



**Am. Sub. H.B. 405**  
124th General Assembly  
(As Passed by the General Assembly)  
(excluding appropriations and similar provisions)

**Reps. Peterson, Schmidt, Clancy, Willamowski, Calvert, Evans**

**Sen. Carnes**

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**ACT SUMMARY**

**MR/DD PROVISIONS**

- Revises the eligibility requirements and disqualifications for serving on a county board of mental retardation and developmental disabilities (county MR/DD board).
- Increases the number of consecutive terms a county MR/DD member may serve to three and the amount of time a member must wait to be re-appointed after serving three, full, consecutive terms to two years.
- Requires the Joint Council on Mental Retardation and Developmental Disabilities to study issues relating to the tax equity program and to prepare a report for the House Speaker, Senate President, and Governor not later than February 1, 2002.
- Eliminates the requirement that the Director of the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) have the consent of a county MR/DD board to make a grant from the Community Mental Retardation and Developmental Disabilities Trust Fund to a service provider and permits the Director to make a grant to persons with MR/DD who are to receive the services.
- Authorizes the ODMR/DD Director to make grants from the Community Mental Retardation and Developmental Disabilities Trust Fund based on allocations to county MR/DD boards.

- Authorizes the ODMR/DD Director to use money available in the Community Mental Retardation and Developmental Disabilities Trust Fund for the same purposes that money in the State MR/DD Risk Fund and the State Insurance Against MR/DD Risk Fund may be used.
- Requires county MR/DD boards' three-calendar year plan regarding Medicaid-funded services to individuals with MR/DD have a fourth component that specifies the number of individuals to be provided, during the first year that the plan is in effect, ODMR/DD-administered home and community-based services pursuant to priority requirements for county MR/DD board waiting lists and the types of such services the individuals are to receive.
- Requires that county MR/DD boards submit the last of the four components of their plans by July 1, 2002, rather than November 1, 2001.
- Provides that a county MR/DD board has Medicaid local administrative authority automatically rather than on the condition that its plan be approved, but authorizes ODMR/DD to terminate all or part of the board's authority if its plan is disapproved.
- Requires that the amount ODMR/DD assigns to a county MR/DD board of the nonfederal share of Medicaid expenditures for certain habilitation center services provided by a habilitation center with which ODMR/DD had a contract in fiscal year 2001 be no less than the amount ODMR/DD paid the center for each individual who received the services pursuant to the contract and, if the contract was for less than the entire fiscal year, no less than the amount ODMR/DD would have paid the center for each individual who received the services pursuant to the contract had the contract been for the entire fiscal year.
- Revises the priority requirements for county MR/DD board waiting lists.
- Requires that ODMR/DD develop a plan to implement the transition, due to the upcoming termination of the Residential Facility Waiver, of individuals who receive services under that waiver to other ODMR/DD-administered home and community-based services.
- Provides that, until a date that ODMR/DD is to specify in its plan to implement the transition of the Residential Facility Waiver termination, the number of ICF/MR beds eligible for Medicaid payment is not to be

higher than the number of such beds eligible for such payment on the effective date of this provision of the act unless the Ohio Department of Job and Family Services (ODJFS) issues a waiver for emergency cases.

- Requires each county MR/DD board that has a contract with one or more private or government entities to provide services under the Residential Facility Waiver to develop a plan jointly with the providers for the implementation of the Residential Facility Waiver transition concerning individuals who reside in a residential facility with a licensed capacity of five or fewer beds.
- Permits the ODJFS Director, on the recommendation of the ODMR/DD Director, to seek a Medicaid waiver under which home and community-based services are provided in the form of family support services programs established by county MR/DD boards.
- Provides that adult services include community and supported employment services.
- Requires the entity responsible for the habilitation management included in adult day habilitation services and the program management included in residential services and supported living to monitor for unusual incidents and misappropriation of funds involving an individual under the care of staff providing the services.
- Requires that a county MR/DD board provide service and support administration to each individual at least age three who is eligible for and requests service and support administration and to each individual receiving ODMR/DD-administered home and community-based services and permits a board to provide, in accordance with the service coordination requirements of federal regulations governing the early intervention program for infants and toddlers with disabilities, service and support administration to an individual under age three eligible for early intervention services under the federal regulations.
- Requires that the individual or private entity responsible for supervising the work of investigative agents report to a county MR/DD board superintendent regarding the agents.
- Revises the conditions under which a county MR/DD board may enter into a direct services contract for family support or supported living

services under which an individual, agency, or other entity will employ a professional or service employee who is also employed by the county MR/DD board and provides that the conditions also apply if the individual to be employed is a county MR/DD board management employee.

- Requires, to a certain extent, a county MR/DD board and provider of Medicaid-funded services to make a service contract entered into before June 6, 2001, comply with procedural requirements of a state law, which went into effect on that date, governing service contracts.
- Makes applicable to county MR/DD boards provisions of continuing law regarding complaints to ODMR/DD involving any of the programs, services, policies, or administrative practices of ODMR/DD or an entity under contract with ODMR/DD.

#### **ECONOMIC DEVELOPMENT AND RELATED TAX PROVISIONS**

- Establishes the Capital Access Loan Program in the Department of Development to assist participating financial institutions in making capital access loans to eligible businesses that face barriers in accessing working capital and obtaining fixed asset financing.
- Permits a board of county commissioners to enter an agreement with a political subdivision or taxing district stipulating that the county may receive certain moneys in the county treasury that otherwise are due the political subdivision or taxing district, as a credit against amounts owed to the county by the political subdivision or taxing district.
- Establishes the Rural Development Initiative Fund in the state treasury and permits the Director of Development to make grants from the Fund to eligible applicants who also receive loans from the Rural Industrial Park Loan Program.
- Extends the sunset date of the Rural Industrial Park Loan Program to July 1, 2007.
- Requires the Governor's Office of Appalachia to develop guidelines for the submission and approval of plans developed by specified county committees for the use of TANF block grant funds under the Appalachian Technology and Workforce Development program, and

modifies aspects of the program's law relative to eligible activities for which TANF funds may be used, the submission and review of county plans pertaining to that use, and the cut-off date of the funding of services that counties must acknowledge.

- Enables counties, townships, and municipal corporations to establish a new form of tax increment financing (TIF), by authorizing the creation of an "incentive district."
- Permits the establishment of an incentive district only if the district meets certain criteria for economic distress or substandard physical infrastructure.
- Provides that service payments made in lieu of taxes in an incentive district be used to finance public improvements that benefit or serve parcels in the district, instead of financing only improvements directly benefiting the single parcel for which payment is made as under ongoing TIF law.
- Requires school board approval, as under ongoing TIF law, if the tax exemption is for more than ten years or if the percentage of taxes exempted is more than 75%.
- Requires additional information to be included in the annual report that all local governmental authorities must submit to the Director of Development when they establish any form of TIF.
- Authorizes townships to spend payments in lieu of taxes received under a traditional TIF on infrastructure not originally designated.
- Allows nonrefundable credits against the corporate franchise tax or personal income tax for job retention projects.
- Exempts certain new, high-technology corporations from the net worth method of calculating the corporate franchise tax.

#### **OTHER TAX PROVISIONS**

- Requires sales and use taxes on certain leases to be paid in a lump sum at the beginning of the lease, rather than in installments.

- Ensures that dealers in intangibles are subject to tax measured by the value of their capital even if they are owned by or affiliated with a financial institution or insurance company.
- Directs to the state GRF 100% of the revenue from the taxes paid by dealers owned by or affiliated with a financial institution or insurance company.
- Grants a corporation franchise tax credit to any financial institution owning a dealer in intangibles that commits to paying the dealers in intangibles' tax.
- Modifies the manner in which a dealer in intangibles' taxable capital is apportioned for the purposes of the dealers in intangibles' tax.
- Makes permanent the ability of certain financial institutions engaged in interstate branch banking to apportion their taxable base (under the corporation franchise tax) on the basis of deposits only, and reduces the share of such an institution's total deposits that must be held in Ohio in order for the institution to use the deposits-only apportionment.
- Reduces the minimum percentage at which the Tax Commissioner can set the discount for cigarette dealers buying tax stamps to 1.8% of the stamps' face value (from 3.6%).
- Exempts real property owned by an Edison center from property taxes, even if the center holds the property in anticipation of leasing it or selling it rather than using it directly for its own activities.
- Exempts from taxation tangible personal property at Camp Perry.
- Establishes an 11-member sales tax holiday study committee that must report to the General Assembly by March 1, 2002, unless Congress enacts national sales tax relief by that date.

### **OTHER PROVISIONS**

- Revises the requirement for actuarial reviews of bills that contain mandated insurance benefits by providing for such reviews only when requested by the presiding officer of the house of the General Assembly that is considering the bill.

- Provides that the compensation and continuation of health care benefits provisions applicable to certain permanent public employees on specified military leave also apply to those Ohio National Guard member employees who are ordered to perform duty by the Governor under specified circumstances.
- Eliminates the requirement that 50 copies of maps of Ohio showing congressional, senatorial, and judicial districts of the state be sent to each member of the General Assembly.
- Authorizes the Director of Budget and Management to transfer to the General Revenue Fund in each of fiscal years 2002 and 2003 up to \$120 million of tobacco master settlement agreement revenue that would otherwise be distributed to the Tobacco Use Prevention and Cessation Trust Fund, and extends the schedule for allocating a portion of master settlement agreement revenue to the Prevention and Cessation Trust Fund to provide that the amounts diverted to the GRF are to be credited to the Trust Fund from 2013 and 2014 receipts.
- Authorizes an additional \$20 million transfer of tobacco master settlement revenue to the GRF if the next tobacco revenue budget bill provides a method to reduce certain funds' allotments of that revenue by the transferred amount.
- Limits the liability of a county recorder to the recorder's bond for any act or omission of the recorder for which the recorder may be liable when performing the recorder's duties.
- Allows money in the Corporate and Uniform Commercial Code Filing Fund to be used for operating expenses of the Secretary of State's Division of Elections.
- Increases the wholesaler's markup under the Cigarette Sales Practices Law to 2.5% (from 2%) of the invoice cost.
- Requires the Department of Education in fiscal years 2002 and 2003 to pay a subsidy to certain community schools in which at least half of the total number of enrolled students are severe behavior handicapped students.

- Specifies that educational service centers may acquire property through lease-purchase agreements.
- Exempts all employees of the School Facilities Commission from collective bargaining.
- Specifies control over Ohio Government Telecommunications and associated funds.
- Requires the Director of the State Lottery Commission to enter into multistate lottery agreements if the Governor so directs.
- Authorizes the Treasurer of State, in consultation with the State Lottery Commission and in accordance with Commission's rules governing statewide joint lottery games, to invest moneys in the Deferred Prizes Trust Fund that represent the proceeds derived from those games.
- Requires the transfer to the State Lottery Fund of those revenues included in the State Lottery Gross Revenue Fund that are collected from lottery sales agents for remittance to insurers under contract to provide sales agent bonding services.
- Establishes an eight-member committee to study the impact of gambling, and requires it to report to the General Assembly by June 30, 2002.
- Adds an additional member of the House of Representatives and an additional member of the Senate to the Nursing Facility Reimbursement Study Council.
- Authorizes an owner of a nursing home for which a certificate of need was granted to recategorize rest home beds as intermediate care facility beds to seek Medicare certification of the beds.
- Adjusts amounts credited to the local government funds.
- Repeals a requirement that the staff of the Legislative Service Commission conduct a study of federal and state mandates on the use of road and bridge funding available to local governments.
- Extends the reporting deadline for the Ohio Plan Study Committee to March 15, 2002 (from December 31, 2001).

- Encourages the Administrator of Workers' Compensation to allow employers a one-time 75% premium reduction during the next premium period.

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## CONTENT AND OPERATION

### MR/DD PROVISIONS

#### Membership of county MR/DD boards

(R.C. 5126.02 and 5126.021)

#### Qualifications for membership

(R.C. 5126.02)

Each county has a county board of mental retardation and developmental disabilities (county MR/DD board) consisting of seven members. Five members are appointed by the board of county commissioners. The other two are appointed by the county probate judge.

Prior law required that at least two of the members appointed by the county commissioners be relatives of persons *receiving* services provided by the county MR/DD board. Whenever possible, one of these had to be a relative of a person receiving adult services and the other a relative of a person receiving services for pre-school or school-age children. The act requires instead that, whenever possible, these members be relatives of a person eligible for (but not necessarily receiving) such services. The act also provides that pre-school and school-age children services are not the only services that the relative of the second member must be, whenever possible, eligible for. Instead, the relative may be one who is eligible for early intervention services.

Regarding the two members appointed by the county probate judge, prior law required that at least one be a relative of a person eligible for services in a public or private residential facility subject to regulation or licensure by the Director of Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD). The act requires instead that at least one be a relative of a person eligible for residential services or supported living. Whereas prior law required that these members appointed by the county commissioners or probate judge be a relative by blood or marriage, the act provides that a member may be a spouse, parent, parent-in-law, sibling, sibling-in-law, child, child-in-law, grandparent, aunt, or uncle of the person eligible for the specified services.

### **Disqualifications**

(R.C. 5126.021)

Certain individuals are ineligible to serve as county MR/DD board members. Among those ineligible are elected public officials, other than precinct, ward, and district committee members, presidential electors, and delegates to a national convention. The act permits township trustees and township clerks to serve.

### **Terms of membership**

(R.C. 5126.02)

Members are appointed to four-year terms. Prior law provided that a member who had served during each of two consecutive terms could not be re-appointed for a subsequent term until one year after ceasing to be a member, except that a member who had served for six years or less within two consecutive terms could be re-appointed for a subsequent term. The act increases the number of consecutive terms a member may serve to three and the amount of time a member must wait to be re-appointed after serving three, full, consecutive terms to two years. A member who has served for ten years or less within three consecutive terms may be re-appointed to a subsequent term.

Members' terms commence on the date of the stated annual organizational meeting. The act provides that this is the stated annual organizational meeting in January.

### **Joint MR/DD Council to study tax equity issues**

(Sections 7 and 8)

The Joint Council on Mental Retardation and Developmental Disabilities consists of three members of the House of Representatives, three members of the Senate, and the ODMR/DD Director. The Council's duties include appointing the original members of the citizen's advisory council at any institution under the control of ODMR/DD that is created after November 15, 1981, conducting reviews and making recommendations to the Director with respect to any disputes between ODMR/DD and entities that have entered into contracts with ODMR/DD for the provision of protective services to individuals with MR/DD, and advocating to the General Assembly, on behalf of the Director, legislative issues about which the Council has provided advice to the Director.

The act requires that the Council study issues relating to the tax equity program. Under the tax equity program, ODMR/DD makes an annual payment to

county MR/DD boards that raise less for county MR/DD board services from county levies than the state average. The Council must:

(1) Review documents submitted by ODMR/DD, the Ohio Superintendents of County Boards of Mental Retardation and Developmental Disabilities, Ohio Association of County Boards of Mental Retardation and Developmental Disabilities, and other entities to the Council regarding the issue of a property tax equalization program for adults only as provided by the biennial budget for fiscal years 2002 and 2003;

(2) Review the concept of Medicaid comparability of care, adult services expenditures within county MR/DD boards, the concept of tax capacity and targeting property taxes to adult services, and the necessity of reducing the disparity in capability of county MR/DD boards to provide adult services;

(3) Establish a reasonable methodology to provide tax equalization for adult services for county MR/DD boards that are below the average on property tax yield.

The Council is required to prepare a report on its responsibilities under the act. The report must include the Council's findings and recommended actions. The report is to be submitted to the House Speaker, Senate President, and Governor not later than February 1, 2002.

In general, ODMR/DD must make payments under the tax equity program on or before September 30. The act requires ODMR/DD to make the payments for fiscal year 2002 after the General Assembly revises the law governing the program following the Council's submission of the report, rather than on or before September 30, 2001.

### **Community Mental Retardation and Developmental Disabilities Trust Fund**

(R.C. 5126.19)

With money in the Community Mental Retardation and Developmental Disabilities Trust Fund, the ODMR/DD Director is permitted to grant temporary funding for certain purposes, including supported living, family support services, and behavioral or short-term interventions for persons with MR/DD that assist them in remaining in the community by preventing institutionalization. The Director may grant the funding to a county MR/DD board or individuals and private entities that provide the services for which the funding is granted. The act eliminates a requirement that the Director have the consent of a county MR/DD board to grant the funding to a service provider and permits the Director to grant the funding to persons with MR/DD who are to receive the services. The act also

provides for the Director to make grants based on allocations to county MR/DD boards.

If the fund contains more than \$10 million on the first day of July, the Director must use \$1 million for payments to county MR/DD boards based on average daily membership in certain programs, \$1 million for the tax equity program, and \$2 million for supported living. Prior law required that the funds be distributed to a county MR/DD board for such purposes in an amount equal to the same percentage of the total amount distributed for the services the board received in the immediately preceding state fiscal year. The act requires that the funds be allocated, rather than distributed, to the county MR/DD board in an amount equal to the same percentage of the total amount allocated, rather than distributed, to the board in the immediately preceding state fiscal year.

The act authorizes the Director to use money available in the fund for additional purposes. The Director may use the money for the same purposes that money in the State MR/DD Risk Fund and the State Insurance Against MR/DD Risk Fund may be used. Money in those funds may be used, in accordance with rules ODMR/DD is required to adopt not later than January 1, 2002, to pay for extraordinary costs, including extraordinary costs for services to individuals with MR/DD, and ensure the availability of adequate funds in the event a county property tax levy for services to individuals with MR/DD fails.

### **County MR/DD board three-year plan**

(R.C. 5126.054; Section 6; ancillary section: 5111.872)

The 2002-2003 biennial budget act, Am. Sub. H.B. 94, enacted a law requiring each county MR/DD board to develop a three-calendar year plan regarding Medicaid-funded services to individuals with MR/DD. The services are habilitation center services, case management services, and ODMR/DD-administered home and community-based services.<sup>1</sup>

H.B. 94 provided for the plan to have three components: an assessment component, a component regarding direct care staff, and a component that provides for the implementation of Medicaid-funded services for individuals who begin to receive the services on or after the date the plan is approved by ODMR/DD.

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<sup>1</sup> *Habilitation center services are services provided by ODMR/DD-certified habilitation centers. These services are also known as the community alternative funding system (CAFS). Case management services refer to such services that the State Medicaid plan requires be provided to individuals with MR/DD.*

The act provides for the plan to have a fourth component, called the preliminary implementation component. The component must specify the number of individuals to be provided, during the first year that the plan is in effect, ODMR/DD-administered home and community-based services pursuant to priority requirements for county MR/DD board waiting lists and the types of such services the individuals are to receive.

The act requires that county MR/DD boards submit the preliminary implementation component to ODMR/DD not later than January 31, 2002. The act also postpones the date by which county MR/DD boards must submit the component that provides for the implementation of Medicaid-funded services. A county MR/DD board must submit that component July 1, 2002, rather than November 1, 2001.<sup>2</sup> In addition, the act requires that the component include assurances adequate to ODMR/DD that the county MR/DD board will provide the types of home and community-based services specified in the preliminary implementation component to at least the number of individuals specified in that component.

In the direct care staff component, a county MR/DD board must provide for the recruitment, training, and retention of existing and new direct care staff necessary to implement services included in individualized service plans. Prior law provided that the services included habilitation center services. The act provides instead that the services include habilitation services. Habilitation is the process by which the staff of a facility or agency assists an individual with MR/DD in acquiring and maintaining those life skills that enable the individual to cope more effectively with the demands of the individual's own person and environment, and in raising the level of the individual's personal, physical, mental, social, and vocational efficiency. Habilitation includes programs of formal, structured education and training.

#### **Medicaid local administrative authority**

(R.C. 5123.046, 5126.055, and 5126.056; ancillary sections: 5123.049, 5123.0411, 5126.035, 5126.046, 5126.054, 5126.057, 5126.18, and 5705.44)

ODMR/DD was required by prior law to review each three-calendar year county MR/DD board plan and, in consultation with the Ohio Department of Job and Family Services (ODJFS) and Office of Budget and Management (OBM),

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<sup>2</sup> *The act prohibits ODMR/DD from taking action against a county MR/DD board on the basis that the board submitted the component that provides for the implementation of Medicaid-funded services after November 1, 2001. ODMR/DD is to take action against a county MR/DD board that fails to submit that component by July 1, 2002.*

approve each plan that includes all the required information and conditions. The act requires instead that ODMR/DD review each component and, in consultation with ODJFS and OBM, approve each component that includes all the required information and conditions. If ODMR/DD approves all four components, the plan is approved, otherwise, it is disapproved.

Prior law provided that a county MR/DD board with an approved plan had Medicaid local administrative authority regarding Medicaid-funded services for individuals with MR/DD.<sup>3</sup> The act provides instead that a county MR/DD board has the Medicaid local administrative authority automatically. Continuing law provides, however, that a county MR/DD board's authority, or part of the authority, may be terminated under certain circumstances.

All or part of a county MR/DD board's Medicaid local administrative authority may be terminated if it fails to correct a deficiency in its implementation of the authority, or submit an acceptable plan of correction regarding its implementation, within a required amount of time. The act specifies the following are additional circumstances under which the authority may be terminated:

(1) Failure to submit all the components of its three-year plan to ODMR/DD within the required time;

(2) ODMR/DD disapproval of the three-year plan;<sup>4</sup>

(3) Failure to update and renew its three-year plan in accordance with a schedule ODMR/DD develops;

(4) Failure to implement its initial or renewed three-year plan approved by ODMR/DD.

One of the actions ODMR/DD may take if it terminates all or part of a county MR/DD board's Medicaid local administrative authority is to appoint an administrative receiver to administer the services for which the county MR/DD

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<sup>3</sup> A county MR/DD board with Medicaid local administrative authority is required to perform certain functions regarding Medicaid-funded services for individuals with MR/DD, including performing assessments and evaluations, monitoring the services, and, under certain circumstances, paying the nonfederal share for the services.

<sup>4</sup> Prior law provided that if a county MR/DD board failed to submit all of the plan's components within the required time or ODMR/DD disapproved the plan, ODMR/DD could withhold all or part of any funds ODMR/DD would otherwise allocate to the county MR/DD board. The act provides for ODMR/DD to terminate all or part of the county MR/DD board's Medicaid local administrative authority instead.

board's authority is terminated. To the extent necessary for ODMR/DD to appoint an administrative receiver, ODMR/DD is permitted to utilize certain individuals. The act eliminates a restriction against utilizing individuals who are employed by or affiliated in any manner with a government entity that provides Medicaid-funded services to individuals with MR/DD pursuant to a contract with a county MR/DD board but maintains a restriction against utilizing an individual employed by or affiliated with a private entity that provides such services pursuant to such a contract.

Another action ODMR/DD may take if it terminates all or part of a county MR/DD board's Medicaid local administrative authority is to contract with a contracting authority that the board recommends. The contracting authority is to administer the services for which the county MR/DD board's authority is terminated. The act provides that if ODMR/DD rejects a county MR/DD board's recommendation regarding a contracting authority, the board is permitted to appeal the rejection, using the complaint process available under continuing law to individuals and private entities who have a complaint with ODMR/DD involving any of the programs, services, policies, or administrative practices of ODMR/DD or any of the entities under contract with ODMR/DD.

**Assignment of nonfederal share of expenditures for habilitation center services**

(R.C. 5123.048)

ODMR/DD is required to assign to a county MR/DD board the nonfederal share of Medicaid expenditures for habilitation center services that a private habilitation center provides if (1) the individuals who receive the services also received the services from the center pursuant to a contract the center had with ODMR/DD in state fiscal year 2001, (2) the county MR/DD board determines that the individuals who receive the services are eligible for county MR/DD board services, and (3) the county MR/DD board contracts with the center to provide the services after the center's contract with ODMR/DD ends.

Prior law required that the amount ODMR/DD assigns to a county MR/DD board be adequate to ensure that the habilitation center services the individuals received were comparable in scope to the services they received when the habilitation center was under contract with ODMR/DD. The amount assigned could not be less than the amount ODMR/DD paid the center for the individuals in fiscal year 2001. The act provides that the amount assigned may not be less than the amount ODMR/DD paid the center for each individual who received the services pursuant to the contract ODMR/DD had with the center in fiscal year 2001. If the contract was for less than the entire fiscal year, the amount assigned may not be less than the amount ODMR/DD would have paid the center for each

individual who received the services pursuant to the contract had the contract been for the entire fiscal year.

**Service waiting list priorities**

(R.C. 5126.042)

If a county MR/DD board determines that available resources are not sufficient to meet the needs of all eligible individuals who request services available through the board, the board is required to establish waiting lists. The county MR/DD board is required, with an exception and certain limitations, to give certain categories of individuals priority on a waiting list.<sup>5</sup> Whereas prior law required the county MR/DD board to give priority in accordance with the board's ODMR/DD-approved, three-year plan, the act requires that the board give priority in accordance with the ODMR/DD-approved, assessment component of the plan.

One of the categories of individuals given priority are individuals eligible for ODMR/DD-administered home and community-based services who meet any of certain specified conditions. One of the conditions is that the individual be younger than 22, and have one or more specific service needs that are unusual in scope or intensity.<sup>6</sup> The act eliminates from this condition a prohibition that the individual not receive residential services or supported living and a requirement that the individual reside in his or her family's home. Another condition is that the individual be at least 22 and have, as determined by the county MR/DD board, intensive needs for certain service on an in-home or out-of-home basis. The act alters this condition by requiring the individual to have intensive needs for home and community-based services rather than residential services and adding a prohibition against the individual receiving residential services or supported living.

The act eliminates a restriction against giving priority to an individual who satisfies the conditions for priority in the category discussed above over an

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<sup>5</sup> *The exception is that no individual may receive such priority over an individual placed on the waiting list on an emergency status.*

<sup>6</sup> *The specific service needs are (1) severe behavior problems for which a behavior support plan is needed, (2) an emotional disorder for which anti-psychotic medication is needed, (3) a medical condition that leaves the individual dependent on life-support medical technology, (4) a condition affecting multiple body systems for which a combination of specialized medical, psychological, educational, or habilitation services are needed, and (5) a condition the county MR/DD board determines to be comparable in severity to any of the preceding conditions and places the individual at significant risk of institutionalization.*

individual given priority under a different category. This other category is for individuals eligible for ODMR/DD-administered home and community-based services who (1) are at least 22 and receive supported living or family support services or (2) reside in their own home or the home of their family, will continue to reside in that home after enrollment in the services, and receive adult services from the county MR/DD board. If two or more individuals on a waiting list for ODMR/DD-administered home and community-based services have priority for the services pursuant to the first-discussed or second-discussed priority category, a county MR/DD board is permitted to use, until December 31, 2003, criteria specified in ODMR/DD rules in determining the order in which the individuals will be offered the services. Otherwise, the county MR/DD board must offer the services to such individuals in the order they are placed on the waiting list. ODMR/DD is required to adopt the rules no later than December 31, 2001.<sup>7</sup> The rules cease to have effect December 31, 2003.

The act also alters a limitation on the first-discussed priority category. Whereas prior law provided that no more than 200 individuals could receive priority during state fiscal years 2002 and 2003 pursuant to that category, the act provides that no more than 400 individuals may receive such priority during the 2002 and 2003 biennium.

### **Residential Facility Waiver transition**

(Sections 4 and 5)

The act requires that ODMR/DD develop a plan to implement the transition, due to the upcoming termination of the Residential Facility Waiver, of individuals who receive services under that waiver to other ODMR/DD-administered home and community-based services. ODMR/DD must develop the plan consistent with the Medicaid redesign plan that ODJFS submitted to the Centers for Medicaid and Medicare Services to comply with an audit conducted by the Centers.<sup>8</sup> The plan must identify how the needs of individuals to be transferred are to be met, including ways that the waiver's service capacity can be reconfigured on a statewide, regional, or county specific basis. ODMR/DD must complete the plan in time for the Executive Branch Committee on Medicaid

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<sup>7</sup> *The rules must also specify conditions under which a county MR/DD board, when there is no individual with priority for the services pursuant to the first-discussed or second-discussed category available and appropriate for the services, may offer the services to an individual on a waiting list for the services but not given such priority.*

<sup>8</sup> *The Centers for Medicaid and Medicare Services is the federal office, formerly known as the Health Care Financing Administration, that administers Medicare and Medicaid.*

Redesign and Expansion MR/DD Services to review the plan and submit recommended changes to ODMR/DD by May 31, 2002. The Committee is required to finish its review and submit suggested changes to ODMR/DD not later than that date. Not later than 60 days after the Committee submits suggested changes, ODMR/DD and ODJFS must establish protocols for county MR/DD boards and private and government entities under contract with a board to provide services under the waiver to follow in implementing the plan.

Until a date that ODMR/DD is to specify in its plan to implement the transition of the Residential Facility Waiver termination, the number of ICF/MR beds eligible for Medicaid payment is not to be higher than the number of such beds eligible for such payment on the effective date of this provision of the act. The date ODMR/DD specifies may not be later than September 1, 2002. Even before that date, however, ODJFS is permitted to issue one or more waivers of the moratorium on additional ICF/MR beds eligible for Medicaid payments in the event that an emergency, as determined by ODJFS, exists. In determining whether to issue a waiver, ODJFS is required to consider the recommendation of ODMR/DD.

The act also requires that ODMR/DD identify costs associated with the Residential Facility Waiver transition plan and sources of funding available to pay the costs.

Each county MR/DD board that has a contract with one or more private or government entities to provide services under the Residential Facility Waiver is required to develop a plan jointly with the providers for the implementation of the Residential Facility Waiver transition as it concerns individuals who reside in a residential facility with a license capacity of five or fewer beds. The plan must be developed in accordance with a protocol ODJFS and ODMR/DD are to establish jointly. February 8, 2002, is the plan's due date.

### **Family support provided as home and community-based services**

(Section 3)

Continuing law authorizes the Director of ODJFS to apply to the United States Secretary of Health and Human Services for one or more Medicaid waivers under which home and community-based services are provided to individuals with MR/DD as an alternative to placement in an ICF/MR. ODJFS is required to enter into an interagency agreement with ODMR/DD with regard to any of the waivers the United States Secretary grants. Under the agreement, ODMR/DD is to administer the waivers.

The act permits the Director of ODJFS, on the recommendation of the Director of ODMR/DD, to seek one or more such waivers, including a waiver under which home and community-based services are provided in the form of family support services programs established by county MR/DD boards.

The Director of ODJFS is required to adopt rules establishing statewide fee schedules for ODMR/DD-administered home and community-based services. Under law enacted by H.B. 94, the Director must adopt the rules not later than the effective date of the first of any ICF/MR-alternative home and community-based services waivers the United States Secretary grants. The act provides that the Director is not required to adopt the rules by the effective date of the waiver under which home and community-based services are provided in the form of family support services programs.

### **Adult services**

(R.C. 5126.01)

One of the services available through a county MR/DD board is adult services. Adult services include adult day habilitation services, adult day care, prevocational services, sheltered employment, and educational experiences and training obtained through entities and activities that are not expressly intended for individuals with MR/DD. Prior law provided that adult services did not include community or supported employment services.<sup>9</sup> The act provides that adult services do include community and supported employment services.

### **Administrative oversight duties included in certain management responsibilities**

(R.C. 5126.14)

The entity responsible for the habilitation management included in adult day habilitation services and the program management included in residential services and supported living is required to provide administrative oversight by taking certain actions. One of the actions is monitoring for major unusual incidents and causes of abuse, neglect, or exploitation involving an individual under the care of staff providing the services; taking immediate actions as

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<sup>9</sup> *Community and supported employment services are job training and other services related to employment outside a sheltered workshop. They include (1) job training resulting in the attainment of competitive work, supported work in a typical work environment, or self-employment, (2) supervised work experience through an employer paid to provide the supervised work experience, (3) ongoing work in a competitive work environment at a wage commensurate with workers without disabilities, and (4) ongoing supervision by an employer paid to provide the supervision.*

necessary to maintain the health, safety, and welfare of the individual; and providing notice of major unusual incidents and suspected cases of abuse, neglect, or exploitation. The act requires that the action also include monitoring for unusual (in addition to major unusual) incidents and misappropriation of funds. Whereas prior law required the entity to provide the notice to the county MR/DD board's investigative agent, the act requires the notice to go to the board.

### **Service and support administration**

(R.C. 5126.15)

Prior law required a county MR/DD board to provide service and support administration to each individual eligible for other services of the board. The act requires instead that a county MR/DD board provide service and support administration to each individual who is at least age three and is eligible for service and support administration if the individual requests, or a person on the individual's behalf requests, service and support administration. A county MR/DD board must also provide service and support administration to each individual receiving ODMR/DD-administered home and community-based services. A county MR/DD board is permitted to provide, in accordance with the service coordination requirements of federal regulations governing the early intervention program for infants and toddlers with disabilities, service and support administration to an individual under age three eligible for early intervention services under the federal regulations.

### **Investigative agent**

(R.C. 5126.221)

Each county MR/DD board is required to employ at least one investigative agent or contract with a private or government entity for the services of an investigative agent. An investigative agent conducts investigations of reports of abuse, neglect, or major unusual incidents involving individuals with MR/DD when circumstances specified in ODMR/DD rules exist.

Prior law required an investigative agent to report directly to a county MR/DD board's superintendent. The act requires instead that the individual or private entity responsible for supervising the work of investigative agents report to the superintendent regarding the agents.

### **Direct services contract**

(R.C. 5126.033)

A county MR/DD board may not enter into a direct services contract for family support or supported living services under which an individual, agency, or other entity will employ a professional or service employee who is also employed by the county MR/DD board unless a number of conditions are met.<sup>10</sup> The act makes the prohibition also applicable if the individual, agency, or other entity will employ a management employee who is also employed by the county MR/DD board.<sup>11</sup>

Under prior law, one of the conditions for entering into the direct services contract was that the employee could not hold any administrative or supervisory position in the employ of the county MR/DD board, could not have held such a position during the period the contract was developed, and had to agree not to take such a position while the contract was in effect. The act provides instead that the employee may not, during the period the contract is developed, be employed by the county MR/DD board as an administrator or supervisor responsible for approving or supervising services to be provided under the contract and agree not to take such a position while the contract is in effect. The act also establishes an additional condition. The employee must not be in management level two or three according to ODMR/DD rules.

### **Existing service contracts to be revised**

(Section 42)

H.B. 94 enacted a law effective June 6, 2001, requiring each service contract between a county MR/DD board and provider of services to individuals with MR/DD to comply with ODMR/DD rules, include a general operating agreement component and an individual service needs addendum, and, if the provider is to provide case management services, habilitation center services, or

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<sup>10</sup> A county MR/DD board employee is considered to be a professional employee if the employee holds a position for which either a bachelor's degree from an accredited college or university or a license or certificate issued by a state occupational licensing board is a minimum requirement. A county MR/DD board employee is considered to be a service employee if the employee holds a position that may require evidence of registration but for which a bachelor's degree from an accredited college or university is not required.

<sup>11</sup> A county MR/DD board employee is considered to be a management employee if the employee holds a position having supervisory or managerial responsibilities and duties.

ODMR/DD-administered Medicaid-funded home and community-based services, comply with all applicable statewide Medicaid requirements. The act requires a county MR/DD board and provider of Medicaid-funded services to revise a service contract entered into before June 6, 2001, to make it comply with the procedural requirements of the law enacted by H.B. 94 governing service contracts.<sup>12</sup> The requirement applies only to the extent the contract is inconsistent with state or federal law. The service contract must be revised not later than July 1, 2002. In revising the service contract, no county MR/DD board or provider may deny an individual eligible for Medicaid-funded services the opportunity to choose a willing and qualified provider with a Medicaid provider agreement.

**County MR/DD board complaints against ODMR/DD**

(R.C. 5123.043)

Continuing law authorizes an individual or private entity that has a complaint involving any of the programs, services, policies, or administrative practices of ODMR/DD or an entity under contract with ODMR/DD to file a complaint with ODMR/DD.<sup>13</sup> Prior to commencing a civil action regarding the complaint, the individual or entity is required to attempt to have the complaint resolved through the administrative resolution process established in ODMR/DD rules. After exhausting the administrative resolution process, the individual or entity may commence a civil action if the complaint is not settled to the individual or entity's satisfaction. The act provides that these provisions are also applicable

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<sup>12</sup> *The act's requirement that a service contract entered into between a county MR/DD board and provider of Medicaid-funded services before June 6, 2001, be revised to comply with the procedural requirements of state law that went into effect after that date may violate the "contract clause" provisions of the United States and Ohio constitutions. Article I, Section 10 of the United States Constitution states, in pertinent part, that "[n]o State shall...pass any...Law impairing the Obligation of Contracts...." Section 28 of Article II of the Ohio Constitution provides:*

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

<sup>13</sup> *An ODMR/DD employee may not file, under this provision of law, a complaint related to the employee's terms and conditions of employment.*

to a county MR/DD board that has a complaint involving any of the programs, services, policies, or administrative practices of ODMR/DD or an entity under contract with ODMR/DD.

### **Miscellaneous corrections**

(R.C. 5126.036, 5126.05, 5126.055, 5126.06, 5126.17, and 5126.357)

The act corrects cross-reference and other errors in the provisions of Am. Sub. H.B. 94 of the 124th General Assembly regarding Medicaid-funded services for individuals with MR/DD.

## **ECONOMIC DEVELOPMENT AND RELATED TAX PROVISIONS**

### **Capital access loans**

The act establishes the Capital Access Loan (CAL) Program in the Department of Development (DOD). Its purpose is to assist participating financial institutions in making CAL Program loans to eligible businesses that face barriers in accessing working capital and obtaining fixed asset financing. "Eligible businesses" are either for-profit business entities or nonprofit entities that have a principal place of business or activity within the state, the operation of which will create new jobs or preserve existing jobs and employment opportunities and will improve the economic welfare of the people of the state. An "eligible business" must have had less than \$10 million in total annual sales in its most recently completed fiscal year. Under the CAL Program, a participating financial institution's risk in making a capital access loan to an eligible business is secured, in accordance with a specified procedure, by a deposit of money from the DOD's Capital Access Loan Program Fund into the financial institution's program reserve account. (R.C. 122.60 and 122.602(A).)

### **Capital Access Loan Program Fund**

The act establishes the Capital Access Loan Program (CALP) Fund in the state treasury. This fund is to consist of money deposited into it from two sources: (1) the Facilities Establishment Fund and (2) grants, gifts, and contributions of money, property, labor, and other things of value received by the DOD Director from individuals, private and public corporations, the United States or any agency of the United States, the state or any agency of the state, or any political subdivision of the state. The total amount of money deposited into the CALP Fund from the Facilities Establishment Fund cannot exceed \$3 million during any fiscal year of the DOD. (R.C. 122.601 and 122.602(A)(1).)

The DOD must disburse the money from the CALP Fund only to pay the CAL Program's operating costs, including the DOD's associated administrative



costs, and only in keeping with the CAL Program's statutorily specified purposes (sec 122.601).

### **Director of Development functions**

The DOD Director must administer the CAL Program and has certain related powers. The Director may receive and accept the aforementioned grants, gifts, and contributions of money, property, labor, and other things of value and must cause them to be held, used, and applied only for the purpose they were made. The Director also may adopt rules under the Administrative Procedure Act, engage in all other acts, and enter into necessary contracts and execute all necessary instruments, to carry out the purposes of the CAL Program. (R.C. 122.602(A).)

### **Qualification as an "eligible business"**

Under the act, a business may obtain a capital access loan if certain requirements are met. To be an "eligible business," a business must satisfy the following (R.C. 122.60(C)):

- (1) It is a for-profit business entity, or a nonprofit entity.
- (2) It had total annual sales in its most recently completed fiscal year of less than \$10 million.
- (3) It has a principal place of for-profit business or nonprofit entity activity within Ohio.
- (4) The operation of the business or activity in the state, alone or in conjunction with other facilities, will create new jobs or preserve existing jobs and employment opportunities and will improve the economic welfare of the people of Ohio. New jobs do not include existing jobs transferred from another facility within Ohio, and existing jobs means only existing jobs at facilities within the same municipal corporation or township in which the project, activity, or enterprise that is the subject of the capital access loan is located.

### **Qualification as a "participating financial institution"**

The act provides for the participation of financial institutions in the CAL Program. "Financial institutions" include any bank, trust company, savings bank, or savings and loan association that is chartered by and has a significant presence in Ohio, or any national bank, federal savings and loan association, or federal savings bank that has a significant presence in Ohio. (R.C. 122.60(D).)

As with a business, a financial institution must qualify to participate in the CAL Program. First, pursuant to power granted in the act, the DOD Director must determine the eligibility of a financial institution to so participate. This power includes the ability to set a limit on the number of financial institutions that may participate in the CAL Program. (R.C. 122.602(B).)

Additionally, a financial institution must enter an agreement with the DOD to participate in the CAL Program. This is referred to in the act as a "participation agreement." This agreement sets out the terms and conditions under which the DOD will deposit money from the CALP Fund into the financial institution's program reserve account (discussed below), specifies the criteria for loan qualification under the CAL Program, and contains any additional terms the DOD Director considers necessary. (R.C. 122.60(G) and (J) and 122.602(C).) (See also "CAL Program limitations," below relative to the entry of participation agreements.)

#### **Creation of a "program reserve account"**

After the DOD Director determines that a financial institution is eligible to participate in the CAL Program and a participation agreement is entered into, the institution is a "participating financial institution" and must establish a program reserve account. A program reserve account is a dedicated account at the financial institution that is the property of the state. The account may be used by the financial institution only for the purpose of recovering a claim arising from a default on a capital access loan (discussed below). (R.C. 122.60(F) and (J) and 122.603(A)(1).)

Under the act, the program reserve account must be interest-bearing and must contain only funds deposited into it under the CAL Program and the interest payable on the moneys in the account. All interest on the moneys in the account must be held in the account as an additional loss reserve. Additionally, no more than twice in a fiscal year, the DOD Director may require that a portion or all of the accrued interest in the account be released to the DOD. When released, the accrued interest must be deposited into the CALP Fund. (R.C. 122.603(A)(1) and (2).)

#### **Loan from a participating financial institution to an eligible business**

**Loan fee.** Once a financial institution is determined to be eligible to participate in the CAL Program and a participation agreement is entered into with the DOD, the institution may make capital access loans to eligible businesses. When a participating financial institution makes such a loan, the eligible business receiving it must pay a fee to the institution. This fee is to be in the amount of not less than 1 ½% and not more than 3% of the principal amount of the loan. The

financial institution must deposit the fee into its program reserve account. Additionally, the financial institution must deposit into the account an amount of money from its own funds equal to the amount of the collected fee. The financial institution may recover from the eligible business all or part of the amount of that money in any manner agreed to by the institution and the business. (R.C. 122.603(B).)

**Loan certification.** Each time a participating financial institution makes a capital access loan, the institution must certify to the DOD Director, within a period specified by the Director, that the institution made the loan. The certification is to include the amount of the loan, the amount of the fee received from the eligible business, the amount of the financial institution's own funds that were deposited into its program reserve account to reflect that fee, and any other information required by the Director. (R.C. 122.603(C).)

### **Disbursement from the CALP Fund**

After the DOD Director receives the previously mentioned certification from a participating financial institution, the Director must disburse money from the CALP Fund to the financial institution for deposit into its program reserve account if the Director makes certain determinations (see below). The amount disbursed must be equal to 10% of the principal amount of the particular capital access loan, and the disbursement does not require Controlling Board approval. (R.C. 122.602(D) and 122.603(D).)

The act places limitations upon the DOD Director's ability to so disburse money from the CALP Fund. This step only may occur if the Director determines that the financial institution's loan to the business meets *all* of the following (R.C. 122.602(D), (E), and (G)):

- (1) It will be made to an eligible business.
- (2) It will be used by the eligible business for a project, activity, or enterprise that fosters economic development.
- (3) It will not be made in order to enroll in the CAL Program prior debt that is not covered under the Program and that is owed or was previously owed by an eligible business to the financial institution.
- (4) It will not be utilized for a project or development related to the on-site construction or purchase of residential housing.
- (5) It will not be used to finance passive real estate ownership. The act defines "passive real estate ownership" as the ownership of real estate for the sole

purpose of deriving income from it by speculation, trade, or rental (R.C. 122.60(H)).

(6) The loan does not exceed \$250,000 for working capital or \$500,000 for the purchase of fixed assets. The same capital access loan may include *both* maximum amounts.

(7) The eligible business that applies for the loan complies with the Application for Economic Development Assistance Law (R.C. 9.66, not in the act).

(8) The loan conforms to any other rules adopted by the DOD Director under the act.

In addition, if the financial institution wants to grant a capital access loan that refinances a nonprogram loan made by another financial institution or to grant a capital access loan to a business that is owned or operated by a person that has previously defaulted under any state financial assistance program, it first must apply to the DOD Director for approval of the capital access loan. The Director cannot approve a loan that refinances a nonprogram loan made by the same financial institution, unless the amount of the refinanced loan exceeds the existing debt, in which case only the amount exceeding the existing debt is eligible for a loan under the CAL Program. (R.C. 122.602(F), (H), and (I).) (See also "**CAL Program limitations**," below relative to approvals.)

#### **Collection of loans and payment from a program reserve account**

Under the act, a participating financial institution determines the timing and amount of delinquency on a capital access loan. It is to do this in a manner consistent with its normal method for making these determinations on similar nonprogram loans. (R.C. 122.604(C).) If a financial institution determines that a portion or all of a capital access loan is uncollectible, the act allows it to submit a specified type of claim to the DOD. If the DOD approves the claim, money in the amount of the claim is approved for release from the financial institution's program reserve account. (R.C. 122.604(A).)

Financial institutions may claim the amount of the principal plus accrued interest owed. The amount of the principal in the claim may not exceed the principal amount covered by the CAL Program. The amount of accrued interest included in the claim may not exceed the accrued interest attributable to the covered principal amount. (R.C. 122.604(B).)

Additionally, a participating financial institution may file more than one claim at a time. If two or more claims are filed at the same time or approximately

the same time and there are insufficient funds in its program reserve account at that time to cover the entire amount of the claims, the financial institution may specify an order of priority in which the DOD must approve the release of the funds from the account in relation to the claims. (R.C. 122.604(D).)

If subsequent to the payment of a claim, a participating financial institution recovers from an eligible business to which the loan was made any amount covered by the previously paid claim, the institution must promptly deposit the amount recovered into its program reserve account, less any reasonable expenses incurred (R.C. 122.604 (E)).

### **Annual report**

Under the act, each participating financial institution must submit an annual report to the DOD on or before March 31 of each year. The report must include or be accompanied by all of the following (R.C. 122.605):

(1) Information regarding the institution's outstanding capital access loans, its capital access loan losses, and other related matters that the DOD considers appropriate;

(2) A statement of the total amount of the institution's capital access loans for which the DOD has made disbursements from the CALP Fund under the CAL Program;

(3) A copy of the institution's most recent financial statement.

### **Withdrawal of funds from financial institutions**

The DOD may cause the withdrawal of money from a participating financial institution's program reserve account and its deposit into the CALP Fund under any of the following circumstances (R.C. 122.603(E) and (F)):

(1) The amount in the account exceeds an amount equal to 33% of the financial institution's outstanding capital access loans. Only the excess amount may be withdrawn in this circumstance.

(2) The financial institution is no longer eligible to participate in the CAL Program. The total amount in the account may be withdrawn in this circumstance.

(3) The participation agreement expires without renewal by the DOD or the financial institution. The total amount in the account may be withdrawn in this circumstance.

(4) The financial institution has no outstanding capital access loans. The total amount in the account may be withdrawn in this circumstance.

(5) The financial institution has not made a capital access loan within the preceding 24 months. The total amount in the account may be withdrawn in this circumstance.

### **CAL Program limitations**

The DOD Director is not permitted to approve any capital access loan made after June 30, 2007, or to enter into a participation agreement with any financial institution after that date (R.C. 122.602(J)).

### **Miscellaneous changes**

The act amends the Facilities Establishment Fund Law to include the CAL Program within its provisions. This allows moneys appropriated or transferred to the Facilities Establishment Fund to be released at the request of the DOD Director for the purpose of the CAL Program. (R.C. 166.03(B).)

### **County and political subdivision revenue agreements**

(R.C. 307.6910; Section 9)

The act permits a board of county commissioners to enter into an agreement with the legislative authority of one or more political subdivisions or taxing districts located wholly or partially within the county (a "contracting subdivision"). The agreement must be in writing, include signatures of authorized officers or representatives of the county and each contracting subdivision, and have two main elements:

- First, an authorization for the board of county commissioners to receive funds due the contracting subdivision from the county treasury, other than funds raised by taxes levied by the contracting subdivision, provided that those funds received by the county may be lawfully applied to the purpose for which money is owed to the county by the contracting subdivision. The funds subject to the authorization include, but are not limited to, the contracting subdivision's share of the undivided local government fund.
- Second, an authorization for the crediting of the funds received by the county against money owed to it by the contracting subdivision.

Upon entering into the agreement, the board of county commissioners must send to the county auditor two copies of the agreement that have been certified by

an authorized officer or representative of the county and each contracting subdivision. The county auditor is required to forward one copy to the county treasurer, and to present the other copy to the county budget commission. The county budget commission must give effect to the agreement in determining or revising the amounts to be credited to the funds of the county and each contracting subdivision in the official or amended official certificate of estimated resources.

Under continuing law, a county generally may not make any contract or give any order involving an expenditure of money without a certificate from the county auditor stating that the amount required to meet the obligation has been lawfully appropriated for the purpose and is in the county treasury or is in the process of collection to the treasury to the credit of the appropriate fund free of any encumbrances. Under the act, the county auditor may rely on the agreement described above in order to make this certification for a county contract or order of money incurred on behalf of a contracting subdivision if the county auditor finds that the amount credited to the county under the agreement is available in the amount and at the time necessary to meet the obligation.

The county auditor and the county treasurer are required to follow the provisions of the agreement described above in carrying out their legal duties regarding the crediting and distribution of money to the funds of the parties to the agreement, except that the agreement does not affect the time at which moneys otherwise would be available by law to the parties.

The terms of an agreement may be enforced in the court of common pleas of the county that is a party to it in an action for a writ of mandamus. For purposes of that action, the legislative authority of the contracting subdivision has a duty to allow payments to the county as specified in the agreement, the board of county commissioners has a duty to receive those payments in the manner specified in the agreement, and these duties are specifically enjoined by law and result from an office, trust, or station. (R.C. 307.6910(F).)

The authority for such agreements expires June 30, 2007.

### **Rural Development**

(R.C. 166.03; Section 19)

#### **Purposes of the RDI Fund**

The act creates the Rural Development Initiative (RDI) Fund in the state treasury and provides that it is to receive moneys from the Facilities Establishment Fund. The DOD Director may make grants from the RDI Fund to eligible applicants in Ohio rural counties that are designated as distressed under the Rural

Industrial Park Loan Program Law and to eligible applicants located in Appalachian counties. But, the Director must give preference to eligible applicants located in Appalachian counties designated as distressed by the federal Appalachian Regional Commission.

The RDI Fund ceases to exist after June 30, 2007, and all moneys remaining in it after that date revert to the Facilities Establishment Fund. In addition, the act extends the sunset date applicable to the Rural Industrial Park Loan Program and its fund from July 1, 2003, to July 1, 2007.

### **Eligibility for grants**

The DOD Director may make grants from the RDI Fund only to eligible applicants who also qualify for and receive funding under the Rural Industrial Park Loan Program. Under that program, eligible applicants include port authorities, community improvement corporations, community-based organizations or action groups that provide social services and have experience in economic development, or other nonprofit economic development entities designated by the governing body of a county or other political subdivision. Eligible applicants that apply for RDI Fund grants, then, are subject to the provisions of the Rural Industrial Park Loan Program Law prohibiting the use of the program to compete against existing Ohio industrial parks and prohibiting the use of a site developed or improved with program assistance to cause the relocation of jobs to that site from elsewhere in Ohio unless the DOD Director makes certain determinations. Eligible applicants also must use their grants for purposes specified in the Rural Industrial Park Loan Program Law--the development and improvement of industrial parks by using moneys for land acquisition; constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, or improving industrial park buildings; or infrastructure improvements.

All projects supported by grants from the RDI Fund are subject to the Prevailing Wage Law as specified in the Facilities Establishment Fund Law. Under the latter law, the provisions of an agreement providing for financial assistance must specify that all wages paid to laborers and mechanics employed on project facilities for which assistance is granted are to be paid according to their respective classes of work as determined by the Prevailing Wage Law, unless (1) the project receives federal funding and, therefore, is subject to federal rules for determining a minimum wage or (2) a private beneficiary of the funds uses regular bargaining unit employees who are subject to a pre-existing collective bargaining agreement for construction at the project site.

The DOD Director is required to develop program guidelines for the transfer and release of moneys under the RDI Fund grant provisions. The release of those moneys to an eligible applicant is subject to Controlling Board approval.

## **Appalachian technology and workforce development**

(Section 21)

### **Amounts and eligible activities**

Continuing law requires the Director of Job and Family Services to provide up to \$15 million in TANF block grant funds to county departments of job and family services in the 29 Appalachian counties. The act provides that each such county is eligible to apply for an initial grant, or grants, the cumulative amount of which may not exceed \$500,000 per county. Such funds may be used to "leverage" other state or local funds for the "eligible activities."

The eligible activities for which these TANF funds may be used are revised by the act. The act removes the following as eligible activities: economic development, organizational development for workforce development partners, workforce development, and technology infrastructure upgrades. The act retains the following as eligible activities: workforce development and supportive services; technology expansion, technical assistance, and training; youth job training; and improving existing technology centers, job creation and retention, purchasing technology, and technology upgrades. The act adds "microenterprise development and other entrepreneurship activities" as eligible activities.

### **Plans and their review**

As a condition for the use of these TANF funds, current law requires each county department of job and family services to submit a plan for their intended use to the Department of Job and Family Services (DJFS) and directs the Governor's Office of Appalachia, the Governor's Regional Economic Office, and local development districts to review that plan. The act adds a provision that requires each county department to have a committee that must develop and submit the plan, and specifies that, at a minimum, the committee must include a county commissioner; a mayor of a municipality in the county; an economic development official from the county, local political subdivision, or development district; a representative of a chamber of commerce or a port authority in the county; a local or regional community action representative; and a representative from the county department of job and family services.

The plan must be submitted for review to the Governor's Office of Appalachia only, which may approve or disapprove it in whole or in part. After an approval, the Governor's Office of Appalachia must forward a plan to the DJFS.

The Governor's Office of Appalachia must develop guidelines for the submission and approval of such plans; guidelines for quarterly monitoring and

reporting on program activities after TANF funds are awarded; guidelines for the reallocation of unawarded TANF funds; and any other guidelines necessary for the administration of the program. The DJFS is required to provide technical assistance and advice to the Governor's Office of Appalachia to facilitate the administration of the TANF funds. The Office of Appalachia must develop guidelines for reallocating unawarded funds.

**Other condition on use of the TANF funds**

Prior law provided that, as a condition for the use of the TANF funds, each county and contract agency must acknowledge that the funds are a one-time allocation, not intended to fund services beyond September 30, 2002. The act removes contract agencies from this provision and changes the funding cut-off date to June 30, 2003.

**Background--tax increment financing (TIF)**

(R.C. 5709.40 to 5709.43, 5709.73 to 5709.75, and R.C. 5709.77 to 5709.81)

Tax increment financing (TIF) is an economic development tool that enables counties, townships, and municipal corporations to apply the increase in taxes resulting from an increase in the assessed value of a developed parcel of land toward payment of public improvements that directly benefit that parcel. To create a TIF, the governmental authority (1) designates a parcel as exempt from taxation on the increased valuation due to improvements for a specified period of time, not to exceed 30 years, (2) generally requires the owner of the parcel to make service payments in the amount of the exempted taxes, and (3) applies those service payments towards financing public improvements that benefit the parcel.

Unless the board of education of the school district in which the land is located otherwise approves, the exemption is limited to a period of ten years and to 75% of the taxes that would otherwise be owed.

**Creation of TIF incentive districts**

(R.C. 5709.40(C), 5709.73(C), and 5709.78(B))

Ongoing law, not changed by the act, enables the designation of individual parcels of land in a TIF arrangement and allows service payments in lieu of taxes to help finance public improvements that directly benefit those parcels.

Under the act, a county, township, or municipal corporation may designate an *area* of land as an incentive district rather than designating individual parcels. The service payments made in lieu of taxes on parcels within the incentive district would be used to help finance the cost of public improvements that benefit or

serve parcels in the incentive district, instead of being limited to financing improvements that directly benefit particular parcels as under ongoing TIF law.

The procedure to create an incentive district under the act is similar to the procedures to create a TIF arrangement on particular parcels under ongoing law. The county, township, or municipal corporation must pass a resolution (counties and townships) or an ordinance (municipal corporations) that specifies the borders of the incentive district. The district may not exceed 300 acres in size and must be enclosed by a continuous boundary. At the same time the incentive district is designated, or at later times, the governmental authority declares that improvements to parcels within the area are a public purpose. Some percentage of the increase in valuation on those parcels is exempt from property taxation. The ordinance or resolution must specify the percentage and must designate the public improvements that benefit or serve parcels in the incentive district. The governmental authority may charge the owner a "service payment" in lieu of the exempted taxes, and must use those payments to help finance the improvements that benefit the incentive district.

A single ordinance or resolution may designate more than one area as an incentive district, but a district may not include a parcel that is already exempt from taxation through any other TIF. More than one ordinance or resolution may be adopted.

#### **Qualification as an incentive district**

(R.C. 5709.40(A)(5), 5709.73(A)(4), and 5709.77(E))

The act permits the establishment of an incentive district only if the area within the boundaries of the incentive district meets certain distress characteristics. The act provides that an incentive district must have at least one of the following characteristics:

(1) At least 51% of the residents of the district have incomes of less than 80% of the median income of residents of the political subdivision in which the district is located, as determined in the same manner specified under the federal Housing and Community Development Act of 1974.

(2) The average rate of unemployment in the district during the most recent 12-month period for which data are available is equal to 150% of the average rate of unemployment for the state for the same period.

(3) At least 20% of the people residing in the district live at or below the poverty level as defined in the federal Housing and Community Development Act of 1974.

(4) The district is a blighted area.

(5) The political subdivision's engineer has certified that the public infrastructure serving the district is inadequate to meet the district's development needs as evidenced by a written economic development or urban renewal plan adopted by the legislative authority of the subdivision.

(6) The district is in a situational distress area as designated by the DOD Director (see R.C. 122.23(F), not in the act).

(7) The district is comprised entirely of unimproved (i.e., vacant) land and that land is located in a distressed area as defined for purposes of the Rural Industrial Park Loan Program Law. A "distressed area" under that law is a county with a population of less than 125,000 that also meets certain criteria based on its average unemployment rate, per capita income, and/or ratio of transfer payment income to total county income (see R.C. 122.23(A), not in the act).

**Notice to board of education required for exemption**

(R.C. 5709.40(B), (C), and (D), 5709.73(C) and (D), and 5709.78(B) and (C))

Under continuing TIF law, a local government must send a notice to the school board stating its intent to exempt a parcel from taxation. The act applies the same requirement to local governments creating an incentive district. The notice must be delivered at least 45 days prior to adoption or amendment of an ordinance or resolution establishing the district.

The act requires that all of the following additional information be contained in a notice of an ordinance or resolution that establishes an incentive district:

- A delineation of the boundaries of the district;
- An identification of each parcel in the district;
- An identification of each anticipated improvement in the district;
- An estimate of the value of each improvement;
- A specification of the life of the district and the percentage of improvements that would be exempted;
- An indication of the date on which the ordinance will be adopted.

As under continuing TIF law, a school board may waive its right to receive such a notice.

**Limits on tax exemption**

(R.C. 5709.40(C), 5709.73(C), and 5709.78(B))

The limit on the percentage of assessed valuation that is exempt from taxes and the number of years of exemption is the same for incentive districts under the act as for TIF arrangements under ongoing law. Specifically, the local school board must approve an exemption percentage greater than 75% and a life for the district longer than ten years. If such approval is granted, the exemption may not exceed 100%, and the life of the district may not exceed 30 years.

School board approval is not required if the service payments in lieu of taxes are paid to the school district in the amount of taxes that would have been payable to the school district if the improvements in the incentive district had not been exempted from taxation. Moreover, a school board may waive its right to give such approval, as it may do under existing law.

**Additional annual report information required for all TIF districts**

(R.C. 5709.40(G), 5709.73(G), and 5709.78(F))

The act requires that additional information be provided in the status report that governmental authorities must provide annually to the DOD Director for all TIFs. Under the act, the report must be prepared in the manner prescribed by the Director. In addition to information required under existing law, the report must include a summary of the receipts from service payments in lieu of taxes, expenditures of money from the TIF funds for each project parcel or area, a description of the public improvements and housing renovations financed with the TIF expenditures, and a quantitative summary of changes in employment and private investment resulting from each project.

**Separate accounts in the "tax increment equivalent fund"**

(R.C. 5709.43(A), 5709.75, and 5709.80)

Under ongoing law, a governmental authority granting tax exemptions under the TIF law must establish a "tax increment equivalent fund" into which the service payments in lieu of taxes are deposited. The act provides that within each fund the governmental authority must maintain an account for each TIF arrangement established under ongoing law and an account for each incentive district established under the act. Payments received for a TIF incentive district

must be paid into the area account and the payments for public infrastructure improvements benefiting that area would be made from that account.

If a resolution or ordinance designating a TIF incentive district authorizes the use of service payments for housing renovations, separate accounts also must be established for service payments designated for public infrastructure improvements, and for service payments authorized for the purpose of housing renovations. Money in an account related to housing renovations may not be used to finance or support housing renovations that take place after the district has expired.

**Tax exemptions for residential property**

(R.C. 5709.40(C), 5709.73(C), and 5709.78(B))

In contrast to pre-existing TIF law, the act does not restrict the granting of tax exemptions for residential property within an incentive district. Under pre-existing TIF law, residential property may be exempted from taxation only if it is located in a "blighted area" of an "impacted city" (these terms are defined in R.C. 1728.01). In an incentive district, there is no such limitation.

**Use of service payments for housing purposes**

(R.C. 5709.40(C), 5709.73(C), and 5709.78(B))

The payments in lieu of taxes arising from exempted parcels may be used to finance housing renovations within the incentive district if the governmental authority so provides, but an incentive district may not be created solely for the purpose of financing housing renovation. Instead, some share of the payments in lieu of taxes must be used to finance other public improvements that benefit or serve the district, and some of the improvements made in the district must be for commercial or industrial purposes. (The act does not specify any minimum share or minimum threshold of commercial or industrial use.)

The local legislation creating the district must designate the parcels in the district where housing renovation may be financed and must specify the relative share of payments in lieu of taxes that are to be applied to housing renovations and to each other nonhousing public improvement that is to be financed with the payments.

Payments designated for housing renovations may be used to finance or support loans, deferred loans, and grants.

### **Sunset provision**

(R.C. 5709.40(C), 5709.73(C), and 5709.78(B))

The authority to create incentive districts ends on June 30, 2007, but tax exemptions granted within zones that are created on or before that date will continue for the period specified in the local legislation creating the zone.

### **Definitions**

"Project" means "development activities undertaken on a parcel, including but not limited to construction, expansion, and alterations of buildings or structures, demolition, remediation and site development, and the building or structures that results from such activities."

A "public infrastructure improvement" includes, but is not limited to, public roads and highways, water and sewer lines, environmental remediation, land acquisition (including acquisition in aid of industry, commerce, distribution, or research), demolition (including that occurring on private property when necessary for economic development), stormwater and flood remediation projects (including when on private property if necessary for public health, safety, and welfare), the provision of gas, electric, and communications service facilities, and the enhancement of public waterways through improvements that allow for greater public access."

### **Additional public infrastructure improvements**

(R.C. 5709.73)

Under continuing law, when the legislative body of a subdivision adopts a TIF measure, it must designate the parcels that benefit from a public infrastructure improvement. Presumably, then, the public infrastructure improvement contemplated in the TIF measure is known when the measure is adopted.

The act expressly authorizes boards of township trustees to amend a prior measure in order to specify additional public infrastructure improvements that benefit parcels designated in the prior measure. To use this authority, the board must have adopted the prior measure before July 21, 1994, and must have a "hold harmless" agreement with the affected school board, whereby the township compensates the school district for all of the property tax revenue foregone because of the TIF exemption.<sup>14</sup> The authority allows the township to use money

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<sup>14</sup> This is the day before S.B. 19 of the 120th General Assembly took effect. Among other things, S.B. 19 enacted significant changes to the TIF law.

in the TIF fund (arising from payments in lieu of taxes on the exempted parcels) for land acquisition in aid of industry, commerce, distribution, or research, demolition on private property, or stormwater or flood remediation projects.

**Multiple TIF parcels**

(R.C. 5709.40, 5709.73, and 5709.78)

The act clarifies that the legislative body of a county, township, or municipal corporation may, in one measure, designate more than one parcel as being served by a public improvement, and thus exempted from taxation. Prior law did not clearly preclude designation of multiple parcels, but some of the changes necessary to effect the incentive district authority may have implied that multiple parcels could not be designated in a single measure.

**Prospective application**

(Section 9(b))

The act declares that its tax increment financing provisions do not affect ordinances adopted by the legislative authority of a municipality or resolutions adopted by a board of township trustees or board of county commissioners prior to the effective date of the act.

**Job retention credit**

(R.C. 122.171, 5733.0610, and 5747.058)

The act authorizes the Tax Credit Authority to grant nonrefundable credits to corporate and noncorporate taxpayers for the purpose of fostering job retention in Ohio. To be eligible for a credit, the taxpayer must have a capital investment project in Ohio at which it has had an average of 1,000 or more full-time employees for at least a year and for which it pays at least \$200 million over a three-year period that includes the year with respect to which the credit is claimed. The amount of the credit may not exceed 75% of the tax withheld from all full-time employees at the project site. It may be granted for a period of up to ten years beginning no earlier than the year in which the \$200 million investment is completed.

The Tax Credit Authority may grant a credit upon application by a taxpayer and upon consideration of the recommendations of the Director of Budget and Management, Tax Commissioner, and Director of Development, each of whom must determine the economic impact of the project on the state and the affected political subdivisions. The Authority must determine that the project will lead to the retention of full-time employment in Ohio, that the taxpayer is economically

sound and can complete the project, that the taxpayer intends to maintain operations at the project site for at least twice the term of the credit, that receiving the credit is a major factor in the taxpayer's decision to begin, continue, or complete the project, and that the political subdivisions in which the project is located have agreed to provide "substantial" financial support to the project. The Authority and the taxpayer may then enter into an agreement that describes the project and the investment plan, provides a method of determining the number of full-time employees, states the term and percentage of the credit, requires the taxpayer to maintain operations at the project site for at least twice the term of the credit, requires the taxpayer to retain a specified number of full-time employees at the site and within the state as a whole for at least the term of the credit (including the 1,000 positions on which eligibility was obtained), requires the taxpayer to submit to the Director of Development financial information related to the project, limits the ability of the taxpayer to relocate employment positions from other parts of the state to the project site, and waives certain statutory limitations periods relating to the credit. The agreement also restricts the relocation of employees from other parts of the state in order to satisfy the minimum employment position criterion. Generally, the restriction disallows the taxpayer relocating employees within the lesser of five years or the number of years for which the credit is granted. The Director of Development may waive the restrictions under certain circumstances.

Financial statements and other information submitted to the Department of Development or the Tax Credit Authority in connection with the credit are not public records, but may be used by the chairperson of the Authority in connection with court proceedings, and may be provided to the Tax Commissioner, who must preserve the confidentiality of the statement or information.

The agreement also must require that the Director of Development verify compliance by the taxpayer and issue a credit certificate for the year. If the taxpayer does not comply, the Authority may reduce the percentage or term of the credit. If the number of full-time employees drops below 90% of the agreed-upon number, the Authority may terminate the agreement and require the taxpayer to refund all or a portion of the amount of credits previously taken.

The Director must adopt rules and prescribe forms for the implementation of the credit program. The rules must be submitted to the House and Senate standing committees on economic development before they are adopted, and may provide for charging credit recipients a fee to cover the program's administrative costs. The Director also must report annually to the Governor, President of the Senate, and Speaker of the House on the projects for which credits have been granted.

### Miscellaneous

(R.C. 5733.0610, 5733.11, 5733.98, 5747.058, 5747.13, and 5747.98)

The act provides that the existing refundable credit for job creation programs under R.C. 122.17 may not be claimed in any tax years following the year in which the taxpayer relocates employment positions in violation of tax credit agreements signed under the job retention program (R.C. 5733.0610 and 5747.058); authorizes the taxpayer to claim credits granted under the program (R.C. 5733.0610 and 5747.058); amends the deadlines for assessments by the tax commissioner to conform to the waiver and extension provisions of the program (R.C. 5733.11 and 5747.13); and specifies the order in which the credit must be taken (R.C. 5733.98 and 5747.98).

### Exemption of new, high-technology corporations from net worth calculation of franchise tax

(R.C. 5733.06(C))

Under existing law, the franchise tax for most corporations is calculated two ways, one based on the corporation's net income and the other based on the corporation's net worth.<sup>15</sup> Tax liability is determined using the method that produces more revenue for the state.

Under the act, the net worth of certain new technology-oriented corporations is deemed to be zero, so that the net income method must be used to determine the tax liability of those corporations. An eligible corporation is one that meets four criteria: (1) it is engaged for the entire taxable year primarily in "research and development, technology transfer, bio-technology, information technology, or the application of new technology developed through research and development or acquired through technology transfer," (2) it uses more than one-half of its Ohio-based assets (measured by net book value) solely for such pursuits, (3) it was organized within three years before the annual franchise tax report is due (excluding extensions), and (4) it is not a "related member" with respect to another taxpayer (that is, too closely related through common ownership of stock, such as a corporation spun off from another primarily for the purpose of qualifying for the exemption). There is an exception to this last criterion for a corporation 75% of whose stock is owned by individuals, estates, or grantor trusts that do not also own more than 20% of another corporation that is engaged in the technology-oriented pursuits listed above and subject to the franchise tax.

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<sup>15</sup> This includes unincorporated associations, such as limited liability companies, that elect to be taxed as corporations.

The exemption is available only for tax years 2003 through 2007.

### **Evaluation, reporting**

(Section 10)

#### **Director of Development duties**

Not later than January 30, 2007, the DOD Director must prepare and deliver an evaluation of the act's provisions pertaining to the job retention tax credit, county-contracting subdivision revenue agreements, the TIF incentive districts, the net worth exemption for high-technology corporations, the Rural Development Initiative Fund, the Appalachian Technology and Workforce Development program, and the Capital Access Loan Program. The Director must deliver the report not later than that date to the President of the Senate, the Speaker of the House of Representatives, the chairpersons of the standing committees to which economic development legislation is generally referred, and the Governor. The evaluation is to cover the time from the act's effective date to December 31, 2006, and the Director must include in it a cumulative summary over that time of data compiled from any annual or other reports required by applicable statutes, and any additional information that the Director considers necessary. In performing this evaluation, the Director must analyze the effectiveness of the various programs and provide recommendations as to whether they should be continued and whether any modifications are necessary.

#### **Department of Taxation responsibilities**

The Department of Taxation is required to provide the necessary data concerning the operation of the net worth exemption, and to forward this information to the DOD Director for inclusion in the report mentioned above. This information includes the number of eligible corporations that have claimed an exemption, the amount of tax revenue foregone because of the exemption, and any other information considered necessary by the Department of Taxation or the DOD Director. In addition, the Department of Taxation must provide to the DOD Director, upon the Director's request, information concerning the administration of the job retention tax credit.

#### **County responsibilities**

Not later than December 31, 2006, a board of county commissioners that enters into an agreement with a contracting subdivision regarding certain revenues in the county treasury during the time covered by the report mentioned above must provide the DOD Director with all necessary information, as determined by the Director, concerning the agreement.

## OTHER TAX PROVISIONS

### Accelerated sales tax payment for leases

(R.C. 5739.01(H), 5739.012, 5741.01(G), and 5741.011; Section 40)

Currently, when something is leased the sales or use tax is payable with each lease payment and is computed on the basis of the amount of each payment; the tax due at the outset of the lease is only the tax on that initial payment. (For example, assuming a 6% state-county sales tax rate, a 48-month lease requiring \$1,000 to be paid at the outset and \$300 each month thereafter means an initial sales tax of \$60 and \$18 in tax each month thereafter for 47 months--a total of \$906.)

Under the act, the entire amount of sales and use tax on certain leased property is to be paid at the beginning of the lease. The tax is to be computed on the basis of the total amount of payments to be paid throughout the lease and paid in a lump sum at the outset of the lease. This change applies only to motor vehicles with a carrying capacity of one ton or less, watercraft, outboard motors, aircraft, and tangible personal property used primarily in business (excluding motor vehicles with a carrying capacity in excess of one ton). Thus, in the terms of the example above, the act imposes the tax on the total value of the lease--\$15,100 (\$1,000 + [47 x \$300])--at the outset, yielding a sum of \$906 payable at the time the lease is executed.

If a lease agreement requires additional payments that are not calculated at the outset, then these additional payments are taxable when they are billed to the lessee. If a lease is "open-ended" (i.e., there is no specified termination date), the tax is to be paid at the outset and computed on the basis of the total amount to be paid during the initial fixed term; the tax on renewal periods that follow the initial period is payable at the beginning of each renewal period.

In order to reduce the potential for avoiding the accelerated tax payments on leases, the act permits the Tax Commissioner to disregard lease transactions that are shams--that is, transactions that lack economic substance because they are not motivated by a business purpose or an expectation of profit (besides avoiding taxes). One particular form of lease is presumed to be a sham: a lease with a renewal clause and a termination penalty (or similar provision) that applies if the renewal clause is not exercised. (Such a transaction could be structured so that the sales or use tax could, in effect, be paid in installments as under prior law--e.g., a series of 48 consecutive one-month "leases" that penalize the lessee for not renewing at the end of any of the first 47 lease periods.) In the case of such a lease, the sales or use tax is payable at the outset on the basis of the entire lease period until the termination penalty no longer applies. The person liable for the

tax may overcome the presumption that such a lease is a tax-avoidance sham by a preponderance of the evidence.

For the purposes of the sales and use tax law, a lease is defined as any transfer of the possession of, and right to use (but not transfer of the title to) tangible personal property for either a fixed period of time greater than 28 days or an open-ended period of time with a minimum fixed period of more than 28 days.

The provision takes effect February 1, 2002.

### **Dealers in intangibles**

#### **Clarification of taxable status**

(R.C. 5725.25, 5725.26, and 5733.09)

Under continuing law, dealers in intangibles (e.g., stockbrokers, mortgage companies, finance and loan companies) are subject to a tax on the value of their capital, surplus, and undivided profits. The tax applies regardless of the organizational form of the dealer (e.g., corporation, partnership, limited liability company). The rate of tax is 8 mills per dollar of such value (0.8%). Dealers organized as Subchapter C corporations or as LLCs taxable as C corporations are exempted from the corporation franchise tax.

The act clarifies how two provisions of current law apply to dealers in intangibles that are owned by, or are part of the same corporate "family" as, a financial institution or insurance company. (For the purposes of this analysis, these provisions are referred to as the "in lieu of other tax" provisions.) One of the "in lieu of other tax" provisions states that the tax on dealers in intangibles is in lieu of any other tax on the property or assets of the dealer, and that the corporation franchise tax is in lieu of any other tax on the property or assets of a financial institution. (R.C. 5725.26.) The other provision states that the tax on domestic insurance companies is in lieu of any other tax on the company's property or assets. (R.C. 5725.25.) In at least one instance, the Ohio Supreme Court held that the second of these provisions does not exempt an insurance company subsidiary from the corporation franchise tax just because the insurance company is subject to the tax on insurance companies. (See *Mutual Holding Co. v. Limbach*, 71 Ohio St.3d 59 (1994).) The Court's reasoning, in part, was that a subsidiary's stock is distinct from the subsidiary itself as an entity and, therefore, the "asset" held by the insurance company was the subsidiary's stock and not the subsidiary itself. Therefore, the Court held, the corporation franchise tax levied on the subsidiary does not constitute a tax on the assets of an insurance company that would be prohibited under the "in lieu of other tax" exemption under R.C. 5725.25.

The act essentially codifies this result and applies it to dealers in intangibles that are owned by, or are under common ownership with, insurance companies or financial institutions.<sup>16</sup> Specifically, the act expressly provides that the two "in lieu of other tax" provisions are not to be construed so as to exempt any dealers in intangibles from the 8-mill tax on dealers. This appears to be intended to preclude a dealer that is owned by a financial institution from obtaining an exemption from the dealers in intangibles tax on the grounds that the institution's "assets" (i.e., its stake in the dealer) are subject to taxation under the corporation franchise tax (because these assets are held by the financial institution and thus constitute part of the institution's taxable base as measured by net worth). Similarly, the act precludes a dealer owned by an insurance company from obtaining an exemption from the dealers in intangibles tax on the grounds that the insurance company's stake in the dealers in intangibles is already subject to taxation under the tax on domestic insurance companies.

The act's express denial of the "in lieu of other tax" exemptions applies to dealers in intangibles taxes payable in 2003 and thereafter.

#### **Distribution of dealers in intangibles tax revenue**

(R.C. 5725.24)

Revenue raised from the tax on dealers in intangibles is divided between the state GRF and the county where the dealer has offices: three-eighths of the revenue is for the state GRF and five-eighths is for the county.

The act segregates dealers in intangibles tax revenue on the basis of whether a dealer is owned by, or under common ownership with, an insurance company or financial institution. All of the revenue arising from dealers owned by or under common ownership with an insurance company or financial institution (in the act's terminology, "qualifying dealers") is to be credited to the state GRF, and the remainder of the revenue--arising from all other dealers--is to be divided among the state GRF and the counties in the same three-eighths--five-eighths proportions as under pre-existing law.

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<sup>16</sup> For the purpose of this discussion, "own" is used to refer to majority stock ownership (such as of a subsidiary). "Common ownership" means that the dealer, if not owned or controlled directly by the insurance company or financial institution, is owned or controlled by the same entity that owns the insurance company or financial institution, either directly or through a chain of majority stakes. "Qualifying controlled group" is the term used in the statutes to refer to such relationships.

### **Corporation franchise tax credit**

(R.C. 5733.45)

The act grants a corporation franchise tax credit for financial institutions that own a dealer in intangibles paying the dealers in intangibles tax or that are under common ownership with such a dealer. The credit may be claimed only if the dealer files a written statement with the Tax Commissioner irrevocably agreeing that the dealer will not seek a refund of any dealers in intangibles tax paid in 2000 and 2001, and that the dealer will pay the tax in 2002 (notwithstanding the fact that the clarification of the "in lieu of other tax" exemption, explained above, does not expressly apply until 2003). The statement must be filed by January 15, 2002.

The credit equals one of the following amounts, whichever is less:

(1) The amount of dealers in intangibles tax paid by the dealer (net of refunds received) in the calendar year preceding the corporation franchise tax year.

(2) The amount of such tax that would be payable in that calendar year on the financial institution's pro rata share in the dealer's taxable capital (based on the cost of the institution's direct investment in the dealer's stock, less appreciation and goodwill exempted in computing the institution's franchise tax).

The credit is nonrefundable and no carryforward is authorized.

Certain rules are to be applied for the purposes of determining if a dealer is under common ownership with a financial institution claiming the credit and determining the cost of an institution's direct investment in a dealer. Generally, these rules require a taxpayer that owns a share of a pass-through entity (e.g., partnership, S corporation, limited liability company) to include the taxpayer's share of that entity's income accounting items in the taxpayer's income accounting items (even if the taxpayer's share of the entity is held indirectly through another entity, and even if the pass-through entities are layered--i.e., one pass-through entity owning a share of another pass-through entity).

### **Apportioning taxable base among states**

(R.C. 5725.14)

In order to properly tax a dealer in intangibles' business activity in Ohio, continuing law apportions the dealer's taxable base among Ohio and any other states where the dealer has offices. A dealer's entire taxable base (i.e., all of its capital, wherever it may be employed) is apportioned among each of its offices in proportion to how much of the dealer's "gross receipts" arise from business at that

office. In the case of dealers whose principal business is loanmaking, gross receipts is measured on the basis of loan amounts originating at each office; in the case of stock and bond brokers, gross receipts is measured on the basis of the amount of commissions charged for business arising from that office, plus 1% of all of the office's other receipts. This office-by-office apportionment method also serves to apportion a dealer's capital among the various counties where it has offices so that each county receives an equitable share of a dealer's tax payments.

The act modifies the apportionment method for dealers that are stock and bond brokers, primarily to account for online trading. The change applies only to apportioning stock and bond brokers' taxable base between Ohio and other states; it does not appear to apply to the apportionment among counties--apparently, this will continue to be done on an office-by-office basis. As under prior law, stock and bond brokers' apportionment is based on the commissions received by the broker, but the commissions are to be assigned to the customer's billing address instead of the office where the commissions arise. For this purpose, a customer's billing address is presumed to be the address as set forth on a customer's bill, statement, or other notice or acknowledgment; if no bill, statement, notice, or acknowledgment is issued, or one is issued electronically to an address that is not a street or post office address, the billing address is presumed to be the customer's street address as set forth in the dealer's records.

For the purpose of the apportionment, the act defines commissions to include brokerage commissions, asset management fees, and similar fees charged in the regular course of business for the maintenance and management of a customer's account. The apportionment no longer includes a factor for 1% of a dealer's "other receipts."

### **Corporation franchise tax on financial institutions--apportioning income**

(R.C. 5733.056)

Financial institutions are subject to the corporation franchise tax. But their taxable base (i.e., capital, surplus, reserves, and undivided profits) is apportioned in a different manner than other corporations. Under continuing law, a three-factor apportionment formula is applied to most financial institutions in order to represent the percentage of an institution's business activity in Ohio (the factors are measures of the institution's property, payroll, and sales). But certain "qualified institutions" may use a single-factor apportionment formula based only on deposits assigned to its branches in Ohio as compared to everywhere; under prior law, this deposits-only formula could be used in lieu of the three-factor formula through tax year 2003. A qualified institution is a financial institution with at least 10% of its deposits assigned to Ohio branches and that has undertaken

mergers with, or acquisitions of, institutions in other states that have resulted in the institution operating interstate branches.

The act allows a qualified institution to continue using the deposits-only apportionment formula beyond 2003. The act also slightly relaxes one of the criteria for being considered a qualified institution that may use the deposits-only formula: only 9%, rather than 10%, of its deposits must be assigned to Ohio branches.

### **Reduction in tobacco stamp discount**

(R.C. 5743.05)

The cigarette excise tax is paid by the purchase of tax stamps (or meter impressions of the stamps), that must be affixed to each package of cigarettes. Current law authorizes the Tax Commissioner to grant a discount to the tobacco dealers who buy the stamps or meter impressions of not less than 3.6% or more than 10% of their face value, as a commission for affixing and canceling the stamps or impressions.

The act reduces the minimum percentage at which the Commissioner can set the discount to 1.8%.

### **Property tax exemption for Edison centers**

(R.C. 5709.12 and 5709.121)

Continuing law allows an exemption from property taxes for property owned by "charitable" or "educational" institutions. To be exempted, the property itself must be used by the institution for a charitable or educational purpose; ownership of property by such an institution alone does not qualify the property for exemption. Currently, a "charitable" or "educational" institution includes, among others, a private, nonprofit, federally tax exempt corporation with a principal purpose of encouraging the advancement of science, promoting scientific research, improving qualifications and usefulness of scientists, or increasing the diffusion of scientific knowledge. Once such a corporation sells real property that has been exempted, the property becomes taxable and the corporation must pay the equivalent of four years of tax savings as a recoupment.

The act provides that property owned by an Edison center is exempted from property taxation.<sup>17</sup> In the case of real property, the property may be exempted

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<sup>17</sup> An Edison center is a "cooperative research and development facility" receiving a grant under the state's Thomas Alva Edison Program. The program awards grants to

even if it is simply held by the center pending lease or sale to other parties. If the Edison center eventually sells or leases the property, the property becomes taxable (unless the lessee's use qualifies for exemption), but the center will not be subject to the four-year tax recoupment.

**Personal property tax exemption for certain Camp Perry property**

(R.C. 5709.17)

Former law exempted from taxation tangible personal property that was "surplus property," as defined by federal law, of the federally chartered, nonprofit Corporation for the Promotion of Rifle Practice and Firearms Safety. The corporation runs the Civilian Marksmanship Program at Camp Perry. The act exempts from taxation all tangible personal property obtained and held by the corporation under the federal charter, not just surplus property.

**Sales tax holiday study**

(Section 28)

The act creates the Committee to Study a Sales Tax Holiday, and requires it to issue a report to the General Assembly by March 1, 2002. However, if Congress enacts legislation by that date providing national sales tax relief, the committee is to issue no report.

The committee consists of the Tax Commissioner, five members appointed by the Speaker of the House of Representatives, and five members appointed by the President of the Senate. The Speaker and President are to appoint three members each from their respective chambers, no more than two of whom can be from the chamber's majority party. The Speaker also must appoint one member representing retail merchants and one who is a county commissioner. The President's other appointments are a member representing consumer advocacy groups and one representing the Ohio Manufacturers Association. All the members must be appointed within 30 days after the act's effective date. The members are to select the committee chairperson from among themselves.

After submitting its report, or determining it will not issue a report because of Congressional action, the committee ceases to exist.

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*"foster research, development, or technology transfer efforts involving enterprises and educational institutions that will lead to the creation of jobs." (R.C. 122.33(C).)*

## OTHER PROVISIONS

### *Independent healthcare actuarial reviews of mandated insurance benefits*

(R.C. 103.144, 103.145, 103.146, and 103.147)

Prior law required the Legislative Budget Officer, whenever any bill received a second hearing in a standing committee in the house of the General Assembly in which the bill originated, to review the bill to determine whether the bill included a mandated benefit.<sup>18</sup> If the Legislative Budget Officer determined that the bill included a mandated benefit, the Legislative Budget Officer was required to arrange for the performance of an independent healthcare actuarial review of the mandated benefit. No later than 60 days after the second hearing of the bill, the Legislative Budget Officer was to submit the findings of the actuarial review to the chairperson of the committee to which the bill was assigned and to the ranking minority member of that committee.

Prior law also permitted the chairperson of a standing committee of either house of the General Assembly to request the Legislative Budget Officer, at any time, to review any bill that was assigned to the chairperson's committee to determine whether the bill included a mandated benefit. If the Legislative Budget Officer determined that the bill included a mandated benefit, the Legislative Budget Officer was required to arrange for the performance of an independent healthcare actuarial review of the mandated benefit. The Legislative Budget Officer was to submit the findings of the actuarial review to the chairperson, and to the ranking minority member of the chairperson's committee, within 60 days after receiving the chairperson's request.

The act revises this requirement for actuarial reviews of bills that contain mandated benefits. Under the act, the chairperson of a standing committee of either house of the General Assembly may, at any time, request the Director of the Legislative Service Commission to review any bill that is assigned to the chairperson's committee in order to determine whether the bill includes a

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<sup>18</sup> Under ongoing law, "mandated benefit" means the following, considered in the context of a sickness and accident insurance policy or a health insuring corporation policy, contract, or agreement: (1) any required coverage for a specific medical or health-related service, treatment, medication, or practice, (2) any required coverage for the services of specific health care providers, (3) any requirement that an insurer or health insuring corporation offer coverage to specific individuals or groups, (4) any requirement that an insurer or health insuring corporation offer specific medical or health-related services, treatments, medications, or practices to existing insureds or enrollees, (5) any required expansion of, or addition to, existing coverage, and (6) any mandated reimbursement amount to specific health care providers.

mandated benefit. The Director must review the bill and notify the chairperson of the Director's determination. If the Director determines that the bill includes a mandated benefit, the presiding officer of the house that is considering the bill may request the Director to arrange for the performance of an independent healthcare actuarial review of the mandated benefit. No later than 60 days after receiving the presiding officer's request to arrange for the performance of the actuarial review, the Director shall submit the findings of the actuarial review to the chairperson of the committee to which the bill is assigned and to the ranking minority member of that committee.

The act retains the requirement that, in arranging for an actuarial review of a mandated benefit, the Legislative Service Commission is to retain one or more independent actuaries on a consulting basis to determine the financial impact of the mandated benefit. It also retains the specific determinations that are to be made by the independent actuary or actuaries.

**Compensation payable to and continuation of health care benefits for certain public employees on military leave**

(R.C. 145.01, 742.01, 3307.01, 3309.01, 5505.01, 5923.05, and 5923.051; Section 41)

**Compensation**

**Continuing law.** Permanent public employees of the state or any political subdivision of the state who are members of the Ohio organized militia or members of other reserve components of the United States armed forces are entitled to a leave of absence without loss of pay for military service for periods of up to one month, for each calendar year in which they are performing military service (R.C. 5923.05(A)). In addition, if these permanent public employees are employed by a political subdivision and are *called or ordered* to active duty for longer than a month because of *an executive order of the President or an act of Congress*, they are entitled to a leave of absence and must be paid, during each monthly pay period of the leave, the lesser of (1) the difference between their gross monthly wage or salary as an employee and the sum of their gross military pay and allowances received that month, or (2) \$500 (R.C. 5923.05(B)).

On the other hand, if these permanent public employees are employed by a state agency and are so called or ordered to active duty beyond a month, they are entitled to a leave of absence and must be paid, during each monthly pay period of the leave, the difference between their gross monthly wage or salary as an

employee and their monthly military pay and allowances (R.C. 5923.05(C)).<sup>19</sup> Under law enacted by Section 3 of Am. Sub. S.B. 164 of the 124th General Assembly, the entitlement of permanent public employees of state agencies to receive these payments applies retroactively to the later of October 1, 2001, or the date a leave of absence begins after a call to active duty; and, if a person who was called to active duty before November 20, 2001, is entitled to additional benefits under that act (that is, to more than \$500), the employing state entity must pay, in a lump sum, the additional amount due.

**Changes made by the act.** The act specifies that the compensation payments to permanent public employees of a political subdivision or a state agency who are called or ordered to active duty for longer than a month because of an executive order of the President or an act of Congress also must be made to permanent public employees of a political subdivision or a state agency who are Ohio National Guard members and who the Governor orders to perform duty for longer than a month under specified circumstances prescribed by statute (R.C. 5923.05(B) and (C)).<sup>20</sup> The act applies these provisions retroactively in the same general manner as Section 3 of Am. Sub. S.B. 164 applied its compensation payment changes (Section 41).

Also, retirement contributions to the state's five retirement systems will not be required to be made by a permanent public employee of a political subdivision or a state agency who is an Ohio National Guard member, or his or her employer, on compensation payments made by the political subdivision or the state in relation to such an order by the Governor to perform duty (R.C. 145.01(R)(2)(g), 742.01(L)(2)(e), 3307.01(L)(2)(j), 3309.01(V)(2)(g), and 5505.01(S)(2)(f)).<sup>21</sup>

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<sup>19</sup> Prior to November 20, 2001 (the effective date of Am. Sub. S.B. 164 of the 124th General Assembly), these permanent public employees of state agencies were subject to the same compensation payment provisions as permanent public employees of political subdivisions--that is, a \$500 limit on the entitlement to compensation payments from the public employer during the period of active duty beyond a month.

<sup>20</sup> R.C. 5919.29(A) permits the Governor to order the performance of duty authorized under the "Act of August 10, 1956," 70A Stat. 596, 32 U.S.C.A. 101 to 716, and under regulations prescribed by the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Air Force, or the Chief of the National Guard Bureau.

<sup>21</sup> The act substitutes cross-references to "Section 3 of Am. Sub. S.B. 164 of the 124th General Assembly" for erroneous cross-references to "Section 3 of S.B. 173 of the 124th General Assembly" in all of the cited retirement system statutes.

### **Health care benefits**

**Continuing law: in general.** Public and private sector employees who are reservists and who are covered by group health policies, plans, or contracts are entitled to continued benefits coverage under those policies, plans, and contracts when called or ordered to active duty. The continuation of benefits coverage may extend from a minimum period of 18 months to a maximum period of 36 months under specified conditions. An employee eligible for continued benefits coverage must pay the amount of contribution required by the employer, up to 102% of the group rate for the coverage being continued. The employer may pay a portion or all of the eligible person's contribution. (R.C. 1751.54, 3923.381, and 3923.382.)

**State employees.** Under other law (notwithstanding the latter "general" law), any state employee who is entitled to military leave and is called to active duty for a period in excess of one month in any calendar year because of an executive order of the President or an act of Congress is entitled to continue or reactivate the person's coverage by any state-sponsored health care plan for the duration of the time the person is on active duty. The person, the person's spouse, or a dependent of the person may request the continuation or reactivation of health, medical, hospital, dental, vision, and surgical benefits coverage whether those benefits are provided by an insurance company, health insuring corporation, or other health plan or entity. The person, spouse, or dependent and the person's employer are each liable for payment of the same costs for the coverage as if the person were not on the military leave of absence. (R.C. 5923.051.)

As noted above, this entitlement applies notwithstanding the general provisions of continuing law explained above. Thus, a state employee's benefits coverage could continue for longer than 36 months if the period of active duty lasts longer than that time, and the state employee could not be required to pay the employer's contribution amount. (R.C. 5923.051.)

The act extends these continuation/reactivation of health care benefits provisions to state employees who are National Guard members ordered to perform duty by the Governor under the described circumstances.

### **Distribution of maps of electoral districts to members of the General Assembly**

(R.C. 149.07)

Formerly, 50 copies of maps of Ohio showing congressional, senatorial, and judicial districts of the state were required to be sent to each member of the General Assembly. The act eliminates this requirement.

## **Tobacco settlement payments to General Revenue Fund**

(R.C. 183.02; Section 32)

Ongoing law provides for the money the state receives from the master lawsuit settlement agreement with the major tobacco companies to be distributed in specified percentages and amounts to several funds. One of these funds is the Tobacco Use Prevention and Cessation Trust Fund, which is to be used by the Tobacco Use Prevention and Control Foundation for research and programs related to preventing or controlling tobacco use. A portion of the state's annual receipts of master settlement agreement money is allocated to the trust fund each year through 2006 and again in 2012.

The act authorizes the Director of Budget and Management to transfer to the General Revenue Fund in each of fiscal years 2002 and 2003 up to \$120 million that would otherwise be distributed to the Tobacco Use Prevention and Cessation Trust Fund. The act also extends the schedule for allocating a portion of master settlement agreement receipts to the trust fund, to require master settlement agreement revenue equal to the amounts the act diverts to the GRF to be credited to the trust fund from 2013 and 2014 receipts.

The act further contemplates that the General Assembly will authorize an additional transfer of up to \$20 million of master settlement agreement receipts to the GRF. The tobacco revenue budget bill for fiscal years 2003 and 2004 is to specify how such a transfer will reduce the shares of tobacco revenue that would otherwise go to the funds established to receive that revenue, but the act specifies that no reductions in the shares allotted to the Education Facilities Trust Fund, Education Facilities Endowment Fund, Education Technology Trust Fund, or Biomedical Research and Technology Transfer Trust Fund are to be made. (Thus, the shares that can be reduced are those allotted to the Southern Ohio Agricultural and Community Development Trust Fund, Ohio's Public Health Priorities Trust Fund, and the Tobacco Use Prevention and Cessation Trust Fund.) Once such a reduction methodology becomes law, the Director of Budget and Management can make one or more transfers to the GRF until June 30, 2003, as long as the total amount transferred does not exceed \$20 million. The act provides that the funds that lose money through this diversion in fiscal years 2002 and 2003 are to be repaid the diverted amounts from fiscal year 2013 and 2014 master settlement agreement receipts.

### **County recorder liability**

(R.C. 317.33)

Continuing law provides that if a county recorder does or omits any specified or unspecified act contrary to the county recorders law, the recorder is liable on the recorder's bond to any party harmed by the improper conduct.<sup>22</sup> The act modifies this provision to provide that the recorder is liable *solely* on the recorder's bond to any party harmed by the improper conduct.

### **Uses of the Corporate and Uniform Commercial Code Filing Fund**

(R.C. 1309.528)

Continuing law requires businesses to file certain documents with the Secretary of State, for such things as registering trade names or recording articles of incorporation or secured transactions. The Secretary of State charges a fee for such filings, and all fees collected under R.C. Title XIII (the Uniform Commercial Code) or Title XVIII (the Corporation and Other Business Entity Code) must be deposited into the state treasury to the credit of the Corporate and Uniform Commercial Code Filing Fund. The fund is used for expenses related to processing the filings, and also for Secretary of State office operations. But under prior law it could not be used for operations of the Division of Elections.

The act eliminates the prohibition against using money in the Corporate and Uniform Commercial Code Filing Fund for expenses of the Division of Elections.

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<sup>22</sup> *Specified actions include if a county recorder refuses to accept a deed or other instrument of writing presented to the recorder for recording, the legal fee for recording it being paid or tendered; or refuses to give a receipt therefor, when required; or fails to number consecutively all deeds or other instruments of writing upon receipt; or fails to index a deed or other instrument of writing, by the morning of the day next after it is filed for record; or neglects, without reasonable cause, to record a deed or other instrument of writing within 20 days after it is received for record; or demands and receives a greater fee for the recorder's services than that allowed by law; or knowingly endorses on a deed or other instrument of writing a different date from that on which it was presented for record, or a different date from that on which it was recorded; or refuses to make out and certify a copy of any record in the recorder's office, when demanded, the recorder's legal fee for the copy being paid or tendered; or purposely destroys, defaces, or injures any book, record, or seal belonging to the recorder's office, or any deed or other instrument of writing deposited in the recorder's office for record, or negligently suffers it to be destroyed, defaced, or injured.*

### **Cigarette wholesaler's markup**

(R.C. 1333.11)

The Cigarette Sales Practices Law prohibits cigarette wholesalers from selling cigarettes, with intent to injure competitors or to destroy or lessen competition, at less than the cost of the cigarettes to the wholesaler. (R.C. 1333.12, not in the act.) The term "cost to the wholesaler" is defined in statute, and generally means the invoice cost of the cigarettes to the wholesaler plus a markup to cover costs of doing business. Former law set the markup at 2% of the invoice cost, unless the wholesaler proved a lesser or higher cost of doing business.

The act increases the wholesaler's markup to 2.5% of the invoice cost. (The wholesaler retains the ability to prove a lesser or higher cost of doing business.)

### **Temporary subsidy for community schools that enroll a high number of severe behaviorally handicapped students**

(Section 38)

Each community school (sometimes called a "charter school") receives a payment from the state for each student that attends the school.<sup>23</sup> The payment is deducted from the amount of state moneys that the school district in which the student is entitled to attend school would otherwise receive for each student that is attending the community school. This payment is the sum of the formula amount (the base cost attributed to all students) times the cost-of-doing-business factor for the county in which the student's resident school district is located, any special education weights and vocational education weights (including local share) calculated for the student, and some Disadvantaged Pupil Impact Aid calculated for the student.<sup>24</sup>

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<sup>23</sup> *Community schools, established under R.C. Chapter 3314., are public, nonprofit, nonsectarian schools that operate independently of any school district under contract with a public sponsor.*

<sup>24</sup> *The method of calculating and making operating payments to community schools is codified in R.C. 3314.08 (not in the act).*

*The school funding system pays a per-pupil amount for each special education student on top of the amount generated by the base-cost formula that applies to all students. The additional amount for a special education student depends upon the "weight" assigned the student based on the student's special need classification. The weight attributed to*

The act establishes a temporary additional subsidy for fiscal years 2002 and 2003 for any community school in which the number of students receiving special education and related services for "severe behavior handicap" conditions (SBH students) in fiscal year 2001 was, and in each of fiscal years 2002 and 2003 is, at least 50% of the total number of students enrolled in the school. This subsidy is not deducted from any amounts calculated for any school district. The amount of the subsidy for each fiscal year is the difference between the aggregate amount calculated for all the SBH students enrolled in the community school for that fiscal year and the aggregate amount calculated for such students for fiscal year 2001. If the difference is a negative number, the amount of the subsidy is zero. If a qualifying school enrolls in either fiscal year fewer SBH students than it did in fiscal year 2001, the subsidy is to be reduced proportionally.

For fiscal year 2001, the special education weight attributed to a SBH student is 3.01, but for fiscal years 2002 and 2003 that weight is 1.4598 and 1.5483, respectively. Even though the formula amount for fiscal years 2002 and 2003 are considerably higher than for fiscal year 2001, the reduced SBH weights could result in lower payments for each SBH student. Therefore, it appears likely that under continuing law community schools that enroll a large number of SBH students will receive significantly smaller operating payments than they would under prior law.<sup>25</sup> The act would essentially hold these community schools harmless for their FY 2001 per pupil aid for SBH students.

### **Community school catastrophic costs payments**

(Section 42)

Under continuing law, if a community school's costs for a student receiving special education and related services exceed the threshold catastrophic cost prescribed for the student's special needs classification under the school funding law, the school can receive an additional state payment equal to the excess of its costs over the threshold. (In fiscal year 2002, the threshold amount is \$25,000 for needs classifications two through five and \$30,000 for classification six.) The act specifies that in calculating such payments to community schools, the Department of Education must utilize the law in effect for the fiscal year in which the costs of

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*each class is multiplied by the formula amount to determine the amount of additional payment for each special student in that class. (R.C. 3317.022, not in the act.)*

<sup>25</sup> (R.C. 3317.013 and 3317.02(T) to (V), neither section in the act.) Under prior law, the formula amount for fiscal year 2001 was \$4,294, for fiscal year 2002 was \$4,414, and for fiscal year 2003 was \$4,538. Currently, the formula amount for fiscal year 2002 is \$4,814 and for fiscal year 2003 is \$4,949. (R.C. 3317.012, not in the act.)

-serving the students were incurred and not the law in effect for the fiscal year in which the costs were reported to and paid by the Department.

**Lease-purchase agreements by educational service centers**

(R.C. 3317.37 and 3317.375)

Continuing law permits the governing board of an educational service center (ESC) to "acquire, lease, or enter into a contract to purchase, lease, or sell real or personal property [and to] construct, enlarge, repair, renovate, furnish, or equip facilities, buildings, or structures for the [ESC's] purposes."<sup>26</sup> The act specifies that ESCs may also acquire real property through "lease-purchase" agreements. These are the same agreements that school districts currently may use to acquire real property.<sup>27</sup> Under such an agreement, an ESC governing board may construct, enlarge, improve, furnish, equip, lease, and eventually acquire a building or improvements to a building for any ESC purpose through a series of one-year renewable leases totaling not more than 30 years. The agreement must provide that at the end of the series of leases, title to the property is vested in the board if all its obligations under the agreement have been satisfied.

An ESC governing board under the act (and a school district board under continuing law) also may grant subleases, easements, and licenses for the use of the land or facilities under the board's control under a lease-purchase agreement. Prior law limited the terms of these subleases, easements, and licenses to "like periods," presumably meaning terms the same as the lease terms agreed to by the district or ESC governing board. The act specifies instead that sublease, easement,

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<sup>26</sup> R.C. 3313.37(A), as amended by Am. Sub. H.B. 94 of the 124th General Assembly.

*An educational service center (ESC) is a regional public educational entity with its own superintendent and elected governing board that provides some educational supervision, curriculum development services, and other administrative services to all local school districts within its territory. ESCs may also provide services to area city and exempted village school districts under contract. ESCs may offer classes in certain subjects or to certain groups of students when individual school districts cannot offer the classes in a cost-effective manner. An ESC is not a taxing authority for purposes of operating the ESC, but it does receive payments from the state and the districts for each student served. In 2001, the General Assembly granted specific authority to ESCs to acquire property for classroom and office space. Prior law had appeared to limit the real property-ownership authority of an ESC to only space needed for special education and driver education programs.*

<sup>27</sup> ESCs (as well as school districts) already have authority to use lease-purchase agreements to acquire office equipment, instructional software, and maintenance equipment (R.C. 3313.37(B)(4) and (5)).

or license terms may not exceed five years beyond the final renewal term of the lease-purchase agreement. Presumably, this provision allows a district or ESC governing board to sublease the property beyond the term of lease-purchase agreement only if the board actually satisfies its obligations under the agreement and acquires title to the property.

**Exemption of School Facilities Commission employees from collective bargaining**

(R.C. 3318.31)

The act exempts all employees of the School Facilities Commission from collective bargaining.

**Control over Ohio Government Telecommunications and associated funds**

(R.C. 3357.07 and 3357.11)

Prior law required the Ohio Educational Telecommunications Network Commission (OETNC) to operate the Ohio Government Telecommunications System that, before September 5, 2001, the Capitol Square Review and Advisory Board operated.

The act instead requires that Ohio Government Telecommunications (OGT) be funded through OETNC and be managed by a broadcasting station under a contract. The broadcasting station must manage the staff of OGT, and the contract does not take effect until the OGT's Program Committee (see next paragraph) approves it. Under the act, "broadcasting station" means a properly licensed noncommercial educational television or radio station, appropriately staffed and equipped to produce programs or lessons and to broadcast programs (R.C. 3353.01(F), not in the act).

The act creates the Program Committee of OGT, consisting of the Senate President, House Speaker, Senate Minority Leader, and House Minority Leader, or their designees. By a vote of a majority of these members, the program committee may add additional members to itself. Besides its contract approval function, the program committee must adopt rules that govern the OGT's operation and its coverage and distribution of official governmental activities. (R.C. 3353.07.)

Finally, ongoing law creates the Governmental Television/Telecommunications Operating Fund in the state treasury. The fund consists of money received from the contract productions of the Ohio Government Telecommunications Studio and must be used for operations or equipment breakdown related to the Studio. The act provides that *only OGT* may authorize the spending of money in the fund. (R.C. 3357.11.)

**Authority of the Director of the State Lottery Commission to enter agreements to conduct statewide joint lottery games**

(R.C. 3770.02(J), 3770.03(B)(5), and 3770.06)

The act provides that, if the Governor directs the Director of the State Lottery Commission to do so, the Director must enter into an agreement with other lottery jurisdictions to conduct statewide joint lottery games. If the Governor signs such an agreement personally or by means of an authenticating officer, the Director then may conduct statewide joint lottery games under the agreement. The entire net proceeds from any statewide joint lottery games must be used to fund primary, secondary, vocational, and special education programs in Ohio. "Statewide joint lottery game" means a lottery game that the Commission sells solely within Ohio under an agreement with other lottery jurisdictions to sell the same lottery game solely within their statewide or other jurisdictional boundaries.

The Commission must conduct any statewide joint lottery games in accordance with rules it must adopt under the Administrative Procedure Act. These "special game rules" must (1) implement any agreements the Governor signs and the Director enters into with other lottery jurisdictions to conduct statewide joint lottery games and (2) require that the Lottery Profits Education Fund created under continuing law receive the entire net proceeds of statewide joint lottery games that remain after associated operating expenses, prize disbursements, lottery sales agent bonuses, commissions, and reimbursements, and any other expenses necessary to comply with the agreements or the rules are deducted from the gross proceeds of those games.

The act relatedly requires that all *gross proceeds* from statewide joint lottery games be deposited into the State Lottery Gross Revenue Fund created under continuing law. The State Lottery Fund must have transferred to it all revenues of the State Lottery Gross Revenue Fund that represent the gross proceeds from statewide joint lottery games and that are not paid to holders of winning lottery tickets, that are not required to meet short-term prize liabilities, that are not credited to lottery sales agents in the form of bonuses, commissions, or reimbursements, and that are not necessary to cover operating expenses associated with those games or to otherwise comply with the agreements the Governor signs and the Director enters into or the rules the Commission adopts.

Whenever, in the Director of Budget and Management's judgment, the amount to the credit of the State Lottery Fund that represents proceeds from statewide joint lottery games equals the entire net proceeds of those games as described in the rules the Commission adopts regarding those games, the Director must transfer those proceeds to the Lottery Profits Education Fund.

Under the act, the Treasurer of State, in consultation with the Commission, in accordance with the rules the Commission adopts governing statewide joint lottery games, and notwithstanding the requirements of any other statutory provision governing the investment of state funds, may invest the moneys in the Deferred Prizes Trust Fund created under continuing law that represent proceeds derived from those games. The Treasurer of State must so invest these moneys in order to provide all or part of the amounts necessary to fund deferred prizes the Commission awards in connection with statewide joint lottery games.

**Lottery sales agent payments to provide bonding services**

(R.C. 3770.06(A))

**Continuing and former law**

Continuing law requires that all gross revenues received from sales of lottery tickets, fines, fees, and related proceeds be deposited into the State Lottery Gross Revenue Fund. Formerly, all revenues of that Fund that were (1) not paid to the holders of winning lottery tickets, (2) not required to meet short-term prize liabilities, (3) not paid to lottery sales agents in the form of bonuses, commissions, or reimbursements, and (4) not paid to financial institutions to reimburse them for sales agent nonsufficient funds had to be transferred to the State Lottery Fund. Under continuing law, whenever, in the Director of Budget and Management's judgment, the amount to the credit of the State Lottery Fund exceeds that needed to meet the Commission's maturing obligations and as working capital for its further operations, the Director must transfer the excess to the Lottery Profits Education Fund.

**Changes made by the act**

The act modifies the provisions governing revenue transfers from the State Lottery Gross Revenue Fund to the State Lottery Fund. It *requires the transfer* to the State Lottery Fund of those revenues included in the State Lottery Gross Revenue Fund that are collected from lottery sales agents for remittance to insurers under contract to provide sales agent bonding services.<sup>28</sup> The act also changes the provision that excludes from transfer to the State Lottery Fund those revenues of the State Lottery Gross Revenue Fund that are *paid* to lottery sales agents in the form of bonuses, commissions, or reimbursements, to a provision

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<sup>28</sup> *It may be that the intent of this amendment was actually to do the opposite--to specify that the revenues collected from lottery sales agents for remittance to these insurers are "not" to be transferred to the State Lottery Fund. All other provisions of R.C. 3770.06(A) relate to revenues that are not to be so transferred and are to remain in the State Lottery Gross Revenue Fund.*

that excludes from transfer to the State Lottery Fund those revenues of the State Lottery Gross Revenue Fund that are *credited* to lottery sales agents in the form of bonuses, commissions, or reimbursements.

### **Gambling impact study**

(Section 39)

The act creates a committee to study the impact of gambling, and requires it to issue a report to the General Assembly by June 30, 2002.

The committee consists of the Director of the State Lottery Commission, three members appointed by the Governor, two members of the House of Representatives appointed by the Speaker of the House (one each from the majority and minority parties), and two members of the Senate appointed by the President of the Senate (one each from the majority and minority parties). The Governor is to designate the chairperson of the committee from among the Governor's appointees.

After issuing its report, the committee ceases to exist.

### **Nursing Facility Reimbursement Study Council**

(R.C. 5111.34)

The Nursing Facility Reimbursement Study Council is required to review, on an ongoing basis, the system for reimbursing nursing facilities under the Medicaid program.

Under prior law, the Council consisted of 15 members, including two members of the House of Representatives appointed by the Speaker of the House and two members of the Senate appointed by the Senate President.

The act adds two more members to the Council, increasing its membership to 17. The two new members are an additional member of the House (for a total of three House members) and an additional member of the Senate (for a total of three Senate members).<sup>29</sup> Not more than two members of the House and two

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<sup>29</sup> *The other members of the Nursing Facility Reimbursement Study Council are (1) the Director of Job and Family Services, (2) the Deputy Director of the Office of Ohio Health Plans of the Department of Job and Family Services, (3) an employee of the Governor's office, (4) the Director of Health, (5) the Director of Aging, and (6) two representatives each of the Ohio Academy of Nursing Homes, Association of Ohio Philanthropic Homes and Housing for the Aging, and the Ohio Health Care Association.*

members of the Senate may be members of the same political party. The Speaker is required to appoint the additional House member and the Senate President is required to appoint the additional Senate member not later than 90 days after the effective date of this provision of the act.

**Medicare certification of certain nursing home beds**

(Sections 11 and 12)

Am. Sub. S.B. 50 of the 121st General Assembly repealed law that required the Director of Health to grant a certificate of need (CON) for the recategorization of rest home beds in a licensed nursing home to intermediate care facility beds if the proposed project met several conditions. One of the conditions was that the owner of the nursing home was required to file a sworn statement with the Department of Health stating that the nursing home would not request Medicare or Medicaid certification for the recategorized beds.<sup>30</sup> S.B. 50 included a provision that provided that the repeal of that law did not release the holder of such a CON from complying with the conditions for the CON, including the condition that the holder not seek Medicare or Medicaid certification for the recategorized beds. The act eliminates the prohibition against the CON holder seeking Medicare certification of the beds but maintains the prohibition against seeking Medicaid certification.

**Adjustments to local government funds**

(Sections 19 and 20)

A provision of Am. Sub. H.B. 94 of this General Assembly established a formula for limiting the amount of tax revenue credited during the current biennium to the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund. If the economy had been strong, the result of the provision would have been to reduce the amounts credited to these funds below the amounts that would normally have been credited under the Revised Code. However, since the economy has been weak, the H.B. 94 formula amounts are actually higher than those that would have been credited under the Revised Code. Limiting the amount of revenue credited to the local government funds results in an increase in the amount credited to the state General Revenue Fund.

The act modifies the H.B. 94 formula by which the Tax Commissioner reduces the amounts of the transfers to the local government funds. For the period

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<sup>30</sup> *If ownership of the nursing home was transferred, the person to whom ownership was transferred was also required to file such a sworn statement.*

July 2001 to January 2002, if the money actually credited to each local government fund, minus each fund's proportionate share of \$64,092,000, is greater than the amount that would normally have been credited under the Revised Code, the Commissioner must subtract the difference from the amounts credited to those funds in February 2002. (\$64,092,000 is the amount transferred in January 2001, from the Income Tax Reduction Fund to the local government funds.) For the period February 2002 to May 2002, if the amounts credited to the local government funds together with amounts subtracted during the preceding period exceeds the amount that would have been credited under the Revised Code, the Commissioner must subtract the difference from the amounts credited in June 2002. The Commissioner must make analogous adjustments for the periods June 2002 to January 2003 and February 2003 to May 2003.

**Elimination of road and bridge funding study**

(Section 27)

Sub. H.B. 73 of the 124th General Assembly (the Transportation Budget Bill) required the staff of the Legislative Service Commission to conduct a study to identify and suggest changes to federal and state mandates on the use of road and bridge funding available to local governments. The act repeals this requirement.

**Extension of reporting date for the Ohio Plan Study Committee**

(Section 19)

Am. Sub. H.B. 94 of the 124th General Assembly created a ten-member Ohio Plan Study Committee, and required it to determine appropriate ways to fund the Board of Regent's Ohio Plan for Technology and Development. The committee was required to report its recommendations to the Governor and General Assembly by December 31, 2001, but the act extends this deadline to March 15, 2002.

**Workers' Compensation premium credit**

(Section 37)

The act includes a statement by the General Assembly encouraging the Administrator of Workers' Compensation to apply a 75% reduction of future premium for private state fund employers and public employer taxing district employers for the period when employer premiums are next due.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-16-01	pp. 926-927
Reported, H. Finance & Appropriations	10-30-01	p. 1047
Passed House (53-46)	10-31-01	pp. 1053-1054
Reported, S. Finance & Financial Institutions	11-15-01	p. 1129
Passed Senate (20-10)	11-15-01	pp. 1131-1139
House refused to concur in Senate amendments (0-87)	11-15-01	pp. 1084-1085
Senate requested conference committee	11-15-01	p. 1146
House acceded to request for conference committed	11-15-01	pp. 1091-1092
House agreed to conference committed report (53-45)	12-05-01	pp. 1101-1173
Senate agreed to conference committee report (18-14)	12-05-01	pp. 1162-1240

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