software, innovations, or expertise for (1) the development or redevelopment of housing projects, (2) the performance of federal housing contracts or grants, (3) any matter related to the efficient operation of housing organizations, or (4) the management or operation of an MHA or redevelopment authority.

## **Two-year window to amend local subdivision rules**

### **Platting and subdivisions – background**

The Subdivision Law<sup>125</sup> provides that the division of some tracts of land must be platted (mapped) and is subject to regulations adopted by a local government for securing and providing for specified purposes like coordination of streets within a subdivision, open spaces for traffic, recreation, light, and air, and the avoidance of future congestion, among other things. Proof of compliance with local zoning ordinances and comments by the health commissioner also may be required.<sup>126</sup> Only land located in areas where subdivision regulations have been adopted is subject to the Subdivision Law.<sup>127</sup>

A plat of land subject to local regulations cannot be recorded until it is approved by a county or regional planning commission and the written approval is endorsed on the plat. Local rules must exempt from the approval requirements any parcels to be used only for agricultural or personal recreational purposes.<sup>128</sup>

### **Approvals of divisions of land without plat**

(R.C. 711.131)

Under continuing law, even if the division of land meets the criteria for being subject to the Subdivision Law, an exemption is made for divisions of land into fewer than six lots under certain circumstances. The exemption is for any proposed division of a *parcel* of land along an existing public street that (1) does not involve the opening, widening, or extension of any street or road and (2) involves no more than five lots after the *original tract* has been *completely subdivided*. The Revised Code gives little guidance in interpreting the terms used in this

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<sup>125</sup> R.C. Chapter 711.

<sup>126</sup> R.C. 711.05, 711.09, and 711.10, not in the bill.

<sup>127</sup> R.C. 711.40, not in the bill. (Unless required by the rules and regulations adopted under the sections cited in the preceding footnote, the Subdivision Law does not apply to the division of any parcel of land by an instrument of conveyance.)

<sup>128</sup> R.C. 711.10 and 711.133, not in the bill.

exemption. The Attorney General has defined some terms in order to interpret this law. An Attorney General opinion has defined “tract” as “a contiguous quantity of land (regardless of size) undivided by lot lines”; “original tract” as “a tract which has not been divided under its present ownership”; and “completely subdivided” as “a tract that is divided into as many lots as the subdivider intends for the tract.”<sup>129</sup> Thus, under this opinion, even though not all of the divisions occur at the same time, if the same owner or owners divide a tract of property into more than five lots, at that time when more than five lots result from the original tract, the entire original tract must be platted, even if some lots have been previously transferred.

Effective April 15, 2005, S.B. 115 of the 125<sup>th</sup> General Assembly amended the law to allow the exemption to be used unless the planning authority amended its general rules within two years after that effective date to limit its approval authority to no more than five lots without a plat from an “original tract” as that original tract exists on the effective date of the amendment to the general rules. If the planning authority so amended its rules, it was required to make the required findings and approve a proposed division in generally the same manner as under the continuing law.

The bill provides another two-year period after the effective date of the section under the bill in which the planning authority may amend its general rules to limit its approval authority to no more than five lots without a plat from an “original tract” as that original tract exists on the effective date of the amendment to the general rules.

## **Board of elections compensation**

(R.C. 3501.12)

The bill increases the minimum compensation of a member of a board of elections by 1.75% annually through 2028. Under continuing law, a board member’s annual compensation must be the greater of the following:

1. The sum of the following:
  - \$102.41 for each full 1,000 of the first 100,000 in county population;
  - \$48.79 for each full 1,000 of the second 100,000 in county population;
  - \$26.50 for each full 1,000 of the third 100,000 in county population;
  - \$8.13 for each full 1,000 above 300,000 in county population.
2. \$6,000.

Existing law requires the dollar amounts listed under (1) above to be increased by 1.75% annually from 2019 through 2028. But the law does not likewise provide for the \$6,000 minimum, which applies in counties with smaller populations, to be adjusted. The bill requires the \$6,000 minimum to be adjusted in the same way as the other figures, meaning that board

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<sup>129</sup> Ohio Attorney General Opinion 1984-073.

members who qualify only for the minimum compensation also will receive the 1.75% annual increase.

## **Municipal garbage fees**

(R.C. 701.10)

The bill authorizes the legislative authority of any municipality that has established a rate or charge for garbage collection to certify to the county auditor unpaid amounts owed. The amount certified becomes a lien against the real property to which services are provided, is placed on the tax list to be collected as other taxes, and paid into the general fund of the municipality. Currently, this authority exists only for municipalities located in a charter county.

## **Township construction projects**

(R.C. 505.262)

The bill allows the board of township trustees of an urban township (a limited home rule township<sup>130</sup> with a population of 15,000 or more in its unincorporated territory) to choose to approve contracts and the issuance of securities for construction by a *majority* vote. Currently, trustees must approve these matters by a *unanimous* vote.

## **County auditor issue warrants**

(R.C. 319.16)

The bill modifies the law regarding the issuance of warrants on the county treasury for money payable from the treasury. Currently, a county auditor must issue a warrant upon presentation of “the proper order or voucher and evidentiary matter for the money.” The bill modifies this to require a county auditor to issue a warrant in either of the following circumstances:

--Upon presentation of a proper order or a voucher and evidentiary matter.

--Upon presentation of a proper court order asserting a proper public purpose for the expenditure.

Effectively, the bill requires a county auditor to issue a warrant upon a court order *without also requiring evidentiary matter* if the order asserts a proper public purpose for the expenditure. The bill specifies that a county auditor who issues a warrant under such circumstances has no liability for the expenditure.

## **Municipal corporation as portion of fire district**

(R.C. 505.37 and 505.371)

The bill allows a township fire district or a joint fire district to include all *or a portion* of a municipal corporation while current law only allows *the entire* municipal corporation. Under continuing law, a municipal corporation that is within or adjoins a township may join the

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<sup>130</sup> See Chapter 504 of the Revised Code.

township's fire district, or a municipal corporation may join together with one or more townships and other municipal corporations to create a joint fire district. Current law only allows both types of districts to include the entire municipal corporation. The bill expands this to allow a district to include a portion of a municipal corporation.

### **Insurance role of regional council of governments**

(R.C. 167.03)

The bill specifies that a program operated by a regional council of governments, with an educational service center as its fiscal agent, and a nonprofit corporation to administer and coordinate a self-funded health benefit program does not constitute engaging in the business of insurance or the business of an administrator and is not subject to Ohio's insurance laws. Under continuing law, political subdivisions can enter into an agreement creating a regional council of government to, among other powers, promote cooperative arrangements, coordinate action among its members, and contract among its members and other governmental agencies and private entities to address problems common to its members.

### **Filing electronically notarized documents**

(R.C. 147.591)

Under existing law, county auditors, engineers, and recorders that accept documents through an electronic recording method must also, and on the same terms, accept printed copies of documents that were electronically executed. The bill replaces that requirement with a requirement that the county officials accept printed copies of electronically executed documents so long as they are properly authenticated. It also adds a new requirement that digital copies of electronically executed documents be accepted on the same terms as any other document that is electronically accepted for recording.

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## MISCELLANEOUS

### **Legal age to purchase cigarettes, other tobacco products**

- Raises from 18 to 21 the legal age for a person to receive or purchase cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.
- Defines “vapor product,” replaces “electronic cigarette” with “electronic smoking device,” and includes both terms within the definition of “alternative nicotine products.”
- Modifies the definition of “tobacco product.”
- Requires clear and visible posting of signage indicating the legal age for receiving or purchasing cigarettes, other tobacco products, alternative nicotine products, or papers to roll cigarettes at locations where those products are sold.

### **Harmonization confirmed**

- Confirms the harmonization of R.C. 149.45 to clarify its relationship to R.C. 149.43.

### **Certain telephone numbers not a public record**

- Provides that telephone numbers for a victim, a witness to a crime, or a party to a motor vehicle accident are not public records.

### **Public records requests by vexatious litigators**

- Prohibits a vexatious litigator from requesting public records without first obtaining permission from the court.

### **Legal age to purchase cigarettes, other tobacco products**

(R.C. 2927.02(B), (C), and (E))

Generally speaking, the bill increases from 18 to 21 the age at which a person may purchase or receive cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes (hereafter referred to as “tobacco products”). More specifically, the bill prohibits a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products, an agent, employee, or representative of any of those persons, or other person from doing any of the following to a person under 21:

- Giving, selling, or otherwise distributing tobacco products;
- Giving away, selling, or distributing tobacco products in any place that does not have posted in a conspicuous place a legibly printed sign in letters at least one-half inch high stating that giving, selling, or otherwise distributing tobacco products to a person under 21 is prohibited by law;

- Knowingly furnishing any false information regarding the name, age, or other identification of the person with purpose to obtain tobacco products for that person.

The bill also prohibits a person from selling or offering to sell tobacco products from a vending machine, unless the location is an area to which persons under 21 are not generally permitted access.

### **“Tobacco product” definition**

(R.C. 2927.02(A)(7))

The bill modifies the definition of “tobacco product” by providing that it also means any product that is derived from tobacco or that contains any form of nicotine, if it is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means and includes “snus.” “Tobacco product” also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, blunt or hemp wraps, and liquids used in electronic smoking devices, whether or not they contain nicotine. “Tobacco product” does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

### **“Vapor product” and “electronic smoking device” as “alternative nicotine product”**

(R.C. 2927.02(A)(2), (5), and (8))

The bill includes “vapor product” and “electronic smoking device” within the definition of “alternative nicotine product.” As a result, the prohibition described above includes vapor products and electronic smoking devices.

A “vapor product” is a product, other than a cigarette or other tobacco product that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. It includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. It also includes any product containing nicotine, regardless of concentration. It does not include any product that is a drug, device, or combination product, as those terms are defined or described under federal law.

The bill changes “electronic cigarette” to “electronic smoking device” and modifies the definition by providing that it means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including an electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe (removes reference to “electronic cigarillo”). “Electronic smoking device” includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. “Electronic smoking device” does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

## Vending machine notice

(R.C. 2927.02(C))

Under the bill, if a person is selling or offering to sell tobacco products by or from a vending machine, the vending machine must have a clearly visible notice that is posted in the area where the vending machine is located that states the following in letters that are legibly printed and at least one-half inch high:

“It is illegal for any person under the age of 21 to purchase tobacco or alternative nicotine products.”

## Exceptions to prohibitions; forfeiture; affirmative defenses

(R.C. 2927.02(D), (E), and (G) and 2927.022)

The bill provides that the existing exceptions to the prohibitions regarding giving, selling, or otherwise distributing tobacco products apply when the person receiving the cigarettes is under 21.

Additionally, the bill provides that the existing law seizure and forfeiture provisions apply when tobacco products are given, sold, or otherwise distributed to a person under age 21 in violation of the prohibitions described above and when those products are used, possessed, purchased, or received by a person under 21 in violation of R.C. 2151.87 (prohibits a child from possessing, using, purchasing, or receiving tobacco products).

Finally, existing law provides certain affirmative defenses to a charge of giving, selling, or otherwise distributing tobacco products to any person under age 21. The bill adjusts the language describing these affirmative defenses to reflect the age increase to 21.

## Harmonization of R.C. 149.45 confirmed

(Section 815.30)

If a section of law is amended by two or more acts, and if the two or more acts do not reflect each other, R.C. 1.52(B) specifies that the amendments are to be harmonized into a composite text, if possible, so that effect may be given to all the amendments.<sup>131</sup> In late 2018, the 132<sup>nd</sup> General Assembly amended R.C. 149.45 (redaction of information) in three acts, H.B. 341, S.B. 214, and S.B. 229. The bill presents the section without amendment to confirm that these three sets of amendments to the section have been harmonized under R.C. 1.52(B).

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<sup>131</sup> R.C. 1.52(B) provides: “If amendments to the same statute are enacted at the same or different sessions of the legislature, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are substantively irreconcilable, the latest in date of enactment prevails. The fact that a later amendment restates language deleted by an earlier amendment, or fails to include language inserted by an earlier amendment, does not of itself make the amendments irreconcilable. Amendments are irreconcilable only when changes made by each cannot reasonably be put into simultaneous operation.”

The H.B. 341 amendments to R.C. 149.45 were made together with, and in relation to, amendments simultaneously made to R.C. 149.43 (public records). (R.C. 149.43 appears elsewhere in the bill.) Confirming the harmonization of R.C. 149.45 in the bill helps to clarify this relationship.

## **Certain telephone numbers not a public record**

(R.C. 149.43(A)(1)(kk))

The bill provides that telephone numbers for a victim (as defined in the Victim's Rights Law), a witness to a crime, or a party to a motor vehicle accident that are listed on any law enforcement record or report are not public records.

## **Public records requests by vexatious litigators**

(R.C. 149.43 and 2323.52)

The bill prohibits a vexatious litigator from requesting public records from any government office under the Public Records Law without first obtaining a court order specifying which records the person may request.

Under continuing law, a court of common pleas may determine that a person is a vexatious litigator if the person has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil court action. For example, if a person frequently filed groundless lawsuits for the purpose of harassing others, the court might find that person to be a vexatious litigator. After a person has received that designation, the person generally is prohibited from participating in legal proceedings in Ohio without first obtaining permission from a court. (The Ohio Supreme Court maintains a publicly available list of vexatious litigators for the purpose of enforcing that restriction.)<sup>132</sup>

The bill requires a vexatious litigator who wishes to submit a public records request to obtain an order from the court of common pleas giving the person leave to proceed and specifying with particularity what records the person may request. A public office is not required to grant a public records request submitted by a vexatious litigator unless the person presents the court order to the public office.

In order for a public office to know whether a person requesting a public record was a vexatious litigator, the public office would have to ask for the requester's identification and check it against the vexatious litigator list. However, under continuing law, a public office may not require a person who requests public records to disclose the person's identity or the intended use of the requested record. As a result, a vexatious litigator could circumvent the bill's restriction by requesting the public record anonymously or by having another person request the record on the vexatious litigator's behalf.

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<sup>132</sup> Ohio Supreme Court, *Vexatious Litigators under R.C. 2323.52*, available at [supremecourt.ohio.gov/Clerk/vexatious/](http://supremecourt.ohio.gov/Clerk/vexatious/).

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## NOTES

### Effective dates

(Sections 812.10 to 812.23)

Article II, Section 1d of the Ohio Constitution states that “appropriations for the current expenses of state government and state institutions” and “[l]aws providing for tax levies” go into immediate effect and are not subject to the referendum. The bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect.

### Expiration

(Section 809.10)

The bill includes an expiration clause stating that an item that composes the whole or part of an uncodified section contained in the bill (other than an amending, enacting, or repealing clause) has no effect after June 30, 2021, unless its context clearly indicates otherwise.

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## HISTORY

Action	Date
Introduced	03-25-19
Reported, H. Finance	05-09-19
Passed House (85-9)	05-09-19

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