



Bill Analysis

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Legislative Service Commission

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(excluding appropriations and similar provisions)

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

Sen. Carnes

BILL 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).
- Requires that the appointing authority of a county MR/DD board member remove the member on receipt of written notice from any source that reasonably demonstrates that the member is ineligible to serve on the board and permits a resident of the county that the board serves or the Director of the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to bring mandamus proceedings against the appointing authority for failure to remove the member.
- 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 the

* *This analysis was prepared before the report of the Senate Finance and Financial Institutions Committee appeared in Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

collective bargaining unit of service and support administrators and to prepare a report for the House Speaker, Senate President, and Governor not later than February 1, 2002.

- Eliminates the requirement that the ODMR/DD Director 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.

- Eliminates a prohibition against individuals employed or under contract as service and support administrators from being in the same collective bargaining unit as employees who perform duties that are not administrative.
- Revises the priority requirements for county MR/DD board waiting lists.
- Permits the Director of the Ohio Department of Job and Family Services, 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.
- 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 bill's effective date unless 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.
- 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.
- Makes applicable to county MR/DD boards provisions of current 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.

Capital Access Loan Program

- 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.
- Creates the Capital Access Loan Program Fund in the state treasury.
- Secures, in accordance with a specified procedure, a financial institution's risk associated with a capital access loan to an eligible business by a

deposit of money from the Capital Access Loan Program Fund in the institution's program reserve account.

County and political subdivision revenue agreements

- 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.

Rural Development Initiative Fund and the Rural Industrial Park Loan Program

- 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.

Appalachian Technology and Workforce Development

- 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.
- 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.

Incentive Districts for Tax Increment Financing (TIF)

- Enables counties, townships, and municipal corporations to establish a new form of TIF, known as an "incentive district."
- Permits the establishment of an incentive district only if the district meets certain criteria for economic distress or substandard physical infrastructure.

- Limits the incentive district to 300 acres in size.
- Allows the local governmental authority to designate the boundaries of an incentive district, to exempt parcels in the district from taxation on increased valuation, and to require owners of the parcels to make service payments in lieu of taxes.
- 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 a 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 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.
- Clarifies that public improvements and public infrastructure improvements for any form of TIF include, but are not limited to, public roads and highways, water and sewer lines, environmental remediation, land acquisition, demolition, and the provision of communications facilities.

Corporate franchise and personal income tax credits

- 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.

Evaluation report for programs in the bill

- Mandates that the Director of Development prepare an evaluation report for the bill's programs that covers their operation until December 31, 2006, and specifies that the report must be delivered no later than January 30, 2007, to the President of the Senate, the Speaker of the House of Representatives, the chairpersons of the standing committees to which

economic development legislation normally is referred, and the Governor.

OTHER PROVISIONS

- 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.
- Postpones to FY 2013 and 2014 the amounts that four of the tobacco settlement trust funds would otherwise have received in FY 2002 and 2003.
- 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.
- Limits the liability of a clerk of a court of record to the clerk's bond for any improper refusal, act, or omission of the clerk when performing the clerk'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.
- 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 services 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.

- Encourages the Administrator of Workers' Compensation to allow employers a one-time 75% premium credit during the next premium period.
- Adds an additional member of the House of Representatives and an additional member of the Senate to the Nursing Facility Reimbursement Study Council.
- Exempts real property owned by an Edison center from property taxes even if the center holds the property, or leases it to others, rather than using it directly for its own activities.
- Suspends the sales tax for two days in 2002 for sales of clothing and shoes priced under \$200 per item.
- Requires sales and use taxes on certain motor vehicle leases to be paid in a lump sum at the beginning of the lease, rather than in installments.
- Reduces amounts credited to the local government funds.
- Exempts from taxation tangible personal property at Camp Perry.

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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.

Current law requires 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 must 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 bill requires instead that these members be relatives of a person eligible for (but not necessarily receiving) the adult services. Instead of being related to a person receiving services for pre-school or school-age children, a member may be related to a person eligible for early intervention services. Regarding the two members appointed by the county probate judge, current law requires 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 bill requires instead that at least one be a relative of a person eligible for residential services or supported living. Whereas current law requires that these members appointed by the county commissioners or probate judge be a relative by blood or marriage, the bill 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 a county MR/DD board member. Among those ineligible are elected public officials, other than precinct, ward, and district committee members, presidential electors, and delegates to a national convention. The bill additionally permits township trustees and township clerks to serve.

Terms of membership

(R.C. 5126.02)

Members are appointed to four-year terms. Current law provides that a member who has served during each of two consecutive terms may not be re-appointed for a subsequent term until one year after ceasing to be a member, except that a member who has served for six years or less within two consecutive terms may be re-appointed for a subsequent term. The bill 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 bill provides that this is the stated annual organizational meeting in January.

Joint MR/DD Council to study tax equity and collective bargaining issues

(Sections 7 and 8)

The Joint Council on Mental Retardation and Developmental Disabilities is an existing council consisting 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 bill requires that the Council study issues relating to the tax equity program and the collective bargaining unit of service and support administrators.¹ The Council must study the issues in meetings open to the public.

Regarding the tax equity program, the Council is to do all of the following:

(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

(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.

Regarding the collective bargaining unit of service and support administrators, the Council must do both of the following:

(1) Review the law that prohibits individuals employed or under contract as service and support administrators from being in the same collective bargaining unit as employees who perform duties that are not administrative;

(2) Determine whether the following service and support administration functions are in conflict or incompatible with the functions of employees who perform duties that are not administrative: selection of providers of day services, contracting with applicable providers, reviewing and assuring the quality of services, and monitoring for major unusual incidents.

The Council is required to prepare a report on its responsibilities under the bill. The report must include the Council's findings and recommended actions.

¹ 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. Service and support administrators were formerly called case managers.

² The bill eliminates that law. See "Collective bargaining unit of service and support administrators" below.

The report is to be submitted to the House Speaker, Senate President, and Governor not later than February 1, 2002.

Current law requires that ODMR/DD make payments under the tax equity program on or before September 30. The bill requires ODMR/DD to make the payments for fiscal year 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. Current law authorizes the Director to grant the funding to a county MR/DD board or, with the consent of a county MR/DD board, individuals and private entities that provide the services for which the funding is granted. The bill eliminates the 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 bill 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. Current law requires 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 bill 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 bill 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)

Each county MR/DD board is required to develop a three-calendar year plan regarding Medicaid-funded services to individuals with MR/DD. The Medicaid-funded services are habilitation center services, case management services, and ODMR/DD-administered home and community-based services.³

Current law provides 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.

The bill 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 bill requires that county MR/DD boards submit the preliminary implementation component to ODMR/DD not later than January 31, 2002. The bill 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, 2001.⁴ In addition, the bill requires that that 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

³ *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.*

⁴ *The bill 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.*

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. Current law provides that the services include habilitation center services. The bill 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: 5126.035, 5126.046, 5126.054, 5123.049, 5123.0411, 5126.057, and 5705.44)

ODMR/DD is required by current 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), approve each plan that includes all the required information and conditions. The bill 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.

Current law provides that a county MR/DD board with an approved plan has Medicaid local administrative authority regarding Medicaid-funded services for individuals with MR/DD.⁵ The bill provides instead that a county MR/DD board has the Medicaid local administrative authority automatically. As under current law, however, 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

⁵ *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.*

implementation, within a required amount of time. The bill 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;⁶

(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 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. Current law provides that this includes individuals who are not employed by or affiliated in any manner with a private or government entity that provides Medicaid-funded services to individuals with MR/DD pursuant to a contract with a county MR/DD board. Under the bill, ODMR/DD may utilize an individual employed by or affiliated with a government 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 bill 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 current 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.

⁶ *Current law provides that if a county MR/DD board fails to submit all of the plan's components within the required time or ODMR/DD disapproves the plan, ODMR/DD may withhold all or part of any funds ODMR/DD would otherwise allocate to the county MR/DD board. The bill provides for ODMR/DD to terminate all or part of the county MR/DD board's Medicaid local administrative authority instead.*

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.

Current law provides that the amount ODMR/DD must assign to a county MR/DD board be adequate to ensure that the habilitation center services the individuals receive are comparable in scope to the services they received when the habilitation center was under contract with ODMR/DD. The amount assigned may not be less than the amount ODMR/DD paid the center for the individuals in fiscal year 2001. The bill 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; ancillary section: 5111.872)

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 in accordance with the board's ODMR/DD-approved, three-year plan.⁷ The bill requires that the county MR/DD board give priority to the individuals 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

⁷ *The exception is that no individual may receive such priority over an individual placed on the waiting list on an emergency status.*

of certain specified conditions. Current law provides that one of the conditions is that the individual be less than 22, not receive residential services or supported living, reside in his or her family's home, and have one or more specific service needs that are unusual in scope or intensity.⁸ The bill eliminates from this condition the prohibition that the individual not receive residential services or supported living and the requirement that the individual reside in his or her family's home. Another condition under current law is that the individual be at least 22 and have, as determined by the county MR/DD board, intensive needs for residential services on an in-home or out-of-home basis. The bill 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.

Under current law, an individual who satisfies the conditions for priority in the category discussed above is to receive priority for the services over any other individual on the waiting list other than an individual with an emergency status or 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. The bill eliminates the restriction that an individual in the first-discussed category of priority not receive priority over an individual in the second-discussed category. 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

⁸ *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.*

to adopt the rules no later than December 31, 2001.⁹ The rules cease to have effect December 31, 2003.

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

The bill creates a new priority category. A county MR/DD board is permitted to provide an individual with MR/DD priority over any other individual on a waiting list for ODMR/DD-administered home and community-based services, other than an individual placed on the waiting list on an emergency status, if two conditions exist. First, the individual receiving the priority must (1) reside in an intermediate care facility for the mentally retarded (ICF/MR) or nursing facility at the time of application for the home and community-based services, (2) have intensive needs and be eligible for home and community-based services, and (3) not be given priority for the services under the priority category in existence for fiscal years 2002 and 2003 only.¹⁰ Second, another individual with MR/DD who has priority for home and community-based services under other categories must choose, instead, to seek admission to the ICF/MR or nursing facility in which the individual seeking priority for the home and community-based services resides, be eligible to have Medicaid pay for the services of such a facility, and be admitted to the facility.¹¹

An individual may receive priority under the bill-created priority category regardless of whether the individual admitted to an ICF/MR or nursing facility resides in the same or different county. If the individuals reside in different

⁹ *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.*

¹⁰ *The 2002 and 2003 fiscal years priority category is available to individuals who reside in an ICF/MR or nursing facility, choose to move to another setting with the help of home and community-based services, and are capable of residing in the other setting.*

¹¹ *The other priority categories are available to individuals who (1) receive residential services or supported living, either need services in the individual's current living arrangement or will need services in a new living arrangement, and have a primary caregiver who is 60 or older or (2) are 22 or older, do not receive residential services or supported living, and are determined to have intensive needs for home and community-based services on an in-home or out-of-home basis.*

counties, the county MR/DD boards serving the counties in which the individuals reside must enter into a collaborative agreement with each other as necessary to implement the priority category. One or more other county MR/DD boards are permitted to enter into the collaborative agreement with the other two boards.

The bill adds the bill-created priority category to the provision that permits a county MR/DD board to use, until December 31, 2003, criteria specified in ODMR/DD rules in determining the order in which individuals will be offered home and community-based services if two or more individuals on a waiting list have priority for the services pursuant to different priority categories. The bill also adds the bill-created priority category to a provision of current law that requires ODMR/DD, when allocating enrollment numbers to a county MR/DD board for ODMR/DD-administered home and community-based services, to do what it considers necessary to enable county MR/DD boards to provide the services to individuals in accordance with the requirements of the priority categories.

Residential Facility Waiver transition

(Sections 4 and 5)

The bill 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.¹² 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 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

¹² *The Centers for Medicaid and Medicare Services is the federal office, formerly known as the Health Care Financing Administration, that administers Medicare and Medicaid.*

beds eligible for Medicaid payment is not to be higher than the number of such beds eligible for such payment on the bill's effective date. 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 bill 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)

Current 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 bill 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. Current law requires that the Director 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 bill 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. Current law provides that adult services do not include community or supported employment services.¹³ The bill 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. Current law provides that 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 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 to the county MR/DD board's investigative agent. The bill requires that the action also include monitoring for unusual (in addition to major unusual) incidents and misappropriation of funds. The entity must provide notice of unusual and major unusual incidents and suspected cases of abuse, neglect, exploitation, or misappropriation of funds to the county MR/DD board, rather than to the investigative agent.

¹³ *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.*

Service and support administration

(R.C. 5126.15)

Current law requires a county MR/DD board to provide service and support administration to each individual who is eligible for other services of the board. The bill requires instead that a county MR/DD board provide service and support administration to each individual at least age three who 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.

Collective bargaining unit of service and support administrators

(R.C. 5126.15)

A county MR/DD board is permitted to provide service and support administration by directly employing service and support administrators or by contracting with entities for the performance of service and support administration. The bill eliminates law that prohibits individuals employed or under contract as service and support administrators from being in the same collective bargaining unit as employees who perform duties that are not administrative.¹⁴

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.

¹⁴ See "Joint MR/DD Council to study tax equity and collective bargaining issues" above.

Current law requires an investigative agent to report directly to a county MR/DD board's superintendent. The bill 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.¹⁵ The bill 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.¹⁶

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

¹⁵ 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.

¹⁶ 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.

County MR/DD board complaints against ODMR/DD

(R.C. 5123.043)

Current law authorizes a person who 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.¹⁷ Prior to commencing a civil action regarding the complaint, the person 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 person may commence a civil action if the complaint is not settled to the person's satisfaction. The bill provides that these provisions are also applicable 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, and 5126.357)

The bill 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.

CAPITAL ACCESS LOAN PROGRAM

In general

The bill 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

¹⁷ *An ODMR/DD employee may not file, under this provision of law, a complaint related to the employee's terms and conditions of employment.*

Capital Access Loan Program Fund into the financial institution's *program reserve account*. (R.C. 122.60(A), (B), (C), (D), (E), (F), (I), and (J), and 122.602(A).)

Capital Access Loan Program Fund

In general

The bill 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) from the Facilities Establishment Fund (see **COMMENT 1**) and (2) from 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).

Appropriation for fiscal years 2002 and 2003

The bill makes an appropriation of \$3 million in fiscal year 2002 and \$3 million in fiscal year 2003 from the Facilities Establishment Fund to the CALP Fund (Section 15 of the bill). The Director of Budget and Management is authorized to transfer from the Facilities Establishment Fund to the CALP Fund up to \$3 million per fiscal year in cash, on an as needed basis, at the request of the Director of Development, subject to Controlling Board approval (Section 9 of the bill).

Director of Development functions: in general

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 bill, a business may participate in the CAL Program by obtaining 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 bill 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 bill, 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 bill 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 bill, 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 under the bill, 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. Under the bill, 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. Under the bill, 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 bill 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 bill 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 bill) (see **COMMENT 2**).
- (8) The loan conforms to any other rules adopted by the DOD Director under the bill.

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 bill, 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 bill 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 bill, 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 *is allowed* to 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)). With respect to "approval," this

provision of the bill apparently precludes the DOD Director from disbursing moneys from the CALP Fund to a participating financial institution for deposit in its program reserve account *after that date* when the financial institution must apply to the DOD Director for prior approval of certain types of capital access loans and perhaps when the financial institution merely certifies the making of a capital access loan in accordance with the bill's procedure.

Miscellaneous changes

The bill 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

Nature of agreements

The bill 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 (R.C. 307.6910 (A) and (B)):

- 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 (see R.C. 5705.35 and 5705.36, not in the bill). (R.C. 307.6910(C).)

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 (see R.C. 5705.41, not in the bill). Under the bill, 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. (R.C. 307.6910(D).)

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 (R.C. 307.6910(E)).

Enforcement of agreements

The terms of an agreement described above 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).)

Sunset provision

The bill repeals effective July 1, 2007, the section of law permitting an agreement as described above (Section 9 of the bill).

RURAL DEVELOPMENT INITIATIVE FUND AND THE RURAL INDUSTRIAL PARK LOAN PROGRAM

Purposes of the RDI Fund

The bill 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 (see R.C. 122.25(A), not in the bill) 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. (Section 17(A) of the bill.)

Sunset provisions

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 (Section 9(A) of the bill). In addition, the bill extends the sunset date applicable to the Rural Industrial Park Loan Program and its fund from July 1, 2003, to July 1, 2007 (R.C. 166.03(B) and Section 11 of the bill).

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 (see R.C. 122.23(B), not in the bill). 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 (see R.C. 122.24 and 122.25, not in the bill). Eligible applicants for grants from the RDI Fund 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. (Section 17(A) of the bill.)

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 (see R.C. 166.02(E) and Chapter 4115., not in the bill). (Section 17(A) of the bill.)

The DOD Director is required to develop program guidelines for the transfer and release of moneys under the bill's RDI Fund grant provisions. The release of those moneys to an eligible applicant is subject to Controlling Board approval. (Section 17(A) of the bill.)

Appropriation for fiscal years 2002 and 2003

The bill permits the Director of Budget and Management to transfer from the Facilities Establishment Fund to the RDI Fund up to \$5 million in cash, on an as needed basis, at the Director's request in both fiscal year 2002 and 2003 (Sections 15 and 17(B) of the bill).

APPALACHIAN TECHNOLOGY AND WORKFORCE DEVELOPMENT

Amounts and eligible activities

Current 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, "contingent upon the passage of H.B. 6 of the 124th General Assembly."¹⁸ The bill 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. And, under the bill, these TANF funds may be used to leverage other state or local funds for the below described "eligible activities." (Section 19 of the bill.)

The bill also revises the eligible activities for which these TANF funds may be used upon being awarded under current law. It *removes* the following as eligible activities: economic development, organizational development for workforce development partners, workforce development, and technology

¹⁸ *This provision is contained in Section 63.09 of Am. Sub. H.B. 94 of the 124th General Assembly, as subsequently amended, under the heading "Appalachian Workforce Development and Job Training." Under the bill, the heading is "Appalachian Technology and Workforce Development." Certain TANF (Temporary Assistance for Needy Families) funds are distributed under the Ohio Works First Program, which provides aid to needy families with a minor child or expecting a child, while other funds are used for the Prevention, Retention, and Contingency Program to help eligible persons overcome immediate barriers to achieving and maintaining self-sufficiency and personal responsibility.*

infrastructure upgrades. It *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. It *adds* microenterprise development and other entrepreneurship activities as eligible activities. (Section 19 of the bill.)

Plans and their review

As a condition on 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 bill 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. (Section 19 of the bill.)

Under the bill, 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. (Section 19 of the bill.)

Also, under the bill, the Governor's Office of Appalachia must develop guidelines for the submission and approval of the plans mentioned above; 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 by the bill to provide technical assistance and advice to the Governor's Office of Appalachia to facilitate the administration of all of the TANF funds. (Section 19 of the bill.)

Other condition on use of the TANF funds

Current law provides that, as a condition on 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 bill removes contract agencies from this provision and changes the funding cut-off date to June 30, 2003. (Section 19 of the bill.)

INCENTIVE DISTRICTS FOR TAX INCREMENT FINANCING (TIF)

Background--tax increment financing

(R.C. 5709.40 to 5709.43 (municipal corporations); R.C. 5709.73 to 5709.75 (townships); and R.C. 5709.77 to 5709.81 (counties))

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 bill, 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 bill, 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 bill 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 (R.C. 5709.40(A)(6)). 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 bill permits the establishment of an incentive district only if the area within the boundaries of the incentive district meets certain distress characteristics. The bill 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 public infrastructure serving the district is below the standards required by a written, comprehensive economic development plan adopted by the legislative authority of the subdivision, as certified by the political subdivision's engineer.

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

(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 bill).

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 existing TIF law, a local government must send a notice to the school board stating its intent to exempt a parcel from taxation. The bill 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 bill 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 existing 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 bill 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. (Unlike the existing TIF law, the school board's approval applies to exemptions granted throughout the entire district rather than

individual parcels.) 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 bill 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 bill, 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 bill 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 bill. Payments received for a TIF incentive district would 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 existing TIF law, the bill does not restrict the granting of tax exemptions for residential property within an incentive district. Under existing TIF law, residential property may be exempted from taxation only if it is located in a "blighted area" of an "impacted city" (the definitions of these terms are presented below). 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 bill 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

The bill includes the following definitions:

Blighted area and impacted city

(R.C. 5709.40(A)(1), 5709.73(A)(4), and 5709.77(E))

"Blighted area" and "impacted city" have the same meanings as in section 1728.01 of the Revised Code.

Blighted area. Division (E) of section 1728.01 of the Revised Code defines "blighted area" as:

an area within a municipality containing a majority of structures that have been extensively damaged or destroyed by a major disaster, or that, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, unsafe and unsanitary conditions or the existence of conditions which endanger lives or properties by fire or other hazards and causes, or that, by reason of location in an area with inadequate street layout, incompatible land uses or land use relationships, overcrowding of buildings on the land, excessive dwelling unit density, or other identified hazards to health and safety, are conducive to ill health, transmission of disease, juvenile delinquency and crime and are detrimental to the public health, safety, morals and general welfare.

Impacted city. Under division (C) of section 1728.01 of the Revised Code, "impacted city" means a municipal corporation that meets either of the following:

(1) In attempting to cope with the problems of urbanization, to create or preserve jobs and employment opportunities, and to improve the economic welfare of the people of the municipal corporation, the municipal corporation has at some time:

(a) Taken affirmative action by its legislative body to permit the construction of housing by a metropolitan housing authority organized pursuant to sections 3735.27 to 3735.39 of the Revised Code within its corporate boundaries or to permit such a metropolitan housing authority to lease dwelling units within its corporate boundaries; and

(b) Been certified by the [D]irector of the [D]epartment of [D]evelopment that a workable program for community improvement (which shall include an official plan of action for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized residential neighborhoods of decent homes and suitable living environment for adequate family life) for utilizing appropriate private and public resources to eliminate, and to prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of blighted, deteriorated, or slum areas, to undertake such activities or other feasible community activities as may be suitably employed to achieve the objectives of such a program has been adopted. A determination by the United States that the impacted city's workable program meets the federal workable program requirements shall be sufficient for the [D]irector's certification.

(2) Been declared a major disaster area, or part of a major disaster area, pursuant to the "Disaster Relief Act of 1970,"...and has been extensively damaged or destroyed by a major disaster, provided that impacted city status obtained pursuant to division (C)(2) of this section lasts for only a limited period from the date of the declaration, as determined by the rules promulgated pursuant to division (G) of section 122.06 of the Revised Code, but in the event that an impacted city, while qualified under such division, enters into a financial agreement with a community urban redevelopment corporation pursuant to section 1728.07 of the Revised Code, a loss of certification under such rules shall not affect that agreement or the project to which it relates.

Project

(R.C. 5709.40(A)(6), by reference in R.C. 5709.73(A)(3) and 5709.77(E))

"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."

Public infrastructure improvement

(R.C. 5709.40(A)(7) and by reference in R.C. 5709.73(A)(5) and 5709.77(G))

A "public infrastructure improvement" includes, but is not limited to, "public roads and highways, water and sewer lines, remediation, land acquisition, demolition, the provision of gas, electric, and communications service facilities, and the enhancement of public waterways through improvements that allow for greater public access."

Legislative declaration

(Section 9(b))

The bill 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 bill.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX CREDIT

Job retention credit

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

The bill 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 (see Footnote 2). 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.

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.¹⁹ Tax liability is determined using the method that produces more revenue for the state. Under the bill, 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 in "research and development, technology transfer, bio-technology, or the application of new technology developed through research and development or acquired through technology transfer" (R.C. 122.15(C)) or "the research and development or the production of information technology," (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.

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

Miscellaneous

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

The bill 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 brownfield remediation or job retention programs (R.C. 5733.0610 and 5747.058); authorizes the taxpayer to claim credits granted under the programs (R.C. 5733.0610 and 5747.058); amends the deadlines for assessments by the tax commissioner to conform to the waiver and extension

¹⁹ This includes unincorporated associations, such as limited liability companies, that elect to be taxed as corporations.

provisions of the two credit programs (R.C. 5733.11 and 5747.13); and specifies the order in which the credits must be taken (R.C. 5733.98 and 5747.98).

EVALUATION REPORT FOR PROGRAMS IN THE BILL

Director of Development duties

Not later than January 30, 2007, the DOD Director must prepare and deliver an evaluation of the bill'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 bill'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. (Section 10 of the bill.)

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. (Section 10 of the bill.)

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 (Section 10 of the bill).

OTHER PROVISIONS

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

(R.C. 149.07)

At present 50 copies of maps of Ohio showing congressional, senatorial, and judicial districts of the state are required to be sent to each member of the General Assembly. The bill eliminates this requirement.

Temporary diversion of revenue from four tobacco settlement trust funds

(R.C. 183.02; Section 27)

Current law requires that the money the state receives from the master lawsuit settlement agreement with the major tobacco companies to be credited to the Tobacco Master Settlement Agreement Fund. The Director of Budget and Management then distributes the money to eight so-called trust funds in the state treasury in specified percentages and amounts.

The bill authorizes the Director of Budget and Management to transfer to the General Revenue Fund, in each of fiscal years 2002 and 2003, the amount that is left in the Tobacco Master Settlement Agreement Fund after transferring to the Education Facilities Trust Fund, Education Facilities Endowment Fund, and Education Technology Trust Fund the percentages and amounts required to be credited to those funds.

The trust funds that would thus not receive revenue during FY 2002 and 2003 are the Tobacco Use Prevention and Cessation Trust Fund, Southern Ohio Agricultural and Community Development Trust Fund, Ohio's Public Health Priorities Trust Fund, and Biomedical Research and Technology Transfer Trust Fund. Under the bill, their loss would not be permanent, however. In FY 2013 and 2014 they would receive the amounts not credited to them from the Tobacco Master Settlement Agreement Fund in FY 2003 and 2004.

County recorder liability

Existing R.C. 317.33 provides that if a county recorder does or omits any specified (see **COMMENT 3**) 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. The bill modifies that law to provide that the recorder is liable *solely* on the recorder's bond to any party harmed by the improper conduct. (R.C. 317.33(A).)

Existing R.C. 317.33 also provides that if a county recorder, acting under the county recorders law, improperly refuses to record an instrument of writing in a manner that is not with malicious purpose, in bad faith, or in a wanton or reckless manner, the recorder is not personally liable on account of the improper refusal and the surety that issued the recorder's bond does not have a right of subrogation against the recorder on account of a claim made on the recorder's bond as a result of the improper refusal. The bill provides that, except when acting with malicious purpose, in bad faith, or in a wanton or reckless manner, a county recorder is not personally liable *for any act or omission for which a recorder would be liable upon their bond*, and the surety that issued the recorder's bond does not have a right of subrogation against the recorder on account of a claim made on the recorder's bond. (R.C. 317.33(B).)

Clerk of a court of record liability

Existing R.C. 2701.20 provides that if the clerk of a court of record, acting in a manner that is not with malicious purpose, in bad faith, or in a wanton or reckless manner, improperly refuses to accept a document for filing or refuses to docket and index a document, the clerk is not personally liable on account of the improper refusal, and the surety that issued the bond does not have a right of subrogation against the clerk on account of a claim made on the clerk's bond as a result of the improper refusal. (R.C. 2701.20(C).) The bill modifies that language to state that if the clerk of a court of record, acting in a manner that is not with malicious purpose, in bad faith, or in a wanton or reckless manner, improperly refuses to accept a document for filing, refuses to docket and index a document, *or performs any other act or omission that gives rise to liability in the performance of the duties of a clerk of court, the clerk is liable solely upon the clerk's bond to any party harmed by the improper refusal, act, or omission*. The clerk is not personally liable, and the surety that issued the bond does not have a right of subrogation against the clerk on account of a claim made on the clerk's bond. (R.C. 2701.20(C).)

Uses of the Corporate and Uniform Commercial Code Filing Fund

(R.C. 1309.528)

Current 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 it cannot be used for operations of the Division of Elections.

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

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

(Section 31)

Each community school (sometimes called a "charter school") receives a payment from the state for each student that attends the school.²⁰ 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.²¹

The bill 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

²⁰ *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.*

²¹ *The method of calculating and making operating payments to community schools is codified in R.C. 3314.08 (not in the bill).*

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 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 bill.)

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 is 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 current law community schools that enroll a large number of SBH students will receive significantly smaller operating payments than they would under prior law.²² The bill would essentially hold these community schools harmless for their FY 2001 per pupil aid for SBH students.

Lease-purchase agreements by educational service centers

(R.C. 3317.37 and 3317.375)

Current 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."²³ The bill specifies that ESCs may also acquire real property through "lease-purchase" agreements.

²² (R.C. 3317.013 and 3317.02(T) to (V), neither section in the bill.) 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 bill.)

²³ 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.

These are the same agreements that school districts currently may use to acquire real property.²⁴ 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 bill (and a school district board under current 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. Current law limits 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 bill specifies instead that sublease, easement, or license terms may not exceed five years beyond the final renewal term of the lease-purchase agreement. Presumably, this provision would allow 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 bill 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)

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

The bill 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

²⁴ 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)).

paragraph) approves it. Under the bill, "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 bill).

The bill creates the Program Committee of OGT that must consist 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, current law creates the Governmental Television/Telecommunications Operating Fund in the state treasury. The Fund must consist 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 bill 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(A) and (B))

The bill 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 existing 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 bill relatedly requires that all *gross proceeds* from statewide joint lottery games be deposited into the State Lottery Gross Revenue Fund, which is created under existing 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 paid to lottery sales agents in the form of bonuses, commissions, and 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.

Workers' Compensation premium credit

(Section 30)

The bill includes a statement by the General Assembly encouraging the Administrator of Workers' Compensation to apply a 75% premium credit for employers (except self-insuring employers) for the period when employer premiums are next due.

Nursing Facility Reimbursement Study Council

(R.C. 5111.34)

The Nursing Facility Reimbursement Study Council is an existing council consisting of 15 members, including two members of the House of Representatives appointed by the House Speaker and two members of the Senate appointed by the Senate President.²⁵ The Council is required to review, on an

²⁵ *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.*

ongoing basis, the system for reimbursing nursing facilities under the Medicaid program.

The bill 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). Not more than two members of the House and two members of the Senate may be members of the same political party. The House 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 bill.

Property tax exemption for Edison centers

(R.C. 5709.12 and 5709.121)

Current 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 bill provides that property owned by an Edison center is exempted from property taxation.²⁶ In the case of real property, the property may be exempted even if it is leased to other parties or simply held by the center pending lease or sale to other parties. If the Edison center eventually sells the property, the property becomes taxable, but the center will not be subject to the four-year tax recoupment of current law.

The provision takes effect 90 days after the bill's effective date.

²⁶ *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 "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).)*

Sales tax "holiday" for clothing and shoes

(Section 17)

The amendment suspends the sales and use tax for two days in 2002 on sales of clothing and footwear. The suspension applies only to items priced individually at \$200 or less; it does not apply to any item priced over \$200 and does not apply to the total value of multiple items sold in a single transaction. (For the purpose of the \$200 threshold, the price is determined without the tax added.) To be exempted under the two-day suspension, clothing or footwear must be designed to be worn "on or about the human body." The suspension will occur on the Friday and Saturday following the effective date of the provision. The Tax Commissioner is to adopt rules as needed to implement the provision, and make informational bulletins available to vendors.

Accelerated sales tax payment for automobile leases

(R.C. 5739.01(H) and 5741.01(G))

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.)

The bill requires the entire amount of sales and use tax on certain motor vehicle leases 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. The bill's change applies only to passenger cars (i.e., cars accommodating nine or fewer passengers), noncommercial vehicles (i.e., "light trucks" with a capacity of one ton or less and not used in business), recreational vehicles, outboard motors, and aircraft. (Applied to the example above, \$906 in tax is still due, but it is payable in entirety at the outset of the lease.)

The provision takes effect 90 days after the bill's effective date.

Adjustments to local government funds

(Sections 17 and 18)

A provision of Am. Sub. H.B. 94 froze the amount of income tax revenue transferred from the General Revenue Fund to the Local Government Fund, the

Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund at the previous biennium's levels. 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 "frozen" amounts are actually higher than those that would have been credited under the Revised Code.

The bill reduces the "frozen" amounts by an additional 6% for fiscal years 2002 and 2003.

Personal property tax exemption for certain Camp Perry property

(R.C. 5709.17)

Current law exempts from taxation tangible personal property that is 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 amendment exempts from taxation all tangible personal property held by the corporation under the federal charter.

COMMENT

1. The Facilities Establishment Fund is contained in the state treasury. It consists of proceeds from the issuance of certain bonds, notes, and other obligations; moneys received by the state from the repayment of certain loans and recovery on certain loan guarantees; service charges for certain loan guarantees and loans in connection with the allowable costs of economic development projects; any grants, gifts, or contributions of money received by the DOD Director to be used for the latter loans; and all other moneys appropriated or transferred to the fund. The moneys in the fund only may be used for purposes that are authorized by Section 13 of Article VIII of the Ohio Constitution, and only subject to approval of the Controlling Board.

2. Under the Application for Economic Development Assistance Law, a person who applies to the state, a state agency, or a political subdivision for economic development assistance must indicate on the application for assistance whether the person has any outstanding liabilities owed to the state, a state agency, or a political subdivision. Such a person also must authorize the state, state agency, or political subdivision to inspect the personal financial statements of the applicant, including tax records and other similar information not open to public inspection.

3. 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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, H. Finance & Appropriations	10-16-01	pp. 926-927
Passed House (53-46)	10-30-01	p. 1047
Reported, S. Finance & Financial Institutions	10-31-01	pp. 1053-1054
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