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SUMMARY

This analysis is arranged by state agency in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item.

The analysis includes three special chapters for act provisions that impact multiple agencies or local governments, as follows:

1. H2Ohio Fund, starting on page 187;
- 2 Local Government, starting on page 424;
3. Miscellaneous, starting on page 435.

The analysis concludes with a note on effective dates and expiration.

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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ACCOUNTANCY BOARD

- Provides that public accountants are not subject to professional discipline solely because they provide accounting services to marijuana licensees.

Accounting services to marijuana licensees

(R.C. 4701.16)

The act explicitly states that a public accountant is not subject to disciplinary action by the Accountancy Board solely for the reason that the accountant is providing professional accounting services to a person licensed under the Medical Marijuana Control Program.

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.

Prescription drug advisory council

- Establishes within DAS the Prescription Drug Transparency and Affordability Advisory Council.
- Requires the Council to submit a written report to the Governor, the General Assembly, and the chairperson of the Joint Medicaid Oversight Committee not later than six months after initial appointments are made.
- Requires the Council to meet at least quarterly after submitting the report to provide assistance and guidance relating to the report's recommendations.
- Requires state agencies, boards, and commissions to cooperate with the Council as necessary for it to carry out its duties.

State workforce diversity surveys

- Requires the DAS Director annually to 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 Revised Code provisions.
- 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 who elects to participate in a health benefit offered to state employees to file an election form with the Ohio Police and Fire Pension Fund Board of Trustees, rather than DAS as under former law.
- Requires the Board to forward the election 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 health 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.

Public safety answering point staffing

- Specifies that a public safety answering point may be deemed compliant with minimum staffing standard rules adopted by the Statewide Emergency Services Internet Protocol Network Steering Committee if it complies with all other operational standard rules.

State agency efficiency review

(Section 701.10)

The act 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 act 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,¹ 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 act also gives the DAS Director authority to transfer equipment and assets relating to a program or function that is being

¹ R.C. Chapter 4117.

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.

Prescription drug advisory council

(R.C. 125.95)

Membership

The act establishes within DAS the Prescription Drug Transparency and Affordability Advisory Council. The Advisory Council has 14 members, including:

- The Director of Administrative Services;
- The Director of Health;
- The Medicaid Director;
- The Director of Mental Health and Addiction Services; and
- The Administrator of Workers' Compensation.

Additionally, the Governor, the Senate President, and the Speaker of the House must each appoint three members, each of whom is working to address prescription drug availability and affordability in any of the following areas:

- Insurance;
- Local, state, and federal government service;
- Private industry;
- Organizations of faith;
- Health care providers;
- Consumer organizations;
- Prescription drug manufacturers;
- Prescription drug wholesale distributors;
- Pharmacists;
- Business organizations;
- Individuals concerned about mental health or substance abuse matters; and
- Advocates for individuals struggling to afford prescription drugs.

Support

DAS must provide administrative support as necessary for the Council to carry out its duties. Additionally, state agencies, boards, commissions, and similar entities must cooperate with and assist the Council as necessary for it to carry out its duties.

Appointments

Initial appointments to the Council must be made by December 16, 2019, and vacancies are to be filled in the same manner as initial appointments. Members serve without compensation.

Report

The Council must submit a report to the Governor, the General Assembly, and the chairperson of the Joint Medicaid Oversight Committee. The report must be submitted within six months after the initial appointments are made and must include the following information:

- How Ohio can best achieve prescription drug price transparency;
- New payment models or other avenues that can be used to create the most affordable environment for purchasing prescription drugs;
- How to leverage Ohio's purchasing power across all state agencies, boards, commissions, and similar entities;
- How to create efficiencies across different health care systems, such as hospitals, the criminal justice system, treatment and recovery support programs, and employer-sponsored health insurance, to (1) reduce duplicative service delivery across these systems, (2) ensure that patients receive high quality and affordable prescription drugs, and (3) support quality care and outcomes;
- Which critical outcomes can be measured and used to improve Ohio's system of purchasing affordable prescribed drugs;
- How federal, state, and local resources are being used to optimize these outcomes and identify where the resources can be better coordinated or redirected to meet the needs of Ohio consumers.

Meetings after report

After submitting its report, the Advisory Council must meet at least quarterly to provide assistance and guidance relating to the report recommendations.

State workforce diversity surveys

(R.C. 124.91)

The act 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.²

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 act creates the Enterprise Applications Fund within the state treasury. Additionally, the act 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.

Additionally, the act allows the OBM Director, on the DAS Director's request, 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 continuing 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

² R.C. 1.60, not in the act.

debarment, and maintain a list of currently debarred vendors. When the debarment ends, under each specific list, the vendor must be eligible to be awarded contracts by state agencies. The act 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 act 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 act 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 act 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. Previously, DAS was permitted to do so under a provision of the main operating budget act that expired June 30, 2019.³

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.⁴

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.⁵ Under continuing law, a spouse or child receiving benefits from the fund 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 act specifies that a Death Benefit Fund recipient receiving a health benefit through the fund is not a state employee. It also specifies that a recipient cannot receive health benefits through the fund if the recipient is eligible to receive them as a state employee. Additionally, continuing law

³ Sections 207.40 and 809.10 of H.B. 49 of the 132nd General Assembly, not in the act.

⁴ R.C. 125.84 and 125.87, not in the act.

⁵ R.C. 742.63, not in the act.

excludes a recipient who is eligible to enroll in the federal Medicare program from receiving benefits through the fund.

Under continuing law, the DAS Director must develop forms for a recipient to enroll, disenroll, or re-enroll in health benefits. The act 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). It also requires the DAS Director to notify the Board when a recipient enrolls, disenrolls, or re-enrolls in health benefits, or when DAS terminates a recipient's benefits. The act requires a recipient to file the election form with the Board, rather than with DAS as under prior law, to receive health benefits through the fund. The Board must forward the election form to DAS after the Board has approved an application for death benefits.

The act requires DAS to notify the Board 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 former law. The amount withheld is the percentage of the cost that would be paid by a state employee for those benefits. Under the act, the Board must pay DAS the remaining cost of the benefits and any administrative costs from appropriations made for that purpose.

Beginning July 18, 2019 (the act's immediate effective date), the act appropriates additional funding for health benefits for Death Benefit Fund recipients. Because the appropriation language includes a similar provision regarding the administration of health benefits for Death Benefit Fund recipients, it appears that provision is also effective on that date. The appropriation language additionally specifies that, for the FY 2020-FY 2021 biennium, the administrative costs paid by the Board to DAS cannot exceed 2% of the total costs of the benefits.⁶

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

Vision benefits for state employees

(R.C. 124.82)

The act specifically includes vision benefits in the types of benefits for which DAS may contract or otherwise provide. Under continuing law, DAS must 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 also may choose to offer these benefits directly.

⁶ Section 812.23.

Invoices for state purchases

(R.C. 125.01)

The act changes the 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 former definition of “invoice” provided 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 act 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 act requires the appointing authority to compensate the employee 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 similar leave for certified disaster service volunteers of the American Red Cross. The act extends the benefit to verified Team Rubicon volunteers. Team Rubicon is a volunteer nonprofit organization consisting mostly of military veterans providing disaster response services.⁷

Public safety answering point staffing

(R.C. 128.021)

The act specifies that a public safety answering point (PSAP) may be deemed compliant with rules for PSAP minimum staffing standards, if the PSAP can demonstrate its compliance with all other rules for operational standards.

Under law unchanged by the act, the Statewide Emergency Services Internet Protocol Network Steering Committee is responsible for adopting rules that establish the technical and operational standards for PSAPs. The Steering Committee also is responsible for advising the state regarding a statewide emergency services Internet protocol network and the dispatch of

⁷ <https://teamrubiconusa.org>.

emergency service providers.⁸ A PSAP is a facility to which 9-1-1 system calls for a specific territory are first routed for response. PSAP personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider or relaying a message or transferring the call to the appropriate provider.⁹

⁸ R.C. 128.02(C), not in the act.

⁹ R.C. 128.01(P), not in the act.

ADJUTANT GENERAL

- Removes the exemption for repayment liability of an Ohio National Guard scholarship recipient who fails to complete the term of enlistment due to the recipient's enlistment, warrant, commission, or appointment to the National Guard or an active duty component of the U.S. armed forces.
- Exempts from repayment liability a scholarship recipient who became liable due to enlistment, warrant, commission, or appointment to the National Guard, an active duty component of the U.S. armed forces, or other service or component of the U.S. armed forces between April 1, 2012, and October 17, 2019.
- Removes outdated language that required the state to return, not later than April 6, 2018, payments already made by scholarship recipients no longer liable for repayments that occurred on or before September 30, 2016.

Ohio National Guard scholarship program

(R.C. 5919.34; Sections 603.01 and 603.02)

The act removes the exemption for repayment liability of an Ohio National Guard scholarship recipient who fails to complete the term of enlistment due to the recipient's enlistment, warrant, commission, or appointment to the National Guard or an active duty component of the U.S. armed forces.

The act exempts from repayment liability a scholarship recipient who became liable for repayment due to enlistment, warrant, commission, or appointment to the National Guard, an active duty component of the U.S. armed forces, or other service or component of the U.S. armed forces between April 1, 2012, and October 17, 2019.

Additionally, the act removes outdated language that required Ohio to return, not later than April 6, 2018, payments already made by scholarship recipients no longer liable for repayments that occurred on or before September 30, 2016.

The Ohio National Guard scholarship program provides eligible Ohio National Guard members with tuition scholarships for colleges and universities in Ohio.

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 of 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

- Extends to dementia in general (rather than only Alzheimer's disease) requirements that the Department of Aging disseminate training materials on its website and administer respite care programs and other supportive services.

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.

Assisted Living and PASSPORT payment rates (VETOED)

- Would have required 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 5.1% higher than the rates in effect on June 30, 2019.
- Would have required 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 5.1% higher than the rates in effect on June 30, 2019.
- Would have established the payment rates for home-delivered meals provided under the PASSPORT program during FYs 2020 and 2021.

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 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 use 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 act establishes.
- 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 health services executive or 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 where 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 a fee to the Board.

Background checks

Conditional employment

(R.C. 173.27 and 173.38)

The act 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. Former law

allowed the criminal records check to be requested up to five business days after conditional employment began.

Procedures for conducting checks

(R.C. 173.38 and 5164.342)

The act 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 act 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, whereas the Department of Medicaid's procedures do not.

Dementia training materials and program support

(R.C. 173.04)

With respect to dementia generally, the act extends the following Department of Aging duties that previously applied only with respect to Alzheimer's disease:

1. A requirement to disseminate on the Department's website training materials for licensed health care and social service personnel;
2. To the extent that funds are available, a requirement to administer respite care programs, which provide short-term, temporary care in the absence of a person's regular caregiver, and to administer other supportive services.

Notice of certification or discipline decisions

(R.C. 173.391)

The Department of Aging is generally required 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 act makes it mandatory, rather than permissive as under prior law, for the Department to notify the provider of the decision not to certify or the disciplinary action the Department is taking.

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 act 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.)

Assisted Living and PASSPORT payment rates (VETOED)

(Sections 209.40, 209.50, and 209.60)

The Governor vetoed a provision that would have required 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 5.1% higher than the rates for the services in effect on June 30, 2019.

The Governor also vetoed a provision that would have required 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 5.1% higher than the rates for the services in effect on June 30, 2019.

Additionally, the Governor vetoed a provision that would have set 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.

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 747.33)

Health services executive license

The act 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 license is not required 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 act’s criminal records check requirements;
- Pay 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 act revises the requirements for a standard nursing home administrator license as follows:

	Former law	The act
Application	Submit an application on forms the Board prescribes.	Submit a completed application in accordance with the Board’s rules.
Preliminary fee	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.
Character	Submit evidence of good moral character and suitability.	Be of good moral character.
Age	Be at least 18.	Be at least 21.
Education and work experience	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.
Criminal records check	No provision.	Comply with the act’s criminal records check requirements and not have a criminal record that the Board determines makes the individual ineligible for the license.

	Former law	The act
Additional requirements	No provision.	Satisfy any additional requirements that the Board is permitted to prescribe in rules.

Continuing 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 act adds that the license also indicates that the licensee has met any rules the Board adopts.

Out-of-state nursing home administrator license

The act 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:

	Former law	The act
Out-of-state licensure	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 similar recognition to nursing home administrators licensed in this state.	Is legally authorized to practice nursing home administration in another state.
Application	No provision.	Submit to the Board a completed application for the license in accordance with the Board's rules.
Age	No provision.	Be at least 21.
Education	No provision.	Hold at least a bachelor's degree from an accredited educational institution.
Character	No provision.	Be of good moral character.

	Former law	The act
Criminal records check	No provision.	Comply with the act's criminal records check requirements and not have a criminal record that the Board determines makes the individual ineligible for the license.
Licensure exam	Is not required to take the licensure examination.	Pass the licensure examination.
Fee	Pay a \$150 fee.	Pay a \$250 fee.
Additional requirements	No provision.	Satisfy any additional requirements that the Board is permitted to prescribe in rules.

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

	Former law	The act
Reason temporary license is requested	To temporarily fill a position of nursing home administrator vacated by reason of death, illness, or other unexpected cause.	A nursing home operator has requested that the Board issue a 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.
Age	No provision.	Be at least 21.
Character	No provision.	Be of good moral character.

	Former law	The act
Criminal records check	No provision.	Comply with the act's criminal records check requirements and not have a criminal record that the Board determines makes the individual ineligible for the license.
License fee	Pay a \$100 fee.	Same.
Additional requirements	No provision.	Satisfy any additional requirements that the Board is permitted to prescribe in rules.

Under the act, 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 former 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 renewed again. 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 act 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 act 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 act provides that a health services executive license is valid for one year and may be renewed and reinstated in accordance with procedures the act 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 former 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 act 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 act, 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

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

Reissuance and restoration of licenses

The act 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 act clarifies that this requirement also applies to temporary nursing home administrator licenses.

Reporting changes of address

The act revises the continuing law requirement that 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 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 act 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. Former law required 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 act 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 act replaces former law requirements regarding complaints regarding nursing home administrators and health services executives with more detailed provisions.

The act 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 act 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 act permits, rather than requires as under former 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 former law and the act:

	Former law	The act
Standards and requirements	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.
Violation of law regarding practice	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.
Unfit or incompetent	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 habitual or excessive use or abuse of drugs, alcohol, or other substances.
Health and safety	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

	Former law	The act
		setting at which the individual serves in a leadership position or directs the practices of others.
Criminal record	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.
Fraud in seeking license	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.
Fraud in practice	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.
Code of ethics	No provision.	Substantially deviating from the Board's code of ethics.
Discipline by another agency	No provision.	Having had another health care licensing agency take any of the 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.

	Former law	The act
Investigations, subpoenas, and disciplinary actions	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 act 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 act 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 act revises the prohibitions regarding the practice of nursing home administration. It 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 act 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 act, 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 at the nursing home or (2) ceases to practice at the nursing home. Former law required nursing home operators to report within ten days after engaging an administrator and within ten days of when the administrator is no longer so engaged.

Reorganization of statutes

The act relocates and reorganizes many provisions of the Revised Code chapter governing the Board to modernize and clarify those statutes. The act 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.

DEPARTMENT OF AGRICULTURE

Amusement rides

- Increases the permit fee for an amusement ride by \$75 (from \$150 to \$225).
- Requires the Advisory Council on Amusement Ride Safety, prior to submitting findings or recommendations to the Director of Agriculture, to vote on whether to submit the findings or recommendations.
- Specifies that the Advisory Council may submit only findings or recommendations that receive a majority vote.
- Requires the Director, annually by November 1, to submit a detailed financial report to the Speaker of the House and the Senate President regarding the amusement ride safety program.

Qualifications for pet stores

- Revises which retail stores qualify as a pet store and require licensure by doing the following:
 - Specifying that a store must sell 40 or more puppies or adult dogs in any calendar year to the public;
 - Clarifying that a high-volume dog breeder is not a pet store; and
 - Clarifying that a dog breeder that maintains and sells dogs from the same premises where the dogs are bred and reared is not a pet store.
- Authorizes the Director to reimburse the license application fee that a person pays for a pet store license if the person:
 - Holds a valid pet store license on October 17, 2019; and
 - No longer qualifies as a pet store owner or operator as a result of the above changes.

High-volume dog breeder – standards of care

- Revises certain standards of care for dogs that a high-volume dog breeder must maintain, including:
 - Regarding the primary enclosure requirements for housing a dog that will take effect on December 31, 2021, clarifies that a dog includes any dog that is 12 weeks or older; and
 - Regarding the flooring requirements for a dog enclosure that will take effect on December 31, 2021, requires coated metal wire (used for flooring) to measure six gauge or thicker.

Defense for nuisances

- Adds the following as complete defenses in civil nuisance actions that involve agricultural activities:

--Agricultural activities that are conducted on land devoted exclusively to agriculture that is taxed in accordance with the land's current agricultural use value; and

--Agricultural activities conducted by a person pursuant to a lease agreement.

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 inclusion in a Director-approved voluntary nutrient management plan.

Urban sediment and storm water runoff pollution

- Revises the law governing soil and water conservation districts and urban sediment and storm water runoff pollution as follows:
 - Requires the Director to support development and implementation of cooperative programs and working agreements between districts and the Ohio Department of Natural Resources (DNR) and the Ohio Environmental Protection Agency (OEPA);
 - Expands a soil and water conservation district's contracting authority by allowing contracts or agreements that address storm water runoff pollution, instead of addressing only urban sediment pollution as in former law;
 - Regarding recommendations that the Ohio Soil and Water Conservation Commission provides to specified persons or entities, clarifies that the recommendations are to encourage proper soil, water, and other natural resource management *for farm, rural, suburban, and urban land*.

Tree syrup exemption

- Exempts a processor of any kind of tree syrup, rather than only maple syrup as in former law, from specified laws governing retail food establishments and food processing establishments.

Small wineries exemption

- Exempts small wineries from retail food establishment licensure requirements if the winery:
 - Serves commercially prepackaged food and sales of that food do not exceed more than 5% of the total gross receipts of the establishment; and
 - Annually produces 10,000 gallons or less of wine.
- Requires the winery owner to:
 - Notify the Director that it is exempt from licensure because it qualifies under the above conditions; and
 - Disclose to customers that the winery is exempt from licensure.

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 (ODA), through voluntary promotional programs, to promote the use of Ohio-produced agricultural goods grown for inclusion in beer, cider, or spirituous liquor.

Agricultural Society Facilities Grant Program

- Creates the Agricultural Society Facilities Grant Program to provide grants in FY 2020 to county and independent agricultural societies to support capital projects that enhance the use and enjoyment of agricultural society facilities.
- Generally requires each agricultural society that applies for assistance to receive an equal amount appropriated for those purposes.
- Requires the Director or the Director's designee to establish requirements and procedures for the Program, including procedures for reviewing applications and awarding grants.
- Requires each agricultural society to provide a matching grant.
- Requires the Director or designee, after reviewing a grant application and matching grant documentation, to approve the application unless:
 - The project or facility is not a bondable capital improvement project; or
 - The agricultural society does not provide a matching grant.

Ohio Expositions Commission

- Adds the Ohio State University's Dean of the College of Food, Agricultural, and Environmental Sciences as a nonvoting member of the existing Ohio Expositions Commission.

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 refunds for assessments levied for the program.

Amusement rides

Permit fee and inspection funding

(R.C. 1711.53; Section 211.10)

The act increases the permit fee for an amusement ride by \$75 (from \$150 to \$225). It also appropriates \$400,000 for FY 2020 and FY 2021 from the GRF for ride inspection purposes.

Advisory Council

(R.C. 1711.52)

The Advisory Council on Amusement Ride Safety studies subjects pertaining to amusement ride safety, including administrative, engineering, and technical subjects, and makes findings and recommendations to the Director of Agriculture. Additionally, the Advisory Council studies the Director's proposed rules, advises the Director, and makes findings and recommendations regarding the rules.

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

Safety program financial report

(R.C. 1711.532)

The act 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 (ODA) amusement ride safety program applicable to the 12 months preceding the report's submission;
- Expenses related to ODA's amusement ride safety program in the 12-month period;
- Any proposed changes to the fee schedule that the Director determines is necessary for issuing permits and conducting amusement ride inspections and reinspections;
- The amount spent from any appropriation made for ODA'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 necessary information.

Qualifications for pet stores

(R.C. 956.01, 956.051, and 956.20; Section 709.10)

The act specifies that a store must sell 40 or more puppies or adult dogs in any calendar year to the public in order to be subject to licensure as a pet store. Former law specified that a store was considered a pet store if it sold any dogs to the public.

The act also clarifies that a high-volume dog breeder or any other dog breeder – that maintains and sells dogs from the same premises where the dogs are bred and reared – does not need to be licensed as a pet store (and pay the annual \$500 license fee). Thus, dogs sold by high-volume breeders are not subject to the following, which apply to dogs sold at pet stores:

- A requirement that the dogs be obtained from specified sources, including a humane society, dog retailer, or qualified breeder;
- A requirement that the dogs must be eight weeks or older and the dog must have a certificate of veterinarian inspection signed by an accredited veterinarian; and
- A requirement that the dogs be microchipped.¹⁰

Although the requirements above no longer apply to high-volume dog breeders for pet store regulation purposes, similar requirements apply to those breeders under regulations for high-volume dog breeders.

Finally, the act authorizes the Director to reimburse the license application fee that a person pays for a pet store license if:

- The person holds a valid pet store license on October 17, 2019; and
- The person no longer qualifies as a pet store owner or operator as a result of the above changes.

High-volume dog breeders – standards of care

(R.C. 956.031)

The act revises the standards of care for dogs that a high-volume dog breeder must maintain, as follows:

- Clarifies that the primary enclosure requirements for housing dogs that will take effect December 31, 2021, apply to dogs that are 12 weeks or older.

¹⁰ R.C. 956.03 and 956.21, not in the act.

- Regarding the flooring requirements for dog enclosures that will take effect December 31, 2021, requires any coated metal wire (used for flooring) to measure six gauge or thicker. Former law did not address wire diameter.
- Regarding the requirement that a dog be provided with an opportunity to exercise daily for at least 30 minutes, excludes an expectant female dog beginning 52 days after the first breeding date and ending when the dog gives birth.
- Regarding the requirement that a dog be provided an opportunity to safely access the outdoors during daylight hours, excludes (1) an expectant female dog, beginning 52 days after the first breeding date and ending when the dog gives birth, (2) a female dog that is nursing, and (3) a puppy younger than 12 weeks.

Defense for nuisances

(R.C. 929.04)

Under continuing law, in a civil nuisance action brought against a person who conducts agricultural activities, there are several complete defenses the person may raise. The act expands the defense to include:

- Agricultural activities that are conducted on land devoted exclusively to agriculture that is taxed in accordance with the land's current agricultural use value (the act retains law that allows the defense to be claimed with regard to agricultural activities conducted within an agricultural district); and
- Agricultural activities conducted by a person pursuant to a lease agreement, written or otherwise.

It also eliminates the specification that the plaintiff in a nuisance action not be engaged in agricultural production, and defines "agricultural activities" to mean common agricultural practices, including crop cultivation and raising livestock. (Former law did not define "agricultural activities.")

Voluntary nutrient management plans – soil test results

(R.C. 905.31)

The act 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. Continuing 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.

Urban sediment and storm water runoff pollution

(R.C. 939.02, 939.04, 940.01, 940.02, 940.06, 1501.20, repealed, and 6111.03)

The act does all of the following regarding the law governing soil and water conservation districts and urban sediment and storm water runoff pollution:

- Requires the Director to support the development and implementation of cooperative programs and working agreements between districts and the Ohio Department of Natural Resources (DNR) and the Ohio Environmental Protection Agency (OEPA).
- The act requires the cooperative programs and working agreements to be for the support of farm, rural, suburban, and urban conservation programs. (Former law only required the Director to coordinate those programs and working agreements between districts and ODA.)
- Allows a board of supervisors seek technical guidance and program support from OEPA to address urban sediment and storm water runoff.
- Allows a board of supervisors to enter into contracts or agreements with OEPA to address storm water runoff pollution (instead of only urban sediment pollution, as in former law).
- Adds that the OEPA Director may coordinate with a soil and water conservation district board to ensure compliance with rules adopted by the OEPA Director that pertain to urban sediment and storm water runoff pollution abatement.
- Adds that a board may enter into contracts or agreements with the DNR Director for partnership on state programs to assist with local needs relating to the management of wildlife, forestry, waterways, and other natural resources programs.
- Requires the Ohio Soil and Water Conservation Commission to add the Directors of OEPA and DNR to the list of people or entities that the Commission must make recommendations to regarding soil and water conservation district operations. The act specifies that those recommendations must encourage proper soil, water, and other natural resource management *for farm, rural, suburban, and urban land*. Former law did not specify the types of land that the recommendations applied to.

Tree syrup exemption

(R.C. 3715.021 and 3717.22)

The act exempts a processor of any kind of tree syrup, rather than only maple syrup as in prior law, from:

- The law governing retail food establishments; and
- The Director of Agriculture's rules governing standards and good manufacturing practices for food processing establishments.

Small wineries exemption

(R.C. 3717.22)

The act exempts small wineries from retail food establishment licensure requirements if the winery:

- Serves commercially prepackaged food and sales of that food do not exceed more than 5% of the total gross receipts of the winery; and

- Annually produces 10,000 gallons or less of wine.

The winery owner or operator must notify the Director that it is exempt from licensure because it qualifies under the above conditions, and must disclose to customers that the winery is exempt from licensure.

Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

The act 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 act authorizes ODA 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. ODA must adopt rules establishing reasonable fees and criteria for voluntary participation in the programs. The fees must be credited to the GRF and used to finance the programs.

Agricultural Society Facilities Grant Program

(Section 717.11)

The act creates the Agricultural Society Facilities Grant Program to provide grants in FY 2020 to county and independent agricultural societies to support capital projects that enhance the use and enjoyment of agricultural society facilities. Agricultural societies conduct various activities, including operating county fairs. Under the program, agricultural societies may apply to the Director for monetary assistance to acquire, construct, reconstruct, expand, improve, plan, and equip those facilities. Except as discussed below, each agricultural society that applies for assistance must receive an equal amount appropriated for those purposes.

By 90 days after the act’s effective date, the Director or the Director’s designee must establish requirements and procedures for the program, including an application form, procedures for reviewing applications and awarding grants, and any other requirements and procedures the Director or designee determines necessary. Under the program, each agricultural society must provide a matching grant unless the applicant demonstrates that it cannot provide the matching amount. The matching grant may be any combination of funding,

materials, and donated labor. An agricultural society must submit documentation of the matching grant along with the grant application by May 30, 2020.

The Director or designee must approve an application unless:

- The project or facility is not a bondable capital improvement project; or
- The agricultural society does not provide a matching grant (unless a demonstration shows that the applicant cannot provide the matching grant).

The Director or designee must award all grants by June 30, 2020, and notify each grant recipient.

Ohio Expositions Commission

(R.C. 991.02)

The act adds the Ohio State University's Dean of the College of Food, Agricultural, and Environmental Sciences as a nonvoting member of the Ohio Expositions Commission. The Dean is to serve on the Commission without compensation. As part of its duties, the Commission is responsible for conducting the Ohio State Fair.

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 act 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

Continuing law provides a mechanism that allows producers of certain agricultural commodities to establish programs to promote the sale and use of their products, develop new uses and markets, improve the methods of distributing them to consumers, and standardize their quality for specific uses. These agricultural commodity marketing programs (including the 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 act:

- Requires the Director to establish a Propane Council composed of members appointed by the Director, including propane retailers (primary business involves 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 Council's actions 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;
- 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.

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 act 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 act 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.

ATTORNEY GENERAL

Peer-to-peer car sharing

Regulations

- Authorizes a licensed driver to rent a vehicle owner's personal motor vehicle through a peer-to-peer car sharing program and peer-to-peer car sharing agreements.
- Establishes requirements for a peer-to-peer car sharing program, including requirements that the program collect, verify, and maintain certain records pertaining to the use of each shared vehicle, and make certain disclosures to participants.
- Specifies that peer-to-peer car sharing and a peer-to-peer car sharing program agreement are consumer transactions for purposes of the Consumer Sales Practices Law.
- When the transaction is primarily for personal, family, or household purposes, specifies that any agreement between a motor vehicle leasing dealer and a lessee, or a motor vehicle renting dealer and a renter, is a consumer transaction for purposes of the Consumer Sales Practices Law.
- Authorizes the operator of a public-use airport to adopt reasonable standards, regulations, procedures, and fees related to a peer-to-peer car sharing program, and requires the relevant parties to comply with them.

Insurance

- Makes a general statement that the General Assembly does not intend to limit or restrict an insurer's ability to exclude coverage or underwrite any insurance policy related to peer-to-peer car sharing.
- Establishes certain insurance requirements that apply to peer-to-peer car sharing, such as minimum coverage limits, and makes the peer-to-peer car sharing program ultimately responsible for ensuring that insurance requirements are met.

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.

Internet Crimes Against Children Task Force

- Requires the Ohio Internet Crimes Against Children Task Force to coordinate a state network of law enforcement agencies to support investigations into internet crimes against children.
- Requires the Task Force to support the state network of law enforcement agencies, by funding positions, providing investigative training and digital forensic support, and conducting community outreach.
- Authorizes the Attorney General to disburse funds appropriated for the Task Force to certain local agencies affiliated with the Task Force, and to the Office of the Attorney General's Crimes Against Children Initiative.
- Requires the Task Force and the Office of the Attorney General to provide a yearly progress report and summary of expenditures

Peer-to-peer car sharing

(R.C. 4516.01, 4516.02, 4516.03, 4516.04, 4516.05, 4516.06, 4516.07, 4516.08, 4516.09, 4516.10, 4516.11, 4516.12, 4516.13, 4549.65, and 5739.01; Sections 757.301 and 812.15)

The act authorizes "peer-to-peer care sharing," allowing a licensed driver to rent a vehicle owner's personal motor vehicle. A vehicle owner and a licensed driver are connected through a peer-to-peer car sharing program, which is an electronically based business platform that enables vehicle sharing for financial consideration. The service is similar to Airbnb, but for motor vehicles.

Basic parameters

The act outlines basic requirements for establishing a peer-to-peer car sharing program in Ohio. As part of the basic requirements for operation, a program must collect information from any participant in the program, including names, addresses, driver's license information, insurance information, verification of current vehicle registration, and whether there are any outstanding safety recalls on the shared vehicle.

The program may not allow a peer-to-peer car sharing program agreement on its platform if the person operating the shared vehicle does not have a valid driver's license or if the shared vehicle is not properly registered.

Additionally, the peer-to-peer car sharing program must collect, verify, and maintain records pertaining to the use of each enrolled shared vehicle. The records must include information about the dates, times, and duration of time that the shared vehicle is in use and confirm that the shared vehicle driver possesses the shared vehicle. The records also must include any fees or financial consideration a shared vehicle driver pays, any revenues or other financial consideration a shared vehicle owner receives, and any other similar, pertinent information. The program must be capable of providing records, on request, to any shared vehicle owner, shared vehicle driver, or insurer, for purposes of facilitating investigation of a claim, incident, or accident. The program may provide the records to law enforcement if requested, but it must provide the records if presented with a valid warrant. The records must be retained for at least three years.

Peer-to-peer car sharing agreement

The contract at the center of the peer-to-peer car sharing arrangement is the peer-to-peer car sharing agreement. A peer-to-peer car sharing program, a shared vehicle owner, and the shared vehicle driver are all parties to the agreement. The agreement sets forth the parameters of peer-to-peer car sharing, including the location(s), dates, and times for drop-off and pick-up of the vehicle, whether the time the shared vehicle owner spends delivering the vehicle is paid, and the daily rate, fees, and any costs for the insurance provided by the program (see "**Insurance**" below).

Also, the program must make a variety of disclosures to the shared vehicle owner and the shared vehicle driver. The disclosures include the program's right to seek indemnification from the shared vehicle owner or the shared vehicle driver, any insurance coverage or lack of coverage that might occur based on whether the car sharing period is in effect or whose insurance is being used, and emergency contact information.

Equipment and recalls

The act specifies that a peer-to-peer car sharing program is responsible for any equipment, including GPS or program-specific equipment that facilitates peer-to-peer car sharing, that is installed in the vehicle, unless the shared vehicle driver causes damage to the equipment.

Generally, the shared vehicle owner is responsible for addressing any safety recall repairs (issued pursuant to federal law) on the shared vehicle. If a safety recall applies to a shared vehicle, the owner must remove the vehicle from the program. Or, if the vehicle is in operation, the owner must notify the program so that the car sharing period can be terminated and the vehicle returned to the owner for repair.

The program, in addition to checking for outstanding recalls before the shared vehicle is enrolled in the program, must establish commercially reasonable procedures to check for outstanding recalls after initial enrollment. The program also must provide notice to each shared vehicle owner of the owner's safety recall responsibilities.

Operation at airports

The act authorizes a public-use airport operator to adopt reasonable standards, regulations, procedures, and fees that apply to peer-to-peer car sharing programs. Additionally, the operator is permitted to enter into agreements, including concession agreements, with a peer-to-peer car sharing program. In turn, the peer-to-peer car sharing program, a shared vehicle owner, and a shared vehicle driver must comply with the airport's standards, regulations, procedures, and agreements and pay all fees in a timely manner.

Penalties and the Consumer Sales Practices Law

Peer-to-peer car sharing

Peer-to-peer car sharing (in general) and a peer-to-peer car sharing program agreement (in particular) are consumer transactions, and thus, subject to the Uniform Commercial Code (U.C.C). For purposes of the Consumer Sales Practices Law (CSPL), the peer-to-peer car sharing program and the shared vehicle owner are considered the "suppliers" and the shared vehicle driver is considered the "consumer." Accordingly, the programs must comply with general business, contract, and advertising practices. (For instance, the peer-to-peer car sharing program agreement cannot specify that the motor vehicle being shared is a luxury vehicle if the motor vehicle is actually a low-cost vehicle.) The Attorney General enforces the CSPL and the specific remedies, fines, and procedures are established in continuing law.

The act specifies, however, that a peer-to-peer car sharing program is not liable under the CSPL if the violation results from a shared vehicle owner or shared vehicle driver providing false, misleading, or inaccurate information to the program and the program relies on the information in good faith. (For instance, if the program verifies the registration provided by a shared vehicle owner for one shared vehicle, but the shared vehicle owner provides a different vehicle to the shared vehicle driver without the program's knowledge, the program is not liable for the shared vehicle owner's deception.)

Motor vehicle leasing and renting dealers

The act extends the provisions related to the U.C.C. and the CSPL to motor vehicle leasing dealers, motor vehicle renting dealers, and the agreements between those dealers and their lessees and renters (when the transaction that is the subject of the agreement is for purposes that are primarily personal, family, or household).

Additionally, the immunity extended to a program when the program relies on false information in good faith is extended to the dealers when they rely in good faith on false information provided by a lessee or renter. Those dealers are already likely subject to the U.C.C. and CSPL (for those agreements) under current federal law and it is unclear whether this provision affects their current duties or current remedies for lessees and renters.

Insurance

General statements

The act makes several general statements pertaining to insurance as applied to a peer-to-peer car sharing program. One statement conveys that it is not the General Assembly's

intent to either limit or restrict an insurer's ability to exclude insurance coverage from an insurance policy or an insurer's ability to underwrite an insurance policy.

Additionally, the statements convey that none of the insurance requirements specified by the act do any of the following:

1. Limit a peer-to-peer car sharing program's liability for its injurious actions or omissions;
2. Limit the program's ability to seek indemnity from a shared vehicle owner or shared vehicle driver; or
3. Create, imply, or otherwise grant insurance coverage that is not found in any motor-vehicle liability policy or other insurance policy.

Assumption of liability

A peer-to-peer car sharing program assumes the liability of a shared vehicle owner for any death, bodily injury, or property damage to a third party or an uninsured or underinsured motorist that is proximately caused by the operation of a shared vehicle during the car sharing period. The amount of liability must be stated in the peer-to-peer car sharing program agreement and cannot be less than the following, which are the minimum amounts required under the Proof of Financial Responsibility Law:

- \$25,000 because of bodily injury to or death of one person in any one accident;
- \$50,000 because of bodily injury or death of two or more persons in any one accident; and
- \$25,000 because of injury to property of others in any one accident.

The assumption of liability does not apply, however, if either occurs:

- The shared vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the program regarding the vehicle owner's motor-vehicle liability policy (or other proof of financial responsibility) or the type or condition of the shared vehicle; or
- The shared vehicle owner and the shared vehicle driver conspire to have the shared vehicle driver fail to return the shared vehicle, in violation of the car sharing agreement.

Vicarious liability

The act exempts a shared vehicle owner from vicarious liability for harm arising from the use, operation, or possession of the shared vehicle during the car sharing period. Vicarious liability is a legal concept that assigns liability an individual who did not actually cause the harm, but who has a specific, "superior" legal relationship to the person who did cause the harm. The act states that both a peer-to-peer car sharing program and a shared vehicle owner are exempt from vicarious liability under a federal law that exempts a motor vehicle renting dealer from vicarious liability, based on ownership, for harm caused by a renter.

But, because a program does not have an ownership interest in a shared vehicle (in contrast to the way a motor vehicle renting dealer does in a rental vehicle), it is unclear whether the provision actually exempts a program from vicarious liability, although it likely does exempt the shared vehicle owner.

Motor vehicle insurance

A peer-to-peer car sharing program must ensure that, during each car sharing period, the shared vehicle owner and shared vehicle driver are each covered by a motor-vehicle liability policy or other proof of financial responsibility. The policy or proof must recognize their status as a shared vehicle owner or shared vehicle driver and provide coverage for the operation of the shared vehicle during the car sharing period. The policy or proof must be maintained in the liability amounts specified above – the minimum amounts required under the Proof of Financial Responsibility Law. The insurance requirement may be satisfied by any of the following (or combination):

- A motor-vehicle liability policy or other proof of financial responsibility that is maintained by the shared vehicle owner;
- A policy or other proof that is maintained by the shared vehicle driver;
- A policy or other proof that is maintained by the peer-to-peer car sharing program.

If the owner or driver of a shared vehicle does not provide the required minimum coverage, the insurance maintained by the program must provide appropriate coverage beginning with the first dollar of the claim and must defend the claim. The program's policy or other proof of financial responsibility cannot require the owner's or driver's policy to first deny a claim.

Additionally, if the program provides at least part of the required insurance coverage and there is a dispute over who was operating the shared vehicle at the time of the loss (and the program either does not have or cannot quickly produce the relevant records), the program must assume liability for that disputed claim. The program may seek indemnity from a shared vehicle owner, however, if the owner is determined to have been the operator at the time of the loss.

The act declares that a policy that meets the act's insurance requirements satisfies Ohio's motor vehicle proof of financial responsibility requirements. The program must examine any motor-vehicle liability policy or proof of financial responsibility held by the shared vehicle owner and the shared vehicle driver. The examination must determine whether that policy or proof provides for or excludes coverage for peer-to-peer car sharing if the owner or driver: (1) refuses the program's insurance coverage, or (2) claims that the person's policy or proof provides coverage for peer-to-peer car sharing. Additionally, the program may require increased limits of insurance beyond the minimum set by law.

General liability coverage

A peer-to-peer car sharing program also must maintain at least \$1 million in coverage for the program's liability for the program's acts or omissions that are the proximate cause of death, bodily injury, or property damage to any person in any one accident because of the

operation of a shared vehicle through the program. The program can maintain that coverage in any form of insurance; it does not have to be maintained by a specific insurance policy.

Organized Crime Investigations Commission

(R.C. 177.02)

The act 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.¹¹

Under continuing law, during a 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. The law requires the Commission to pay for necessary and actual expenses but, before the act, it was silent regarding compensation and other employment costs incurred by the employing agency.

Contacting persons after accident or crime

(R.C. 1349.05)

The act 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

¹¹ R.C. 177.011, not in the act.

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.

Internet Crimes Against Children Task Force

(R.C. 195.01 and 195.02)

The act establishes certain duties of the Ohio Internet Crimes Against Children Task Force. The Task Force began in northeast Ohio with the help of a federal grant from the U.S. Department of Justice.¹² Federal law facilitated the establishment of a national network of coordinated task forces representing state and local law enforcement.¹³ These task forces have certain duties under federal law, such as a duty to engage in proactive investigations, forensic examinations, and effective prosecutions of internet crimes against children, and a duty to develop multijurisdictional, multiagency responses and partnerships to internet crimes against children offenses through ongoing support to other law enforcement agencies.¹⁴

The act requires the Task Force to do all of the following:

- Consistent with its federal duties, coordinate a state network of local law enforcement agencies that assist federal, state, and local law enforcement agencies in investigations, forensic examinations, and prosecutions related to technologically facilitated sexual exploitation of children, internet crimes against children, and victim identification;
- Consistent with available funding, support the state network of law enforcement agencies by funding personnel with agencies who have demonstrated the ability to investigate and prosecute internet crimes against children;
- Support the state network of law enforcement agencies by coordinating and providing investigative training and digital forensic support through on-scene forensic facilities, laboratory computer forensic services, or by funding computer forensic hardware and software licensing to agencies who employ trained computer forensic personnel; and
- Conduct or support internet safety presentations and community outreach events throughout Ohio aimed at educating the public about the dangers of the internet and how to keep children safe while they are online.

Attorney General disbursement of funds

The act requires the Attorney General to use money appropriated to the Task Force to support its operation including equipment, personnel, and training only and for no other purpose. The act also requires that the Attorney General disburse money appropriated for the purposes of the Task Force in the following manner:

¹² Ohio ICAC website, <http://ohioicac.org/en-US/about.aspx>.

¹³ 34 United States Code (U.S.C.) 21112.

¹⁴ 34 U.S.C. 21114.

1. 60% to the Task Force;
2. 20% in coordination with the Task Force, to local internet crimes against children affiliated agencies in good standing with the Task Force; and
3. 20% to the crimes against children initiative within the Office of the Attorney General for investigations, forensic examinations, and prosecutions related to technologically facilitated sexual exploitation of children, internet crimes against children, and victim identification.

Progress report

Annually, by January 31, the Task Force and the Attorney General's office must provide to the General Assembly a summary of the previous calendar year's expenditures and progress in combating Internet crimes against children. They must include in the report annual statistics, including statistics from affiliated agencies, consistent with the reporting requirements of the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention's Internet Crimes Against Children Task Force Program.

AUDITOR OF STATE

Auditing Medicaid providers and managed care organizations (VETOED)

- Would have provided that, until June 30, 2023, the Auditor of State is not responsible for the costs the Auditor incurs when auditing medical assistance recipients (VETOED).
- Would have required the Auditor, until June 30, 2023, to audit Medicaid managed care organizations (VETOED).

Independent auditors

- Removes the Auditor's authority to contract with a public accountant to audit a public office as an independent auditor; the Auditor has continuing authority to contract with a *certified* public accountant.
- Instead of ensuring independent auditors comply with Generally Accepted Auditing Standards as under prior law, requires the Auditor to ensure independent auditors comply with Generally Accepted *Government* Auditing Standards.

Costs of audits

- Allows the Auditor 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 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 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 and requires the Director to develop a schedule identifying the specific tax revenue sources to be used to make the monthly transfers.
- Prohibits the Controlling Board from authorizing additional spending from the Local Government Audit Support Fund.

Audit of Auditor of State's Office

- Allows the Governor and Finance Committee chairpersons to select designees to recommend an accountant for appointment, rather than requiring the Governor and chairpersons to evaluate accountants themselves as under prior law.

- Requires OBM to provide staff services to the Governor and Finance chairpersons or to their designees.

Auditing Medicaid providers and managed care organizations (VETOED)

(Section 701.55)

The Governor vetoed provisions regarding the Auditor of State's authority to conduct audits related to medical assistance programs (Medicaid, the Children's Health Insurance Program, the Refugee Medical Assistance Program, and any other program that provides medical assistance and Department of Medicaid is authorized by state statute to administer). The vetoed provisions would have been in effect until June 30, 2023, and done the following:

1. Provided that the Auditor is not responsible for the costs the Auditor incurs under continuing law when auditing medical assistance recipients;
2. Required the Auditor to audit Medicaid managed care organizations and provide a copy of each such audit to the Governor, Medicaid Director, and Joint Medicaid Oversight Committee.

Independent auditors

(R.C. 117.115 with conforming changes in R.C. 102.02, 117.11, 1724.05, and 1726.11)

Upon request of a local public office under continuing law, the Auditor may contract with an independent auditor to conduct an audit of the local public office. Previously, a public accountant, certified public accountant, or an official governmental audit organization could serve as an independent auditor. The act eliminates the reference to a public accountant, thereby allowing the Auditor to contract with only a certified public accountant or an official governmental audit organization as independent auditors. And, the act requires any independent auditor to comply with Generally Accepted *Government* Auditing Standards (GAGAS) rather than Generally Accepted Auditing Standards (GAAS) as under prior law.

Costs of audits

(R.C. 117.13)

The act allows the Auditor to determine which audit costs to recover from a state agency or local public office. Previously, the Auditor collected 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 act 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 by the act – 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 act requires the Auditor to determine and publish those rates annually instead of establishing those rates by rule as under prior law. The act also requires the rates to take into consideration federal cost recovery guidelines.

Instead of charging a local public office's audited funds as under prior law, the act 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. 117.131 and 131.511)

The act 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 OBM Director 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. The act specifies that appropriations for the Fund must remain at the amount designated by the General Assembly. The Controlling Board is not allowed to authorize additional spending from the fund.

Audit of Auditor of State's Office

(R.C. 117.14)

Continuing law requires an annual audit of the Office of the Auditor of State by an independent accountant. Under prior law, the Governor and Finance Committee chairpersons evaluated and appointed the independent accountant. The act allows the Governor and chairpersons to select designees to *evaluate and recommend* an independent accountant, but the Governor and chairpersons must make the appointment. Additionally, the act requires OBM to provide staff services to the Governor and chairpersons (or their designees) to assist with these duties.

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 act 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 act 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. Former law provided only that a preliminary or final report of an internal audit's findings and recommendations was not a public record until the final report was submitted. The act also clarifies that any internal audit report or work paper that meets the definition of a security record or infrastructure record under continuing law is not a public record.

Expenditure of excess revenue

(R.C. 131.35)

The act changes terminology in the law governing the expenditure of excess money received into certain state funds from which the Controlling Board may make transfers. Prior law required excess "funds" received into those state funds to 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 act, these requirements would apply to "revenue" received into these state funds.

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 act 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.¹⁵

¹⁵ R.C. 105.41 and 123.20, not in the act.

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.

Real estate licenses

- Increases several fees related to the licensing of real estate brokers and salespersons paid to the Division of Real Estate and Professional Licensing.
- Replaces the annual renewal fee for real estate brokers and real estate salespersons with a three-year renewal fee.
- Requires a person seeking a real estate broker or salesperson license to submit to a criminal records check, in addition to other continuing licensure requirements.
- 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.
- Expands the civil enforcement authority of the Superintendent of Real Estate and Professional Licensing relative to oil and gas land professionals.

Real Estate Recovery, 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.

Division of Liquor Control: D-5l liquor permit

- Authorizes the Division of Liquor Control to issue the D-5l liquor permit (for sales of beer and intoxicating liquor in a revitalization district) to a premises that is located in a municipal corporation with less than 10,000 people, provided the municipal corporation is located in a county with more than one million people.

Unclaimed funds

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

Manufacturing Mentorship Program

- Creates the Manufacturing Mentorship Program to expose a 16- or 17-years old minor to manufacturing occupations in Ohio through temporary employment.
- Requires an employer employing a minor under the 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 (1) permitting a minor to operate a tool described above unless the minor is employed under the Mentorship Program, and (2) permitting a minor who is employed under the program to operate a tool prohibited for use by minors of that age under federal and state law.
- Establishes a civil penalty for whoever violates the above prohibitions.
- Prohibits the Director from adopting any rule to prohibit a 16- or 17-year old minor employed 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.

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 act'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.

Fireworks license moratorium

- Extends the moratorium on issuing a fireworks manufacturer or wholesaler license and approving the geographic transfer of those licenses to December 31, 2020.

Mesh crib liners (VETOED)

- Would have removed a prohibition on the manufacture, sale, delivery, or possession of mesh crib liners in the absence of safety standards promulgated by the U.S. Consumer Product Safety Commission (VETOED).

Division of Financial Institutions: multistate licensing system

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

The act authorizes the Superintendent of Financial Institutions to require persons licensed or registered by the Division of Financial Institutions¹⁶ to participate in a multistate licensing system. If the Superintendent chooses to use the system, the Superintendent may establish 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 act expressly allows the Superintendent to set an annual renewal date that is different from the date provided in continuing 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 having two-year licenses.

¹⁶ 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.

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 act, 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.

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.¹⁷

Real estate license fees

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

The act 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	Former Law	The Act
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

¹⁷ R.C. 1345.02, 1345.03, and 1345.031, not in the act.

Fee	Former Law	The Act
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
Floor of foreign real estate dealer's fee for each salesperson employed by the dealer	\$150	\$203

In addition, the act 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	Former – Annual	The Act – 3-Year
Renewal of real estate broker's license	\$60	\$243
Renewal of 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 license criminal records check

(R.C. 109.572 and 4735.143)

One of the requirements under continuing law for a real estate broker or salesperson license is that the person not be convicted of a felony or crime of moral turpitude. The Superintendent of Real Estate and Professional Licensing may, if the Superintendent has reason to believe that an applicant has been convicted of a criminal offense, request the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check of the applicant.

The act requires that every applicant submit to a criminal records check to be licensed as a real estate broker or salesperson. The Superintendent must request BCII, or a vendor approved by BCII, to conduct a criminal records check based on fingerprints the applicant has submitted to BCII. Any fee must be paid by the applicant.

If the applicant discloses on the application that he or she has been convicted of a criminal offense, the applicant may take the examination only after the Superintendent has received the results and has made a determination to disregard the conviction. The Superintendent can disregard the conviction if the applicant has proven to the Superintendent that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant again will violate the laws involved.

If no conviction was indicated on the application and all other licensure requirements are met, the applicant may sit for the examination before the Superintendent receives the criminal records check results. If the applicant receives a passing score and meets the other licensure requirements, the Superintendent must issue a provisional license. If the criminal records check results subsequently confirm that the licensee has no conviction, the provisional status is removed. If it is determined that the licensee has been convicted of a criminal offense, the Superintendent may immediately suspend the license.

The act also requires any entity offering prelicensure education to notify a student, prior to enrollment in a class, (1) that a conviction of a criminal offense may disqualify an individual from obtaining a real estate license and (2) the student's rights to request a determination as to whether such a conviction will disqualify the student.

Real estate services to medical marijuana licensees

(R.C. 4735.18)

The act 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 (1) 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 (2) receiving, holding, or disbursing funds from a real estate brokerage trust account in connection with such a transaction.

Oil and gas land professionals: civil penalties

(R.C. 4735.023 and 4735.052)

The act makes technical corrections to ensure the Superintendent of the Division of Real Estate and Professional Licensing is able to investigate and begin disciplinary proceedings against independent oil and gas land professionals who violate the Real Estate Licensing Law's requirements.

Oil and gas land professionals working as independent contractors (i.e., not as employees) can 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. Continuing law, changed in part by the act, 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 act maintains these provisions, but corrects two cross-references to reference the appropriate enforcement provisions – the oil and gas land professional enforcement provisions, rather than the general provisions.

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, continuing law requires the Real Estate Commission to impose special assessments on brokers and salespersons renewing their licenses.

The act eliminates a tiered structure for assessments and instead requires 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 act 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 prior law, if the Real Estate Appraiser Recovery Fund's balance was less than \$500,000, the Superintendent could 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 act 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 act 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 act 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 act requires the company to provide the appraiser with written notice that explains the reasons for removal and an opportunity to respond in all cases.

D-5I liquor permit

(R.C. 4303.181)

The act modifies the requirements for issuance of a D-5I liquor permit. The D-5I permit authorizes the sale of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption, as well as beer, wine, and mixed beverages for off-premises consumption. The D-5I permit is not subject to the population quota restrictions that apply to regular D-5 permits.

Under continuing law, a D-5I permit may be issued to a premises to which all of the following apply:

- The premises has gross annual receipts from the sale of food and meals that constitute at least 75% of its total gross annual receipts;
- The premises is located within a revitalization district (an area designated by a municipal corporation or township that includes entertainment and other similar facilities);
- The premises is located in a municipal corporation or township in which the number of D-5 liquor permits issued equals or exceeds the population quota limit for those permits that may be issued in the municipal corporation or township; and
- The premises meets one of several population criteria.

The act adds a new population criterion by authorizing the Division of Liquor Control to issue the D-5I permit to a premises that meets the first three criteria and that is located in a municipal corporation with less than 10,000 people, provided the municipal corporation is located in a county with more than one million people.

Unclaimed funds

(R.C. 169.06)

The act allows the Director of Commerce to publish electronically notices of unclaimed funds. Under continuing law, the Director must 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 and publish additional notices.

Manufacturing Mentorship Program

(R.C. 4109.22 and 4109.99)

The act creates the Manufacturing Mentorship Program to expose minors who are 16 or 17 years old to manufacturing occupations in Ohio through temporary employment. 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; and
- 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 Law¹⁸ or rules adopted under the Law.

For purposes of the Mentorship Program, 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 act 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:

- A ten-hour course in general industry safety and health hazard recognition and prevention approved by the U.S. Occupational 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);

¹⁸ R.C. Chapter 4109.

- Instructions on how to operate the specific tools the minor will use;
- 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 act 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 act requires the Director to include a tool on the list if the federal Fair Labor Standards Act¹⁹ (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.

Prohibitions

The act 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.

An employer who violates the above 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 act prohibits the Director from adopting any rule that would prohibit a minor who is 16 or 17 years

¹⁹ 29 U.S.C. 201 *et seq.*

old and employed 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.

Division of Industrial Compliance: building code

(R.C. 121.083 and 3781.10)

The act 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.

Structural steel welding and inspection requirements

(R.C. 3781.40, 3781.06, and 3781.061)

Under the act, a contractor, subcontractor, or construction manager whose workers are welding the structural steel on a construction project must ensure that:

- The workers performing the structural steel welding have been tested by and hold a valid certification from an American Welding Society (AWS) accredited facility or individual.
- All structural steel welds performed for the project are listed in the project's job specifications and meet specifications, guidelines, tests, and other methods used to ensure that all structural steel welds satisfy, 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.

Except as described below, the requirements listed above apply to all construction projects that involve structural steel welding, which, under the act, 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 to have its own 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 Director of Job and Family Services 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.

Penalty

A person who recklessly fails to comply with the act's structural steel welding requirements 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.²⁰

Fireworks license moratorium

(R.C. 3743.75)

The act extends the moratorium on issuing a fireworks manufacturer or wholesaler license and approving the geographic transfer of those licenses from December 31, 2019, to December 31, 2020.

Mesh crib liners (VETOED)

(R.C. 3713.022 and 3713.99)

The Governor vetoed a provision that would have removed a prohibition on the manufacture, sale, delivery, or possession of mesh crib liners in the absence of safety standards promulgated by the U.S. Consumer Product Safety Commission. Under continuing law, the prohibition will take effect April 6, 2020.

²⁰ R.C. 3781.99, not in the act.

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 act 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 does not include soap.²¹

Under continuing law, unless the above exemption applies, 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 in individual practices makeup artistry, which is the application of cosmetics for the purpose of skin beautification, the individual must be registered under that Law.²²

²¹ R.C. 3715.01, not in the act.

²² R.C. 4713.14 and R.C. 4713.01 and 4713.69, not in the act.

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 former 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 former 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 act 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 former law. Formerly, if an applicant had a graduate degree from a mental health counseling program in Ohio, it had to 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, the graduate degree also may be from a program temporarily approved by the Counselor, Social Worker, and Marriage and Family Therapist Board in accordance with rules adopted by the Board.

As discussed below, 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

An applicant for a professional clinical counselor license or a professional counselor license must complete specified training. The act requires an applicant to include participation in a “*clinical* counseling internship” as part of those training requirements. Formerly, an applicant was required to participate in a “counseling internship.”

Licensure by endorsement

The act 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 act requires the applicant to complete at least 750 hours of supervised experience approved by the committee.

Under continuing 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. Subject to the act’s endorsement authority the Board’s professional standards committees also may 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 act requires the Board to establish a schedule of deadlines for biennially renewing the licenses and certificates of registration it issues. (Formerly, a license or certificate expired two years after it was issued.) The act 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 October 17, 2019 (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 that date is valid for more than three years after that date.

License display

(R.C. 4757.13)

The act 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.

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

- Extends eligibility for the motion picture tax credit to certain live theater productions and production contractors.
- Requires that production companies and production contractors be registered with the Secretary of State as a condition of receiving the credit.
- Adds post-production, advertising, and promotional expenses to the kinds of expenditures for which the credit may be claimed.
- Disqualifies productions that do not begin within a specified period after being certified as eligible for the credit.
- Stipulates that tax credit certificates are to be awarded in two rounds – in July and January – each fiscal year.
- Requires each round's applications to be ranked on the basis of the economic and workforce development impact of the production and granted tax credits in the order of the ranking.
- Terminates a tax credit recipient's authority to transfer its right to claim the credit to a third party.

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.

Sports event grant program

- Authorizes the Development Services Agency to award a sports event grant on the basis of an Ohio sporting event that had been held in Ohio within the two preceding years.

Opportunity zone investment credit

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

The act 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.”²³ Once the zone is certified by the Secretary 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.²⁴

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.²⁵

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 act 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

²³ 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.

²⁴ 26 U.S.C. 1400Z-2. To qualify, the reinvestment must be made within 180 days after the gain is realized.

²⁵ 26 U.S.C. 1400Z-2.

an opportunity zone fund that in turn holds 100% of its invested assets in opportunity zones in Ohio (referred to in the act as an “Ohio qualified opportunity fund”). Unlike the federal tax incentives, the act’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 the taxpayer makes the investment. 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 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 must 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 act 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 act 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 act 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 act 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 act modifies an existing income tax credit for investments in smaller businesses, principally by reducing the total biennial limit on the credit allotment. Under prior law, the amount of the credits awarded each fiscal biennium was limited to \$100 million; the act reduces the limit to \$50 million.

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

Prior law also required 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 have done 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 act 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 prior law, the payroll qualification referred to the pay of “new employees,” but expressly allowed pay for retained employees to count as pay for new employees. The act 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 act also modifies the administration of the credit. As under former law, taxpayers must apply to DSA to qualify for the credit, or the business may apply on a taxpayer's behalf. The act 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 former law the right to claim a credit was represented by a "certificate," which could be used to claim the tax credit once the investment's required two-year holding period concluded, the act 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 after an applicant provides DSA with all documentation needed to demonstrate that a business satisfies the qualifications.

Under continuing law, 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 act's changes apply to investments made on or after July 1, 2019.

Motion picture tax credit

(R.C. 122.85, 107.036, 5726.98, 5733.98, 5747.98, and 5751.98; Section 757.250)

The act modifies the motion picture tax credit – a refundable credit for companies that produce all or part of a motion picture in Ohio and incur at least \$300,000 in Ohio-sourced production expenditures. The credit equals 30% of the company's Ohio-sourced expenditures for goods, services, and payroll involved in the production and may be claimed against the commercial activity tax (CAT), the financial institutions tax (FIT), or the personal income tax. A company seeking the credit must first apply to the Director of Development Services for certification of the project as a "tax credit-eligible production." Then, upon completion of the project, the company must hire an independent certified public accountant to compile a report of the company's Ohio-sourced expenditures and apply to the Director for a tax credit certificate based on that amount (or the amount of expenditures estimated in the company's initial application, whichever is less).

Broadway theatrical productions

The act extends eligibility for the motion picture tax credit to "Broadway theatrical productions" that are directly associated with New York City's Broadway Theater District and are rehearsed or performed by a professional cast and crew at a qualified production facility – an Ohio facility that is used in the development or presentation to the public of live stage theater. Such a theatrical production qualifies for the credit if (1) the production is scheduled for presentation in New York City's Broadway Theater District after it is performed in Ohio (a "pre-Broadway production"), (2) the production is scheduled to be performed in Ohio for more than five weeks with an average of at least six performances per week (a "long run production"), or (3) the activities comprising the technical period of the production are conducted in Ohio before the beginning of a performance tour (a "tour launch").

The procedures for certifying Broadway theatrical productions as "tax credit-eligible" and awarding a tax credit certificate upon the completion of the production are mostly the

same as those that apply to motion pictures. However, the act makes a few adjustments to the information that is required to be submitted with the application for certification of the project (see, “**Application requirements,**” below).

Production contractors

The act also extends eligibility for the credit to companies that are involved in a motion picture certified as a tax credit-eligible production but are not themselves the production company. These “production contractors” receive a credit based on Ohio-sourced expenditures incurred in performing services under contract with the production company related to the motion picture such as editing, postproduction, photography, lighting, cinematography, sound design, catering, special effects, production coordination, hair styling or makeup, art design, or distribution.

Production contractors are included in the same credit application and evaluation process as the production company producing the motion picture so no separate credit application or progress reporting on the motion picture is required. Following completion of the motion picture, each involved production contractor receives a tax credit certificate – separate from the tax credit certificate awarded to the production company – for a credit equal to 30% of the contractor’s Ohio-sourced expenditures paid or incurred performing services related to the motion picture (or the amount of such expenditures estimated in the production company’s initial application, whichever is less).

Registration with Secretary of State

The act requires, as a condition of receiving the motion picture tax credit, that a production company or production contractor first be registered with the Secretary of State.

Eligible expenditures

The act broadens the types of expenses upon which the credit is based to include postproduction, advertising, and promotional expenditures. Under prior law, only expenditures for goods, services, and payroll used directly for the production itself could be included in computing the amount of the credit and in meeting the \$300,000 minimum expenditure threshold. The act requires the Director to adopt rules as to the specifics of what constitutes “postproduction” activities.

Application requirements

The act makes several adjustments to the information that is required to be submitted for a motion picture or Broadway theatrical production to be certified as eligible for the credit. All applicants are required to submit an estimate of the amount of state and local taxes that will be generated from the project and of the project’s overall economic impact. Furthermore, in addition to the list of preproduction and production dates required under continuing law, the application must include a list of the post-production dates associated with the motion picture or Broadway theatrical production.

If the application concerns a Broadway theatrical production, the application need not include the percentage of the production “being shot in Ohio” or the shooting script. In lieu of submitting an address for an Ohio production office, the company may provide the address of

the qualified production facility at which the Broadway theatrical production will be rehearsed or performed. In addition, the application must include a list of each scheduled performance of the production at that facility.

If the application concerns a motion picture, it must state the name and address of each production contractor that is contracted to perform services involving the motion picture and the amount of eligible expenditures paid or incurred under the contract.

Rescinding certification

The act requires the Director to rescind certification of a production if the production process does not begin within a specified period. The production process for motion pictures and Broadway theatrical productions that are certified as credit-eligible on or after the act's 90-day effective date, October 17, 2019, must begin within 90 days of such certification unless the production company demonstrates that the delay is due to unforeseeable circumstances beyond its control or due to action or inaction by a government agency. The production process for previously certified motion pictures must begin within one year of such certification or before October 17, 2019, whichever is later.

Continuing law requires production companies to submit "sufficient evidence of reviewable progress" within 90 days of the eligibility certification and any time thereafter at the Director's request. The Director may (but is not required to) revoke a production's eligibility if a company fails to report sufficient progress. If eligibility is revoked, the company may reapply for the eligibility certification.

Awarding tax credits

The act requires the Director to award tax credit certificates in two rounds each fiscal year. The first round of applications would be approved by July 31, and the second round would be approved by January 31. The amount of credits awarded in the first round of applications is limited to \$20 million plus any credit allotment that was not used in the previous fiscal year. Under continuing law, the maximum amount of credits that may be awarded in any fiscal year is \$40 million.

For each round, the Director must rank the applications on the basis of the extent of positive economic impact a production would have and the effect of the production on developing a permanent Ohio workforce in the motion picture or live theater industries. Priority must be given to television series and miniseries. For the purposes of ranking applications, the "economic impact" of a production is determined based on the production company's total expenditures in Ohio that are directly associated with the production. The production's impact on developing a permanent Ohio workforce in the motion picture and live theater industries is determined "first by the number of new jobs created and second by the amount of payroll added" for Ohio employees.

After ranking the applications, the Director must award tax credits to productions in the order of their ranking, starting with the productions that have the greatest economic and workforce development impact. The act requires the Director to adopt rules prescribing a schedule and deadlines for applications to be submitted and reviewed.

Prior law specified that applications concerning television series and miniseries were to be prioritized, but did not otherwise specify how and when certificates were to be awarded. Based on the Development Services Agency's website, it appears that the Director awarded credits whenever they were available (i.e., when the annual credit cap resets) in the order in which applications were received.²⁶

Transferability of credits

The act terminates the authority for a credit recipient to transfer all or part of the credit to another person. Under prior law, a motion picture company was permitted to transfer the authority to claim the credit to a third party only if the company provided certain details of the transfer to the Director. A transferred credit had to be claimed by the transferee for the same tax period for which the company could have claimed the credit. A motion picture company was permitted to divide portions of a transferred credit between different transferees but could not transfer the same portion of the credit to more than one transferee.

The act specifies that credits transferred to a third party before the act's 90-day effective date, October 17, 2019, may continue to be claimed to the extent authorized under that transfer.

Application of changes

The act's modifications to the process of ranking applications and awarding credits – including the requirement that credits be awarded in two annual cycles – apply beginning with the 2021 fiscal year. The Director is required to adopt rules necessary to implement those modifications on or before the first day of that fiscal year. The other changes made by the act apply to productions that are certified as tax credit-eligible productions on or after the act's 90-day effective date, October 17, 2019.

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 act adds to the list of specified amendments that will not bring a CRA under the newer state law requirements. Specifically, the act 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.

²⁶ Ohio Development Services Agency, "Ohio Film Office – Tax Credit Overview and Frequently Asked Questions," <https://development.ohio.gov/filmoffice/Incentives.html>.

Rural Industrial Park Loan Fund

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

The act reinstates the Rural Industrial Park Loan Fund and appropriates \$25 million to it from the Facilities Establishment Fund. Under the act, 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.²⁷

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 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.²⁸

Sports event grant program

(R.C. 122.121)

Under continuing law, grants may be awarded by the Director of Development Services to counties, municipalities, or nonprofit organizations acting on behalf of a county or municipality to support the selection of a site for a national or international sports competition. Grants may be used solely to defray the county's, municipality's, or local organizing committee's cost to host the event pursuant to an agreement with the event's sponsor.

Under prior law, a sporting event was disqualified for a grant if it has been held in Ohio in either of the last two years. The act removes the two-year restriction, allowing grants to be awarded even for events that have been held in the two-year period preceding the new event.

²⁷ See Am. Sub. H.B. 1, 128th General Assembly (2009) and Am. Sub. H.B. 64, 131st General Assembly (2015).

²⁸ R.C. 122.24, not in the act.

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-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.

Information about residential services

- 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.
- Requires a county DD board, when contacted about residential services, to provide information about the different types of residential services that are offered, including ICF/IID and home and community-based services.
- Requires a county DD board to inform an individual of the option to receive ICF/IID services before placing the individual on a waiting list for home and community-based services.

Right to receive ICF/IID services from willing provider

- 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.
- Permits individuals with developmental disabilities who are eligible for both ICF/IID and home and community-based services to choose which services to receive.
- Requires the Department to determine whether county DD boards violate these rights.

County DD boards' waiting lists

- Provides that a county DD board's duty to establish a waiting list for home and community-based services applies if the board determines that available resources are insufficient to enroll all individuals who have been assessed as needing the services *and have requested the services*.

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 Advisory Board

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

Disciplinary actions 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.
- Authorizes the DD Director to issue a summary order suspending a supported living certificate holder's authority to provide supported living to one or more identified individuals when there is an immediate danger of causing serious injury or death.

Medicaid rates for ICF/IID services

- Provides that the mean FY 2020 and FY 2021 Medicaid rates for all 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.
- Delays the addition of the quality incentive payment to the Medicaid payment rates, for ICFs/IID, from July 1, 2020, to July 1, 2021.
- Requires the DD Director to establish a workgroup to recommend new quality indicators to be used to determine ICF/IIDs' quality incentive payments.
- Eliminates the current quality indicators and instead requires that new quality indicators be created based on the workgroup's recommendations.
- Modifies the formula to be used to determine the relative weight point value used in determining an ICF/IID's quality incentive payment.
- Reduces ICFs/IID direct support personnel payments once they begin to receive quality incentive payments.
- Permits the Department to pay an ICF/IID a rate add-on for outlier services.

- Requires that to be eligible to receive outlier ICF/IID services, an individual must be a Medicaid recipient, be determined to need intensive behavioral support services, and meet any other requirements specified by the Department.
- Requires the Department to negotiate the amount of the rate add-on with the Department of Medicaid.

ICF/IID franchise permit fee

- Increases the rate of the franchise permit fee imposed on ICFs/IID from \$18.02 to \$23.95 for FY 2020 and to \$24.89 for each fiscal year thereafter.
- Provides for the franchise permit fee to be assessed quarterly instead of annually.
- Provides that an ICF/IID's franchise permit fee for a quarter is to equal the franchise permit fee rate multiplied by the number of the ICF/IID's inpatient days for the quarter.

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 in 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 (VETOED)

- Would have required that the Medicaid rate for homemaker/personal care services provided by direct support professionals under a Medicaid waiver administered by the Department be \$12.82 per hour for calendar year 2020 and \$13.23 per hour for the first half of calendar year 2021.

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.

Innovative pilot projects

- Permits the DD Director to authorize, in FY 2020 and FY 2021, innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards.

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 councils

- Reduces to seven (from 13) the number of a citizen's advisory council members to be appointed for an institution under the Department's control.
- 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.

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.

County DD board 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 act 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 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 any reasonable accounting action the Director of Developmental Disabilities (DD Director) considers necessary.

If a county DD board fails to submit a five-year projection, its superintendent must provide an explanation. If the Department finds the explanation to be sufficient, it may grant an extension. If not, or if no explanation is submitted, the Department may conduct further reviews to complete the projection at full cost to the county DD board or revoke the superintendent's certification.

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 or may revoke the superintendent's certification.

Additional assessments of a board's fiscal condition

The act 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 90 days.

Annual plans

The act requires county DD boards to develop and submit to the Department annual plans, instead of three-year plans. The annual plans 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 act generally applies other provisions of continuing law pertaining to the former three-year plans to the new 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 act 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.

Information about residential services

(R.C. 5126.047, primary, 5123.01, 5123.193, 5126.042, and 5126.046)

Information available online

The act requires the 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 must provide the Department with current and accurate vacancy information in accordance with procedures that the Director must establish.

County DD board duties when contacted about services

The act requires a county DD board, when an individual with a developmental disability or a person acting on the individual's behalf contacts the board about residential services, to inform the individual or person about the different types of programs and services offered as residential services, including both ICF/IID and home and community-based services. When informing the individual or person about ICF/IID and home and community-based services, the county DD board, at a minimum, must both:

- Provide a copy of the Department's pamphlet describing all of the items and services covered by Medicaid as ICF/IID and home and community-based services; and
- Provide assistance in accessing the searchable database of residential facility vacancies that the act requires the Department to make available on its website.

If an individual with a developmental disability or a person acting on the individual's behalf contacts a county DD board to express interest in ICF/IID services, the board must provide contact information for all ICFs/IID in the county that the board serves and contiguous counties.

County DD board duty when placing individual on waiting list

The act requires a county DD board to inform an individual of the option to receive ICF/IID services before placing the individual on a waiting list for home and community-based services. A county DD board also must provide the individual with the contact information for all ICFs/IID located in the county the board serves and contiguous counties and direct the individual to the searchable database of residential facility vacancies that the act requires the Department to include on its website.

Right to receive ICF/IID services from willing provider

(R.C. 5126.046, primary and 5123.044)

The act 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. The act requires the Department to determine whether a county DD board violates these rights.

County DD boards' waiting lists

(R.C. 5126.042)

The act revises a requirement that a county DD board establish a waiting list for home and community-based services available under Medicaid waivers administered by the Department if the board determines that available resources are insufficient to enroll all individuals who are assessed as needing the services. The act provides that a county DD board is required to establish a waiting list if it determines that available resources are insufficient to enroll all individuals who have been assessed as needing the services *and have requested the services*.

Continuing law requires the Department to adopt rules regarding county DD boards' waiting lists for home and community-based services. Prior law required that the rules establish criteria that a county board had to use to determine the date an individual was assessed as needing the services. The act requires that the rules establish criteria a county DD board must use to determine the date an individual who has been assessed as needing the services *requests* the services.

Criminal records checks for conditionally employed applicants

(R.C. 5123.081)

The act 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 board. Former law required a criminal records check, but did not require the hiring entity to request it before the conditional employment began.

Ohio STABLE Account Program Advisory Board

(R.C. 113.55 and 113.56)

The act changes the name of Ohio's ABLÉ Account Program Advisory Board to the STABLE Account Program Advisory Board. Under federal law, eligible individuals with disabilities may be designated as a beneficiary of an ABLÉ 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 Board is responsible for reviewing the work of the Treasurer of State as it relates to Ohio's program.

Disciplinary actions against supportive living certificates

(R.C. 5123.166, primary, 5123.0414, and 5123.1612)

Ohio 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.²⁹ 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 provide supported living or begin to provide supported living. The act adds that the DD Director also may suspend a certificate holder's authority to expand or add supported living.

Generally, these actions must be taken in accordance with the Administrative Procedure Act (R.C. Chapter 119), which requires prior notice and an opportunity for a hearing. However, preexisting law permits the DD Director to summarily suspend (i.e., without first providing notice and an opportunity for a hearing) a certificate holder's authority to provide supported living when the provider's failure to meet certification standards represents a pattern of serious noncompliance or creates a substantial risk to the health or safety of an individual who is receiving or will receive supported living from the provider. The act modifies the following procedures that apply to summary suspensions:

--It requires the DD Director to send a provider notice of the order by certified mail, instead of registered mail as under prior law;

--It requires that the hearing date be within 30 days after receipt of the hearing request only if a provider's written, timely request includes a request for a hearing within that time.

The act also authorizes summary suspensions in an additional circumstance, and specifies different procedures that apply to those summary suspensions. Under the act, the DD Director may issue a summary order suspending a supported living certificate holder's authority to provide supported living if the DD Director determines that (1) the certificate holder's noncompliance with one or more requirements of state law or rules causes or presents an immediate danger of causing serious injury, harm, impairment, or death to an individual and (2) the certificate holder does not remove the conditions that caused or presented those

²⁹ R.C. 5123.16, not in the act.

conditions before the order is issued. The order is to apply only to individuals the DD Director determines experienced or are in immediate danger of experiencing serious injury, harm, impairment, or death. The order takes immediate effect upon notification to the certificate holder. The county DD board for the county where the individuals identified in the order reside must arrange for an alternative method of providing services to them until the order is lifted.

The DD Director must notify the certificate holder and the county DD board of the order immediately, by telephone, after issuing it. The Director also must provide written notice by electronic or regular mail. Both notices must inform the certificate holder of the right to request a reconsideration. The request may be made within 24 hours after receiving the telephone notice. The Director must reconsider the order within 24 hours after receiving a reconsideration request. The reconsideration may be conducted in person, by telephone, or by review of the certificate holder's written submission that accompanies the request, whichever method the certificate holder chooses. The Director must issue a decision within 24 hours following the conclusion of the meeting, telephone conversation, or review.

The DD Director must lift the order if the Director determines that the certificate holder has removed the conditions that led to the order and that the conditions will not recur.

The act provides that the order does not constitute an action under continuing law that authorizes the DD Director to take disciplinary action against a supported living certificate holder and is not subject to that law or the Administrative Procedure Act. The DD Director's order under this provision of the act does not preclude the Director from taking other action against a certificate holder authorized by that continuing law.

Medicaid rates for ICF/IID services

(R.C. 5124.15, 5124.24, and 5124.26; Sections 261.230 and 601.03 to 601.05, amending Section 261.168 of H.B. 49 of the 132nd G.A.)

Under continuing law, an ICF/IID's Medicaid payment rate is the higher of two rates determined under older and newer formulas. The older formula predates H.B. 24 of the 132nd General Assembly, which enacted the newer one. The older formula expires beginning with FY 2022, at which time an ICF/IID's rate is to be the rate determined under the newer formula.

Revisions to older formula

The act 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.³⁰

³⁰ 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

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. Under prior law, the target amount was \$290.10 or, at the Department's sole discretion, a larger amount. If an adjustment was to be made, it had to equal the percentage by which the mean total per Medicaid day rate was greater or less than the target amount. The act 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 act 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.

Revisions to newer formula

The act revises parts of the newer formula that is used to determine the Medicaid payment rates of ICFs/IID. The parts concern a direct support personnel payment and a quality incentive payment.

Under prior law, an ICF/IID was to receive a direct support personnel payment equal to 3.04% of its per Medicaid day direct care costs until FY 2021. An ICF/IID was to begin receiving a quality incentive payment beginning with that fiscal year. The act provides for direct support personnel payments to continue in FY 2021 and thereafter. However, beginning in FY 2022, direct support personnel payments are to be reduced to 2.04% of an ICF/IID's per Medicaid day direct care costs. Also, the act provides for quality incentive payments not to begin to be paid until FY 2022.

The amount of an ICF/IID's quality incentive payment is to be based in part on the number of points it earns for meeting quality indicators. Prior law established 13 quality indicators. The act eliminates those quality indicators and instead requires that the quality indicators be based on recommendations contained in a report to be issued by the ICF/IID Quality Indicators Workgroup that the act requires the DD Director to establish. The workgroup is to consist of at least one representative from each of the following as appointed by the Director:

- The Department;

been determined by the Department to be at risk of admission to a developmental center. (R.C. 5124.01(OO)(2), not in the act.) The modifications to the older formula do not apply when determining the Medicaid payment rate of an ICF/IID in peer group 3-B.

- The Ohio Health Care Association;
- The Ohio Provider Resource Association;
- The Arc of Ohio;
- The Values of Faith Alliance;
- The Ohio Association of County Boards of Developmental Disabilities.

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

Not later than December 31, 2019, the workgroup must submit to the DD Director a report containing recommended quality indicators. In making its recommendations, the workgroup must:

- Recommend not more than five quality indicators;
- Recommend quality indicators that address aspects of ICF/IID services that individuals receiving services, their families, and their guardians consider to be important;
- Recommend quality indicators that can be calculated using data the Department already collects or that the Department can collect with minimal additional administrative burden on ICFs/IID;
- Consider utilizing a consumer satisfaction survey for one or more of the quality indicators and consider whether the National Core Indicators could be used for this purpose or if a new survey should be developed; and
- Consider whether any quality indicators that the workgroup recommends should be adjusted for acuity and whether to recommend different quality indicators for ICFs/IID of different sizes or serving different populations.

The workgroup ceases to exist when it submits its report.

Continuing law provides for the amount of an ICF/IID's quality incentive payment to be the product of (1) the relative weight point value and (2) the number of points the ICF/IID earns. The act revises one of the steps to be used to determine the relative weight point value. Under prior law, the Department was to determine the amount equal to 3.04% of the direct care costs of all ICFs/IID as part of the process of determining the relative weight point value. The act reduces this to 1%. As a result, the relative weight point value is to be determined as follows:

1. Determine for each ICF/IID the product of (1) the number of its inpatient days and (2) the number of points it earned for meeting quality indicators;
2. Determine the sum of all of the products determined under (1) for all ICFs/IID;
3. Determine the amount equal to 1%, instead of 3.04%, of the direct care costs of all ICFs/IID;
4. Divide the amount determined under (3) by the sum determined under (2).

Outlier services rate add-on for intensive behavioral support services

Continuing law permits the Department to pay an ICF/IID a separate rate add-on for ventilator-dependent outlier ICF/IID services. The act also permits the Department to pay a separate rate add-on for outlier ICF/IID services provided to residents identified as needing intensive behavioral support services. The Department is to negotiate with the Department of Medicaid the amount of the new rate add-on, if any, or the method by which that amount is to be determined.

Payment of the new rate add-on is conditioned on an ICF/IID applying for it and the Department approving the application. The Department is permitted to approve an application if (1) the ICF/IID submits to the Department a best practices protocol for providing the outlier ICF/IID services and the Department determines that the protocol is acceptable and (2) the ICF/IID meets all other eligibility requirements for the rate add-on to be established in the Department's rules. An ICF/IID that receives approval must provide the services in accordance with the best practices protocol and requirements regarding the services to be established in the Department's rules.

The act provides that a resident is qualified to receive the outlier ICF/IID services if the resident is a Medicaid recipient, needs intensive behavioral support services, and meets all other eligibility requirements to be established in the Department's rules.

ICF/IID franchise permit fee

(R.C. 5168.60, 5168.61, 5168.62, 5168.63, and 5168.64; Section 812.20)

Continuing law imposes a franchise permit fee on ICFs/IID. The act increases the franchise permit fee rate from \$18.02 to \$23.95 for FY 2020 and to \$24.89 for FY 2021 and thereafter.

Under prior law, the franchise permit fee was assessed on a yearly basis and determined as follows:

1. Multiply an ICF/IID's Medicaid-certified capacity on the first day of May of the calendar year in which the assessment was determined by the number of days in the fiscal year for which the fee was assessed;
2. Multiply the product determined under (1) by the franchise permit fee rate.

The act provides for the franchise permit fee to be assessed quarterly instead of annually. As a result, the fee is to be determined by multiplying the franchise permit fee rate by the number of an ICF/IID's inpatient days for a quarter. Each ICF/IID is required by the act to submit to the Department a monthly report containing the number of its inpatient days for that month. A report is due not later than fifteen days after the last day of the month for which it is submitted. Reports must be submitted in a manner the Department is to prescribe. The Department is permitted to review the data included in a report for accuracy. If an ICF/IID fails to submit a report for a month, the number of its inpatient days for that month is to be determined by multiplying the ICF/IID's Medicaid-certified capacity by the number of days in the month.

Under prior law, the Department was required to determine the amount of each ICF/IID's annual franchise permit fee not later than the 15th day of each August and notify each ICF/IID of the amount not later than the first day of each September. The act requires instead that the Department notify each ICF/IID of the amount of its quarterly fee not later than the last day of each October, January, April, and July. Although the fee was formerly assessed annually, ICFs/IID were required by prior law to pay the fee in quarterly installment payments not later than 45 days after the last day of each September, December, March, and June. The act requires that ICFs/IID pay their quarterly fees not later than 45 days after the last day of each October, January, April, and July. The act makes conforming changes to reflect its change from an annual to a quarterly fee.

County share of nonfederal Medicaid expenditures

(Section 261.130)

The act 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 it determines is eligible for its services. Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

County subsidies used for nonfederal share

(Section 261.200)

The act 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 act 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,³¹ 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 (VETOED)

(Section 261.220)

The Governor vetoed a provision that would have required that the Medicaid payment rate for homemaker/personal care services provided during calendar year 2020 by direct support professionals under a Medicaid waiver administered by the Department of Developmental Disabilities be \$12.82 per hour. The rate for such services provided during the first half of calendar year 2021 would have been set at \$13.23 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 act 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.

Innovative pilot projects

(Section 261.160)

For FY 2020 and FY 2021, the act permits the DD Director to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards. Under the act, a pilot project may be implemented in a manner inconsistent with the laws or rules governing the Department and county DD boards; however, the Director cannot authorize a pilot project to

³¹ 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.

be implemented in a manner that would cause Ohio to be out of compliance with any requirements for a program funded in whole or in part with federal funds. Before authorizing a pilot project, the Director must consult with entities interested in the issue of developmental disabilities, including the Ohio Provider Resource Association, Ohio Association of County Boards of Developmental Disabilities, Ohio Health Care Association/Ohio Centers for Intellectual Disabilities, the Values and Faith Alliance, and ARC of Ohio.

Central intake/referral system for home visiting programs

(R.C. 3701.611)

Under law enacted in 2016 by S.B. 332 of the 131st 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.³² The Department of Developmental Disabilities is the lead agency that administers this federal grant program in Ohio.³³

The act 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 act 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.

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

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

The act 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 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 councils

(R.C. 5123.092; Section 751.10)

The act reduces to seven (from 13) the number of persons to be appointed as members of a citizen's advisory council, which continuing law requires to exist for each institution under the Department's control. The reduction in membership is to be achieved by not filling vacancies as they arise.

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

The act designates an institution's managing director as the individual responsible for nominating persons to fill vacancies on a council. Under former law, nominations were made by the remaining council members. The act eliminates a provision that permitted removal of a member based on several successive, unexcused absences from council meetings.

Employment First Task Force

(R.C. 5123.023)

The act 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. Formerly, the Director was permitted but not required to establish this Task Force.

The act also removes sunset provisions that would have eliminated the Task Force on January 1, 2020.

Interagency Workgroup on Autism

(R.C. 5123.0419)

The act 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. Formerly, the Director was permitted but not required to establish this Workgroup.

Workgroup members' travel expenses

(R.C. 5123.0424)

The act 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.

DEPARTMENT OF EDUCATION

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 payments for FY 2019.
- Requires the Department to make an additional payment to each city, local, or exempted village school district, with at least 50 enrolled students, that experiences an average annual percentage change in its enrollment between FY 2016 and FY 2019 that is greater than zero.
- 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 continuing 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 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 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 after the end of each fiscal year describing the initiatives on which the district's or school's student wellness and success funds were spent.

Funding adjustments for 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.

Per-pupil guarantee (VETOED)

- Beginning with FY 2022, would have guaranteed each city, local, and exempted village school district at least as much funding per pupil as the statewide per pupil amount paid for chartered nonpublic schools in Auxiliary Services funds and for administrative cost reimbursement (VETOED).

Funding adjustment for career-technical education

- Requires the Department to adjust the amounts paid to certain school districts for FY 2020 and FY 2021 to account for the decrease in career-technical education students served by a city, local, or exempted village school district and the corresponding increase in students served by a joint vocational school district beginning in FY 2020.

School bus purchase assistance

- Requires the Department of Education, in partnership with the Department of Public Safety, to develop a program to provide school bus purchase assistance, and to report to the General Assembly by January 31, 2020, how the program will operate.

School climate grants

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

Preschool funding, Montessori community schools

- Requires the Department to pay each community school that operates a preschool program using the Montessori method as its primary method of instruction an amount equal to the formula amount for FY 2019 (\$6,020) for each student younger than age four.

Quality Community School Support Program

- Establishes the Quality Community School Support Program, under which certain “community schools of quality” may receive additional per pupil payments.

Funding for groups of STEM schools

- Requires the Department to pay all funds for each STEM school that operates within a group directly to the governing body of the group, and requires the governing body to distribute to each STEM school within the group the full amount determined by the Department for that school.
- Requires the Department to assign a separate internal retrieval number to each STEM school within a group.

Studies and reports

- 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.
- Requires the Department to 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.
- Requires the Department to conduct separate studies of economically disadvantaged students and preschool education by December 31, 2020.

High School Graduation and Testing

High school graduation requirements

- Beginning with the class of 2023, requires students enrolled in public and chartered nonpublic schools to qualify for a high school diploma by attaining a competency score on the English language arts II and Algebra I end-of-course exams and earning two state diploma seals.
- Permits students who do not attain a competency score on the English language arts II or Algebra I end-of-course exams to qualify for a high school diploma using an alternative demonstration of competency.
- Requires the Department, in consultation with the Chancellor of Higher Education and the Governor’s Office of the Workforce Transformation, to determine a competency

score on the English language arts II and Algebra I end-of-course exams by March 1, 2020.

- Requires the State Board of Education to develop a system of state diploma seals for the purpose of allowing students to qualify for a high school diploma.

At-risk students

- Requires each public school and chartered nonpublic school, by June 30, 2020, to adopt a policy regarding students who are at risk of not qualifying for a high school diploma.
- Specifies that a policy must include criteria and procedures for identifying at-risk students and a process for providing written notification to the parent, guardian, or custodian of at-risk students.
- Requires each district or school to assist at-risk students with additional instructional and support services.

Graduation plans

- Stipulates that each district or school must develop, and subsequently update, a graduation plan for every student enrolled in grades 9-12 and that the plan must be used to help identify at-risk students.

Recommendations regarding students retaking grade 12

- Requires the Superintendent of Public Instruction, in collaboration with the Chancellor and the Office of Workforce Transformation, to establish a committee to develop policy recommendations regarding students who completed grade 12, but did not qualify for a high school diploma.
- Requires the committee to report its recommendations to the State Board and the General Assembly by October 1, 2020.

Changes to end-of-course exams

- Eliminates the end-of-course exams for English language arts I and, if a federal waiver is received, geometry.
- Specifies students must complete the English language arts II, Algebra I, science, American history, and American government end-of-course exams, but only the English language arts II and Algebra I end-of-course exams are required for graduation.
- Requires the state Superintendent or designee, after the State Board determines the five ranges of scores for the end-of-course exams, to conduct a public presentation before the House and Senate standing committees that consider primary and secondary legislation.
- Prohibits the State Board from setting a new minimum cumulative performance score for the end-of-course exams after October 17, 2019.

- Prohibits requiring a student to retake the English language arts II and Algebra I end-of-course exams in grades 9-12 if the student received a proficient score or higher, or achieved a competency score, prior to grade 9.

State Report Cards

Value-added progress dimension

- Changes the grading scale used to determine letter grades assigned for the value-added progress dimensions on the report card.
- Permits the State Board to award a district or building an overall value-added progress dimension grade of “A” if the grades for the district or building’s subgroup value-added dimension score is a “C” or higher, instead of a “B” or higher as under prior law.

Preliminary data and community schools at risk of closure

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

Amendment to data for report card calculations

- Requires the Department to accept an amendment to data submitted by a school district for the calculation of the 2018-2019 report card, if there are extenuating circumstances and if the district provides adequate information to explain and support the amended data to the Department by August 10, 2019.

Study committee

- Establishes a study committee to evaluate how performance measures, components, and the overall grade on the state report card are calculated and to report its findings to the General Assembly by December 15, 2019.

Dropout recovery school report cards

- Specifies that the state test passage rate measure on the dropout recovery report card must include the percentage of 12th grade students who have attained the “designated” passing score on all high school assessments or the “cumulative” performance score on the end-of-course exams, whichever applies.
- Requires the Department of Education to reissue 2017-2018 and 2018-2019 overall ratings for each dropout recovery community school using the new state test passage rate measure and provides a limited exemption from closure based upon the reissued ratings.

Study committee, dropout recovery school report cards

- 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 models: blended learning, portfolio learning, or credit flexibility.

- Requires the State Board to submit the committee’s recommendations to the General Assembly by April 17, 2020.

Community Schools

Community school mergers

- Establishes a procedure by which two or more community schools may merge, which 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 a community school ineligible to participate in a merger if it (1) has received certain failing grades on one of two most recent report cards or (2) has been notified of the sponsor’s intent to terminate or not renew the school’s sponsorship contract.

Sponsor evaluations

- Decreases the frequency of the evaluation of any community school sponsor rated “effective” or “exemplary” for three or more consecutive years to once in each three-year period.
- Requires the Department to recalculate the rating for the 2017-2018 school year for the sponsor of a dropout recovery community school that itself receives a recalculated rating for that school year based on the act’s revised test passage report card measure.
- 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 information used to determine “adherence to quality practices” and “compliance with laws and rules” under continuing law.

Finding for recovery verification

- Limits a community school sponsor’s duty to annually verify that the Auditor of State has not issued findings for recovery against specified persons to only those who have responsibility for fiscal operations or the authorization to spend money on behalf of a school.

Sponsor assurances

- Reduces the filing frequency for sponsor opening assurances from once each year to once prior to the opening of a school’s first year of operation and, for brick-and-mortar schools, once more prior to the opening of operations from any new building.

Conversion schools reclassified as “start-up”

- Reclassifies 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.

Community school closure criteria

- Changes the number of years of specified underperformance necessary for closure of community schools (including dropout recovery schools) from two of the three most recent school years to three consecutive school years.

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 (PARTIALLY VETOED)

- Requires the Department each year, to publish separate lists regarding community school closures, community schools at risk of closure, and “challenged” school districts.
- Would have required the lists be published by August 31 (VETOED).

Scholarship Programs

Educational Choice (Ed Choice) scholarship

- Specifies that if the number of applicants for an Ed Choice scholarship for a school year exceeds 90% of the maximum number prescribed by statute, the Department must increase the limit by 5%.
- Expands high school eligibility for Ed Choice scholarships.
- Accelerates the phased in eligibility for income-based Ed Choice scholarships to cover all grade levels, K-12, beginning with the 2020-2021 school year.
- Revises the method for computing a student’s Ed Choice scholarship by permitting the Department to subtract only tuition discounts for which all students attending the student’s nonpublic school may be eligible.
- Beginning with the 2020-2021 school year, requires the Department to conduct an annual priority application period for Ed Choice scholarships that begins on February 1 and runs for at least 75 days.
- Requires the Department to continue awarding scholarships after the priority application period ends, prorating the amount if the student receives a scholarship after the school year begins, and in the case of income-based scholarships, award them only if appropriated funds remain available.

Cleveland scholarship applications

- Requires the Department, 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.

Other Provisions

Academic distress commissions – moratorium

- Prohibits the state Superintendent from establishing any new academic distress commissions until October 1, 2020.

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.

Nonpublic school administrative cost reimbursement

- Permits up to \$446 per student to reimburse chartered nonpublic schools for administrative costs for FY 2020 and FY 2021.

Accredited nonpublic schools (VETOED)

- Would have established a category of nonpublic schools called “accredited nonpublic schools” for private schools that are accredited by the Independent Schools Association of the Central States (VETOED).

Educational service centers

- Specifically permits an educational service center (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 students before or during the school day, but permits a district or school to choose not to establish a school breakfast program for financial reasons or if it already has a successful breakfast program or partnership in place.

- Requires the Department to submit a report on the breakfast program to the General Assembly and the Governor annually by December 31.

Student transportation

- Prohibits a school district board 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 the annual medical examination for school bus drivers required under rules adopted by the State Board may be performed by the same individuals who may perform medical examinations for school bus drivers who are subject to State Highway Patrol rules.

Involuntary lease or sale of 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 prior law).

Transfer of 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 an 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.
- Requires the district boards affected by the territory transfer and the board of township trustees to execute an equitable division of the funds and indebtedness between the districts and specifies that legal title to school property is transferred to the district gaining territory.

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

- Requires applicants for an alternative resident educator license to have either a cumulative undergraduate grade point average (GPA) of 2.5 out of 4.0 or a cumulative graduate school GPA of 3.0 out of 4.0.
- 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.

“Properly certified or licensed” teachers, paraprofessionals (PARTIALLY VETOED)

- Would have repealed the prohibition against school districts and STEM schools employing teachers to provide instruction in a core subject area who are not “properly certified or licensed” teachers (VETOED).
- Would have repealed the prohibition against school districts and STEM schools employing paraprofessionals to provide support in a core subject area in a program supported by federal Title I funds who are not “properly certified” paraprofessionals (VETOED).
- 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.”

Computer science teachers

- Permits a school district, community school, or STEM school, for the 2019-2020 and 2020-2021 school years, to allow an individual with a valid educator license in any of grades 7-12 to teach a computer science course if the individual first completes an approved professional development program.
- Requires a district superintendent or school principal to approve any professional development program endorsed by the College Board, the organization that creates and administers the national Advanced Placement examinations, as appropriate for the course the individual will teach.

Bright New Leaders for Ohio Schools

- Eliminates the law that established the nonprofit corporation that initially created and implemented the Bright New Leaders for Ohio Schools Program and, instead, designates 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-K through 12 to individuals who complete the program.

FAFSA completion incentives

- Requires the Department to establish a program that awards grants to school districts and educational service centers to organize activities that encourage and assist high school seniors to complete the Free Application for Federal Student Aid (FAFSA).

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.

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 distributing funding for prevention-focused behavioral initiatives.

Excessively absent students

- Specifies that when determining whether a student is “excessively absent” a school district or school must consider only that student’s nonmedical excused absences and unexcused absences, rather than *all* excused and unexcused absences as under prior law.

Computer coding as 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 or chartered nonpublic school to substitute two full seasons of show choir to fulfill high school physical education requirements.

Athletics

- Requires a school district, interscholastic conference, or organization that regulates interscholastic athletics to have uniform transfer rules for public and nonpublic schools.
- 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 stipulated under prior law).

Consolidated school mandate report

- Eliminates (1) training on crisis prevention and intervention and (2) establishment of a wellness committee from the consolidated school mandate report that each district annually must file with the Department to denote compliance or noncompliance with the items contained in the report.

Department of Education performance audit

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

English learners

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

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

The act retains the school financing system in existing law, 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. It also provides for deductions and transfers for community school and STEM school students as prescribed under existing law. For a more detailed description of the act’s school financing provisions, see the LBO Greenbook for the Department of Education and the LSC Comparison Document for the act. From the LSC home page, www.lsc.ohio.gov, click on “Budget Central,” then on “Main Operating – H.B. 166,” and then on “EDU” under “Greenbooks” 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 act requires the Department of Education to pay each city, local, exempted village, and joint vocational school district an amount equal to the district’s payments for FY 2019.

It also requires the Department to make an additional payment for FY 2020 and FY 2021 to each city, local, and exempted village school district, with at least 50 enrolled students, that experiences an average annual percentage change in its enrollment between FY 2016 and FY 2019 that is greater than zero.

Community schools and STEM schools

For FY 2020 and FY 2021, the act requires the Department, for each student enrolled in a community school or STEM school, to deduct from the student’s resident district and pay to the school an amount in the manner prescribed by existing law. For this purpose, the act specifies that (1) the “formula amount,” which is used to calculate the “opportunity grant” for each school, equals \$6,020 (the formula amount for FY 2019), (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, and (3) the per pupil amount deducted from a school district and paid to a community school that accepts responsibility to transport its students must be the same amount deducted and transferred for that purpose for FY 2019.

Additionally, for FY 2020 and FY 2021, the Department must calculate and pay each community school and STEM school's graduation and third-grade reading bonuses using a formula amount of \$6,020.

Other payments

When 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, 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 \$6,020 (as with payments for community schools and STEM schools under the act).

Student wellness and success funding

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

The act 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. The Department is prohibited from later reconciling or adjusting the payment.

Student wellness and success funds

City, local, and exempted village school districts

The Department must pay student wellness and success funds to city, local, and exempted village school districts on a per pupil basis. For this payment, a district's total student count is the total number of students who were enrolled in the district for 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 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. Districts in the highest quintile are paid the highest per-pupil amount. Those in the other four quintiles are paid smaller per pupil amounts based on a sliding scale calculation. Each district, however, must 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 Department must pay student wellness and success funds, on a full-time equivalency basis, to joint vocational school districts, community schools that are not Internet- or computer-based community schools (e-schools), and STEM schools. This payment is calculated by determining, for each student enrolled in the district or school in 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 act 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 Department must pay student wellness and success enhancement funds to city, local, and exempted village school districts that received supplemental targeted assistance funding for FY 2019. Again, for this payment, a district's total student count is the total number of students who were enrolled for the preceding fiscal year.

This payment equals 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 divided by 36%; times
- The district's total student count.

Joint vocational school districts

The enhancement funds for joint vocational school districts, community schools that are not e-schools, and STEM schools are calculated by determining, for each student enrolled in the district or school in 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

Districts and schools must 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;
- Professional development regarding cultural competence; and
- Student services provided prior to or after the regularly scheduled school day or any time school is not in session.

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, each district and school, after the end of each fiscal year, must submit a report to the Department describing the initiatives on which the funds were spent.

Funding adjustments for TPP value changes

(R.C. 3317.028)

The act 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.

It does not make any changes to the 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.

Per-pupil guarantee (VETOED)

(R.C. 3317.28)

The Governor vetoed a provision that, beginning with FY 2022, would have guaranteed each city, local, and exempted village school district at least as much funding per pupil as the statewide per pupil amount paid for chartered nonpublic schools in Auxiliary Services funds³⁴

³⁴ Auxiliary Services funds are used to purchase goods and services for students who attend chartered nonpublic schools, such as textbooks, digital texts, workbooks, instructional equipment, library materials, tutoring and other special services, provision of language and academic support

and for administrative cost reimbursement.³⁵ (For FY 2019, the statewide per pupil amount paid for chartered nonpublic schools in Auxiliary Services funds and for administrative cost reimbursement was approximately \$1,305.)

Funding adjustment for career-technical education

(Section 265.227; conforming changes in Sections 265.220 and 265.225)

The act requires the Department to adjust the amounts paid to certain school districts for FY 2020 and FY 2021 to account for the decrease in career-technical education students served by a city, local, or exempted village school district and the corresponding increase in students served by a joint vocational school district. To qualify for this adjustment, a city, local, or exempted village school district must have provided a career-technical education program in FY 2019 but, beginning in FY 2020, is a member of a joint vocational school district that provides that program instead.

The adjustment equals the aggregate amount of career-technical education funds paid to the city, local, or exempted village school district for FY 2019 minus those funds deducted from the district for FY 2019 for students enrolled in community and STEM schools.

School bus purchase assistance

(Section 265.324)

The act requires the Department of Education, in partnership with the Department of Public Safety, to develop a program to provide school bus purchase assistance and, by January 31, 2020, to report to the General Assembly how the program will operate.

School climate grants

(Section 265.325)

For FY 2020 and FY 2021, the act 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.

The Superintendent of Public Instruction must prescribe an application form, establish procedures for considering and approving grant applications, and determine the amount of the grant awards.

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

services and other accommodations for English language learners, and procurement of security services (R.C. 3317.06).

³⁵ Each chartered nonpublic school may be reimbursed for administrative and clerical costs incurred as a result of complying with state and federal recordkeeping and reporting requirements (R.C. 3317.063, not in the act). (See also “**Nonpublic school administrative cost reimbursement**” below.)

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

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

Third, to other applicants in the order in which their applications were received.

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

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 (total of \$50,000).

Preschool funding, Montessori community schools

(R.C. 3314.06; Section 265.20)

The act requires the Department to pay each community school that operates a preschool program using the Montessori method an amount equal to the formula amount for FY 2019 (\$6,020) for each student younger than age four.

Otherwise, payments for nondisabled students enrolled in preschool programs are not authorized in the Revised Code. Instead, these payments are authorized under an uncodified provision of the act.³⁶

Quality Community School Support Program

(Section 265.335)

The act 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.

The act 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 the types of community schools of quality are described in the table below.

³⁶ See Section 265.20 of the act.

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 either (1) is in its first year of operation, or (2) is in its second or third year of operation, opened as a kindergarten only school, and has added one grade level each year.		✓		
The school replicating the operational and instructional model used by a Type 1 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.				✓
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.				✓

Funding for groups of STEM schools

(R.C. 3326.031; conforming changes in R.C. 3326.33, 3326.34, 3326.36, 3326.37, and 3326.41)

Continuing law authorizes STEM schools that operate from multiple facilities located in one or more school districts to operate within a group directed by a single governing body. The act makes two changes regarding this type of STEM school.

First, it requires the Department to pay all funds for each STEM school that operates within a group to the governing body of the group, rather than directly to each school as under prior law. The governing body then must distribute to each STEM school within the group the full amount determined by the Department for that school.

Second, the act requires the Department to assign a separate internal retrieval number (IRN) (building identification number) to each STEM school within a group.

Study of e-school funding models

(Section 265.470)

The act 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. Under continuing law, 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.³⁷

Report on partnership with educational service centers

(Section 265.505)

The act 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.

Other school financing studies

(R.C. 3317.60)

The act requires the Department to conduct separate studies of economically disadvantaged students and preschool education. Each study must be submitted by December 31, 2020, to the President and Minority Leader of the Senate, Speaker and Minority

³⁷ See R.C. 3314.08(H)(3) and 3314.27, latter not in the act.

Leader of the House, and members of the standing committees of the House and Senate that consider legislation regarding primary and secondary education.

In conducting the study of economically disadvantaged students, the Department must (1) review the criteria used in the current school funding formula to define “economically disadvantaged students” in order to determine the effectiveness of the criteria and (2) research how other states define “economically disadvantaged students” and how “economically disadvantaged students” are addressed in other states’ school funding formulas.

In conducting the study of preschool education, the Department, in consultation with the Department of Job and Family Services and stakeholder groups determined appropriate by the Department, must prepare a report including both (1) a review of early childhood initiatives in Ohio, including preschool, Head Start, and other early learning opportunities for young children, and (2) information regarding how other states support early learning opportunities for young children.

High School Graduation and Testing

High school graduation requirements

(R.C. 3301.0712, 3301.0714, 3313.618, and 3313.6114; conforming in R.C. 3313.6110, 3314.03, 3326.11, and 3328.24)

The act establishes a new set of high school graduation requirements for students attending school districts, community schools, STEM schools, college-preparatory boarding schools, and chartered nonpublic schools. Students who entered 9th grade for the first time on or after July 1, 2019 (the class of 2023) must meet the new requirements to qualify for a high school diploma. It also permits students who entered 9th grade for the first time on or after July 1, 2014, but prior to July 1, 2019 (the classes of 2018 through 2022), to qualify for a diploma by meeting the new requirements, rather than the requirements specified for them under continuing law.

Under the new graduation requirements, a student must demonstrate competency in English language arts and math by attaining a “competency score” on the English language arts II and Algebra I end-of-course exams. If a student fails to attain a competency score on one or both of the end-of-course exams, the student still may meet the requirements through alternative demonstrations of competency. Finally, each student also must earn two state diploma seals from a system of state diploma seals prescribed by the State Board, at least one of which must be statute-defined (see “**State diploma seals**” below).

The Department, in consultation with the Chancellor of Higher Education and the Governor’s Office of Workforce Transformation, must determine a competency score for the English language arts II and Algebra I end-of-course exams by March 1, 2020. Additionally, the individualized education program of a student receiving special education services must specify the manner in which the student will participate in assessments related to the new graduation requirements.

Alternative demonstrations of competency

The act permits a student who does not attain a competency score on one or both of the English language arts II and Algebra I end-of-course exams to still qualify for a high school diploma using an alternative demonstration of competency. However, prior to being allowed to do so, the student's district or school must offer remedial support to the student, and the student must retake any end-of-course exam on which the student did not attain a competency score. If the student fails to attain a competency score on a second administration of an end-of-course exam, the student is then permitted to use a specified alternative demonstration of competency.

The alternative demonstrations are: (1) earning course credit through the College Credit Plus program in the failed subject area, (2) providing evidence that the student has enlisted in the U.S. armed forces, or (3) completing both a "foundational" option and either another "foundational" option or a "supporting" option.

"Foundational" options include:

- Earning a score of proficient or higher on three or more state technical assessments in a single career pathway;
- Obtaining an industry-recognized credential;
- Completing a pre-apprenticeship or apprenticeship in the student's chosen career field; or
- Providing evidence of acceptance into an apprenticeship program after high school that is restricted to participants age 18 or older.

"Supporting" options include:

- Completing 250 hours of work-based learning with evidence of positive evaluations;
- Obtaining an OhioMeansJobs-readiness seal; or
- Attaining a workforce readiness score, as determined by the Department of Education, on the national-recognized job skills assessment (the WorkKeys assessment) selected by the State Board under continuing law.

State diploma seals

The act requires the State Board to establish a system of state diploma seals, which may be attached to a student's high school diploma, for the purpose of qualifying for graduation.

The system consists of 12 state diploma seals. Two of them, the State Seal of Biliteracy and the OhioMeansJobs-Readiness Seal, are already established under continuing law. The ten new state diploma seals, created under the act, can be separated into two categories: *statute-defined seals*, which generally have requirements that are specified in statute, and *school-defined seals*, which have requirements that are largely aligned with guidelines adopted by a student's district or school. (For more information on the individual seals, see the table below.) A student must attain at least two state diploma seals to qualify for graduation, and at least one

of those seals must be the State Seal of Biliteracy, the OhioMeansJobs-Readiness Seal, or one of the act's statute-defined seals.

Of the ten new state diploma seals, seven are statute-defined and three are school-defined. A district or school must develop guidelines establishing a requirement for at least one of the school-defined seals. A district or school also must maintain appropriate records to identify students who have met the requirement of a new state diploma seal and attach a seal to the diploma and transcript of a student enrolled in the district or school that meets the seal's requirement. However, the Department must provide each district or school with an appropriate mechanism to assign a new state diploma seal, and a student must not be charged a fee to be assigned a diploma seal.

State diploma seal	Continuing law, statute-defined, or school-defined	Requirements
State seal of Biliteracy ³⁸	Continuing law	Meet the requirements and criteria, including assessments of foreign language and English proficiency, set by the State Board.
OhioMeansJobs-readiness ³⁹	Continuing law	Meet the requirements and criteria, including demonstration of work-readiness and work ethic competencies such as teamwork, problem-solving, reliability, punctuality, and computer technology competency, set by the state Superintendent, in consultation with the Chancellor and the Governor's Office of Workforce Transformation.
Industry-recognized credential	Statute-defined	Attain an industry-recognized credential that is aligned with an in-demand job.
College-ready	Statute-defined	Attain a score that is remediation-free, in accordance with standards adopted under continuing law, on a nationally standardized assessment (ACT or SAT).
Military enlistment	Statute-defined	Either of the following: <ol style="list-style-type: none"> 1. Provide evidence of enlistment in a branch of the U.S. armed forces; or 2. Participate in a Junior Reserve Officer

³⁸ R.C. 3313.6111, not in the act.

³⁹ R.C. 3313.6112, not in the act.

State diploma seal	Continuing law, statute-defined, or school-defined	Requirements
		Training program approved by Congress under federal law.
Citizenship	Statute-defined	<p>Any of the following:</p> <ol style="list-style-type: none"> 1. Attain a proficient score or higher on both the American history and American government end-of-course exams; 2. Attain a score that is the equivalent of proficient or higher on appropriate Advanced Placement or International Baccalaureate exams; or 3. Attain a final course grade that is the equivalent of a “B” or higher in “appropriate courses” taken through the College Credit Plus Program.
Science	Statute-defined	<p>Any of the following:</p> <ol style="list-style-type: none"> 1. Attain a proficient score or higher on the science end-of-course exam; 2. Attain a score that is the equivalent of proficient or higher on an appropriate Advanced Placement or International Baccalaureate exam; or 3. Attain a final course grade that is the equivalent of a “B” or higher in an “appropriate course” taken through the College Credit Plus Program.
Honors diploma	Statute-defined	Meet the additional criteria for an honors diploma set by the State Board under continuing law.

State diploma seal	Continuing law, statute-defined, or school-defined	Requirements
Technology	Statute-defined	Any of the following: <ol style="list-style-type: none"> 1. Attain a score that is the equivalent of proficient or higher on an appropriate Advanced Placement or International Baccalaureate exam; 2. Attain a final course grade that is the equivalent of a “B” or higher in an “appropriate course” taken through the College Credit Plus Program; or 3. Complete a course offered through the district or school that meets guidelines developed by the Department. (A district or school is not required to offer a course that meets those guidelines.)
Community service	School-defined	Complete a community service project that is aligned with guidelines adopted by a school district board of education or a school governing authority.
Fine and performing arts	School-defined	Demonstrate skill in the fine or performing arts according to an evaluation aligned with guidelines adopted by the district board or school governing authority.
Student engagement	School-defined	Participate in extracurricular activities such as athletics, clubs, or student government to a meaningful extent, as determined by guidelines adopted by the district board or school governing authority.

Related EMIS changes

The act specifies that the state guidelines regarding the education management information system (EMIS) must include collecting data regarding the number of students who:

- Earn each state diploma seal;
- Use an alternative demonstration of competency to qualify for a high school diploma; and

- Complete each “foundational” and “supporting” option as part of an alternative demonstration of competency.

At-risk students

(R.C. 3313.617; conforming changes in 3314.03, 3326.11, and 3328.24)

The act requires each school district, community school, STEM school, college-preparatory boarding school, and chartered nonpublic school, by June 30, 2020, to adopt a policy regarding students who are at risk of not qualifying for a high school diploma. The policy must include:

1. Criteria for identifying at-risk students. The criteria must include a student’s lack of adequate progress in meeting the terms of a graduation plan (see “**Graduation plans**” below). It may include other factors such as issues regarding excessive absences or misconduct.

2. Procedures for identifying at-risk students. The procedures must include a method for determining if a student is not making adequate progress in meeting the terms of a graduation plan and allow for a student to be identified as at risk in grades 9-12. Additionally, the procedures may allow for a student to be identified as at risk in other grade levels.

3. A notification process. The process must include notifying a student’s parent, guardian, or custodian in each year in which a student is identified as at risk. It must include at least a written notification with a statement that the student is at risk of not graduating and descriptions of the district or school’s curriculum requirements, the state graduation requirements, and additional instructional or support services available to at-risk students.

Assistance for at-risk students

The policy must require the district or school to assist at-risk students with additional instructional and support services to help them qualify for a high school diploma. The instructional and support services may include any of the following:

- Mentoring programs;
- Tutoring programs;
- High school credit through demonstration of subject area competency under continuing law;
- Adjusted curriculum options;
- Career-technical programs;
- Mental health services;
- Physical health care services; or
- Family engagement and support services.

Graduation plans

(R.C. 3313.617(E))

Under its at-risk student policy, a district or school must develop a graduation plan for every student in grades 9-12 that addresses the student's academic pathway to meet the curriculum requirements and satisfy the state graduation requirements. The graduation plan must be developed jointly by a student and a representative of the district or school and updated each school year until the student qualifies for a high school diploma. The district or school must invite a student's parent, guardian, or custodian to assist in developing and updating the plan.

Additionally, the graduation plan must supplement the policy on career advising under continuing law. The act also permits a public school to use the individualized education program (IEP), of a student with a disability, in lieu of developing a graduation plan if the IEP contains academic goals substantively similar to a graduation plan.

Recommendations regarding students retaking grade 12

(Section 733.51)

The act requires the state Superintendent, in collaboration with the Chancellor and the Governor's Office of Workforce Transformation, to establish a committee to develop policy recommendations regarding methods to assist students who completed grade 12, but did not qualify for a high school diploma. The committee must consist of a representative of each of the following:

- Career-technical educators;
- Community colleges;
- Guidance counselors;
- Ohio technical centers;
- Principals;
- Superintendents; and
- Teachers.

The recommendations must include identifying assistance and supports to aid the students and the amount of state funding necessary to ensure adequate operation of the identified assistance and supports. They also must address methods to minimize the social stigma associated with not graduating on time. Finally, the recommendations may include any changes to the law or rules necessary to implement the identified assistance and supports.

The committee must issue a report that includes its recommendations to the State Board and the General Assembly by October 1, 2020.

Changes to end-of-course exams

(R.C. 3301.0711 and 3301.0712)

Beginning with the class of 2023, the act eliminates the English language arts I and geometry end-of-course exams and stipulates that students will be required to complete only the (1) English language arts II, (2) science, (3) Algebra I, (4) American history, and (5) American government end-of-course exams. The act further specifies that only the English language arts II and Algebra I end-of-course exams will be required for graduation. The act requires the Department to seek a waiver from the U.S. Secretary of Education if necessary to implement the Algebra I end-of-course exam as the primary assessment of high school mathematics.

The act makes several other changes related to the end-of-course exams. First, the state Superintendent, or designee, must conduct a public presentation before the House and Senate committees that consider primary and secondary legislation regarding the range of scores on the end-of-course exams designated by the State Board. Next, it prohibits the State Board from setting a new minimum cumulative performance score for the end-of-course exams after October 17, 2019. Finally, it prohibits requiring a student to retake the Algebra I or English language arts II end-of-course exams in grades 9-12, if the student received a proficient or higher score, or attained a competency score, in an administration of the exam prior to grade 9.

State Report Cards

Value-added progress dimension

(R.C. 3302.03)

The act changes the grading scale used to determine letter grades assigned for the value-added progress dimension of the state report cards for school districts and buildings as follows:

1. A score that is at least one standard error of measure above the mean (rather than two as under prior law) is an "A."
2. A score that is less than one standard error of measure above but greater than one standard error of measure below the mean is a "B." (Under prior law, a "B" was a score at least one standard error of measure but less than two standard errors of measure above the mean.)
3. A score that is less than or equal to one standard error of measure below the mean score but greater than two standard errors of measure below the mean is a "C." (Under prior law, a "C" was a score less than one standard error of measure above the mean but greater than or equal to one standard error of measure below the mean.)
4. A score that is less than or equal to two standard errors of measure below the mean score but is greater than three standard errors of measure below the mean score is a "D." (Under prior law, a "D" was a score not greater than one standard error of measure below the mean but greater than or equal to two standard errors of measure below the mean.)
5. A score that is less than or equal to three standard errors of measure below the mean score is an "F." (Under prior law, an "F" was not greater than two standard errors of measure below the mean.)

The act also requires the State Board, in establishing its benchmarks for assigning letter grades to the value-added progress dimension, to assign a grade of “A” only to a district or building that receives a grade of “C” or higher on its value-added progress dimension grades for its subgroups. The subgroups include gifted students, students with disabilities, and students whose performance is in the lowest quintile for achievement. Under prior law, the subgroup grade had to be at least a “B” for a district or building to receive an “A” for the overall value-added progress dimension grade.

Preliminary data and community schools at risk of closure

(R.C. 3302.03, 3314.017, and 3314.354)

The act requires the Department 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 and building; and
- Preliminary data on community schools at risk of becoming subject to permanent closure due to their report card grades.

Amendment to data for report card calculations

(Section 265.530)

The act requires the Department to accept an amendment to data submitted by a school district for the calculation of a graded measure of the state report card. This applies only to data to be used for the report card for the 2018-2019 school year. The Department must accept the amended data if:

1. There are extenuating circumstances, including the death of a district’s Education Management Information System (EMIS) coordinator anytime during the collection of data for submission to be used for the 2018-2019 school year report card; and
2. The district provides adequate information to the Department by August 10, 2019, to explain and support the amended data.

State report card study committee

(Section 265.510)

The act establishes a report card study committee, which must be appointed, convene its first meeting, and elect a chairperson by August 17, 2019. The committee must study how performance measures, components, and the overall grade on the state report card are calculated. It also must evaluate design principles for the state report card, its primary audience, and how report cards address student academic achievement, including whether the measures are appropriately graded to reflect student academic achievement. It must submit to the General Assembly a report about its study, including certain specified recommendations, by December 15, 2019.

The committee must consist of the following members:

- The state Superintendent or designee;

- The chairpersons of the standing committees of the House and Senate that consider primary and secondary education legislation;
- Two members of the House appointed by the Speaker;
- Two members of the Senate appointed by the Senate President; and
- Three superintendents, one each from a rural district, one from a suburban district, and an urban district, appointed by the Buckeye Association of School Administrators (BASA).

The committee must investigate at least the following matters related to the state report card:

- How many years of data should be included in, and how grades are assigned to, the progress component;
- How to structure the prepared for success component, including considering additional ways to earn points;
- How the gap closing component meets requirements established under federal law and applies to all schools;
- How the graduation component includes students with disabilities and mobile students; and
- Whether the overall grades should be a letter grade or some other rating system that clearly communicate the performance of school districts and other public schools to families and communities.

Dropout recovery school report cards

(R.C. 3314.017 and 3314.351; Sections 812.20 and 812.30)

Dropout recovery community schools receive different state report cards than those for other public schools. Rather than letter grades, they are issued rating designations of “exceeds standards,” “meets standards,” and “does not meet standards.” The ratings are based on (1) graduation rates of various student cohorts, (2) growth in student reading and math achievement, (3) annual measurable objectives, and (4) percentage of twelfth-grade students and other students within three months of their 22nd birthdays who attain a passing score on applicable state achievement assessments for graduation.

The act makes a few changes to this report card system. First it specifies that the state test passage rate must include the percentage of the specified students (1) who have attained the designated passing score on all high school assessments prescribed prior to July 1, 2014 (Ohio Graduation Tests), or (2) who have attained the cumulative performance score on the end-of-course exams, whichever applies. Prior law specified that the measure consist of only the percentage of those same students who attained the designated score on all applicable high school achievement assessments.

Next, the act requires the Department to recalculate the ratings for each dropout recovery school for the 2017-2018 school year and calculate the ratings for the 2018-2019 school year using the act's revised test passage measure.

Finally, it exempts from closure a dropout recovery school that receives a reissued overall rating of "meets standards" or "exceeds standards" for either year (see also "**Community school closure criteria**" below).

All of these provisions were effective July 18, 2019.

Study committee, dropout recovery school report cards

(R.C. 3314.017)

The act requires the State Board to coordinate a committee to study the classification, authorization, and report card ratings of dropout recovery community schools 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; and
- 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 by April 17, 2020.

Community Schools

Community school mergers

(R.C. 3314.0211)

The act establishes a procedure by which two or more community schools may merge. However, it prohibits merger 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 governing authority of the surviving community school, then, 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 act 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.

Report card ratings of surviving school

The act 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.

Sponsor evaluations

(R.C. 3314.016)

Frequency

The act directs the Department to conduct evaluations for any sponsor rated "effective" or "exemplary" for three or more consecutive years only once every three years, instead of annually as under prior law.

Rating recalculation

Under the act, the test passage measure on the state report card for dropout recovery community schools is revised to accommodate the end-of-course exams. It also requires that the report card ratings of affected schools for the 2017-2018 school year (the first year of those exams) are recalculated for purposes of the community school closure law. (See "**Dropout recovery school report cards**" above.) Accordingly, the act also requires the Department to recalculate the rating for that same school year for the sponsor of a dropout recovery community school that itself receives a recalculated rating.

Advance notice and review of information used to rate sponsor

Under the act, a sponsor may review information used by the Department to calculate the "academic performance" component of its evaluation using the same process under continuing 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 verification

(R.C. 3314.02)

The act 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 member, or employee, but only if those persons have a responsibility for fiscal operations or authorization to expend money on behalf of the school. Prior law required a sponsor to annually verify that the Auditor of State had not issued a finding for recovery against all those persons regardless of their fiscal responsibilities.

Sponsor assurances

(R.C. 3314.19)

The act reduces the number of times a community school sponsor must submit to the Department a list of assurances that each school it sponsors is in compliance with certain provisions of law. Under the act, a sponsor must submit the list for each school once when the school first opens for operation and, in the case of a brick-and mortar school, once again if it begins operation from a new building. In either case, the assurances must be submitted within ten days prior to opening day of instruction. Under prior law, a sponsor had to submit the assurances every year for each school it sponsors.

Conversion schools reclassified as “start-up”

(R.C. 3314.02)

The act reclassifies 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.

Community school closure criteria

(R.C. 3314.35 and 3314.351; Section 812.10)

Effective July 18, 2019, the act changes the number of years of underperformance, as measured on the state report cards, that trigger the closure of a community school. First, it changes the number of times a community school that is not a dropout recovery 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. Similarly, in the case of a dropout recovery school, to trigger closure the school must receive a designation

of “Does Not Meet Standards” for the three most recent school years, rather than two of the three most recent school years as under prior law.

Annual e-school reports

(R.C. 3314.21)

The act 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;
- 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.

It 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 (PARTIALLY VETOED)

(R.C. 3314.353)

The act requires the Department 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; and
- All “challenged” school districts in which new start-up community schools may be located.

The act would have prescribed a deadline of August 31 for the Department to publish these lists, but the Governor vetoed that deadline.

Background on community schools

Community schools (often called “charter schools”) are public schools that operate independently 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).

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;
- The Department's Office of Ohio School Sponsorship; 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.

Scholarship Programs

Educational Choice (Ed Choice) scholarships

Limit on number of scholarships

(R.C. 3310.02)

The act specifies that if the number of applicants for an Educational Choice (Ed Choice) scholarship for a school year exceeds 90% of the maximum number prescribed by statute (currently 60,000), the Department must increase the limit by 5% for the next year. The new limit then will be the maximum number available in subsequent school years until another adjustment is triggered.

Eligibility of high school students

(R.C. 3310.03; conforming changes in R.C. 3310.032 and 3310.035)

Beginning with the 2019-2020 school year, the act qualifies for a first-time Ed Choice scholarship a high school student who was previously enrolled in a public or nonpublic school in grades 8-11 or was homeschooled for those grades, if the student would be assigned to a building in any of grades 9-12 that either:

1. Received a grade of "D" or "F" for the four-year adjusted cohort graduation rate on two of the three most recent report cards; or
2. Is a building that otherwise qualifies the student for Ed Choice under continuing law (generally meaning that, for two of the three most recent school years, it received an overall "D" or "F" or an "F" for the value-added progress dimension measure on its state report cards).

Prior law qualified a high school student for a first-time scholarship, regardless the student's current school, only if the student would be assigned to a building that received a

grade of “D” or “F” for the four-year adjusted cohort graduation rate on two of the three most recent report cards. It did not specifically mention students currently enrolled in grades 8-11 or homeschooled students.

The act does state that students who received scholarships as entering high school students under that prior law may continue to receive scholarships as long as they continue to meet the law’s other eligibility criteria regarding district residency, attendance, and state achievement testing.

Income-based scholarships – expansion of grade bands

(R.C. 3310.032)

The act expands eligibility for income-based Ed Choice scholarships to all students entering grades K-12 for the first time, beginning with the 2020-2021 school year.

The first year for the Ed Choice income-based scholarships was the 2013-2014 school year, for which year only kindergarten students could receive scholarships. For each subsequent year, the law provided for adding one next higher grade level until all grades are eligible for scholarships. Accordingly, for the 2018-2019 school year, it served grades K-5, and for the 2019-2020 school year, it will serve grades K-6. Thereafter, under the act, all grades will be eligible.

Scholarship computation

(R.C. 3310.08)

The act revises the method for computing the amount of a student’s Ed Choice scholarship. Prior law specified only that the scholarship amount would be the lesser of the tuition charged by the student’s nonpublic school or the statutory maximum amount.⁴⁰ By administrative rule, “tuition” had been defined as the tuition of the school *minus* all financial aid, discounts, and adjustments for the student.⁴¹ Instead, the act specifies that the amount to be discounted from a school’s tuition is limited to only certain discounts for which all students attending the school may be eligible. It specifically lists the deducted discounts as those related to the following conditions:

1. The student’s family has multiple children enrolled in the same school;
2. The student’s family is a member of, or affiliated with, a religious or secular organization that provides oversight of the school, or from which the school has agreed to enroll students;
3. The student’s parent is a school employee; or

⁴⁰ The maximum Ed Choice scholarship is \$4,650 for grades K-8 and \$6,000 for grades 9-12 (R.C. 3310.09, not in the act).

⁴¹ Ohio Administrative Code (O.A.C.) 3301-11-10.

4. Some other qualification, not based on income or the student's athletic or academic ability, and for which all students in the school may qualify.

Thus, under the act, a student's scholarship is the lesser of (1) the school's tuition minus the qualifying discounts or (2) the statutory maximum amount. Certain discounts that a student is awarded by the school or some other organization, such as a discount based on family income, will not be deducted from the scholarship.

Scholarship application periods

(R.C. 3310.16)

The act replaces the requirement for two Ed Choice application periods each year with a single priority application period and a requirement to award scholarships after the priority period on a rolling basis. Beginning with the 2020-2021 school year, the Department must conduct a priority application period that begins on February 1 and runs for at least 75 days. After the priority period closes, the Department must continue awarding scholarships, prorating the amount if the student receives a scholarship after the school year begins, and in the case of income-based scholarships, award them only if the appropriated funds remain available.

Cleveland scholarship applications

(R.C. 3313.978)

The act 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 begins on July 1 of the school year for which a scholarship is sought and must last at least 30 days.

The act also requires the Department to determine by May 31 whether funds remain available for the program after the first application period. If the scholarships awarded in the first application period use the entire amount appropriated for that school year, the Department need not conduct a second application period. Conversely, if there are funds remaining, the Department must conduct a second application period.

Background on scholarship programs

Ed Choice

The Educational Choice (Ed Choice) Scholarship Program operates statewide in every school district except Cleveland to provide scholarships for students who (1) are assigned or would be assigned to district schools that have persistently low academic achievement or (2) are from low-income families. Under the income-based portion of the program, a student qualifies if the student's family income is 200% of poverty or below, but a student can continue to receive a reduced scholarship as family income increases up to 400% of poverty. Students may use their scholarships to enroll in participating chartered nonpublic schools.

For students who qualify based on the performance of their resident districts' schools, the scholarships are deducted from the districts' state aid accounts. For students who qualify based on family income, the scholarships are paid from a specific appropriation.

Pilot Project (Cleveland) Scholarship Program

The Cleveland Scholarship Program allows students who are residents of the Cleveland Municipal School District to obtain scholarships to attend participating nonpublic schools. The scholarships are the lesser of the tuition charged by the alternative provider or the statutory maximum, which is the same as for Ed Choice. In general, scholarship students are not counted in Cleveland's average daily membership (ADM) for funding purposes. A portion of Cleveland's state aid has been earmarked in the state operating budget to be used to help fund this program. The rest of the funding for the program comes from the state general revenue funds (GRF) without any deduction from Cleveland.

Other Provisions

Academic distress commissions – moratorium

(Section 265.520)

The act prohibits the state Superintendent from establishing any new academic distress commissions (ADCs) until October 1, 2020. Under continuing law suspended by the act, the state Superintendent must establish an ADC for any school district that receives three overall grades of "F" on the district's state report card. The act does not affect the previously established ADCs for Youngstown, Lorain, and East Cleveland school districts.

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

Assessment requirements for chartered nonpublic schools

(R.C. 3301.0711(K))

The act permits any chartered nonpublic school that participates in state scholarship programs to administer an alternative assessment to the state achievement assessments for grades 3-8. The alternative standardized assessment must be approved by the Department, and each chartered nonpublic school must report the results of each assessment to the Department.

Students with disabilities

(R.C. 3301.0711(C)(1)(c))

The act 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; and
- The plan is reviewed annually to determine if the student’s needs continue to require excusal from taking the assessments.

Nonpublic school administrative cost reimbursement

(Section 265.180)

Under continuing law, each chartered nonpublic school may be reimbursed for administrative and clerical costs incurred as a result of complying with state and federal recordkeeping and reporting requirements. The act increases to \$446 the maximum amount per pupil that may be reimbursed to a school for FY 2020 and FY 2021. Law, notwithstanding for those fiscal years, but unchanged by the act, caps the amount at \$360.⁴²

Accredited nonpublic schools (VETOED)

(Sections 130.70, 130.71, and 130.73)

The Governor vetoed a provision that would have established 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). It would have:

1. Required accredited nonpublic schools to comply with minimum education standards adopted by the State Board of Education, but prohibited the State Board from prescribing additional operating standards for them;
2. Exempted accredited nonpublic schools from the state minimum high school curriculum and chartering requirements;
3. Maintained the exemptions from state achievement testing for non-scholarship high school students attending accredited nonpublic schools, including an exemption for scholarship students attending such schools from the testing requirements;
4. Exempted accredited nonpublic schools from the College Credit Plus (CCP) Program as long as students and parent are notified at enrollment that the school does not participate;
5. Permitted ODE to exercise limited oversight over the ISACS accreditation process of nonpublic schools, and permitted ODE to revoke a school’s designation if it failed to cooperate with ODE in its oversight;
6. Required accredited nonpublic school teachers to meet the standards set by ISACS for educator qualifications rather than the requirements under continuing law that requires a person to have a bachelor’s degree to teach in subjects other than foreign language, music, religion, computer technology, or fine arts;
7. Exempted 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

⁴² R.C. 3317.063, not in the act.

background checks for teaching and nonteaching employees and for volunteers who have direct contact with students; and

8. Required a joint committee of the General Assembly to study the effects of the creation of accredited nonpublic schools and to submit a report with recommendations regarding expansion of the designation.

Educational service centers

Application for grants

(R.C. 3312.01)

The act adds applying for state or federal grants on behalf of a school district to the services an educational service center (ESC) may provide to school districts and community schools by way of a service agreement.

Contracting for districts and other political subdivisions

(R.C. 3313.843)

The act permits an ESC to contract on behalf of school districts and other political subdivisions, with which it has service agreements, to purchase supplies, materials, equipment, and services on their behalf. The act 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 the services it provides and the corresponding cost for each service, as required under continuing law;
- Has been designated as “high performing” under rule of the State Board;⁴³ and
- Has been found to be substantially in compliance with audit rules and guidelines in its most recent audit by the Auditor of State.

The act specifies that purchases made under this provision by a school district or political subdivision are in compliance with federal competitive bidding requirements for personnel-based services and exempt from any similar state statutes. Additionally, it prohibits a political subdivision from making purchases under this provision if the subdivision already has received bids for a purchase, unless the same terms, conditions, and specifications at a lower price can be made under this provision. Note, continuing 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.⁴⁴

⁴³ See O.A.C. 3301-105-01.

⁴⁴ R.C. 3313.46 and 3327.08, neither in the act.

Ohio Medicaid school component

(R.C. 5162.01 and 5162.364)

The act 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.

School breakfast programs

(R.C. 3313.813, 3313.818, and 3314.18)

The act requires the Department to establish a program, under which higher-poverty public schools must offer breakfast to all enrolled students before or during the school day. It applies to schools operated by school districts, community schools (except e-schools), and STEM schools. However, the act permits a district or school to choose not to establish a school breakfast program for financial reasons or if it already has a successful breakfast program or partnership in place.

The school district superintendent or a building principal, in consultation with building staff, must 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 act 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	Percentage of students that qualify for free or reduced-price meals
2020-2021	70%
2021-2022	60%
Each subsequent year	50%

The act 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. And the Department must offer assistance to schools and school districts, including technical assistance in submitting claims for reimbursement under federal law.

Additionally, it 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.

No reduction in school district transportation

(R.C. 3327.015)

The act prohibits a school district board from reducing the transportation it provides to students the district *is not required* to transport after the first day of the school year.

For a detailed description of school transportation requirements, please see the LSC Members Only Brief, volume 132, issue 3, at <https://www.lsc.ohio.gov/documents/reference/current/membersonlybriefs/132transportationofstudents.pdf>.

Medical examinations for school bus drivers

(R.C. 3327.10)

The act permits all of the following to perform the annual medical examination for school bus drivers required under rules adopted by the State Board:

- 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 continuing 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.

Involuntary lease or sale of district property

(R.C. 3313.411)

The act requires 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, to offer to lease or sell that property to community schools, STEM schools, and college-preparatory

boarding schools located in the district. Under prior law, the district had to offer to lease or sell that property if it has not been used for school operations for two years.⁴⁵

Transfer of district territory

(R.C. 3311.242)

The act creates a new process for transferring territory between school districts (in addition to the other processes prescribed under continuing law). Under the act, 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 school district. The board of the district 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. It must be held in the same manner as a regular board of education election and the proposal must be approved by a majority vote.

If approved by the voters, the district board losing territory must notify the State Board of the election results, and the board of township trustees must enter into negotiations with the district board gaining territory regarding terms of the transfer. The district board gaining territory must file with the State Board the proposal and a copy of any formal agreement. The act specifies that the district board does not have to enter into an agreement. However, it is unclear whether the transfer may proceed without an agreement.

The State Board must approve the filed proposal and provide written notification of that approval to both affected districts. The act 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.

⁴⁵ 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 act does not affect the right to first refusal in a voluntary sale.

State minimum teacher salary schedule

(R.C. 3317.13, as amended in Section 101.01)

The act 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.

Under continuing law, 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 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.⁴⁶

Alternative resident educator licenses

(R.C. 3319.26)

The act requires applicants for an alternative resident educator license to have either a cumulative undergraduate grade point average of 2.5 out of 4.0 or a cumulative graduate school GPA of 3.0 out of 4.0. Prior law specified only that applicants had to have an undergraduate GPA of 2.5 out of 4.0.

The act also 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. However, the act leaves it up to the Chancellor whether to approve any such program. The act maintains the second method, which is successful completion of the pedagogical training institute.

The other prerequisites to alternative resident educator licensure are not affected by the act. 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.

“Properly certified or licensed” teachers, paraprofessionals (PARTIALLY VETOED)

(Repealed R.C. 3319.074; R.C. 3302.01, 3302.03, 3311.78, 3311.79, 3314.03, 3317.141, 3319.226, 3319.283, and 3326.13; Section 812.20)

The Governor vetoed a provision that would have eliminated the prohibition on school districts and STEM schools from employing teachers in a core subject area unless they are

⁴⁶ R.C. 3317.14, not in the act, and 3317.141.

“properly certified or licensed teachers,” and from hiring paraprofessionals to provide support in a core subject area in a program supported by federal Title I funds unless they are “properly certified paraprofessionals.”

Under that provision, a teacher is considered “properly certified or licensed” only after completing all requirements for certification or licensure in the subject areas and grade levels in which the teacher provides instruction. A “properly certified paraprofessional” is one who has an educational aide permit and one of the following: (1) a designation of “ESEA qualified,” (2) completed at least two years at an accredited institution of higher education, (3) holds at least an associate’s degree, or (4) has passed a test selected by the Department. The core subject areas are reading and English language arts, math, science, social studies, foreign language, and fine arts.

However, the Governor left in place the act’s provision that eliminates that prohibition on community schools. Under continuing law, community school teachers and paraprofessionals must have a license, permit, or certification to provide instruction or academic support, but under the act they will not be required to be “properly certified” in any specific subject areas or grade levels.⁴⁷ This is similar to law in effect prior to July 1, 2019.

Computer science teachers

(Section 733.61)

The act temporarily permits a school district, community school, or STEM school, for the 2019-2020 and 2020-2021 school years, to allow an individual with a valid educator license in any of grades 7-12 to teach a computer science course if, prior to teaching the course, the individual completes a professional development program approved by the district superintendent or school principal. That program must provide content knowledge specific to the course the individual will teach. The superintendent or principal must approve any professional development program endorsed by the College Board, the organization that creates and administers the national Advanced Placement examinations, as appropriate for the course the individual will teach.

The individual may not teach a computer science course elsewhere than the school district or school that employed the individual when the individual completed the professional development program.

Beginning July 1, 2021, a district or school may allow an individual to teach a computer science course only if the individual satisfies the requirements of permanent law, unchanged by the act. That law requires an individual who teaches computer science either to (1) hold an educator license in computer science, (2) hold a license endorsement in computer technology

⁴⁷ R.C. 3314.03(A)(10) and (A)(11)(d).

and pass a computer science context examination, or (3) hold a supplemental teaching license for computer science.⁴⁸

Bright New Leaders for Ohio Schools

(Repealed R.C. 3319.271; R.C. 3319.272; conforming change in R.C. 3317.25)

Initially created in 2013 by H.B. 59 of the 130th 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 act eliminates the law establishing the nonprofit corporation that initially created and implemented the program and, instead, designates 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 prior law.

FAFSA completion incentives

(Sections 265.10, 265.20, and 733.23)

The act requires the Department to establish a program for FY 2020 and FY 2021 that awards grants to school districts and educational service centers to organize activities that encourage and assist high school seniors to complete the Free Application for Federal Student Aid (FAFSA). It appropriates \$75,000 for each fiscal year for the program and specifies that the maximum award for each recipient is \$5,000 per fiscal year. If the amount appropriated is not sufficient, the Department must give priority to lower-wealth districts.

The Department must 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.”

School child day-care programs

(R.C. 3301.53)

The act 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.

⁴⁸ R.C. 3319.236, not in the act.

Behavioral prevention initiatives

(R.C. 3313.6024, 3314.03, 3326.11, and 3328.24)

The act 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:

- 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 act also permits the Department to use these reports as a factor to determine the distribution of any funding for prevention-focused behavioral initiatives.

Excessively absent students

(R.C. 3321.191)

The act revises the standard for determining if a student is “excessively absent from school” by stipulating that excused medical absences are not considered. Under the act, a student is considered excessively absent when the student’s combined *nonmedical* excused absences and unexcused absences exceed 38 hours in one school month or 65 hours in a school year. This differs from prior law, which considered *all* excused and unexcused absences when determining whether a student was excessively absent.

Under continuing law, when a student becomes excessively absent from school, the district or school must notify the student’s parent, guardian, or custodian, in writing, within seven days of the most recent triggering absence. At that time, the district or school (1) must provide the student with an intervention plan and (2) may use any other appropriate intervention strategies contained in the policy. However, only a student’s unexcused absences count toward truancy.

Computer coding as a foreign language

(R.C. 3313.603(E))

Continuing law specifies a minimum of 20 units of academic credit 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 act specifies 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.

It 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.⁴⁹ However, it may or may not apply to community schools even though they generally must comply with the minimum high school curriculum.⁵⁰

Show choir as physical education

(R.C. 3313.603)

The act permits a school district or 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 continuing law.

Athletics transfer rules

(R.C. 3313.5316)

The act requires a school district, interscholastic conference, or organization that regulates interscholastic athletics to have the same transfer rules for public and nonpublic schools and prohibits the creation of rules, bylaws, or other regulations to the contrary.

International students in athletics

(R.C. 3313.5315)

The act 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.

Prior law specifically permitted 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 attended a school that began operating a dormitory on its campus prior to 2014.

⁴⁹ See R.C. 3326.15, not in the act.

⁵⁰ R.C. 3314.03(A)(11)(f) regarding community school curriculum requirements does not specifically reference division (E) of R.C. 3313.603.

Consolidated school mandate report

(R.C. 3301.68)

The act eliminates (1) training on crisis prevention intervention and (2) establishment of a wellness committee from the consolidated school mandate report that each district annually must file with the Department under continuing law.

Department of Education performance audit

(Section 701.43)

The act requires the Auditor of State to conduct a performance audit of selected offices or programs within the Department of Education by October 1, 2020.

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 act changes all references of “limited English proficient student” in the Revised Code to “English learner” to align with recent amendments to federal law.⁵¹

⁵¹ See 20 U.S.C. 7801(20).

JOINT EDUCATION OVERSIGHT COMMITTEE

- Abolishes the Joint Education Oversight Committee (JEOC) on October 1, 2019.
- Assigns the responsibility to complete any unfinished JEOC business, as well as its records and materials, to the Legislative Service Commission.

Joint Education Oversight Committee abolished

(Repealed R.C. 103.44 to 103.50 and 3314.231; Sections 311.10 and 733.40)

The act abolishes the Joint Education Oversight Committee (JEOC) on October 1, 2019, and provides funding for its operations until that date. It terminates the employment of JEOC staff and transfers custody of all JEOC records, documents, files, equipment, assets, and other materials to the Legislative Service Commission (LSC). LSC also is assigned the responsibility to complete any unfinished JEOC administrative business or pending actions after October 1, 2019.

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 act increases by \$50, fees for the following licenses and permits: 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.

It also revises the process of obtaining a license. Under prior law, a person who wished to obtain an embalmer's or funeral director's license was required to first register with the Ohio Board of Embalmers and Funeral Directors and subsequently complete an apprenticeship program. The registration fee was \$25, and the fee for filing a certificate of apprenticeship was \$10. The act removes the registration requirement and specifies that an applicant need only obtain a certificate of apprenticeship subject to a \$35 fee.

ENVIRONMENTAL PROTECTION AGENCY

Extension of E-Check

- Extends the motor vehicle inspection and maintenance program (E-Check) through June 30, 2025, where federally mandated.
- Retains all statutory requirements governing the program, including:
 - The new contract must ensure that the program achieves at least the same emissions reductions as achieved by the program under the prior contract;
 - The Director of Administrative Services must use a competitive selection process when entering into a new contract with a vendor; and
 - E-Check must be a decentralized program and include a new car exemption for motor vehicles that are up to four years old.

Local air pollution control authority

- Removes the Mahoning-Trumbull Air Pollution Control Authority, City of Youngstown from the list of agencies that qualify as a local air pollution control authority.

Post-use polymers and recoverable feedstocks

- Excludes, under certain circumstances, post-use polymers (plastics) and recoverable feedstocks from the laws governing solid waste disposal.

Asbestos abatement

- Makes the following changes to the law governing asbestos abatement:
 - 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 prior law;
 - Authorizes the Ohio Environmental Protection Agency (OEPA) to take certain enforcement actions against a contractor licensee or certificate holder if either violates or threatens to violate specified federal regulations adopted under the Federal Toxic Substances Control Act; and
 - Eliminates the Director of Environmental Protection's (OEPA Director) authority to approve, on a case-by-case basis, alternatives to the continuing worker protection requirements for a project conducted by a public entity.

Extension of various fees

- Extends the sunset of the following fees for two years:
 - Annual emissions fees for synthetic minor facilities;
 - Annual discharge fees for National Pollutant Discharge Elimination System (NPDES) permit holders;

- License fees for public water system licenses;
- Fees levied on the transfer or disposal of solid wastes; and
- Fees levied on tire sales.
- Extends the levying of higher fees for the following, and the decrease of those fees at the end of two years:
 - Applications for plan approvals for wastewater treatment works;
 - State certification of laboratories and laboratory personnel (for purposes of the Safe Drinking Water Law);
 - Applications to take examinations for certification as water supply system or waste water system operators;
 - Applications for permits, variances, and plan approvals under the Water Pollution Control and Safe Drinking Water Laws.

George Barley Water Prize

- Appropriates \$125,000 in FY 2020 to a new line item, Environmental Program Support, to support the final stage of the awards process for the Everglades Foundation's George Barley Water Prize.
- If the \$125,000 is not fully spent in FY 2020, authorizes the OEPA Director to certify an amount up to the unexpended, unencumbered balance to be reappropriated in FY 2021.

Extension of E-Check

(R.C. 3704.14)

The act extends the motor vehicle inspection and maintenance program (E-Check) in counties where this program is federally mandated by:

- Authorizing the OEPA Director to request the Director of Administrative Services (DAS Director) 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; and
- Requiring the OEPA 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 up to 24 months through June 30, 2025.

The act retains the requirement that the new contract ensure that the program achieves at least the same emissions reductions achieved under the prior contract. 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 act retains all statutory requirements governing the program, including requirements that E-Check be a decentralized program (meaning tests do

not take place at dedicated testing centers) and include a new car exemption for motor vehicles that are up to four years old.

Local air pollution control authority

(R.C. 3704.01 and 3704.111)

The act removes the Mahoning-Trumbull Air Pollution Control Authority (City of Youngstown), which ceased operations in 2018, from the list of agencies that statutorily qualify as a local air pollution control authority. Under continuing law, a local air pollution control authority agrees, via a delegation agreement, to perform certain air pollution control regulatory services on behalf of OEPA.

Post-use polymers and recoverable feedstocks

(R.C. 3734.01)

The act 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;
- They remain retrievable and substantially unchanged physically and chemically;
- Their storage does not cause a nuisance;
- Their storage does not pose a threat from vectors (e.g., insects or vermin);
- Their storage does not adversely impact public health, safety, or the environment; and
- Prior to the end of the 90-day or less storage period, they are converted using gasification or pyrolysis.

The following table describes each scientific term as used in the act.

Term	Scientific description
Post-use polymer	<p>A plastic polymer that is both:</p> <ul style="list-style-type: none"> ▪ Derived from any source and is not being used for its original intended purpose; and ▪ Used or intended to be used to manufacture crude oil, fuels, other raw materials, intermediate products, or final products using pyrolysis or gasification. <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"> ▪ Post-use polymers; or

Term	Scientific description
	<ul style="list-style-type: none"> ▪ Materials for which the U.S. Environmental Protection Agency has made a nonwaste determination or has otherwise determined are not solid waste.
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:</p> <ul style="list-style-type: none"> ▪ Crude oil, diesel, gasoline, home heating oil, or another fuel; ▪ Feedstocks; ▪ Diesel and gasoline blendstocks; ▪ Chemicals, waxes, or lubricants; or ▪ Other raw materials, intermediate products, or final products.
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)

Prior to the act, OEPA's asbestos management program did not meet the requirements of the U.S. EPA's Model Accreditation Plan (MAP). As such, OEPA did not have the authority to approve training courses and license individuals, and Ohio-based training course providers were required to obtain course approvals in other compliant states. The act aligns Ohio law with the MAP by making the following changes to the law governing asbestos abatement:

- 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 prior law. (For example, if an activity involves four linear feet, a person must 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 operation 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 violates or threatens 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. (Previously, denial was limited to felony convictions.)
- Eliminates the OEPA 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;
- Requires a person to be certified as an asbestos hazard evaluation specialist for inspections and assessments of suspect asbestos-containing materials;
- Requires a person to be certified as an asbestos hazard abatement project designer in order to oversee an asbestos hazard abatement activity;
- 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 in prior law, before beginning an asbestos hazard abatement project.

Extension of various fees

(R.C. 3745.11, 3734.57, and 3745.901)

The act extends the time period for charging various OEPA fees, as follows:

Type of fee	Description	Fee under prior law	Fee under the act
Emission fees for synthetic minor facilities	Each person who owns or operates a synthetic minor facility must pay an annual fee per a fee schedule. The schedule 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 that has the potential to	The fee was required to be paid through June 30, 2020.	The act extends the fee through June 30, 2022.

Type of fee	Description	Fee under prior law	Fee under the act
	emit pollutants in amounts that are at or above the thresholds for major (Title V) sources, but its emissions are restricted such that the emissions are below those thresholds.		
Plan approval application fee for wastewater treatment works	<p>A person applying for a wastewater treatment works plan approval is required to pay one of the following fees, depending on the date:</p> <p>--A tier-one fee of \$100 plus 0.65% of the estimated project cost, up to a maximum of \$15,000; or</p> <p>--A tier-two fee of \$100 plus 0.2% of the estimated project cost, up to a maximum of \$5,000.</p>	An applicant was required to pay the tier-one fee through June 30, 2020, and the tier-two fee would have applied on and after July 1, 2020.	The act extends the tier-one fee through June 30, 2022; the tier-two fee begins on or after July 1, 2022.
Discharge fees for NPDES permit holders	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.	The fees were due by January 30, 2018, and January 30, 2019.	The act extends the fees and the fee schedules to January 30, 2020, and January 30, 2021.
Surcharge for major industrial dischargers	An NPDES permit holder that is a major industrial discharger must pay an annual surcharge of \$7,500.	The surcharge was due by January 30, 2018, and January 30, 2019.	The act extends the fee to January 30, 2020, and January 30, 2021.
Discharge fee for specified exempt dischargers	Certain NPDES permit holders (one category of public discharger and eight categories of industrial dischargers) must pay an annual fee of \$180, regardless of average daily discharge flow.	The fee was due by January 30, 2018, and January 30, 2019.	The act extends the fee to January 30, 2020, and January 30, 2021.
License fee for public water system license	A person may not operate or maintain a public water system without an annual license from OEPA. Applications for initial	The fee for an initial license or a license renewal applied through June 30, 2020,	The act extends the initial license and license renewal fee through June 30,

Type of fee	Description	Fee under prior law	Fee under the act
	licenses or renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems.	and had to be paid annually in January.	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 OEPA's approval. The fee for the plan approval is \$150 plus 0.35% of the estimated project cost. However, current law caps the fee.	The fee cap was \$20,000 through June 30, 2020, and would have been \$15,000 on and after July 1, 2020.	The act extends the \$20,000 cap through June 30, 2022; the \$15,000 cap 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 individual laboratory cannot be assessed a fee more than once in a three-year period; but, if the person requests analytical methods or analysts, the person must pay \$1,800 for each additional survey requested.</p>	<p>The schedule with higher fees applied through June 30, 2020, and the schedule with lower fees would have applied on and after July 1, 2020.</p> <p>The \$1,800 additional fee applied through June 30, 2020.</p>	<p>The act extends the higher fee schedule through June 30, 2022; the lower fee schedule applies on and after July 1, 2022.</p> <p>The act extends the additional fee through June 30, 2022.</p>
Fee for examination for certification as an operator of a water supply system or wastewater system	A person applying to OEPA to take an examination for certification as an operator of a water supply system or a wastewater system (class A and classes I-IV) must pay a fee, at the time an application is submitted, in accordance with a statutory schedule.	A schedule with higher fees applied through November 30, 2020, and a schedule with lower fees would have applied on and after December 1, 2020.	The act extends the higher fee schedule through November 30, 2022; the lower fee schedule applies on and after December 1, 2022.
Application fee for a permit (other than an NPDES permit), variance, or plan approval	A person applying for a permit (other than an NPDES permit), a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law must pay a nonrefundable fee.	If the application was submitted through June 30, 2020, the fee was \$100. If the application would have been submitted on or after July 1, 2020, the fee would have been \$15.	The act extends the \$100 fee through June 30, 2022; the \$15 fee applies on and after July 1, 2022.

Type of fee	Description	Fee under prior law	Fee under the act
Application fee for an NPDES permit	A person applying for an NPDES permit must pay a nonrefundable application fee.	If the application was submitted through June 30, 2020, the fee was \$200. If the fee would have been submitted on or after July 1, 2020, the fee would have been \$15.	The act extends the \$200 fee through June 30, 2022; the \$15 fee applies on and after July 1, 2022.
Fees on the transfer or disposal of solid wastes	A total of \$4.75 in state fees is levied on each ton of solid waste disposed of or transferred in Ohio. The fees are used for administering the hazardous waste (90¢), solid waste (75¢), and other OEPA programs (\$2.85), and for soil and water conservation districts (25¢).	The fees applied through June 30, 2020.	The act extends the fees through June 30, 2022.
Fees on the sale of tires	A base fee of 50¢ per tire is levied on the sale of tires to assist in cleaning up scrap tires. An additional fee of 50¢ per tire is levied to assist soil and water conservation districts.	Both fees were scheduled to sunset on June 30, 2020.	The act extends the fees through June 30, 2022.

George Barley Water Prize

(Sections 277.10 and 277.20)

The act appropriates \$125,000 in FY 2020 to a new line item, Environmental Program Support, to support the final stage of the awards process for the Everglades Foundation's George Barley Water Prize. If the \$125,000 is not spent in its entirety in FY 2020, the OEPA Director may certify to the Director of Budget and Management an amount up to the unexpended, unencumbered balance to be reappropriated in FY 2021. The George Barley Water Prize recognizes groundbreaking innovation in removing excess phosphorus from freshwater sources.⁵²

⁵² <https://www.barleyprize.org>.

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.

School facilities maintenance set-aside

- Specifies that the maintenance funds set aside for a state-funded classroom facilities project may be used for “upgrades,” subject to Commission approval.

Expedited Local Partnership Program (ELPP)

- Permits a school district that has already received assistance under Classroom Facilities Assistance Program (CFAP) and has divided its CFAP project into segments to participate in Expedited Local Partnership Program (ELPP) for a discrete portion of one or more of its future segments.

Priority funding under CFAP

- Requires the Commission to give first priority for 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 the district’s portion of the project cost 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 ELPP districts

- Specifies that an ELPP district that did not construct facilities under its ELPP agreement retains its percentile ranking determined at the time of its initial agreement under 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.

School storm shelters

- Extends from September 15, 2019, to September 15, 2020, the existing moratorium regarding the construction of storm shelters in private and public school buildings.
- Requires the Commission to conduct a study and make recommendations regarding storm shelter requirements for school buildings to the General Assembly by December 31, 2019.

Executive Director powers

(R.C. 123.21)

The act eliminates a provision 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.

School facilities maintenance set-aside

(R.C. 3318.05, 3318.051, 3318.06, 3318.061, 3318.062, 3318.063, 3318.36, and 3318.361)

The act specifies that the maintenance funds set aside for a state-funded classroom facilities project may be used for "upgrades," subject to approval by the Commission. It also makes changes to tax levy ballot language used by most districts to generate the required funds. It appears that an existing maintenance levy may not be used for upgrades unless specifically approved by the voters for that purpose.

Background

The Commission administers several programs that provide state assistance to school districts and other public schools in constructing classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Other smaller programs address the particular needs of certain types of districts and schools. These, too, are cost-sharing programs.

Besides raising its share of the project cost, usually through the issuance of voter-approved bonds and an accompanying tax levy, a school district participating in CFAP must levy a separate tax or set-aside other funds for the maintenance of the facilities. The amount of that set aside is equal to one-half mill (0.0005) times the district's tax valuation for 23 years. Some districts qualify for an equalized supplemental payment to help pay the cost of the maintenance requirement.⁵³ This maintenance set-aside requirement applies to CFAP and most other programs administered by the Commission (including the Expedited Local Partnership Program, as described below). A separate maintenance set-aside requirement applies to joint vocational school districts. It is not affected by the act's provisions.⁵⁴

⁵³ R.C. 3318.18, not in the act.

⁵⁴ R.C. 3318.43, not in the act.

Expedited Local Partnership Program (ELPP)

(R.C. 3318.36)

The act permits a school district that has already received assistance under CFAP and has divided its CFAP project into segments to participate in the Expedited Local Partnership Program (ELPP) for a discrete portion of one or more of its future segments.

ELPP permits most school districts that have not been served under CFAP to apply the advance expenditure of district money on approved parts of their district-wide needs toward their shares of their CFAP projects when they become eligible for CFAP. Except as now provided by the act, a district may not participate in ELPP if it is reasonably expected to receive CFAP assistance within two fiscal years.

In 2008, all districts participating in CFAP were authorized to segment their projects. Until then, only the large urban districts were permitted to do so.⁵⁵

Priority funding under CFAP

(R.C. 3318.036)

The act specifies that the Commission must give first priority for 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.

Priority under CFAP for ELPP districts

(R.C. 3318.037)

Separately, the act 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 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;
- The district has previously participated in ELPP but did not construct any new facilities as part of that program; and
- The district reapplies for ELPP between January 1, 2019, and July 1, 2020, and subsequently enters into a new agreement for that program.

⁵⁵ R.C. 3318.034 and 3318.38, neither in the act.

The act 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.

School storm shelters

(R.C. 3781.1010)

The act extends from September 15, 2019, to September 15, 2020, the existing moratorium on the building code requirement for storm shelters in school buildings operated by a public or private school or in any such school building undergoing or about to undergo construction, alteration, repair, or maintenance financed prior to the end of the moratorium.

Study

(Section 287.90)

The act also requires the Commission to evaluate and make recommendations regarding appropriate requirements for storm shelters for school buildings. The Commission must conduct the study in consultation with stakeholders, including school district officials, and submit a report of its findings to the General Assembly by December 31, 2019.

OHIO GENERAL ASSEMBLY

Legislative Committee on Public Health Futures

- Re-establishes the Legislative Committee on Public Health Futures.
- Requires the Committee to review the effectiveness of recommendations of previous reports and to make legislative and fiscal policy recommendations that it believes would improve local public health services in Ohio.
- Requires the Committee to produce its report by December 31, 2020, and dissolves the Committee once it issues the report.

Broadcast committee meetings

- Authorizes the Ohio Government Telecommunications Service to broadcast and record any committee meeting in the Senate or House, as directed by the presiding officer.

Cystic Fibrosis Legislative Task Force

- Specifies when members of the Cystic Fibrosis Legislative Task Force must be appointed and how long they serve, including as chairperson.

Legislative Committee on Public Health Futures

(Section 737.40)

The act re-establishes the Legislative Committee on Public Health Futures and requires that it review relevant reports previously produced by similar public health futures committees in Ohio. The Committee must review the effectiveness of recommendations from those reports that are being or that have been implemented, and based on the knowledge and insight gained from its reviews, make legislative and fiscal policy recommendations that it believes would improve local public health services in Ohio.

Not later than December 31, 2020, the Committee must prepare a report that describes its review of the past reports and the implemented recommendations and that explains the Committee's new policy recommendations. The Committee must transmit a copy of its report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House. Upon transmitting its report, the Committee ceases to exist.

The Ohio Department of Health (ODH) and each of the following associations must appoint one individual to the Committee: the County Commissioners Association of Ohio, the Ohio Township Association, the Ohio Public Health Association, the Ohio Environmental Health Association, the Ohio Boards of Health Association, the Ohio Municipal League, and the Ohio Hospital Association. The Association of Ohio Health Commissioners must appoint two individuals to the Committee. The President and Minority Leader of the Senate and the Speaker and Minority Leader of the House each must appoint two members to the Committee. Of the two appointments made by each legislative leader, one must be a member of the General

Assembly from the appointing member's chamber. Appointments must be made as soon as possible but not later than 30 days after October 17, 2019. Vacancies on the Committee must be filled in the same manner as the original appointment.

As soon as all members have been appointed to the Committee, the Senate President must fix a time and place for the Committee to hold its first meeting. At that meeting, the Committee must elect from among its membership a chairperson, a vice-chairperson, and a secretary. The ODH Director must provide meeting and office space, equipment, and professional, technical, and clerical staff as are necessary for the Committee successfully to complete its work.

Broadcast committee meetings

(R.C. 3353.07)

The act 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. "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 act modifies the appointment procedures for members to the Cystic Fibrosis Legislative Task Force. It requires that appointments be made within 45 days after the first regular session of each General Assembly. Under the act, 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 the person is no longer a member of the General Assembly.

The act also eliminates a restriction that prohibited the chairperson of the Task Force from serving as chairperson for more than one year.

OFFICE OF THE GOVERNOR

- Repeals state laws that established 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, 191.10, 3798.14, 3798.15, and 3798.16, all repealed; R.C. 103.41, 3701.36, 3701.68, 3798.01, 3798.10, 5101.061, 5162.12, and 5164.01)

The act 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 in 2011 pursuant to an executive order.⁵⁶

Specifically, the act repeals state laws that required 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;

⁵⁶ 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 act repeals state laws that permitted 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 was 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 had to be done in accordance with federal law governing the confidentiality of individually identifiable health information.

H2OHIO FUND

- Creates the H2Ohio Fund in the state treasury.
- Directs a portion of FY 2019 GRF surplus revenue and 50% of FY 2021 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 Ohio Lake Erie Commission, in coordination with state agencies or boards responsible for water protection and water management, 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, 513.10, 513.20, and 513.30)

The act creates the H2Ohio Fund in the state treasury and directs a portion of FY 2019 GRF surplus revenue (up to \$172 million) 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. It authorizes the Controlling Board, in FY 2021, to increase or establish appropriations from the fund to state agencies as “necessary to support the statewide strategic vision and comprehensive periodic water protection strategy.” It also requires 50% of FY 2021’s ending GRF surplus revenue to be transferred to the fund (the other 50% will be transferred to the Budget Stabilization Fund).

The H2Ohio 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, 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 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;

- Agricultural water improvement projects, which focus on agricultural practices that impact Ohio waters;
- Community water improvement projects, which involve a public water system operated by a political subdivision;
- Nature water improvement projects, which involve a natural water system, including the creation and maintenance of wetlands and flood plains; 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 report

The Ohio Lake Erie Commission, in coordination with state agencies or boards responsible for water protection and water management, 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.

DEPARTMENT OF HEALTH

Fetal-infant mortality review boards

- Authorizes local boards of health to establish fetal-infant mortality review boards to review fetal and infant deaths within the board's jurisdiction.
- Specifies a review board's membership, purposes, and responsibilities.
- Specifies that investigatory materials that a review board possesses are confidential and not public records, and that board meetings are not subject to Ohio's Open Meetings Law.
- Specifies that entities that submit investigatory materials to a review board, as well as board members, are immune from civil liability in connection with their responsibilities.
- Requires the Director of Health (ODH Director) to adopt rules for the establishment and operation of fetal-infant mortality review boards.

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 their incidence.
- 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 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.

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.
- 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.

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.

Radiation technology professionals

- Authorizes nuclear medicine technologists and radiation therapy technologists who are certified in computed tomography (CT) to perform CT procedures.
- Makes other changes to the law governing the regulation of radiation technology professionals.

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

- Adds four new members to and updates two member association names represented on the Child Lead Poisoning Advisory Council.

Lead abatement: order to vacate

- If an owner or manager of a residential unit, child-care facility, or school is out of compliance with a lead hazard control order, requires the ODH Director or a board of health to issue an order to vacate, which prohibits the owner or manager from using that property for any purpose.
- 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.

Lead-Safe Home Fund Pilot Program

- Requires the ODH Director to establish a Lead-Safe Home Fund Pilot Program to improve housing conditions for children by providing grants to eligible property owners for lead-safe remediation actions.
- Requires the Director to coordinate the program with the Lead Safe Cleveland Coalition.

- Requires the Director to submit a report of the program’s findings and outcomes to the Governor and the General Assembly by June 30, 2021.
- Requires the Coalition to provide ODH with documentation of the amount of private sector dollars collected, and requires ODH to distribute an equal amount, but not exceeding \$1 million in each fiscal year.

Ambulatory surgical facilities

- Modifies the criteria for determining whether a facility must be licensed as an ambulatory surgical facility.
- 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.”

Newborn safety incubators (VETOED)

- Would have exempted a law enforcement agency, hospital, or emergency medical service organization that installs a newborn safety incubator from the requirement to have staff on site under specified circumstances.

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.
- Expands eligibility for screening and diagnostic services provided through ODH's Ohio Breast and Cervical Cancer Project.

Public Health Priorities Fund

- Renames Ohio's Public Health Priorities Trust Fund as Ohio's Public Health Priorities Fund, eliminates the purposes for money in the fund, and instead requires the ODH Director to use the money for pressing public health needs and 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 surveillance advisory board

- Abolishes the Ohio Cancer Incidence Surveillance System Advisory Board.

Certificates of need

- Requires the ODH Director to determine within 180 days whether a certificate of need (CON) application is complete.
- Modifies the time periods used by the Director in determining each county's bed need and in reviewing CON applications.
- Eliminates the second phase of the four-year CON review period during which certain beds resulting from a reduction could have been made available for redistribution.
- Establishes specific conditions for accepting CON applications in January 2020, with particular criteria to be used in granting an increase in beds in Delaware, Greene, Lake, Licking, and Medina counties.

- Creates an interim period for review of CON applications that begins October 17, 2019, and ends July 1, 2021.
- Eliminates the authority to appeal a decision by the ODH Director regarding a CON, unless the person is the CON applicant or the person who requested a reviewability ruling.
- Eliminates provisions regarding the award of attorney's fees relative to CON appeals.

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 ODH Director can issue a license authorizing the person to operate the nursing home, the person must submit 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 notice that identifies the facility as a freestanding emergency department.
- 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.
- Requires the Speaker of the House and the Senate President to each appoint an individual who represents children's interests to the Commission.

Radon mitigation specialists

- Prohibits the ODH Director from requiring a licensed radon mitigation specialist to be physically present 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.

Resident's right to choose hospice care program

- Adds to the bill of rights for a resident of a nursing home or residential care facility the right to choose a licensed hospice care program that best meets the resident's needs.

Solemn Covenant of the States to Award Prizes for Curing Diseases

- 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 various powers, including 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.
- Specifies how the Commission is organized, its membership, and administrative, recordkeeping, financial, and reporting requirements.
- Specifies how the Compact is to be enforced.
- 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.
- Allows a 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 the Compact dissolves when the Compact membership is reduced to one state or the Commission votes to dissolve it.

Fetal-infant mortality review boards

(R.C. 121.22, 149.43, 3701.049, 3707.70, 3707.71, 3707.72, 3707.73, 3707.74, 3707.75, 3707.76, and 3707.77)

The act authorizes a local board of health to establish and operate a fetal-infant mortality review board, in accordance with rules the ODH Director must adopt, to review:

--Each fetal death experienced by a woman who was, at the time of the fetal death, a resident of the health district in which the board exercises authority; and

--Each death of an infant who was, at the time of death, a resident of the health district in which the local board exercises authority.

No reviews during criminal investigation

The act prohibits a fetal-infant mortality review board from conducting a review of a death while an investigation of the death or prosecution of a person for causing the death is pending, unless the prosecuting attorney agrees to allow it. 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 review board chairperson of the conclusion.

Membership

If a local board of health establishes a fetal-infant mortality review board, the local board, by a majority vote of a quorum of its members, must select the review board's members. Members may include the following professionals or individuals representing the following constituencies:

- Fetal-infant mortality review coordinators;
- Board-certified obstetricians and gynecologists;
- Key community leaders from the board of health's jurisdiction;
- Health care providers;
- Human services providers;
- Consumer and advocacy groups; and
- Community action teams.

A majority of the review board members may invite additional individuals to serve on the board. The additional members must serve for a period of time determined by a majority of the members and have the same authority, duties, and responsibilities as the members. In addition, the review board, by a majority vote of a quorum of its members, must designate a chairperson.

A vacancy is to be filled in the same manner as the original appointment. A board member is prohibited from receiving any compensation or reimbursement for expenses associated with membership. A review board may work in conjunction with, or be a component of, a child fatality review board or regional child fatality review board.

A review board must convene at least once a year at the call of its chairperson.

Purpose

The act specifies that a review board's purpose is to decrease the incidence of preventable fetal and infant deaths by doing all of the following:

- Assessing, planning, improving, and monitoring the service systems and broad community resources that support and promote the health and well-being of women, infants, and families;

--Recommending and developing plans for implementing local service and program changes, as well as changes to the groups, professions, agencies, and entities that serve families, children, and pregnant women; and

--Providing the Department of Health (ODH) with aggregate data, trends, and patterns regarding fetal and infant deaths.

Submission of information; family member participation

Notwithstanding state confidentiality laws, the act requires an individual, public children services agency, private child placing agency, agency that provides services specifically to individuals or families, a law enforcement agency, or another public or private entity that provided services to a pregnant woman whose fetus died or an infant who died to submit to the review board copies of any record it possesses that the board requests. These records may include maternal health records. In addition, the individual or entity may make available to the board other information, documents, or reports that could be useful to the board's investigation. An exception to this requirement exists when a person is under investigation, or being prosecuted, for causing the death (unless the prosecuting attorney agrees to allow the death review).

The act 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

Except for information from a public children services agency about a child who is the subject of a child abuse, neglect, or other criminal conduct investigation under limited circumstances in continuing law, the following are confidential and exempt from the Publics Records Law: any record, document, report, or other information presented to a fetal-infant mortality review board or a person abstracting such materials on the board's behalf; statements made by board members during board meetings; all board work products, and data submitted by the board to ODH or a national infant death review database (other than the annual report required by the act, discussed below). These materials must be used by the review board and the Ohio Department of Health (ODH) only in the exercise of their proper functions. In addition, board meetings are not public meetings subject to Ohio's Open Meetings Law.⁵⁷

If the materials are presented in paper form, they must be stored in a locked file cabinet. If a database is used to store the materials electronically, the database must be stored in a secure manner. All information accessible to each board member and used during a review, including information provided by the deceased's mother, must be de-identified.

⁵⁷ R.C. 121.22.

The act prohibits the unauthorized dissemination of this confidential information. A violation of this prohibition is a second degree misdemeanor.

Immunity

The act grants civil immunity to both:

--An individual or public or private entity providing records, documents, reports, or other information to a fetal-infant mortality review board, for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing these materials to a board; and

--Each review board member 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.

Data reporting and annual report

The act requires a fetal-infant mortality review board, not later than April 1 each year, to both:

--Submit to the fetal-infant mortality database maintained by ODH or a national infant death review database individual data pertaining to each fetal or infant death reviewed in that board's jurisdiction within the 12 months preceding the submission; and

--Submit to ODH a report that summarizes any trends or patterns the review board identifies.

The specific data that must be submitted, and other information the board considers relevant to a review, must be specified by the ODH Director in rules. The report, a public record, may include recommendations on how to decrease the incidence of preventable fetal and infant deaths in the board's jurisdiction and Ohio, as well as any other information the board determines should be included.

Rules

The ODH Director must adopt rules to establish a procedure for fetal-infant mortality review boards to follow in reviewing a fetal or infant death. The rules must be adopted in accordance with the Administrative Procedure Act⁵⁸ and do the following:

--Specify the procedures that a local board of health must use to establish and operate a review board;

--Specify the data and other relevant information a review board must use when reviewing a fetal or infant death;

--Establish guidelines for a review board to follow so that information presented to it does not include anything that would permit any person's identity from being ascertained; and

⁵⁸ R.C. Chapter 119.

--Specify the standards and procedures a review board must use when reporting fetal-infant mortality data to ODH's fetal-infant mortality database or a national infant death review database.

Pregnancy-associated Mortality Review (PAMR) Board

(R.C. 121.22, 149.43, 3738.01, 3738.02, 3738.03, 3738.04, 3738.05, 3738.06, 3738.07, 3738.08, and 3738.09)

The act establishes in 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 act 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, must select a chairperson. It may replace a chairperson.

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 act 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 act 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 other 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 act 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 act 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 biennial reports described below), are confidential and not public records. 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 act prohibits the unauthorized dissemination of this confidential information. A violation of this prohibition is a second degree misdemeanor.

Immunity

The act 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 PAMR Board must submit to the Governor, General Assembly, and ODH Director a biennial report that:

--Summarizes its 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. The reports are public records, and the ODH Director must make each report available on ODH's website.

Rules

The ODH Director must adopt rules in accordance with the Administrative Procedure Act⁵⁹ that are necessary for the PAMR Board's operations, including rules that:

--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 to prevent unauthorized dissemination of confidential information.

Central intake/referral system for home visiting services

(R.C. 3701.611)

Continuing 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 act 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. According to the Institute, the Pathways Community

⁵⁹ R.C. Chapter 119.

HUB model focuses on the comprehensive identification and reduction of risk in a culturally connected pay-for-performance approach.⁶⁰

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 act 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.

Substance use disorder professionals

(Sections 737.10 and 737.11)

The act authorizes ODH to establish a loan repayment program for professionals who provide treatment and 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 act 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)

Under continuing law, ODH operates a Dental Hygienist Loan Repayment Program in cooperation with the Dentist Loan Repayment Advisory Board. The program is to provide student loan repayment for dental hygienists who agree to serve in areas designated as dental health resource shortage areas.

Law unchanged by the act authorizes the ODH Director to accept donations for the program's operations. Formerly, the Director was required to deposit donations into the state treasury to the credit of the Dental Hygiene Resource Shortage Area Fund. According to ODH staff, however, no donations were received in nearly four years. The act therefore eliminates this fund and requires that any donations be deposited to the credit of the Dental Hygienist Loan Repayment Fund, a preexisting fund.

⁶⁰ Pathways Community HUB Institute, Pathways Community HUB Model Overview, available at <https://pchi-hub.com/hubmodeloverview>.

Radiation technology professionals

(R.C. 4773.01, 4773.061, 4773.07, and 4773.08)

The act revises the law governing ODH's regulation of radiation technology professionals. First, it authorizes nuclear medicine technologists and radiation therapy technologists who are certified in computed tomography, or CT, to perform CT procedures. It also requires the ODH Director to adopt rules establishing standards for the performance of CT procedures and for the approval of national organizations that certify nuclear medicine and radiation therapy technologists in CT.

Second, it modifies the definitions of radiation technology professionals as follows:

- By adding to the definitions of general x-ray machine operator, radiation therapy technologist, and radiographer references to radiation-generating equipment;
- By specifying that radiation therapy technologists are the same as radiation therapists;
- By removing from the definitions of general x-ray machine operator and radiographer references to determining the site of radiation and replacing them with references to determining procedure positioning.

The act also clarifies that a general x-ray machine operator does not determine procedure positioning, while a radiographer does, and changes references from "radiography" to "radiology."

Examination fees

(R.C. 3701.044)

When an entity administers an examination or evaluation on behalf of ODH, 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 act requires ODH to post on its website the dollar amount of the fee. If the entity changes the fee amount, 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 act adds the following members to the Child Lead Poisoning 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 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 act requires the ODH Director or a board of health to issue an order to vacate, which prohibits the owner or manager of a residential unit, child-care facility, or school from using the property for *any purpose*, if:

- 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 prior law, the Director or board could only issue an order to vacate that prohibited the owner or manager from using the property as a residential unit, child-care facility, or school.

The act also authorizes the Director or board 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 or is about to violate the order. The court must grant injunctive relief on a showing that the person has violated or is about to violate the order.

Under prior law, the Director could only request the Attorney General to bring a civil action for civil penalties and injunctive and other equitable relief against any person who violated any provision of the Lead Abatement Law and rules adopted under it. Prior law did not specifically provide for injunctive relief for violations of a lead hazard control order.

Lead-Safe Home Fund Pilot Program

(Section 737.15)

The act requires the ODH Director to establish a two-year Lead-Safe Home Fund Pilot Program (for FY 2020 and 2021) to improve housing conditions for children by providing grants to eligible property owners for lead-safe remediation actions. The Director must enter into a cooperative agreement with the Lead Safe Cleveland Coalition. The Coalition may make certain decisions and determinations regarding the program in accordance with the program requirements specified below.

The act appropriates money in FY 2020 and FY 2021 for the pilot program, to make quarterly distributions to the Coalition. The Coalition must provide ODH with documentation that shows the amount of private sector dollars that have been collected. ODH must distribute an amount that equals the documentation but does not exceed \$1 million in each fiscal year.

The ODH Director must establish the following for the program:

- A means to solicit applicants;
- An application process;
- A process for distributing and administering the grants;
- A methodology for evaluating the eligibility of the applicants; and
- Any other procedures and requirements necessary to administer the program.

By June 30, 2021, the Director, in consultation with the Coalition, must issue a report of the program's findings and outcomes to the Governor and the General Assembly.

Ambulatory surgical facilities

(R.C. 3702.30; conforming changes in R.C. 111.15, 2317.54, 3702.12, 3702.13, and 3711.12)

The act modifies the criteria to determine whether a facility must be licensed as an ambulatory surgical facility. It eliminates standards that were based on the provision of anesthesia services, application for 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 act retains provisions that require licensure when the facility is separate from an inpatient care facility. In addition, it extends the licensure requirement to any facility operated by a separate entity within an inpatient care facility. Accordingly, the licensing requirement applies under the act 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.

Similar to prior law, the act specifies that the licensing requirement does not extend to the offices of physicians, podiatrists, or dentists. Law unchanged by the act, however, specifies that the licensing requirement does apply 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.

Health care facility payments

(R.C. 3702.30(E))

In addition to ambulatory surgical facilities, continuing law requires ODH to license freestanding dialysis centers, freestanding inpatient rehabilitation facilities, freestanding birthing centers, freestanding radiation therapy centers, and freestanding or mobile diagnostic imaging centers. The act 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)

Continuing law requires newborns to be screened for Krabbe disease. The act repeals the law that limits the screening process to “first tier testing,” or testing accomplished by measuring galactocerebrosidase activity using mass spectrometry. The act neither requires nor specifies a particular screening process for Krabbe disease.

Newborn safety incubators (VETOED)

(R.C. 2151.3516 and 2151.3532)

Under continuing law, a parent may deliver to a newborn safety incubator his or her newborn who is not older than 30 days without intent to return for the child. A law enforcement agency, hospital, or emergency medical service organization may install a newborn safety incubator that meets certain standards, including that the incubator notify the agency, hospital, or organization within 30 seconds of a newborn being placed inside.

Continuing law requires the agency, hospital, or organization to have one or more officers or employees present at all times at the location where the incubator has been installed. The Governor vetoed a provision that would have exempted an agency, hospital, or organization from this requirement if the following conditions were met:

- An officer or employee could arrive at the location within seven minutes of a newborn being placed inside the incubator;
- The agency, hospital, or organization submitted to ODH a written statement confirming that an officer or employee could arrive at the location within the seven-minute period.

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 act 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 act modifies the reporting cycle for the ODH Director to submit to the General Assembly a report detailing the prevalence of diabetes in the state. Formerly, the Director was required to submit the report by January 31 of each even numbered year. The act 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 act)

The act 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 in the same manner that the Office makes available the numbers to the Department of Job and Family Services' Division of Child Support for child support enforcement under continuing law.

Under law unchanged by the act, 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.

Area training centers for nursing home employees

(R.C. 3721.41 and 3721.42)

The act repeals the law requiring the ODH Director to establish centers throughout the state for training nursing home employees and to contract with local public or nonprofit entities for their operation.

Breast and Cervical Cancer Project

Providers

(R.C. 3701.601)

The act adds the following providers as 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 continuing law, the ODH Director must distribute money from the fund to pay for breast and cervical cancer screening, diagnostic, and outreach services for uninsured and under-insured women as part of the Ohio Breast and Cervical Cancer Project. Prior law limited the providers eligible for payments to federally qualified health centers, other community health centers, and health departments operated by local boards of health.

Eligibility

(R.C. 3701.144)

The act expands eligibility for screening and diagnostic services provided through the Breast and Cervical Cancer Project, as follows:

- Increases maximum income eligibility from 250% to 300% of the federal poverty line;
- In the case of women seeking breast cancer screening and diagnostic services generally, eliminates the requirement that they be younger than 65;

- In the case of women seeking breast cancer screening and diagnostic services because of family history, clinical examination results, or other factors, lowers to 21 (from 25) the age at which they become eligible for services.

Public Health Priorities Fund

(R.C. 183.18 and 183.33)

The act renames Ohio's Public Health Priorities Trust Fund as Ohio's Public Health Priorities Fund. It eliminates the purposes for which money in the fund must be used, and 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, to meet the act's requirements.

Continuing law requires that all investment earnings of the fund be credited to the fund. The act 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. It 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 Plant⁶¹) cease operation, the act 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.

⁶¹ 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>.

- 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 act'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.⁶² 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 act 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.⁶³

H.B. 6, recently enacted by the 133rd General Assembly with the effective date of October 22, 2019, provides for rate-payer-funded subsidies to the two nuclear facilities in Ohio to keep them producing electricity. As a result, these facilities may not be shutting down soon.

Cancer surveillance advisory board

(R.C. 3701.264, repealed)

The act abolishes the Ohio Cancer Incidence Surveillance System Advisory Board, but maintains the Ohio Cancer Incidence Surveillance System in ODH. Under prior law, the Board oversaw the collection and analysis of data by the surveillance system and advised the ODH Director and Ohio State University in the system's implementation.

Certificates of need

The act modifies a number of procedures used in conducting the Certificate of Need (CON) Program. Under the program, activities involving long-term care facilities, including an

⁶² See R.C. 4905.10, not in the act.

⁶³ 18 Code of Federal Regulations (C.F.R.) 35.32(a)(6) and 35.33(b).

increase in the number of beds, may be conducted only if a CON has been granted by the ODH Director.

Determining application completeness

(R.C. 3702.51 and 3702.57; Section 737.50)

The act requires the ODH Director to make a final determination of whether an application for a CON is complete not later than 180 days after the Director receives the application. The Director must adopt rules specifying procedures for making the determination and issuing notice within the 180-day time frame. Until the rules are adopted, however, the time frames specified in ODH's preexisting rules are to continue governing the Director when making the determinations.⁶⁴

Bed need determinations

(R.C. 3702.593(B))

Every four years, continuing law requires the ODH Director to determine the following for purposes of considering CON applications: (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 in order for the statewide occupancy rate to be 90%. The act revises the dates by which the Director must make the determinations, as well as the four-year periods that are used, as follows:

--The April 1 deadline for making the determinations is changed to October 1;

--The four-year periods that began in 2012 are replaced with four-year periods beginning in 2023.

Review periods

(R.C. 3702.593(D), (I), (J), and (K))

Under continuing law, the process for reviewing CON applications occurs during four-year review periods. The act changes the date that each review period begins from July 1 to January 1. It eliminates all previously scheduled review periods and requires the ODH Director to establish one that begins January 1, 2020, and ends December 31, 2023, with subsequent periods every four years thereafter. Applications can be accepted during the first January of the review period and reviewed through September 30 of that year.

The act eliminates the ODH Director's authority to implement a second phase of acceptance and review of CON applications during the third year of a four-year review period. The second phase was limited to the review of applications to redistribute 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.

⁶⁴ O.A.C. 3701-12-08 and 3701-12-09.

January 2020 review

(Section 737.60)

When reviewing CON applications in January 2020, the act generally requires the ODH Director to use the long-term care bed supply and bed need determinations made in calendar year 2016. However, in the case of Delaware, Greene, Lake, Licking, and Medina counties, the Director must:

1. Redetermine the bed supply and bed need determinations made in calendar year 2016 using the same data that was used in those determinations, but without applying laws that permit variations from a county's bed need determination when the Director considers a CON application;

2. Refuse to accept a CON application for any of the specified counties, other than Greene County, unless the applicant is an owner of, or is the operator of, a skilled nursing facility in the county to which the CON application proposes to relocate beds;

3. Refuse to accept a CON application for any of the specified counties if the source of the beds to be relocated is a facility that has a four- or five-star rating under the nursing home quality rating system established by the U.S. Centers for Medicare and Medicaid Services on the date the beds are under contract for purchase or transfer, unless the facility is voluntarily closing; and

4. Use either (a) the standard CON application review process set forth in continuing law, excluding a provision under which the relocation of beds may be approved only if, after the relocation, the number of beds in the facility's service area will be at least equal to the state bed need rate, or (b) the comparative CON application review process set forth in continuing law, excluding a provision under which a comparative review is required if two or more applications propose to relocate beds from the same service area and the number of beds remaining would be less than the state bed need rate. The comparative review process is to be used in order to limit the increase in beds in the specified counties as follows:

- Delaware County – 200 total beds;
- Greene County – 99 total beds;
- Lake County – 200 total beds;
- Licking County – 185 total beds;
- Medina County – 200 total beds.

Conditions for reviewing applications until July 2021

(Section 737.70)

The act establishes an interim period during which the ODH Director may accept CON applications for review only under specific circumstances. The interim period begins October 17, 2019, and ends July 1, 2021.

To be accepted for review during the interim period, a CON application must meet one of the following conditions:

1. Be submitted under the general provisions governing the CON review process or under a specific provision authorizing the relocation of beds between contiguous counties, and, if relevant, in accordance with the act's provisions governing review of CON applications in January 2020;

2. Propose either:

--The replacement of an existing long-term care facility, if the replacement facility will have the same owner and operator and the replacement will occur in a county with an identified bed need according to the Director's determination made in 2016; or

--The renovation of or an addition to an existing long-term care facility, if the facility is in a county with an identified bed need according to the Director's 2016 determination.

The Director is prohibited from accepting an application during the interim period unless it otherwise complies with the CON statutes and, if relevant, the act's provisions governing review of CON applications in January 2020. The interim period and its conditions for review of CON applications do not apply to pending CON applications.

Appeals of CON decisions

(R.C. 3702.60)

The act eliminates the authority of certain persons to appeal decisions made by the ODH Director in determining whether a proposed activity is subject to CON review (a reviewability ruling) and whether a CON application is granted or denied. The persons no longer permitted to appeal the decisions include:⁶⁵

1. Any person that resides or regularly uses long-term care facilities within the service area served or to be served by the long-term care services that would be provided under the CON or reviewability ruling in question;

2. Any long-term care facility that is located in the service area where the long-term care services would be provided under the CON or reviewability ruling;

⁶⁵ See the definition of "affected person" in R.C. 3702.51(M), not in the act.

3. Third-party payers that reimburse long-term care facilities for services in the service area where the long-term care services would be provided under the CON or reviewability ruling; and

4. Any CON applicant whose application was reviewed comparatively with the application.

The act retains the authority of the CON applicant to appeal the ODH Director's decision to grant⁶⁶ or deny a CON. It also retains the authority of the person who requested a reviewability ruling to appeal the Director's resulting decision. The appeals continue to be subject to the Administrative Procedure Act (R.C. Chapter 119). Further appeals may continue to be made to the 10th District Court of Appeals. However, the act eliminates provisions regarding the award of attorney's fees.

Transfer of nursing home ownership

(R.C. 3721.026)

The act imposes disclosure requirements on an individual who is assigned or transferred operation of a nursing home. In that situation, before the ODH Director can issue a license authorizing the person to operate the nursing home, the person must submit documentation showing:

- 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, (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 or the person operates other nursing homes in Ohio, 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

⁶⁶ Under R.C. 3702.52(C)(1), the ODH Director may grant a CON for only part of a project. This may be an example of when a CON applicant would appeal a decision to grant a CON.

ownership. These requirements are in addition to any other nursing home operation requirements.

Freestanding emergency departments

(R.C. 3727.49)

The act requires a freestanding emergency department, which is a facility that provides emergency care and is structurally separate and distinct from a hospital, to provide notice identifying itself as a freestanding emergency department. The notice must be posted either:

- In a conspicuous place in an area of the facility accessible to the public; or
- On the facility's website.

Under the act, 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.

Finally, the act 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 act 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. Additionally, the act requires the Speaker of the House and the Senate President to each appoint an individual who represents children's interests. The other 16 members of the Commission are from various government agencies, medical associations, and community-based programs.

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 act prohibits the ODH Director from requiring a licensed radon mitigation specialist to be physically present to supervise 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 former rules adopted by the Director, a licensed radon mitigation specialist had to be physically present during radon mitigation.

Resident's right to choose hospice care program

(R.C. 3721.13)

The act adds to Ohio's bill of rights for residents of nursing homes and residential care facilities (commonly referred to as assisted living facilities) the right, if a resident has requested the care and services of a hospice care program, to choose a licensed program that best meets the resident's needs.

Solemn Covenant of the States to Award Prizes for Curing Diseases

(R.C. 3799.01)

Compact establishment

The act enacts into law 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.

Cure prize process

Prize creation

The Commission must adopt rules establishing criteria to define and classify 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 when 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 also must 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 also may 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 noncompacting 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 also may 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 is 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 by reenacting the Compact. 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 act, 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 the 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 also must make an annual report to the governors and legislatures of the compacting states, which 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 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 the court of competent jurisdiction for the geographical area in which the Commission's principal 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.

Appropriations

The legislative authority of each compacting state is responsible for making appropriations it determines necessary to pay for Compact costs, if funding is requested or required. These costs may include annual member dues and prize distributions.

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.

DEPARTMENT OF HIGHER EDUCATION

Restriction on instructional fee increases

- For the 2019-2020 and 2020-2021 academic years, permits state universities, the Northeast Ohio Medical University, and university branch campuses to increase instructional and general fees by not more than 2% over the previous academic year.
- For the 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 the previous academic year.
- 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, and fees to offset the cost of providing textbooks to 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.

Choose Ohio First scholarship

- Qualifies students enrolled in a certificate program in the fields of science, technology, engineering, math, medicine, and dentistry for the Choose Ohio First Scholarship.
- Permits students who receive multiple scholarships to exceed the maximum award amount.
- Prohibits the Chancellor of Higher Education from holding institutions of higher education responsible for repayment of an award under the program under certain circumstances.

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 continuing development and implementation of recommendations for an innovation pathway between K-12 education and higher education and career-technical education.

STEM Public-Private Partnership Pilot Program

- Establishes for FY 2020 and FY 2021 the STEM Public-Private Partnership Pilot Program to encourage public-private partnerships between high schools, colleges, and the community to provide students with education and training in a targeted industry.

Career-technical post-secondary credit plan

- Requires the Chancellor, in consultation with the Superintendent of Public Instruction and specified stakeholders, to develop and, if determined appropriate, implement a statewide plan permitting high school students in a career-technical planning district to receive post-secondary credit on a college transcript.
- Requires the Chancellor to submit the completed plan to the Governor, the President and the Minority Leader of the Senate, and the Speaker and the Minority Leader of the House by June 30, 2020.

Community College Acceleration Program

- Requires the Chancellor, with the assistance of the Department of Job and Family Services, to establish the Community College Acceleration Program to enhance support services to students from local social service agencies.

War Orphans Scholarship

- Changes the name of the Ohio War Orphans Scholarship to the Ohio War Orphans and Severely Disabled Veterans' Children Scholarship.

Leave donation program

- Changes the procedure under which rules for the administration of a state institution of higher education leave donation program must be adopted.

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 FY 2020 and FY 2021 (the 2019-2020 and 2020-2021 academic years), the act limits each state university, the Northeast Ohio Medical University, and each university branch campus to not more than a 2% increase in its in-state undergraduate instructional and general fees over what the institution charged in the prior academic year.

For those same years, each community college, state community college, and technical college may not increase its instructional and general fees more than \$5 per credit hour over what it charged in the previous academic year.

Increases for all other special fees, including newly created ones, are subject to the approval of the Chancellor of Higher Education.

However, the act's limits on fee increases explicitly *exclude*:

- 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; and
- 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.

As in previous biennia when the General Assembly capped tuition increases, the act's provisions do not apply to increases required to comply with institutional covenants related to the institution's obligations or to meet unfunded legal mandates or legally binding prior obligations or commitments. Further, the Chancellor, with Controlling Board approval, may approve an increase to respond to exceptional circumstances identified by the Chancellor.

Additionally, institutions that participate in an undergraduate tuition guarantee program may increase fees in accordance with that separate provision (see below).

Undergraduate tuition guarantee

(R.C. 3345.48)

The act 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 act 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 act is 2%.

Prior law permitted, but did not require, a state university to establish an undergraduate tuition guarantee program. The university also was 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.

Choose Ohio First Scholarship

Eligibility and cumulative amount

(R.C. 3333.61, 3333.62, and 3333.66)

The act qualifies for the Choose Ohio First Scholarship students enrolled in a certificate program in the fields of science, technology, engineering, math, medicine, and dentistry at a state university or the Northeast Ohio Medical University (NEOMU).

Additionally, it permits students who receive multiple Choose Ohio First Scholarships to exceed the maximum award, so long as each scholarship is within its permitted amount. The maximum award amount is one-half of the highest in-state undergraduate instructional and general fees charged by all state universities.

Award repayment

(R.C. 3333.65)

The act prohibits the Chancellor from holding a state university, NEOMU, or a nonpublic university or college responsible for repayment of a student's award, plus interest, under the Primary Medical Student component of the Choose Ohio First Scholarship Program, until the institution is able to attain repayment from the student. Further, the Chancellor may not require repayment from a university or college if it has certified collection of the repayment to the Attorney General and sent a copy of the certification to the Chancellor.

Under continuing law, the Chancellor may require a state university and NEOMU to repay an award, plus interest, if the university violates the terms of its agreement.

Project-based learning program models

(Section 381.590)

The act requires the Chancellor to 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 381.375)

The act 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.⁶⁷ 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.

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.

STEM Public-Private Partnership Pilot Program

(Section 733.30)

The act establishes the STEM Public-Private Partnership Pilot Program for FY 2020 and FY 2021 to encourage partnerships between high schools, colleges, and the community to provide high school students the opportunity to receive education in a targeted industry, while simultaneously earning high school and college credit. A partnership selected for participation may use the grants awarded only for transportation, classroom supplies, and instructors for a course offered under the program.

The Chancellor must select five partnerships to participate in the program, one from each quadrant and one from the central part of the state. Each partnership will receive a one-time grant of \$100,000. However, a partnership is ineligible for a grant if it received a grant under a similar pilot program that operated in FY 2017.

The Chancellor must adopt rules for the program, which must include at least the following operational requirements:

- A partnership must consist of one community college or state community college, one or more private companies, and one or more public or private high schools;

⁶⁷ The act's provision uses the term "vocational schools."

- The partnering community college or state community college must pursue one targeted industry, but may partner with multiple private companies within that industry;
- Students will earn college credit from the community college or state community college for courses taken under the program;
- Students, high schools, and colleges that participate in the program must do so under the College Credit Plus program;
- The curriculum offered by the program must be developed and agreed upon by all members of the partnership;
- The private company or companies that are part of the partnership must provide full- or part-time facilities to be used as classroom space.

Selection of partnerships

The Chancellor must select the five partnerships for the program based on the following considerations:

- Whether the partnership existed before the application was submitted;
- Whether it is oriented toward a targeted industry;
- The likelihood of a student gaining employment upon graduating from high school or upon completing a two-year degree in the industry to which the partnership is oriented in relation to its geographic region;
- The number of students projected to be served;
- The cost per student;
- The sustainability of the partnership beyond the duration of the program; and
- The level of investment made by the private company partners.

Career-technical post-secondary credit plan

(R.C. 3333.167)

The act requires the Chancellor, in consultation with the Superintendent of Public Instruction, to develop and, if determined appropriate, implement a statewide plan permitting high school students in a career-technical planning district to receive post-secondary credit on a college transcript in a manner comparable to the College Credit Plus Program.

The Chancellor and Superintendent must consult the following stakeholders to assist with developing the plan:

- The Ohio Association of Career-Technical Education;
- The Ohio Association of Career-Technical Superintendents;
- The Ohio Association of Compact and Comprehensive Career-Technical Schools;

- The Ohio Association of Community Colleges;
- The Inter-University Council of Ohio;
- The Association of Independent Colleges and Universities of Ohio; and
- Any other stakeholders the Chancellor determines appropriate.

The plan must:

1. Identify and define the criteria, policies, procedures, and timelines necessary for a high school student to receive post-secondary credit for completing an approved course;
2. Identify any technology solutions or statewide data information systems necessary to streamline and facilitate the electronic exchange of student data to improve the credit verification process for students, districts, and state institutions of higher education;
3. Identify any regional or national accreditation requirements or existing state policy barriers that must be considered when developing the plan; and
4. Recommend a date and the method by which the plan will be implemented, if the Chancellor and Superintendent decide the plan is appropriate.

The Chancellor must submit the plan to the Governor, the President and the Minority Leader of the Senate, and the Speaker and the Minority Leader of the House by June 30, 2020.

Community College Acceleration Program

(R.C. 3333.052)

Under the act, 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 Chancellor must adopt rules to administer the program, including specifying the types of services provided, which may include:

- Comprehensive and personalized advisement;
- Career counseling;
- Tutoring;
- Tuition waivers; and
- Financial assistance to defray transportation and textbook costs.

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 act changes the name of the Ohio War Orphans Scholarship to the Ohio War Orphans and Severely Disabled Veterans' Children Scholarship. Under continuing law, the 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 act does not

affect the administration of the program, the distribution of scholarships, or the eligibility of any children.

Leave donation program

(R.C. 3345.57)

The act changes the procedure under which rules for administering a state institution of higher education's leave donation program must be adopted. Under continuing law, a state institution of higher education may establish a program for an employee to donate accrued but unused paid leave to another employee who does not have any leave and has a critical need for it. Former law required rules for those programs to be adopted under Ohio's Administrative Procedure Act (APA). The act requires, instead, that they be adopted under a different statutory rule-making procedure, sometimes referred to as the "abbreviated rule-making procedure." The two rule-making procedures differ chiefly in that the APA requires an agency to give notice of, and to conduct a public hearing on, its proposed rules. By contrast, the abbreviated rule-making procedure does not require notice or hearing.

DEPARTMENT OF INSURANCE

Reimbursement for out-of-network care (VETOED)

- Would have required an insurer to reimburse an out-of-network provider for unanticipated out-of-network care provided at an in-network facility and for emergency care provided at any facility (VETOED).
- Would have prohibited a provider from balance billing a patient (1) for unanticipated or emergency out-of-network care provided at the above facilities and (2) for any other out-of-network care unless certain conditions were met (VETOED).
- Would have established alternative dispute resolution procedures for disputes between providers and insurers regarding unanticipated or emergency out-of-network care (VETOED).

Telemedicine services

- Requires a health benefit plan to provide coverage for telemedicine services on the same basis and to the same extent as in-person services, but specifies that a health plan issuer is not required to reimburse for telemedicine services at the same rate as in-person services.
- Prohibits a health benefit plan from excluding telemedicine services from coverage solely because they are telemedicine services.
- Prohibits a provider from charging a health plan issuer any facility, origination, or equipment fees for a covered telemedicine service.
- Applies to all health benefit plans issued, offered, or renewed on or after January 1, 2021.

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 or that prohibits providers from advertising their rates.

Pharmacy copayments

- Prohibits health plan issuers and third party administrators from (1) requiring or directing pharmacies to collect cost-sharing beyond a certain amount from individuals purchasing prescription drugs, (2) retroactively adjusting pharmacy claims other than as a result of a technical billing error or a pharmacy audit, and (3) 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 pharmacy copayment provisions.
- Requires the Department of Insurance to create a web form for consumers to submit complaints relating to violations of the pharmacy copayment provisions.

Direct primary care agreements

- Provides that certain agreements to provide health care do not constitute insurance.

Health care price transparency (VETOED)

- Would have added to preexisting health care price transparency requirements that apply to health care products, services, and procedures (VETOED).
- Would have required that certain health care providers, health plan issuers, and Medicaid to provide to patients or their representatives, within specified time limits, a cost estimate for nonemergency products, services, or procedures before each is provided (VETOED).
- Would have required 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 (VETOED).
- Would have authorized any member of the General Assembly to intervene in litigation challenging either the preexisting or additional health care price transparency provisions (VETOED).

Ohio Assigned Risk Insurance Plan

- Allows the Ohio Assigned Risk Insurance Plan (OARP) to directly issue automobile insurance policies to persons unable to meet the financial responsibility requirements through ordinary methods.
- Requires OARP to file its policies and related items with the Superintendent of Insurance as if it were any other insurer.
- Requires policies issued by OARP to be treated like any policy issued by any other insurer.
- Requires OARP to provide audited reports and its books and records to the Superintendent of Insurance.

Reimbursement for out-of-network care (VETOED)

(R.C. 3902.50, 3902.51, and 3902.52; Section 739.31)

Unanticipated out-of-network care in network facility

The Governor vetoed provisions that would have required a health plan issuer to reimburse an individual out-of-network provider for unanticipated out-of-network care when

the care was provided to a covered person at a facility that was in the health benefit plan's provider network. The provider would have been required to charge the health plan issuer, and the issuer would have been required to reimburse the provider.

As used in this provision, "**unanticipated out-of-network care**" means health care services that are provided under a health benefit plan, by an individual out-of-network provider, when either of the following applies:

- The covered person did not have the ability to request such services from an in-network provider; or
- The services provided were emergency services.

"**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.

Emergency out-of-network care at out-of-network facility

The above reimbursement provisions would also have applied in the context of emergency care provided at an out-of-network facility. In addition, a health plan issuer would have needed to reimburse the out-of-network emergency facility, not just the individual provider.

Amount of reimbursement

The reimbursement described above would have been required to be the greatest of the following three amounts:

- The median amount the health plan issuer negotiated with in-network providers for the service in question;
- The rate the health plan issuer pays for out-of-network services; or
- The rate paid by Medicare for the service in question.

Prohibition on balance billing

In addition to requiring a health plan issuer to reimburse a provider or facility, the act also would have prohibited a provider or facility from billing a covered person for the difference between the issuer's out-of-network reimbursement and the provider's or facility's charge (balance billing), so long as the care had been provided in Ohio.

Cost sharing

The act would have prohibited a health plan issuer from requiring cost sharing from a covered person at a rate higher than if the unanticipated or emergency care had been provided on an in-network basis.

Price transparency

The Governor also vetoed provisions relating to health care services, other than unanticipated or emergency services, provided by an individual out-of-network provider at an in-network facility. These provisions would have required such a provider to do the following in order to charge a covered person:

- Inform the person that the provider is not in the person's health benefit plan network;
- Provide the person a good faith estimate for the cost of the services, the estimated reimbursement, and the person's individual responsibility; and
- Obtain the person's affirmative consent to receive the services.

The act would have allowed the health plan issuer to reimburse the provider at either the health plan's in-network or out-of-network rate.

Penalties

A pattern of continuous or repeated violations of any of the above provisions would have constituted an unfair or deceptive act or practice in the business of insurance, potentially subjecting the violator to penalties including payment of damages, a limitation or suspension of the violator's ability to engage in the business of insurance, and an investigation by the Attorney General.

Alternative dispute resolution

The act would have allowed a provider to request alternative dispute resolution from the Superintendent of Insurance to resolve a billing dispute for unanticipated or emergency out-of-network care if both of the following applied:

- The provider believed that the health plan issuer's offer of reimbursement did not meet the requirements in "**Amount of reimbursement**" above; and
- The billed amount exceeded \$700.

Additionally, the Superintendent of Insurance would have been required to adopt alternate dispute resolution procedures. It would have specifically required mediation to be attempted before arbitration.

Effective date

The requirements would have begun to apply beginning April 1, 2020, to health benefit plans entered into or renewed on or after October 17, 2019.

Telemedicine services

(R.C. 3902.30, 4723.94, and 4731.2910)

The act requires a health benefit plan to provide coverage for telemedicine services on the same basis and to the same extent that the plan provides coverage for in-person health care services. A "**telemedicine service**" is a health care service provided through synchronous

or asynchronous information and communication technology by a health care professional who is located at a site other than where the recipient is located.

A health benefit plan may not exclude coverage for a service solely because it is provided as a telemedicine service. The act also prohibits a health benefit plan from imposing any annual or lifetime benefit maximum in relation to telemedicine services other than a benefit maximum imposed on all benefits offered under the plan.

A health benefit plan may assess cost-sharing requirements to a covered individual for telemedicine services as long as these requirements are not greater than those for comparable in-person health care services. Also, the act does not require a health plan issuer to reimburse a health care provider (1) at the same rate as in-person services or (2) for any costs or fees associated with the provision of telemedicine services that would be in addition to or greater than the standard reimbursement for comparable in-person health care services.

A physician, physician assistant, or advanced practice registered nurse may not charge a health plan issuer a facility fee, origination fee, or any fee associated with the cost of equipment used to provide telemedicine services with regard to a covered telemedicine service.

The telemedicine provisions apply to all health benefit plans issued, offered, or renewed on or after January 1, 2021.

Minimum charges for health services

(R.C. 3902.31)

The act 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.

Such a contract may, however, prohibit a provider from disclosing or advertising contractually agreed upon reimbursement rates.

These requirements apply to all new contracts between a third-party payer and a provider entered into on or after October 17, 2019 (the section's effective date). For contracts in existence prior to and continuing through that date, the requirements apply three years after that 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; Section 739.20)

The act prohibits a health plan issuer, a term that includes pharmacy benefit managers and other third-party administrators, from requiring cost-sharing from an individual purchasing a prescription drug that exceeds the greater of:

- The amount an individual would pay if the drug were purchased without coverage under a health benefit plan; or
- The net reimbursement paid to the pharmacy by the health plan issuer.

A health plan issuer also is prohibited from directing a pharmacy to collect cost-sharing in such a prohibited amount.

Prohibited adjustments and fees

A health plan issuer may not retroactively adjust a pharmacy claim for reimbursement for a prescription drug unless the adjustment resulted from either a technical billing error or a pharmacy audit.

Also, 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

If a pharmacy benefit manager or other administrator knowingly violates the act's pharmacy copayment provisions, its license may be suspended for up to two years, revoked, or not renewed by the Superintendent of Insurance.

If a health insuring corporation or a multiple employer welfare arrangement fails to comply with the pharmacy copayment 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 pharmacy copayment, 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 for violating the law. It appears that R.C. 3923.87, enacted by the act, 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 pharmacy copayment 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 pharmacy copayment provisions, the Board 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 Department of Insurance must create a web form that consumers can use to submit complaints relating to violations of the pharmacy copayment provisions.

Affected plans

The pharmacy copayment requirements apply to contracts for pharmacy services and to health benefit plans entered into or amended on or after October 17, 2019.

Direct primary care agreements

(R.C. 3901.95)

The act provides that an agreement that meets all of the following conditions is not insurance and is not subject to Ohio's insurance laws:

- 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 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, or up to 60 days after, the other party's receives the notification.
- It does not impose a termination penalty or 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 (VETOED)

(R.C. 3962.01 to 3962.15 and 5164.65; Section 751.15)

The Governor vetoed provisions that would have added to existing health price transparency requirements, which apply to health care products, services, and procedures, but have not been implemented due to ongoing litigation.⁶⁸ The vetoed provisions generally would have required certain health care providers and health plan issuers to provide to patients or their representatives a cost estimate, within specified time limits, for nonemergency health care products, services, or procedures before each was provided. They also would have required the Department of Insurance to have a connector portal that health care providers could have used to transmit information to health plan issuers for their use in generating cost estimates. A detailed description of the vetoed provisions is available on pages 240 to 252 of LSC's analysis of H.B. 166, As Passed by the House. The analysis is available online at <https://www.legislature.ohio.gov/download?key=12043&format=pdf>.

Ohio Assigned Risk Insurance Plan

(R.C. 4509.70)

The act allows the Ohio Assigned Risk Insurance Plan (OARP) to directly issue automobile insurance policies. Under continuing law, the OARP is a program through which drivers who are unable to obtain automobile insurance through ordinary methods may obtain coverage. Such applicants are often unable to obtain coverage because they are deemed "high risk" by insurers. Coverage under the OARP is available from automobile insurers as provided in a plan approved by the Superintendent of Insurance that fairly apportions applicants among Ohio automobile insurers. The act expands the availability of such coverage by explicitly authorizing the OARP to directly issue policies as if it were an automobile insurer.

Every form of a policy, endorsement, rider, rules, and rates, etc., proposed to be used by the OARP must be filed with the Superintendent as if the OARP were any other insurer. The act requires any policy issued by the OARP to be recognized as if it were issued by any other insurer. Any policy issued by the OARP must meet all requirements of the Proof of Financial Responsibility Laws. If the policy meets those requirements, the policy will be recognized to demonstrate proof of financial responsibility.

The OARP must make annual audited financial reports and its books and records available to the Superintendent.

⁶⁸ See R.C. 5162.80, not in the act.

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 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 after, for various providers.
- Requires the ODJFS Director to search the uniform statewide automated child welfare information system (SACWIS) for reports of abuse or neglect regarding those providers.
- Requires the 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.
- 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 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 prior five years and (2) an in-home aide whose certificate was revoked within the prior five years.
- 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 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 the 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, child welfare employment

- Requires a search or report, or request for a search, of prospective specified officers and administrators in the following databases: 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 act.

Kinship Navigator Program

- Modifies the Statewide Program of Kinship Care Navigators, as follows:
 - Changes its name to the Statewide Kinship Care Navigator Program and requires ODJFS to establish it through rules adopted by October 19, 2020;
 - Requires ODJFS to create 5 to 12 program regions to help kinship caregivers by providing information and referral services and assistance obtaining support services;
 - Expands the list of individuals who may be kinship caregivers to include any nonrelative adult having a familiar and long-standing relationship or bond with the child or family, which will ensure the child's social ties;
 - Requires the program to be funded to the extent of GRF appropriations and requires the ODJFS Director to seek Title IV-E funds for the program;
 - Requires ODJFS to pay the program's nonfederal share and provides that county departments of job and family services and public children services agencies (PCSAs) are not responsible for the program's cost.

Foster caregivers as mandatory reporters

- Designates foster caregivers as 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 PCSA or private child placing agency (PCPA) 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 16th 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 18th birthday;
 - Designates a child who meets the changed eligibility requirements an "emancipated young adult" (EYA).
- Provides that a person eligible for a dispositional order for temporary or permanent custody until age 21 (1) is not eligible for foster care assistance as an EYA and (2) certain adoption assistance requirements for an AYA do not apply.
- 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 former law).

Temporary child hosting

- Permits a child to be hosted by a host family only when the following conditions are satisfied:
 - Hosting is done on a temporary basis, under a host family agreement entered into with a “qualified organization’s” assistance;
 - Either of the child’s parents, or the guardian or legal custodian, is incarcerated, incapacitated, receiving medical, psychiatric, or psychological treatment, on active military service, or subject to other circumstances under which hosting is appropriate;
 - The host family provides care only to that child or only to a single-family group, in addition to the host family’s own child or children, if applicable.
- Defines “host family” as any individual who provides care in the individual’s private residence for a child or single-family group at the request of the child’s custodial parent, guardian, or legal custodian, under a host family agreement, in addition to the host family’s own child or children, if applicable.
- Restricts a qualified organization from authorizing hosting with a host family if any adult residing with the prospective host family has been convicted of or pleaded guilty to specified crimes.

Host family background check

- Requires, before a qualified organization provides for hosting of a child, and every four years thereafter, a prospective host family and all other persons age 18 or older residing in the host family’s home to request, and provide to the qualified organization the results of, the following:
 - A criminal records check and information from the FBI, including fingerprint-based checks of the national crime information databases; and
 - A background check in Ohio’s central registry of abuse and neglect.
- Prohibits an organization from authorizing hosting with a host family if a person subject to the checks fails to provide the results of the checks and the required information.

Policies, procedures, and host family training

- Requires a qualified organization to implement written policies and procedures for employees, and for host family training.

Child abuse, neglect, and dependency

- Designates employees of qualified organizations and each host family as mandatory reporters of child abuse and neglect.
- Requires a host family to immediately report knowledge or suspicion of abuse or neglect of a hosted child to a qualified organization.
- Prohibits a PCSA from filing a complaint that a hosted child is an unruly, abused, neglected, or dependent child if the child is hosted in compliance with the act, unless the agency determines that other factors warrant filing the complaint.
- Provides that a presumption that a hosted child is abandoned may be rebutted if the child is hosted in compliance with the act.

ODJFS regulation of qualified organizations

- Amends the definitions of “association” and “institution” to expressly exclude “qualified organizations,” which has the effect of exempting the organizations from regulation under ODJFS requirements imposed on associations and institutions.
- Exempts host families from ODJFS certification requirements or supervision.

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.

Public Assistance

- Requires the ODJFS Director to seek federal approval to operate a two-year demonstration project under which an Ohio Works First participant satisfies federal work requirements through on-the-job training, education directly related to employment, or a course of study leading to a certificate of general equivalence.

Workforce Development

- Prohibits an assistance group from participating in the Comprehensive Case Management and Employment Program until fraudulent assistance is repaid.

Unemployment Compensation

- 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.
- 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 act makes changes to the 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 that ODJFS establishes, must review the basic child support schedule and report any recommendations for statutory changes to the General Assembly.

The act repeals certain factors that ODJFS and the Council may consider, and enacts new factors that each review must include.

New review factors

Under the act, 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 the following, to ensure that deviations from the basic child support schedule are limited and that support amounts are appropriate based on child support 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 act repeals:

- The adequacy and appropriateness of the 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 reports of the Council;
- The Council's membership;
- The effective date of new or modified guidelines adopted after the review;
- The date of the next review.

Income of incarcerated parent

The act requires that a court or agency must not determine a parent to be voluntarily unemployed or underemployed, and therefore must not impute income to that parent, if the parent is incarcerated. The act defines a parent as "incarcerated" if 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.

In adopting this requirement, the act repeals a requirement for calculating income of a parent incarcerated for an offense (1) related to the abuse or neglect of the child who was the subject of the order, or (2) under Ohio's Criminal Code against the obligee or the child who was the subject of the order.

Processing charge for child support orders

The act 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 previous law, the amounts were \$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

The act 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.**”

Second, it replaces the term, “health care,” with “**health care coverage.**” “Health care” was previously 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 act substitutes the term “health care coverage,” changes “coverage under a health insurance plan” to “health insurance coverage,” 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.

Third, the act 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 the difference in cost between self-only and family coverage;
- Requires the 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 of Ohio law that applies to the health care.

The act makes changes to various other sections of the Child Support Enforcement Law addressing health care by replacing 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 act 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.

Rulemaking

The act 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 job and family services are responsible for regulating child care providers (other than preschool programs and school child programs, which are regulated by the Ohio Department of Education (ODE)). Child care can be provided in a facility, the home of the provider, or the child's home. Not all child care providers are subject to regulation, but a provider must be licensed or certified to be eligible to provide publicly funded child care. The distinctions among the types of providers are described in the table below.

Child Care Providers		
Type	Description/Number of children served	Regulatory system
Child day-care center	Any place 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.
Family day-care home	<p>Type A home – 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>Type B home – 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>
In-home aide	A person who provides child care in a child's home but does not reside with the child.	To be eligible to provide publicly funded child care, an in-home aide must be certified by a 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)

The act makes numerous changes to Ohio law governing criminal records checks in order to conform with federal requirements enacted when the Child Care and Development Block Grant Act was reauthorized in 2014.⁶⁹ The following table compares who is required to request criminal records checks under prior law and the act.

Person subject to criminal records check	Prior law	The act
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 ⁷⁰	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 must 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, including fingerprint-based checks of certain national crime information databases.

Technically, the act 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

⁶⁹ 42 U.S.C. 9857 *et seq.*

⁷⁰ These persons were not subject to background checks under the Child Care Law, but continue to be subject to a different background check under R.C. 3319.39.

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, prior law required the ODJFS Director, as part of the licensure process, to search the uniform statewide automated child welfare information system (SACWIS) for reports of abuse or neglect pertaining to the applicant, any other adult residing in the home, and any adult designated by the applicant as an emergency or substitute caregiver. Additionally, when a public children services agency (PCSA) determined that child abuse or neglect occurred and involved a person who applied for licensure as a type A or type B family day-care home, the agency was required to give ODJFS any information it determined to be relevant for evaluating the fitness of the person. If the ODJFS Director determined that the information received from SACWIS or a PCSA, when viewed within the totality of the circumstances, reasonably lead to the conclusion that the applicant could endanger the health, safety, or welfare of children, the Director was required to deny the license. The act repeals those provisions and instead requires the 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.

It also requires the ODJFS Director to inspect the state registry of sex offenders (SORN) and the national sex offender registry for the same individuals 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 act, 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 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 Director also must provide that information when requested by another state for the purposes of child care regulation and 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, the ODJFS Director must 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 act 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 act 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

The act repeals the law that required 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.

It also repeals the requirement that type A and type B home licensees also attest that no child in the home has been adjudicated a delinquent child for committing one of those offenses.

Provider licensing

Child care definitions

(R.C. 3301.52, 3301.53, 5104.01, 5104.34, 5104.38, and 5104.41)

The act modifies prior law 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 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. Prior law included child care provided to families determined to be homeless within the category referred to as protective child care. The act separates homeless child care from protective child care.

“**Special needs child care**” is child care provided to a child who is younger than 18 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 prior law modified in part by the act, an “**administrator**” is the person responsible for the daily operation of a child day-care center, type A home, or type B home. The act removes the reference to a type B home and instead refers to an approved child day camp. It clarifies that a “**child day camp**” operated for no more than 12 hours a day and no more than 15 weeks during the summer. Under preexisting law, a child day camp operated 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 act 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 act 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 act adds a reference to licensed type B homes to the definition of “**license capacity**.”

It 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 act 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 act 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. In the case of providers exempt from licensure or approval, it refers to “care” rather than “child care.”

The act also changes descriptions and requirements for programs that provide care for children but are exempt from child care licensure, as follows:

- 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 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 to participate 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 continuing 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 ODJFS Director determines that a provisional license holder meets statutory requirements, the Director will issue a new license. The act designates 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 Director adopt rules requiring the ODJFS toll free telephone number to be included on each provisional license issued to a child day-care center.

Continuing 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 its administrator changes. Under the act, the center or home also must notify the ODJFS Director of any changes to its address or license capacity. It further requires all of these notifications to be made in writing.

Under continuing 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 act removes from law provisions specifying that if, during the application process, the Director determines that the owner's license had been earlier revoked, the Director's investigation must cease and that action is not subject to appeal under the Administrative Procedure Act.

The act specifies 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 act removes the requirement that a licensee display its most recent inspection report in a conspicuous place.

Summary suspensions

(R.C. 5104.042)

The act makes several changes to the law authorizing the ODJFS Director to suspend a child care license without prior hearing 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 prior 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 prior law;
- Eliminating the requirement that, when ODJFS moves to revoke a license that was 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. 5104.035 and 5104.036, repealed)

Prior statutory law established eligibility requirements for child care administrators and staff members, including age, experience, and educational requirements. The act 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 act adds family day-care homes, approved child day camps, and employees to continuing 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)

In order to provide publicly funded child care, a child day camp must be approved by the ODJFS Director. Under the act, 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 American Camp Association or a nationally recognized organization with comparable standards. The act shortens the approval period from two years to one.

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 and must be certified by a county department of job and family services to be eligible to provide publicly funded child care. Under prior law, a certificate was valid for 12 months. The act increases that period to two years.

The act 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. It also eliminates the requirement that the ODJFS Director establish in rule hourly reimbursement ceilings for certified in-home aides.

Step Up to Quality

Continuing law requires that, beginning July 1, 2020, publicly funded child care be provided only by a child care provider that is rated through Step Up to Quality. It also generally 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 act 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: 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 act 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 child care

The act 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 payment and tracking

Continuing law requires ODJFS to establish a system to track attendance and calculate payments for publicly funded child care. The act renames the system the automated child care system. (Under prior law, it was named the Ohio electronic 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 act 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

In general, publicly funded child care may be provided only to children under age 13. The act 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 act 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.⁷¹ The third party was required to compile the information and report it to ODJFS by December 1. 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).⁷²

⁷¹ The information is also used in establishing the child support guidelines.

⁷² 45 C.F.R. 98.45.

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 BCII to conduct a criminal records check, the request **must** (rather than **may**) include an FBI fingerprint check. The act 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 act 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 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 expansion, child welfare employment

(R.C. 3107.035, 5103.02, 5103.037, 5103.0310, and 5103.181)

Officers and administrators

The act requires an institution or association that receives or cares for children, 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 SACWIS;
- Request a certified search of the Findings for Recovery database;
- Conduct a database review at the federal System for Award Management website; and
- Conduct a search of the U.S. Department of Justice National Sex Offender (NSO) public website.

The act explicitly authorizes an institution or association to refuse to hire or appoint the person based solely on the results.

Prospective foster and adoptive parents

The act 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 age 18 or older who reside with the caregiver. Certification or recertification may be denied based solely on the results of the search.

Under the act, 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 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 act 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 act, an institution or association that receives or cares for children must do the following prior to employing a person:

- Request a summary report of a search of SACWIS;
- Conduct a search of the NSO website.

The act explicitly authorizes the institution or association to refuse to hire the person based solely on the results.

For the purpose of this requirement, the act 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 act requires the ODJFS Director to adopt rules, in accordance with the Administrative Procedure Act, to implement and execute the background check expansion requirements described above.

Kinship Navigator Program

(R.C. 5101.851 and 5101.85)

The act makes it mandatory that ODJFS establish a Statewide Kinship Care Navigator Program. (Under previous law, ODJFS was permitted, but not required to establish a “Statewide Program of Kinship Care Navigators.”) Under continuing law, the program’s purpose is to assist kinship caregivers who are seeking information regarding, or assistance obtaining, state and local services and benefits.

The act expands the definition of “kinship caregiver” to include any nonrelative adult who has a familiar and long-standing relationship or bond with the child or the family, which relationship or bond will ensure the child’s social ties. Otherwise, a “kinship caregiver” is defined by continuing law as any of the following adults caring for a child in place of the parents: grandparents (up to “great-great-great”), siblings, aunts, uncles, nephews, and nieces (up to “great-grand”), first cousins and first cousins once removed, stepparents and stepsiblings, spouses and former spouses of the above individuals, or a legal guardian or legal custodian of the child.

Regions

(R.C. 5101.853)

The act requires the ODJFS Director to divide the state into 5 to 12 regions for the program. In establishing the regions, the Director must take into consideration:

- The population size;
- The estimated number of kinship caregivers;
- The expertise of kinship navigators;
- Any other factor the Director considers relevant.

Services provided

(R.C. 5101.854 and 5101.851)

Each region must provide information and referral services and assistance in obtaining support services for kinship caregivers. Under continuing law, the information and referral services and assistance includes:

- Publicly funded child care;
- Respite care;
- Training related to caring for special needs children;
- A toll-free telephone number that may be called to obtain basic information about the rights of, and services available to, kinship caregivers; and
- Legal services.

Kinship navigator payment to PCSAs eliminated

(R.C. 5101.852, repealed)

The act repeals ODJFS's responsibility to make payments to PCSAs to permit them to provide kinship navigator information and referral services and assistance obtaining support services to kinship caregivers.

Funding; no local share

(R.C. 5101.856; Section 307.115)

The act requires the ODJFS Director to take any action necessary to obtain federal funds available for the program under Title IV-E of the Social Security Act. It specifies that the program is to be funded to the extent GRF has been appropriated by the General Assembly. The act earmarks \$8.5 million in FY 2020 and also in FY 2021 for the program.

ODJFS must pay the full nonfederal share for the program. No county department of job and family services or PCSA is responsible for the program's cost.

Rules

(R.C. 5101.855)

ODJFS must adopt rules to implement the program by October 19, 2020.

Foster caregiver as mandatory reporter

(R.C. 2151.421)

The act 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 act replaces the 72-hour placement limit and 14-consecutive-day waiver, in favor of a 14-consecutive-day limit, for a PCSA or private child placing agency (PCPA) to place a preteen in a children's crisis care facility. Under prior law, the ODJFS Director or the Director's designee could grant the waiver from the 72-hour limit.

Juvenile court hearings

(R.C. 2151.424)

The act modifies the law governing juvenile court hearings and reviews by:

- Applying the law to a kinship caregiver with custody or with whom a child has been placed, instead of a nonparent relative with custody; and
- Specifying that foster caregivers, kinship caregivers, and prospective adoptive parents have the right to be heard, instead of the right to present evidence.

These changes apply to a variety of juvenile court hearings and reviews governing child placement, case plans, treatment, and care.

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 act, 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 act 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 former 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 act 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 act, 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 act 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 former law);
- Whose custody, arrangement, or care and placement was terminated on or after the person’s 18th birthday; and

- Who has not yet attained the age of 21.

Under former 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 act provides that a person eligible for a dispositional order for temporary or permanent custody until age 21 (1) is not eligible for foster care assistance as an EYA and (2) certain adoption assistance requirements for an AYA are not applicable.⁷³

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 act, 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 former law, this exception is limited only to medical conditions.

Definition of child for foster care and adoption assistance

The act defines “child” for purposes of Ohio’s law governing foster care and adoption assistance to mean any of the following:

- Any person under age 18, or a mentally or physically handicapped person, as defined by ODJFS rule, under 21;
- An AYA;
- An EYA.

Former law defines a child to include the persons who were between 18 and 21 who met the requirements to receive foster care and adoption assistance.

Voluntary participation agreement

The act 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.

⁷³ See R.C. 5101.1415 regarding application of R.C. 5101.1411(C) to an AYA.

The act 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 former 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 act, 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 act, a "representative," (which replaces the term "designee" under former 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 act 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 act 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 act 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 act 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 act 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 act 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 act, 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 act 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 act 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 prior law those practice and training requirements applied to foster care workers and their supervisors.

Temporary child hosting

(R.C. 109.572, 2151.421, 2151.90, 2151.901, 2151.902, 2151.903, 2151.904, 2151.906, 2151.907, 2151.908, 2151.909, 2151.9010, 2151.9011, and 5103.02)

When a child may be placed

The act permits a child to be hosted by a host family only when the all of the following conditions are satisfied:

- Hosting is done on a temporary basis (not to exceed one year, unless extended by a juvenile court, at the request of the child's parent, guardian, legal custodian, host family, or the organization that arranged the host family agreement, and the court determines there are extenuating circumstances).
- Hosting is done under a host family agreement entered into with a qualified organization's assistance.
- Either one or both of the child's parents, or the child's guardian or legal custodian, are incarcerated, incapacitated, receiving medical, psychiatric, or psychological treatment, on active military service, or subject to other circumstances under which hosting is appropriate.

- The host family provides care only to that child or only to a single-family group, in addition to the host family's own child or children, if applicable.

When child placement is prohibited

A qualified organization is prohibited from authorizing hosting with a host family if any person age 18 or older who resides with the family previously has been convicted of or pleaded guilty to specified crimes (including, for example, murder, aggravated murder, and rape), unless all the following conditions are satisfied:

- If the offense was a misdemeanor, or would be a misdemeanor if the conviction occurred at the time that hosting is being considered, at least three years have elapsed since the person was fully discharged from any imprisonment or probation arising from the conviction.
- If the offense was a felony, at least ten years have elapsed since the person was fully discharged from imprisonment or probation arising from the conviction.
- The victim of the offense was not: under age 18, a functionally impaired person, developmentally disabled, suffering from a mental illness, or 60 or older.
- Hosting in the host family's home will not jeopardize in any way the child's health, safety, or welfare, as determined by considering the following factors:
 - The person's age at the time of the offense;
 - The nature and seriousness of the offense;
 - The circumstances under which the offense was committed;
 - The degree of participation of the person involved in the offense;
 - The time elapsed since the person was fully discharged from imprisonment or probation;
 - The likelihood that the circumstances leading to the offense will recur;
 - Whether the person is a repeat offender;
 - The person's employment record;
 - The person's efforts at rehabilitation and the results of those efforts;
 - Whether any criminal proceedings are pending against the person;
 - Any other factors the qualified organization considers relevant.

Host family

The act defines "host family" as any individual who provides care in the individual's private residence for a child or single-family group, at the request of the child's custodial parent, guardian, or legal custodian, under a host family agreement. The individual also may provide care for the individual's own children. The term "host family" excludes a foster home.

Qualified organization

A “qualified organization” is a private association, organization, corporation, or other entity that is not a Title IV-E reimbursable setting and has established a program that does all of the following:

- Provides resources and services to assist and educate parents, host families, children, or any person hosting a child under a host family agreement on a temporary basis;
- Requires a criminal background check on the host family and all adults residing in the host family’s household;
- Requires a background check in Ohio’s central registry of abuse and neglect from ODJFS for the host family and all adults residing in the household;
- Ensures that the host family is trained on their rights, duties, responsibilities, and limitations as outlined in the host family agreement;
- Conducts in-home supervision of a child while the host family agreement is in force as follows:
 - For hostings of fewer than 30 days, within two business days of placement and then at least once a week thereafter;
 - For hostings of 30 days but less than 90 days, within two business days of placement and then twice a month;
 - For hostings of 90 days or more, within two business days of placement and then an option for less frequent supervision, as determined in accordance with the child’s best interests.
- Plans for the child to return to the parents, guardian, or legal custodian.

The “qualified organization” definition excludes any entity that accepts public money intended for foster care or kinship care funding or the placement of children by a PCSA, PCPA, or private noncustodial agency.

Host family background check

Before a qualified organization provides for hosting of a child, and every four years thereafter, a prospective host family, and all other persons age 18 or older who reside in the host family’s home, must request, and provide to the qualified organization the results of, the following:

- A criminal records check and information from the FBI as part of the criminal records check, including fingerprint-based checks of the national crime information databases;
- A background check in Ohio’s central registry of abuse and neglect from ODJFS.

If the person fails to provide the results and information, the organization is prohibited from authorizing hosting with the host family.

A person may request the criminal records check and information from either the superintendent of BCII or any entity authorized, on the person's behalf, to request the superintendent to conduct the criminal records check and provide the information. The BCII superintendent, on receipt of a request for a criminal records check and FBI information, must conduct a criminal records check in accordance with Ohio law.

The act specifies that the report of any criminal records check conducted by the BCII in accordance with the act is not a public record and cannot be made available to anyone except:

- The person subject to the criminal records check or the person's representative;
- The qualified organization's administrative director who requested the criminal records check, or the administrative director's representative;
- Any court, hearing officer, or other necessary individual involved in a case regarding an organization's decision not to authorize hosting with the host family if the host family either (1) was subject to the criminal records check, or (2) resided with the person subject to the criminal records check.

Employee policies and procedures

A qualified organization must develop and implement written policies and procedures for employees, including policies and procedures on:

- Familiarization with emergency and safety procedures;
- The principles and practices of child care;
- Administrative structure, procedures, and overall program goals of the organization;
- Appropriate techniques of behavior management;
- Techniques and methodologies for crisis management;
- Familiarization with the disciplinary procedures and the discipline and behavior intervention policies required by ODJFS rules and any other similar requirements;⁷⁴
- Procedures for reporting suspected child abuse or neglect;
- An emergency medical plan;
- Universal precautions; and
- Knowledge and skills to understand and address the issues confronting adolescents.

Host family training

A qualified organization must develop and implement written policies and procedures for host family training, including training on:

⁷⁴ O.A.C. 5101:2-5-13 and 5101:2-9-21.

- The host family’s legal rights and responsibilities;
- The organization’s policies and procedures regarding host families;
- The effects of separation and attachment issues on children and their families;
- The effects of physical abuse, sexual abuse, emotional abuse, neglect, and substance abuse on normal human growth and development, as well as information on reporting child abuse and neglect;
- Behavior management techniques;
- Cultural competence;
- Prevention, recognition, and management of communicable diseases;
- Community health and social services available to children and their families;
- Training on appropriate and positive behavioral intervention techniques;
- Education advocacy training;
- The host family’s responsibility to report abuse or neglect of the hosted child.

Child abuse, neglect, and dependency

The act designates an employee of a qualified organization and each host family mandatory reporters of child abuse or neglect. Additionally, it requires a host family to immediately report to a qualified organization employee the knowledge or reasonable cause to suspect, based on facts that would cause a reasonable person in a similar position to suspect, that the hosted child has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect.

The act prohibits a PCSA from filing a complaint that a hosted child is an abused, neglected, or dependent child because the child is hosted by a host family in compliance with the act, unless the PCSA determines that factors other than hosting warrant the complaint. This prohibition also covers children who may be unruly, juvenile traffic offenders, or habitually truant, or who violated the prohibition against a child possessing, using, purchasing, or receiving cigarettes or other tobacco products.

The act also provides that a presumption that a child hosted under a host family agreement is abandoned may be rebutted if the hosting complies with the act.

ODJFS regulation

The act amends the definitions of “association” and “institution” to expressly exclude “qualified organizations” under Ohio’s laws governing the placement of children. This has the effect of exempting qualified organizations from regulation under ODJFS rules for the adequate and competent management of institutions or associations.

Under the act, host families are exempt from certification or supervision requirements under ODJFS rules for management of institutions or associations.

Multi-system youth action plan

(R.C. 121.374)

The act 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 act, the Ohio Family and Children First Council must develop a comprehensive multi-system youth action plan that:

- 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; and
- Conducts an assessment of the legal and financial conditions that contribute to custody relinquishment for the purposes of receiving child-specific services.

The Cabinet Council must submit its final action plan to the General Assembly by December 31, 2019.

Public Assistance

TANF work requirements demonstration project

(Section 307.96)

The act requires the ODJFS Director to seek federal approval to operate a two-year demonstration project regarding the work requirements for Ohio Works First. Ohio Works First is one of the state's Temporary Assistance for Needy Families (TANF) programs. It provides time-limited cash-assistance to low-income families with children.

Federal law establishes work participation rates that a state must satisfy to avoid a possible reduction in the federal funds it receives for its TANF programs. Generally, the minimum participation rate is 90% for two-parent families and 50% for all families. A family's TANF assistance may be reduced or terminated if a member who is subject to the work requirements refuses to satisfy them.⁷⁵

⁷⁵ 42 U.S.C. 607.

The demonstration project must enable the following:

1. An Ohio Works First participant to satisfy the work requirements by satisfactorily participating in any of the following for up to 24 months:

- On-the-job training;
- Education directly related to employment if the participant has not received a high school diploma or a certificate of high school equivalency; or
- A course of study leading to a certificate of general equivalence if the participant has not completed secondary school or received such a certificate.

2. A participant not to be subject to a penalty due to the participant's satisfaction of work requirements under the demonstration project;

3. The state to count a participant's satisfaction of work requirements under the demonstration project toward the state's work participation rates, regardless of whether the participant also participates in other acceptable work activities.

Workforce Development

Comprehensive Case Management and Employment Program

(R.C. 5101.83)

The Comprehensive Case Management and Employment Program (CCMEP) is an ODJFS-administered program through which employment and training services are made available to participants in accordance with an assessment of their needs.⁷⁶ The act 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. Law otherwise unchanged by the act 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 act 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.

⁷⁶ R.C. 5116.01 *et seq.*, not in the act.

Unemployment compensation debt collection

(R.C. 4141.35)

When an individual receives unemployment benefits to which the individual is not entitled, the ODJFS Director must issue an order demanding repayment and take additional actions to recover the overpayment. If the overpayment is not repaid within 45 days after repayment is due, the 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.⁷⁷ The act exempts any overpayment collected by the Attorney General from a requirement that the amount first be proportionately credited to improperly charged employers' accounts and then to the mutualized account created within the Unemployment Compensation Fund.

⁷⁷ R.C. 131.02.

JUDICIARY/SUPREME COURT

Paying retired assigned judges

- 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.

Judicial salary – Montgomery County

- Removes an obsolete requirement that Montgomery County pay the salaries of the part-time county court judges in excess of a specified amount during the, now-completed, transition from a part-time county court to a municipal court.

Prohibition against court action by nature or ecosystem

- 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.

Jurisdiction over child custody or child support

- In provisions regarding the jurisdiction of juvenile courts over child support and custody matters, modifies certain provisions relating to the Summit County and Richland County Domestic Relations Divisions.
- Modifies provisions regarding juvenile court and domestic relations court jurisdiction over certain child support and custody matters.
- Clarifies, in provisions that take away juvenile court jurisdiction, the meaning of references to the parents not being married and to the subject child's sibling, that the matter at issue could be ancillary to a prior marriage termination action, and that the domestic relations court has jurisdiction when the juvenile court's is taken away.
- Specifies that the provisions in the preceding dot point apply to all cases initiated after March 22, 2019, and do not affect a juvenile court's authority to issue a support order related to another type of juvenile court proceeding.
- Modifies the transfer mechanism in provisions regarding a juvenile court's transfer of an action or order to a domestic relations court and specifies that the provisions apply to all orders in effect prior to, and all cases initiated on or after, March 22, 2019.
- Specifies that, when a child support enforcement agency is required to review a court-issued child support order after a juvenile court has granted custody of the child to an individual or entity other than as set forth in the court's order, the agency must take appropriate action, and any objections must be filed in the domestic relations court.

- Clarifies that a domestic relations court’s jurisdiction over “domestic relations matters” includes actions transferred or removed from a juvenile court under the provisions described above and over complaints for child support and custody.

Paying retired assigned judges

(R.C. 141.16, 1901.123, and 1907.143)

The act requires the Ohio Supreme Court, instead of a county treasurer, 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 is that part of each per diem that is proportional to the county or local shares of the total compensation of a resident judge. 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 act removes obsolete requirements concerning Montgomery County’s paying part of the salary costs for part-time judges of the Montgomery County Municipal Court, if they exceeded a certain amount. The court has fully transitioned from a part-time county court to a municipal court, and therefore the removed provisions no longer applied.

Prohibition against court action by nature or ecosystem

(R.C. 2305.011)

The act 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 act 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 act 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.

Jurisdiction over child custody or child support

Richland County, Summit County courts of common pleas

(R.C. 2151.23)

In law that generally grants juvenile courts exclusive jurisdiction to determine the custody of a child not a ward of another Ohio court, or to hear and determine a request for child support that is not ancillary to a specified type of domestic relations proceeding or to a criminal or civil domestic violence proceeding, the act adds an exception specifying that the grant is subject to other provisions regarding the Summit County Court of Common Pleas Domestic Relations Division's jurisdiction over child custody and support matters that are not subject to the exclusive jurisdiction of a juvenile court.

In law that grants juvenile courts original jurisdiction over child custody and support matters certified to the court after a divorce decree has been granted and over the case of a child certified to the court by any other court in specified circumstances, the act removes exceptions currently provided with respect to the Richland County Court of Common Pleas Juvenile Division and Domestic Relations Division.

The act does not change related provisions in the law specifying the jurisdiction of domestic relations divisions.

Juvenile court jurisdiction

Prohibition against juvenile court exercise of jurisdiction

(R.C. 2151.233 and 2151.234)

The act modifies several laws that prohibit a juvenile court from exercising jurisdiction in certain situations to determine custody or support for a child. Under the act, for all cases and proceedings initiated on or after March 22, 2019, subject to specified exceptions, a juvenile court may not exercise jurisdiction, and the domestic relations court has jurisdiction, to determine custody or support for a child, if either: (1) the child's parents are married to each other, (2) they were married to each other but no longer are and there is an existing custody or support order regarding the child or another child of the same parents over which the court does not have jurisdiction, or (3) the determination is ancillary to the parents' pending or prior action for divorce, dissolution, annulment, or legal separation. The exceptions provide that these provisions do not apply to any case or proceeding brought under R.C. Chapter 3115 (the Uniform Interstate Family Support Act (UIFSA), not in the act), or to any case or proceeding initiated outside of Ohio.

The provisions modified by the act as described above formerly: (1) did not include the statement that the domestic relations court has jurisdiction, (2) did not expressly state that the child's parents are married to each other, (3) stated that the child's parents are not married, instead of stating that the child's parents were married to each other but no longer are married

to each other, (4) referred to the child's sibling instead of to another child of the same parents, and (5) did not include the statement that the determination may be ancillary to a prior action, as well as a pending action.

The act modifies a law that pertains to the relationship of the prohibition against a juvenile court exercising jurisdiction in the situations described above and a different Juvenile Court Law provision that grants juvenile courts exclusive jurisdiction concerning an alleged delinquent, unruly, abused, neglected, or dependent child or juvenile traffic offender. Under the act, the prohibition against a juvenile court exercising jurisdiction, as modified by the act and described in the second preceding paragraph, does not affect a juvenile court's authority to issue a custody or support order under the other Juvenile Court Law provision or when granting custody of the child to a relative or placing the child under a kinship care agreement. Formerly, this provision did not include a reference to support orders, and it specified only that the prohibition did not affect a juvenile court's authority to issue a custody order related to the other type of juvenile court proceeding granting custody of the child to a relative or placing the child under a kinship care agreement.

The act defines "domestic relations court" for purposes of these provisions, and the provisions described below, as the division of a court of common pleas with domestic relations jurisdiction.

Juvenile court transfer of jurisdiction

(R.C. 2151.235)

Discretionary transfer

The act modifies law that permits a juvenile court to transfer jurisdiction over an action or order it has issued for child support or custody in specified situations. Under the act, upon its own motion, the motion of a court with domestic relations jurisdiction, or the motion of any interested party, a juvenile court may transfer jurisdiction over the action or order as follows: (1) to the appropriate common pleas court with domestic relations jurisdiction, if the child's parents are married to each other and are not parties to a proceeding described below in "**Mandatory transfer**," (2) to the appropriate common pleas court with domestic relations jurisdiction, if the parents were married to each other but no longer are and there is an existing order for custody or support regarding the child or another child of the same parents over which the juvenile court does not have jurisdiction, or (3) to the common pleas court exercising jurisdiction over a civil domestic violence protection order if that child or both parents are subject to both a child support order and the protection order. Any transfer made under this provision must require the consent of the appropriate court of common pleas with domestic relations jurisdiction.

The provisions modified by the act as described above formerly: (1) did not expressly state that the child's parents are married to each other, (2) stated that the child's parents are not married instead of stating that the child's parents were married to each other but no longer are, (3) referred to the child's sibling instead of to another child of the same parents, and (4) referred to parents of the child, instead of both parents, being subject to both a child support order and the protection order. Additionally, the provisions formerly included a fourth option,

repealed by the act (but see “**Mandatory transfer,**” below) – the fourth option was transfer to the common pleas court exercising jurisdiction over a pending divorce, marriage dissolution, legal separation, or annulment proceeding to which the parents of the child subject to the order were parties. Also, the provisions formerly seemed to require the transfer if one of the specified entities or parties made the motion, the court receiving jurisdiction consented to the transfer, and the juvenile court certified all or part of the record to the court receiving jurisdiction.

Mandatory transfer

Under the act, upon its own motion, the motion of a court with domestic relations jurisdiction, or the motion of any interested party, a juvenile court must transfer, and the domestic relations court must accept, jurisdiction over an action or an order it has issued for child support or custody to the appropriate common pleas court exercising jurisdiction over a pending divorce, dissolution of marriage, legal separation, or annulment proceeding to which the parents are parties. This provision is similar in some regards to the fourth option described above that the act repeals, but this provision clearly requires a transfer in the specified circumstances.

Procedure upon transfer

The act specifies duties for both the juvenile court and the domestic relations court involved in a discretionary or mandatory transfer under its provisions. In all such transferred cases:

1. The juvenile court must: (a) issue an order granting the request to transfer, (b) certify the relevant part of the record in the action or related to the order to the court receiving jurisdiction, unless the authorizing statute for the domestic and juvenile courts has combined them into a domestic relations division of the same court or designated them as a family court and the transfer would be within the court of the same county, and (c) notify and serve the county child support enforcement agency (CSEA) administering the case of all transfers in writing (the CSEA receiving notice of a transfer then must take appropriate action).

2. The domestic relations court receiving jurisdiction must: (a) issue an order accepting or denying the transfer, and (b) notify and serve the CSEA that is receiving the case or that would have received the case, in writing, of the order accepting or denying the transfer (the CSEA receiving notice of a transfer then must take appropriate action).

Special rules when transfer is due to pending proceeding in domestic relations court

Under the act, when the juvenile court action or order being transferred is due to a pending divorce, dissolution, legal separation, or annulment proceeding in a common pleas court with domestic relations jurisdiction:

1. The juvenile court and domestic relations court retain concurrent jurisdiction during the pendency of the action or order;

2. The transfer must be completed and included in final orders that are issued regarding child support or custody in the domestic relations action; and

3. If the domestic relations action is dismissed without final orders being issued regarding child support or custody, the transfer is not completed and the juvenile court action or order remains within the juvenile court's jurisdiction. The domestic relations court must notify the juvenile court, the CSEA in the county of the juvenile court, and the parties of the dismissed action.

Applicability of transfer provisions

The act specifies that the transfer provisions it modifies or enacts, as described above, apply to all orders in effect prior to March 22, 2019, and all actions or proceedings initiated on or after that date. Formerly, the transfer provisions applied to all orders in effect, and all actions or proceedings pending or initiated, on or after March 22, 2019.

Child Support Enforcement Agency notification and review

(R.C. 2151.236)

Under continuing law, if a child is subject to a support order issued by a domestic relations court and if a juvenile court adjudicates the child to be delinquent, unruly, abused, neglected, or dependent and grants custody to an individual or entity other than as set forth in the domestic relations court, the juvenile court must notify the domestic relations court and the CSEA serving the domestic relations court's county. Formerly, the CSEA then was required to review the child support order under specified provisions that generally govern its review of court child support orders. The act modifies the CSEA review provision to instead specify that the CSEA must review the child support order and take appropriate action; any objection to an administrative order issued as an appropriate action taken under the act's modification must be filed in the domestic relations court.

Certification to a juvenile court

(R.C. 3109.061)

The act extends the definition of "domestic relations court" that it enacts, described above in "**Prohibition against juvenile court exercise of jurisdiction,**" to a preexisting provision, unchanged by the act, that states that nothing in specified provisions concerning juvenile court jurisdiction, CSEA notification and review, and the designation of common pleas court domestic relations, juvenile, and probate duties is to be construed to prevent a domestic relations court from certifying a case to a juvenile court.

Domestic relations matters definition

(R.C. 3105.011)

The act modifies the preexisting definition of "domestic relations matters" that pertains to a provision relating to common pleas courts' (including domestic relations divisions') jurisdiction over domestic relations matters. Under the act, the term means: (1) any matter committed to the jurisdiction of domestic relations courts as designated in specified Ohio counties, as well as a complaint for child support and allocation of parental rights and responsibilities, including the enforcement and modification of such orders, (2) actions and proceedings under Ohio law governing divorce, spousal support, annulment, dissolution of

marriage; children; parentage; neglect, abandonment, or domestic violence; UIFSA; child support; and the Uniform Child Custody Jurisdiction and Enforcement Act, (3) actions pursuant to R.C. 2151.231 requesting a child support order, (4) actions removed from the jurisdiction of the juvenile court under R.C. 2151.233 as described above, and (5) all matters transferred by the juvenile court under R.C. 2151.235 as described above.

Formerly, the term meant: (1) any matter committed to the jurisdiction of domestic relations courts as designated in the specified Ohio counties, and (2) actions and proceedings under Ohio law governing divorce, spousal support, annulment, dissolution of marriage; children; parentage; neglect, abandonment, or domestic violence; UIFSA; child support; and the Uniform Child Custody Jurisdiction and Enforcement Act.

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 act 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 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.

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 act 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 state department, division, bureau, board, or commission must deliver copies of any report, pamphlet, document, or other publication that is intended for general public use and distribution and that is reproduced by duplicating processes.

The act also requires a state government body to notify the State Library of documents or other publications intended for general public use and distribution that are made available on its website. The State Library must retain those electronic publications in its digital archive and provide permanent access and records to each public or college library designated by the State Library Board to be a depository for state publications.

The act 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.

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.

Rates for hospital inpatient services (VETOED)

- Would have required that an urban hospital's Medicaid base rate for inpatient services provided during FY 2020 be at least the average of the base rates for hospitals in the same peer group region if the urban hospital's FY 2019 base rate was less than \$4,000 (VETOED).

Rates for nursing facility services (PARTIALLY VETOED)

- 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.
- 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.
- Repeals a provision that would have adjusted nursing facilities' rates for tax costs and a \$16.44 add-on by an amount equal to the difference between the Medicare skilled nursing facility market basket index and a budget reduction adjustment factor.

- Would have delayed the repeal until July 1, 2021 (VETOED).
- 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 (VETOED)

- Would have required that the Medicaid payment rate for Vagus Nerve Stimulation during FY 2020 and FY 2021 equal 75% of the Medicare rate for the service (VETOED).

Rates for personal care waiver services (VETOED)

- Would have required that the Medicaid rates for personal care waiver services be increased annually, beginning with FY 2022, by the difference between the Medicare skilled nursing facility market basket index and a budget reduction adjustment factor (VETOED).

Rates for aide and nursing services

- Repeals a law that required the Department to (1) reduce the Medicaid rates for aide and nursing services on October 1, 2011, and (2) adjust the Medicaid rates for those services not sooner than July 1, 2012.

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.

Home-delivered meals under Medicaid waivers (VETOED)

- Would have required 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 delivery person to meet face-to-face with the meal recipients (VETOED).
- Would have established the payment rates for home-delivered meals provided under the MyCare Ohio and Ohio Home Care waiver programs during FYs 2020 and 2021 (VETOED).

MyCare Ohio standardized claim form (PARTIALLY VETOED)

- Requires the Medicaid Director to develop a standardized claim form to be used under the Integrated Care Delivery System (MyCare Ohio) and standardized claim codes to be used on the form.
- Requires MyCare Ohio providers to use the standardized claim form and codes.
- Would have required the Department to pay a clean claim within 30 days and would have imposed 1% interest per month on that claim if not paid within 35 days (VETOED).

Medicaid managed care

Monitoring of behavioral health services

- Repeals on July 1, 2020, the requirement that the Joint Medicaid Oversight Committee periodically monitor the Department's inclusion of behavioral health services in the Medicaid managed care system.

Recoupment of payments

- Requires a Medicaid managed care organization (MCO) to give a provider all of the details of a recoupment of an overpayment.
- Requires the Department to assess the efforts of Medicaid MCOs to recoup overpayments and to include in contracts with Medicaid MCOs reasonable terms establishing limits on the recoupments.

Medicaid prompt payment waiver

- Repeals a requirement that the Medicaid Director apply for a waiver from the federal Medicaid prompt payment requirements to instead require health insuring corporations to submit claims in accordance with requirements established by the Department of Insurance.

Area agencies on aging

- Requires the Department, if it adds to Medicaid managed care 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 MyCare Ohio and (2) withhold a percentage of their premium payments for the purpose of providing the performance payments.

Performance metrics

- Requires the Department to establish performance metrics to evaluate Medicaid MCOs' performance, post the metrics on its website, and update them quarterly with any changes.

Employment program measure

- Requires the Department, as part of the re-procurement process for new Medicaid MCO contracts, to include in the measures used to determine which MCOs will be awarded contracts measures related to the abilities and commitment of MCOs to operate employment programs for Medicaid recipients.

Prescribed drugs

- Permits, instead of requiring, the Department to include prescribed drugs in the Medicaid managed care system.

State pharmacy benefit manager (PARTIALLY VETOED)

Procurement

- Requires the Director to select and contract with a state pharmacy benefit manager (PBM) to administer prescribed drug benefits under the care management system and to be responsible for processing all pharmacy claims under the care management system.

Disclosures

- Requires entities seeking to become the state PBM to disclose specified information.

Contract amendment

- Would have required the Department to review the contract every six months and make recommended changes and to reprocure the master state PBM contract every four years (VETOED).

Affiliated companies

- Would have permitted the affiliated companies of the state PBM to conduct state PBM business in their own names with Medicaid MCOs (VETOED).

Provisional state PBM

- Requires the Director to select a provisional state PBM by July 1, 2020.
- Specifies that the provisional state PBM will be fully implemented as the state PBM upon its demonstrated ability to fulfill the state PBM's duties, as evidenced through a readiness review process established by the Director.
- Requires the Director to notify the Joint Medicaid Oversight Committee if selection of the provisional state PBM cannot occur by the required date.

Medicaid MCOs and the state PBM

- Requires Medicaid MCOs to use the state PBM pursuant to the terms of the master contract between the Department and the state PBM.
- Would have tasked the contracted state PBM with serving as the single PBM used by Medicaid MCOs under the care management system (VETOED).
- Would have required the master contract to specify that all pharmacy claims information shared between the parties is confidential and proprietary (VETOED).
- Would have clarified that, despite the act's PBM provisions, a Medicaid MCO can contract directly with a pharmacy regarding the practice of pharmacy (VETOED).

State PBM compensation

- Requires all payments between the Department, Medicaid MCOs, and the state PBM to comply with state and federal law and any other agreement reached between the Department and the federal government.
- Would have required the Director to determine the payment to the state PBM, with payments for claims adjudication being made to the state PBM from a Medicaid MCO and payments for other administrative services being made to the state PBM directly from the Department (VETOED).
- Would have required the Director to establish a dispensing fee to be paid for the state PBM for each prescribed drug dispensed under the care management system (VETOED).

Prescribed drug formulary

- Would have required the state PBM, in consultation with the Director, to establish a Medicaid prescribed drug formulary, and would have specified that the formulary was not effective until approved by the Director (VETOED).
- Would have prohibited the state PBM from making a payment for a prescribed drug exceeding the drug's formulary per-unit prize (VETOED).

State PBM quarterly reports

- Requires the state PBM to report specified information to the Director quarterly.
- Permits the Director to ask for additional information as necessary.

Medicaid Director quarterly reports

- Would have required the Director to make findings based on the state PBM quarterly reports and submit a report to the General Assembly within 60 days after receiving the quarterly report (VETOED).
- Would have required the Director to be available to testify, on request, before either chamber of the General Assembly or the Joint Medicaid Oversight Committee (VETOED).

Civil penalty

- Prohibits a person from violating the terms of the master PBM contract or the act's requirements pertaining to the state PBM.

Pharmacy appeals process

- Requires the Director to establish an appeals process by which pharmacies can appeal to the Department any disputes relating to the maximum allowable cost for a prescribed drug set by the state PBM.
- Requires all pharmacies participating in the care management system to use the pharmacy appeals process.

Rulemaking

- Would have required the Director to adopt rules as necessary to implement the act's state PBM provisions, including specifically enumerated provisions (VETOED).

Payment and cost disclosures

- Requires the state PBM to disclose to the Department upon request all of the PBM's prescription drugs payment sources.
- Requires Medicaid MCOs to disclose to the Department their administrative costs associated with providing pharmacy services under the care management system.

Prescribed drug claims processing pilot

- Requires the Department to administer a pilot program for the pre-audit processing of prescribed drug claims made by qualifying pharmacies in 16 southeastern Ohio counties to Medicaid MCOs and their pharmacy benefit managers.
- Requires the Department to submit a report by September 1, 2021, to the Governor, the Senate President, the Speaker of the House, and the chairperson of the Joint Medicaid Oversight Committee.

Vetoed Medicaid managed care provisions (VETOED)

- Would have permitted a Medicaid MCO to submit a request to the State Board of Pharmacy for information in its drug database about all Medicaid recipients enrolled in a plan offered by the MCO, and would have required the Board to provide the information in a single electronic file or format (VETOED).
- Would have required the Department to establish a waiver under which Medicaid MCO plans could cover any service or product that would have a beneficial effect on enrollees' health and would likely reduce the plan's costs (VETOED).
- Would have required the Department to establish the Shared Savings Bonus Program, under which a Medicaid MCO would earn a bonus if its three-year average per recipient capitated payment rate was less than the three-year average per recipient cost of certain other states' Medicaid programs (VETOED).
- Would have required the Department to establish the Quality Incentive Program, under which the Department would randomly assign certain Medicaid recipients to Medicaid MCOs based on points earned for meeting health and quality metrics (VETOED).
- Would have permitted regional hospital networks to become Medicaid MCOs if they accepted a capitated payment that was not more than 90% of the lowest capitated payment made to a Medicaid MCO that is a health insuring corporation (VETOED).
- Would have required each Medicaid MCO to establish a program to incentivize enrollees to obtain covered health care from high quality and efficient providers (VETOED).

- Would have required a Medicaid MCO, if it established a rate for a service that was greater than the fee-for-service rate, to require providers of the service to enter into value-based contracts as a condition of joining the MCO's provider panel (VETOED).
- Would have prohibited a Medicaid MCO from permitting a provider to be part of the MCO's provider panel unless the provider assured the MCO that it would comply with a requirement regarding cost estimates (VETOED).
- Would have required a hospital, with certain exceptions, 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 did not have a contract with the MCO and the MCO referred the recipient to the hospital (VETOED).
- Would have required the Department to evaluate and benchmark the financial health of Medicaid MCOs (VETOED).
- Would have required the Department to obtain approval from the Joint Medicaid Oversight Committee and the Controlling Board before adjusting the capitation rates paid to Medicaid MCOs under certain circumstances (VETOED).
- Would have required the Department to complete a procurement process for Medicaid MCOs by July 1, 2020 (VETOED).

Prescribed drug spending growth

- Requires the Director, by July 1, 2020, to establish an annual benchmark for prescribed drug spending growth under Medicaid.
- Requires the Director, for each year that the Director projects that Medicaid drug spending will exceed the benchmark, to identify specific drugs that significantly contribute to exceeding the benchmark and publish a list of them.
- Requires the Director to enter into a supplemental rebate agreement or renegotiate an existing supplemental rebate agreement for identified drugs, if appropriate, and establishes criteria for these renegotiations.
- Permits the Director to consider removing an identified drug from the Medicaid preferred drug list and imposing a prior authorization requirement on the drug if a supplemental rebate agreement is not established or renegotiated.

Review of prescribed drug reform savings

- Requires the Department, before January 1, 2021, to conduct a review of all savings to the state from the act's prescribed drug reforms.
- Requires the Department to complete a report outlining its findings within 60 days after its review and to submit it to the Governor and the General Assembly.
- Requires the Department to testify about its findings before the Joint Medicaid Oversight Committee and, on request, before the General Assembly.

Pharmacy supplemental dispensing fee (PARTIALLY VETOED)

- Requires the Department to adopt rules to provide to retail pharmacies a supplemental dispensing fee that includes at least three payment levels.
- Would have required the Department to adopt the rules by January 1, 2020 (VETOED).
- Would have prohibited the supplemental dispensing fee from causing a reduction in other payments made to the pharmacy (VETOED).
- Requires the Director to adjust the supplemental dispensing fee if federal Medicaid law reduces the amount of federal funds the Department receives for the fee.

Social determinants of health

- Requires the Medicaid Director to implement within the Medicaid program strategies that affect social determinants of health.

Evaluations of expansion group's employment success

- Requires the Department to periodically evaluate the success that the expansion eligibility group has with (1) obtaining employer-sponsored health insurance, (2) improving health conditions that would otherwise prevent or inhibit stable employment, and (3) improving the conditions of employment.
- Requires the Department to complete a report for each evaluation.

Automatic designation of representative (VETOED)

- Would have automatically designated a facility participating in the Assisted Living Program as the primary authorized representative for a Medicaid applicant who resides in the facility, for purposes of allowing disclosure of information by a county department of job and family services (VETOED).

Care Innovation and Community Improvement Program

- Requires the Medicaid Director to continue the Care Innovation and Community Improvement Program for the FY 2020-FY 2021 biennium.

Rural healthcare workforce training and retention (VETOED)

- Would have required the Medicaid Director to create the Rural Healthcare Workforce Training and Retention Program for FYs 2020 and 2021, under which nonprofit hospital agencies and public hospital agencies could have earned supplemental Medicaid payments for graduate medical education costs (VETOED).

Children's hospitals study committee

- Requires the Department of Medicaid to establish a committee to study and develop performance indicators for children's hospitals.

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 required the Medicaid Director to adopt rules regarding the 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.

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 act makes the terms and procedures for suspending a Medicaid provider agreement because of certain types of indictments, which it refers to as disqualifying indictments, generally the same as those for suspending a provider agreement because of a credible allegation of fraud. The act also makes the following revisions to the law governing the suspension of provider agreements because of a disqualifying indictment:

- Under prior law, the Department of Medicaid was 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 was indicted for an act that would be a felony or misdemeanor under Ohio law and the act related to or resulted from furnishing or billing for Medicaid services or participating in the performance of management or administrative services relating to furnishing Medicaid services. The act 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.
- Prior law required the Department to *terminate* Medicaid payments to a provider when the provider agreement was suspended because of a disqualifying indictment. The termination applied only to payments for Medicaid services rendered *after* the date the Department sent notice of the suspension. Claims for payment for Medicaid services rendered before that date could be subject to prepayment review procedures under which the Department reviewed claims to determine whether they were supported by sufficient documentation, in compliance with state and federal law, and otherwise complete. Under the act, 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 law in effect before the act and law in effect after the act regarding the suspension of Medicaid provider agreements because of disqualifying indictments.

Law in effect before the act	Law in effect after the act
Medicaid providers subject to suspension	
<p>Noninstitutional providers when the Department received notice and a copy of an indictment that charged any of the following with committing certain acts:</p> <ol style="list-style-type: none"> 1. The provider; 2. The provider's owner, officer, authorized agent, associate, manager, or employee. (<i>R.C. 5164.37(C).</i>) 	<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"> 1. The provider; 2. The provider's officer, authorized agent, associate, manager, or employee;

Law in effect before the act	Law in effect after the act
	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>
Indictments that require suspension	
<p>1. Except for an independent provider, an act that would be a felony or misdemeanor under Ohio law that related to or resulted 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>
Stopping Medicaid payments	
<p>The Department was required to terminate Medicaid payments to a suspended provider for Medicaid services rendered after the date when the Department sent the provider notice of the suspension. Claims for services rendered before the notice was sent could 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>
Exceptions	
<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>

Law in effect before the act	Law in effect after the act
When suspension is lifted	
<p>1. The proceedings in <i>the criminal case</i> were 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>
Restricted Medicaid activities	
<p>A provider, owner, officer, authorized agent, associate, manager, or employee could not 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>

Law in effect before the act	Law in effect after the act
Notice of suspension	
<p>The Department had to 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"> 1. Not later than five days after the suspension unless a law enforcement agency makes a written request to temporarily delay the notice; 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>
Content of suspension notice	
<p>A notice of a provider agreement suspension had to:</p> <ol style="list-style-type: none"> 1. Describe the indictment that was the cause of the suspension, without necessarily disclosing specific information concerning any ongoing civil or criminal investigation; 2. State how long the suspension will continue; 3. Inform the provider or owner of the opportunity to request a reconsideration. <i>(R.C. 5164.37(F).)</i> 	<p>A notice of a provider agreement suspension must:</p> <ol style="list-style-type: none"> 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; 2. Same; 3. Same. <i>(R.C. 5164.36(F).)</i>

Law in effect before the act	Law in effect after the act
Reconsideration	
<p>A suspended provider or owner could request a reconsideration within 30 days of receiving the suspension notice. The reconsideration was not subject to an adjudication hearing under the Administrative Procedure Act. The provider or owner could 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 was authorized to suspend provider agreements, or (3) the provider or owner could 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 had to review the information and documents. After the reviews, the information, the suspension could be affirmed, reversed, or modified, in whole or in part. The review and notification of its results had to 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)

Prior law required the Department to *terminate* Medicaid payments to a provider when the provider agreement was suspended because of a credible allegation of fraud for which an investigation was pending under the Medicaid program. The termination applied only to payments for Medicaid services rendered after the date the Department sent the provider notice of the suspension. Claims for payment for Medicaid services rendered before that date could be subject to prepayment review procedures under which the Department reviewed claims to determine whether they were supported by sufficient documentation, were in compliance with state and federal statutes and rules, and were otherwise complete. Under the act, 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 act 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 act 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.

Continuing 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 act 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.

Rates for hospital inpatient services (VETOED)

(Section 333.170)

The Governor vetoed a provision that would have required that an urban hospital's Medicaid base rate for inpatient services provided during FY 2020 be no less than the average of the Medicaid base rates in effect on July 1, 2019, for inpatient services provided by other urban hospitals that are located in the same peer group region, if the hospital's Medicaid base rate in effect June 30, 2019, for inpatient services was not more than \$4,000.

Rates for nursing facility services

Low resource utilization residents

(R.C. 5165.152)

The act 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, when calculating the facility's Medicaid 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 prior law, the rate was the following:

- \$115 per day if the Department was satisfied that the facility cooperated 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 was not satisfied.

The act provides for the rate to be \$115 per day regardless of whether the facility cooperates with the Long-Term Care Ombudsman Program.

Quality payment rates

(R.C. 5165.25)

The act 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 act 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 facility for at least 100 days (i.e., long-stay residents).

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 facility under its 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 facility's long-stay residents who had a urinary tract infection during the measurement period;
- The percentage of the facility's long-stay residents whose ability to move independently worsened during the measurement period;
- The percentage of the 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 facility for each quality metric:

- Unless CMS assigned the nursing facility the lowest percentile for the quality metric, divide the number of the facility's points for the quality metric by 20;
- If CMS assigned the nursing facility the lowest percentile for the quality metric, reduce the 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 (PARTIALLY VETOED)

A nursing facility is not to receive a quality incentive payment for a fiscal year, other than the second half of FY 2020, if its licensed occupancy percentage is less than 80%. However, this disqualification does not apply to a nursing facility for a fiscal year if it has a score for meeting the quality metrics for the fiscal year of at least 15 points. The Governor vetoed a second exception to the disqualification. If not for the veto, a nursing facility would have been exempt for a fiscal year if, less than four years before the first day of the fiscal year, it had undergone a renovation during which it temporarily removed one more of its licensed beds from service. The Governor also vetoed part of a third exception to the disqualification. If not for the veto, a nursing facility would have been exempt from the disqualification for a fiscal year if it had been initially certified for participation in Medicaid less than four years before the first day of the fiscal year. As a result of the partial veto, a nursing facility is exempt for a fiscal year if it was initially certified for participation in Medicaid. Because the initial certification would not have to have occurred within four years and all nursing facilities must obtain Medicaid certification to participate in Medicaid, it appears that all nursing facilities are exempt from the disqualification and therefore do not have to meet the licensed occupancy percentage requirement to receive a quality incentive payment.

A nursing facility's licensed occupancy percentage for a fiscal year is to be determined as follows:

- Multiply the facility's licensed occupancy on the last day of the measurement period by the number of days in that measurement period;
- Divide the number of the facility's inpatient days for the measurement period by the product determined under the first step.

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 (PARTIALLY VETOED)

The act 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:

1. The amount that is 2.4% of the portions of each nursing facility's Medicaid payment rate regarding its ancillary and support, capital, direct care, and tax costs, the critical access incentive payment, and the \$16.44 add-on (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 determined pursuant to a two-step process. The Governor partially vetoed the first step. If not for the veto, the first step would have been to determine the following for each nursing facility, including those that are not to receive a quality incentive payment because they do not meet the licensed occupancy condition:

1. Determine the amount that is 2.4% of each nursing facility's base rate on the first day of the fiscal year;

2. Add the amount determined under (1) to the facility's base rate for nursing facility services provided on the first day of the fiscal year;

3. Multiply the sum determined under (2) by the Medicare skilled nursing facility market basket index for federal fiscal year 2020;

4. Add amounts determined under (1) and (3);

5. Multiply the sum determined under (4) by the number of each nursing facility's Medicaid days for the measurement period.

As a result of the veto, the first step is to determine the following for each nursing facility:

1. Determine 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 the nursing facility's Medicaid days for the measurement period.

The second step is to determine the sum of the amounts determined under the first step for all nursing facilities.

Budget reduction adjustment factor (PARTIALLY VETOED)

(R.C. 5165.15, 5165.21, and 5165.361; Sections 333.270, 812.10, and 812.12)

For FYs 2018 and 2019, the formula for determining the Medicaid rates for nursing facility services contained a \$16.44 add-on, which became part of the formula on July 1, 2016. Prior law provided that, in FY 2020 and thereafter (other than the first fiscal year in a rebasing cycle), the add-on was instead to be the sum of the following:

1. The amount of the add-on for the preceding fiscal year;
2. The difference between (a) the Medicare skilled nursing facility market basket index determined for the federal fiscal year that began during the state fiscal year preceding the one for which the rate is being determined and (b) the budget reduction adjustment factor for the fiscal year for which the rate is being determined.

The act provides for the add-on to continue to be \$16.44. The Governor vetoed a provision that would have delayed the elimination of the adjustment until FY 2022.

Continuing law provides that, beginning with FY 2020 (other than the first fiscal year in a rebasing cycle), the formula includes the difference between the Medicare skilled nursing facility market basket index and the budget reduction adjustment factor as part of the manner in which the rates for ancillary and support costs, capital costs, and direct care costs are determined. Under prior law eliminated by the act, this was also to be applied as part of the process of determining rates for tax costs beginning with FY 2020. The Governor vetoed a provision that would have delayed the elimination until FY 2022.

The act 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 (VETOED)

(Section 333.185)

The Governor vetoed a provision that would have required 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 would have been provided.

The vetoed provision would also have required 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 would not increase Medicaid expenditures. The Director would have been prohibited from selecting for rate reduction any Medicaid service for which the rate is determined in accordance with state statutes.

Rates for personal care waiver services (VETOED)

(R.C. 5166.09, primary and 5166.01)

The Governor vetoed a provision that would have required that the Medicaid rate for personal care services provided under a Medicaid waiver that covers home and community-based services as an alternative to nursing facility services be increased each state fiscal year beginning with FY 2022. The amount of the increase would have been the difference between:

1. The Medicare skilled nursing facility market basket index determined for the federal fiscal year that begins during the state fiscal year immediately preceding the state fiscal year for which the determination is being made; and

2. The budget reduction adjustment factor for the state fiscal year for which the determination is being made.

The budget reduction adjustment factor for a state fiscal year would have had to be the same as the budget reduction adjustment factor used for that state fiscal year in determining the Medicaid rates for nursing facility services. (See “**Rates for nursing facility services**” above.)

Rates for aide and nursing services

(R.C. 5164.77, repealed)

The act repeals a law that required the Department to (1) reduce the Medicaid rates for aide and nursing services on October 1, 2011, and (2) adjust the Medicaid rates for those services not sooner than July 1, 2012, in a manner that reflects, at a minimum, labor market data, education and licensure status, home health agency and independent provider status, and length of service visit.

Rates for community behavioral health services

(Section 333.180)

The act 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 Medicare. 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 (VETOED)

(R.C. 5166.04; Section 333.160)

The Governor vetoed a provision that would have required 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 would have had to 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.

The Governor also vetoed a provision that would set 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.

MyCare Ohio standardized claim form (PARTIALLY VETOED)

(R.C. 5164.912)

The act requires the Medicaid Director to develop a standardized claim form that must be used by medical providers providing health care services under the Integrated Care Delivery System (known as MyCare Ohio). The required form must be selected from universally accepted claim forms used in the United States.

The Director also must create standardized claim codes to be used on the claim form. The act requires Medicaid providers providing Medicaid services to use the appropriate standardized claim form and codes.

The Governor vetoed a provision that would have required the Department to pay within 30 days any clean claim. A clean claim is one that is properly submitted using the appropriate standardized claim form and claim codes and is for Medicaid services that are allowable under the MyCare program. If the Department failed to pay the clean claim within 35 calendar days, the Department would have had to pay interest on the claim of 1% per month, calculated from the expiration of the 35-day period.

Medicaid managed care

Monitoring of behavioral health services

(R.C. 103.416; Section 125.10)

Effective July 1, 2020, the act repeals a requirement that the Joint Medicaid Oversight Committee periodically monitor the Department's inclusion of alcohol, drug addiction, and mental health services in the Medicaid managed care system.

Recoupment of payments

(R.C. 5167.22, primary, 5167.01, and 5167.221)

The act requires a Medicaid MCO, when it seeks to recoup an overpayment made to a provider, to give the provider all details of the recoupment, including:

- The name, address, and Medicaid identification number of the Medicaid recipient to whom the agency provided the services;

- The dates that the services were provided;
- The reason for the recoupment;
- The method by which the provider may contest the proposed recoupment.

The Department must assess Medicaid MCOs' efforts to recoup overpayments made to providers who are network providers and providers who are not network providers. The assessments must examine the amount of time recoupment efforts take, starting from the time providers receive final payment and ending when the recoupment effort is completed. Each Medicaid MCO must submit to the Department information that the Department needs to perform the assessments. The Department must specify what information is needed.

Following the assessments, the Department must include in contracts with Medicaid MCOs terms the Department determines are reasonable to establish limits on Medicaid MCOs' recoupment efforts. The terms must include exceptions for cases of fraud and other types of deception.

Medicaid prompt payment waiver

(R.C. 5167.25, repealed, with conforming changes in R.C. 3901.3814)

The act repeals a requirement that the Medicaid Director apply to CMS for a waiver from the federal Medicaid prompt payment requirements that would have instead required health insuring corporations to submit claims in accordance with requirements established by the Department of Insurance.

Area agencies on aging

(Section 333.190)

The act 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-FY 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 act continues for FYs 2020 and 2021 a requirement that the Department make performance payments to Medicaid MCOs that provide care under the Integrated Care Delivery System. The Department has been required to provide the performance payments since FY 2014.⁷⁸

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 determining 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 act 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 act requires the Department to establish performance metrics to evaluate and compare how Medicaid MCOs perform under their MCO contracts with the Department. The performance metrics can include financial incentives and penalties. These metrics are in addition to the managed care performance program under continuing law unchanged by the act, under which the Department provides payments to Medicaid MCOs that meet certain performance standards. The Department must post the metrics on its website and update its website quarterly to reflect any changes it makes to the metrics.

Employment program measure

(Section 333.197)

The act requires the Department, as part of the re-procurement process for new Medicaid MCO contracts, to include, in the measures to determine which MCOs will be awarded contracts, measures related to their abilities and commitment to establish and operate employment programs for Medicaid recipients enrolled in their plans.

⁷⁸ Section 323.300 of H.B. 59 of the 130th General Assembly.

Prescribed drugs

(R.C. 5167.05 and 5167.12)

The act provides that the Department is permitted, instead of required, to include prescribed drugs in the Medicaid managed care system. Under prior law, the Department had to require Medicaid MCOs to cover prescribed drugs.

State pharmacy benefit manager (PARTIALLY VETOED)

(R.C. 5167.24)

Procurement (PARTIALLY VETOED)

The act 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 insurer, including a state agency or MCO. The act provides that the state PBM is a pharmacy benefit manager for purposes of Ohio's third party administrator law, therefore, the state PBM is subject to that law. The Director, through a procurement process, must select a state PBM to be responsible for processing all pharmacy claims administration for Medicaid MCOs under the care management system (so long as the Department includes prescribed drugs in that system). The Department is responsible for enforcing the contract after the procurement process.

As part of the procurement process, the 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 Governor vetoed a requirement that the Director reprocure the state PBM contract every four years.

Disclosures (PARTIALLY VETOED)

As part of the procurement process, a prospective state PBM must disclose to the Director all of the following:

- Any activity, policy, practice, contract, or arrangement of the state PBM that may present any conflict of interest with the PBM's relationship with or obligation to the Department 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 Ohio with which it shares common ownership, management, or control, or that are owned, managed, or controlled by any of its affiliated companies;
- Any direct or indirect fees, charges, or any kind of assessments imposed by the PBM on pharmacies licensed in Ohio. (The Governor vetoed a requirement that the state PBM list separately the fees and assessments charged to Ohio pharmacies that operate 11 or fewer locations and those charged to Ohio pharmacies that operate more than 11 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.

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.

Contract amendment (VETOED)

The Governor vetoed a provision that would have required the Medicaid Director to review the state PBM contract every six months and make the recommended changes.

Affiliated companies (VETOED)

The Governor vetoed a provision that would have permitted the affiliated companies of the state PBM to conduct PBM business in their own names with Medicaid MCOs.

Provisional state PBM

The act requires the Director to select a provisional state PBM by July 1, 2020. The provisional state PBM will be fully implemented as the state PBM upon its demonstrated ability to fulfill the obligations of the state PBM, as illustrated through a readiness review process established by the Director. An entity failing to complete the readiness review process will be deemed as not having met the criteria of the review process. The act prohibits the provisional state PBM from entering into contracts with the Department or Medicaid MCOs as the state PBM before it has satisfactorily completed the readiness review process.

If the Director determines that, for reasons beyond his or her control, selection of a provisional state PBM cannot occur before July 1, 2020, the Director must notify the Joint Medicaid Oversight Committee of (1) the reasons for the delay and (2) the steps that the Director is taking to complete the selection as expeditiously as possible.

Medicaid MCOs and the state PBM (PARTIALLY VETOED)

(R.C. 5167.241(A) and (C))

The act requires Medicaid MCOs to use the state PBM pursuant to the terms of the master contract between the Department and the state PBM.

The Governor vetoed provisions that would have required:

- The state PBM to be responsible for processing all pharmacy claims under the care management system;
- All contracts between the state PBM and a MCO to specify that all pharmacy claims information shared between the parties is confidential and proprietary.

The Governor also vetoed a provision that would have permitted a Medicaid MCO, despite the act's state PBM provisions, to contract directly with a pharmacy regarding the practice of pharmacy, which includes 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.⁷⁹

State PBM compensation (PARTIALLY VETOED)

(R.C. 5167.241(B))

All payments between the Department, Medicaid MCOs, and the state PBM must comply with state and federal law (which includes federal statutes as well as CMS regulations) and any other agreement reached between the Department and CMS. The Director can change a payment arrangement in order to comply with state or federal law or any agreement between the Department and CMS.

The Governor vetoed provisions that would have required the Director to do both of the following regarding the state PBM's compensation:

- Determine the rate the state PBM is paid for its services. All payments relating to claims adjudication would have had to be made to the state PBM from a Medicaid MCO. All payments relating to other administrative matters (such as formulary management and prescribed drug supplemental rebate negotiation) would have had to be made to the state PBM directly by the Department.
- Establish a dispensing fee to be paid to the state PBM for each drug it dispenses under the care management system.

⁷⁹ R.C. 4729.01, not in the act.

Prescribed drug formulary (VETOED)

(R.C. 5167.242)

The Governor vetoed provisions that would have required the state PBM, in consultation with the Director, to develop a Medicaid prescribed drug formulary for the care management system. At minimum, the formulary would have had to list prescribed drugs and specify the per unit price for each drug. The formulary price would have been the total price ceiling for the prescribed drug including any supplemental rebates or discounts received for the drug. The state PBM would have been prohibited from making any payment for a formulary drug in an amount in excess of the per unit price as listed in the formulary.

The Medicaid prescribed drug formulary would not have been effective until approved by the Director. The state PBM would have been required to immediately disclose in writing to the Director any changes to the formulary, and the Director could disapprove any changes. In developing the formulary, the state PBM would have been required to negotiate prices for and price prescribed drugs at the lowest price that also maximizes the health of Medicaid recipients and promotes the efficiency of Medicaid.

State PBM quarterly reports

(R.C. 5167.243)

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;
- The percentage of savings in drug prices that were passed on to care management system participants;
- Any activity, policy, practice, contract, or arrangement of the state PBM that may present any conflict of interest with its relationship with or obligation to the Departments or 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, (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 Ohio 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;
- 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 act 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 act's reporting requirements.

Medicaid Director quarterly reports (VETOED)

(R.C. 5162.137)

The Governor vetoed provisions that would have required the Director to make findings based on the state PBM's quarterly reports and complete a report detailing the findings within 60 days after receiving the quarterly report. The Director would have been required to submit the report to the General Assembly and, on request, testify about the findings before either chamber of the General Assembly or the Joint Medicaid Oversight Committee. While testifying, the Director would have been required to keep confidential any document marked as "confidential" or "proprietary" and redact any information as necessary before it becomes public, except that the Director could have shared the document or information with other state agencies or entities.

Civil penalty

(R.C. 5167.244)

The act prohibits any person from violating the terms of the master PBM contract or its requirements pertaining to the state PBM compensation and Medicaid MCOs and the state PBM. Violations are subject to a civil penalty in an amount to be determined by the Director.

Pharmacy appeals process

(R.C. 5167.245)

The Director must establish an appeals process by which pharmacies can appeal to the Department (as opposed to the state PBM) any disputes relating to the maximum allowable cost set by the state PBM for a prescribed drug. All pharmacies participating in the care management system must use the appeals process to resolve any disputes relating to the maximum allowable cost.

Rulemaking (VETOED)

(R.C. 5167.246)

The Governor vetoed provisions that would have required the Director to adopt rules as necessary to implement the act's PBM provisions, including:

- Specifying the information that the state PBM must disclose to the Director;
- Establishing the amount of civil penalties for violations of these provisions;
- Adjusting capitation payments to Medicaid MCOs as necessary, as a result of the state PBM processing all pharmacy claims;
- Prohibiting the state PBM from requiring an enrollee to obtain a specialty drug from a specialty pharmacy owned or otherwise associated with the state PBM;
- Defining “specialty drug” and “specialty pharmacy”;
- Establishing a dispensing fee to be paid to the state PBM for claims adjudication;
- Specifying procedures for conducting appeals (see above).

Payment and cost disclosures

(R.C. 5167.122)

The state PBM to, on request from the Department, must disclose to the Department all sources of payment the PBM receives for prescribed drugs, including any benefits such as drug rebates, discounts, credits, clawbacks, fees, grants, chargebacks, reimbursements, or other payments related to services provided for the Medicaid MCO.

Additionally, Medicaid MCOs must disclose to the Department, in the format specified by the Department, the MCO’s administrative costs associated with providing pharmacy services under the care management system.

Prescribed drug claims processing pilot

(Section 333.290)

The act requires the Department to administer a 16-county pilot program for the pre-audit processing of prescribed drug claims submitted to Medicaid MCOs or their pharmacy benefit managers, by a qualifying pharmacy. The Department must ensure that the pilot program is operational beginning January 1, 2020.

Qualifying pharmacies

In order for a pharmacy to submit a claim under the pilot program, both of the following must apply to the claim:

1. The claim must relate to a prescription filled in Adams, Athens, Belmont, Gallia, Guernsey, Harrison, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Tuscarawas, Vinton, or Washington County.

2. The pharmacy submitting the claim must serve a significant share of Medicaid enrollees in the county who are enrolled in Medicaid MCO plans, as determined by the Director.

The act specifies that a pharmacy’s participation in the pilot program is voluntary.

Department duties

Under the pilot program, the Department must:

- Approve individuals or entities to serve as claims processors;
- Ensure that claims are adjudicated by approved claims processors and that information relating to each claim is submitted to the Department for evaluation and review;
- Authorize approved claims processors to accept and adjudicate claims from the payment amounts submitted by patients;
- Utilize a coordination of benefits process to determine the respective payment responsibilities of different payors.

If a claims processor is unable to provide claims data to the Department, the participating pharmacy must, to the extent permissible under state and federal law, cooperate with the Department in providing any information missing from the claim.

Conclusion date, report

The pilot program is temporary; the Department must conclude it on December 31, 2020. At the conclusion of the program, the Department must evaluate and review the following data relating to each prescribed drug claim made under the program:

- The usual and customary drug cost;
- The contracted drug ingredient cost;
- The dispensing fee;
- Any applicable taxes.

The Department must prepare a report relating to the pilot program by September 1, 2021. The Department must submit the report to the Governor, the Senate President, the Speaker of the House, and the chairperson of the Joint Medicaid Oversight Committee. The report must outline both:

1. The costs, savings, trends, and utilization rates realized under the pilot program; and
2. Any policy recommendations, including whether to reinstate the program, and if further implementation will decrease prescribed drug costs and spending levels.

Vetoed Medicaid managed care provisions (VETOED)

(R.C. 4729.80, 4729.801, 5162.138, 5162.139, 5166.01, 5166.43, 5166.50, 5167.10, 5167.105, 5167.106, 5167.107, 5167.20, 5167.29, 5167.35, and 5167.36; Sections 333.65, 333.195, and 333.230)

The Governor vetoed a number of provisions regarding Medicaid managed care. The vetoed provisions would have done the following:

- Permitted a Medicaid MCO to submit a request to the State Board of Pharmacy for information in its drug database (the Ohio Automated Rx Reporting System or OARRS)

about all Medicaid recipients enrolled in a plan offered by the MCO, and required the Board to provide the information in a single electronic file or format.

- Required the Department to establish a waiver under which Medicaid MCO plans could cover any service or product that would have a beneficial effect on the health of Medicaid recipients enrolled in the plans and, because of the beneficial effect, would likely have reduced the per recipient per month costs under the plan by the end of the first three years that the service or product was covered.
- Required the Department to do all of the following if the U.S. Secretary of Health and Human Services agreed to enter into an enforceable agreement that safeguarded the state's receipt of federal Medicaid funds:
 - Establish the Shared Savings Bonus Program, under which a Medicaid MCO would have earned a bonus if its three-year average per recipient capitated payment rate was less than the three-year average per recipient cost of certain other states' Medicaid programs.
 - Establish the Quality Incentive Program, under which the Department would have randomly assigned certain Medicaid recipients to Medicaid MCOs based on points earned for meeting health and quality metrics.
 - Permit regional hospital networks to become Medicaid MCOs if they accepted a capitated payment that was not more than 90% of the lowest capitated payment made to a Medicaid MCO that is a health insuring corporation.
- Required each Medicaid MCO to establish a program that incentivized enrollees to obtain covered health care from high quality and efficient providers.
- Required a Medicaid MCO, if it established a rate for a service that was greater than the fee-for-service rate, to require providers of the service to enter into value-based contracts as a condition of joining the MCO's provider panel.
- Prohibited a Medicaid MCO from permitting a provider to be part of the MCO's provider panel unless the provider assured the MCO that it would comply with a requirement regarding cost estimates.
- Required a hospital, with certain exceptions, to accept as payment in full from a Medicaid MCO an amount equal to 90% of the fee-for-service rate for a non-emergency service provided to a Medicaid recipient, if the hospital did not have a contract with the MCO and the MCO referred the recipient to the hospital.
- Required the Department, by January 1, 2020, to (1) evaluate and benchmark the financial health of Medicaid MCOs against other MCOs providing services under the Medicaid programs of other states in the Midwest, (2) publish its findings on its website, (3) submit the findings to the Joint Medicaid Oversight Committee, and (4) adopt rules addressing the financial health of Medicaid MCOs in the state.

A detailed description of these vetoed provisions is available on pages 307 to 315, 318, 320, and 351 to 352 of LSC's analysis of H.B. 166, As Passed by the House. The analysis is available online at <https://www.lsc.ohio.gov/documents/budget/133/MainOperating/HP/BillAnalysis/h0166-ph-133.pdf>.

The Governor also vetoed a provision that would have required the Department, before adjusting the capitation rates paid to Medicaid MCOs under certain circumstances, to obtain the approval of the Joint Medicaid Oversight Committee and then obtain approval for the appropriations needed for the adjustment from the Controlling Board. The requirement would have applied if (1) the adjustment would increase the capitation rate for a period of time to an amount exceeding the amount the capitation rate otherwise would be for that period, according to the Medicaid MCO contracts in effect at the time the adjustment would be applied and (2) the total cost to the Medicaid program would exceed \$50 million. The requirement would have been in addition to a requirement under continuing law to obtain federal approval for changes to Medicaid.

Additionally, the Governor also vetoed a provision that would have required the Department to complete a procurement process for Medicaid MCOs by July 1, 2020.

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, 5167.173, 5167.18, 5167.20, 5167.201, 5167.22, 5167.23, 5167.26, 5167.41, and 5168.75)

The act clarifies and simplifies statutes governing the Medicaid managed care system. For the sake of clarity, the act provides for Medicaid recipients to enroll in "Medicaid MCO plans" rather than in Medicaid managed care organizations. For the sake of simplicity, the act requires Medicaid MCOs to comply with various requirements rather than, as under prior law, requiring the contracts that the Department enters into with Medicaid MCOs to include the requirements. Also, the act 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.

Prescribed drug spending growth

(R.C. 5164.7515)

The act requires the Director, by July 1, 2020, to establish an annual benchmark for prescribed drug spending growth under Medicaid. If the Director determines that Medicaid prescribed drug spending in a given year is projected to exceed the benchmark, the Director must identify specific prescribed drugs that significantly contribute to exceeding the benchmark. The Director must publish a list of the identified prescribed drugs.

Identified drugs

For each drug identified by the Director, the Director must determine if there is a current supplemental rebate for that drug between the drug's manufacturer and the Department, or its designee. If there is, the Director can choose to renegotiate the rebate

agreement. If there is not a current supplemental rebate for the drug, the Director must evaluate whether to pursue one with the drug manufacturer. In making this evaluation, the Director can consider:

- The drug's actual cost to the state;
- Whether the manufacturer is providing significant discounts or rebates for other prescribed drugs under Medicaid; and
- Any other information the Director considers relevant.

Renegotiation of rebate agreement

If the Director determines that an existing prescribed drug supplemental rebate agreement should be renegotiated, the Director must establish a target rebate amount for the renegotiation, considering any of the following:

- Public information relevant to pricing the drug;
- Department information that is relevant to pricing the drug;
- Information relating to value-based pricing of the drug for Medicaid recipients;
- The seriousness and prevalence of the conditions for which the drug is prescribed;
- The drug's volume of use among Medicaid recipients;
- The drug's effectiveness in treating conditions for which it is prescribed or improving a patient's health, quality of life, or overall health outcomes;
- The likelihood that the drug will reduce the need for other medical care, including hospitalization;
- The drug's average wholesale price, wholesale acquisition cost, and retail price, and its cost under the Medicaid program, not including any rebates received for it;
- In the case of generic drugs, the number of manufacturers that produce the drug;
- Whether there are pharmaceutical equivalents to the drug; and
- Any other information the Director considers relevant.

In renegotiating a supplemental rebate agreement, the Director must seek to negotiate the Director's target rebate amount. The act prohibits the Director from entering into a rebate agreement for less than 60% of the target.

Removal from preferred drug list

If a supplemental rebate is not established or renegotiated for an identified prescribed drug, the Director can consider removing the drug from the Medicaid preferred drug list and imposing a prior authorization requirement on the drug, in accordance with continuing Medicaid law unchanged by the act.

Review of prescribed drug reform savings

(Section 333.240)

The act requires the Department, by January 1, 2021, to conduct a review of all savings to the state from the act's prescribed drug reforms. The Department must complete a report outlining its findings 60 days after its review and submit it to the Governor and the General Assembly. The Department must testify about its findings before the Joint Medicaid Oversight Committee, and, on request of the Senate President, the Speaker of the House, or both, before the General Assembly.

Pharmacy supplemental dispensing fee (PARTIALLY VETOED)

(Section 333.280)

The act requires the Department to adopt rules to provide a supplemental dispensing fee under the care management system to retail pharmacies. The supplemental dispensing fee must have at least three different payment levels. The Director must adjust the supplemental dispensing fee if federal Medicaid law reduces the amount of federal funds the Department receives for the fee.

The Governor vetoed provisions that would have:

- Required the rules establishing the supplemental dispensing fee to be adopted by January 1, 2020;
- Required the supplemental dispensing fee to be based on (1) the ratio of Medicaid prescriptions a pharmacy location filled compared to the total prescriptions the location filled (based on the "Survey of the Average Cost of Dispensing a Medicaid Prescription in the State of Ohio" prepared for the Department) and (2) the number of retail pharmacy locations participating in the care management system in the area (as determined and periodically reviewed by the Department). Pharmacy locations with a high ratio of Medicaid prescriptions and a low number of other pharmacy locations would have received a higher dispensing fee amount.
- Prohibited the supplemental dispensing fee from causing a reduction in other payments made to the pharmacy for providing prescription drugs under the care management system.

Social determinants of health

(R.C. 5162.72)

The act requires the Medicaid Director to implement strategies that address social determinants of health, including employment, housing, transportation, food, interpersonal safety, and toxic stress.

Evaluations of expansion group's employment success

(R.C. 5162.1310)

The act requires the Department to periodically evaluate the success that members of the expansion eligibility group (also known as Group VIII) have with (1) obtaining employer-sponsored health insurance coverage, (2) improving health conditions that would otherwise prevent or inhibit stable employment, and (3) improving the conditions of their employment, including duration and hours of employment. Medicaid MCOs are required to collect and submit to the Department relevant data about members of the expansion eligibility group who are enrolled in the MCOs' plans. The Department is permitted to request that a Medicaid MCO collect and submit to the Department additional data the Department needs for its evaluation.

The Department must complete a report for each of the evaluations. The Medicaid Director must submit the reports to the General Assembly and Joint Medicaid Oversight Committee.

Automatic designation of representative (VETOED)

(R.C. 5160.01 and 5160.48)

The Governor vetoed a provision that would have designated a facility participating in the Assisted Living Program as the primary authorized representative when a resident of the facility applied for Medicaid. Under law unchanged by the act, 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.

The vetoed provision would have specified that, for an applicant who resides in 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 would have been considered an authorized representative for purposes of the continuing law discussed above, and accordingly, the county department could communicate with the facility regarding the application.

Care Innovation and Community Improvement Program

(Section 333.220)

The act requires the Medicaid Director to continue the Care Innovation and Community Improvement Program for the FY 2020-FY 2021 biennium. The Director was originally required to establish it for the FY 2018-FY 2019 biennium.⁸⁰

Any nonprofit hospital agency affiliated with a state university and any public hospital agency may volunteer to participate if the hospital has a Medicaid provider agreement. The nonprofit and public hospital agencies that participate are responsible for the state share of the

⁸⁰ Section 333.320 of H.B. 49 of the 132nd General Assembly.

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, 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.

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 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.

All intergovernmental transfers made under the program must be deposited into the existing Care Innovation and Community Improvement Program Fund. Money in the fund and the corresponding federal funds must continue to be used to make the supplemental payments to hospital agencies under the program.

Rural healthcare workforce training and retention (VETOED)

(Section 333.227)

The Governor vetoed a provision that would have required the Medicaid Director to create the Rural Healthcare Workforce Training and Retention Program for FYs 2020 and 2021. Any nonprofit hospital agency affiliated with a state university and any public hospital agency could have volunteered to participate if the hospital has a Medicaid provider agreement and an approved graduate medical education program.

Nonprofit and public hospital agencies that participated in the program would have been responsible for the state share of the program's costs and required to make or request the appropriate government entity to make intergovernmental transfers to pay for the costs. The Director would have been required to establish a schedule for making the transfers.

Each participating hospital agency would have been required to do all of the following tasks in accordance with strategies, and for the purpose of meeting goals, that the Director would have been required to establish:

- Increase residency positions in primary, specialty, or dental care as identified by the Director;
- Create incentives to increase recruitment and retention of graduates of Ohio residency and fellowship programs in primary, specialty, or dental care as identified by the Director;
- Increase training opportunities for physician assistants, psychologists, and advanced practice registered nurses in primary care, alcohol and drug treatment, or mental health, as appropriate for their scope of practice;
- Report to the Director about how the above tasks would address the workforce needs of critical access hospitals and rural hospitals (i.e., hospitals that are Medicare certified or accredited by a federally approved national accrediting organization, registered with the Department of Health, and located in a county that has a population of less than 125,000);
- Create opportunities for persons to receive training in serving medically underserved populations, providing team-based care, and undergoing clinical rotations in federally qualified health centers, facilities operated by community addiction services providers and community mental health services providers, critical access hospitals, and rural hospitals.

The Medicaid Director would have been required to consult with the Director of Health and Director of Mental Health and Addiction Services to ensure that the program's strategies and goals were consistent with the state's healthcare workforce objectives.

Participating hospital agencies would have received supplemental Medicaid payments at least once during FY 2020 and at least once again during FY 2021 for graduate medical education costs that were apportioned to the provision of hospital inpatient services included in the Medicaid managed care system. The supplemental payments would have equaled the difference between (1) Medicaid payments for direct and indirect graduate medical education and (2) the Medicaid payment based in part on Medicare direct and indirect graduate medical education reimbursement principles.

The Director would have been required to consult with participating hospital agencies to create a centralized database that tracked (1) how they encouraged physicians in residency programs to practice medical specialties for which there is a need in this state and (2) physicians' decisions to practice medicine in this state, the locations at which they practiced, and whether they became or obtained employment with Medicaid providers.

The Rural Healthcare Workforce Training and Retention Program Fund would have been created in the state treasury. All intergovernmental transfers under the program were to be deposited into the fund. Money in the fund and the corresponding federal match were to be used to make supplemental Medicaid payments under the program.

Children's hospitals study committee

(Section 333.67)

The act requires the Department to establish a committee to study and develop performance indicators for children's hospitals. The Medicaid Director must appoint the committee's members. The committee must prepare and submit to the Department a report of its findings and recommendations. The act does not specify a timeline by which members must be appointed or the report must be submitted.

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 130th G.A.)

The act continues the Hospital Care Assurance Program (HCAP) for two additional years. The program was scheduled to end October 16, 2019, but under the act 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 act 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 act eliminates all provisions regarding approved health information exchanges from statutes governing protected health information.⁸¹ Prior law defined “approved health information exchange” as a health information exchange that had been approved by the Medicaid Director or that had been certified by the Office of the National Coordinator for Health Information Technology. 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.⁸²

Specifically, the act repeals statutes that:

- Required the Medicaid Director to adopt rules establishing (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 participated in approved health information exchanges (participation agreements);
- Permitted a covered entity to disclose an individual’s protected health information to a health information exchange without a valid authorization if (a) the exchange was an approved health information exchange, (b) the covered entity was a party to a valid participation agreement with the exchange, (c) the disclosure was consistent with all procedures established by the exchange, and (d) the covered entity, before making the disclosure, furnished written notice to the individual or the individual’s personal representative;
- Gave covered entities and approved health information exchanges immunity from civil and criminal liability for actions authorized by the statutes governing approved health information exchanges.

⁸¹ “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.

⁸² “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 act also eliminates a requirement that a covered entity, when it disclosed an individual's protected health information to a health information exchange, restrict disclosure in a manner 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 rules required the covered entity to comply with such a request. The Director's duty to adopt those rules is eliminated as part of the act's repeals.

Health Care/Medicaid Support and Recoveries Fund

(R.C. 5162.52)

The act establishes two additional purposes for which the Department is to use money credited to the Health Care/Medicaid Support and Recoveries Fund: (1) programs that serve youth involved with multiple government agencies and (2) innovative programs that the Department 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, the Department 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 act abolishes the Integrated Care Delivery Systems Fund, which was part of the state treasury. Under prior law, a portion of the amounts that the Integrated Care Delivery System (MyCare Ohio) saved the Medicare program had to be deposited into the fund, if an agreement with the federal government provided for the state to receive those amounts. The Department was required to use money to further develop integrated delivery systems and improved care coordination for individuals eligible for both Medicare and Medicaid (dual eligible individuals).

Managed Care Performance Payment Fund

(R.C. 5162.60, repealed)

The act abolishes the Managed Care Performance Payment Fund. The fund, which was part of the state treasury, consisted of:

- Amounts transferred to it for the Managed Care Performance Payment Program;
- All fines collected from Medicaid MCOs for failure to meet performance standards or other requirements specified in provider agreements with the Department or rules adopted by the Medicaid Director;
- All of the fund's investment earnings.

Prior law required that the fund be used to do the following:

- Make performance payments to Medicaid MCOs under the Managed Care Performance Payment Program;

- Meet obligations specified in Medicaid provider agreements;
- Pay for Medicaid services provided by Medicaid MCOs;
- Reimburse a Medicaid MCO that had paid a fine for failure to meet performance standards or other requirements if the organization came into compliance.

Medicaid Administrative Reimbursement Fund

(R.C. 5162.62, repealed)

The act abolishes the Medicaid Administrative Reimbursement Fund. The balance of this fund was transferred to a different fund in FY 2018, and it had a zero cash balance.

Medicaid School Program Administrative Fund

(R.C. 5162.64, repealed)

The act repeals the law that established the Medicaid School Program Administrative Fund. Prior law required that money be used 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.

Extended authority regarding employees

(Section 333.20)

The act 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 was last scheduled to expire July 1, 2019.⁸³

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.⁸⁴ 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

⁸³ Section 323.10.30 of H.B. 59 of the 130th General Assembly, Section 327.20 of H.B. 64 of the 131st General Assembly, and Section 333.20 of H.B. 49 of the 132nd General Assembly.

⁸⁴ 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 act.)

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 act 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.

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.
- Replaces obsolete statutory references to certificates to practice for physicians and physician assistants with references to licenses to practice.
- Eliminates a requirement under which an affirmative vote of at least six Board members is necessary to determine whether various license types may be issued.

Expedited license eligibility – malpractice claims

- Modifies an eligibility requirement for 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 preceding ten years.

Limited branches of medicine – reciprocity

- Modifies an eligibility requirement for a person seeking a license 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 Board's renewal of licenses and, instead, provides that each license is valid for a two-year period, expires two years after the date of issuance, and may be renewed for additional two-year periods.

Continuing education

- Reduces to 50 (from 100) the continuing education hours that a physician or podiatrist must complete every two years for license renewal.
- Reduces the continuing education hours that a physician or podiatrist may earn by 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 a cosmetic therapist, massage therapist, dietitian, or respiratory care professional a civil penalty of up to \$5,000 if the practitioner fails to complete the required continuing education.

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 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.

Eliminated certificates

- Eliminates telemedicine certificates and requires the Board to convert previously issued certificates into standard physician licenses.
- Eliminates limited certificates, which authorized the practice of medicine in state-operated hospitals 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 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 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.
- Reduces to \$400 (from \$500) the fee that must be paid to the Board when applying for an initial license to practice as a physician assistant.

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 act eliminates statutory references to certificates to practice issued by the Board and, instead, refers to licenses to practice. The act also eliminates obsolete statutory references to certificates to practice issued by the Board to physicians and physician assistants and, instead, refers to licenses to practice.

The act authorizes the Board to take any action it considers necessary to rename the certificates that have been issued as licenses.

Board procedures for issuing licenses

(R.C. 4730.12, 4731.05, 4731.14, 4731.17, 4731.56, 4760.03, 4762.03, 4774.03, and 4778.03)

The act eliminates a requirement under which an affirmative vote of at least six Board members was needed to issue any of the following licenses 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 act requires instead that the Board adopt internal management rules regarding the issuance of licenses.

Expedited license eligibility – malpractice claims

(R.C. 4731.299)

The act modifies an eligibility requirement (largely unchanged by the act) that applies to individuals seeking an expedited license by endorsement to practice medicine and surgery or osteopathic medicine and surgery. Under prior law, an applicant for an expedited license was required to certify that no more than two malpractice claims had been filed against the applicant within a period of ten years. The act clarifies that the applicant must certify that they had no 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 – reciprocity

(R.C. 4731.19)

The act specifies that an applicant for a license 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. Former law did 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 act eliminates dates established in statute for the Board's renewal of licenses issued to: physicians, podiatrists, physician assistants, massage therapists, cosmetic therapists, dietitians, anesthesiology assistants, respiratory care professionals, acupuncturists, Oriental medicine practitioners, radiologist assistants, and genetic counselors. The act instead provides that each license is valid for a two-year period, expires 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 act reduces to 50 (from 100) the number of continuing education hours that must be completed every two years for license renewal. The act includes a corresponding change for the three-year renewal period that applies to clinical research faculty physicians.

The act also reduces the number of continuing education hours that a physician or podiatrist may earn by providing health care services as a volunteer. Under prior law, one-third of the continuing education requirement could be met by providing volunteer services to indigent and uninsured persons. The act limits the number of hours that may be earned in this manner to three.

In the case of physician assistants, the act 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 act eliminates the 100-hour requirement, it maintains the requirement to complete at least 12 hours of continuing education in advanced pharmacology every two years.

Failure to complete continuing education

Under continuing law, if a physician or podiatrist fails to complete continuing education requirements, the Board may take disciplinary action, impose a civil penalty, or permit the physician or podiatrist to agree in writing to complete the requirements and pay the civil penalty. The act 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 act 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 or imposed by the Board, must be in an amount specified by the Board, not exceeding \$5,000.

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)

Continuing 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, for more than two years, has not been engaged in practice or participating in a training or educational program;
- 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 act extends to the Board this same authority as part of its regulation of anesthesiology assistants, Oriental medicine practitioners, acupuncturists, radiologist assistants, genetic counselors, dietitians, respiratory care professionals, and physician assistants.

The terms and conditions related to fitness to practice that may be imposed include:

- Requiring an applicant to pass an oral or written examination, or both;
- Requiring an applicant to obtain additional training and pass an examination;
- 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; and
- Restricting or limiting the applicant's extent, scope, or type of practice.

Telemedicine certificates

(R.C. 4731.296, repealed, and 109.572, 4731.14, and 4731.294; Section 747.40)

The act eliminates the Board's issuance of telemedicine certificates. Under prior law, a telemedicine certificate authorized the practice of medicine in Ohio through the use of any communication by a physician located outside the state. The act requires the Board to convert all existing telemedicine certificates to licenses to practice medicine and surgery or osteopathic medicine and surgery.

Limited certificates

(R.C. 4731.292, repealed)

The act eliminates the Board's issuance of limited certificates. Under prior law, a limited certificate authorized an individual who was not a U.S. citizen to practice medicine in state-operated hospitals.⁸⁵

Training certificates

(R.C. 4731.291 and 4731.573)

The act 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 act 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 an individual seeking a training certificate to pursue a clinical fellowship program, the act clarifies that the applicant must provide evidence that the program is either accredited or conducted at an institution with an accredited residency program.

Physician assistants

Furnishing samples

(R.C. 4730.43)

The act limits a physician assistant's 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 132nd General Assembly (effective March 20, 2019). The act restores the limitation that was eliminated by S.B. 259.

⁸⁵ According to a Board representative, limited certificates have not been issued for a number of years and no longer exist in practice.

Volunteering at charitable events

(R.C. 4730.02)

Law generally unchanged by the act 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 act 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)

To practice as a physician assistant, Ohio 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 act 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 act authorizes the Board to permit the individual to correct the violation and pay a civil penalty. The act maintains the Board's authority to take disciplinary action against the individual.

License application fee

(R.C. 4730.10)

Under prior law, an applicant for an initial license to practice as a physician assistant was required to pay the Board a \$500 application fee. The act reduces the fee to \$400.

DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES

Stabilization centers

- Requires alcohol, drug addiction, and mental health services (ADAMHS) boards to establish and administer six mental health crisis stabilization centers.
- Requires the establishment and administration of 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

- 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 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

- Expands the program that recruits physicians to provide services at MHAS-operated institutions to also recruit physician assistants and advanced practice registered nurses.

Criminal records checks, residential facility staff

- Requires that criminal records checks for residential facility staff be conducted under the BCII criminal records check procedures.

Court costs, 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.

MAT Drug Reimbursement Program (VETOED)

- Would have created a program to reimburse counties for the costs of medication-assisted treatment (MAT) for substance use disorders among inmates of county jails (VETOED).

Corrective changes

- Consolidates and coordinates provisions of recent enactments involving opioid treatment programs.

Stabilization centers

(Sections 337.50(C) and 337.150)

Mental health crisis stabilization centers

The act 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 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 act requires, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, the establishment and administration of 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 act 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.

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 program's objectives. 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 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 they have 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 it. 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 it 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 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 act requires the Medicaid Director to develop plans in collaboration with major Ohio health care plans. However, there can be no prior authorization or step therapy requirements for medication-assisted treatment for program participants. The plans must ensure:

- The development of an efficient and timely process for reviewing 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

(R.C. 5119.19)

The main appropriations act for the FY 2018-FY 2019 biennium (H.B. 49 of the 132nd 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 law largely unchanged by the act, "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 act 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 131st 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 act maintains these provisions regarding the transfer.

Under the act, 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 act 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

(R.C. 5119.185)

The act changes the name of MHAS's Physician Recruitment Program to the Clinician Recruitment Program and expands the program to include physician assistants (PAs) and advanced practice registered nurses (APRNs). Under the program, the Department may agree to repay all or part of a physician's, PA's, or APRN's educational loans in exchange for the clinician providing health care services at institutions operated by the Department.

Criminal records checks, residential facility staff

(R.C. 109.572)

The act requires that criminal records checks for residential facility staff be conducted under BCII criminal records check procedures. Continuing law, unchanged by the act, 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.⁸⁶

Court costs, mental health adjudications

(R.C. 5122.43; R.C. 2101.11, not in the act)

Under law unchanged by the act, 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, 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.

⁸⁶ R.C. 5119.34(L)(3), not in the act.

The act 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.

Suicide study

(Section 337.30(B))

The act 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, it 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 must examine the rates of suicide for the general population as a whole and for veterans of the U.S. armed forces as a subgroup. MHAS and DVS must submit a report to the General Assembly before October 17, 2020. The report must include the Departments' conclusions regarding the causes of suicides and recommendations for reducing the rates of suicide in the state.

MAT Drug Reimbursement Program (VETOED)

(R.C. 5119.39)

The Governor vetoed a provision that would have created 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 would have been required to allocate funds to each county for reimbursement based on factors it considered appropriate.

Corrective changes

(R.C. 3715.08 (renumbered as 3719.064) and 3719.064, repealed)

The act consolidates and coordinates provisions of recent enactments that include duplicative but inconsistent references to opioid treatment programs. Under H.B. 111 of the 132nd General Assembly, programs that use opioid agonist medications, such as methadone and buprenorphine, must be licensed as opioid treatment programs beginning June 29, 2019. Under S.B. 119 of the 132nd General Assembly, certain references to opioid treatment are included but do not reflect the program licensure required by H.B. 111.

DEPARTMENT OF NATURAL RESOURCES

Water withdrawal permits

- Revises the law governing permits for withdrawal and consumptive use of state waters, particularly with respect to groundwater.
- Designates the Chief of the Division of Water Resources in the Department of Natural Resources (DNR) as the supervising authority for the statewide withdrawal and consumptive use permit program.
- Requires additional scientific data and information to be included in an application for a groundwater withdrawal permit, and requires the Chief, after receiving the information, to establish the geographic area of the projected cone of depression.
- Adds to the reasons for which the Chief may deny an application for a permit for withdrawal of groundwater.
- Requires certain groundwater withdrawal permittees to submit an annual report and certify compliance every five years.
- Authorizes the Chief to require aquifer monitoring and a decrease of groundwater withdrawals when water supply diminution occurs.
- Allows a permittee to request the Chief to amend a withdrawal permit when another groundwater user affects or has the potential to affect the projected cone of depression.
- Establishes two separate complaint procedures, one for property owners in the geographic area defined by the cone of depression and one for owners outside that area.
- Alters the reasons for which a permit may be suspended or revoked and streamlines the suspension and revocation procedures.
- Requires the Chief to provide written notice to the Ohio Environmental Protection Agency's (OEPA) Director when the Chief requires a permittee that is a public water system to decrease its withdrawal, or prior to revoking, suspending, or amending the system's withdrawal permit.
- Authorizes the OEPA Director to require a public water system to decrease its pumping rates under specified circumstances.
- Prohibits a person from installing a public water system well without an approved well siting application issued by the OEPA Director and specifies the information that an applicant must include in an application.
- Eliminates the law that exempted a person who provided specified information to OEPA under the Safe Drinking Water Law from the requirement to register with DNR a facility with the capacity to withdraw water in excess of 100,000 gallons per day.

- Prohibits a person from filing a false registration.

Hunting and fishing license fees

- Increases certain recreational hunting and fishing license and permit fees, but decreases nonresident youth deer permit and wild turkey permit fees.

Transfers from Waterways Safety and Wildlife funds

- Authorizes the Controlling Board, at the request of the DNR 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 DNR to collect donations for protection and enhancement of Ohio's scenic rivers and deposit them into the Scenic Rivers Protection Fund.

Eliminated funds

- Eliminates the "Ohio Geology" License Plate Fund, which consisted of contributions for "Ohio Geology" license plates, and transfers the money to the Geological Mapping Fund.
- Retains law specifying that the contributions must be used primarily for grants to state college and university geology departments, and secondarily for providing geological kits to state elementary and secondary schools.
- Eliminates the defunct Mine Safety Fund.

Oil and Gas Leasing Commission costs

- Authorizes the Geological Mapping Fund to be used for the administration of the Oil and Gas Leasing Commission.

Stream flow monitoring pilot

- Requires the DNR Director to establish a pilot program to study the environmental impact of oil and gas production operations on stream flow using continuous stream flow monitoring technology.

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 under certain circumstances.

- 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 had to 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.

Water withdrawal permits

General changes

(Chapters 1521 and 1522)

Ohio has two permit programs governing the withdrawal and consumptive use of state waters. One program applies statewide and requires a permit for any withdrawal that will result in a consumptive use of 2 million gallons per day or more in any 30-day period. The other program applies solely in the Lake Erie basin. It requires a permit when a facility has a new or increased capacity for a withdrawal or consumptive use in the following amounts:

1. At least 2.5 million gallons per day from Lake Erie or a recognized navigation channel;
2. At least 1 million gallons per day from any river or stream or from groundwater in the Lake Erie watershed; or
3. At least 100,000 gallons per day from any river or stream in the Lake Erie watershed that is a high quality water.

The two programs overlap. Thus, if a withdrawal or consumptive use by a facility in the Lake Erie basin is below the thresholds specified in (1) above, the facility may still require a permit under the statewide program if the withdrawal and consumptive use exceeds the threshold under that program. According to an official from DNR, as of June 30, 2019, no person has ever applied for or received a permit under the Lake Erie basin program. However, there have been numerous permits issued under the statewide program.

The act alters the law governing the two programs, particularly with respect to permits for withdrawal and consumptive use of groundwater. It also designates the DNR Chief of the

Division of Water Resources with implementing the statewide program (along with an existing water diversion program) instead of the DNR Director, as under prior law. It retains the Chief as the implementing authority of the withdrawal and consumptive use permit program that applies solely in the Lake Erie basin.

Permit applications for groundwater withdrawals

(R.C. 1521.23, 1521.24, 1521.25, 1521.26, 1521.27, 1521.28, 1522.12, 1522.121, 1522.122, 1522.123, 1522.124, and 1522.125)

The act requires an applicant for a groundwater withdrawal and consumptive use permit under either program to submit the following scientific data and information along with the application:

1. A hydrologic map consisting of a single map using the most recent U.S. Geological Survey 7.5 minute topographic maps at a scale of 1:24,000 as a base or other approved format that shows specified information;

2. A hydrogeologic description that must include specified information and that is in sufficient detail to determine the cone of depression, which is a depression or low point in the water table or potentiometric surface of a body of groundwater that develops around a location from which groundwater is being withdrawn;

3. A steady state groundwater model that defines the projected cone of depression; and

4. Alternative water supply information (in the event that the permittee causes a disruption or diminution of someone else's water supply).

Once the Chief receives the permit application, the Chief must use the submitted data to establish the geographic area defined by the ten-foot contour line of the projected cone of depression (contour lines show variation in the water levels within the cone of depression). The Chief may designate a different contour line (other than a ten-foot line) based on water resource availability, seasonal variations, other water users in the hydrologic study area, or other groundwater data available.

Permit approval or denial; exemption

(R.C. 1521.29 and 1522.12)

Continuing law allows the Chief to deny a withdrawal and consumptive use permit for various reasons, including impacts to public water rights, ineffective conservation practices, and impacts to public welfare. With regard to groundwater withdrawals, the act authorizes the Chief to deny a permit if the withdrawal will cause a significant lowering of groundwater levels, an overdrafting of an aquifer, a diminution of water available to existing wells, water usage interruptions, or irreparable damage to an aquifer.

The act also requires the Chief to approve or deny a permit application under the statewide program within 90 days (rather than a time established by rule as under prior law). It also exempts facilities that hold a surface or in-stream mining permit from permitting requirements under the statewide program. (That exemption already applies under the Lake Erie basin program.)

Requirements for permit holders

(R.C. 1521.30, 1521.31, and 1522.19)

The act requires a permittee under the statewide program, at least once every five years, to certify that the facility for which the permit has been issued is in compliance with the permit. The Chief may require a permittee who withdraws groundwater under either program to:

1. Continuously monitor aquifer water levels; and

2. Decrease withdrawals and submit a revised groundwater model if the current model conflicts with reported groundwater data or an investigation shows that the withdrawals have caused a diminution of a person's water supply.

A permittee submitting a revised groundwater model must use additional data that reflects the permittee's impact on groundwater. Based on the revised groundwater modeling, the Chief may amend the permit to reduce the withdrawal amount or establish a revised cone of depression. A permittee also may request the Chief to amend a permit when another groundwater user affects or has the potential to affect the permittee's projected cone of depression.

Enforcement

(R.C. 1521.29, 1521.32, 1521.33, and 1522.20)

The Chief may suspend or revoke a statewide or Lake Erie basin permit for specified reasons, provided the Chief complies with certain due process procedures. The act adds to the reasons for which the Chief may suspend or revoke a permit by allowing the Chief to do so if a withdrawal or consumptive use will result in a significant lowering of water levels, aquifer overdrafting, or irreparable aquifer damage. It also allows suspensions or revocation of a Lake Erie basin permit if a withdrawal or consumptive use will endanger public health, safety, or welfare. The act eliminates the Chief's authority to revoke a permit under the statewide program without a prior hearing because there has been a determination that the quantity of water consumption exceeds the permitted amount. The Chief may still revoke a permit for that reason, but the permittee must have a hearing, if requested, prior to the revocation. Finally, the act streamlines the procedures for suspension and revocation of a permit, but the procedures remain largely consistent with prior law.

Complaints

(R.C. 1521.35, 1521.36, 1522.24, and 1522.25)

The act authorizes a property owner in the geographic area defined by the cone of depression to submit a complaint alleging that a permittee has caused a diminution of groundwater supply. It creates a rebuttable presumption that the permittee is the cause of the diminution within that geographic area. Upon complaint, the permittee must provide an alternative water source to the property owner until the permittee rebuts the presumption. If the permittee fails to rebut the presumption, the permittee must continue to supply the property owner with an alternative water source.

The act creates a similar complaint procedure for a property owner located outside the geographic area of the cone of depression. It requires the Chief to investigate and issue the results of the investigation. However, it does not require the Chief to take any action based on the results of the investigation. The act specifies that the property owner outside the cone of depression may commence a civil action against the permittee to resolve the diminution.

Other provisions

(R.C. 1521.16, 1521.29, 1521.34, and 1522.23)

Under continuing law, a person who owns a facility that has the capacity to withdraw state waters exceeding 100,000 gallons per day must register the withdrawal with DNR. The act prohibits a person from filing a false registration. It also eliminates a provision of law that exempted a person from registering when the person provided specified information to OEPA under the Safe Drinking Water Law.

Public water systems

(R.C. 6109.071 and 6109.072)

The act requires the Chief to provide written notice to the OEPA Director when the Chief requires a permittee that is a public water system to decrease its withdrawal, or prior to revoking, suspending, or amending the system's withdrawal permit. The OEPA Director may require a public water system to decrease its pumping rates if either:

1. The public water system is pumping at a rate that is drawing or has the potential to draw contaminants into the public water system or a public water system well; or
2. The Chief revokes, suspends, or amends a withdrawal permit or requires a decrease in withdrawal.

The act also prohibits a person from installing a public water system well without an approved well siting application issued by the Director. It then specifies the information (such as a general plan or alternative drinking water options) that an applicant must include in the application. The Director may adopt rules regarding well siting applications.

Hunting and fishing license fees

(R.C. 1533.10, 1533.11, 1533.111, 1533.112, 1533.32, and 1533.321; Section 715.10)

The act increases the fees for the following recreational hunting and fishing licenses and permits:

- 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 act decreases the fees for both of the following nonresident youth permits:

- An annual deer permit fee from \$74 to \$15 for a nonresident youth under 18 (the same as Ohio resident youths under the act); 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 act).

It also specifies that, except for the \$9 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 132nd 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
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 Waterways Safety Fund or Wildlife Fund may receive federal revenue that is granted for specific purposes. The act authorizes the Controlling Board, at the request of the DNR Director, to approve the expenditure of that federal revenue, but only for those specific purposes. Former law put stipulations on the expenditure of federal revenue received by the state.

Scenic Rivers Protection Fund

(R.C. 4501.24 and 4503.56, not in the act)

The act authorizes DNR to receive donations for the Scenic Rivers Protection Fund. The donations must be used to help finance conservation efforts, education, corridor protection,

restoration, and habitat enhancement and clean-up projects along wild, scenic, and recreational river areas. Prior to the act, the fund's only source of revenue came from contributions collected from the sale of "Scenic Rivers" license plates. The contribution amount is \$40 each time a person voluntarily applies for or renews a motor vehicle registration for those license plates.

"Ohio Geology" License Plate Fund

(R.C. 1505.09 and 4503.515, not in the act; R.C. 1505.12 and 1505.13, repealed)

The act eliminates the "Ohio Geology" License Plate Fund and transfers the money directed to it to the Geological Mapping Fund. The act does not change the contribution amount for "Ohio Geology" license plates or the purposes of the contribution, only the fund into which the contributions are directed.

"Ohio Geology" license plates have a \$15 annual contribution, the proceeds of 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 also may use contributions to provide materials such as rock and mineral kits to elementary and secondary schools to assist students in geological studies. The license plates cannot currently be requested in a new application for motor vehicle registration. They can only be renewed because fewer than 25 individuals currently have and consistently renew them.

Mine Safety Fund

(R.C. 1561.24, repealed, makes conforming changes in R.C. 1561.011)

The act eliminates the Mine Safety Fund. Prior law authorized the transfer of money to the fund from the Coal-Workers Pneumoconiosis Fund by the Administrator of Workers' Compensation for mine safety purposes. However, the Mine Safety Fund had not received any transfers since 2012.

Oil and Gas Leasing Commission costs

(R.C. 1505.09)

The act 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. Prior to the act, only the Oil and Gas Leasing Commission Administration Fund could be used for that purpose. However, that fund does not have any money in it. Notably, the Chief of the Division of Geological Survey serves as the chairperson of the Oil and Gas Leasing Commission, which is responsible for leasing state property for oil and gas development.

Stream flow monitoring pilot

(Section 715.20)

The act requires the DNR Director to establish a pilot program to study the environmental impact of oil and gas production operations on stream flow using continuous stream flow monitoring technology. The study must conclude by December 31, 2020.

The Director must adopt policies and procedures to administer and implement the program. After the conclusion of the study, the Director must submit a report of the study's findings to the General Assembly.

Oil and gas

Registration and identification; transfer and assignment

(R.C. 1509.31)

The act 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.

It also alters the procedures associated with the assignment or transfer of an oil and gas lease. Under continuing 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 both:

- Include specified information, including the name and address of the assignee or transferee; and
- Be sent on a form prescribed by the Division by certified mail, return receipt requested, within 30 days of the assignment or transfer.

Under prior law, the assignor or transferor also had to submit a \$100 nonrefundable fee along with the notice. The act eliminates the \$100 fee. (It also eliminates a \$100 nonrefundable application fee that the assignor or transferor of a well had to pay.)

The act 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. When the assignee or transferee is the individual or entity providing the notice, the assignee or transferee must attest to ownership of the lease. The Division cannot charge a fee when the assignee or transferee submits the notice.

Oil and gas regulatory cost recovery assessment

(R.C. 1509.50)

Under continuing 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 act alters the manner in which the oil and gas regulatory cost recovery assessment is calculated, effective on and after January 1, 2020, from a formula to a flat rate assessment as follows:

H.B. 166 flat rate assessment (effective January 1, 2020)	
Natural gas produced	Oil produced
0.5¢ 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

Until January 1, 2020, the assessment is calculated using the following formula:

Calculation of the assessment	
10¢ per barrel of oil for all the wells of the owner	
+	
\$0.5¢ 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	
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 \$0.5¢ per 1,000 cubic feet of natural gas for all of the wells of the owner.</u>	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>

Unit operation calculation

(R.C. 1509.28)

Under continuing 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 act 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 continuing law, any person adversely affected by an order of the Chief may appeal the order to the Oil and Gas Commission. However, former law specified that the appeal had to be filed within 30 days after the date on which *the appellant* received notice of the order

by certified mail. Former law presumed that the appellant was the person who received the order. Thus, the act 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 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 had to be sent to the appellant via certified mail.

BOARD OF NURSING

- Eliminates obsolete references to certificates of authority held by advanced practice registered nurses.
- Corrects a reference to the Ohio Board of Nursing's Substance Use Disorder Monitoring Program.

Certificates of authority

(R.C. 4723.08 and 4723.28)

The act removes obsolete references to certificates of authority issued by the Ohio Board of Nursing to advanced practice registered nurses. Effective in 2017, H.B. 216 of the 131st 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.

Substance Use Disorder Monitoring Program

(R.C. 4723.06)

The act corrects a reference to the Ohio Board of Nursing's Substance Use Disorder Monitoring Program.

OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD

- Permits an individual to engage in 3-D printing of open-source prosthetic kits without having to obtain a license from the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board.
- Requires the Board to grant the 3-D printing authority to an individual who applies for the authority and meets the Board's requirements specified in rules.

Prosthetics by 3-D printing

(R.C. 4779.02, 4779.08, and 4779.40)

The act establishes a means by which an individual may engage in 3-D printing of open-source prosthetic kits without having to obtain a prosthetics license or an orthotics and prosthetics license from the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board. According to Board staff, 3-D printing of prosthetics has been included in the practice of prosthetics; therefore, under law in effect before the act, an individual who did so without the appropriate license was subject to criminal penalties.⁸⁷

The act requires the Board to prescribe an application form that individuals seeking to obtain the 3-D printing authority without licensure may use to apply to the Board to receive that authority. The Board must grant the authority to an applicant who meets the Board's requirements, which are to be specified through the adoption of rules.

An individual who receives the 3-D printing authority is expressly exempt from having to be licensed. The act specifies that the individual cannot represent himself or herself as being authorized to practice prosthetics or to practice orthotics and prosthetics.

⁸⁷ Telephone interview with staff of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board (June 12, 2019).

STATE BOARD OF PHARMACY

- Would have authorized the State Board of Pharmacy to provide information from its Ohio Automated Rx Reporting System (OARRS) to a prescriber or pharmacist from, or participating with, a prescription monitoring program operated by a federal agency, but only under certain conditions (VETOED).
- Specifies that churches and other places of worship are included among the service entities that may procure naloxone, without having to obtain a license from the Board, for use in emergency situations involving opioid-related overdoses.
- Creates in the state treasury the Board of Pharmacy Federal Equitable Sharing Justice Fund and the Board of Pharmacy Federal Equitable Sharing Treasury Fund for depositing moneys derived from forfeitures of property pursuant to federal law.

OARRS access, federal monitoring programs (VETOED)

(R.C. 4729.80)

Continuing law authorizes the State Board of Pharmacy to establish a drug database to monitor the misuse and diversion of medical marijuana, controlled substances, naltrexone, and other prescription drugs.⁸⁸ The database, known as the Ohio Automated Rx Reporting System (OARRS), provides information about drug use to prescribers, pharmacists, and others.

The Governor vetoed a provision that would have authorized the Board to provide information requested by a prescriber or pharmacist from, or participating with, a prescription monitoring program operated by a federal agency. The Board would have provided this information only if both:

- The Board approved the federal agency's prescription monitoring program; and
- There was a written agreement between the Board and agency under which the information was to be used and disseminated according to Ohio law.

Naloxone and places of worship

(R.C. 4729.514)

The act expressly provides that churches and other places of worship are included among the service entities that are not required to obtain a license from the Board in order to procure naloxone for use in emergency situations resulting from opioid-related overdoses.⁸⁹

⁸⁸ R.C. 4729.75, not in the act. The Governor did not veto conforming changes included in R.C. 4729.86.

⁸⁹ See R.C. 4729.541(A)(12), not in the act.

Accounting of federal forfeiture moneys

(R.C. 4729.65)

The act creates in the state treasury the Board of Pharmacy Federal Equitable Sharing Justice Fund and the Board of Pharmacy Federal Equitable Sharing Treasury Fund. Moneys derived from forfeitures of property under federal law are to be deposited in the funds as determined by the source of the money, rather than deposited into the Board of Pharmacy Drug Law Enforcement Fund, as under prior law. The separate funds are required by the U.S. Departments of Justice and Treasury asset forfeiture programs, which permit the sharing of federal forfeiture proceeds with state and local law enforcement agencies.⁹⁰

⁹⁰ U.S. Department of Justice and U.S. Department of the Treasury, *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies*, July 2018, <https://www.justice.gov/criminal-afmls/file/794696/download>.

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 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 the cost they incur in providing indigent defense in cases, including capital cases, subject to a proportional reduction if the General Assembly's appropriation to the State Public Defender is insufficient to cover the counties' costs.
- Changes the name of the Ohio Legal Assistance Foundation to the Ohio Access to Justice Foundation.
- Requires the State Public Defender, in each fiscal year, to make certain determinations with regards to county reimbursements for indigent defense and report those findings and determinations the following fiscal year to the Governor and specified members of the General Assembly.

State Public Defender powers

(R.C. 120.04)

The act 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 preexisting Public Defender Gifts and Grants Fund.

State Public Defender billing practices

(R.C. 120.06)

The act 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 upon payment of the bill, the county may submit the combined cost of the legal fees and expenses to the State Public Defender for reimbursement, as described below in **"Reimbursement for indigent defense."**

Previously, in this situation, the county: (1) had to pay 100% of the amount identified in the State Public Defender's submitted bill as legal fees, less a calculated state reimbursement rate reduction, and 100% of the amount identified as expenses, and (2) could submit the cost of the expenses, excluding legal fees, to the State Public Defender for reimbursement.

Reimbursement for indigent defense

(R.C. 120.08, 120.18, 120.28, 120.33, 120.34, 120.35, and 2941.51)

The act requires the State Public Defender to reimburse county governments for the costs they incur in providing indigent defense in cases, including capital cases, but the reimbursement amount must 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 act retains a related provision that specifies that the amount to be reimbursed for indigent defense in any fiscal year cannot exceed the total amount appropriated by the General Assembly for that year for reimbursements. Prior to the act, the law required 50% reimbursement by the State Public Defender to counties for the total cost of indigent defense in capital and noncapital cases, subject to the same type of allowance for a proportional reduction of the reimbursements and the same capping of the reimbursements at the General Assembly's appropriation for the year.

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 act changes the name of the Ohio Legal Assistance Foundation to the Ohio Access to Justice Foundation.

The Foundation is a nonprofit organization that supports the delivery of civil legal services to indigent clients. It 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.

State Public Defender reimbursement study and report

(R.C. 120.041)

In addition to other duties under Ohio law, the State Public Defender must make certain determinations for each state fiscal year and prepare a report that includes all of its findings and determinations described below for that fiscal year. By October 1 following the fiscal year covered by the report, the State Public Defender must submit the report to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House, and the Governor.

These determinations are as follows:

1. The total dollar amount of all requests for reimbursements submitted for that fiscal year by counties under R.C. 120.18, 120.28, 120.33, 120.35, and 2941.51;

2. The total dollar amount paid to all counties as reimbursements under the requests described in (1) above that were submitted for that fiscal year;

3. The percentage of total costs submitted by counties under the requests described in (1) above that was paid to all counties as reimbursements for that fiscal year;

4. Commencing in FY 2021, the increase or decrease in the total dollar amount found under (2) above from the total dollar amount found under (2) for the previous fiscal year;

5. Out of the total dollar amount found under (2) above that was paid to all counties as a reimbursement, the total amount of that money used by all of the counties for each of the following categories of costs:

- Appointed counsel;
- Personnel;
- Expert witnesses;
- Investigations;
- Transcripts;
- Rent or lease, utilities, furnishings, maintenance, and equipment;
- Travel;
- Any other category of costs set by the State Public Defender.

6. Commencing in FY 2021, the increase or decrease in the amount of money found under (5) above to have been used for each category of costs described in (5) from the amount of money found under that division to have been used for each such category of costs for the previous fiscal year;

7. The cost per each felony, misdemeanor, traffic, or juvenile delinquency case assigned to a public defender or counsel pursuant to R.C. 120.06, 120.16, 120.26, or 120.33.

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.
- 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.

Deputy registrar service fee

- Requires the Registrar to adopt rules to set the deputy registrar service fee at \$5 (instead of a fee between \$3.50 and \$5.25, as in recently enacted prior law).

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 the Department of Public Safety (DPS) used prior to 2011 for MARCS-related equipment maintenance. (Those functions are 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) 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.

Reinstatement Fee Debt Reduction and Amnesty Program

- Extends the “Driver’s License Reinstatement Fee Debt Reduction and Amnesty Program” from July 31, 2019, to December 31, 2019.

Vision screenings

(R.C. 4507.12)

The act creates alternative ways for a person to certify that the person meets the vision standards for obtaining a driver’s license. Under prior law, vision screenings could only take place at a deputy registrar office. The act, however, permits a person to have a vision screening at a licensed optometrist’s or ophthalmologist’s office of the person’s choice, 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 is not capable of passing the vision screening conducted at a deputy registrar office; and
- After a person fails the vision screening at both a deputy registrar office and the driver examiner’s office.

The act 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 a deputy registrar to verify that the vision screening results meet the vision standards required for licensing. If the results meet the vision standards, the deputy registrar may renew the driver’s license or issue a driver’s license to the person.

If a person fails all of the vision screenings, the deputy registrar is prohibited from issuing a license until the person’s vision is corrected to meet the vision standards.

Disabled veteran vehicle registration

(R.C. 4503.29)

The act permits a disabled veteran with a service connected disability rated at 100% by the federal Veterans’ Administration to receive military license plates under an existing administrative program without paying registration taxes and fees, for up to two motor vehicles. The military license plates are designed to recognize a specific military branch, a particular combat zone, or a medal that the veteran was awarded.

Under prior law, such a disabled veteran could only receive the benefit of obtaining license plates without paying registration taxes and fees for one motor vehicle and only if the veteran applied for the “Disabled Veteran” license plates (printed with the word “VETERAN” across the bottom and the International Symbol of Access on the side).⁹¹ The act allows

⁹¹ R.C. 4503.41, not in the act.

disabled veterans more choices in the appearance of the license plates, while still receiving the same benefits regarding registration taxes and fees.

Under the act, the two-vehicle 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 law unchanged by the act.⁹²

Deputy registrar service fee

(R.C. 4503.038)

The act requires the Registrar to adopt rules to fix the deputy registrar service fee at \$5, thus increasing the fee from \$3.50. The fee compensates deputy registrars for performing services such as processing vehicle registrations, driver’s licenses, and other motor-vehicle-related transactions.

Under prior law, enacted by H.B. 62, the transportation budget act, the Registrar was required to adopt rules to fix the deputy registrar fee at a rate between \$3.50 and \$5.25. When establishing the fee, the Registrar was also required to consider inflation and any other relevant factors. Under that prior authority, the Registrar set the fee at \$3.50.

State Fire Marshal CDL exemption

(R.C. 4506.03)

Under continuing 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, including qualified persons who operate fire equipment for a fire department, volunteer or nonvolunteer fire company, fire district, or joint fire district.

The act 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 to operate a commercial motor vehicle.

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

⁹² R.C. 4503.44, not in the act.

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 prior law, all such documents had to be notarized and verified.

The act exempts the accompanying power of attorney (or other appropriate document) from notarization and verification requirements. Under prior law, only the application, and not the accompanying documents, for the salvage certificate of title was so exempt.

A similar notarization and verification exemption for a power of attorney exists in continuing law when (1) to (3) above apply but the insurance company obtains the physical certificate of title.

MARCS Fund

(R.C. 4501.16)

The act eliminates the Multi-Agency Radio Communications System (MARCS) Fund, which had not been used since 2010. It 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 the Department of Administrative Services and is funded through the MARCS Administration Fund.

Ohio Investigative Unit Fund

(R.C. 125.13, 4501.10, and 5502.132, not in the act)

The act 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 DPS Investigative Unit from the sale of excess motor vehicles and other equipment. Under continuing law, unchanged by the act, 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 act permits DPS to use the funds deposited into the Infrastructure Protection Fund for DPS's operating expenses. DPS also may continue to use the money in the fund 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.

Reinstatement Fee Debt Reduction and Amnesty Program

(Sections 601.07 and 601.08, amending Section 1 of H.B. 336 of the 132nd G.A.)

The act reinstates the Driver's License Reinstatement Fee Debt Reduction and Amnesty Program. The program was created in 2018, during the 132nd General Assembly, and allows an eligible applicant to either pay a reduced reinstatement fee, or receive a complete waiver of all pending reinstatement fees, to have his or her driver's license reinstated. The program expired on July 31, 2019. It will resume operation on October 17, 2019 (the act's effective date) until December 31, 2019.⁹³

⁹³ See <https://www.legislature.ohio.gov/download?key=10202&format=pdf> to learn more about the program.

PUBLIC UTILITIES COMMISSION

- Adds that where the 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 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.
- Permits a natural gas company's property, equipment, or facilities that enable either of the following to be considered instrumentalities and facilities for distribution service if PUCO determines that treatment is just and reasonable:
 - Interconnection with or receipt from any property, equipment, or facilities used to generate, collect, gather, or transport biologically derived methane gas;
 - The supply of biologically derived methane gas to consumers within Ohio.
- Requires, if PUCO makes that treatment determination, the property, equipment, or facilities to be considered used and useful in rendering public utility service for purposes of fixing utility rates.

Electric distribution utility significantly excessive earnings

(R.C. 4928.143)

The act adds that where the 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. Continuing law requires PUCO to make these determinations in two cases:

1. Following the end of each annual period of an electric security plan, 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 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 act also permits 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. Prior law prohibited PUCO, in making its determination under (1), above, from considering, directly or indirectly, the revenue, expenses, or earnings of “any affiliate or parent company.”

Consumer rights regarding electric usage data

(R.C. 4928.02)

The act 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.

Biologically derived methane gas

(R.C. 4929.18)

Under the act, any property, equipment, or facilities installed or constructed by a natural gas company that enable either of the following may be considered instrumentalities and facilities for distribution service, if PUCO determines that treatment is just and reasonable:

- Interconnection with or receipt from any property, equipment, or facilities used to generate, collect, gather, or transport biologically derived methane gas (which is gas from the anaerobic digestion of organic materials, including animal waste and agricultural crops and residues);
- The supply of biologically derived methane gas to consumers within Ohio.

If PUCO makes that determination, the property, equipment, or facilities must be considered used and useful in rendering public utility service for purposes of fixing utility rates.

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 act 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. Prior law prohibited 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 act, a person may exceed that limit as long as the person is a passive landowner.

The act 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.

DEPARTMENT OF REHABILITATION AND CORRECTION

Supervision of offenders serving community control sanctions

- Modifies the requirement that a court, in a county not served by a probation department, that sentences a felon to a community control sanction must place the offender under supervision of the Adult Parole Authority (APA), so that the requirement applies unless the court has entered into an agreement with the APA for its services.
- Modifies the requirement that specified violations by a felony offender sentenced to a community control sanction in a county not served by a probation department be reported to the APA, so that the requirement applies unless the court has entered into an agreement of a specified nature with the APA for its services.
- Allows the APA to offer a county funding for probation services if the county does not contract with the APA for specified types of those services under continuing law and as long as the General Assembly has appropriated sufficient funds for that purpose.
- Specifies that if a county accepts probation service funds from the APA, the APA is relieved of its duties to supervise offenders placed on community control by that county's courts under the supervision provisions described in the second and third preceding dot points.

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.

Supervision of offenders serving community control sanctions

(R.C. 2929.15)

The act modifies the circumstances under which certain sentencing courts must place felony offenders subject to community control sanctions under the supervision of the Adult Parole Authority (APA). Under the act, if a county lacks a probation department, the court must place offenders serving a community control sanction under the supervision of the APA unless the court has entered into an agreement with the APA under R.C. 2301.32 (see “**Probation funding from APA,**” below) for its services. Former law required the court in such a county to place offenders serving a community control sanction under the supervision of the APA, and did not mention any such agreement between the court and the APA.

Similarly, the act modifies the provisions regarding the reporting of specified violations by a felony offender sentenced to a community control sanction. Under the act, if there is no county or multicounty probation department supervising the offender and the offender violates a condition of a sanction, condition of release, or law, or leaves the state without permission, the violation or departure must be reported to the APA unless the court has entered into an agreement with the APA under R.C. 2301.32. Formerly, if there was no such probation department supervising the offender and the offender engaged in any of that conduct, the provision required that the violation or departure be reported to the APA, and did not mention any such agreement between the court and the APA.

Probation funding from APA

(R.C. 2301.32)

The act allows the APA to offer a county funding for probation services in lieu of entering an agreement for specified types of those services under continuing law, provided that the General Assembly has appropriated sufficient funds for that purpose. If a county accepts funds under the section that contains both the authorization and the provisions regarding agreements for the provision of the specified types of services under continuing law, the APA is relieved of its duties to supervise offenders placed on community control by that county’s courts under the supervision provisions described above.

The agreement provisions continued by the act allow: (1) in a county served by a probation department, the common pleas court to enter into an agreement with the APA under which the probation department may receive supplemental investigation and supervisory services from the APA, or (2) in a county not served by a probation department, the common pleas court to enter into an agreement with the APA to place defendants under a community control sanction in charge of the APA and for the court to pay the state in amounts provided for in the agreement.

Targeted community alternatives to prison

(R.C. 2929.34 and 5149.38)

The act eliminates a requirement that certain prison terms imposed for a fifth degree felony be served in a local correctional facility if the court that imposed the fifth degree felony term was a common pleas court of a “target county.” The “target counties” were: Franklin, Cuyahoga, Hamilton, Summit, Montgomery, Lucas, Butler, Stark, Lorain, 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. 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 act 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 act 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 act 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 continuing laws that establish 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 act 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 former law, these "laboratory services" included 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 act modifies the effectivity of state financial agreements between DRC and a community-based correctional facility and program or a district community-based correctional facility and program from an annual basis, or a period of one year from the date of the agreement under former 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 Board's duties is to solicit business proposals offering job training, apprenticeship, education programs, and employment opportunities. The act requires the Board to also solicit these business proposals for Ohio Penal Industries.

SECRETARY OF STATE

- Moves the date of a presidential primary from the second Tuesday after the first Monday in March to the third Tuesday after the first Monday in March.
- Specifies that moving the date for the presidential primary does not invalidate a declaration of candidacy, nominating petition, or other petition that has been filed and identified the primary election date as March 10, 2020, instead of March 17, 2020.
- Delays the deadline for major political parties to certify presidential and vice-presidential candidates to the Secretary of State for the 2020 general election from the 90th day before the day of the general election to the 60th day before the day of the general election.
- Reduces from four to two the minimum number of precinct election officials per precinct in a multi-precinct voting location in which electronic pollbooks are used.
- Requires a board of elections that chooses to make that reduction to approve the change by a vote of at least three of its members.
- Eliminates the Election Reform/Health and Human Services Fund.

Presidential primary

(R.C. 3501.01, 3513.01, and 3513.12; Section 735.15)

The act moves the date of a presidential primary election from the second Tuesday after the first Monday in March to the third Tuesday after the first Monday in March. Under current law, all other primary elections in Ohio that are not a presidential primary election are held on the first Tuesday after the first Monday in May.

Additionally, the act specifies that moving the date for the presidential primary does not invalidate a declaration of candidacy, nominating petition, or other petition that has been filed and identified the primary election date as March 10, 2020, instead of March 17, 2020.

Certification of presidential and vice-presidential candidates

(Section 735.11)

The act delays the deadline for major political parties to certify presidential and vice-presidential candidates to the Secretary of State for the 2020 general election. For the 2020 general election, presidential and vice-presidential candidates must be certified to the Secretary not later than the 60th day before the 2020 general election. Under continuing law, major political parties must certify the names of the presidential and vice-presidential candidates to the Secretary for placement on the ballot on or before the 90th day before the day of the general election. A major political party is a political party organized under the laws of the state whose candidate for governor or nominees for presidential electors received not less than 20% of the total vote cast at the most recent regular state election.

Additionally, the act requires the Secretary to certify to the boards of elections the forms of the official ballots to be used at the 2020 general election on or before the 50th day before the election. Under continuing law, the Secretary must certify the forms of the official ballots to be used at a general election on the 70th day before.⁹⁴

Minimum precinct election officials

(R.C. 3501.22)

In a voting location that serves more than one precinct, if electronic pollbooks are used at that location, the act reduces the minimum number of precinct election officials who must be appointed from four per precinct to two. Under the act, a board of elections that wishes to make that reduction must approve the change by a vote of at least three of its members. Continuing law generally allows board decisions to be made by a vote of 2-2, with the Secretary of State casting a tiebreaking vote.

Additionally, the act makes a technical correction to change the term “presiding judge” to “voting location manager,” which is the term currently used in the Election Law.⁹⁵

Election Reform/Health and Human Services Fund

(R.C. 111.28; Section 516.10)

The act eliminates the Election Reform/Health and Human Services Fund (Fund 3AH0). That fund existed 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.⁹⁶

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 act does 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.

⁹⁴ R.C. 3501.01(F)(1), 3505.01, and 3505.10(B)(1), not in the act.

⁹⁵ R.C. 3501.11(X), not in the act.

⁹⁶ 52 U.S.C. 21021 through 21025.

DEPARTMENT OF TAXATION

Income taxes

- Reduces income tax rates by 4%.
- Eliminates the lowest two income tax brackets, thereby reducing the number of brackets from seven to five.
- Disallows the business income tax deduction and 3% flat rate on business income greater than \$250,000 if the income arises from the practice of law or from lobbying.
- Requires that income excluded under the business income deduction be “added back” when determining a taxpayer’s eligibility for means-tested tax benefits.
- Suspends the annual inflation indexing adjustment of income tax brackets and personal exemption amounts for taxable years beginning in 2019; indexing resumes in 2020.
- Extends, from 60 to 90 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.
- Establishes reporting and payment procedures for pass-through entity owners whose state tax liability is affected by an IRS partnership-level audit.
- Repeals the income tax credit for contributions to campaigns for state offices.
- Repeals the income tax credit for a pass-through entity investor’s share of the financial institutions tax (FIT).
- 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 and limits the amount of credits to \$5 million per fiscal year.
- Eliminates the Ohio political party fund income tax checkoff.
- Prohibits tax return preparers from engaging in certain conduct and prescribes penalties for preparers that engage in that conduct.
- 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 business income deduction.

Municipal income taxes

- Would have allowed taxpayers up to 24 months to terminate the taxpayer’s initial election to opt-in to the state-administered tax (VETOED).
- 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.

- Creates a separate Municipal Net Profit Tax Fund to receive revenue solely from the state-administered municipal tax on business income.
- Requires that income from any retirement benefit plan, including one that does not qualify for favorable federal tax treatment, be exempt from municipal income tax.

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.
- Repeals the sales tax exemption for sales of vehicles, parts, and repair services to a professional motor racing team.
- Repeals the sales tax exemption for sales of investment bullion and coins.
- 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.
- Specifies that a peer-to-peer car sharing program operator is a vendor for sales and use tax purposes and therefore required to collect taxes for such services.
- Would have specified the manner by which any other technology platform operator’s services are subject to sales and use tax (VETOED).
- Allows counties and transit authorities to levy their local sales and use taxes in increments of 0.05%.

County sales tax

- Authorizes noncharter counties to levy an additional ½% sales and use tax to be used exclusively to construct, acquire, equip, or repair detention facilities, provided the tax is approved by voters.
- Reduces the maximum sales and use tax rate available to an overlapping transit authority commensurately.
- 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.
- Allows a convention facilities authority (CFA) created between July and December of 2019 to levy an additional lodging tax of up to 3%.

- Increases from 15% to 25% the maximum amount of lodging tax revenue received by the Muskingum County CFA that may be diverted by the CFA to various county fairground purposes.

Property taxes

- 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.
- 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.
- Limits the amount that can be held in the reserve balance account (i.e., rainy day fund) of a county board of developmental disabilities.
- Imposes restrictions on a county budget commission's ability to reduce the amount of taxes that a county levies on behalf of a county board of developmental disabilities.
- Requires certain county websites to display the percentage of property taxes charged by each taxing unit.
- Would have modified information conveyed in and the form of property tax election notices and ballot language (VETOED).
- Extends, by two years, the deadline by which an owner or lessee of a renewable energy facility may apply for existing law's property tax exemption for such facilities.
- Clarifies the calculation of payments-in-lieu-of-taxes (PILOTs) that must be paid by solar energy facilities that receive the renewable energy property tax exemption.
- Exempts from real property taxation convention centers and arenas owned by the Hamilton County CFA and leased to a private enterprise.
- 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.
- Would have authorized a property tax reduction for certain property owners whose taxes comprise a relatively high proportion of a school district's operating expenses (VETOED).

- Would have exempted 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 (VETOED).

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.

Nicotine vapor products tax

- Levies an excise tax on the distribution, sale, or use of liquid or other consumable vapor products containing nicotine at a rate of 1¢ per 0.1 milliliter or gram of product.
- Applies the new tax at the first point at which the vapor product is received in Ohio.
- Administers the new tax in a similar manner to an existing excise tax on tobacco products other than cigarettes.
- Excludes gross receipts used to pay the new tax from those gross receipts taxable under the commercial activity tax (CAT).
- Requires monthly vapor products tax returns and all existing monthly tobacco products tax returns to be filed by the 23rd of the following month.
- 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."

Other tax provisions

- Extends the authority for townships and municipal corporations to levy a new gross receipts tax (up to 2%) on businesses within a tourism development district (TDD) until December 31, 2020.
- Authorizes townships and municipal corporations to enter into agreements with owners of property located within a TDD to impose a development charge equal to a percentage (up to 2%) of gross receipts derived from sales made at the property.
- Temporarily increases the amount to be credited to the Local Government Fund (LGF) in FYs 2020 and 2021, from 1.66% to 1.68% of the state tax revenue credited to the GRF each month.

- Modifies the formula for making direct payments from the LGF to municipalities.
- Allows the Department of Taxation to disclose to the Department of Education whether students applying for or receiving scholarships under the Educational Choice Scholarship Pilot Program meet income eligibility requirements.
- Modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

Income taxes

The act includes several changes to Ohio's income tax, principally: a reduction in income tax rates on nonbusiness income, the elimination of the two lowest income tax brackets, and a new limitation on the business income deduction.

Tax bracket elimination

Continuing law prescribes tiered tax brackets for nonbusiness income, with increasingly greater rates assigned to higher income brackets. In 2017 and 2018, there were seven brackets (reduced from nine in 2016). For 2018, the lowest bracket began at \$10,850 of adjusted gross income and the highest applied to income of \$217,400 or more. Individuals with an adjusted gross (nonbusiness) income of less than \$10,850 were exempt from the tax.⁹⁷

The act eliminates those first two tax brackets (\$10,850-\$16,300 and \$16,300-\$21,750 for the 2018). Beginning in 2019, individuals with an adjusted gross (nonbusiness) income (minus personal exemptions) of less than \$21,750 will be exempt from the tax. (Similar to current law, individuals with income of more than \$21,750 will still pay the tax on their first \$21,750 of income. That tax is reflected as a dollar amount added to the remaining tax brackets.)⁹⁸

Reduction in tax rates

The act reduces the tax rates applicable to the remaining five tax brackets by 4% beginning with 2019. Previously, the rates in those five brackets ranged from 2.969% to 4.997%. Under the act, those rates will range from 2.850% to 4.797%.⁹⁹

Taxation of business income

Under continuing law, a taxpayer may deduct the first \$250,000 of the taxpayer's business income from the taxpayer's adjusted gross income. (For married taxpayers that file separate returns, the deduction equals \$125,000 per spouse.) A 3% flat tax applies to all business income in excess of that amount.

⁹⁷ These income amounts reflect inflation-indexing adjustments for 2018.

⁹⁸ R.C. 5747.02(A)(3) and 5747.06 and Section 757.150.

⁹⁹ R.C. 5747.02(A)(2) and (3) and Sections 757.150 and 757.160.

Exclusion for income from lobbying or legal services

Beginning in 2020, income earned from the practice of law or from lobbying will not be eligible for either the business income deduction or the 3% flat rate. This new exclusion applies specifically to income from (1) legal services provided by an attorney admitted to practice in Ohio or registered as corporate counsel in Ohio or (2) lobbying activity by a person required to register with the Joint Legislative Ethics Committee. Instead, such income will be subject to the same graduated tax rates applicable to nonbusiness income.¹⁰⁰

Eligibility for tax benefits

The act 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 prior law, Business Owner would have been eligible for several means-tested benefits, while Nurse would not. Under the act, Business Owner will 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 is considered to be \$250,000 and Business Owner will not be eligible for any of the means-tested benefits.¹⁰¹

Inflation indexing adjustment

(R.C. 5747.02 and 5747.025; Section 757.160)

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis. The act suspends these adjustments for taxable years beginning in 2019. Consequently, the 2018 income tax brackets will also apply in 2019 (although the number of those brackets, and the tax rates corresponding with those brackets, will be reduced as described above). Indexing resumes in 2020.

Individual amended returns

(R.C. 5747.10 and 5747.11; Section 757.70)

The act extends, from 60 to 90 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.

¹⁰⁰ R.C. 5747.01(A)(31), (B)(2), and (HH).

¹⁰¹ R.C. 323.151, 5747.01(JJ), 5747.022, 5747.025, 5747.05, 5747.054, 5747.055, and 5748.01 and Section 757.150.

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 state return.

Timeline for refunds

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 (previously, 60 days) or, if still applicable, before the general deadline to apply for refunds (four years from the date of the overpayment).

The act correspondingly extends this former deadline to 90 days.

Partnership level audits

The act 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.

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.¹⁰²

New state procedures

The act prescribes new procedures in response to this change in federal law. Under the act, 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

¹⁰² 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.

changes in federal liability (“adjustments”) to the Tax Commissioner, notify its direct partners of each partner’s share of the adjustments, and submit an amended return that includes any additional tax that would have been due from the entity’s nonresident direct partners if the items requiring adjustment had been reported correctly. Each direct 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). If the partner is itself a pass-through entity, that entity would follow the same reporting and payment procedures on behalf of its own partners (i.e., the “indirect” partners of the audited partnership).

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 partner’s entire share of the adjustments), multiplied by the state’s highest income tax rate.

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, 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.

The act also allows a partnership to request an alternative reporting and payment method, which the Tax Commissioner may approve at the Commissioner’s discretion.

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 act 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 act allows partnerships to designate a different individual as the state representative, in accordance with rules adopted by the Department of Taxation.

Automatic extension for large partnerships

Under the act, an audited partnership with more than 10,000 partners may automatically extend the reporting and payment deadlines prescribed in the new rules by an additional 60 days, provided that the partnership notifies the Tax Commissioner that it will take the extension.

Application date

The new procedures apply to final federal adjustments made on or after October 1, 2019.

Tax credit repeal

(R.C. 5747.01, 5747.02, 5747.29, 5747.65, and 5747.98; Section 757.150)

The act 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 was 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 could not exceed \$50 per individual taxpayer.

The second credit repealed by the act allowed 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 the institution's FIT tax payments. The refundable credit equaled the owner's proportionate share of the lesser of the FIT due or paid during the taxable year.

The credits are repealed for taxable years beginning in 2019 or thereafter.

Lead abatement income tax credit

(R.C. 3742.50, 5747.02, 5747.08, 5747.26, and 5747.98; Section 757.10)

The act 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 must submit 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.

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.

Political party fund checkoff

(R.C. 5747.081, 131.44, 3501.05, 3517.01, 3517.10, 3517.102, 3517.1012, 3517.11, 3517.12, 3517.153, 3517.16, 3517.17, 3517.18, 3517.23, 3517.99, 3517.992, 5703.05, 5747.03, and 5747.04; Sections 757.240 and 815.10)

The act eliminates the Ohio political party fund income tax checkoff for taxable years beginning in or after 2019 – generally meaning returns filed in 2020 and thereafter. Prior law allowed an individual to choose an option on their return to credit \$1 (or \$2 for married couples filing joint returns) of their income tax liability to the fund. Money in the fund is divided among Ohio's major political parties. The money could not be used to further the election or defeat of any particular candidate or to influence the outcome of an issue election.

Under the act, the fund is dissolved on January 1, 2020, or earlier if the Commissioner determines that all or substantially all of the checkoff contributions for taxable years beginning before the termination date have been received by the fund. Amounts received by the fund before its dissolution must be distributed and utilized in the same manner prescribed by prior law.

The act relieves the Auditor of State of a prior duty to conduct annual audits of the use of money distributed from the fund. The audit requirement is eliminated after the fund is dissolved and all money is distributed by the treasurers of the state executive committees of the major political parties.

Requirements for tax return preparers

(R.C. 5703.263; Section 757.281)

The act prohibits tax return preparers from engaging in certain conduct and authorizes the Tax Commissioner to impose penalties or request that the Attorney General seek an injunction against a tax return preparer that engages in that conduct. For this purpose, a "tax return preparer" is defined to be a person operating a business that prepares tax returns or applications for refund for a taxpayer in exchange for compensation. The definition expressly excludes attorneys admitted to the Ohio bar, accountants registered in Ohio or elsewhere, and individuals working for a public accounting firm under the supervision of an accountant.

Also excluded are persons that only do any of the following:

- Perform typing, reproducing, or other mechanical assistance;
- Prepare a return or application for refund on behalf of their employer or an officer or employee of that employer;
- Prepare an application for refund as a fiduciary; or
- Prepare a return or application for refund in response to a notice of deficiency or a waiver of restriction after the commencement of an audit.

The act authorizes the Commissioner, beginning in 2020, to require a tax return preparer to include their federal tax identification number on any state tax form they prepare. If the Commissioner imposes such a requirement, the penalty for failing to provide the number or for providing false, inaccurate, or incomplete information is \$50 for each incident. The maximum penalty is \$25,000 per calendar year.

The act expressly prohibits tax return preparers from doing any of the following:

- Recklessly, willfully, or unreasonably understating the taxpayer’s tax liability;
- Failing to properly file returns or keep records;
- Failing to cooperate with the Commissioner or comply with tax law;
- Failing to act diligently to determine a taxpayer’s eligibility for tax reductions;
- Misrepresenting their experience or credentials;
- Cashing a refund check without the taxpayer’s permission;
- Guaranteeing tax refunds or credits; or
- Engaging in other fraudulent and deceptive conduct.

Each time a tax return preparer engages in prohibited conduct, the Commissioner may request that the Attorney General apply to a court for an injunction against the tax return preparer. Generally, if the court determines an injunction is appropriate, the tax return preparer is enjoined only from continuing the prohibited conduct. However, if the court finds that the tax return preparer has continually or repeatedly engaged in prohibited conduct and that a standard injunction is not a sufficient deterrent, the court may enjoin the tax return preparer from preparing tax returns and applications for refund in Ohio. The act specifies that a prior injunction for engaging in prohibited conduct issued to the same tax return preparer by a federal or any state’s court in the preceding five years is sufficient evidence for a court to conclude that another injunction is appropriate in response to subsequent violations.

If the Commissioner has previously warned a tax return preparer in writing of the consequences of continuing to engage in prohibited conduct, the Commissioner may impose a penalty of up to \$100 for each incident. This penalty and the penalty for failure to include a federal tax identification number on a return or application for refund is collected in the same manner as delinquent taxes. The act allows the Commissioner to abate the penalties for good cause.

School district income tax base

(R.C. 5748.01(E)(1)(b); Section 757.150)

The act requires that, for purposes of school district income taxes that use “earned income” as the tax base, amounts that 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, most taxpayers may deduct up to \$250,000 of their business income see “**Business income deduction**,” above.) Under prior law, the deducted amount had to be added back when computing the taxable income of taxpayers in school districts that use OAGI as a base, but not in districts that had an earned income tax base.

This change applies to taxable years commencing in 2019 or thereafter.

Municipal income taxes

State administration of municipal income taxes

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.

Taxpayer opt-in (VETOED)

(R.C. 718.80; Section 757.220)

The Governor vetoed a provision that would have allowed a business to reverse its initial election to opt-in to the state-administered municipal income tax within 24 months after making that initial election by notifying the Tax Commissioner. Under the vetoed provision, if a business reversed its decision to opt-in during that time, the business’s initial election would have terminated 60 days after the notice was sent to the Commissioner.

Continuing law unchanged by the act requires a business to make the election to opt-in or opt-out of the state-administered tax on or before the first day of the third month after the beginning of their taxable year (March 1 for calendar year taxpayers).

Net distribution deficiency

(R.C. 718.83, 321.24, and 5745.05; Section 812.20)

The act 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 act 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 act authorizes the Commissioner to recover the deficiency by reducing the municipal corporation’s future municipal income tax distributions, electric and telephone company income tax distributions, and property tax distributions.

Municipal Net Profit Tax Fund

(R.C. 718.83, 718.85, and 718.90; Sections 701.20 and 812.20)

In addition to administering the municipal income taxes of businesses that opt-in to central filing and collection, the Department of Taxation also administers a separate municipal income tax on electric and telephone companies.

Under prior law, revenue from both taxes was deposited into a single Municipal Income Tax Fund. The act 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 continues 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.

Municipal taxation of retirement plans

(R.C. 718.01; Section 757.220)

The act specifies that income from any retirement benefit plan, including a “nonqualified plan” that is not eligible for favorable federal tax treatment, is exempt from municipal income tax. Continuing law prescribes categories of income that a municipal corporation must exempt from its municipal income tax. One category of exempt income is pension income.

Prior law did not define the term “pension,” so presumably municipal corporations had some authority to clarify what plans they consider to qualify as a pension and, thus, exempt from municipal income tax. For example, the City of Cleveland argued it had the authority to impose municipal income tax on income from a type of nonqualified employee benefit plan on the ground that the plan was not a pension. In *Macdonald v. Cleveland Income Tax Board of Review*, the Ohio Supreme Court considered Cleveland’s argument that it could impose a tax on income from supplemental executive retirement plans (SERPs) or “top hat plans” (see “**SERPs and other nonqualified plans**,” below). The Court held that the term “pension,” as used in Cleveland’s ordinances, encompassed SERPs and that Cleveland could not tax SERP income because it had exempted pension compensation from its municipal income tax.¹⁰³

The act specifically defines pensions to include SERPs and other nonqualified plans, essentially requiring every municipal corporation to exempt income from such plans from its municipal income tax. Under the act, a pension is defined as any retirement benefit plan regardless of (1) whether the plan qualifies for favorable federal income tax treatment, (2) whether the plan is subject to federal Medicare and Social Security withholding taxes, and (3) whether and when the plan is included in the employee’s taxable wages. A retirement benefit plan, in turn, is defined to be any arrangement by which benefits are provided to

¹⁰³ 151 Ohio St.3d 114 (2017).

individuals on or after their retirement or termination of service, excluding wage continuation, severance, or leave accrual payments.

The act specifically ensures that SERPs and other nonqualified retirement plans are exempt from municipal income taxes regardless of how they may be treated under a given municipality's ordinance. SERPs are unfunded employee benefit plans maintained by an employer primarily to provide deferred compensation for a select group of management or highly compensated employees. Income from SERPs, and several other types of nonqualified plans, may be subject to federal and state income tax as part of the beneficiary's taxable wages before the beneficiary actually withdraws money from the plan.¹⁰⁴ In addition, nonqualified plans are generally (1) exempt from certain federal pension regulations, i.e., ERISA¹⁰⁵ ("Employee Retirement Income Security Act") and (2) subject to Social Security and Medicare withholding taxes¹⁰⁶ (referred to collectively as "Federal Insurance Contributions Act" taxes, or FICA taxes). In contrast, qualified plans are generally tax-exempt until distributed to beneficiaries, exempt from FICA taxes, and subject to ERISA regulations. Among the requirements for such favorable federal tax treatment is that a plan does not discriminate among employees in terms of contributions or benefits; accordingly, SERPs and other nonqualified plans that discriminate do not receive favorable treatment.

The exemption changes apply to municipal taxable years beginning on or after January 1, 2020.

Sales and use taxes

Use tax collection

The act 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 act 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.

¹⁰⁴ 26 U.S.C. 401(a).

¹⁰⁵ See, e.g., 29 U.S.C. 1002 and 1051(2).

¹⁰⁶ 26 U.S.C. 3121(a)(5).

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.¹⁰⁷

“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 2018, the controlling legal precedent on the subject required a physical presence by the seller in the taxing state to establish substantial nexus.¹⁰⁸ Most states, including Ohio, tailored their sales and use tax collection requirements for out-of-state sellers in conformance with that standard.

The U.S. Supreme Court overturned the *Quill* standard in a 2018 case, *South Dakota v. Wayfair, Inc.*, determining 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.¹⁰⁹

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.¹¹⁰

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.

¹⁰⁷ 430 U.S. 274, 279 (1977).

¹⁰⁸ *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

¹⁰⁹ 585 U.S. ____, 138 S.Ct. 2080.

¹¹⁰ R.C. 5741.12(B), not in the act.

The act 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 act 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 act eliminates a narrower presumption of substantial nexus under prior law 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 prior presumption is subsumed by the act's new presumption of substantial nexus for sellers with more than \$100,000 in gross receipts from sales into Ohio.

The act also eliminates a presumption of substantial nexus under prior law 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).

Marketplace facilitators

(R.C. 5741.01, 5741.04, 5741.05, 5741.07, 5741.071, 5741.11, 5741.13, and 5741.17; Sections 757.80 and 812.20)

The act 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 act 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 act 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 act 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, 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, any use tax due on sales of hotel lodging must either be remitted by the seller or by the consumer.

Advertising exception

The act expressly exempts from the definition of “marketplace facilitator” any advertisers that do not collect payment from the consumer, provide payment processing services, or provide virtual currency used by the consumer in the sale and, consequently, exempts such advertisers from having to collect and remit use tax on behalf of marketplace sellers.

Waiver

The act establishes a process by which certain marketplace sellers may request a waiver from the requirement that a marketplace facilitator collect and remit use tax on the seller's sales. The Commissioner is required to grant the waiver if the marketplace facilitator consents and if the seller: (1) has annual gross receipts within the U.S. of at least \$1 billion (including the gross receipts of affiliates), (2) is publicly traded or has an affiliate that is publicly traded on a major stock exchange, (3) is current on all taxes, fees, and charges administered by the Department of Taxation (excluding charges that are the subject of a bona fide dispute), (4) has not canceled a waiver or had a waiver revoked by the Commissioner related to the same marketplace facilitator in the preceding 12 months, and (5) has not repeatedly failed to file Ohio sales tax returns.

The act requires the Commissioner to notify both the seller and the marketplace facilitator of whether the request is granted or denied and also requires the seller to keep the

marketplace facilitator apprised of the status of the request. If the request is not granted or denied within 30 days of the date it was filed, it is deemed to have been granted.

A seller may cancel the waiver at any time by sending notice to the marketplace facilitator and the Commissioner. The Commissioner may revoke a waiver only if the seller no longer meets the criteria described above.

Destination-based sourcing

The act 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 act relieves a marketplace facilitator from personal liability if the marketplace facilitator was unable to obtain accurate or sufficient 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 act 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. Generally, 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.

Class action lawsuits

The act 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.¹¹¹

Repeal of sales tax exemptions

(R.C. 122.175, 5739.01(TT), 5739.02(B)(38) and (54), 5739.03, and 5739.05; Section 757.140)

The act repeals two sales tax exemptions:

1. The exemption for sales of vehicles, parts, and repair services to qualified motor racing teams. To qualify for the exemption, the racing team had to 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.

2. The exemption for sales of investment bullion and coins.

The repeal of both exemptions takes effect October 1, 2019.

Sales tax exemption for food manufacturing equipment

(R.C. 5739.011; Section 757.140)

The act 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 exemption previously applied only if the food being produced or processed was a dairy product. The expanded exemption applies beginning October 1, 2019.

Taxation of technology platform operators

(R.C. 5739.01(C) and (SSS); Section 757.301)

Peer-to-peer car sharing program operators

Continuing law requires a vendor – i.e., a person that makes retail sales of goods or services – to collect sales tax. The act specifies that the operator of a peer-to-peer car sharing program is a vendor, requiring an operator of a peer-to-peer car sharing program to collect sales tax from the consumer for car sharing services (see “**Peer-to-peer car sharing**” under **ATTORNEY GENERAL**). The act states that the provision “clarifies the status of vendors . . . and does not change the existing application of” the sales tax law.

Other technology platform operators (VETOED)

The Governor vetoed a provision that would have specified that an operator of any technology platform (other than a peer-to-peer car sharing platform) that “connects” a consumer with another person who is providing a taxable service is a vendor. The act would have required an operator of any technology platform that facilitates a taxable service, rather

¹¹¹ R.C. 5741.10, not in the act.

than the person providing the taxable service, to collect sales tax from the consumer, even if the person providing the service (e.g., the driver) is not an agent of the operator. Except for peer-to-peer car sharing program operators (see above), it is unresolved under continuing law whether other technology platform operators, including transportation network companies, e.g. Uber or Lyft, are vendors required to collect sales tax.¹¹²

Local sales and use tax rate increments

(R.C. 5739.021, 5739.023, and 5739.026; Section 757.331)

The act allows counties and transit authorities to levy their local sales and use taxes in rate increments of 0.05% beginning October 1, 2019. Under former law, a county or transit authority could only levy or increase a rate in increments of 0.1% or 0.25%.¹¹³

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%.

County sales tax: detention facility

(R.C. 5739.021 and 5739.023; Section 757.331)

The act authorizes a county, except for one that has adopted a charter (currently only Cuyahoga and Summit counties) to levy up to a 0.5% sales and use tax exclusively to construct, acquire, equip, or repair detention facilities (referred to in this analysis as “detention facility purposes”). Continuing law authorizes any county to levy a sales and use tax of up to 1% for general operations, or for supporting criminal and administrative justice services (including, among others, detention facility purposes) or funding a regional transportation improvement project. A county may levy an additional tax of up to 0.5% for any of one dozen special purposes. The act increases the maximum rate a county may levy overall from 1.5% to 2%, but it requires the extra 0.5% to be dedicated exclusively for detention center purposes and approved by county voters before taking effect.

However, this 0.5% additional detention facility tax rate is reduced commensurately in a county with a transit authority that levies a sales or use tax, to the extent the transit authority’s tax exceeds 1%. Under continuing law, a transit authority may levy up to a 1.5% sales and use tax rate. So, for instance, if the transit authority levies a 1.25% tax, the county would only be able to levy a detention facility tax of 0.25%. Similarly, if the transit authority’s rate equals 1.5%, the county would not be allowed to levy an additional detention facility tax.

¹¹² The question of whether Uber is a vendor required to collect sales tax currently is pending in the Board of Tax Appeals. *Uber Technologies, Inc. v. Testa*.

¹¹³ 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%.

Conversely, if a county does levy an additional tax for detention facility purposes, the maximum rate of tax that the overlapping transit authority may levy is reduced commensurately. Thus, for instance, if the transit authority levies a 1.25% tax and the county levies a detention facility tax of 0.25%, the transit authority would not be able to increase its tax an additional 0.25% to reach the otherwise-allowable 1.5% maximum transit authority rate.

These commensurate rate-reduction mechanisms ensure that the detention facility tax rate will not exceed the maximum tax rate that could have been levied in the county had the transit authority levied the full rate of tax to which it was otherwise entitled.

The provision begins to apply October 1, 2019.

Lodging tax

For county agricultural societies

(R.C. 5739.09(L))

Continuing law authorizes a 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. This tax is in addition to the 3% lodging tax authority that all counties have. 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.

Under former law, the term of the additional lodging tax could not exceed five years. The act 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.

For new convention facilities authorities (CFAs)

(R.C. 351.021(C)(3); Section 757.311)

Continuing law authorizes a board of county commissioners to create CFAs with the authority to administer convention, entertainment, or sports facilities located within their respective territories and, in a few counties, to levy a lodging tax. The act authorizes an additional lodging tax of up to 3% for any convention facilities authority created between July and December of 2019 and subjects the creation of a CFA during that period to a referendum if a petition signed by electors equal in number to 10% of the votes cast in the county for Governor in the most recent gubernatorial election, is filed within 90 days after the creating resolution is adopted.

The act requires the additional lodging tax to be adopted, if at all, by December 30, 2020. The tax is proposed by resolution of the CFA and must be approved by the board of county commissioners before it is levied. Like most other CFA lodging taxes, the revenue must be used to pay the costs of constructing, operating, and maintaining a convention, entertainment, or sports facility, including associated debt, the CFA's operating costs, and costs to administer the tax.

The additional lodging tax itself is not subject to voter approval or referendum. However, if a referendum is held on the board of county commissioners' resolution creating the CFA, the tax does not take effect unless the board's resolution is upheld by the referendum. The CFA may adopt a resolution proposing the lodging tax at any time after its creation (and before December 30, 2020) but the tax cannot take effect until the 90-day referendum period on the board of county commissioners' resolution has expired.

For county fairground purposes

(R.C. 351.021(F))

The act increases from 15% to 25% the amount of lodging tax revenue received by a CFA located in a county with a 2010 population between 80,000 and 90,000 (i.e., Muskingum County) that the CFA may allocate to tourism-related sites or facilities and programs, the improvement and maintenance of county fairgrounds, and any other purpose connected with the use of a county fairground. The act also specifies that unspent lodging tax revenue that was previously allocated to such purposes may be used in subsequent years without counting towards the 25% cap.

Generally, CFAs that levy a lodging tax are required to use the revenue to pay the costs of constructing, operating, and maintaining a convention, entertainment, or sports facility including associated debt, the convention facilities authority's operating costs, and costs to administer the tax. However, in 2013, H.B. 59 allowed the Muskingum County CFA to allocate a portion of its lodging tax revenue to tourism-related sites or facilities and programs and county fairgrounds.

Property taxes

State community college permanent improvements levy

(R.C. 3358.11, 3333.59, 3358.02, and 3358.06)

The act 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 150,000.¹¹⁴

¹¹⁴ R.C. 3358.01, not in the act.

The tax levy and bond issuance authorized by the act 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 act allows a school board proposing to levy such a tax to share the proceeds 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 district resident students enrolled in each chartered nonpublic school.

The act 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 act 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.

Fraternal and veterans’ organization exemptions

(R.C. 5709.17; Section 757.90)

The act 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 the purpose of determining this rental-income threshold for fraternal organizations, the act excludes rent received from other fraternal organizations. Similarly, for purposes of qualifying for the veterans’ organization exemption, the act 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

(R.C. 319.302, 323.155, and 323.16; Section 757.350)

The act 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 who attend the center reside in a household that receives public assistance, the reduction equals 25% of the taxes imposed. If 50% or more of the children who 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.

The exemption applies beginning in tax year 2019. Local governments are not reimbursed by the state for revenue lost as a result of the partial exemption.

Community school property tax applications

(R.C. 5713.08 and 5715.27)

The act 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.

Under continuing law, property used for an educational purpose, including such community school property, qualifies for a property tax exemption.¹¹⁵ Prior law, with only a few exceptions, required property owners to apply annually to the Tax Commissioner to obtain an

¹¹⁵ R.C. 5709.07(A).

exemption for the tax year. Under continuing law, the Commissioner evaluates and decides whether to approve the exemption.

The act 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 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 are still required to file for and obtain annual approval from the Commissioner.

County DD board funding

The act limits the amount that can be held in the reserve balance account (i.e., rainy day fund) of a county board of developmental disabilities (county DD board) and imposes new restrictions on a county budget commission's authority to reduce the amount of taxes that a county levies on a county DD board's behalf.

Under continuing law, each year the county budget commission reviews the budget and projected tax revenue of each subdivision in the county. The commission may reduce a subdivision's tax levy if it determines that the revenue from that tax, as currently levied, would exceed the actual needs of the subdivision as set forth in the subdivision's own budget.¹¹⁶

Continuing law also requires each county to establish a board of developmental disabilities and to levy taxes on its behalf. Under current law, if the amount that would be raised from such a tax, in combination with the county DD board's existing funds, would exceed the board's actual needs for a tax year, the county budget commission may reduce the rate of that tax accordingly.

Rainy day funds

(R.C. 5705.222)

Under the act, the balance of a county DD board's rainy day fund would not be permitted to exceed 40% of the board's expenditures for all services during the preceding year. Prior law specified no limit.

The act also provides that, when determining whether or not to reduce the amount of taxes a county levies on behalf of the county DD board, the county budget commission may not take into account any rainy day fund balance that is under that limit. Similarly, the act specifies that any balance in a board's capital improvements account that is within existing law's

¹¹⁶ R.C. 5705.32, not in the act.

statutory limit likewise may not be considered. (Under continuing law, the balance of a county DD board's capital improvements account is limited to 25% of the replacement value of the board's capital facilities and equipment.)

General funds

(R.C. 5705.322)

In addition, the act requires that, before reducing a county's taxing authority as a result of the balance of a county DD board's general fund, the county budget commission must (1) take into account the county DD board's five-year projection of revenues and expenditures and (2) hold a separate, public hearing on the proposed reduction. If the commission holds such a hearing, the proposed reduction must be the sole topic of the hearing, the commission must publish notice of the hearing, and the commission must allow county representatives an opportunity to appear and explain the county DD board's financial needs.

Tax allocation information online

(R.C. 323.131; Section 757.210)

The act requires each county auditor and treasurer to post on their respective websites, or on the county's website, the percentage of property taxes charged by each taxing unit and, where counties are concerned, the percentage of taxes charged by the county for each of the county purposes for which taxes are charged (e.g., developmental disabilities, detention facilities, senior services, public safety communications). The requirement begins to apply in 2021.

Property tax notices and ballot language (VETOED)

(Sections 130.80, 130.81, and 130.82)

The Governor vetoed a provision that would have modified information conveyed in, and the form of, property tax election notices and ballot language as follows:

1. Required notices and ballot language to convey a property tax levy's rate in dollars for each \$100,000 of fair market value instead of in dollars for each \$100 of taxable value.
2. Required notices and ballot language to display the estimated amount the levy would collect annually.
3. Prohibited any portion of a property tax question from being printed on the ballot in boldface type or with differing font size, with some exceptions.

The vetoed provision wholly comprises H.B. 76 of the 133rd General Assembly. A detailed description of the vetoed provision is available as LSC's analysis of H.B. 76, as Reported by House Ways & Means. The analysis is available online at <https://www.legislature.ohio.gov/download?key=11653&format=pdf>.

Property tax exemption for renewable energy facilities

(R.C. 5727.75; Section 757.200)

The act extends, by two years, the deadline to apply for existing law's property tax exemption for qualified renewable energy facilities.

Under continuing law, a renewable energy facility may qualify for a real and tangible personal property (TPP) tax exemption. Prior to the act, the owner or lessee of the facility must have applied for the exemption and begun construction on the facility by January 1, 2021. The act extends this deadline to January 1, 2023.

When a property tax exemption is approved, the owner or lessee of the facility is required to make "payments-in-lieu-of-taxes" (PILOTS) to the local governments in which the facility is located. The act makes a technical correction to out-of-date language regarding the calculation of PILOTS that must be paid with respect to solar energy facilities. The correction causes each year's PILOTS to be calculated on the basis of generating capacity rating as of the last day of the preceding year instead as of December 31, 2016.

Exemption for convention centers and arenas

(R.C. 5709.084; Section 757.90)

The act authorizes a real property tax exemption for a convention center or arena that is owned by a convention facilities authority (CFA) of a county with a population between 750,000 and 1 million and is leased to a private enterprise. According to the 2010 U.S. census, Hamilton County is the only county in Ohio that has a population within that range. The exemption applies to tax year 2019 and every tax year thereafter.

Continuing law exempts property owned by a CFA from taxation unless the property is leased to, or used exclusively by, a private enterprise.¹¹⁷ There are several exceptions to this rule for certain arenas and convention centers such as Nationwide Arena in Franklin County.

Property tax abatement for certain municipal property

(Section 757.340)

The act 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 because of severe storms or flooding and (2) following that declaration, obtained the title to property pursuant to the terms of a hazard mitigation grant from the Federal Emergency Management Agency (FEMA). The property must also currently be used for a tax-exempt purpose.

¹¹⁷ R.C. 351.12, not in the act.

The application for exemption and abatement must be filed with the Tax Commissioner within 12 months of the provision's effective date (October 17, 2019).

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.

School district property tax reduction for certain property owners (VETOED)

(R.C. 319.302 and 323.18)

The act would have authorized a property tax reduction for certain property owners whose taxes comprise a relatively high proportion of a school district's operating expenses. The reduction would have essentially functioned as a cap on the property taxes paid by such property owners to the school district. If the school district taxes charged against such owners' property exceeded the cap, the owners' taxes would have been reduced accordingly.

To qualify, property would have had to be in a "qualifying area," which is an area that is located in both a village and in a school district with an enrollment of at least 1,300 students and per-pupil operating spending of at least \$6,500 greater than the statewide average. The act would have capped the amount of school district property taxes paid by property owners in the qualifying area at four times the operating expenses the district paid in the previous year on account of students who reside in the qualifying area.

The reduction would have decreased the school district property taxes collected from all real property in the qualifying area so that collections did not exceed the cap. So, the amount of the total reduction would have equaled the difference between the cap amount and the total school district property taxes that would have been collected absent the cap.

Once the total tax reduction for the qualifying area was determined, it would have been applied to each parcel of real property within the area. The reduction available to a particular parcel's owner would have been based on the proportion of the total school district property taxes paid by the parcel's owner as compared to all parcel owners in the qualifying area.

In tax years when a reduction was applied, a school district would have collected less revenue from the property located in the qualifying area than it otherwise would have. In such cases, the district would have had to proportionately reduce the amounts credited to each of the district's funds, other than funds created to pay off bonds or other debt charges.

Exemption of residential development property (VETOED)

(R.C. 5709.54)

The Governor vetoed a provision that would have exempted 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 would have applied to any unimproved parcel subdivided pursuant to a plat and on which construction of residential buildings, e.g., single- or multi-family dwellings, was planned but not started. A detailed description of the vetoed provision is available on pages 394-396 of LSC's analysis of H.B. 166,

As Passed by the House. The analysis is available on line at <http://www.legislature.ohio.gov/download?key=12043&format=pdf>.

Financial institutions tax

The act 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 act 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 is excluded from 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 will 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. For institutions that are not covered by such a filing, assets is determined according to generally accepted accounting principles (GAAP).

Technical amendment

The act 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 act 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."

Temporary historic rehabilitation CAT credit

(Section 757.40)

The act 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 act 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.

Other tax provisions

Vapor products tax

(R.C. 1346.04, 5743.01, 5743.025, 5743.03, 5743.14, 5743.20, 5743.41, 5743.44, 5743.51, 5743.52, 5743.53, 5743.54, 5743.55, 5743.59, 5743.60, 5743.61, 5743.62, 5743.63, 5743.64, 5743.66, and 5751.01; Sections 757.260 and 757.270)

The act levies an excise tax on the distribution, sale, or use of nicotine vapor products, effective October 1, 2019. Similar to the existing tax on tobacco products other than cigarettes (OTP), the vapor products tax would be levied primarily on distributors and all revenue from the tax is credited to the GRF. However, unlike the OTP tax, which is based on the wholesale price of the OTP product, the vapor products tax will be based on the volume of nicotine-containing liquid or other nicotine substance consumed in an electronic smoking product.

A corresponding “use” tax is imposed on persons using, storing, or consuming vapor products for which a vapor distributor has not paid the tax. (That is, the use tax applies, for example, to vapor products purchased outside Ohio and brought into Ohio, or otherwise acquired from someone other than a vapor distributor or retail dealer, in a manner analogous to the cigarette and OTP use taxes levied under continuing law.)

Tax base and rate

The act defines a vapor product as any liquid solution or other substance that (1) contains nicotine, (2) is consumed by use of an electronic smoking product, and (3) is not regulated as a drug or device by the U.S. Food and Drug Administration (FDA). An electronic smoking product is a noncombustible product, except for a cigarette or an OTP, that (1) is designed to use vapor products, (2) employs some mechanical, electronic, or chemical means to

produce vapor from such products, and (3) is not regulated as a drug or device by the FDA. An example includes an electronic cigarette or “vape pen.”

The tax is imposed on the volume of vapor products at the first point the products are received in Ohio by a vapor distributor or seller. The rate equals 1¢ per 0.1 milliliters (mL) of liquid vapor product or 1¢ per 0.1 grams of nonliquid vapor product. A vapor product is taxed only once, and, even if a tax-paid product is later reprocessed, diluted, or otherwise altered, the altered product is not subject to the tax.

Taxpayer

The tax is payable by vapor distributors and sellers of vapor products. A “seller” is any person located outside the state who is engaged in the business of selling vapor products to Ohio consumers. A distributor includes any person that:

1. Sells vapor products to retail dealers;
2. Is a retail dealer that receives vapor products upon which the tax has not been paid by another person;
3. Is a wholesaler that receives vapor products from a manufacturer or upon which the tax has not been paid by another person;
4. Is a wholesaler outside Ohio that sells vapor products to an Ohio wholesaler;
5. Is a “secondary manufacturer,” i.e., a person that repackages, reconstitutes, dilutes, or reprocesses vapor products for resale to consumers.

Similar to OTP taxes, a manufacturer of vapor products may avoid payment of the tax if it notifies the Commissioner that the retailer will pay the tax.

The use tax is payable by any person who uses, stores, or consumes vapor products for which the tax has not already been paid.

Tax returns and payments

Vapor distributors must file returns and pay the tax due on a monthly basis, by the 23rd day of each month, unless the Commissioner allows a longer reporting interval. Returns must be filed electronically. Vapor distributors must also maintain the invoice from each vapor product transaction. For each vapor product transaction, the invoice must indicate the vapor distributor’s account number, whether or not the tax has been paid, and the weight or volume of each vapor product, rounded to the nearest 0.1 mL or 0.1 gram, as applicable.

Licensing requirements

The act requires vapor distributors to obtain an annual license to operate in the state. A licensed vapor distributor may sell vapor products only to retail dealers, other licensed vapor distributors, or, if the vapor distributor is also a retail dealer, to consumers. However, a licensed distributor may sell vapor products to another licensed distributor only if the seller first obtains the Commissioner’s permission to do so and receives the products directly from a manufacturer or importer. (A similar requirement exists under continuing law for transfers of OTP.)

The licensing process for vapor distributors is identical to the process for wholesale dealers of OTP. The act requires only a single license for distributing OTP and vapor products, so an OTP distributor that already holds the OTP license before the vapor tax takes effect on October 1, 2019, may distribute vapor products after that date without obtaining an additional license.

Vapor distributors that do not already hold an OTP distributor license must apply to the Tax Commissioner for the license, which is valid for one year beginning on the first day of February. The annual application fee is \$125 per business location for a license solely to distribute vapor products or \$1,000 per business location for a combined OTP and vapor products license. (Under continuing law, a licensing fee to distribute OTP is \$1,000.) If a license is issued after February 1, the application fee is reduced proportionately for the remainder of the year. As the vapor tax begins to apply October 1, 2019, the act requires a vapor distributor that does not hold an OTP license before that date to apply for a license by September 30, 2019. This initial license will remain in effect until February 1, 2021. Revenue from the license fee is deposited in the Cigarette Tax Enforcement Fund, which funds the Department of Taxation's expenses in enforcing cigarette, OTP, and vapor product tax law.

As with existing OTP licenses, the Commissioner may refuse to issue or reissue a vapor distributor license if the applicant has any outstanding tax liability or has failed to file any prior vapor products tax return. The Commissioner may also suspend a license if a taxpayer fails to file a return or pay the tax. In addition, the Commissioner may cancel a license at the request of the licensee.

Administration and enforcement

The act incorporates vapor products into many of the existing provisions for the administration and enforcement of the state cigarette and OTP taxes. These provisions include:

- Tax refunds and the application of a taxpayer's refund to offset a debt the taxpayer owes to the state.
- Records retention, fraud prevention, and inspections.
- Seizure and forfeiture of products when the Commissioner has reason to believe that a person is avoiding paying the tax.
- Requirements for transporting or distributing untaxed vapor products.
- Registration and reporting of vapor product importers and manufacturers, which the act requires beginning in July 2020.
- Civil and criminal penalties.
- Prohibition against municipal corporations imposing a similar tax.¹¹⁸

¹¹⁸ R.C. 715.013, not in the act.

The act also explicitly requires secondary manufacturers to comply with federal packaging laws when reconstituting, diluting, or reprocessing vapor products.

CAT exclusion

The act authorizes a vapor distributor to exclude from its gross receipts subject to the CAT an amount equal to the vapor products excise tax remitted to the state. A similar CAT exclusion already exists for distributors of cigarettes and tobacco products subject to state excise taxes. Under continuing law, the CAT is a business privilege tax levied on the basis of a business's taxable gross receipts.

Tobacco products tax return due dates and nexus

(R.C. 5743.62, 5743.63, and 5743.66)

The act adjusts the due date for several types of monthly OTP returns to the 23rd day of the following month, instead of the last day of the month. Under prior law, returns of OTP distributors were due on the 23rd day of the next month, but OTP seller and use tax returns and importer and manufacturer reports were not due until the last day of the next month. The act also sets the monthly return due date for the new vapor products tax as the 23rd day of the following month.

The act changes the phrasing of three nexus-related references involving sellers of tobacco products from "nexus in this state" to "substantial nexus with this state," which is consistent with phrasing involving sellers of items or services subject to the general use tax.

Tourism development districts

Under continuing law, a township or municipal corporation located in a county with a population between 375,000 and 400,000 that levied a county sales tax rate of 0.50% or less in September 2015 (currently only Stark County) may designate a special district within which the municipal corporation or township may levy certain taxes or fees or receive certain revenue to fund tourism promotion and development in that district. Such a district is referred to as a "tourism development district" or a TDD. The act makes two modifications to the TDD law that enhance the authority of a TDD to raise revenue.

Gross receipts tax

(R.C. 5739.101)

The act extends until December 31, 2020, the authority of townships and municipal corporations to levy a new gross receipts tax within the territory of a TDD. Under prior law, such a tax was allowed only if it was adopted before January 1, 2019. Canton is the only subdivision that adopted a TDD gross receipts tax before that date.¹¹⁹

Under continuing law, a TDD gross receipts tax is levied on businesses' gross receipts derived from making sales in the TDD (excluding food sales) at a rate not exceeding 2%. The tax

¹¹⁹ Ohio Department of Taxation, Resort Tax, available at: <https://www.tax.ohio.gov/resorttax.aspx>.

is administered and collected by the Tax Commissioner in the same manner as the gross receipts tax that is permitted in certain “resort areas” such as Kelleys Island and Put-in-Bay.

Development charge

(R.C. 505.56, 505.58, 715.014, and 715.015)

The act authorizes a township or municipal corporation to enter into agreements with owners of property located within the TDD to impose a development charge on the property equal to a percentage (up to 2%) of gross receipts derived from sales made at the property (excluding food sales). The development charge is subject to approval of the board of county commissioners. It is collected and enforced in the same manner, and has the same lien status, as real property taxes regardless of changes in ownership of the property.

A township or municipal corporation that levies a gross receipts tax within the TDD is prohibited from entering into or enforcing a development charge agreement within the same district.

Local Government Fund

(R.C. 5747.50; Sections 387.10, 387.20, 757.230, and 812.20)

LGF temporary increase

The act temporarily increases the amount to be credited to the Local Government Fund (LGF) each month. Generally, the LGF receives 1.66% of the total state tax revenue credited to the General Revenue Fund. The act increases that percentage to 1.68% for each month in FYs 2020 and 2021.

Most of the funds credited to the LGF are distributed to county undivided local government funds (county LGFs), from which the funds are allocated amongst subdivisions within the county using either a statutory or an alternative, county-specific formula. One million dollars of the LGF is set aside each month to make payments to villages with a population of less than 1,000 and to townships, and the remainder (around 5% of total LGF funds) has been used to make direct payments to municipal corporations.

Direct distributions to municipalities

The act modifies the formula for distributing these direct payments among municipalities. Previously, only municipalities that levied an income tax in 2006 received a distribution; each municipality’s distribution was based on that municipality’s share of the payments in 2006 (with that share being based on the municipality’s relative income tax collections).

Under the act, every municipality in the state with a population of 1,000 or more will receive a distribution. (Villages with a population of less than 1,000 will continue to receive a portion of the \$1 million set-aside.) Each such municipality’s share is based on population, with the caveat that cities with a population of more than 50,000 will be capped at that amount. So, when each municipality’s share is calculated, cities with a population of more than 50,000 will be considered to have a population of 50,000. The share paid to a municipality with a population of less than 50,000 will be based upon that municipality’s actual population.

Verifying and disclosing scholarship eligibility

(R.C. 5703.21(C)(19))

The act allows the Department of Taxation to disclose to the Department of Education whether students applying for or receiving scholarships under the Educational Choice Scholarship Pilot Program meet the program's income eligibility requirements. Eligibility for the Educational Choice Scholarship Pilot Program is based in part on a student's family income.¹²⁰ The Department of Education must request the verification and provide sufficient information about the student and their family to allow the Department of Taxation to make the verification.

Continuing law permits disclosure of certain information in the possession of the Department of Taxation to other state agencies and offices under specified circumstances to aid in the implementation of Ohio law. Otherwise, the disclosure of taxpayer information is prohibited and subjects the violator to employment termination and a fine.

Job Retention Tax Credit

(R.C. 121.171)

The act modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

Continuing law authorizes the JRTC for businesses that agree to make a minimum capital investment in Ohio and to retain a specified number of employees in connection with that capital project. The business must be engaged in either manufacturing or corporate administrative functions. To receive the tax credit, the business applies to the Tax Credit Authority, which reviews the application and offers a tax credit agreement. The credit will equal an agreed-upon percentage of the business' payroll, and can be allowed for up to 15 years.

Previously, to receive the credit, a business was required to employ at least 500 employees or have an annual payroll in Ohio of at least \$35 million. In addition, for manufacturing projects, the business had to make a capital investment in Ohio of at least \$50 million over three years. For corporate administrative projects, the investment must equal at least \$20 million.

The act makes several changes to these requirements. First, the act provides that, if a corporate administrative project is located in a foreign trade zone, the business does not have to meet the 500 employee or \$35 million payroll requirement. The project must still involve an investment of at least \$20 million over three years.

¹²⁰ See R.C. 3310.02 and 3310.032.

For manufacturing projects, the act entirely removes the requirement that a business have at least 500 employees or \$35 million payroll. In addition, the act modifies the \$50 million capital investment requirement, such that a manufacturer's investment may equal either (a) \$50 million or (b) 5% of the net book value of the tangible personal property located at the project site on the last day of the three-year investment period.

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
 - Procedures for performance accountability of career professional employees.

Maritime Assistance Program

- Creates the Ohio Maritime Assistance Program, to be administered by ODOT.
- Permits certain port authorities to apply for grants to 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.

Memorial bridge – change of location

- Changes the location of the “Lance Corporal Michael Stangelo, USMC, Memorial Bridge.”

International Symbol of Access

- Removes the recently enacted requirement that a person – who is erecting or replacing a sign containing the International Symbol of Access (for example, for an accessible parking spot) – use a logo that depicts a dynamic character leaning forward with a sense of movement.

ODOT business plan

(R.C. 5501.20)

The act 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.

Prior law required the Director to adopt the business plan by July 1 of every odd-numbered year. That business plan was 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 were expected to work to fulfill the mission, business objectives, and strategies

stated in the plan and could be suspended, demoted, or removed for performance that hinders or restricts fulfillment of the plan.

Although the act removes the requirement that the Director adopt a business plan and the employee performance expectations related to the plan, it retains 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 Assistance Program

(R.C. 5501.91; Section 411.20)

The act creates the Ohio Maritime Assistance Program, to be administered by ODOT. Under the program, specified port authorities may apply to ODOT for a grant to improve an existing marine cargo terminal. The terminal must either (1) be owned by the port authority and be located on the shores of Lake Erie or the Ohio River or on a Lake Erie tributary or (2) be within a federally qualified opportunity zone located on the shores of Lake Erie or the Ohio River and have a stevedoring operation.

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.

A port authority must pay a dollar-for-dollar matching amount for the grant money. The act appropriates \$11 million in FY 2020 and \$12 million in FY 2021 for the program, through the Ohio Maritime Assistance Fund, created by the act.

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.

Memorial bridge – change of location

(R.C. 5534.152)

The act changes the location of the “Lance Corporal Michael Stangelo, USMC, Memorial Bridge.” The designation was originally established on State Route 93 on the bridge spanning the Tuscarawas River, located in Canal Fulton, Ohio. However, that bridge was already named. The act designates, instead, the State Route 93 bridge that crosses over State Route 21, located in Lawrence Township. Lance Corporal Michael Stangelo was a veteran of the U.S. Marine Corps who died on June 15, 2016, after losing his battle with Post-Traumatic Stress Disorder.

International Symbol of Access

(R.C. 9.54)

H.B. 62 of the 133rd General Assembly (the transportation budget) included a provision that required a person – who was erecting or replacing a sign that contains the International Symbol of Access (for example, for an accessible parking spot) – to use a logo that depicts a dynamic character leaning forward with a sense of movement.



The act removes this provision, and reverts back to prior law, requiring the signs to use the standard International Symbol of Access and forms of the word “accessible.” This aligns Ohio law with federally required signage requirements.



TREASURER OF STATE

- Expands the 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.
- Requires the Treasurer, in the case of a contract for services that benefit the state, to enter into the contract jointly with the Director of Administrative Services (DAS Director).
- Permits the Treasurer to enter into a pay for success contract upon receiving an appropriation 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.
- Allows the Treasurer to adopt 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 previous Pay for Success Contracting Program administered by the DAS Director, 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 act expands the Pay for Success Contracting Program, described below under **“Continuation of prior program,”** and requires the Treasurer of State to administer it. 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. In the case of a contract for services that benefit the state, the Treasurer must enter into the contract jointly with the Director of Administrative Services (DAS Director).

Under the contract, the service intermediary receives payment for providing the 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. Additionally, the Treasurer and, as applicable, the DAS Director, 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. A political subdivision must not use state funds to pay the cost of a contract.

The act also allows the Treasurer to apply for federal grants on behalf of a requesting state agency, political subdivision, or group to pay all or part of the cost of a contract. The Treasurer is prohibited from applying for federal grants without first entering into an agreement with the state agency, political subdivision, or group for the Treasurer to do so.

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 previous program, only a nonprofit organization or a wholly owned subsidiary of a nonprofit organization could enter into a pay for success contract.

Contract terms

The act requires a pay for success contract to include provisions that:

- Require the Treasurer, in consultation with the requesting state agency or agencies and the DAS Director, or in consultation with the requesting political subdivision or group of political subdivisions, to specify performance targets to be met by the service provider;
- Require 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 contract – to evaluate whether the service provider has met 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 whether the service provider has met 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 whether the service provider has met each performance target, as determined by the independent evaluator;
- Specify the maximum amount a service intermediary may earn for meeting the performance targets;

- Require a state agency, political subdivision, or group that requested the contract to determine, in accordance with applicable laws, to which data in the possession of the requesting entity, the intermediary will have access for the purpose of fulfilling the contract, along with any limitations on the use of the data. The requesting entity must retain control over the data and provide the data directly to the service intermediary under the contract. If any dispute arises concerning the data, the requesting entity must work directly with the service intermediary to resolve the dispute.

These contract requirements are similar to the requirements for the prior program, except that the act adds provisions regarding measurement of improvement and requires the state agency, political subdivision, or group that requested the contract to provide the service intermediary with access to relevant data, instead of requiring the Treasurer to ensure that access. And, the act clarifies that a state agency, political subdivision, or group that requested the contract may not serve as the independent evaluator and that a service intermediary must meet a performance target instead of only making progress toward it.

Program administration

The act requires the Treasurer to administer the Pay for Success Contracting Program and to develop procedures for awarding contracts. The Treasurer may take any other action necessary to administer the program.

The Treasurer may adopt rules in accordance with the Administrative Procedure Act to administer the program. The rules may include the procedure for a state agency, political subdivision, or group of them to request the Treasurer and, as applicable, the DAS Director to enter into a contract and to deposit the cost of the contract with the Treasurer. The rules also may address the types of services that are appropriate for a service provider to provide under a pay for success contract.

Measurement of improvement

At least 75% of the contracts under the Pay For Success Contracting Program must specify performance targets that, based on available regional or national data, require the improvement in the status of Ohio or the relevant area, with respect to the issue the contract addresses, to exceed the average improvement in other geographical areas during the period of the contract. The Treasurer must adopt by rule 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.

Funds

The act 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 for the purpose of entering 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 funds to implement and administer the program. Any investment earnings on the funds are credited to them.

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 prior program – infant mortality initiatives

The act also continues the previous Pay for Success Contracting Program administered by the DAS Director for a limited purpose. The DAS 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 similar to those under the act. However, the 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 act 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 132nd 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 act, the prior version of the law continues to apply to those pilot project contracts, instead of the act's new version.¹²¹

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

¹²¹ See R.C. 3701.142, not in the act.

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 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.¹²²

¹²² National Conference of State Legislatures, *Social Impact Bonds*, available at ncsl.org/research/labor-and-employment/social-impact-bonds.aspx.

TURNPIKE AND INFRASTRUCTURE COMMISSION

Audits and reports

- Replaces the requirement that the Auditor of State make an unannounced annual audit of the Ohio Turnpike and Infrastructure Commission's accounts and transactions with a requirement that the Auditor of State make an audit of the Commission at least every other year.
- 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 for goods and services via a competitive proposal process when it 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, and removes the restriction that all notices occur in a Franklin County newspaper.
- Raises the threshold, from \$150,000 to \$500,000, for when a bond is required for goods and service contracts.

Audits and reports

(R.C. 5537.17)

The act replaces the requirement – that the Auditor of State make an unannounced annual audit of the Ohio Turnpike and Infrastructure Commission's (Commission) accounts and transactions – with a requirement that the Auditor of State make an audit of the Commission at least every other year. The Commission is still subject to an audit of its books and accounts by certified public accountants (CPAs); however, the Auditor of State must approve the CPAs.

Furthermore, 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 prior law, the Commission had to make an annual report of its activities, including a complete operating and financial statement, to the Governor and General Assembly. That report is eliminated.

Competitive bidding and advertising

(R.C. 5537.07 and 5537.13)

Competitive bidding

The act authorizes the Commission, when contracting for goods and services, to forgo the competitive bidding process and to use a competitive proposal process. The Commission may use the competitive proposal process when it determines that competitive bidding is not practical or advantageous to the Commission. In doing so, the Commission may 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. The act does not affect the requirement that the Commission use competitive bidding for construction contracts.

Design/build – construction contracts

The act authorizes the Commission to use a value-based selection process for projects that involve both design and construction elements in a single contract. Continuing 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, under prior law, the Commission needed to award the final project via competitive bidding. The act allows the Commission to forgo competitive bidding and to award the final project to the contractor it considers to be the best value.

Public advertising

The act authorizes the Commission to use a shorter form of public notice for advertising contracts. The shortened form 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 act also removes the requirement that all public advertising occur in a newspaper of general circulation in Franklin County. It retains the Commission's authority to determine other newspapers in which to advertise.

Additionally, the act permits the Commission to enter into contracts to purchase equipment, materials, and services without public advertising for:

- 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

The act increases the threshold, from \$150,000 to \$500,000, for when a bond is required for goods and service contracts entered into by the Commission.

DEPARTMENT OF VETERANS SERVICES

- Requires the Directors of Veterans Services and Mental Health and Addiction Services to establish a three-year pilot program to make transcranial magnetic stimulation available for veterans with substance use disorders or mental illness, and to operate the program for three years.
- Requires the Directors to contract for services related to the program.
- Establishes the Transcranial Magnetic Stimulation Fund in the state treasury to consist of moneys appropriated to it by the General Assembly.

Transcranial magnetic stimulation pilot

(R.C. 5902.09)

The act requires the Directors of Veterans Services and Mental Health and Addiction Services to establish a three-year pilot program to make transcranial magnetic stimulation available for veterans with substance use disorders or mental illness. The program must operate in conjunction with a supplier for services selected by the Directors under state law that regulates the purchase of supplies and services. This continuing law requires competitive selection for services that cost \$50,000 or more.¹²³

The Directors, by mutual agreement, must enter into a contract for the purchase of services related to the pilot program. The contract must include provisions requiring the suppliers to create, implement, operate, and evaluate outcomes of the pilot program, to choose a location for the pilot program, to spend payments received from the state, and to report quarterly to the Senate President and the Senate standing committee that generally considers legislation regarding veterans affairs.

One or both Directors must adopt rules under the Administrative Procedure Act as necessary to administer the program, including a rule requiring that clinical protocols and outcomes are collected and reported quarterly by the supplier. The report also must include a thorough accounting of the use of all state funds received by the supplier.

The act establishes the Transcranial Magnetic Stimulation Fund in the state treasury. Any money appropriated by the General Assembly for the pilot program must be deposited into the fund. The Directors, with the approval of the Controlling Board, may authorize a disbursement from the fund to the supplier for services rendered under the contract. The act appropriates \$3 million in each of FY 2020 and FY 2021 for the program.

¹²³ R.C. 125.05, not in the act.

DEPARTMENT OF YOUTH SERVICES

- 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 September 26, 2003, continue in effect as those of DHS.

Juvenile Justice and Delinquency Prevention Fund

(R.C. 5139.87)

The act 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. All federal grants and moneys received for federal juvenile programs must be deposited into the new fund, and receipts deposited in it must be used for federal juvenile programs. The act requires that all investment earnings on the cash balance in the fund be credited to the fund, and eliminates the requirement that they be credited for the appropriate federal fiscal year.

The act requires DHS to maintain a financial activity report of each individual grant within the fund, including expenses and revenues credited to those individual grants.

The act eliminates the stipulation 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, were required to continue in effect as rules, orders, or determinations of DHS.

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.
- Authorizes the board of trustees of an urban township to create a tax increment financing arrangement by a majority vote rather than by a unanimous vote.

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 authorities

- 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 specific purposes.

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 of \$250 or more charged as a lien against real property.

Two-year window to amend local 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.

Municipal corporation as portion of fire district

- Allows a township fire district or a joint fire district to include a portion, rather than the entirety, of a municipal corporation.

Electronically notarized documents

- Replaces the 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.

Township employee compensatory time

- Allows a township employee to take, in lieu of overtime pay, compensatory time off at a rate of 1½ times the number of overtime hours worked at a time mutually convenient to the employee and the employee's supervisor within 180 days after working overtime.
- Allows a township appointing authority, by rule or resolution, to adopt an alternative policy governing the calculation and payment of overtime.

Hospitals and nonprofits

- Allows the board of a county hospital or a joint township district hospital board to form or acquire control of a domestic nonprofit corporation or a domestic nonprofit limited liability company.
- Allows a board to be a partner, member, owner, associate, or participant in a nonprofit enterprise or nonprofit venture.
- Requires a board forming, acquiring, or participating in a nonprofit entity to do so in furtherance of certain specified reasons.

Criminal records checks, municipal tax employees

- Requires criminal records check for employees of municipal corporations and regional councils of government with access to federal tax information.

County recorder and Housing Trust Fund fees

- Increases to \$17 the base fee and the Housing Trust Fund fee (\$34 total) collected by the county recorder for recording and indexing the first two pages of an instrument when using photocopying or any similar process.
- Removes the \$50 million cap on Housing Trust Fund fees that the Treasurer of State deposits into the Low- and Moderate-Income Housing Trust Fund, and eliminates the Housing Trust Reserve Fund where fees in excess of \$50 million each year were deposited.

County recorder's technology fund

- Extends the time during which a county recorder may annually request that an additional amount be credited to the County Recorder's Technology Fund.
- Extends the time for which a current funding proposal is effective, notwithstanding the number of years of funding specified in the originally approved proposal.
- Requires a board of county commissioners to approve such extensions to be deposited in the County Recorder's Technology Fund if the total does not exceed \$8.

Park districts

- Adds a park district created under R.C. Chapter 1545 to the definition of "contracting subdivision" to allow for parks created under that chapter to work jointly with other contracting subdivisions for certain purposes.

Regional water and sewer districts

- Allows a regional water and sewer district to make loans and grants to and enter into cooperative agreements with any person (a natural person, firm, partnership, association, or corporation other than a political subdivision) rather than only with political subdivisions, as in former law.
- Expands a district's authority to offer discounted rentals or charges to any person, instead of only to persons age 65 or older, who is of low or moderate income or qualifies for the homestead exemption.

Concealed handgun license fees

- Allows a sheriff, with approval of the board of county commissioners, to use the county's portion of concealed handgun license fees for constructing, maintaining, or renovating a shooting range to be used by the sheriff or the sheriff's employees.

Tax increment financing

(R.C. 5709.51, 5709.40, 5709.41, 5709.73, and 5709.78; Section 757.291)

Under continuing law, a county, township, or municipal corporation may adopt a resolution exempting certain property from property taxation through a method known as tax increment financing (TIF). There are 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 must use those service payments to pay for infrastructure improvements related to development of the TIF property.

The act 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 act 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.

Township tax increment financing legislation

(R.C. 5709.73)

The act authorizes the board of trustees of an “urban township” to adopt a resolution creating a project or incentive district TIF arrangement by a majority vote rather than by unanimous vote, as had been required for all townships under prior law. An urban township is a township that has a population of 15,000 or more within its unincorporated territory and has adopted a limited home rule government – an arrangement under continuing law that allows the township to exercise certain home rule powers the Ohio Constitution otherwise reserves to municipal corporations and chartered counties.

County family and children first councils

(R.C. 121.37)

Law unchanged by the act requires each board of county commissioners to establish a county family and children first council. Regarding council membership, the act 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 prior law.

Metropolitan housing authorities

(R.C. 3735.31, 3735.33, 3735.40, and 3735.41)

The act authorizes metropolitan housing authorities (MHAs) to redevelop slum areas within their districts and make available, acquire, construct, improve, manage, lease, or own mixed-use or mixed-income developments, or a combination of them. In addition, the MHA may participate in partnerships or joint ventures relating to the development of housing or projects 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 urban or rural living accommodations for persons or families of varying incomes. The act 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 act 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.

Board of elections compensation

(R.C. 3501.12)

The act increases the \$6,000 minimum compensation of a member of a board of elections by 1.75% annually through 2028. This minimum compensation applies in the 44 smaller counties. Legislation enacted in 2018 similarly required the compensation for board members in the larger counties, which is tiered to population, to increase by 1.75% annually through 2028.

Municipal garbage fees

(R.C. 701.10)

The act 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 when the unpaid amount is at least \$250. 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. Formerly, this authority existed only for municipalities located in a charter county (Summit and Cuyahoga).

Two-year window to amend local rules

Platting and subdivisions – background

The Subdivision Law¹²⁴ 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

¹²⁴ R.C. Chapter 711.

commissioner also may be required.¹²⁵ Only land located in areas where subdivision regulations have been adopted is subject to the Subdivision Law.¹²⁶

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.¹²⁷

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 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.”¹²⁸ 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 125th 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 act provides another two-year period after the October 17, 2019, effective date, in which the planning authority may amend its general rules to limit its approval authority to no

¹²⁵ R.C. 711.05, 711.09, and 711.10, not in the act.

¹²⁶ R.C. 711.40, not in the act. (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.)

¹²⁷ R.C. 711.10 and 711.133, not in the act.

¹²⁸ Ohio Attorney General Opinion 1984-073.

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.

Municipal corporation as portion of fire district

(R.C. 505.37 and 505.371)

The act allows a township fire district or a joint fire district to include all *or a portion* of a municipal corporation, whereas prior law only allowed *the entire* municipal corporation to be included. Under continuing law, a municipal corporation that is within or adjoins a township may join the 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.

Electronically notarized documents

(R.C. 147.591)

Under prior law, county auditors, engineers, and recorders that accepted documents through an electronic recording method must also, and on the same terms, have accepted printed copies of documents that were electronically executed. The act replaces that requirement with a requirement that the county officials accept printed copies of electronically executed documents if they are properly authenticated. To be properly authenticated, the act provides the document must contain an attached authenticator certificate in a form set forth in the act. 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.

Township employee compensatory time

(R.C. 4111.03)

The act allows a township employee to take, in lieu of overtime pay, compensatory time off at a rate of 1½ times the number of overtime hours worked. The employee and the employee’s supervisor must agree on a mutually convenient time for the employee to use compensatory time that is within 180 days after the employee worked the overtime. The act also allows a township appointing authority to adopt a rule or resolution creating an alternative policy governing overtime pay.

A political subdivision is subject to the federal Fair Labor Standards Act¹²⁹ (FLSA), which, like Ohio law, requires an employer to pay overtime if an employee works more than 40 hours in a week unless an exception applies. Under the FLSA, a political subdivision may, in lieu of paying overtime compensation, grant 1½ hours of compensatory time off for each hour of overtime worked. The compensatory time must be granted in accordance with the terms of a collective bargaining agreement or, in the case of an employee not covered by a collective bargaining agreement, an agreement between the employer and employee entered into before

¹²⁹ 29 U.S.C. 201, *et seq.*

the employee works overtime. If the work includes work in a public safety activity, an emergency response activity, or a seasonal activity, the employee may not accrue more than 480 hours of compensatory time. If the work is not related to those activities, the limit is 240 hours. Once an employee accrues 480 or 240 hours of compensatory time, as applicable, the FLSA requires the employee to be paid in accordance with the FLSA's overtime pay requirement.¹³⁰

Hospitals and nonprofits

(R.C. 339.10 and 513.172)

The act, without specifying how, allows a board of a county hospital or joint township district hospital board to “form, or acquire control of, a domestic nonprofit corporation or a domestic nonprofit limited liability company.” It allows a board to be a partner, member, owner, associate, or participant in a nonprofit enterprise or nonprofit venture. Additionally, it requires a board forming, acquiring, or participating in a nonprofit entity to do so in furtherance of any of the following:

- To support the county hospital's or joint township hospital district's mission;
- To provide for any or all health care or medical services, whether inpatient or outpatient services, diagnostic treatment, care, or rehabilitation services, wellness services, services involving the prevention, detection, and control of disease, home health services or services provided at or through various facilities, education, training, and other necessary and related services for the health professions;
- The management or operation of any hospital facility;
- The management, operation, or participation in programs, projects, activities, and services useful to, connected with, supporting, or otherwise related to the health, wellness, and medical services and wellness programs discussed above; or
- Any other activities that further the county hospital or joint township hospital district or are necessary to perform its mission and functions and respond to change in the health care industry as determined by the board.¹³¹

Criminal records checks, municipal tax employees

(R.C. 109.572 and 718.131)

Under continuing law, a criminal records check is required for all state employees, prospective employees, and contractors with access to federal tax information.¹³² The act

¹³⁰ 29 U.S.C. 207(o).

¹³¹ See Ohio Constitution, Article VIII, Section 6, which restricts a county, city, town, or township from becoming a stockholder in any joint stock company, corporation, or association. A court could determine that this provision of the act is in violation of the Ohio Constitution.

¹³² R.C. 124.74, not in the act.

extends this requirement to all employees, prospective employees, and contractors of municipal corporations and regional councils of government with access to federal tax information. The Internal Revenue Service, through Publication 1075, requires criminal records checks pursuant to federal law, which requires state and local governments to preserve the confidentiality of such information.¹³³

Under the act, each municipal tax administrator (including a regional council of governments that administers municipal income taxes, such as the Regional Income Tax Agency) must request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to conduct a fingerprint-based criminal records check. As part of the check, BCII must obtain criminal records information from the FBI. The tax administrator and individual also must comply with any separate request from the FBI for a national criminal records check.

County recorder and Housing Trust Fund fees

(R.C. 317.32)

The act increases by \$3 the former base fee of \$14 and the former Housing Trust Fund Fee of \$14 (\$28 total for the first two pages under former law) that is collected by the county recorder for recording and indexing the first two pages of an instrument when using photocopying or any similar process. The resulting total fee is \$34 for the first two pages. The act retains the additional base fee of \$4 per subsequent page and the additional Housing Trust Fund fee of \$4 per subsequent page (\$8 total) in continuing law.

Low- and Moderate-Income Housing Trust Fund; Housing Trust Reserve Fund

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

The act removes the \$50 million cap on the amount of Housing Trust Fund fees collected by county recorders that are deposited each year into the Low- and Moderate-Income Housing Trust Fund. Under former law, amounts exceeding \$50 million were deposited into the Housing Trust Reserve Fund unless that fund had a balance of \$15 million; in the latter case, amounts exceeding \$50 million went to the state GRF. As a result, all Housing Trust Fund fees collected by county recorders will be deposited in the Low- and Moderate-Income Housing Trust Fund.

County recorder's technology fund

(R.C. 317.321)

The act allows for a county recorder to extend current approved funding requests for the county recorder's technology fund beyond those formerly allowed, and requires a board of county commissioners to approve these extensions, notwithstanding continuing statutory limitations. Under continuing law, a county recorder's funding request for technology fund purposes generally is limited to a five-year period. However, in 2013, H.B. 59 of the 130th

¹³³ 26 U.S.C. 6103(p)(4).

General Assembly enacted language that purported to allow, temporarily, for extensions of funding beyond the five-year period and a mandatory bump of up to \$3 to be directed to the County Recorder's Technology Fund from the county general fund. At the termination of those extensions, beginning January 2019, it appeared that the law would resort to discretionary county commissioner approval, rejection, or modification with a mandatory bump of up to \$3, for a period of up to five years, provided the total of such allocations could not exceed \$8. Essentially, H.B. 59 "grandfathered" any then-current allocation of recorder's fees to the technology fund for another five-year period (calendar years 2014-2018), notwithstanding whatever the approved proposal agreement provided for the term of the funding.

The act similarly extends any proposal that was approved by the board of county commissioners before, and is in effect on October 17, 2019, to continue to January 1, 2025, notwithstanding the number of years of funding specified in the approved proposal. The act also provides that a proposal submitted between October 1, 2019, and October 1, 2023, for the mandatory bump of up to \$3 be credited to the technology fund, in addition to the other funding allocation; if the total of those two amounts does not exceed \$8, the board must approve the proposal. Because the H.B. 59 date of January 1, 2019, has passed, in order to get the extension of the first amount beyond that already approved, the county recorder must have an approved funding allocation in effect on October 17, 2019, and then, despite whatever the number of years are provided in the original approval, the act would extend it for another five. If the recorder does not have such an approval in effect on that date, the recorder could possibly receive the up to \$3 bump if that does not cause the recorder's total allocation to the technology fund to exceed the \$8 limit.

Park districts

(R.C. 755.16)

The act adds a park district created under R.C. Chapter 1545 to the definition of "contracting subdivision" to allow for parks created under that chapter to work jointly with other contracting subdivisions to acquire property for, construct, operate, and maintain any parks, playgrounds, playfields, gymnasiums, public baths, swimming pools, indoor recreation centers, educational facilities, and community centers. Under continuing law, a "contracting subdivision" includes a municipal corporation, township, joint recreation district, township park district, county, school district, educational service center, or state institution of higher education.

Regional water and sewer districts

(R.C. 6119.06, 6119.09, and 6119.091)

Cooperative agreements and loans and grants

The act allows a regional water and sewer district to make loans and grants to and enter into cooperative agreements with any person (a natural person, firm, partnership, association, or corporation other than a political subdivision). Prior law allowed a regional water and sewer district to make loans and grants to and enter into cooperative agreements only with a political subdivision. Further, the act authorizes a district to provide loans and grants for the design of

water resource projects. The act retains the authority for a district to provide loans and grants for the acquisition and construction of water resource projects.

Rental discounts

The act expands a district's authority to offer discounted rentals or charges for water resource projects, which include drinking water and sewer services. Under former law, a district was limited in its ability to offer discounts to persons who were 65 or older and who were of low or moderate income or qualified for the homestead exemption. The act allows a district to offer discounts to a person of any age, provided the person is of low or moderate income or qualifies for the homestead exemption.

Concealed handgun license fees

(R.C. 311.42)

The act allows a sheriff, with the approval of the board of county commissioners, to spend any portion of the fees the county receives in the sheriff's concealed handgun license issuance expense fund for constructing, maintaining, or renovating a shooting range to be used by the sheriff or the sheriff's employees, and for equipment associated with the shooting range.

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.
- Would have specified that the provisions regarding the sale or distribution of cigarettes, other tobacco products, alternative nicotine products, or rolling papers do not apply to a person who was at least 18 on October 1, 2019 (VETOED).
- Prohibits a person who is 18 or older but younger than 21 from knowingly furnishing false information concerning that person's name, age, or other identification for the purpose of obtaining tobacco products.
- Modifies the definition of "tobacco product."
- Defines "vapor product," replaces "electronic cigarette" with "electronic smoking device," and includes both terms within the definition of "alternative nicotine products."
- 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.
- Specifies that a child may obtain tobacco products if accompanied by the child's parent, spouse, or legal guardian, each of whom must be 21 or older.
- Would have specified that a child may obtain tobacco products if accompanied by the child's parent, spouse, or legal guardian who was at least 18 on October 1, 2019 (VETOED).
- Specifies that a child who knowingly furnishes false information concerning that child's name, age, or other identification for the purpose of obtaining tobacco products may be subject to performing up to 20 hours of community service.

State agency regulatory rulemaking

- Requires state agencies to submit a report to the Joint Committee on Agency Rule Review (JCARR) providing details about the state agency's review of its principles of law or policy that are not stated in rule.
- Requires JCARR to make the reports available on its website.
- Removes the requirement that the review be completed at reasonable intervals.
- Not later than December 31, 2019, requires certain state agencies to produce a base inventory of rules containing regulatory restrictions.
- Until July 1, 2023, requires certain state agencies to eliminate two restrictions before enacting a new rule containing a restriction.

New community authorities

- Specifies that a facility can be located outside a new community district.
- Allows an organizational board of commissioners to add territory to a new community district with the permission of the person who owns or controls the real estate unless the developer objects.
- Allows an owner of real estate to agree to community development charges via a declaration of covenants.

Land conveyances

- Authorizes the conveyance of various parcels of state-owned land in Portage County under the jurisdiction of Kent State University.

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.

Harmonization confirmed

- Confirms the harmonization of R.C. 149.45 to clarify its relationship to R.C. 149.43.

Legal age to purchase cigarettes, other tobacco products

(R.C. 2927.02(B), (C), and (E))

Generally speaking, the act 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 act 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 act 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.

The Governor vetoed a provision that would have specified that the provisions regarding the sale or distribution of cigarettes, other tobacco products, alternative nicotine products, or rolling papers do not apply to a person who was at least 18 on October 1, 2019.

False information to obtain tobacco products

(R.C. 2927.024)

The act prohibits a person who is 18 or older but younger than 21 from knowingly furnishing false information concerning that person's name, age, or other identification for the purpose of obtaining tobacco products. A person who violates this prohibition is guilty of furnishing false information to obtain tobacco products, a fourth degree misdemeanor. If the offender previously has been convicted of or pleaded guilty to a violation, furnishing false information to obtain tobacco products is a third degree misdemeanor.

“Tobacco product” definition

(R.C. 2927.02(A)(7))

The act 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 an electronic smoking device and 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 under federal law.

“Vapor product” and “electronic smoking device” as “alternative nicotine product”

(R.C. 2927.02(A)(2), (5), and (8))

The act 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 act 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 under federal law.

Vending machine notice

(R.C. 2927.02(C))

Under the act, 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 and states 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.”

Child possessing, using, purchasing, receiving tobacco products

(R.C. 2151.87)

The act modifies continuing law by specifying that a child may use, consume, or possess tobacco products, purchase or attempt to purchase tobacco products, order, pay for, or share the cost of tobacco products, or accept or receive tobacco products if the child is accompanied by the child’s parent, spouse, or legal guardian, each of whom must be 21 or older. (The Governor vetoed a stipulation that this provision would not apply to a child if the child’s parent, spouse, or legal guardian was at least 18 on October 1, 2019.)

The act removes the various penalties a child can incur for using, consuming, or possessing tobacco products, purchasing or attempting to purchase tobacco product, paying for or sharing the cost of tobacco products, or accepting or receiving tobacco products, but maintains the prohibition against knowingly furnishing false information concerning that child’s name, age, or other identification for the purpose of obtaining tobacco products. A violation of that prohibition may result in the child performing not more than 20 hours of community service. The act also removes the exception that allows a child to accept, receive, use, consume, or possess cigarettes, other tobacco products, alternative nicotine products, or rolling papers while participating in a research protocol.

Exceptions to prohibitions; forfeiture; affirmative defenses

(R.C. 2927.02(D), (E), and (G) and 2927.022)

The act provides that the continuing exceptions to the prohibitions regarding giving, selling, or otherwise distributing tobacco products apply when the person receiving the cigarettes is under 21.

Additionally, it provides that the continuing 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 the law.

Finally, continuing law provides certain affirmative defenses to a charge of giving, selling, or otherwise distributing tobacco products to an underage person. The act adjusts the language describing these affirmative defenses to reflect the age increase to 21.

State agency regulatory rulemaking

Agency review of principles of law or policy

(R.C. 121.93)

In an effort to identify principles of law or policies that should be set forth formally as administrative rules, continuing law requires state agencies to review their operations periodically, but at least once during a Governor's term. The act removes a stipulation that the reviews be conducted "at reasonable intervals," so state agencies must conduct at least one review during a Governor's term under the act. The act also requires a state agency to send a report to the Joint Committee on Agency Rule Review (JCARR) about the agency's review with details about which principles or policies were identified. JCARR must make the reports available on its website.

Inventory of regulatory restrictions

(R.C. 121.95)

The act requires certain state agencies to review their existing rules in order to prepare a base inventory of regulatory restrictions by December 31, 2019. In the base inventory, the agency must provide all of the following information concerning each regulatory restriction:

- A description of the regulatory restriction;
- The rule in which the restriction appears;
- The statute under which the restriction was adopted;
- Whether state or federal law expressly and specifically requires the agency to adopt the regulatory restriction or the agency adopted it under the agency's general authority;
- Whether removing the restriction would require a change to state or federal law, provided that removing a regulatory restriction adopted under a law granting the agency general authority is presumed not to require a change to state or federal law;
- Any other information JCARR considers necessary.

After completing the inventory, the agency must post it on its website and send a copy to JCARR, which must review the inventory and send it to the Speaker of the House and the President of the Senate.

In addition, through June 30, 2023, the act prohibits an agency from adopting any new regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions. The agency cannot merge two existing regulatory restrictions into a single restriction in order to accomplish this.

For these purposes, a “state agency” includes an administrative department created under R.C. 121.02, an administrative department head appointed under R.C. 121.03 (essentially all cabinet-level departments), a state agency organized under an administrative department or administrative department head, the Department of Education, the State Lottery Commission, the Ohio Casino Control Commission, the State Racing Commission, and the Public Utilities Commission of Ohio.

Rules adopted by an otherwise independent official or entity organized under an agency are attributed to the parent agency for the purposes of the provisions. This means that a parent agency must include rules containing regulatory restrictions adopted by those otherwise independent officials or entities as part of its total number of regulatory restrictions. A “regulatory restriction” requires or prohibits an action. Rules that include the words “shall,” “must,” “require,” “shall not,” “may not,” and “prohibit” are considered to contain regulatory restrictions.

However, the following types of rules or regulatory restrictions are not required to be included in an agency’s inventory of regulatory restrictions:

- An internal management rule;
- An emergency rule;
- A rule that state or federal law requires the agency to adopt verbatim;
- A regulatory restriction contained in materials or documents incorporated by reference into a rule;
- Access rules for confidential personal information;
- A rule concerning instant lottery games;
- Any other rule that is not subject to review by JCARR.

New community authorities

(R.C. 349.01, 349.03, and 349.07)

Continuing law allows a developer to establish a “new community district” by petitioning a board of county commissioners or legislative authority of a municipal corporation.¹³⁴ The board or legislative authority may approve the petition if it finds that creating the district “will be conducive to the public health, safety, convenience, and welfare” and is intended to result in development of facilities for industrial, commercial, residential, cultural, educational, and recreational activities. If the petition is approved, a new community authority (NCA) is established to develop land in the district, provide services in the district, and

¹³⁴ The developer must petition the organizational board of commissioners, which is the board of county commissioners or the legislative authority of a municipal corporation depending where the district is located. See R.C. 349.01(F).

raise revenue by levying community “charges” in the district. The act modifies the law regarding NCAs in three ways.

First, the act specifies that a facility can be located outside of the district. Second, it allows a county or municipal corporation to add territory to a district if the person who owns or controls¹³⁵ the property within the territory agrees and the developer does not object. Finally, the act specifies that a real estate owner can agree to pay a community development charge via a declaration of covenants, a legal document that contains guidelines for a planned community. Accordingly, the act modifies the definition of community development charge to accommodate changes agreed to via a declaration of covenants.¹³⁶

Land conveyances

(Sections 753.10, 753.20, 753.30, 753.40, and 753.50)

The act authorizes the conveyance of various parcels of state-owned land in Portage County under the jurisdiction of Kent State University. The grantee and consideration for each conveyance will be determined by the University’s Board of Trustees. The proceeds must be paid to the University and used for purposes to be determined by the Board. The Auditor of State, with help from the Attorney General, must prepare the deeds, which must state the consideration and be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented to the Auditor of State for recording, and delivered to the grantees. The grantees must present the deeds for recording in the Office of the Portage County Recorder and must pay all costs of the conveyances including the county recording fee.

Certain telephone numbers not a public record

(R.C. 149.43(A)(1)(mm))

The act 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.

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.¹³⁷ In late 2018,

¹³⁵ Through leases of at least 40 years, options, or contracts to purchase.

¹³⁶ The change to R.C. 349.03(A) is corrective. The language the act removes related to an acreage requirement that H.B. 500 (132nd General Assembly) eliminated.

¹³⁷ 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

the 132nd General Assembly amended R.C. 149.45 (redaction of information) in three acts, H.B. 341, S.B. 214, and S.B. 229. The act 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).

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 act.) Confirming the harmonization of R.C. 149.45 in the act helps to clarify this relationship.

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.”

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 act 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 act 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 act includes an expiration clause stating that an item that composes the whole or part of an uncodified section contained in the act (other than an amending, enacting, or repealing clause) has no effect after June 30, 2021, unless its context clearly indicates otherwise.

HISTORY

Action	Date
Introduced	03-25-19
Reported, H. Finance	05-09-19
Passed House (85-9)	05-09-19
Reported, S. Finance	06-20-19
Passed Senate (33-0)	06-20-19
House refused to concur in Senate amendments (1-90)	06-20-19
Senate requested conference committee	06-20-19
House acceded to request for conference committee	06-20-19
House agreed to conference report (75-17)	07-17-19
Senate agreed to conference report (29-1)	07-17-19