Bill Rowland and other LSC staff

Legislative Service Commission

Sub. S.B. 261*

124th General Assembly
(As Reported by H. Finance and Appropriations)

Sen. Carnes

BILL SUMMARY

- Increases the tax on cigarettes from 24¢ per pack of 20 to 55¢, effective July 1, 2002.
- Modifies the Unfair Cigarette Sales Act with respect to the determination of a retailer's "cost of doing business."
- Applies the income tax to trusts to the extent income is apportioned and allocated to Ohio.
- Delays the corporation franchise tax and personal income tax benefits that otherwise would result from the accelerated depreciation deduction recently enacted by Congress.
- Requires a year-end transfer from the General Revenue Fund (GRF) to a new fund in the amount by which GRF revenue exceeds inflation-adjusted FY 2001 GRF revenue; the new fund is devoted to budget stabilization and the Income Tax Reduction Fund.
- Indexes the personal income tax rate brackets to a broad measure of price inflation, beginning in 2005.
- Attributes income and other tax items of a subsidiary to the parent corporation for the purposes of the franchise tax if the subsidiary is not regarded as an entity separate from the parent for federal income tax purposes.

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* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note for Sub. S.B. 261 for an analysis of such provisions.*

- Requires nonresident investors in a pass-through entity doing business in Ohio to apportion their share of business income on the basis of the entity's apportionment ratios over the most recent three years.

- Specifies that income arising from liquidating all or part of a business (including income from goodwill) is apportionable business income, and therefore taxable at least in part by Ohio, rather than allocable nonbusiness income for which nonresidents might receive a tax credit.

- Eliminates statutory language requiring a portion of foreign source dividends received by a corporation to be included in the corporation's franchise tax base measurement.

- Prescribes a new formula to provide equity-based funding to county MRDD boards to help pay for adult services.

- Permits the transfer of cash from most state funds, other than those created under R.C. Chapter 5747. (such as the three local government funds), to the GRF to cover deficits during fiscal years 2002 and 2003.

- Generally prohibits appropriations in fiscal years 2004 and 2005 from the GRF from exceeding spending from the GRF in fiscal years 2002 and 2003 (except in certain areas), creates the Budget Study Committee consisting of ten legislators, and requires the committee to issue a report by March 31, 2003.

- Authorizes the Director of Job and Family Services to establish and implement a supplemental drug rebate program under which drug manufacturers may be required to provide the Department of Job and Family Services a supplemental rebate (in cash or services) as a condition of having the drug manufacturer's drug products covered by Medicaid without prior approval, but makes an exception for certain drugs used to treat mental illness, HIV, or AIDS.

- Creates the Health Care Services Administration Fund and requires the Director of Job and Family Services to use money in the fund for costs associated with administration of the Medicaid Program.

- Specifies sources of funding for the Health Care Services Administration Fund, including (1) a percentage of federal financial participation of administrative claims a state agency or political subdivision obtains for

administering a Medicaid component for the Department of Job and Family Services and (2) amounts from assessments and intergovernmental transfers under the Hospital Care Assurance Program.

- Authorizes the Department of Job and Family Services to make Medicaid payments to providers in an amount that exceeds the Medicare reimbursement level.

- Requires the Director of Job and Family Services to examine instituting a copayment program under Medicaid designed to reduce inappropriate and excessive use of medical goods and services and, if, on completion of the examination, the Director determines such a copayment program is feasible, authorizes the Director to seek federal approval to institute the copayment program.

- For fiscal years 2003 through 2005, increases to $4.30 (from $3.30 in fiscal year 2003 and $1 in fiscal years 2004 and 2005) the franchise permit fee imposed on long-term care beds.

- Increases the mean total per diem Medicaid reimbursement rate applicable to all nursing facilities in fiscal year 2003.

- Modifies the law governing the use of money in the Nursing Facility Stabilization Fund.

- Requires the Director of Job and Family Services to submit quarterly reports to the General Assembly on the establishment and implementation of programs designed to control the increase in the cost of the Medicaid Program.

- Requires the Department of Aging to establish one or more prescription drug discount card programs.

- Requires the Director of Aging to solicit and accept proposals for administration of the program that specify certain information.

- Requires the Director to contract with one or more program administrators based on rules the Director adopts.

- If provided for by rules adopted by the Director, permits a program administrator to charge a fee for a prescription drug discount card.

- If a program's discount is achieved through rebates or discounts negotiated with drug manufacturers, prescribes how the program administrator is to use the rebates or discounts.

- Provides that records identifying recipients of Golden Buckeye Cards or prescription drug discount cards are not public records and only information not pertaining to a recipient's medical history or prescription utilization history may be disclosed at the Director's discretion.

- Requires the Director to annually develop and distribute evaluations of each prescription drug discount program.

- Authorizes the Director of Health to accept for review an application for a certificate of need approving the relocation of up to 24 existing nursing home beds in Jackson County to Gallia County.

- Extends for one year (until July 1, 2003) the scheduled expiration of a process administered by the Department of Alcohol and Drug Addiction Services for the certification or credentialing of chemical dependency professionals for purposes of Medicare and Medicaid reimbursement.

- Requires state employees whose employment commences on or after the bill's effective date and who are paid by warrant of the Auditor of State to be paid by direct deposit.

- Extends the number of academic terms that an individual enlisted in the Ohio National Guard may receive scholarships under the Ohio National Guard Scholarship Program if the individual is called to active duty.

- Authorizes county commissioners of counties with larger populations to appoint additional members to the veterans service commission if the commission's budget request exceeds certain thresholds.

- Creates the Committee to Study State and Local Taxes, and requires it to submit a report by March 1, 2003, summarizing its study of the state and local tax structure and including recommendations for improvements in that structure.

- Creates the Economic Development Study Committee to report by January 31, 2003, on ways to improve Ohio's economy.

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CONTENT AND OPERATION

Cigarette tax increase

(R.C. 5743.02, 5743.023, 5743.322, and 5743.32; Section 3)

The state imposes taxes on cigarettes at the rate of 1.2¢ per cigarette (12 mills), which is equivalent to 24¢ per pack of 20 cigarettes. The taxes consist of two levies, one at the rate of 1.1¢ and another at the rate of 0.1¢. Revenue from both taxes is paid into the General Revenue Fund. The taxes are payable by wholesale and retail dealers, generally by the purchase of tax stamps that must be affixed to cigarette packages. (Two "use" taxes also are levied at the same rates on cigarettes purchased by consumers and on which a dealer has not yet paid the Ohio tax.)

The bill increases the total tax to 2.75¢ per cigarette, or 55¢ per pack of 20 cigarettes. The bill also combines both existing levies into a single levy. The use tax levies also are increased by the same amount and combined into a single levy.

The increased rate takes effect July 1, 2002 and applies to cigarettes on hand (i.e., in a dealer's inventory or not yet sold) on that date. In order for the increase to be collected for "on hand" cigarette stocks, the bill requires dealers to

report and pay the additional tax on those cigarettes. The report and payment of one-third of the additional tax is due July 31, 2002. The remaining two-thirds of the additional tax is payable in two installments--one by August 31, 2002, and the other by September 30, 2002. Dealers also must pay the increase for stamps they previously purchased but have not yet affixed to packages. A penalty is imposed for each day a dealer is late in paying the increase for on hand cigarettes and not-yet-used stamps; the penalty equals $50 or 10% of the amount of tax due, whichever is greater. The state may enforce payment of the additional "on hand" tax (and the penalty, if it applies) by assessment.

The bill affects only the rate of the state tax on cigarettes; it does not affect the rate at which counties are permitted to tax cigarettes, or the rate of the tax on tobacco products other than cigarettes.

The bill also adds a new, temporary payment option for cigarette dealers. Dealers may purchase stamps by paying only the pre-increase face value of the stamps (i.e., 24¢ for a pack of 20), with the remaining 31¢ due within 30 days. If a dealer does not pay the remaining amount within the 30-day period, the state may not make any further stamp sales to the dealer until the dealer pays the outstanding balance and penalty and interest charges. If a wholesale dealer purchases stamps on credit by posting a bond, the amount secured by the bond need not be more than 24¢; the remaining amount is payable within 30 days on the same terms as for cash sales. This payment option is available only between July 1, 2002, and April 30, 2003.`

Unfair Cigarette Sales Act: determination of a retailer's "cost of doing business"

(R.C. 1333.11(B))

Under the current Unfair Cigarette Sales Act (R.C. 1333.11 to 1333.21), a retailer is prohibited from advertising, offering to sell, or selling cigarettes at less than cost to the retailer, "with the intent to injure competitors, or destroy substantially or lessen competition." The definition of "cost to the retailer" includes, among other things, the retailer's cost of doing business as evidenced by the methods of accounting regularly employed by the retailer in the allocation of overhead costs and expenses. In the absence of proof of a lesser or higher cost of doing business by a retailer, the "cost of doing business" is generally stated to be **6%** of the invoice cost of the cigarettes to the retailer, or of the replacement cost of the cigarettes to the retailer, whichever is lower.

The bill increases that amount to **8%**.

Taxation of trust income

(R.C. 5747.01(A)(6), (I), and (S), 5747.02, and 5747.05; Section 5(A))

Current law

The personal income tax currently applies to the income of individuals and estates; it does not apply to the undistributed income of a trust, but such income, once distributed, may become taxable to the beneficiary when received.[1] Distributions of income from a trust generally are taxable on a current basis as they are distributed (or required to be distributed) to beneficiaries. However, in the case of a complex trust, income arising from property in the trust may accumulate for distribution at some later time.[2] Under current law, once such an accumulation distribution is made, the beneficiary may have to include the distribution in taxable income under a three-year "throwback rule." The purpose of the throwback rule is to diminish tax avoidance, such as may result from a trust shifting distributions to a year when the beneficiary may be subject to a lower marginal tax rate.

Under the existing throwback rule, beneficiaries must include in their taxable incomes any accumulation distribution they receive to the extent the distribution is not greater than the income accumulating in the trust over the preceding three years (net of allowable deductions, federal taxes, distributions reported by other beneficiaries, and adding back the trust's federal personal exemptions). The rule is similar to the federal throwback rule that formerly applied to domestic trusts, except that the Ohio rule considers only the trust's undistributed income over the three most recent years.

The bill

The bill extends the income tax to the taxable income of trusts, but only to three of a trust's taxable years--those beginning in 2002, 2003, and 2004. Thereafter, the tax would not apply. While the tax applies to trust income, accumulation distributions received by beneficiaries would not be taxable to the beneficiaries. Once the tax on trust income expires, accumulation distributions again become taxable to the beneficiary under the three-year throwback rule, but

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[1] *In this context, "income" encompasses not only income in the ordinary sense, but also gains, losses, expenses, and other accounting items that figure in the computation of taxable income.*

[2] *A complex trust is a trust that is not required to distribute its income on a current basis as the income accrues; thus, income can accumulate in the trust. By contrast, a simple trust is a trust that is required to distribute all of its income on a current basis.*

the distributions are taxable only to the extent that they were not taxed to the trust during the trust's three taxable years.

Generally, a trust's taxable income is the income that is not distributed (or not required to be distributed) by the trust. (Some farming income is excluded; see below.) It is derived from the trust's federal taxable income; the same additions and deductions applicable to the federal taxable income of estates apply to trusts. The tax applies only to the taxable income that is apportioned and allocated to Ohio (as explained below). The tax is computed by multiplying the allocated and apportioned income of the trust by the personal income tax rates.

Once the tax on trusts' income takes effect, accumulation distributions received by beneficiaries will no longer be taxable under the three-year throwback rule.

Apportionment, allocation of income

Under the bill, trusts are to be taxed on the portion of their taxable income that is apportioned or allocated to Ohio ("modified taxable income"). There are three methods of apportioning or allocating income, depending on the form and source of the income:

- Capital gains (or losses) from selling or disposing of stocks, bonds, and other equity or debt interests in another entity (the "qualifying amount") are apportioned on the basis of the relative book value of the entity's physical assets in Ohio to the book value of the entity's total physical assets everywhere.

- Business income excluding any such capital gains or losses ("modified business income") is apportioned under the three-factor formula (sales, property, and payroll) as if the trust were a corporation under the franchise tax.

- Nonbusiness income excluding any such capital gains or losses ("modified nonbusiness income") is allocated to Ohio to the extent that it is produced by assets held by a resident trust. (The residency rules are explained below.)

Alternative allocation and apportionment methods may be applied if the forgoing methods do not "fairly represent the modified taxable income" of a trust. A credit is allowed for taxes paid to another state on a trust's modified nonbusiness income.

The income tax credits for residents and nonresidents are not allowed for trusts.

Residency

A trust's residency determines the extent of its income that is subject to the tax. Residency is determined by the domicile of the person who transferred the net assets to the trust. There are three cases in which a trust (or part of a trust) is considered an Ohio resident:

- The net assets were transferred under a will of a deceased person who was domiciled in Ohio at the time of death.

- The net assets were transferred by a person who is domiciled in Ohio and the trust (or a part of it) is not irrevocable.

- The net assets were transferred by a person who was domiciled in Ohio when the trust (or a part) became irrevocable. This case applies only if, for the trust's current taxable year, at least one of the trust's beneficiaries is an Ohio resident for the purpose of the income tax.

A transfer is considered to be irrevocable for this purpose to the extent that the person transferring the assets is not considered to be the owner of the assets under the federal grantor trust rules (these rules prescribe the circumstances under which the grantor of a trust exercises such control over the trust that income of the trust is taxed as the grantor's income).

Farm income; exempt trusts

A trust's income from farming is deductible, but only if the trust includes ten acres or more of farmland that is eligible for current agricultural use valuation (CAUV), regardless of whether the land actually is enrolled as CAUV land for property tax purposes.

The income tax will apply to all trusts that are subject to federal income taxation. The tax will not apply to a trust that is exempted from the federal income tax on the basis of the trust satisfying section 501(c)(3) of the Internal Revenue Code--i.e., it is organized exclusively for charitable, religious, educational, scientific, and certain other purposes, none of its net income inures to the benefit of any private person, and it is not engaged in propaganda, lobbying, or political campaigning.

The extension of the income tax to trust income begins with trusts' taxable years beginning in 2002.

Delay of accelerated depreciation deduction

The bill modifies the corporation franchise and personal income tax computation in a manner that, in effect, defers the Ohio tax benefits resulting from the accelerated depreciation deduction permitted by recent changes in federal tax law. Instead of the entire benefit being claimed immediately, it is spread out over six years. The bill does not entirely eliminate the Ohio tax benefits from the federal acceleration; taxpayers still recover their costs more quickly than under the conventional depreciation schedules.

Federal law permitting accelerated depreciation

Recent federal legislation permits businesses, in computing federal income tax, to claim a larger share of their depreciation deduction earlier than under conventional depreciation schedules.[3] Specifically, the legislation permits businesses to immediately deduct 30% of the cost of qualifying business or income-producing property in the year it is acquired; this 30% is in addition to the first-year depreciation allowed under the conventional depreciation schedules (which, in the case of most tangible personal property, ranges from 3.75% of cost to 33.33%, depending on the property's cost recovery period and the depreciation convention used).[4] The conventional depreciation schedules apply to the remaining 70% of the cost. The accelerated depreciation deduction allows businesses to recover the cost of their property acquisitions more quickly by moving an additional 30% of the cost recovery into the first year; it does not change the amount of depreciation deducted over the property's recovery period.

To qualify for this accelerated "bonus" depreciation deduction, property generally must be acquired between September 11, 2002, and September 10, 2004.[5] The bonus depreciation deduction is (arguably) incorporated into the computation of the Ohio corporation franchise tax and personal income tax once the pertinent Ohio statutes are next amended, except to the extent the statute is amended to offset or modify the effects of the change in federal law.

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[3] *Section 101 of the Job Creation and Worker Assistance Act of 2002, Pub. Law No. 107-147, 26 U.S.C. 168(k).*

[4] *If the property qualifies for the Section 179 expensing deduction, the 30% depreciation deduction applies to the balance remaining after the expensing deduction.*

[5] *Special rules apply to determine the acquisition date for some kinds of property.*

Add-back of accelerated depreciation

(R.C. 5733.04(I)(17) and 5747.01(A)(20))

The bill requires corporations subject to the franchise tax, and individual business owners subject to the personal income tax, to add back 5/6 of the additional bonus depreciation when it is claimed for federal tax purposes.[6] In effect, taxpayers are permitted to deduct only 1/6 of the federal depreciation bonus claimed in the year property is acquired. In each of the five succeeding years, 1/6 of the bonus deduction is allowed in addition to the depreciation allowed under the conventional schedules. By the sixth year, the bonus depreciation amount is entirely recovered.

The add-back does not affect the adjusted basis of the property. (Property's adjusted basis is the property's cost that, at a given time, has not yet been recovered through depreciation.)

Example

To illustrate how the bill operates, consider a taxpayer acquiring depreciable property in 2002 at a cost of $100,000. Assume that the applicable recovery period for the property is ten years; the taxpayer does not apply Section 179 expensing; and the taxpayer uses the MACRS mid-year convention. As shown below, the taxpayer must adjust its income in the first year by adding back $25,000 of the $30,000 bonus, and then adjust its income in the next five years by deducting $5,000 each year until the add-back is recovered.

Effect of depreciation add-back

Year	Deduction before bill's adjustment (annual/cumulative)	Deduction after bill's adjustment (annual/cumulative)	Difference (cumulative)
2002	$37,000	$12,000	($25,000)
2003	12,600/49,600	17,600/29,600	(20,000)
2004	10,080/59,680	15,080/44,680	(15,000)
2005	8,064/67,744	13,064/57,744	(10,000)
2006	6,454/74,198	11,454/69,198	(5,000)

[6] *That is, an individual who owns a business as a sole proprietor, or through a "pass-through" entity such as a partnership, S corporation, or limited liability company. The bill does not affect estates subject to the income tax.*

2007	5,159/79,357	10,159/79,357	0
2008	4,585/83,942	4,585/83,942	0
2009	4,585/88,527	4,585/88,527	0
2010	4,592/93,119	4,592/93,119	0
2011	4,585/97,704	4,585/97,704	0
2012	2,296/100,000	2,296/100,000	0

Allocating, apportioning the add-back and five-year deduction

(R.C. 5733.04(I)(17)(c) and (I)(18)(b) and 5747.01(A)(20)(c) and (A)(21)(b))

If a corporation's depreciated property is of a kind that income arising from it is allocable to Ohio to some extent for tax purposes, then the amount added back must be allocated to Ohio to the same extent; otherwise, it is apportioned. Accordingly, the five-year deduction must be made from a corporation's allocable income if income arising from the property is allocable. (Under the franchise tax law, income from a corporation with interstate operations is either allocated to a state or apportioned among the states where the corporation operates, depending on the nature and source of the income. Generally, capital gains and rents arising from property located or used in Ohio are allocable entirely to Ohio; dividends paid by a person with physical assets in Ohio are allocable at least in part to Ohio; and certain intangible income arising from activities in Ohio are allocable at least in part to Ohio. Other income is apportioned among all of the states where the company operates in proportion to its business presence in those states.)

Similarly, the add-back of the depreciation bonus passed through to individual owners of a pass-through entity is allocable if income from the depreciated property is allocable as nonbusiness income, and apportionable as business income if income from the property is apportionable as business income. The five-year deduction must be made from nonbusiness income if income arising from the property is nonbusiness income. (Under the personal income tax, nonbusiness income is allocated, and business income is apportioned, for the purpose of computing the nonresident tax credit and the amount of a nonresident owner's pass-through income that is subject to Ohio income tax.)

Pass-through entity owners

(R.C. 5733.04(I)(17)(a) and 5747.01(A)(20)(a))

In the case of a corporation that is a partner in a partnership or that owns a share of another kind of pass-through entity, the corporation must add back 5/6ths

of the corporation's share of the bonus depreciation deduction passed through the entity to the corporation. In the case of an individual who owns a share of a pass-through entity, the add-back applies notwithstanding an existing requirement that individuals account for their entire passed-through share of income items (i.e., their entire share of the federal bonus depreciation) for the purpose of computing the nonresident credit and the amount of a nonresident owner's pass-through income that is subject to Ohio income tax.

In the case of both corporations and individuals, the Tax Commissioner may prescribe procedures whereby the add-back requirement is waived if the corporation or individual owns less than 5% of the entity (either directly, or indirectly through its holdings of another entity).

Election for closed taxable years

(Section 5(B))

If a corporation's taxable year ends in 2002 but before the bill's effective date, it may elect to apply the add-back (and the related five-year deduction to recover the add-back) to its tax year 2003 tax report. The election is revocable as long as the revocation is made before the 91st day after the applicable statute of limitation on refunds and assessments.

Indexing income tax rate brackets

(R.C. 5747.02)

The bill requires the personal income tax rate schedule to be indexed for inflation beginning in 2005, based on increases in the implicit Gross Domestic Product Price Deflator. This index indicates the periodic change in the overall price level of all goods and services produced or provided by labor and capital within the United States. It is the same inflation measure used currently to index the personal exemption.

Indexing the rate brackets will moderate, and in some cases eliminate, the tendency for increases in a taxpayer's income to be taxed at higher marginal tax rates. Income taxes are computed on the basis of a graduated rate schedule that causes higher levels of income to be taxed at higher rates. (The schedule is set forth in R.C. 5747.02.)

The rate schedule is to be adjusted each July by the Tax Commissioner, beginning in 2005. Each of the income amounts defining a rate bracket is to be increased by the percentage increase in the GDP price deflator over the preceding calendar year. (For example, the July 2005 adjustment is to be based on the

increase in the index over 2004.) Income amounts are to be rounded to the nearest multiple of $50. If the price index decreases, no adjustment is to be made.

The adjustment applies to taxable years beginning in the calendar year in which the adjustment is made. (For example, the July 2005 adjustment would apply to taxable years beginning in 2005; for nearly all taxpayers, that would affect the tax reported on returns filed in 2006.) To the extent that tax withholding schedules are not adjusted to account for the indexing adjustment (which will not be known until nine months of most taxpayers' taxable year has passed), refunds will be larger, or the amount of tax due with a return will be smaller, than if the withholding schedules accounted for the indexing.

Attribution of tax items to subsidiaries

(R.C. 5733.01(F))

The bill expressly attributes direct ownership in certain subsidiaries to the parent corporation, as well as attributing the subsidiaries' tax items (income, deductions, gains, losses, etc.) to the parent corporation. Specifically, the bill treats the assets, liabilities, and the tax items of a "disregarded" entity or qualified subchapter S subsidiary (QSSS) owned by a parent corporation as the parent corporation's own assets, liabilities, and tax items. (Under federal law, a disregarded entity is a company or other entity owned by a parent entity but not treated as separate from the parent for tax purposes. Similarly, a QSSS is a wholly-owned subsidiary of an S corporation that is treated as not being separate from the parent S corporation.)[7] This treatment is similar to federal tax treatment of such entities. If the parent corporation sells or disposes of its share of a disregarded entity or QSSS, the sale is treated as a sale by the parent of its share of the entity's or subsidiary's assets, and the gain or loss is to be included in the corporation's net income. When the corporation apportions its income for the purpose of computing its franchise tax, it must include the entity's or subsidiary's payroll, property, and sales factors.

The provision applies to a corporation's taxable years ending on or after the bill's effective date.

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[7] *Treating QSSSs in this manner under the corporation franchise tax law may not be appropriate, since only S corporations can own a QSSS, but S corporations are not subject to the corporation franchise tax.*

Nonresident income tax credit

(R.C. 5747.21 and 5747.212)

Under current law, nonresidents who have Ohio-source income may claim a tax credit equal to the Ohio tax on any income that is not allocated or apportioned to Ohio. Existing law governs how a nonresident's income is either allocated or apportioned to Ohio for the purpose of computing the amount of the nonallocable income on which the credit is based.

The bill prescribes a new rule for how nonresident pass-through entity owners must apportion certain kinds of income. If a nonresident holds at least a 20% interest in a pass-through entity (in the form of equity or debt) for any one of the three most recent taxable years, and incurs income (including a gain or loss) from selling or disposing of that interest, the nonresident must apportion the income on the basis of the entity's apportionment ratios during those three years. If the entity was not in business for any of those years, then the ratio for that nonbusiness year is ignored.

The provision applies to a taxpayer's taxable years ending on or after the bill's effective date.

Income from liquidating a business

(R.C. 5747.01(B))

Under current income tax law, a business's income is either apportioned among the various states in proportion to the supposed business presence in those states (according to the three-factor formula explained above), or it is allocated entirely to one or another state. The purpose is to fairly attribute income to the state where the income is earned to avoid substantial multiple taxation of the same income. Income is apportioned if it is considered "business" income--i.e., income from the regular conduct of the business (e.g., income from an auto parts manufacturer selling auto parts). All other income--"nonbusiness" income--is allocated to the state depending on factors such as the physical location of the property or assets from which the income arises. (An example of nonbusiness income is the gain or loss the auto parts manufacturer might incur from selling its manufacturing equipment; income from the sale would be allocated to Ohio if the equipment was located in Ohio at the time of the sale.) The income tax applies to all business and nonbusiness income, but a credit is granted to offset the tax on a nonresident's income that is not allocated to Ohio.

Under the bill, one source of income is expressly made to be apportionable business income rather than allocable nonbusiness income: income from

liquidating all or part of a business, including income from the goodwill of the business. As business income, such income is to be apportioned among the states on the basis of the three-factor formula (sales, payroll, property), rather than allocated entirely to one state or another.

Disposition of "excess" tax receipts

(R.C. 131.44 and 131.441)

The bill limits the amount available for expenditure from the General Revenue Fund by requiring a year-end transfer of any "excess" GRF tax receipts to a new fund--the "Excess Tax Receipts Fund." Once money is transferred into the ETRF, it may not be transferred or appropriated from the fund except to supplement the Budget Stabilization Fund and the Income Tax Reduction Fund under the existing BSF/ITRF mechanism (unless the legislature overrides the prohibition against transferring or appropriating ETRF money by subsequent legislation).

"Excess" revenue is the excess of each fiscal year's actual GRF tax receipts above FY 2001 GRF tax receipts ($16,195,800,000) adjusted each year for inflation. The annual inflation adjustment is the greater of 3% or the annual percentage increase in the Consumer Price Index. The inflation-adjusted figure is the so-called "target revenue." At the end of each fiscal year, GRF revenue in excess of the target revenue must be transferred to the ETRF. Presumably, this transfer requirement is intended to limit appropriations from the GRF to the extent those appropriations would make the transfer impossible. Once excess revenue is transferred to the ETRF, it must remain there until the Director of Budget and Management makes the annual transfer called for under existing law to supplement the BSF and, to the extent the BSF contains 5% of the preceding fiscal year's GRF receipts, to the ITRF.

The ETRF transfer requirement applies to FY 2002 and each fiscal year thereafter.

Removal of unconstitutional franchise tax base adjustment

(R.C. 5733.04(I)(2))

The bill modifies the statutory language governing a deduction from the net income-based measure of the corporation franchise tax. The modification reflects a 2000 Ohio Supreme Court decision that invalidated the language insofar as the language did not permit corporations to fully deduct dividends they receive from a foreign (non-U.S.) affiliate. (*Emerson Electric v. Tracy* (2000), 90 Ohio St.3d 157.) Before the Court decision, corporations were permitted to deduct, among

other foreign-source income items, dividends received from a related corporation having little or no business presence in the United States. But, by statute, corporations could deduct only 85% of such dividends in computing the net income tax base. The Court held that, by denying the deduction for 100% of such foreign-source dividends, the statute violated the Foreign Commerce Clause of the United States Constitution.

The bill makes the statutory language consistent with the Court's decision.

New equity funding formula for adult MRDD services

(R.C. 5126.053 and 5126.18)

The bill prescribes a new formula for computing equity funding for adult services provided by county boards of mental retardation and developmental disabilities. (The existing formula is described below, under "***Current equity funding formula***.") The formula results from deliberations by the Joint Council on Mental Retardation and Developmental Disabilities, which was required by Am. Sub. H.B. 405 to establish a new methodology for equalizing adult MRDD services funding (see Sections 7 and 8 of that act).

Basic operation of new formula

(R.C. 5126.18(A), (C), (D), and (G))

The new formula is designed to provide supplemental funding to county MRDD boards that raise less-than-average amounts of funding from local property taxes for a given tax rate (adjusted for the county board's adult enrollment). To the extent the formula is fully funded, it would ensure that each county board has available the same amount per adult enrollee as it would raise locally if it levied the statewide average millage for adult services funding.[8] In other words, the formula ensures that each county board's tax yield per mill of property tax is at least equal to the statewide average yield per mill (again, adjusted for adult enrollment).

If the formula is not fully funded (i.e., appropriations are less than the total amount required to raise all county boards' tax yields up to the statewide average

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[8] *Since MRDD levies are not levied specifically for adult services, the property tax rate for adult services is derived by computing the amount of local money spent for adult services, and converting that amount into an equivalent property tax millage rate (in the bill's terms, the "local tax effort for adult services"). The statewide average millage is derived similarly, but on an aggregate basis. Federal and state funding received by county boards is disregarded.*

tax yield), equity payments computed under the formula are prorated in proportion to the appropriations actually made as compared to the appropriations required to fully fund the formula (this proportion is the "funding percentage"). For example, if fully funding the formula requires an appropriation of $40 million, but the available appropriation is $20 million, each payment is reduced by one-half of the computed amount.

Funding under the formula is to be computed and paid annually by the Department of Mental Retardation and Developmental Disabilities, not later than September 30. Equity payments are to be used solely for paying the nonfederal share of Medicaid expenditures that county boards are required to pay under existing law.

Required local effort

(R.C. 5126.18(E) and (F))

The amount of a county MRDD board's equity payment is contingent on the board's local tax effort for adult services, which measures the effective property tax rate a board devotes to adult services funding (see footnote 1). If a board's local tax effort is at least equal to the statewide average millage, and the formula is fully funded, then the board receives the full amount computed for it under the formula. If its local tax effort is less than the statewide average tax effort, then its payment is prorated accordingly. For example, if a county board's local tax effort is 75% of the statewide average millage, then it receives 75% of the payment computed for it under the formula.

If the formula is not fully funded, then the required statewide average millage is scaled down in proportion to the funding gap. For example, if the statewide average millage for adult services is 1.5 mills, but the appropriation is only one-half of the amount of the equity payments computed under the formula, then the required local tax rate is only 0.75 mills. (In the bill's terms, this scaled-down rate is the "funding-adjusted required millage.") Thus, a county board's local tax effort must equal this scaled-down rate, or its equity funding payment will be prorated on the basis of how far shy of the scaled-down rate the board's local tax effort is.

Request for exemption from funding reduction

(R.C. 5126.18(E) and (F))

If a county board's equity payment is reduced because its local tax effort is less than the statewide average millage, the Department must notify the board of the reduction by July 15, and advise the board that it may request to be exempted

from the payment reduction. The exemption request must be filed within 21 days after the notice is issued. In its request, the board may present evidence of its attempts to obtain passage of tax levies or of any other "extenuating circumstances" the board considers relevant. The board is entitled to a hearing before the Director on the exemption request in order to present pertinent evidence. The Director must conduct such a hearing unless the Director grants the exemption on the basis of the evidence presented with the board's exemption request. Whether or not a hearing is held, the Director must decide on the exemption request by August 31. The Director may grant the exemption request, in whole or in part, if the Director finds that the county board "has made good faith efforts" to obtain passage of levies, or that there are other extenuating circumstances.

If the Director denies a board's exemption request, then an amount equal to the board's reduction in payment is apportioned among all other county boards' equity payments in proportion to each board's computed payment.

"Adult services"

(R.C. 5126.18(A)(2))

For the purpose of measuring a county board's adult enrollment, the bill defines "adult services" as assessment, home service, adult program, community employment, and retirement services provided to individuals who are at least 22 years old and who are considered to be mentally retarded or developmentally disabled. "Adult services enrollment" excludes those individuals if the services are provided solely through service support administration or family support services.

Technical and conforming changes

The bill consolidates the three code sections currently dealing with MRDD tax equity funding (R.C. 5126.16, 5126.17, and 5126.18) into a single section--R.C. 5126.18. Accordingly, the definition of "effective tax rate" in R.C. 5126.053, currently made by cross-reference to R.C. 5126.16, is recited in R.C. 5126.053.

Current equity funding formula

The current MRDD tax equity formula is designed to provide funding to county MRDD boards with below-average taxable property wealth (adjusted for enrollment). The further a county board's enrollment-adjusted property wealth is below the statewide average, the greater the payment. The formula also incorporates a tax "effort" component: the payment is reduced for boards having

effective property tax rates below one mill. The payment decreases in proportion to how far below one mill the board's effective tax rate is.

Unlike the bill's tax equity formula, the current formula measures enrollment by including both adult and infant enrollees. Equity payments must be used to pay for developing and implementing early intervention services for individuals enrolled as infants (under three years old on September 30) or adults (16 years of age or older).

Additional transfers to the General Revenue Fund

(Section 21)

Under the bill, the Director of Budget and Management is authorized during fiscal years 2002 and 2003 to make transfers of cash to the General Revenue Fund from funds that (1) are created in uncodified law or in the Revised Code *other than* in the Income Tax Law (Chapter 5747.) and (2) do not consist of federal funds or of funds from which transfers for general purposes are constitutionally restricted, which transfers are necessary to ensure that expenditures from the General Revenue Fund do not exceed amounts credited to it.[9] The Director is required to issue any directives to state agencies that are necessary to accomplish the purposes of this provision.

This transfer authority applies notwithstanding any other provision to the contrary.

Limitation on appropriations from the General Revenue Fund; Budget Study Committee

(Section 26)

The bill prohibits the aggregate amount of appropriations from the General Revenue Fund (GRF) for fiscal years 2004 and 2005 from exceeding the aggregate amount of spending from the GRF for fiscal years 2002 and 2003, *except for* appropriations and spending for (1) higher education, (2) primary and secondary education, (3) Medicaid, (4) debt service, and (5) property tax relief.

It also creates the Budget Study Committee to conduct a comprehensive study of the five areas of state spending listed above for purposes of making recommendations that, if implemented, would improve efficiency and maintain or

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[9] *Funds created under Chapter 5747. of the Revised Code include the Local Government Fund, the Library and Local Government Support Fund, and the Local Government Revenue Assistance Fund (see R.C. 5747.03(A) and 5747.61).*

exceed current levels of service in those areas. The Committee is to consist of five members of the House of Representatives appointed by the Speaker of the House of Representatives and five members of the Senate appointed by the Senate President. Of the five members from each house, two must be of the minority party. Appointments are to be made by November 6, 2002. The Committee is to conduct its first meeting not later than November 15, 2002, at which time it must select a chairperson and vice chairperson.

The bill requires the Committee to report its recommendations to the General Assembly not later than March 31, 2003.

Supplemental drug rebate program

(R.C. 5111.082)

The bill authorizes the Director of Job and Family Services to establish and implement a supplemental drug rebate program under which drug manufacturers may be required to provide the Department of Job and Family Services a supplemental rebate as a condition of having the drug manufacturer's drug products covered by Medicaid without prior approval.[10] The Director is to establish the program in rules.

If necessary, the Director is permitted to apply to the United States Secretary of Health and Human Services to establish the program. A supplemental rebate may be, at the Director's discretion, one or more cash payments by a drug manufacturer to the Department or one or more services a drug manufacturer performs that are guaranteed to produce savings to the Medicaid program within one year of the date the Director enters into a supplemental drug rebate contract with the drug manufacturer or other date negotiated by the Director and drug manufacturer. The bill provides that examples of services drug manufacturers may perform include disease management, drug product donations, drug utilization control, prescriber and beneficiary counseling and education, and fraud and abuse initiatives.

The bill also requires the Director to exempt from the program any of a drug manufacturer's drug products that have been approved by the United States Food and Drug Administration for the treatment of HIV, AIDS, or mental illness, including schizophrenia, major depressive disorder, and bipolar disorder.

If the Director establishes the program, the Director must consult with drug manufacturers regarding the establishment and implementation of the program.

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[10] *The rebate would be supplemental to a drug rebate already required by federal law.*

Health Care Services Administration Fund

(R.C. 5111.94)

The bill creates in the state treasury the Health Care Services Administration Fund. The Director of Job and Family Services is to use money available in the fund for costs associated with administration of the Medicaid Program. The fund is to consist of amounts received from sources described below, except that no funds are to be deposited into the fund in violation of federal statutes or regulations.

Other agencies' administrative claims

(R.C. 5111.90, 5111.91, 5111.92, and 5111.94; ancillary sections: 173.40, 5101.11, 5111.871, and 5123.041)

Medicaid is a shared federal, state, and county program. Amounts received from the federal government for the program are sometimes referred to as federal financial participation. The bill provides that amounts the Department retains or collects from the federal financial participation another state agency or political subdivision obtains through an approved, administrative claim regarding a Medicaid component or aspect of a Medicaid component that the agency or political subdivision administers for the Department are to be deposited into the Health Care Services Administration Fund.[11] If the component was approved by the United States Department of Health and Human Services prior to January 1, 2002, and federal financial participation was initially obtained for the component prior to that date, the Department is permitted by the bill to retain or collect not more than 10% of the federal financial participation. If the component received approval on or after January 1, 2002, the Department is required to retain or collect not less than 3 and not more than 10% of the federal financial participation. The percentage the Department retains or collects is to be specified in the contract the Department enters into with the other state agency or political subdivision regarding the agency or political subdivision's administration of the component or aspect of the component.[12] The Department's retention or collection of federal

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[11] *The bill defines "state agency" as every organized body, office, or agency, other than the Department of Job and Family Services, established by state law for the exercise of any function of state government. "Political subdivision" is defined by the bill as a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in a geographical area smaller than that of the state.*

[12] *Under current law, the Department of Job and Family Services may enter into interagency agreements with one or more other state agencies to have the state agency administer one or more Medicaid components, or one or more aspects of a component,*

financial participation is permitted to the extent authorized by federal statutes or regulations.

Current law permits the Department to enter into agreements (referred to as contracts under the bill) with political subdivisions to use funds of the political subdivision to pay the nonfederal share of Medicaid expenditures. The Department is to determine the political subdivision's federal financial reimbursement. The Department's determination is subject to the United States Secretary of Health and Human Services' approval and availability of federal financial participation. The bill provides that the Department's determination is also subject to the bill's provision regarding retention or collection of federal financial participation that a political subdivision obtains through an approved administrative claim.[13]

Supplemental Medicaid payments

(R.C. 5111.93 and 5111.94)

Amounts the Department retains or collects of the federal financial participation included in a supplemental Medicaid payment to one or more Medicaid providers owned or operated by a state agency or political subdivision that brings the payment to such providers or providers to the upper payment limit established by a federal Medicaid regulation are to be deposited into the Health Care Services Administration Fund. If the Department retains or collects a percentage of such federal financial participation, the Department must adopt a rule in accordance with the Administrative Procedure Act specifying the percentage the Department is to retain or collect.

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under the Department's supervision. The bill authorizes the Department to enter into such agreements (referred to as contracts under the bill) with political subdivisions. A political subdivision, as is required of a state agency under current law, must comply with any rules the Director of Job and Family Services has adopted governing the component, or aspect of the component, that the political subdivision is to administer. A state agency or political subdivision is required by the bill to comply also with the terms of the contract. (R.C. 5111.91.)

[13] *The bill provides that current law under which the Department of Job and Family Services may seek to obtain federal financial participation for costs incurred by a private or government entity authorized or under contract to implement a Department program does not apply to contracts between the Department and a political subdivision to use funds of the political subdivision to pay the nonfederal share of Medicaid expenditures or contracts between the Department and another state agency or political subdivision to administer a Medicaid component or aspect of a component. (R.C. 5101.11.)*

With certain exceptions, the federal Medicaid regulation cited by the bill provides that aggregate Medicaid payments to state hospitals, nursing facilities, or intermediate care facilities for the mentally retarded, or such facilities owned or operated by a political subdivision, for inpatient services may not exceed a reasonable estimate of the amount the facilities would be paid under Medicare payment principles.[14] Exceptions include that the aggregate of Medicaid payments for inpatient services in political subdivision hospitals may exceed a reasonable estimate of the amount they would be paid under Medicare by not more than 150%.

Funds recovered through a tort action under the right of recovery

(R.C. 5111.94)

The amount of the state share of all money the Department of Job and Family Services, in fiscal year 2003 and each fiscal year thereafter, recovers pursuant to a tort action under its right of recovery that exceeds the state share of all money the Department, in fiscal year 2002, recovers pursuant to a tort action under the right of recovery is to be deposited into the Health Care Services Administration Fund. Current law gives the Department a right of recovery against the liability of a third party for the cost of medical services and care arising out of injury, disease, or disability of a Medicaid or Disability Assistance recipient or Ohio Works First participant. The entire amount of any settlement or compromise of an action or claim that such a recipient or participant brings against a third party, or any court award or judgment, is subject to the Department's right of recovery.

Audits of Medicaid providers

(R.C. 5111.94)

The amount of the state share of all money the Department, in fiscal year 2003 and each fiscal year thereafter, recovers through audits of Medicaid providers that exceeds the state share of all money the Department, in fiscal year 2002, recovers through such audits is to be deposited into the Health Care Services Administration Fund. In determining the amount of money the Department, in a fiscal year, recovers through audits of Medicaid providers, the amount recovered in the form of vendor offset is to be excluded. The bill defines "vendor offset" as a reduction of a Medicaid payment to a Medicaid provider to correct a previous, incorrect Medicaid payment to that provider.

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[14] *42 C.F.R. 447.272.*

Hospital Care Assurance Program assessments and transfers

(R.C. 5111.94; Section 10; ancillary sections: 5112.01, 5112.06, 5112.07, and 5112.11)

Amounts from assessments on hospitals and intergovernmental transfers by government hospitals under the existing Hospital Care Assurance Program (HCAP) are to be deposited into the fund in accordance with the law. Under HCAP, (1) hospitals are annually assessed an amount based on their total facility costs and (2) government hospitals make annual intergovernmental transfers to the Department. Assessments and intergovernmental transfers are made in periodic installments. The Department distributes money generated by assessments, intergovernmental transfers, and federal matching funds generated by the assessments and transfers to hospitals. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to individuals who are residents of this state and are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty guidelines. A portion of the money generated from the first installment of assessments and intergovernmental transfers during each program year beginning in an odd-numbered calendar year is deposited into the Legislative Budget Services Fund.

The bill provides that, of the amount the Department receives during fiscal year 2003 from the first installment of assessments and intergovernmental transfers made under HCAP, the Director is to deposit $175,000 into the state treasury to the credit of the Health Care Services Administration Fund. Amounts from assessments and intergovernmental transfers under HCAP are to be deposited into the fund in accordance with the law until October 16, 2003, the date the HCAP terminates.[15]

Current law prohibits the Department from using money it receives as assessments or intergovernmental transfers under HCAP or money the Department pays to hospitals under HCAP to replace any funds appropriated by the General Assembly for the Medicaid Program. The bill provides that HCAP funds deposited into the Legislative Budget Services Fund or Health Care Services Administration Fund are not subject to this prohibition.

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[15] *Current law provides that the purpose of assessments under HCAP is to distribute funds to hospitals pursuant to the HCAP law. The bill provides that the assessments' purpose is also to deposit funds into the Legislative Budget Services Fund and Health Care Services Administration Fund. The bill provides that the purpose of the intergovernmental transfers under HCAP is the same as the purpose of assessments under HCAP.*

Medicaid payments exceeding Medicare reimbursement levels

(R.C. 5111.02)

Current law provides that Medicaid reimbursement to a medical provider for a medical service may not exceed the authorized reimbursement level for the service under Medicare. The bill provides that the prohibition does not apply if a federal statute or regulation permits otherwise. The exception to the prohibition is subject to the Department's discretion.

Medicaid copayments

(R.C. 5111.0112 and 5111.02; ancillary section: 2913.40)

The bill eliminates a provision of current law that authorizes the Department of Job and Family Services to institute, to the maximum extent that federal laws and regulations permit, a copayment program for all services provided under Medicaid. Instead, the Director of Job and Family Services is required by the bill to examine instituting a copayment program under Medicaid. As part of the examination, the Director must determine which groups of Medicaid recipients may be subjected to a copayment requirement under federal statutes and regulations and which of those groups are appropriate for a copayment program designed to reduce inappropriate and excessive use of medical goods and services. If, on completion of the examination, the Director determines that it is feasible to institute such a copayment program, the Director is permitted to seek federal approval to institute the copayment program. If necessary, the Director may seek approval by applying for a federal waiver. If approval is obtained, the Director is required to adopt rules governing the copayment program. The rules must be adopted in accordance with the Administrative Procedure Act.

Franchise permit fee

(R.C. 3721.51 and 3721.56; Section 14)

The Department of Job and Family Services is required to assess an annual franchise permit fee on long-term care beds in nursing homes and hospitals.[16] The fee is applied to each nursing home bed, Medicare-certified skilled nursing facility bed, and Medicaid-certified nursing facility bed, and each bed in a hospital that is registered as a skilled nursing facility bed or long-term care bed or licensed as a nursing home bed.

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[16] *The Department is required to cease implementation of the franchise permit fee if the federal government determines that it would be an impermissible health care related tax under federal Medicaid law.*

Except for fiscal years 2002 and 2003, the amount of the franchise permit fee is $1 for each such bed a nursing home or hospital has multiplied by the number of days in the fiscal year for which the fee is assessed. And except for fiscal years 2002 and 2003, all the money generated by the franchise permit fee and penalties associated with the fee must be deposited into the Home and Community-Based Services for the Aged Fund. Money in that fund must be used for (1) the Medicaid program, (2) the PASSPORT program, and (3) the Residential State Supplement program.

For fiscal years 2002 and 2003, the franchise permit fee is $3.30 per bed per day. Of the money generated from the fee and associated penalties, 30.3% is to be deposited into the Home and Community-Based Services for the Aged Fund. The remaining 69.7% must be deposited into the Nursing Facility Stabilization Fund. Money in the Nursing Facility Stabilization Fund must be used to make payments to nursing facilities (1) under the law governing Medicaid payments to nursing facilities, (2) to reimburse the cost of a portion of the franchise permit fee, and (3) for the purpose of enhancing quality of care.

The bill increases the franchise permit fee to $4.30 for fiscal years 2003 through 2005. This is a $1 increase for fiscal year 2003 and a $3.30 increase for fiscal years 2004 and 2005. Of the money generated by the fee and associated penalties for these fiscal years, 23.26% is to be deposited into the Home and Community-Based Services for the Aged Fund and 76.74% is to be deposited into the Nursing Facility Stabilization Fund.

For the purpose of reimbursing nursing facilities a portion of the franchise permit fee, the Department is required to use money in the Nursing Facility Stabilization Fund to make payments to each nursing facility for each Medicaid day in fiscal years 2002 and 2003 in an amount equal to 69.7% of the franchise permit fee a nursing facility pays for the fiscal year the Department makes the payment divided by the nursing facility's inpatient days for the calendar year preceding the calendar year in which that fiscal year begins.[17] The bill changes for fiscal year 2003 the percentage of the franchise permit fee that is to be divided by a nursing facility's inpatient days. The percentage to be used is 76.24% rather than 69.7%. The bill provides for the Department to make this payment for fiscal years 2004 and 2005 as well.

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[17] *A Medicaid day is a day during which a resident who is a Medicaid recipient occupies a bed in a nursing facility that is included in the facility's Medicaid certified capacity. Therapeutic or hospital leave days for which payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days.*

Regarding using money in the Fund for the purpose of enhancing quality of care, the Department is required by current law to make payments to each nursing facility for fiscal years 2002 and 2003 in an amount equal to $1.50 per Medicaid day. Under the bill, the Department must make payments to each nursing facility for fiscal years 2004 and 2005 in an amount equal to $2.25 per Medicaid day.

Limitation on Medicaid payments to nursing facilities

(Section 11)

Under current law, Medicaid rates paid to nursing facilities for fiscal year 2003 are subject to a limitation. The mean total per diem rate for all nursing facilities, weighted by Medicaid days and calculated as of July 1, 2002, cannot exceed $152.66, plus any difference between $143.92 and the mean total per diem rate for all nursing facilities in the state for fiscal year 2002, weighted by Medicaid days and calculated as of July 1, 2001. The Department of Job and Family Services is required to reduce the total per diem rate for each nursing facility if the mean total per diem rate calculated before imposition of the limitation exceeds the maximum mean. The amount the Department must reduce the total per diem rates is a percentage that is equal to the percentage by which the mean total per diem rate exceeds the maximum mean.

The bill increases the maximum mean total per diem rate for fiscal year 2003. The maximum is increased to $153.23 (from $152.66), plus, as under current law for the current maximum, any difference between $143.92 and the mean total per diem rate for all nursing facilities for fiscal year 2002, weighted by Medicaid days and calculated as of July 1, 2002.

Quarterly Medicaid cost control reports

(R.C. 5111.091)

The bill requires the Director of Job and Family Services to submit reports to the President and Minority Leader of the Senate and Speaker and Minority Leader of the House of Representatives on the establishment and implementation of programs designed to control the increase of the cost of the Medicaid Program. The reports are due every three months.

Establishment of prescription drug discount card programs

(R.C. 173.061)

The bill requires the Director of Aging to establish one or more prescription drug discount card programs that enable cardholders to receive discounts on

prescription drugs dispensed at participating pharmacies.[18] A card must be provided to any Ohio resident who is at least age 60 or disabled and applies for the card in accordance with administrative rules the Director adopts.[19] If the Director establishes more than one program, an eligible resident may participate in any one, more than one, or all of the programs.

Selection of program administrator or administrators

The Director of Aging is required to solicit and accept proposals from entities separate from the Department of Aging to act as a program administrator. The Director must adopt rules for administration of a program and accept only proposals submitted on or before a date established by the Director that provide for administration consistent with the rules and specify all of the following:

(1) The estimated amount of the discount based on the entity's previous experience and how the discount is to be achieved;

(2) To the extent that discounts on prescription drugs are to be achieved through rebates or discounts in prices that the entity negotiates with drug manufacturers, the proportion of the rebates or discounts to be used to do all of the following: (a) reduce any costs to cardholders, (b) achieve discounts for cardholders, and (c) cover costs for administering the program;

(3) Any other benefits offered to cardholders;

(4) If fees are permitted, the fee, if any, to cardholders for participation in the program and whether the fee is to be a one-time or periodic fee;

(5) The estimated number and geographic distribution of participating pharmacies and the process for establishing the program's pharmacy network;

(6) Financial incentives to be paid to participating pharmacies by the entity;

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[18] *"Prescription drug" means a drug that may not be dispensed without a prescription from a licensed health professional authorized to prescribe drugs. "Pharmacy" means any place where the "practice of pharmacy" is conducted. The "practice of pharmacy" includes dispensing drugs.*

[19] *A "disabled person" is a person who has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment without any present indication of recovery therefrom or who has been certified as permanently and totally disabled by an Ohio or federal agency.*

(7) The percentage of prescription drugs to be covered by the program by major drug category;

(8) How the entity proposes to improve medication management for cardholders;

(9) How cardholders and participating pharmacies will be informed of the discounted price negotiated by the entity;

(10) How the entity will handle complaints about the program's operation;

(11) The entity's previous experience in managing similar programs;

(12) Any additional information requested by the Director.

The Director must choose one or more administrators on the basis of the proposals submitted, but may require an administrator to modify its conduct of a program in accordance with rules adopted by the Director. Prior to entering into a contract, the Director is required to obtain approval of the contract from the Controlling Board at a public hearing.

The Director is to specify in rules the duration of a contract and may terminate it if an administrator does not conduct the program in accordance with the proposal or any modifications required by rules. When a contract period ends or a contract is terminated, the Director must enter into a new contract. Prior to making a new contract, the Director may modify the rules for administration of the program or programs.

Discount card fee

The rules for administration of a program may permit an administrator to charge a fee for a prescription drug discount card, which may be a one-time or periodic fee. If the rules permit a fee, each entity that submits a proposal that includes a fee must specify the amount of the fee and the period to which the fee will apply. If a fee is charged, the rules may require an administrator to issue the cards. If a fee is not charged, the rules may require the administrator to issue the cards or may include the prescription drug discount information on Golden Buckeye Cards.

Use of rebates or discounts by a program administrator

To the extent that an administrator achieves a discount through rebates or discounts in prices negotiated with drug manufacturers, a program administrator is required to use the rebates or discounts to do the following:

(1) Reduce any costs to cardholders;

(2) Achieve discounts for cardholders;

(3) Cover any administrative costs of the program.

Restrictions on use of participant information

The bill prohibits an administrator from selling any information concerning a person who holds a prescription drug discount card, other than aggregate information that does not identify the cardholder, without the cardholder's written consent. The bill provides that an administrator's parent company and any subsidiary of the parent company are subject to this prohibition.

Unless written consent from a cardholder is obtained, the bill prohibits an administrator, its parent company, and its subsidiaries from using any personally identifiable information concerning a cardholder that it obtains through the program to promote or sell a program or product being offered that is unrelated to the administration of the program. The bill specifies that this provision does not prohibit contacting cardholders concerning participation in or administration of the program. For example, it is permissible to mail a list of pharmacies participating in a program's network.

Administrative rules

The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act (Revised Code Chapter 119.) governing the program. In addition to the rules mentioned above, the Director must adopt rules that do all of the following:

(1) Specify how a resident may apply to participate in any one or more prescription drug discount card programs.

(2) Specify the circumstances under which the Director may require an administrator to modify its conduct of the program.

(3) Specify the duration of a contract with a program administrator.

(4) Require that an administrator permit any pharmacy willing to comply with the administrator's terms and conditions for participation in the program's network to participate in any network used by the administrator for its program.

(5) Prohibit an administrator from requiring a pharmacy or drug manufacturer to participate in the program's network as a condition of participating in another network operated by the administrator.

(6) Permit a program administrator to negotiate with one or more drug manufacturers for discounts in drug prices or rebates.

(7) Permit a program administrator to receive any rebate payments from drug manufacturers.

(8) Require that a program administrator create a financial incentive program for participating pharmacies through which the administrator is required to distribute a portion of any rebate payments received from drug manufacturers.

Public records law

(R.C. 173.062)

Ohio's public records law generally requires every public office to promptly prepare and make available for inspection all public records. The bill provides that records identifying Golden Buckeye Card or prescription drug discount card recipients are not public records and may be disclosed only at the discretion of the Director. The bill limits the information the Director may disclose to only information that does not contain the recipient's medical history or prescription drug utilization history.

Cost of prescription drug discount card programs

(R.C. 173.06)

Current law requires the Department of Aging to bear all costs of the Golden Buckeye Card Program. The bill provides that the Department is not required to bear any costs of that program that are related to prescription drug discount card programs.

Annual evaluation of prescription drug discount card programs

(R.C. 173.07, 173.071, and 173.072)

The bill requires the Director of Aging to issue a report on the operation of each prescription drug discount card program no later than four months after the end of each 12-month period that one or more programs are in operation.

Under the bill, each program administrator is required to annually collect information related to the operation of the program from each participating pharmacy. Each administrator must provide the information to the Director no later than one month after the end of each 12-month period the program is in operation.

Each report must be based on the information the Director receives from the administrator or administrators and specify all of the following about each program:

(1) The number of prescription drug discount cardholders;

(2) The number of cardholders who used the card at least once in the immediately preceding 12-month period;

(3) The total cost savings to all cardholders generated by the program;

(4) The average cost savings to a cardholder per prescription;

(5) The source and method of cost savings under the program;

(6) The drugs that are discounted under the program listed according to major drug category;

(7) For each participating pharmacy, the number of times in the 12-month period that the pharmacy's usual and customary price was lower than the price offered under the prescription drug discount program;

(8) The name of the program's administrator;

(9) The length of the contract between the director and the program's administrator;

(10) The number of pharmacies participating in the program;

(11) Other than the cost of prescription drugs, any fees paid by cardholders to participate in the program;

(12) Any costs incurred by the state to operate the program;

(13) Any costs incurred by participating pharmacies to participate in the program.

The bill requires the Director to submit each report to the Governor, Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the chairpersons and ranking minority members of the House and Senate committees having primary concern with health care matters.

Transfer of nursing home beds

(Section 27)

Ohio law prohibits building or expanding the capacity of a nursing home without a certificate of need (CON) issued by the Director of Health. However, with limited exceptions, a moratorium that has been in effect since 1993 and was most recently extended to June 30, 2003, prohibits the Director from accepting for review an application for a CON permitting an increase in beds in an existing health care facility if the beds are proposed to be licensed as nursing home beds.

The bill authorizes the Director to accept for review an application for a CON approving the relocation of up to 24 existing nursing home beds in Jackson County to Gallia County.

ODADAS certification of chemical dependency professionals

(Sections 7 and 8)

Under current law that sunsets July 1, 2002, the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) must establish and administer a process for the certification or credentialing of chemical dependency professionals for the purpose of qualifying their services for reimbursement under Medicare or Medicaid. The process must be made available to any individual who is a member of the profession of alcoholism counseling, drug abuse counseling, or chemical dependency counseling or any individual who is an alcoholism or drug abuse prevention consultant or specialist. Certification or credentialing is not required for services not reimbursed by Medicare or Medicaid.

After the July 1 sunset of this law, ODADAS is, instead, to accept certification or credentialing from the Ohio Credentialing Board for Chemical Dependency Professionals, unless the ODADAS Director finds that this does not serve the public interest.[20] If the Director finds that the public interest is not served in accepting certification or credentialing by the Credentialing Board, the Director is to make a written request to the Council on Alcohol and Drug Addiction Services for authority for ODADAS to establish a certification or credentialing program or accept certifications or credentials from an entity designated by ODADAS. The Council is required, if it determines there is substantial evidence to support the Director's finding, to authorize ODADAS to take either or both of these actions.

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[20] *The Ohio Credentialing Board for Chemical Dependency Professionals no longer exists.*

The bill delays until July 1, 2003, the sunset of the law under which ODADAS must establish and administer a process for the certification or credentialing of chemical dependency professionals.

Mandatory direct deposit of state employee compensation

(R.C. 124.151)

Current law requires that the compensation of any employee paid by warrant of the Auditor of State, *upon the employee's written authorization*, must be paid by direct deposit. The authorization must include the designation of a financial institution equipped to accept direct deposits and the number of the account into which the deposit will be made.

The bill requires that the compensation of any employee whose employment commences on or after the bill's effective date and who is paid by warrant of the Auditor of State *must* be paid by direct deposit and *requires* each such employee to provide to the appointing authority *a written authorization* for payment by direct deposit. The bill further requires the Director of Administrative Services to provide by rule adopted under the Administrative Procedure Act for the direct deposit in a financial institution of the compensation of an employee *who fails* to provide the appointing authority with a written authorization for payment by direct deposit.

Academic scholarships for National Guard members

(R.C. 5919.34)

Under the Ohio National Guard Scholarship Program, individuals who have enlisted in the Ohio National Guard may qualify for scholarships toward their college education expenses. To be eligible, an individual must have not yet earned a bachelor's degree, must be a current member in good standing of the Ohio National Guard whose enrollment extends beyond the end of the academic term for which a scholarship is sought, must be enrolled for at least six quarter or semester-hour credits of coursework in a degree-granting higher education program, and must have not yet accumulated 96 "eligibility units."[21] An individual accumulates eligibility units by enrolling in coursework for which a scholarship is awarded under the program. In each academic term, an individual

[21] *R.C. 5919.34(A)(2). An eligible applicant may enroll in coursework at any state-assisted institution of higher education, any private nonprofit college or university that has a certificate of authorization from the Ohio Board of Regents, a private for-profit career school regulated by the State Board of Proprietary School Registration, and any private for-profit degree-granting institution that is exempt from regulation by the State Board of Proprietary School Registration.*

will accumulate the following eligibility units for semester-hour and quarter-hour coursework:

Number of semester or quarter-hour credits	Eligibility units accumulated for semester hours	Eligibility units accumulated for quarter hours
12 or more	12	8
At least 9 but less than 12	9	6
At least 6 but less than 9	6	4

The statute sets specific limits on the number of individuals who may receive scholarships in an academic term.[22] Accordingly, the Adjutant General has adopted regulations governing the selection of scholarship recipients from the pool of eligible applicants. If a qualified individual is not awarded a scholarship in an academic term, that individual may re-apply for a scholarship in future academic terms. Scholarships are to be awarded without regard to financial need.[23] All scholarships under the program are paid directly to the institution of higher education in which the recipient is enrolled.

The following amounts are to be paid to an institution on behalf of an individual who is selected to receive a scholarship under the program:

(1) If the institution is state-assisted, an amount equal to 100% of the institution's tuition charges;[24]

(2) If the institution is a nonprofit private institution or a private for-profit degree-granting institution that is exempt from regulation by the State Board of Proprietary School Registration, an amount equal to 100% of the average tuition charges of all state universities;[25]

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[22] *R.C. 5919.34(B).*

[23] *R.C. 5919.34(C).*

[24] *State-assisted institutions of higher education include the 13 state universities, branch university campuses, community colleges, technical colleges, and state community colleges.*

[25] *The term "state university" refers to any of the 13 state universities listed in R.C. 3345.011, which are: University of Akron, Bowling Green State University, Central State*

(3) If the institution is a private for-profit career school regulated by the State Board of Proprietary School Registration, the lesser of the following:

(a) An amount equal to 100% of the total instructional and general charges of the institution; or

(b) An amount equal to 100% of the average tuition charges of all state universities.

Under the bill, an individual who is enlisted in the Ohio National Guard and who is called into active duty during that enlistment may receive scholarships under the program for any academic terms that the individual missed or could have missed as a result of the active duty. The bill permits an individual to receive scholarships under the program after the individual's enlistment in the National Guard expires in order to make up for the time in which the individual could not attend courses due to an active duty assignment. Active duty includes a call into full-time federal service by the President of the United States, by an act of Congress, or by the Governor, and also includes a call into full-time state service by the Governor. The bill prohibits awarding a scholarship to an individual for the academic term in which the individual's enlistment ends, unless the individual is eligible for a scholarship in that academic term due to credit for previous active duty.[26]

The bill also specifically accounts for individuals who are currently enrolled in courses for which scholarships under the program are awarded when they are called into active duty. First, it requires the institution of higher education in which such individual is enrolled to grant the individual a "leave of absence" from the individual's education program, and it prohibits an institution from imposing any academic penalty for the individual's withdrawal from or failure to

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University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.

[26] *This provision is in keeping with the current law provision that requires an eligible applicant's term of enlistment in the National Guard to extend beyond the academic term for which a scholarship is awarded. However, it also recognizes that an individual may be eligible for a scholarship in that academic term due to credit for prior active duty even though without that credit the individual would not be eligible for a scholarship under the program. The bill does not provide a benefit for an individual who is called into active duty and who although still a member of Ohio National Guard has not been awarded a scholarship because the individual's enlistment did not extend beyond the current academic term and the individual was not eligible for a scholarship because of credit for prior active duty.*

complete courses due to active duty. Second, it provides instruction on how to account for the missed coursework and eligibility units that were accumulated for those unfinished courses.[27] Under the bill, either:

(1) The Adjutant General must *not* add to that person's accumulated eligibility units the number of units for which the scholarship was paid, and the institution of higher education must repay the scholarship amount to the state; or

(2) The Adjutant General must add to that person's accumulated eligibility units the units for which the scholarship was paid *if* the institution of higher education agrees to permit the individual to complete the remainder of the academic courses in which the individual was enrolled at the time the individual was called into active duty.

Veterans service commission membership and budgets

(R.C. 5901.02, 5901.021, and 5901.03; Section 35)

Under existing law, the veterans service commission of each county consists of five county residents appointed for five-year terms by a judge of the Court of Common Pleas from enumerated veterans' organizations. The bill authorizes the board of county commissioners of a county with a population of more than 400,000 to appoint up to six additional commission members if the commission's budget request for the next fiscal year exceeds one of two thresholds. One threshold is 25/1000 of 1% of the assessed value of property in the county (equivalent to 0.25 mills, which is one-half of the maximum levy allowed for the commission's budget under R.C. 5901.11, not in the bill). The other is 110% of the amount appropriated to the commission from the county general fund for the current fiscal year. If the commission's budget request exceeds either of these amounts, the bill authorizes the board to appoint up to six new members, who must be residents of the county, for terms not exceeding five years. The total number of such new members serving on the commission in any particular year may not exceed six. If the board does create new memberships, it may permit the enlarged commission to submit an original or revised budget request later than the last Monday in May, as would otherwise be required. The board may remove any member appointed under the bill for any cause.

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[27] *Under continuing law, no scholarship is to be paid for an individual if the individual withdraws from or fails to complete courses for which a scholarship is awarded under the program so that the individual is enrolled for less than 6 credit hours for any reason other than active duty. If a scholarship has already be paid for such an individual the Adjutant General is required to add to that individual's accumulated eligibility units the number of eligibility units for which the scholarship was paid. (R.C. 5919.34(E)(3).)*

The bill specifies that the new powers of the board of county commissioners first apply to budget requests for the fiscal year beginning January 1, 2003, regardless of when the requests are made.

Committee to Study State and Local Taxes

(Section 6)

The bill creates the Committee to Study State and Local Taxes consisting of the following nine members: three members of the House of Representatives appointed by the Speaker of the House of Representatives, not more than two of whom can be from the majority party; three members of the Senate appointed by the President of the Senate, not more than two of whom can be from the majority party; the Tax Commissioner; the Director of Budget and Management; and the Director of Development. The members must be appointed within 30 days after the bill's effective date. Vacancies are to be filled in the same manner as original appointments. The members must select a chairperson from among the Committee members. A majority of the Committee constitutes a quorum for the conduct of official business.

The Committee may request staff assistance from the Legislative Service Commission as well as participating agencies. The Committee may meet during periods when the General Assembly has adjourned and may solicit and take testimony from experts on public finance and taxation as well as from interested parties. The bill requires all state agencies and local governments to comply promptly with any requests by the Committee for data or other information that the Committee requires to properly complete its research.

The bill requires the Committee to do all of the following:

(1) Study the current state and local tax structure, including determining how that structure affects various sectors of the economy such as business, industry, and individuals;

(2) Examine the current state and local tax structure with attention to its equity, simplicity, stability, neutrality, and competitiveness and, in doing so, consider ease of administration and compliance as an aspect of "simplicity" and long-term revenues as an aspect of "stability";

(3) Identify aspects of the tax structure that present particular obstacles to equity, simplicity, stability, neutrality, and competitiveness;

(4) Analyze who bears the ultimate tax burden with respect to any particular tax; and

(5) Evaluate priorities in the tax structure.

On or before March 1, 2003, the Committee must prepare and submit a report summarizing its review of the state and local tax structure to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Minority Leaders of the House and Senate. The report must include recommendations for improvements in the tax structure that are revenue neutral in the aggregate.

Economic Development Study Committee

(Section 25)

The bill creates the Economic Development Study Committee consisting of four members appointed by the President of the Senate and three members appointed by the Speaker of the House of Representatives. Of the members appointed by the President, one must represent retail merchants, one the Ohio Chamber of Commerce, one the Ohio Manufacturers Association, and one the Interuniversity Council. Of the members appointed by the Speaker, one must represent the Ohio Farm Bureau Federation, one the labor unions of the state, and one the National Federation of Independent Businesses. At the first meeting of the Committee, the members must elect a chairperson and vice chairperson. Members are to serve without compensation.

The bill requires the Committee to study the needs of Ohio's economy and submit a written report to the President and the Speaker not later than January 31, 2003. The report must address the challenges of the ongoing revenue shortfall of the state and recommend measures to increase investment in high technology in the state, encourage economic growth and the creation of jobs, improve primary, secondary, and higher education, and achieve other goals important to the vitality of Ohio's economy. The Committee ceases to exist upon the submission of the report.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	04-25-02	p.	1733
Reported, S. Finance & Financial Institutions	05-21-02	p.	1786
Passed Senate (17-15)	05-21-02	pp.	1788-1795
Reported, H. Finance & Appropriations	05-24-02	p.	1815

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