



## *Final Analysis*

*Jennifer Parker,  
Bill Rowland,  
and other LSC staff*

*Legislative Service Commission*

**Am. Sub. H.B. 95\***  
125th General Assembly  
(As Passed by the General Assembly)

**Rep. Calvert**

**Sens. Harris, DiDonato, Carnes, Jacobson, Blessing, Goodman, Fingerhut,  
Miller, Mallory, Prentiss, White**

**Effective date: June 26, 2003; certain provisions effective September 26, 2003;  
certain provisions effective on other dates; certain items vetoed**

---

### **TABLE OF CONTENTS**

This analysis is arranged by state agency, beginning with the Department of Administrative Services and continuing in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item. The analysis concludes with a Local Government category and a Miscellaneous category.

Within each category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation. Items generally are presented in the order in which they appear in the Revised Code.

#### **DEPARTMENT OF ADMINISTRATIVE SERVICES**

Vehicle Liability Fund.....	27
Ohio fleet management.....	28
Former law.....	28
Changes made by the act.....	29
Duties relating to space allocation.....	33
State forms management.....	34
Form Burden Law.....	35
Office of State Records Administration.....	35

---

\* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Budget in Detail spreadsheet and Comparison Document for H.B. 95 for an analysis of such provisions.*

Schedules of rates for certain public employees .....	36
Overview.....	36
Adjustment of schedules of rates .....	37
Step advancement moratorium .....	38
Longevity pay adjustment moratorium.....	39
Background.....	39
Operation of the act.....	39
Two per cent pay supplement .....	40
In general .....	40
Qualifications.....	40
Proration.....	40
Retirement system caveat .....	41
Child support law caveat .....	41
Salaries of State Fire Commission members .....	41
Purchases by state agencies.....	41
Continuing law .....	41
Changes made by the act.....	42
Multistate purchasing contracts .....	42
Electronic procurement.....	43
Suspension of rental property commissions and fees .....	43
Professional design services contracts.....	43
Professional design firms for public improvements .....	44
Continuing law .....	44
Changes made by the act.....	44
Encouraging Diversity, Growth, and Equity Program.....	45
Creation and implementation.....	45
Bond guarantee authority .....	47

#### DEPARTMENT OF AGING

Resident Services Coordinator Program .....	49
Bed fee for regional long-term care ombudsperson programs .....	49
Golden Buckeye Card program .....	50
Prescription drug program.....	50
Annual report.....	52
The Long-Term Care Consumer Guide.....	53
Investigative authority of State Long-Term Care Ombudsman .....	53

#### DEPARTMENT OF AGRICULTURE

Family Farm Loan Program .....	55
Agricultural Districts .....	56
Division of Markets .....	56
Changes in Nursery Stock and Plant Pests Law.....	57
Increase in license and inspection fees related to nursery stock .....	57



Inspection of agricultural products by Director of Agriculture.....	58
Use of investment earnings of Clean Ohio Agricultural Easement Fund .....	59
Gypsy moth suppression.....	59
Indemnification for agricultural animals injured or killed by black vultures .....	60
Auctioneers Law.....	60
License fees and licensing procedures for auctioneers, apprentice auctioneers, and special auctioneers.....	60
Changes regarding single-auction licenses .....	61
Farm Service Agency Electronic Filing Fund .....	63
Background.....	63
Creation of the Fund .....	63
Wine tax diversion to Ohio Grape Industries Fund .....	64

### OHIO ARTS COUNCIL

Gifts and Donations Fund .....	64
--------------------------------	----

### OHIO ARTS AND SPORTS FACILITIES COMMISSION

Ohio arts facility: term of cooperative or management contracts .....	65
Ohio sports facility: state's property interests.....	65

### OHIO ATHLETIC COMMISSION

Commission office in Youngstown .....	66
Fees relative to the regulation of boxing and wrestling .....	66
Athlete Agents Registration Fund.....	67

### ATTORNEY GENERAL

Tobacco Master Settlement Agreement Law (MSA) .....	72
Tobacco product manufacturer escrow deposits.....	72
Certification requirements for tobacco product manufacturers.....	73
Directory of certified tobacco product manufacturers.....	75
Agent for service of process .....	77
Documentation of cigarettes sold and taxes paid.....	78
Reporting and sharing of reported information.....	79
Adoption of administrative rules.....	79
Criminal prohibitions and penalties.....	79
Injunctive relief and miscellaneous remedies.....	81
Collection of moneys due the state .....	82
Prohibiting government entities from contracting with persons against whom an unresolved finding for recovery has been issued.....	83
Crime Victims Reparations Awards .....	84
Payment of awards .....	84
Definitions.....	85
Denial of claim or reduction of award.....	87



Cap on reparations .....	88
Medical records .....	88
Gambling and Charitable Bingo Laws .....	89
Sporting organizations .....	89
Historic railroad educational organization.....	89
Prohibition against schemes of chance.....	89
Bingo license fees .....	90
Compensation of bingo game operators.....	91
Conducting instant bingo .....	91
Raffles.....	93
Regulation of a "charitable instant bingo organization" .....	93
Maintenance of records .....	94
Distribution of the net profits from the proceeds of the sale of instant bingo ....	94
Veteran's, fraternal, or sporting organization conduct of instant bingo .....	96
Liquor law changes .....	96
Prizes.....	97
License fee for manufacturers and distributors of bingo supplies .....	97
Contract for conduct of instant bingo other than at a bingo session.....	97
Definitions.....	98
Miscellaneous .....	100

**AUDITOR OF STATE**

Uniform accounting network .....	101
Training programs .....	101

**OHIO BALLOT BOARD**

Membership term for certain members of the Ohio Ballot Board.....	102
---	-----

**OHIO BARBER BOARD**

Fee increases .....	103
---------------------	-----

**OFFICE OF BUDGET AND MANAGEMENT**

Federal funds reports and expenditures .....	105
The Family Services Stabilization Fund .....	105
Transfer and reimbursement of tobacco revenue .....	106
State agency "needs" analyses for facility closures .....	106

**BOARD OF CAREER COLLEGES AND SCHOOLS**

Deposit of funds .....	107
------------------------	-----

**OHIO CIVIL RIGHTS COMMISSION**

Civil Rights Commission General Reimbursement Fund.....	108
---	-----



DEPARTMENT OF COMMERCE

Increase in liquor permit fees..... 110

Changes in the distribution of the Undivided Liquor Permit Fund..... 114

Population ceiling for municipal corporations and townships in which  
the D-5i liquor permit can be issued ..... 115

Sunday sales by a D-5g liquor permit holder ..... 115

Sunday liquor sales hours--special scenario ..... 116

Changes in the political subdivisions in which the D-5j liquor permit  
may be issued..... 117

Creation of the F-5 permit for riverboats participating in a riverboat festival ..... 117

Sale of spirituous liquor in 50 milliliter containers..... 118

Repeal of travel agency and tour promoter registration requirement ..... 119

Consumer Finance Fund; income and expenses administering  
High Cost Mortgage Law ..... 119

Boiler and pressure vessel inspections and fees ..... 119

Pressure piping systems and welding and brazing regulations ..... 120

Pressure piping systems regulation..... 120

Welding and brazing procedure regulation..... 121

Intent ..... 122

Rules for Gaseous Piping Systems ..... 123

Elevator certificate of operation fee increase and fee setting authority ..... 123

Prevailing Wage Law..... 124

Statute of limitations ..... 124

Complaint procedures ..... 124

Procedure for filing a lawsuit ..... 125

DEPARTMENT OF DEVELOPMENT

Duties of the Department ..... 126

Office of Small Business..... 127

Defense Conversion Assistance Program ..... 127

Submission of determination on job relocation to the Joint  
Legislative Committee on Tax Incentives..... 127

Clean Ohio Council membership..... 128

Use of investment earnings of Clean Ohio Revitalization Fund ..... 128

Innovation Ohio Loan Fund..... 128

Ohio Housing Finance Agency chairperson and vice-chairperson..... 129

Housing trust fund fees..... 129

Expenditures from the Housing Trust Fund..... 130

Ohio Coal Development Office transfer..... 130

Authority to designate enterprise zones and enter into enterprise  
zone agreements extended..... 132

Carry forward of Ohio Venture Capital Program tax credits..... 132



OHIO BOARD OF DIETETICS

Board of Dietetics fees..... 133

DEPARTMENT OF EDUCATION

Background on state education financing litigation..... 141

Introduction--key concepts of the current school funding system..... 144

    Base-cost funding..... 144

    Equity aid phase-out ..... 147

    Parity aid ..... 147

    Categorical funding..... 147

    Subsidies addressing reliance on property taxes ..... 152

    State funding guarantee ..... 153

Adjustment of base-cost inflation factor ..... 153

Update of cost-of-doing-business factors..... 154

Elimination of three-year averaging of formula ADM..... 154

Measurement of attendance ..... 154

Percentage of JVSD students counted in the formula ADM of  
school districts..... 154

Transitional aid..... 155

Parity aid phase-in percentages ..... 155

Excess cost threshold..... 156

Amendments to statutes in anticipation of new funding system..... 156

    Elimination of future school funding features..... 156

    Two-year extension of other school funding components ..... 156

GRADS personnel allowance ..... 157

Across-the-board DPIA payment increase for FY 2004 and FY 2005..... 157

Special education funding weights..... 158

Speech language pathology services..... 158

Expenditure of vocational education funding and reporting of  
that expenditure ..... 159

Joint vocational school district special education funding and expenditures ..... 160

    Attribution and payment of excess costs..... 160

    Requirement that joint vocational school districts spend the  
    formula-calculated amounts on special education and related services..... 161

Head Start and Head Start Plus..... 162

    Corrective action plan..... 165

    Licensing of Head Start agencies..... 165

    Head Start Partnership Study Council..... 166

    LOEO study of Head Start and child care partnership agreements ..... 167

Modification of due dates and scope of LOEO studies ..... 167

Pupil-teacher ratio formula adjustment ..... 168

Changes in "unit" funding for certain services..... 168

Reassignment of school buses ..... 169



Renaming the Auxiliary Services Mobile Unit Repair and Replacement Fund.....	170
Changes to the Pilot Project Scholarship Program .....	170
Background.....	170
Eligibility for scholarships--expansion to tenth grade .....	170
Scholarship amounts .....	171
Additional tuition charges.....	171
Payments to tutorial assistance providers .....	172
Modification of a school district's tax levy obligation when in fiscal emergency.....	173
Accounting requirements for school district "fiscal caution" designations .....	174
Changes to community school law .....	175
Background.....	175
Sponsorship of community schools by ESCs .....	176
New sponsors after contract termination or nonrenewal.....	176
Automatic withdrawal of community school students .....	177
Internet- or computer-based community schools.....	177
Notification to parents of community school students .....	178
Payments to community schools.....	178
Parity aid funding for community schools.....	179
Temporary subsidy for community schools that enroll a high number of severe behavior handicapped students .....	179
Transportation coordinators .....	180
School district textbook and electronic textbook purchases .....	181
Employment of school district business managers .....	181
Administration of OGT practice tests to ninth graders.....	183
Background on OGT.....	183
Practice versions of the OGT.....	183
Intervention services.....	184
Annual school progress reports .....	184
Elimination of a public school's authority to operate a school savings system....	185
Changes affecting educational service centers .....	185
Background.....	185
Local school district option to change ESC membership.....	186
Elimination of minimum standards for service to school districts .....	188
Payments to ESCs .....	188
Elimination of ESC approval of employment by local school districts of teachers, administrators, and superintendents.....	190
Elimination of ESC approval of the assignment of local school district staff and students.....	190
Calculation of the cost of ESC office space .....	191
Elimination of ESC annual report on activities of local school districts .....	192
Transfer of authority to propose new local school districts.....	192



Pupil-teacher ratios in bilingual multicultural classes.....	193
Certified software packages for reporting EMIS data.....	194
Common core of EMIS standards .....	194
Filing of school district revenue certificates.....	195
Verification of signatures on school district transfer petitions.....	195
Ohio Regional Education Delivery System .....	195
Participation in National Assessment of Educational Progress (NAEP) .....	196
Pilot Project Special Education Scholarship Program.....	197
Eye exams for disabled students.....	198
Sharing of results of educator licensure examinations with the Board of Regents .....	199
Stipend for National Board certified teachers .....	200

#### BOARD OF EMBALMERS AND FUNERAL DIRECTORS

Licensing fees .....	201
Exemption from continuing education .....	201

#### STATE EMPLOYMENT RELATIONS BOARD

Duties of the Chairperson and Executive Director .....	202
Appointment and cost of fact-finding panels for collective bargaining.....	203

#### ENVIRONMENTAL PROTECTION AGENCY

Use of investment earnings of Clean Ohio Revitalization Fund .....	207
Use of investment earnings of Clean Ohio Operating Fund.....	208
Elimination of Hazardous Waste Facility Board.....	208
Hazardous Waste Clean-up Fund.....	210
Continuation of and increase in solid waste disposal fee.....	210
Environmental Review Appeals Commission filing fee .....	211
Fees for permits issued under Air Pollution Control Law .....	211
Fees for previously issued permits and variances.....	211
Fees for permits to install issued on or after July 1, 2003 .....	211
Emissions fees for holders of air pollution control permits to operate or variances other than holders of Title V permits and owners or operators of synthetic minor facilities .....	215
Synthetic minor facility fees.....	215
Water pollution control fees.....	216
Safe drinking water fees .....	217
Certification of operators of water supply systems or wastewater systems.....	220
Application fees under Water Pollution Control Law and Safe Drinking Water Law .....	222
Electronic submission of certain applications to Environmental Protection Agency.....	222
Fee for covenant not to sue under brownfield portion of Clean Ohio Program...	222



<b>OHIO ETHICS COMMISSION</b>	
Filing and late fees for financial disclosure statements.....	223

<b>GENERAL ASSEMBLY</b>	
Legislative Audit Commission Study Committee.....	225

<b>OFFICE OF THE GOVERNOR</b>	
Governor's Office of Faith-based and Community Initiatives.....	225

<b>DEPARTMENT OF HEALTH</b>	
Hemophilia program and advisory council.....	229
Funding for program for medically handicapped children.....	230
Office of Women's Health Initiatives replaced by Women's Health Program.....	231
Help Me Grow.....	231
Quality Monitoring and Inspection Program fees.....	232
Continuing effect of Certificates of Need.....	232
Notice of intent before commencing health activities.....	233
Moratorium on long-term care beds.....	233
Vital records.....	234
Fees for vital records.....	234
Uncertified vital records.....	236
Certificate recognizing delivery of a stillborn infant.....	236
Maternity licensure program fees.....	236
Nursing home and residential care facility licensing fees.....	237
The Nursing Facility Regulatory Reform Task Force.....	237
Nursing home administrator licensing fees.....	239
Definition of "home health agency".....	239
Agricultural labor camps.....	239
Camp licensing fees.....	239
Camp inspections.....	240
Fee increases for persons involved in asbestos hazard abatement.....	240
Asbestos Hazard Abatement Project Fee.....	241
Food service operations.....	241
Radiation control program fees for health care and radioactive waste facilities.....	241
Hearing Aid Dealers and Fitters Licensing Board fees.....	242

<b>OHIO HIGHER EDUCATION FACILITY COMMISSION</b>	
Eligibility for financing.....	243

<b>OHIO HISTORICAL SOCIETY</b>	
Charges for specified materials.....	244
Charges for specified activities performed by the Archives Administration.....	244



INSPECTOR GENERAL

Background .....245  
The act .....246  
    Reimbursement of investigation costs.....246  
    Definition of "state agency".....246

DEPARTMENT OF INSURANCE

Limitations on insurers' use of genetic testing to be continued.....247  
Interest charged on money advanced to domestic insurers and HMOs .....248  
Health insuring corporation policy to cover return to long-term care facility.....248  
Maximum deductibles and copayments for HMO plans .....249

DEPARTMENT OF JOB AND FAMILY SERVICES

*I. General* .....264  
Agreements between Director of ODJFS and boards of  
county commissioners .....264  
    Background.....264  
    Fiscal agreements to replace partnership agreements .....265  
    Contracts and grants incorporated into partnership agreement .....268  
    Retroactive effective date.....268  
    ODJFS publishing fiscal agreement materials .....269  
    Requirement for hearing and planning committee review eliminated .....269  
    Rules governing fiscal agreements .....269  
    Report .....270  
    When a fiscal agreement is not in effect .....270  
Operational agreements .....271  
Performance and other administrative standards.....272  
Designation of entity to serve as county family services agency.....272  
Exchange of information to improve services and other requirements .....273  
Reimbursement of county expenditures for food stamps and Medicaid .....274  
ODJFS action against a county regarding family services duties .....275  
    Causes for taking action against the responsible entity.....275  
    Actions ODJFS may take .....276  
    Notice of proposed action .....277  
    Administrative review .....277  
    Other actions not subject to these provisions .....280  
    Request for Attorney General to seek recovery against responsible entity .....280  
Reporting requirements .....281  
Maximization of federal funds.....281  
Dates for ODJFS reports .....281  
Voter Registration Program .....282  
Disclosure of information regarding public assistance recipients.....282  
    Mandatory release of information.....283



Discretionary release of information .....	283
Special restrictions governing the release of information regarding recipients of medical assistance .....	284
Authorization form for release of information.....	285
Sharing information regarding public assistance recipients with law enforcement agencies .....	286
No reimbursement of fees by an applicant, participant, or recipient of a family services program for appealing an administrative appeal decision.....	287
<i>II. Unemployment Compensation.....</i>	<i>287</i>
Federal Operating Fund.....	287
Job listings by persons or corporations that contract with the state.....	288
Private industry councils .....	288
Unemployment compensation fund updates to coordinate with federal trade act law changes .....	288
<i>III. Workforce Development.....</i>	<i>289</i>
Agreements with one-stop operators and one-stop partners .....	289
<i>IV. Child Welfare.....</i>	<i>290</i>
Foster care and adoption assistance .....	290
Notice, public hearing, and JCARR rule-making requirements .....	290
Single cost reporting form and cost report monitoring procedures .....	290
Actions taken when fiscal accountability procedures not met .....	290
Recovery of Title IV-E funds .....	291
Child welfare subsidy .....	292
State-funded adoption subsidy programs .....	292
State Adoption Maintenance Subsidy (SAMS).....	292
Post Adoption Special Services Subsidy (PASSS).....	293
Age limitation.....	294
State Adoption Special Services Subsidy (SASSS).....	294
Rules .....	294
ODJFS disciplinary actions .....	295
University Partnership Program participants .....	295
Putative Father Registry Fund.....	296
Independent living for young adults .....	297
Repeal of domestic violence training program.....	297
Ohio Child Welfare Training Program.....	297
Training programs for foster caregivers and adoption assessors.....	297
Reimbursement of foster caregivers for attending training .....	298
Reimbursement of agencies for providing training programs .....	299
Grants to regional training centers.....	299
Effective date .....	299
<i>V. Child Day-Care .....</i>	<i>300</i>
Day-care rules .....	300
Background.....	300



Licensed Type A homes and day-care centers .....	300
Type B homes and in-home aides .....	300
Payments to providers of publicly funded day-care .....	301
Eligibility for publicly funded child day-care .....	301
<i>VI. Food Stamp Program</i> .....	302
Food Stamp Program work requirements.....	302
<i>VII. Title IV-A Temporary Assistance for Needy Families</i> .....	302
TANF funds for publicly funded child day-care .....	303
Ohio Works First .....	303
Minor heads of household.....	303
Learning, Earning, and Parenting (LEAP) Program.....	303
Prison nursery program .....	304
Prevention, Retention, and Contingency Program.....	304
Background.....	304
The act .....	305
County share of public assistance expenditures .....	308
<i>VIII. Medicaid</i> .....	309
Treatment of trusts in Medicaid eligibility determinations .....	310
Medicaid Estate Recovery.....	310
Investigation regarding receipt of services .....	310
Claims against the estate .....	310
Release of the decedent's account proceeds.....	311
Priority of claims .....	311
Liens .....	312
Health Check.....	312
Medicaid prenatal care and substance abuse screening.....	312
Care management system within Medicaid.....	313
Pilot program for care management of chronically ill children.....	314
Managed care organizations under Medicaid contracts .....	314
Prescription drug coverage by health insuring corporations .....	314
Appointment of temporary manager.....	315
Disenrollment of Medicaid recipients .....	315
Technical changes .....	316
Medication Management Incentive Payment Program .....	316
Medicaid copayment program .....	317
Supplemental rebates .....	317
Advisory council to select Medicaid drug managers.....	318
Medicaid coverage of dental, podiatric, and vision care services.....	319
Medicaid coverage of chiropractic services.....	319
Assertive community treatment and intensive home-based mental health services.....	319
Mental health and alcohol and drug addiction services.....	320
Medicaid payments to children's hospitals.....	321

Medicaid inflation adjustment factor for hospital outpatient services.....	322
Medicaid reimbursement of long-term care services.....	322
Background.....	322
2004 and 2005 reimbursement rates for nursing facility services .....	323
2004 and 2005 reimbursement rates for ICF/MR services .....	324
Cap on ICF/MR beds eligible for Medicaid payments.....	324
Medicaid reimbursement of nursing facility franchise permit fee .....	324
ICF/MR franchise permit fee.....	326
Copies of Medicaid rules.....	326
Medicare certification.....	326
Nursing Facility Reimbursement Study Council.....	326
Federal financial participation for county MR/DD board administrative costs ...	327
Medicaid waivers for alternatives to ICF/MR placement .....	327
Medicaid waivers for early intervention services for young children and therapeutic services for children with autism.....	328
Ohio Access Success Project.....	328
Ohio Home Care Program.....	330
Criminal records checks for waiver agency employees .....	331
Initiating the criminal records check .....	331
Offenses disqualifying an applicant from employment .....	332
Fees .....	334
Confidentiality .....	334
Special provision for existing employees .....	335
Conforming change in the BCII Law .....	335
Criminal records checks for independent home and community- based services providers .....	335
Initiating the criminal records check .....	335
Offenses disqualifying a person from being an independent provider.....	337
Fees .....	338
Confidentiality.....	338
Conforming change in the BCII Law .....	338
Ohio Commission to Reform Medicaid .....	339
Study expanding Medicaid coverage for breast and cervical cancer treatment ...	339
Federal Jobs and Growth Tax Relief Reconciliation Act of 2003 .....	341
<i>IX. Hospital Care Assurance Program .....</i>	<i>341</i>
Delayed termination of HCAP .....	341
Health Care Services Administration Fund .....	342
Changes to HCAP penalties.....	342
<i>X. Disability Financial and Medical Assistance .....</i>	<i>342</i>
Separation of financial and medical assistance .....	343
Eligibility for Disability Financial Assistance.....	343
Termination of existing financial assistance eligibility .....	344
Financial assistance amounts .....	344



Eligibility for Disability Medical Assistance.....	345
Extension of existing medical assistance eligibility .....	345
Medical services available .....	346
Time limits and program limits .....	346
Delegation of administrative duties .....	347
Investigations of administrative compliance .....	347
Disability advocacy programs .....	347
Recovery of erroneous payments .....	348
Eligibility determinations .....	348
Report to the General Assembly.....	349
Rule-making authority.....	349
Transition.....	349
Cross-reference changes.....	350
<i>XI. Title XX Social Services</i> .....	350

**JOINT COMMITTEE ON AGENCY RULE REVIEW**

Fiscal agent.....	351
-------------------	-----

**JOINT LEGISLATIVE ETHICS COMMITTEE**

Registration fees .....	351
Late filing fee for executive agency lobbyists and their employers .....	352

**JUDICIARY**

Additional judge for Richland County Court of Common Pleas .....	353
Prior law .....	353
Operation of the act.....	354
Additional court costs or bail.....	355
Appointed counsel in juvenile court .....	356

**LEGAL RIGHTS SERVICE COMMISSION**

Commission authority.....	357
---------------------------	-----

**OHIO LOTTERY COMMISSION**

Transfer of lottery prize awards .....	358
Overview.....	358
Changes made by the act.....	359
Unclaimed lottery prizes.....	359
Deduction of state-owed debts from lottery prize award payments .....	360

**DEPARTMENT OF MENTAL HEALTH**

Assertive community treatment in certification standards .....	360
--	-----



DEPARTMENT OF MENTAL RETARDATION AND  
DEVELOPMENTAL DISABILITIES

Residential facilities for individuals with mental retardation or  
a developmental disability.....363

Background.....363

Rule-making authority.....364

Licensed bed capacity.....364

Transfer of Medicaid savings .....365

Cap on number of residential facility beds .....366

Obtaining a license without development approval.....367

Responsibility for nonfederal share of ICF/MR services.....369

Use of county allocations for costs of state-operated ICF/MR .....370

Priority category for county MR/DD board waiting list .....370

Distribution of county MR/DD board subsidies.....371

General purpose subsidy .....371

Subsidy for employment of a business manager.....372

Family support services subsidy .....372

Service and support administration subsidy .....372

Supported living services .....373

Tax equity payments.....373

Apprehension of MR/DD institution escapees.....374

Personal items provided on discharge from MR/DD institutions .....374

Ohio Autism Task Force .....374

Membership.....374

Report on recommendations .....375

DEPARTMENT OF NATURAL RESOURCES

Repeal of Civilian Conservation Law.....379

Membership of Reclamation Commission.....380

Use of investment earnings of Clean Ohio Trail Fund.....381

Dam construction permit fees.....381

Annual fees for dams .....382

Hunting and fishing license, permit, and stamp requirements and fees .....383

Additional Division of Wildlife license, permit, and stamp  
requirements and fees .....385

State timber sales.....388

Allocation and distribution of money from state timber sales .....388

Elimination of new formula for the distribution of money from the  
sale of state timber felled or damaged by natural conditions .....389

Prohibition against entrance fees for state parks and nature preserves .....389

Muskingum River Advisory Council.....389



OHIO BOARD OF NURSING

Administration of intravenous therapy to adults .....391  
Board of Nursing fees.....392  
Nurse Education Grant Program .....393  
Deposit of funds into Special Nursing Issue Fund.....395  
Supervision of home health agency services .....395  
Community health worker certification program.....396  
    Community health workers.....396  
    Certification.....396  
    Community health workers--supervision.....397  
    Disciplinary actions .....398  
    Community health worker training programs .....399  
    Administrative procedures .....399

STATE BOARD OF ORTHOTICS, PROSTHETICS  
AND PEDORTHICS

Elimination of sunset .....401

STATE PERSONNEL BOARD OF REVIEW

Transcript and Other Documents Fund .....402

PUBLIC DEFENDER COMMISSION

State reimbursement to counties for legal services to indigent defendants .....403

STATE BOARD OF PHARMACY

Administration of adult immunizations by pharmacists.....403

DEPARTMENT OF PUBLIC SAFETY

0.08 blood alcohol concentration reverter.....404  
Creation of the Division of Homeland Security.....405  
Commercial driver's licenses (CDL) .....406  
Motorcycle Safety and Education Program .....407  
Vehicle registration periods for buses .....407  
Motor vehicle certificate of title document retention .....408  
State Highway Safety Fund.....408

PUBLIC UTILITIES COMMISSION OF OHIO

Special Assessment Fund .....409  
Gas Pipe-line Safety Fund.....409  
Motor Carrier Safety Fund .....410

PUBLIC WORKS COMMISSION

Use of investment earnings of Clean Ohio Conservation Fund.....410



STATE RACING COMMISSION

Deposit of entire 1/2 of 1% of all amounts wagered on exotic wagering into the State Racing Commission Operating Fund.....411
State Racing Commission performance study .....411

OHIO BOARD OF REGENTS

Increase in Ohio Instructional Grant (OIG) amounts .....413
Creation of the Instructional Grant Reconciliation Fund .....414
Denial of financial aid to students convicted of riot-related offenses.....415
Dismissal of students convicted of rape or sexual battery .....415
Cap on tuition charges at state-assisted institutions of higher education.....416
Miami University pilot tuition restructuring plan .....416
Study of co-located institutions .....417
Transfer of students between state institutions of higher education.....418
Residency for board of trustee members of the University of Cincinnati.....420
Conversion of Belmont Technical College to Belmont Community College .....420
Commission on Higher Education and the Economy .....421
Higher education programs at the Warren County Career Center .....422
Pilot joint vocational-college partnership program .....422
Creation of a new community college .....423

DEPARTMENT OF REHABILITATION AND CORRECTION

Administrative resolution of small claims of inmates .....424
Parole Board study of appropriateness of "pre-S.B. 2" sentences .....425

RETIREMENT SYSTEMS

Public notice and meeting for reemployed PERS, STRS, and SERS retirants ....426
Elected official's retirement allowance penalty .....427

STATE BOARD OF SANITARIAN REGISTRATION

Sanitarian and sanitarian-in-training registration fees.....428

OHIO SCHOOL FACILITIES COMMISSION

Classroom facilities assistance programs--background.....430
Termination of three programs administered by the School Facilities Commission .....432
Allocation of classroom facilities project funds .....432
Authorization for certain large land area districts to participate in the Exceptional Needs program .....432
Participation in both the Exceptional Needs and the Expedited Local Partnership programs .....433
Use of existing taxes to generate revenue for classroom facilities projects .....433
Use of an existing permanent improvement levy for maintenance .....434



Repeal of credit for previous expenditures .....	435
Most programs .....	435
Expedited Local Partnership program.....	435
Renovation of existing facilities in lieu of replacement by new construction.....	436
Additional assistance to correct oversights or deficiencies .....	436
Disposal of real property by school districts.....	437
Delegation authority of the School Facilities Commission .....	437

#### OHIO SCHOOLNET COMMISSION

Membership of Ohio SchoolNet Commission.....	438
--	-----

#### SECRETARY OF STATE

Notary public qualifications and fee increase.....	440
Certification of special police .....	441
Election Law changes .....	442
Presidential ballot certification deadlines .....	442
Election precinct size .....	443
Election supplies; ballot approval .....	443
Implementation of the Help America Vote Act of 2002.....	444
Election Law signature requirements .....	445

#### DEPARTMENT OF TAXATION

<i>I. Sales and Use Tax</i> .....	455
How state and local sales and use taxes work .....	455
State sales and use tax rate temporarily increased .....	455
Additional services made subject to sales and use taxation.....	455
Sales and use tax exemptions eliminated .....	457
Determination of "price"--items included in it .....	457
Sales that are not subject to sales or use taxes.....	458
Partial exemption for sales of fractional ownership program aircraft .....	460
Filing returns and paying taxes by electronic funds transfer; change in dates for accelerated tax payments.....	460
Accelerated sales and use tax payments .....	461
Increased discount for vendors .....	462
Sourcing of and licensing for the new services subject to taxation .....	462
Recovery of sales tax refund amounts .....	462
Personal liability for failure to file returns or remit taxes .....	463
Revisions made to comply with the Streamlined Sales and Use Tax Agreement .....	464
Background.....	464
Major tax base definitions and their impact on the tax base.....	465
Collection of sales and use taxes on leases and rentals.....	468
Simplification of administering exemptions .....	469



Restrictions on frequency of changes in local tax rates .....	469
Tax rate schedules.....	470
Uniform standards for attributing the source of transactions to taxing jurisdictions.....	471
Bad debt.....	476
Delay of certain sales and use tax provisions .....	477
<i>II. Municipal Taxation.....</i>	<i>477</i>
Appeals from municipal tax administrators' decisions .....	477
Municipal income tax withholding requirements.....	478
Automatic three-year withholding requirement eliminated.....	478
Withholding tax base established.....	479
Erroneous payment of tax or withholding .....	481
Municipal income tax filing deadlines .....	481
Uniform deadline for filing municipal income tax returns .....	481
Uniform extension periods.....	481
Ohio Business Gateway .....	482
Municipal corporations not responsible for operation and maintenance of the Ohio Business Gateway .....	483
Tax Commissioner granted rulemaking authority with respect to the Ohio Business Gateway.....	483
Ohio Business Gateway Steering Committee created .....	483
Municipal taxation of business net profit.....	485
Uniform tax base established.....	485
Taxpayers that are neither individuals nor C corporations .....	486
Unintended effects negated.....	486
Municipal corporations authorized to exempt certain income .....	486
Net profit from sole proprietorships and rental activity .....	487
Apportionment of net profit.....	487
Definition of "intangible income" altered.....	488
Tax credit for "qualifying losses" on nonqualified deferred compensation plans .....	488
Municipal taxation of S corporation distributive shares: credit for resident shareholders.....	490
Background.....	490
Credit for resident S corporation shareholders.....	490
<i>III. Taxation of Local Exchange Telephone Companies .....</i>	<i>491</i>
Telephone companies no longer taxed as public utilities.....	491
Summary .....	491
Assessment rate reduction for telephone companies.....	491
Public utility excise tax .....	492
Corporation franchise tax .....	492
Telephone company income becomes subject to taxation by municipal corporations .....	496



Sales by telephone companies are subject to sales or use taxes.....	497
IV. <i>Other Areas of Taxation</i> .....	497
Call center tax credit to offset future "anti-PIC" legislation.....	497
Current Agricultural Use Valuation.....	499
Exemption of property in community reinvestment areas from real property taxation.....	499
Background.....	499
Complaints concerning continued exemption .....	500
Additional limitations on Tax Commissioner's involvement with CRA property tax exemptions .....	501
Classification of a structure or remodeling composed of multiple units .....	501
Bond requirement for cigarette dealers; electronic payment of cigarette taxes ...	502
Defer tax recognition of book-tax differences.....	503
Motor fuel taxes and their enforcement.....	504
Refunds for water intentionally added to fuel .....	504
Motor fuel use permit violations .....	504
Inspections related to motor fuel.....	505
Motor Fuel Tax Administration Fund .....	506
Additional fuel use tax phase-out clarification.....	506
Monthly deduction from local government shares of motor fuel tax .....	506
Reimbursement of school districts for new motor fuel taxes .....	507
Real estate assessment fund: permissible uses .....	507
Fee to defray Department of Taxation's property tax administrative costs.....	508
Personal property tax on inventory: accelerated phase-out .....	509
Reduce state reimbursement for \$10,000 business property exemption .....	510
Eliminate filing requirement for businesses with only exempt property .....	510
Tax abatement for "qualified property" .....	510
Changes to the job creation and job retention tax credits .....	512
Deferment of income tax liability for members of the armed forces serving in Operation Iraqi Freedom.....	513
Extension of Tax Commissioner's power to disregard sham transactions .....	514
Tax replacement payments for taxing districts having a nuclear power plant .....	515
Extension of county taxation authority to finance convention centers.....	517
Authority to levy an additional hotel lodging tax and to use proceeds from existing hotel lodging taxes to pay costs associated with convention centers.....	517
Contributions to certain convention facilities authorities prohibited .....	519
Yearly audits required .....	519
Authority to levy a 2% sales tax on food and beverages .....	520
Convention facilities authorities .....	521
Yearly audits required .....	521
Increased lodging tax for port authority military-use facilities.....	522
Pollution control and other special-purpose tax-exempt facilities.....	522

Changes in general administration.....	522
Eliminate exclusion from franchise tax base .....	523
Application fee .....	523
Partial exemption .....	524
Revaluation .....	524
Effective date of exemption.....	525
Appeals .....	525
Revocation .....	525
Transitional provisions .....	526
Notice to local taxing authorities .....	526
Abating late penalties.....	526
Preneed funeral trusts exempted from income tax.....	527
"Decoupling" from new federal bonus depreciation.....	528
Corporation franchise tax: increased minimum tax .....	529
Corporation franchise tax: allocation and apportionment .....	529
Change in property apportionment .....	529
Allocation.....	530
Lottery proceeds under the corporate franchise tax.....	531
Tax Commissioner's authority to apply income tax refunds toward the payment of unpaid workers' compensation premiums or unemployment compensation contributions or payments in lieu of contributions .....	532
Department of Taxation Enforcement Fund--for property or cash forfeited under the Corrupt Activity Forfeiture Law, Felony Drug Abuse Offense Forfeiture Law, or Contraband Forfeiture Law or under federal law.....	532
Corrupt Activity Forfeiture Law .....	533
Felony Drug Abuse Offense Forfeiture Law .....	534
Contraband Forfeiture Law.....	536

#### DEPARTMENT OF TRANSPORTATION

Audits of force accounts and penalties for violations.....	541
Sale of advertising at roadside rest areas.....	543
General aviation license tax .....	544

#### OHIO VETERANS HOME AGENCY

Pharmaceutical and supply purchases .....	544
---	-----

#### BUREAU OF WORKERS' COMPENSATION

Fund transfers for payment of workers' compensation payments .....	545
--	-----

#### DEPARTMENT OF YOUTH SERVICES

Community corrections facilities .....	547
Background.....	547
Operation of the act.....	548



Federal juvenile justice programs funds .....	548
RECLAIM formula .....	549
Operation of the act--RECLAIM formula .....	549
Operation of the act--RECLAIM advisory committee.....	551
Operation of the act--DYS felony care and custody program .....	552
Operation of the act--contingency program.....	553
DYS reports to Governor and the legislature.....	553
Prior law .....	553
Operation of the act.....	554
Definition of "public safety beds" .....	554
Prior law .....	554
Operation of the act.....	554
Miscellaneous .....	555
Technical changes .....	555

#### LOCAL GOVERNMENT

Powers of a regional transit authority .....	559
County competitive bidding requirements .....	559
Profits from local correctional facility commissaries.....	560
Local correctional facilities .....	560
Jails .....	561
Medical treatment .....	561
Increased sheriff's fees.....	562
Service and return of writs and orders fees.....	562
Other fees .....	564
Miscellaneous .....	565
Boards of alcohol, drug addiction, and mental health services in counties with separate boards .....	565
Board of township trustees of limited home rule townships.....	566
Increase in township clerk salaries.....	566
Conversion of township park district to township park land .....	566
Increase from \$15,000 to \$25,000 in the competitive bidding threshold for certain political subdivisions .....	567
Increase from \$10,000 to \$25,000 in the competitive bidding threshold for certain political subdivisions .....	567
Agricultural societies.....	568
Use of credit cards.....	568
Agreements to obtain loans and credit .....	568
Purchase or lease of real estate.....	569
Offense of misconduct involving a public transportation system.....	569
Pre-trial diversion programs .....	569
Metropolitan housing authorities.....	570
Change in appointment method in specified counties.....	570



Resident members .....	570
Restricting the use of a street or highway lane to buses only.....	571
Purchase orders by political subdivisions or taxing units .....	571
Additional veterans service commission appointments .....	572
Overview.....	572
Additional memberships in certain counties.....	572
County drainage facilities rates and charges.....	573
Regional water and sewer district contracts.....	573

#### MISCELLANEOUS

Multiple-state prescription drug purchasing program .....	575
Facilities Closure Commissions .....	576
Procedure for closing a state institutional facility for the purpose of expenditure reductions or budget cuts .....	576
Composition and duties of Facilities Closure Commissions .....	577
Privately operated and managed correctional facilities.....	579
Applicability .....	579
Monitoring of home care services provided to dependent adults.....	579
Retail installment contract charges .....	581
State enforcement of statutory lien .....	581
Judgment liens in favor of the state .....	581
Governmental Television/Telecommunications Operating Fund .....	582
Conditional employment in long-term care facility.....	582
Railroad crossing traffic laws .....	583
Task Force to Eliminate Health Services Duplication.....	584
Membership.....	584
Duties.....	584
Optimize use of food grown at state correctional institutions and Department of Youth Services facilities.....	585

---

#### DEPARTMENT OF ADMINISTRATIVE SERVICES

- Codifies the Vehicle Liability Fund.
- Requires the Director of Administrative Services, through the Office of Risk Management, to operate the Vehicle Liability Fund on an actuarially sound basis, including maintaining reserves necessary and adequate to cover potential liability claims, expenses, fees, or damages.
- Requires contributions from state agencies and state bodies for the purpose of purchasing liability insurance or administering self-insurance programs to be deposited to the credit of the Vehicle Liability Fund.



- Eliminates a provision of law that required reimbursements by state agencies to the Department of Administrative Services for contracts of insurance to be deposited to the credit of the General Services Fund or the Information Technology Fund.
- Creates a new fleet management program that gives the Department exclusive authority over the acquisition and management of certain motor vehicles used by state agencies, but allows the Department to delegate this authority under certain circumstances.
- Grants the Department authority to direct and approve all funds that are expended for the purchase, lease, repair, maintenance, registration, insuring, and other costs related to the possession and operation of motor vehicles for the use of state agencies.
- Requires, for the provision of a motor vehicle to any employee of a state agency for business use, that the employee drive a certain number of business miles per year and be approved by the Department.
- Establishes the Vehicle Management Commission within the Department to recommend to the Department and the General Assembly modifications to the Department's procedures and functions under the new fleet management program.
- Gives the Department powers and duties that implement the Management Improvement Commission's recommendations concerning facilities planning and space utilization by state agencies.
- Eliminates the State Forms Management Control Center in the Department and its administrator, but retains the Department's responsibility to control and supervise a revised state forms management program.
- Repeals the Form Burden Law that is no longer operative.
- Removes the Office of State Records Administration and a designated administrator from the Department, but retains Department responsibility for a state records program.
- Removes several duties of the state records program including the duty to make continuing surveys of record-keeping operations and recommend

improvements, and the duty to establish and operate state records centers and auxiliary facilities as authorized by appropriation and provide related necessary services.

- Eliminates outdated E-1 and E-2 schedules of rates for salaries and wages paid to certain public employees exempt from the Collective Bargaining Law, and creates new E-1 and E-2 schedules for their pay periods beginning July 1, 2005.
- Creates a moratorium on step advancements for certain public employees exempt from the Collective Bargaining Law and certain state board and commission employees from June 29, 2003, through June 25, 2005.
- Creates a moratorium on the receipt of credit for service with the state government or any political subdivision for purposes of longevity pay adjustments for certain public employees exempt from the Collective Bargaining Law and certain state board and commission employees for the period from July 1, 2003, through June 30, 2005.
- Creates a one-time 2% pay supplement to be paid in the first paycheck in December 2004 to certain permanent public employees exempt from the Collective Bargaining Law.
- Eliminates an obsolete reference to a non-existent pay range for State Fire Commission members.
- Would have allowed state agencies to purchase services that cost more than \$50,000 or supplies that cost more than \$25,000 directly from the lowest of at least three solicited bidders or offerors rather than from or through the Department of Administrative Services (VETOED).
- Would have required a state agency, when soliciting those bids or proposals, to comply with competitive selection requirements (VETOED).
- Requires the Director to inquire into entering into multistate purchasing contracts and to report to the General Assembly the Director's findings and recommendations not later than December 31, 2003.
- Requires the Department, when exercising its statutorily granted powers, to actively promote and accelerate the use of electronic procurement by



implementing the relevant recommendations concerning e-procurement from the 2000 Management Improvement Commission Report to the Governor.

- Suspends the authority of the Director to collect commissions or fees in connection with certain lease agreements during the period beginning July 1, 2003, and ending June 30, 2005.
- Changes the definition of "qualifications," for purposes of the Professional Design Services Law, to include as a catch-all "any other relevant factors as determined by the public authority."
- Prohibits public authorities, except state agencies under certain circumstances, planning to contract with a professional design firm for professional design services under the Professional Design Services Law from seeking any form of fee estimate, fee proposal, or other estimate or measure of compensation before selecting and ranking firms.
- Requires the Director to adopt rules to create and implement the Encouraging Diversity, Growth, and Equity (EDGE) Program which is to certify disadvantaged businesses as EDGE business enterprises that then may apply for contract, financial and bonding, and management and technical assistance to, as well as for mentoring opportunities with, the Department of Development.
- Requires the Director of Development to perform certain duties to assist the Director of Administrative Services in the implementation of the EDGE Program and requires both directors to issue a detailed report to the Governor no later than December 31, 2003, regarding the implementation and progress of the EDGE Program.
- Authorizes the Director of Development to guarantee bonds executed by sureties for minority businesses and EDGE business enterprises as principals on contracts with the state, any political subdivision or instrumentality, or any person as the obligee, and establishes parameters for those guaranty bonds.

## *Vehicle Liability Fund*

(R.C. 9.83 and 125.15)

Former law required all state agencies that had to secure contracts of insurance from the Department of Administrative Services (DAS) to reimburse DAS upon its request for the contracts, including a reasonable sum to cover DAS' administrative costs. The money so paid had to be deposited into the state treasury to the credit of the General Services Fund or the Information Technology Fund, as appropriate.

The act eliminates the requirement that moneys paid for contracts of insurance be deposited into the state treasury to the credit of those funds and establishes, in permanent law, the Vehicle Liability (VL) Fund in the state treasury. The VL Fund, which formerly was established by administrative rule, must be used to provide insurance and self-insurance for the state. Money in the VL Fund also may be applied to the payment of liability claims (i.e., liability for injury, death, or loss to person or property arising from the operation of an automobile, truck, motor vehicle with auxiliary equipment, etc.) that are filed against the state in the Court of Claims and determined in the manner provided in the law governing that court. The Director of Administrative Services, through the Office of Risk Management, is required to operate the VL Fund on an actuarially sound basis.

The Director is required to collect from each state agency or participating state body its contribution to the VL Fund for the purpose of purchasing insurance or administering self-insurance programs. The Director must determine the amount of the contribution, with the approval of the Director of Budget and Management, based on actuarial assumptions and the relative risk and loss experience of each state agency or participating state body. The amount of the contribution also must include a reasonable sum to cover DAS' administrative costs. In addition to these contributions, which must be deposited into the VL Fund, all investment earnings of the VL Fund must be credited to it.

Reserves must be maintained in the VL Fund in an amount that is necessary and adequate, in the exercise of sound and prudent actuarial judgment, to cover potential liability claims, expenses, fees, or damages. The Director may procure the services of a qualified actuarial firm for the purpose of recommending the specific amount of money that is required to maintain adequate reserves in the VL Fund for a specified period of time.

## Ohio fleet management

(R.C. 125.831, 125.832, and 125.833)

### Former law

Former law required the Director of Administrative Services to establish and operate a fleet management program for purposes including cost-effective acquisition, maintenance, management, and disposal of all vehicles owned or leased by the state. This program covered state departments, agencies, institutions, commissions, and boards other than state-supported institutions of higher education, the General Assembly, legislative agencies, the courts, and judicial agencies. Under the program, the Director was allowed to establish a fleet reporting system and to require the covered state departments, agencies, institutions, commissions, and boards to submit information concerning state vehicles. Additionally, the purchase or lease of a vehicle by those state entities apparently required the submission of a request to and the prior approval of the Director. (Former R.C. 125.831--repealed by the act.)

The former Fleet Management Program Law also entitled each of the following to receive a vehicle allowance to secure or lease transportation for that person's use in the scope of the person's employment or official duties (former R.C. 125.831):

- The Director of Budget and Management;
- The Director of Commerce;
- The Director of Transportation;
- The Director of Agriculture;
- The Director of Job and Family Services;
- The Director of Public Safety;
- The Superintendent of Insurance;
- The Director of Development;
- The Tax Commissioner;
- The Director of Administrative Services;
- The Director of Natural Resources;

- The Director of Mental Health;
- The Director of Mental Retardation and Developmental Disabilities;
- The Director of Health;
- The Director of Youth Services;
- The Director of Rehabilitation and Correction;
- The Director of Environmental Protection;
- The Director of Aging;
- The Director of Alcohol and Drug Addiction Services;
- The Administrator of Workers' Compensation;
- The Adjutant General;
- The Chancellor of the Ohio Board of Regents;
- The Chairperson of the Industrial Commission;
- The Director of the State Lottery Commission;
- The Superintendent of Public Instruction; and
- The Chairperson of the Public Utilities Commission of Ohio.

**Changes made by the act**

**Overview.** The act eliminates the law discussed above and replaces it with a new Fleet Management Program (FMP) Law. Under the new law, the Director of Administrative Services must implement to the greatest extent possible the recommendations of the 2002 report entitled "Administrative Analysis of the Ohio Fleet Management Program." Additionally, the Director must attempt to reduce the number of passenger vehicles used by state agencies during the fiscal years ending on June 30, 2004, and June 30, 2005.

To accomplish these ends, the act grants DAS *exclusive authority* over the acquisition and management of all motor vehicles used by state agencies (see detail below). "Motor vehicle," as used in the new FMP Law, *generally* includes any automobile, car, minivan, passenger van, sporty utility vehicle, or pickup truck

with a gross vehicle weight of under 12,000 pounds; but, DAS' authority under the new law does *not* extend to any such vehicle that is used by a law enforcement officer and law enforcement agency or any such vehicle equipped with specialized equipment (see below) that is not normally found in such a vehicle and that is used to carry out a state agency's specific and specialized duties and responsibilities. "Specialized equipment" must be equipment other than standard mobile radios with no capabilities other than voice communication, exterior and interior lights, or roof-mounted caution lights. Finally, "state agency," as used in the new FMP Law, means every organized body, office, or agency established by the laws of Ohio for the exercise of a function of state government, other than a state-supported institution of higher education, the office of the Governor, Lieutenant Governor, Auditor of State, Treasurer of State, Secretary of State, or Attorney General, the General Assembly or any legislative agency, or the courts or any judicial agency.

In carrying out its exclusive authority mentioned above, DAS must do both of the following:

- Approve the purchase or lease of each motor vehicle for use by a state agency, including deciding if a motor vehicle is to be leased or purchased for that use. To this end, the act requires the prior approval of the Director of Administrative Services of all state agency purchases or leases of motor vehicles.
- Direct and approve all funds that are expended for the purchase, lease, repair, maintenance, registration, insuring, and other costs related to the possession and operation of motor vehicles for the use of state agencies.

**Specific duties of the Director under the new FMP Law.** Under the act, the Director of Administrative Services must establish a new Fleet Management Program and operate it for purposes including, but not limited to, cost-effective acquisition, maintenance, management, analysis, and disposal of all motor vehicles owned or leased by the state. In that operation, the Director must do each of the following:

- Establish policies and procedures for the Program relative to motor vehicle assignments, additions of motor vehicles to fleets or motor vehicle replacements, motor vehicle fueling, and motor vehicle repairs. Other policies and procedures also could be established. All state agencies must comply with these policies and procedures.

- Adopt rules for implementing the Program that are consistent with recognized best practices;<sup>1</sup>
- Adopt rules that prohibit, except in very limited circumstances, the *exclusive assignment* of state-owned, leased, or pooled motor vehicles to state employees. On a related note, the act provides that, as of the effective date of the new FMP Law, no such motor vehicle may be *personally assigned* as any form of compensation or benefit of state employment, and no such motor vehicle can be assigned to an employee solely for commuting to and from home and work.
- Determine how motor vehicles will be maintained, insured, operated, financed, and licensed;
- Pursuant to a specific formula in the act, annually establish the minimum number of business miles per year a state agency employee must drive in order to qualify for DAS' approval of a motor vehicle for that employee for business use;
- Establish and maintain a fleet reporting system. As part of the system, the Director must require state agencies to submit to DAS information relative to state motor vehicles, and the agencies must provide DAS with fleet data and information, including, but not limited to, mileage and costs. All information is to be submitted in the formats and in the manner DAS determines.

**Fleet plans.** The act requires state agencies that use state motor vehicles or that pay mileage reimbursements to employees to provide a fleet plan to DAS, as it directs.<sup>2</sup>

**Fees and reimbursement of costs.** The new Fleet Management Program is to be supported by reasonable fees DAS charges for the services it provides. The Director of Administrative Services must collect these fees and deposit them into the state treasury to the credit of the Fleet Management Fund, which exists under continuing law.

The act clarifies that neither the setting nor the collection of these fees is subject to any restriction imposed by law upon the Director's or DAS' authority to

---

<sup>1</sup> *The act does not indicate what constitutes "recognized best practices."*

<sup>2</sup> *The act neither defines the term "fleet plan" nor indicates what it encompasses.*

set or collect fees. And, the act also correspondingly requires each state agency to reimburse DAS for all costs incurred in the assignment of motor vehicles to the state agency.

**Delegation of fleet management responsibilities.** Under the act, notwithstanding its statutorily prescribed management responsibilities for the new Fleet Management Program, DAS may delegate any or all of those responsibilities to a state agency if it demonstrates to the satisfaction of DAS both of the following:

- Capabilities to institute and manage a fleet management program, including, but not limited to, the presence of a certified fleet manager. The act separately requires a state agency to have a certified fleet manager as a condition of DAS delegating its fleet management responsibilities to the agency. And, DAS must create and maintain a certified fleet manager program.
- Fleet management performance, as demonstrated by (1) fleet data and other information submitted to DAS by the agency pursuant to annual reporting requirements and (2) any other criteria DAS considers necessary in evaluating the performance.

Even if DAS delegates its fleet management responsibilities to a state agency, it has the authority to determine that the agency is not complying with the new FMP Law and to direct that the agency's fleet management responsibilities be transferred to DAS.

**Transfer of state agency fleet management to DAS.** The act requires state agency fleets that have 100 or fewer vehicles on July 1, 2004, to be managed by the new Fleet Management Program on a time schedule DAS determines. State agency fleets that have more than 100 but less than 500 vehicles on July 1, 2005, also must be managed by the Program on a time schedule DAS determines. However, these requirements do not apply if DAS has delegated its fleet management authority to the state agency in question as described above.

**Disposition of motor vehicles.** As previously noted, one of the act's general requirements is that DAS attempt to reduce the number of passenger vehicles used by state agencies during the fiscal years ending on June 30, 2004, and June 30, 2005. It relatedly provides that the proceeds derived from the disposition of these motor vehicles must be paid to whichever of the following applies:

- The fund that originally provided moneys for the purchase or lease of the motor vehicles;

- If the motor vehicles were originally purchased with moneys received from the General Revenue Fund, the state treasury for credit to the Fleet Management Fund.

**DAS reporting requirement.** The Department must annually prepare and, by no later than January 31, submit a statewide fleet report to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The report may include, but is not limited to, the numbers and types of motor vehicles; the motor vehicles' mileage, miles per gallon, and cost per mile; mileage reimbursements; accident and insurance data; and, for those state agencies to which DAS has delegated its fleet management responsibilities, information regarding their compliance with applicable fleet management requirements.

**Vehicle Management Commission.** Finally, the act establishes the Vehicle Management Commission within DAS. The Commission consists of the Director of Administrative Services, two members of the House of Representatives who must be appointed by the Speaker of the House, two members of the Senate who must be appointed by the President of the Senate, and four persons with experience in the vehicle leasing, purchasing, and maintenance industry in Ohio who must be appointed by the Governor and serve at the Governor's pleasure. The Governor also must appoint the Commission's chairperson.

Initial appointments of members to the Commission must be made by September 1, 2003. Thereafter, appointments of legislative members of the Commission must be made within 15 days after the commencement of the first regular session of the General Assembly. Vacancies on the Commission are to be filled for the unexpired term in the same manner as an original appointment.

The Commission must periodically review DAS' implementation of the new Fleet Management Program. Additionally, the Commission may recommend to DAS and the General Assembly modifications to DAS' procedures and functions and other statutory changes.

### **Duties relating to space allocation**

(R.C. 123.01)

The act gives DAS powers and duties that implement the Management Improvement Commission's recommendations concerning facilities planning and space utilization by state agencies. Specifically, DAS must do each of the following:

- (1) Conduct biennially, by state agency location, a census of agency employees assigned space;

(2) Require each state agency to categorize periodically the different uses of its space by office space, common areas, storage space, and other uses and report its findings to DAS;

(3) Create and update periodically a master space utilization plan, incorporating space utilization metrics, for all space allotted to state agencies;

(4) Conduct periodically a cost-benefit analysis to determine the effectiveness of state-owned buildings;

(5) Assess periodically the alternatives associated with consolidating the commercial leases for buildings located in Columbus; and

(6) Commission a comprehensive space utilization and capacity study to determine the feasibility of consolidating existing commercially leased state agency space into a new state-owned facility.

### **State forms management**

(R.C. 125.92, 125.93, 125.95, 125.96, and 125.98)

Former law established in DAS a State Forms Management Control Center under the control and supervision of the Director of Administrative Services, who had to appoint an *administrator* of the Center. The Center was required to develop, implement, and maintain a *statewide forms management program* that involved all state agencies and was designed to simplify, consolidate, or eliminate, when expedient, forms, surveys, and other documents used by the agencies.

The act eliminates the Center in DAS as well as the position of its administrator. But, DAS still must establish and administer a state forms management program under the control and supervision of the Director of Administrative Services or the Director's designee. The program must be developed, implemented, and maintained for all state agencies and be designed to simplify, consolidate, or eliminate, when expedient, forms, surveys, and other documents used by them.

Under former law, the Center was required, among its other duties, to conduct an annual evaluation of the effectiveness of the forms management program and the forms management practices of individual state agencies. The results of an evaluation had to be reported to the Speaker of the House of Representatives and the President of the Senate by January 15 of each year. The act eliminates from the duties of the continuing DAS state forms management program this annual evaluation requirement as well as the Center's duties (1) to utilize existing functions within DAS to design economical forms and compose art work, (2) to use appropriate procurement techniques to take advantage of

competitive selection, consolidated orders, and contract procurement of forms, (3) to establish and supervise control procedures to prevent the undue creation and reproduction of state forms, and (4) to assist state agencies to compose art work for forms.

Finally, the Center formerly was required to maintain a *central cross-index* of state forms to facilitate standardization of the forms, eliminate redundant forms, and provide a central source of information on forms usage and availability. The act instead requires the state forms management program to maintain a *central forms repository* of all state forms for those purposes.

### **Form Burden Law**

(R.C. 125.91; repeal of R.C. 125.931, 125.932, 125.933, 125.934, and 125.935)

The act outright repeals the statutes pertaining to the Form Burden Law that are no longer operative, as that law's requirements were only for fiscal years 1995 through 1999. That law had a requirement that each state agency submit in those fiscal years a forms reduction summary to the Director of Administrative Services.

### **Office of State Records Administration**

(R.C. 9.01, 101.82, 149.011, 149.33, 149.331, 149.332, 149.333, 149.34, and 149.35)

Under former law, DAS had full responsibility for establishing and administering a state records program for all state agencies, except for state-supported institutions of higher education. This responsibility was fulfilled by DAS' Office of State Records Administration which was under the control and supervision of the Director of Administrative Services or the Director's appointed deputy. The office had an *administrator* designated by the Director.

The former *state record administration program* had a number of statutory duties, including, but not limited to, the duty to work with the state archivist in establishing effective management procedures for state records, the duty to make surveys of record-keeping operations and recommend improvements in current records management practices, the duty to establish and operate state records centers and auxiliary facilities authorized by appropriation, the duty to review applications for one-time records disposal and schedules of records retention and destruction submitted by state agencies, the duty to establish and maintain a records management training program, and the duty to obtain reports from entities necessary for the program's effective administration (R.C. 149.331 and 149.332).

The act eliminates the Office of State Records Administration in DAS as well as the position of state records administrator. But, DAS will have the



responsibility (replacing "full" responsibility under former law) for establishing and administering a state records program (replacing former law's "state record administration program") for all state agencies, except for state-supported institutions of higher education, under the control and supervision of the Director of Administrative Services or the Director's appointed deputy. The act also eliminates as duties of the state records program (1) the surveying of record-keeping operations, (2) the recommending of improvements in current records management practices, (3) the establishment and operation of state records centers and auxiliary facilities, and (4) the obtaining of reports from entities for the program's effective administration; a new duty under the act is that program must provide a basic consulting service for personnel involved in record-keeping (in addition to its continuing duty to establish and maintain a records management training program for those personnel). (R.C. 149.33 and 149.331.) Similarly, the act removes the requirements for each state agency to cooperate in the surveys and to transfer certain records to a state records center or auxiliary facility (R.C. 149.34). The act also replaces numerous statutory references to the state records administrator with references to the state records program or the Director of Administrative Services.

Finally, although continuing law defines "records" to include any document, device, or item, regardless of physical form or characteristic, that is created or received by or comes under the jurisdiction of a public office and that serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office, the act specifically includes in that definition, as an example, *electronic records* as defined in the Uniform Electronic Transactions Act.

### **Schedules of rates for certain public employees**

(R.C. 124.15 and 124.152)

#### **Overview**

Continuing law provides that certain public employees are to be paid a wage or salary that must be determined using one of four "schedules of rates" set forth in R.C. 124.15 and 124.152.

**Managerial and professional employees.** Under continuing law, managerial and professional public employees who are permanent employees paid directly by warrant of the Auditor of State, whose positions are included in the state's job classification plan, and who are exempt from the Collective Bargaining Law ("exempt employees") receive wages or salaries based upon the schedule of

rates known as Schedule E-2.<sup>3</sup> Additionally, managerial or professional employees of state boards and commissions receive salaries based upon the schedule of rates known as Schedule C. Under both the E-2 and C schedules, there are a certain number of different pay ranges to which an employee paid under that schedule is assigned. Then, for each pay range, there is a specific minimum and maximum hourly wage or annual salary that the employee may receive.

**Nonmanagerial and nonprofessional employees.** Exempt employees who are not managerial or professional employees paid under Schedule E-2 receive wages or salaries based upon the schedule of rates known as Schedule E-1. Additionally, employees of state boards and commissions who are not managerial or professional employees paid under Schedule C receive wages or salaries based upon the schedule of rates known as Schedule B. Similar to the E-2 and C schedules, the E-1 and B schedules contain a certain number of different pay ranges to which an employee under that schedule is assigned. However, rather than having a minimum and maximum hourly wage and annual salary for each pay range as under the E-2 and C schedules, pay ranges under the E-1 and B schedules contain a number of step values, one to which an employee is assigned, with each step providing for a specifically set hourly wage or annual salary.

#### **Adjustment of schedules of rates**

Under former law, there were three different sets of E-1 and E-2 schedules: one set for pay periods between July 1, 2000, and June 30, 2001, another set for pay periods between July 1, 2001, and June 30, 2002, and still another set for pay periods on and after July 1, 2002. The act eliminates the two outdated sets of E-1 and E-2 schedules mentioned above, retains the set of E-1 and E-2 schedules for pay periods on and after July 1, 2002, and enacts a new set of E-1 and E-2 schedules that will apply to pay periods beginning July 1, 2005. This new set

---

<sup>3</sup> Under R.C. 124.14(B) (not in the act), exempt employees, for purposes of R.C. 124.15 and R.C. 124.152, do not include any of the following: elected officials; legislative employees; employees of the Legislative Service Commission; employees in the Governor's office; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the (a) Secretary of State, (b) Auditor of State, (c) Treasurer of State, or (d) Attorney General; employees of the Supreme Court; employees of a county children services board that establishes its own compensation rates; any position for which the authority to determine compensation is given by law to an individual or entity other than DAS; and employees of the Bureau of Workers' Compensation whose compensation the Administrator of Workers' Compensation establishes.

includes a 4% increase in the salaries and wages under the schedules. (R.C. 124.152(A) and (B).)

**Step advancement moratorium**

**Background.** As previously noted, each nonmanagerial or nonprofessional exempt employee paid under Schedule E-1 and each nonmanagerial or nonprofessional state board or commission employee paid under Schedule B is assigned to a specific pay range and step value within that pay range. Under generally continuing law, during the course of employment, each of these types of employees is eligible for advancement to succeeding steps in his or her pay range. These step advancements can occur in two ways. First, after a newly hired or promoted employee completes the employee's probationary period, the employee will receive an automatic step advancement to the next higher step. Second, every 12 months, employees generally become eligible to advance to the next higher step. (R.C. 124.15(G).)

**Operation of the act.** The act declares a moratorium on the second type of step advancements (i.e., annual advancements) from June 29, 2003, through June 25, 2005; the advancements will resume thereafter. During the moratorium, employees who are hired or promoted and successfully serve a probationary period continue to automatically advance to the next step in the employee's pay range. But, such an employee is subject to the moratorium thereafter. (R.C. 124.15(G)(2)(a).)

The moratorium *does not apply*, however, to employees of the Secretary of State, the Auditor of State, the Treasurer of State, or the Attorney General who are paid under Schedule E-1 or Schedule B, if the Secretary of State, the Auditor of State, the Treasurer of State, or the Attorney General decides to exempt the office's employees from the moratorium and notifies the Director of Administrative Services in writing of this decision on or before July 1, 2003 (R.C. 124.15(G)(2)(b)).

Under the act, upon the resumption of the annual step advancements, retroactive advancements cannot be granted to an employee for the period the moratorium was in effect. And, the moratorium does not affect an employee's performance evaluation schedule. (R.C. 124.15(G)(2)(a).)

## Longevity pay adjustment moratorium

(R.C. 124.181(E)(1) and (3))

### Background

Under continuing law, nonmanagerial or nonprofessional exempt employees paid under Schedule E-1 and nonmanagerial or nonprofessional state board or commission employees paid under Schedule B receive longevity pay adjustments. A first pay adjustment of 2.5% of the employee's classification salary base is received after the employee completes five years of total service with the state government or any of its political subdivisions. Thereafter, each employee receives an annual pay adjustment of 1.5% of the employee's classification salary base until a maximum of 10% of the employee's classification salary base is reached.

### Operation of the act

The act declares a moratorium on employees' receipt of credit for service for purposes of longevity pay adjustments for the period from July 1, 2003, through June 30, 2005. The moratorium does not apply, however, to employees of the Secretary of State, the Auditor of State, the Treasurer of State, or the Attorney General who are paid under Schedule E-1 or Schedule B if the Secretary of State, the Auditor of State, the Treasurer of State, or the Attorney General decides to exempt the office's employees from the moratorium and notifies the Director of Administrative Services in writing of this decision on or before July 1, 2003. (R.C. 124.181(E)(3).)

If an employee who is exempt from the moratorium and receives longevity adjustment credit for a period of service during the moratorium, takes a position with another entity of state government or a political subdivision of the state, either during or after the moratorium, and if that entity's employees either are or were subject to the moratorium, the employee will continue to retain the credit that was earned. But, if the moratorium is in effect when the employee takes the new position, the employee will stop receiving *additional* longevity adjustment credit so long as the employee is in that position, until the moratorium expires. (R.C. 124.181(E)(3).)

## **Two per cent pay supplement**

(R.C. 124.183 and 124.181(B) and (C) and 3121.01(D))

### **In general**

The act creates a one-time 2% pay supplement that will be paid in the first paycheck in December 2004 to each permanent employee who (1) is an exempt employee, (2) was appointed on or before March 6, 2003, and (3) is on the active payroll as of November 14, 2004.<sup>4</sup> The pay supplement for nonmanagerial and nonprofessional exempt employees paid under Schedule E-1 will be based on the annualization of the top step in the pay range that the employee is in as of November 14, 2004. The pay supplement for managerial and professional exempt employees paid under Schedule E-2 will be based on the annualization of the maximum hourly rate of the pay range that the employee is in on November 14, 2004. Finally, the pay supplement for any other exempt employee not paid under Schedule E-1 or Schedule E-2 will be based on the annualization of the base rate of the employee's pay on November 14, 2004. (R.C. 124.183(B), (C), and (E).)

### **Qualifications**

Employees of the General Assembly, legislative agencies, the Supreme Court, and state boards or commissions are not eligible for the 2% pay supplement. Additionally, employees of the Secretary of State, and the Auditor of State, the Treasurer of State, and the Attorney General are not eligible for the pay supplement unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides the office's employees should be eligible and notifies the Director of Administrative Services in writing of this decision on or before July 1, 2004. (R.C. 124.183(G).)

### **Proration**

A part-time employee who is eligible to receive the 2% pay supplement will have the employee's supplement pro-rated based on the number of hours worked in the 26 pay periods before November 14, 2004. An employee who is eligible to receive the supplement and who was on a voluntary leave of absence also will have the employee's supplement pro-rated based on the number of hours worked in the 26 pay periods before November 14, 2004. (R.C. 124.183(D).)

---

<sup>4</sup> R.C. 124.183(A) defines "active payroll" as meaning when an employee is actively working; on military, workers' compensation, occupational injury, or disability leave; or on an approved leave of absence.

### **Retirement system caveat**

The 2% pay supplement is not subject to withholding for deposit into any state retirement system and is not to be used for calculation purposes in determining an employee's retirement benefits (R.C. 124.183(F)).

### **Child support law caveat**

Unless the 2% pay supplement is \$150 or more, it is not to be considered "income" (in the form of a lump sum payment) for purposes of the Collection and Disbursement of Child Support Law (R.C. Chapter 3121.).

### **Salaries of State Fire Commission members**

(R.C. 124.15(J) and 3737.81(C))

The act eliminates an obsolete reference to pay range 32 (S)(D) that once was used to fix the salary of members of the State Fire Commission but no longer is contained in the Department of Administrative Services Law. The act retains an authorization for the Director of Administrative Services to establish the members' rate of payment.

### **Purchases by state agencies**

(R.C. 125.05, 125.06, 125.07, and 5513.01)

### **Continuing law**

Continuing law allows state agencies to purchase services that cost \$50,000 or less and supplies that cost \$25,000 or less (both amounts as adjusted by the Consumer Price Index) directly from the supplier or through DAS, whichever the state agency determines. For services and supplies whose cost is above these dollar amounts, state agencies generally must make the purchase from or through DAS. DAS, in turn must make the purchase pursuant to competitive selection requirements. These requirements include, but are not limited to, advertisement of the intended purchases and notice of the time and place where bids or proposals will be accepted and opened.

If, in the latter circumstance the Director of DAS determines that it is not possible or not advantageous to the state for DAS to make the purchase, DAS must grant an agency a "release and permit" which allows the agency to directly purchase the supplies or services.

### **Changes made by the act**

(R.C. 125.05, 125.06, 125.07, and 5513.01)

The act retains the provisions described in the immediately preceding paragraph. The Governor vetoed provisions, however, that would have granted state agencies another purchasing option. Specifically, state agencies desiring to purchase services that would have cost more than \$50,000 or supplies that would have cost more than \$25,000 (both as adjusted by the Consumer Price Index) could have solicited at least three bids or proposals for the services or supplies and made the purchase directly from the lowest bidder or offeror rather than from or through DAS. This exception would have applied, however, only if the state agency, based upon these solicited bids or proposals, determined that it was possible to purchase the services or supplies directly from one of the bidders or offerors at a lower price than making the purchase from or through DAS. In soliciting these bids or proposals, the agency would have had to comply with the same competitive selection requirements mentioned in the immediately preceding paragraph with which DAS must comply. Finally, if the state agency did so directly purchase services or supplies, it would have had to provide DAS with written notification of the subject and amount of the purchase.

### **Multistate purchasing contracts**

(Section 175)

The Department of Administrative Services is authorized to purchase supplies and services for the use of state agencies. Under continuing law, state agencies generally must purchase supplies costing more than \$25,000 or services costing more than \$50,000 (as these amounts are adjusted by changes in the Consumer Price Index) from or through DAS. For purchases of an equal or lesser amount, state agencies have the option under continuing law of making the purchase directly.

The act requires the Director of Administrative Services to inquire into entering into multistate purchasing contracts when purchasing supplies and services for the use of state agencies. By not later than December 31, 2003, the Director must issue a report to the General Assembly that details the Director's findings. The report must include recommendations on any legislation necessary to authorize multistate purchasing contracts.

### **Electronic procurement**

(R.C. 125.073)

Under continuing law, whenever the Director of Administrative Services determines that the use of a reverse auction is advantageous to the state, the Director, in accordance with rules the Director must adopt, may purchase services or supplies by reverse auction.<sup>5</sup> The act requires DAS, when exercising its statutorily granted powers, to actively promote and accelerate the use of electronic procurement (e-procurement), including reverse auctions, by implementing the relevant recommendations concerning e-procurement from the 2000 Management Improvement Commission Report to the Governor.<sup>6</sup> It also requires DAS beginning July 1, 2004, to report annually to the House of Representatives and Senate committees dealing with finance on the effectiveness of e-procurement.

### **Suspension of rental property commissions and fees**

(Section 8.22)

Continuing law authorizes the Director of Administrative Services to fix and collect commissions and fees arising from the rental of property (R.C. 123.10, not in the act). The act prohibits the imposition of commission and fees during the period beginning July 1, 2003, and ending June 30, 2005 in connection with leases entered into by the Department that are in effect on the act's effective date, leases for which negotiations have commenced as of July 1, 2003, or leases for which no information pertaining to the imposition of commissions and fees was given prior to negotiations.

### **Professional design services contracts**

(R.C. 153.65)

Under the current Professional Design Services (PDS) Law, a public authority that may contract for those services includes the state, a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special district of the latter. The PDS Law also provides that the qualifications that a

---

<sup>5</sup> R.C. 125.072(A)(2) defines "reverse auction" as a purchasing process in which offerors submit bids in competing to sell services or supplies in an open environment via the Internet.

<sup>6</sup> The act does not define the term "electronic procurement."

professional design firm must satisfy for contracting purposes include competence to perform the required professional design services as indicated by the technical training, education, and experience of its personnel, the ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform those services competently and expeditiously, the past performance of the firm, and *other similar factors*. The act replaces the catch-all with "any other relevant factors as determined by the public authority."

**Professional design firms for public improvements**

(R.C. 153.691)

**Continuing law**

(R.C. 153.65 and R.C. 153.66 to 153.69 (not in the act))

Continuing law requires the state, any county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special district of any of these (referred to as "public authorities") that is planning to contract for services within the scope of practice of an architect or landscape architect or a professional engineer or surveyor (referred to as "professional design services") to encourage professional design firms to submit a statement of qualifications to the public authority, which the public authority will keep on file. The public authority relatedly may institute prequalification requirements for professional design firms seeking to provide services to the public authority. Submitted statements of qualifications to the public authority as part of the requirements serve to create *prequalified firms* and to facilitate the creation of a *list of prequalified firms*.

When the public authority finally decides to contract for a specific design project, it must publicly announce the contracts available in order to receive statements of qualification from professional design firms for that specific project. Following the announcement, the public authority must evaluate the statements of qualifications of prequalified firms on file together with those that are submitted by other professional design firms for that specific project. The public authority then generally must select and rank at least three design firms it considers most qualified for the project. Finally, a contract must be attempted to be negotiated with the design firm ranked most qualified.

**Changes made by the act**

(R.C. 153.691)

The act generally prohibits public authorities planning to contract for professional design services from requiring any form of fee estimate, fee proposal,

or other estimate or measure of compensation prior to the public authority's selecting and ranking of professional design firms. However, this prohibition does not apply in instances when design firms are selected and ranked by a state agency from a list of prequalified firms on file and the state agency's payment of funds for the services has been preapproved by the Controlling Board.

### **Encouraging Diversity, Growth, and Equity Program**

(R.C. 122.041, 122.87, 122.88, 122.90, and 123.152)

#### **Creation and implementation**

The act requires the *Director of Administrative Services* to adopt rules in accordance with the Administrative Procedure Act to create and administer the Encouraging Diversity, Growth, and Equity (EDGE) Program. The rules must do all of the following:

(1) Establish procedures by which a business may apply for certification as an EDGE business enterprise;

(2) Establish agency procurement goals for contracting with EDGE business enterprises in the award of state contracts based on the availability of eligible program participants by region or geographic area, and by standard industrial code. Goals are required to be based on a percentage level of participation and a percentage of contactor availability and must be applied at the contract level, relative to an overall dollar goal for each state agency, in accordance with the following certification categories: construction, architecture, and engineering; professional services; goods and services; and information technology services.

(3) Establish a system of certifying EDGE business enterprises based on a requirement that the business show both social and economic disadvantage based on the following:

- Relative wealth of the business seeking certification as well as the personal wealth of its owner(s);
- Social disadvantage based on either (i) a rebuttable presumption when the owner(s) demonstrate membership in a racial minority group or show personal disadvantage due to color, ethnic origin, gender, physical disability, long-term residence in an environment isolated from the mainstream of American society, or location in an area of high unemployment, (ii) some other demonstration of

personal disadvantage not common to other small businesses, or (iii) business location in a qualified census tract;

- Economic disadvantage based on economic and business size thresholds and eligibility criteria designed to stimulate economic development through contract awards to businesses located in qualified census tracts.

(4) Establish standards to determine when an EDGE business enterprise no longer qualifies for EDGE business enterprise certification;

(5) Develop a process for evaluating and adjusting goals established for the EDGE Program to determine what adjustments are necessary to achieve participation goals established by the Director;

(6) Establish a point system to evaluate bid proposals to encourage EDGE business enterprises to participate in the procurement of professional design and information technology services;

(7) Establish a system to track data and analyze each certification category;

(8) Establish a process to mediate complaints and to review EDGE business enterprise certification appeals;

(9) Implement an outreach program to educate potential participants about the EDGE Program;

(10) Establish a system to assist state agencies in identifying and using EDGE business enterprises in their contracting processes;

(11) Implement a system of self-reporting by EDGE business enterprises as well as an on-site inspection process to validate the qualifications of an EDGE business enterprise;

(12) Establish a waiver mechanism to waive program goals or participation requirements for those companies that, despite their best-documented efforts, are unable to contract with EDGE business enterprises; and

(13) Establish a process for monitoring overall program compliance in which agency Equal Employment Opportunity officers maintain primary responsibility for the monitoring of their agencies.

The act also requires another director, the *Director of Development*, to do all of the following with regard to the EDGE Program:

(1) Conduct outreach, marketing, and recruitment of EDGE business enterprises;

(2) Provide assistance to DAS, as needed, to certify new EDGE business enterprises and to train appropriate state agency staff;

(3) Provide business development services to EDGE Program participants in the developmental and transitional stages of the Program, including financial and bonding assistance and management and technical assistance;

(4) Develop a mentor program to bring businesses into a working relationship with EDGE business enterprises in a way that commercially benefits both entities and serves the purpose of the EDGE Program; and

(5) Establish processes by which an EDGE business enterprise may apply for contract assistance, financial and bonding assistance, management and technical assistance, and mentoring opportunities.

Under the act, both the Director of Development and the Director of Administrative Services must prepare a detailed report and submit it to the Governor not later than December 31, 2003. It must outline and evaluate the progress made in implementing the EDGE Program.

### **Bond guaranty authority**

The *Director of Development* may execute bonds as surety for minority businesses as principals, on contracts with the state, any political subdivision or instrumentality thereof, or any person as the obligee. The Director, as surety, may exercise all the rights and powers of a company authorized by the Department of Insurance to execute bonds as surety but is not to be subject to any requirements of a surety company under Title 39 of the Revised Code (regulating insurance matters) or to any rules of the Department of Insurance. (R.C. 122.89, not in the act.)

The act provides this similar bonding authority to the Director of Development with regard to the guarantee of bonds executed by sureties for minority businesses and EDGE business enterprises. It also requires the Director to adopt rules in accordance with the Administrative Procedure Act to establish procedures for the application for bond guarantees and the review and approval of those applications when submitted by sureties that execute bonds eligible for guarantees by the Director. The act allows the Director to guarantee, in accordance with those rules, up to 90% of the loss incurred and paid by sureties on bonds guaranteed by the Director.

Under the act, the penal sum amounts of all outstanding guarantees made by the Director cannot exceed three times the difference between the amount of moneys in the Minority Business Bonding Fund and available to the Fund and the amount of all outstanding bonds issued by the Director for the surety bonds issued on behalf of minority businesses as principals.

---

## DEPARTMENT OF AGING

- Establishes the Resident Services Coordinator Program in the Department of Aging to provide services to low-income and special-needs tenants in subsidized rental housing and establishes the Resident Services Coordinator Fund to receive moneys from the Department of Development and the General Assembly.
- Increases to \$6 (from \$3) the annual "bed" fee that long-term care facilities must pay for the support of regional long-term care ombudsperson programs and exempts adult foster homes from paying the fee.
- Requires the Department of Aging to adopt rules on deadlines for payment of the bed fee in accordance with the Administrative Procedure Act (R.C. Chapter 119.) rather than the procedures that do not require public hearings (R.C. Chapter 111.).
- Limits who is considered a person with a disability for purposes of Golden Buckeye Card program eligibility.
- Requires the Director of Aging to establish one or more prescription drug programs that enable cardholders to receive reduced prices on prescription drugs dispensed at participating pharmacies rather than prescription drug discount card programs that enable cardholders to receive discounts on prescription drugs dispensed at participating pharmacies.
- Eliminates the Department's Long-Term Care Consumer Guide.
- Permits the State Long-Term Care Ombudsman to investigate all complaints against community-based long-term care service providers, rather than only complaints involving an individual age 60 or older.



### **Resident Services Coordinator Program**

(R.C. 173.08)

The act establishes the Resident Services Coordinator Program in the Department of Aging under which resident service coordinators provide information and assistance to low-income and special-needs tenants, including the elderly, living in subsidized rental housing complexes. The coordinators are to aid tenants in identifying and obtaining community and program services and other benefits for which they are eligible. The act also establishes the Resident Services Coordinator Fund to receive moneys from the Department of Development's Low- and Moderate-Income Housing Trust Fund and moneys the General Assembly appropriates to the Resident Services Coordinator Fund.<sup>7</sup>

### **Bed fee for regional long-term care ombudsperson programs**

(R.C. 173.26)

Under continuing law, a nursing home, residential care facility, adult care facility, adult foster home, or other specified long-term care facility must annually pay to the Department of Aging an amount for each bed the facility maintained for use by a resident during any part of the previous year. The funds are used to pay the costs of operating regional long-term care ombudsperson programs. The act increases the amount to \$6 (from \$3) per bed and excludes adult foster homes from the payment requirement. (An adult foster home is a residence in which accommodations and personal care services are provided to one or two adults who are unrelated to the home's owners.)

Prior law also required the Department of Aging to adopt rules on deadlines for payment of bed fees in accordance with R.C. 111.15, which does not require the Department to hold public hearings on proposed rules. The act requires the Department to adopt the rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.), which requires the Department to hold public hearing on proposed rules.

---

<sup>7</sup> *The act provides that in any fiscal year in which the amount in the Low- and Moderate-Income Housing Trust Fund exceeds by at least \$250,000 the amount of funds in that Fund that is awarded to provide training, technical assistance, and capacity building assistance to nonprofit development organizations in areas of the state the Director designates as underserved, at least \$250,000 from the Fund must be provided to the Department of Aging for the Resident Services Coordinator Program.*

### **Golden Buckeye Card program**

(R.C. 173.06)

Continuing law requires the Director of Aging to establish a Golden Buckeye Card program and provide a golden buckeye card to any Ohio resident who applies and is 60 or older or disabled. The act limits who may qualify for a golden buckeye card as a person with a disability by providing that the person must be 18 years of age or older and changing the definition of disability. Under prior law, a person was regarded as disabled for the purpose of the Golden Buckeye Card program if the person (1) had some impairment of body or mind that made the person unfit to work at any substantially remunerative employment the person was substantially able to perform and would will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery or (2) had been certified as permanently and totally disabled by an agency of this state or the United States having the function of so classifying persons. Under the act, a person is regarded as having a disability if the person has some impairment of body or mind and has been certified as permanently and totally disabled by an agency of this state or the United States having the function of so classifying persons.

### **Prescription drug program**

(R.C. 173.061, 173.062, 173.07, and 173.071)

Prior law required 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. The act provides instead that the Director must establish one or more prescription drug programs that enable cardholders to receive reduced prices on prescription drugs dispensed at participating pharmacies. Continuing law requires that a card 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.<sup>8</sup>

Continuing law requires that the Director solicit and accept proposals from entities separate from the Department to act as a program administrator. The proposals must provide for administration consistent with rules adopted by the Director and specify certain information. Under prior law, the information to be specified included the estimated amount of the discount based on the entity's previous experience and how the discount was to be achieved and, to the extent

---

<sup>8</sup> *The act uses the term "person with a disability" rather than "disabled person."*

that discounts on prescription drugs were to be achieved through rebates or discounts in prices that the entity negotiated with drug manufacturers, the proportion of the rebates or discounts to be used to do all of the following: (a) reduce any costs to the cardholders, (b) achieve discounts for cardholders, and (c) cover costs for administering the program. Under the act, the information to be specified includes the estimated amount of the reduced prices on prescription drugs based on the entity's previous experience and how the reduction is to be achieved and, to the extent that an entity negotiates rebates with drug manufacturers, the proportion of the rebates to be used to do any of the following: (a) reduce any costs to the cardholders, (b) cover costs for administering the program, and (c) offer any other benefits to cardholders.

Under prior law, once an administrator had been chosen for the program, to the extent that the administrator achieved a discount on prescription drugs through rebates or discounts in prices negotiated with drug manufacturers, the administrator was required to use the rebates or discounts to do all of the following: (a) reduce costs to the cardholders, (b) achieve discounts for cardholders, and (c) cover costs for administering the program. Under the act, to the extent that the administrator negotiates rebates with drug manufacturers, the administrator must use the rebates to do one or more of the following: (a) reduce any costs to the cardholders, (b) cover costs for administering the program, and (c) offer any other benefits to cardholders.

The act defines a "rebate" to mean a refund of a certain portion of the wholesale price of a drug to the program administrator based on a negotiated agreement between the manufacturer and the administrator and in consideration of market share performance or continued access or availability of the drug under the administrator's prescription drug program. Under the act, when determining Medicaid drug rebates, an administrator is subject to best price calculations promulgated by the Centers for Medicare and Medicaid Services in the federal Department of Health and Human Services. With prior approval of the Controlling Board, an administrator may use rebates negotiated with a drug manufacturer for purposes other than those discussed above, including sharing a portion of the rebate with the administrator's clients, prescription drug program participants, or participating pharmacies.

The act permits a program administrator to negotiate with drug manufacturers to have the prescription drug program or programs established by the Department serve as a single enrollment point for the manufacturer's discount program. The act defines a "drug discount" as reimbursement of a certain portion of the wholesale price of a drug to the program administrator for funds accrued or paid in connection with a reduction in cost of the drug by the manufacturer to the prescription drug program cardholder pursuant to an agreement between the

manufacturer and the administrator and in consideration of the administrator's agreement to return 100% of the non-negotiated discounts to the cardholder at the point of sale. A discount is not tied to and does not vary based on market share performance.

To the extent that discounts are offered by manufacturers through the program, the discounts are exempt from the best price calculations when determining Medicaid drug rebates under federal law, if all of the following apply:

(1) The manufacturer's program provides prescription drug assistance to a limited group of persons without negotiations between the manufacturer and a third party regarding the amount of assistance;

(2) The manufacturer establishes the amount of the benefit to be given to persons without negotiations between the manufacturer and a third party regarding the amount of the benefit;

(3) The entire amount of the discount is used to benefit an individual without providing an opportunity for the administrator, participating pharmacies, or any other third party to reduce or take for its use a portion of the benefit;

(4) A participating pharmacy is reimbursed based on the lower of a calculated formula equal to the average wholesale price less a defined percentage plus a dispensing fee, or the pharmacy's usual and customary price for the drug;

(5) Other than the benefit amount, a participating pharmacy collects no additional payment from the manufacturer's discount program.

To the extent that drug discounts on prescription drugs are achieved through reduced prices an administrator obtains from drug manufacturers, the administrator is required to use the drug discounts to reduce prescription drug costs for cardholders. The act requires the Director to adopt rules permitting an administrator to work with one or more drug manufacturers to obtain drug discounts.

### **Annual report**

(R.C. 173.071)

Continuing law requires the Director 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. Each report must be based on the information the Director receives from the administrator or administrators and specify certain information about each program. The act requires that the report include information specifying the drugs

for which rebates are offered under the program, listed according to major drug category.

**The Long-Term Care Consumer Guide**

(R.C. 173.45 to 173.59, repealed)

The act eliminates a requirement that the Department of Aging publish the Ohio Long-Term Care Consumer Guide, a guide to Ohio nursing homes. Under prior law, the Guide had to be available on the Internet, and had to be updated periodically. Every two years, the Department was required to publish an Executive Summary of the Guide, which had to be available in electronic and printed media. In addition, prior law specified that, to the extent possible, annual customer satisfaction surveys had to be conducted for use in the Guide. The Department was permitted to charge the nursing home a fee of up to \$400 for each annual survey.

**Investigative authority of State Long-Term Care Ombudsman**

(R.C. 173.14)

The act eliminates a limit on the State Long-Term Care Ombudsman's authority to investigate complaints against community-based long-term care service providers, allowing the Ombudsman to investigate any complaints against a community-based long-term care service provider not just those that involve an individual age 60 or older.

---

**DEPARTMENT OF AGRICULTURE**

- Extends the Family Farm Loan Program through October 15, 2005, and extends until that date the Agricultural Financing Commission's authority to advise and make recommendations to the Director of Agriculture regarding the Program.
- Revises the definition of "agricultural production," for purposes of placing land in an agricultural district, to include tracts, lots, or parcels of land or portions thereof that are used for conservation practices, provided that the land so used comprises not more than 25% of land that is otherwise devoted exclusively to agricultural use and for which an agricultural district application is filed, and authorizes the supervisors of a soil and water conservation district to assist the county auditor upon

request to determine whether a conservation activity is a conservation practice for that purpose.

- Authorizes, rather than requires, the Division of Markets in the Department of Agriculture to perform specified duties, eliminates the Division's duty relating to inspection of farm produce at collecting and receiving centers, and makes conforming changes.
- Authorizes the Division to participate in trade missions between states and foreign countries in order to encourage the sale and promotion of Ohio-grown products.
- Increases license and inspection fees related to nursery stock that are assessed under the Nursery Stock and Plant Pests Law, and requires the money collected from the new additional fees to be used to pay the costs of administering the Nursery Stock and Plant Pests Law, including paying the costs of employing a minimum of two additional inspectors.
- Eliminates the Director's authority in the Division of Markets Law to adopt a fee schedule for inspecting any agricultural product for the purposes of the issuance of an export certificate that could be required by the United States Department of Agriculture or foreign purchasers, and instead authorizes the Director or his authorized representative, in the Nursery Stock and Plant Pests Law, to conduct inspections of agricultural products that are required by federal agencies, other states, or foreign countries to determine whether the products are infested and to issue a certificate if a product is not infested, allows the Director to charge specified fees for performing those functions, and requires that the money from the fees be used to pay the costs of administering the Nursery Stock and Plant Pests Law, including paying the costs of employing a minimum of two additional inspectors.
- Allows investment earnings of the Clean Ohio Agricultural Easement Fund, which are credited to the Fund, to be used indefinitely to pay costs incurred by the Director in administering the agricultural easements program.
- Authorizes the Director to establish a voluntary gypsy moth suppression program under which a landowner may request that the Department have the landowner's property treated for gypsy moths in exchange for the landowner's payment of a percentage of the cost of the treatment, and



requires the Director to adopt rules to facilitate implementation of the program.

- Adds injury or killing of certain agricultural animals by black vultures, in addition to by coyotes as in continuing law, as a basis for claims against the Agro Ohio Fund.
- Requires the Department to adopt rules prescribing fees that auctioneer licensees must pay and, except for single-auction licensees, deadlines and procedures with which they must comply, and specifies that until those rules are adopted, licensees must pay the fees and comply with the deadlines and procedures established in statute.
- Increases the amount of financial responsibility required for single-auction licensees.
- Excludes persons who seek compensation for losses resulting from improper conduct by single-auction licensees from eligibility for compensation from the Auction Recovery Fund, but retains requirements pertaining to single-auction licensees' contributions to the Fund.
- Creates in the state treasury the Farm Service Agency Electronic Filing Fund consisting of money appropriated to it together with money reimbursed to the Fund by the Farm Service Agency (FSA) in the United States Department of Agriculture, and requires the Director of Agriculture to use money in the Fund to pay the Secretary of State for fees charged in advance for the electronic filing by the FSA of financing statements related to agricultural loans that the FSA disburses.
- Extends the extra 2¢ earmark of wine tax revenue credited to the Ohio Grape Industries Fund through June 30, 2005.

### **Family Farm Loan Program**

(R.C. 122.011 and 901.63; Sections 132.05 and 132.06)

Under former law, the Family Farm Loan Program was scheduled to expire on July 1, 2003. The act extends the expiration date to October 15, 2005, and changes all statutory dates with regard to that Program accordingly. The act also extends to that date a requirement that the Agricultural Financing Commission



advise and make recommendations to the Director of Agriculture regarding that Program.

### **Agricultural Districts**

(R.C. 929.01, 1515.08, and 5713.30)

Continuing law establishes requirements for placing land in an agricultural district. Land that is in an agricultural district is exempt from certain assessments. In addition, agricultural activities on the land may not be subject to nuisance actions. One of the requirements with which land in an agricultural district must comply is that it must be used for agricultural production. Law generally unchanged by the act defines "agricultural production" to mean commercial aquaculture, apiculture, animal husbandry, or poultry husbandry; the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth. The term also includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth.

The act revises the definition to include conservation practices, provided that the tracts, lots, or parcels of land or portions thereof that are used for conservation practices comprise not more than 25% of tracts, lots, or parcels of land that are otherwise devoted exclusively to agricultural use and for which an application is filed for the establishment of an agricultural district. "Conservation practices" includes, but is not limited to, the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops to abate soil erosion. The act authorizes the supervisors of a soil and water conservation district to assist the county auditor when requested in determining whether a conservation activity that is conducted in conjunction with agricultural activities is a conservation practice for that purpose.

### **Division of Markets**

(R.C. 901.17)

Law retained in part by the act requires the Division of Markets in the Department of Agriculture to perform specified duties regarding the production and marketing of agricultural products. Under former law, the duties included the inspection and determination of the grade and condition of farm produce at

collecting and receiving centers within the state. The act authorizes, rather than requires, the Division to perform the specified duties. It also modifies the duties by: (1) eliminating the requirement that the Division inspect and determine the grade and condition of farm produce at collecting and receiving centers within the state, and (2) authorizing the Division to participate in trade missions between states and foreign countries in order to encourage the sale and promotion of Ohio-grown products.

Under former law, the Director of Agriculture had to adopt and could amend schedules of fees to be charged for inspecting farm produce at collecting and receiving centers or other services as noted above. The fees had to be made with a view to the minimum cost and to make "this branch" of the Department self-sustaining. The fees had to be credited to the Inspection Fund in the state treasury for use in performing the Division's duties. All investment earnings of the Fund were to be credited to the Fund. If, in any year, the balance of the Fund was not sufficient to meet the Division's expenses incurred in performing its duties, the deficit had to be paid from funds appropriated for the use of the Department. As a result of the act's elimination of the requirement that the Division inspect and determine the grade and condition of farm produce at collecting and receiving centers within the state, the act makes conforming changes by eliminating these provisions.

Prior law authorized the Director to adopt a schedule of fees to be charged for inspecting any agricultural product for the purposes of the issuance of an export certificate as could be required by the United States Department of Agriculture or foreign purchasers. The fees had to be credited to the General Revenue Fund. The act eliminates these provisions in the Division of Markets Law and enacts similar provisions, with modifications, in the Nursery Stock and Plant Pests Law (see "*Changes in Nursery Stock and Plant Pests Law*"; "*Inspection of agricultural products by Director of Agriculture*," below).

### *Changes in Nursery Stock and Plant Pests Law*

#### *Increase in license and inspection fees related to nursery stock*

(R.C. 921.151, 921.22, and 927.53; Sections 3.01, 3.02, 3.03, and 147.02)

Law retained in part by the act establishes annual nursery stock collectors or dealers license fees, annual flat and per-acre inspection fees for woody nursery stock, and annual flat and per-acre inspection fees for nonwoody nursery stock. Under law not in the act, money from the fees is credited to the General Revenue Fund. The act increases the fees as follows:

<b>License, inspection, and per-acre fee</b>	<b>Former fee</b>	<b>The act's additional fee</b>
Nursery stock collector or dealer license	\$50	\$25
Woody nursery stock inspection	\$50	\$15
Intensive production areas for woody nursery stock inspection, per acre	\$4	50¢
Nonintensive production areas for woody nursery stock inspection, per acre	\$2	\$1.50
Nonwoody nursery stock inspection	\$30	\$35
Intensive and nonintensive production areas for nonwoody nursery stock inspection, per acre	\$4	50¢

The money collected from the new additional fees must be deposited into the state treasury to the credit of the Pesticide Program Fund created in the Pesticides Law and must be used to administer the Nursery Stock and Plant Pests Law, including paying the costs of hiring a minimum of two additional inspectors. The act specifies that the portion of the money in the Fund collected under the provisions governing the additional new fees must be used to carry out the purposes specified in those provisions and the portion of the money in the Fund collected under the Pesticides Law must be used to carry out the purposes of that Law.

**Inspection of agricultural products by Director of Agriculture**

(R.C. 921.151, 921.22, and 927.69; Sections 3.01, 3.02, 3.03, and 147.02)

Under continuing law, the Director of Agriculture or his authorized representative may perform specified inspection activities to carry out the purposes of the Nursery Stock and Plant Pests Law. The act adds to those functions authority for the Director or his authorized representative to conduct inspections of agricultural products that are required by other states, the United States Department of Agriculture, other federal agencies, or foreign countries to determine whether the products are infested. If, upon making such an inspection, the Director or his authorized representative determines that an agricultural product is not infested, he may issue a certificate, as required by other states, the United States Department of Agriculture, other federal agencies, or foreign countries, indicating that the product is not infested.

Under the act, if the Director charges fees for any of the certificates, agreements, or inspections specified below, the fees must be as follows: (1) phyto sanitary certificates, \$25, (2) compliance agreements, \$20, (3) solid wood packing certificates, \$20, and (4) agricultural products and their conveyance inspections, \$65. The Director may adopt rules that define the certificates, agreements, and inspections. The fees must be deposited into the state treasury to the credit of the Pesticide Program Fund created in the Pesticides Law. Money so credited to the Fund must be used to pay the costs incurred by the Department in administering the Nursery Stock and Plant Pests Law, including paying the cost of employing a minimum of two additional inspectors. The act specifies that the portion of the money in the Fund collected under the provisions governing agricultural product inspections must be used to carry out the purposes specified in those provisions and the portion of the money in the Fund collected under the Pesticides Law must be used to carry out the purposes of that Law.

### **Use of investment earnings of Clean Ohio Agricultural Easement Fund**

(R.C. 901.21)

Law unchanged by the act creates the Clean Ohio Agricultural Easement Fund, which consists of 12½% of net proceeds of general obligation bonds issued and sold for agricultural and conservation projects. The Fund must be used for the purposes of the agricultural easements program. Investment earnings of the Fund must be credited to the Fund. Under former law, those earnings could be used until July 26, 2003, to pay the costs incurred by the Director of Agriculture in administering that program. The act eliminates the deadline, thus allowing the investment earnings to be used for that purpose indefinitely.

### **Gypsy moth suppression**

(R.C. 921.151 and 927.701; Sections 3.01, 3.02, 3.03, and 147.02)

The act authorizes the Director of Agriculture to establish a voluntary gypsy moth suppression program under which a landowner may request that the Department of Agriculture have the landowner's property aerially sprayed to suppress the presence of gypsy moths in exchange for payment from the landowner of a portion of the cost of the spraying. Under the act, "gypsy moth" means the live insect, *Lymantria dispar*, in any stage of development.

To determine the amount of payment that is due from a landowner, the Department first must determine the projected cost per acre to the Department of gypsy moth suppression activities for the year in which the landowner's request is made. The cost must be calculated by determining the total expense of aerially spraying for gypsy moths to be incurred by the Department in that year divided by

the total number of acres proposed to be sprayed in that year. With respect to a landowner, the Department must multiply the cost per acre by the number of acres that the landowner requests to be sprayed. The Department must add to that amount any administrative costs that it incurs in billing the landowner and collecting payment. The amount that the landowner must pay to the Department cannot exceed 50% of the resulting amount.

The act requires the Director to adopt rules in accordance with the Administrative Procedure Act to establish procedures under which a landowner may make a request to have his property aerially sprayed for gypsy moth suppression and to establish provisions governing agreements between the Department and landowners concerning gypsy moth suppression together with any other provisions that the Director considers appropriate to administer the gypsy moth suppression program.

The Director must deposit all money collected from landowners as payment for gypsy moth suppression into the state treasury to the credit of the Pesticide Program Fund created under continuing law. Such money that is credited to the Fund must be used for the suppression of gypsy moths.

**Indemnification for agricultural animals injured or killed by black vultures**

(R.C. 955.51)

Law retained by the act requires an owner of horses, sheep, cattle, swine, mules, goats, domestic rabbits, or domestic fowl or poultry that have an aggregate fair market value of \$10 or more and that have been injured or killed by a coyote to notify the dog warden within three days after the loss or injury has been discovered. The dog warden promptly must investigate the loss or injury and determine whether it was made by a coyote. If the dog warden finds that the loss or injury was made by a coyote, the dog warden promptly must notify a wildlife officer. If the wildlife officer affirms the finding or is uncertain about that finding, the owner may proceed with an indemnification claim against the Agro Ohio Fund. The act adds that an injury or killing of those animals by black vultures, in addition to coyotes, is a basis for claims against the Fund.

**Auctioneers Law**

(R.C. 4707.071, 4707.072, 4707.10, and 4707.24)

**License fees and licensing procedures for auctioneers, apprentice auctioneers, and special auctioneers**

**Rules to be adopted under the act.** The Auctioneers Law establishes several categories of licenses to be issued by the Department of Agriculture as

well as fees and licensing procedures for those licenses. The act retains the license categories, but requires the Department to adopt rules prescribing fees that auctioneer, apprentice auctioneer, and special auctioneer licensees must pay and license renewal deadlines and procedures with which they must comply in lieu of the statutory requirements. Until the rules are adopted, licensees must pay the statutory fees and comply with the statutory license renewal deadlines and procedures discussed below. The act makes necessary conforming changes.

**Statutory fees and procedures to be replaced.** The statutory fee for each auctioneer's, apprentice auctioneer's, or special auctioneer's license is \$100, and the annual renewal fee for any of these licenses is \$100. All licenses expire annually on June 30 and must be renewed according to the procedures in the Standard Renewal License Procedure Law or other procedures established in the Auctioneers Law. Any auctioneer, apprentice auctioneer, or special auctioneer licensee who fails to renew his license before July 1 must reapply for licensure in the same manner and pursuant to the same requirements as for initial licensure unless before September 1 of the year of expiration, the person pays, in addition to the regular renewal fee, a late renewal penalty of \$100.

The Auctioneers Law prohibits any person who fails to renew the person's license before July 1 from engaging in any auctioneering activity specified in statute until the person's license is renewed or a new license is issued. A person who renews his license between July 1 and September 1 cannot engage in any auctioneering activity until his license is renewed or he is issued a new license. The Department may refuse to renew the license of or issue a new license to any person who violates these provisions. Finally, for each new auctioneer or apprentice auctioneer license issued upon the occasion of a change in business location or a change in the name under which business is conducted, the Department may collect a fee of \$10 for each change unless the notification of the change occurs concurrently with the renewal application.

**Identification card.** Law largely unchanged by the act requires the Department to prepare and deliver to each licensee a permanent license certificate and an annual renewal card, the appropriate portion of which must be carried by the licensee at all times when engaged in any type of auction activity, and part of which must be posted with the permanent certificate in a conspicuous location at the licensee's place of business. The act changes the type of card that a licensee receives with his license certificate from an annual renewal card to an identification card.

#### **Changes regarding single-auction licenses**

Under continuing law, the Department may grant single-auction licenses to any nonresident person deemed qualified by the Department. An applicant for a

single-auction license or any auctioneer affiliated with the applicant must meet specified requirements before the applicant is issued a license. One of the requirements is payment of a license fee. As with other licenses issued under the Auctioneers Law (see above), the act requires the Department to adopt rules prescribing the fee. Until the rules are adopted, a license applicant must pay the statutory fee, which is \$100. An additional requirement is submission of proof of financial responsibility in the form of a bond. Formerly, the amount of the bond initially was \$10,000, and increased to \$25,000 on July 1, 2003. The act increases the amount of financial responsibility that is required for a single-auction license to \$50,000.

Law unchanged by the act establishes the Auction Recovery Fund and establishes procedures by which persons may apply for compensation from the Fund for losses resulting from improper conduct by persons licensed under the Auctioneers Law. The Fund consists of all of the following: any moneys transferred to it from the Auctioneers Fund; except as otherwise provided under continuing law, a portion, in an amount specified in rules adopted by the Director, of license fees collected under the Auctioneers Law; any assessments levied under continuing law (see below); repayments made to the Auction Recovery Fund by persons licensed under the Auctioneers Law; and interest earned on the assets of the Fund.

Under law unchanged by the act, the Director must ascertain the balance of the Auction Recovery Fund on the first day of July each year. If the balance of the Fund is greater than \$2 million, the Director may utilize, during the fiscal year beginning on that first day of July, the portion of the Fund that is greater than \$2 million for educational or research purposes. If the balance of the Fund is at least \$4 million, the portion of license fees collected under the Auctioneers Law that otherwise would be credited to the Auction Recovery Fund must be credited to the Auctioneers Fund during the fiscal year beginning on that first day of July. However, if the balance of the Auction Recovery Fund is less than \$400,000, the Director must levy an assessment against each person who holds a valid license issued under the Auctioneers Law. The amount of the assessment is determined by a formula that is established under continuing law. All assessments that are collected must be credited to the Fund.

The act excludes persons who seek compensation for losses resulting from improper conduct by single-auction licensees from eligibility for compensation from the Auction Recovery Fund. However, the requirement that a portion of license fees collected from single-auction licensees be deposited into the Auction Recovery Fund and the requirement that an assessment be levied on each single-auction licensee if the balance of the Fund is less than \$400,000 remain unchanged by the act.

## **Farm Service Agency Electronic Filing Fund**

(R.C. 901.85; Section 146.05)

### **Background**

Farmers may apply for crop loans that are administered by county offices of the Farm Service Agency (FSA) in the United States Department of Agriculture. In exchange for providing a crop loan, the FSA obtains a contractual security interest in the crop, and thus the crop becomes collateral for the loan. The FSA is required to file a Uniform Commercial Code (UCC) financing statement with the Secretary of State in order to perfect its security interest and to ensure that if the farmer defaults on the loan, the FSA legally would be first in line ahead of any other of the farmer's creditors to receive the proceeds from the sale of the crop and thus to obtain repayment of the loan. This financing statement must be filed before the FSA can disburse the loan to the farmer.

The Secretary of State recently has developed an electronic system for the filing of UCC financing statements that enables the financing statements to be filed more quickly than is possible through other means of filing. An entity that files a significant volume of filing statements may enter into an agreement with the Secretary of State under which it can file its financing statements via computer in exchange for setting up a pre-payment account for filing fees with the Secretary of State. The entity must deposit in the pre-payment account an amount of filing fees to cover the volume of filings that the entity anticipates it will make during a specified period of time in the future. The FSA would like to participate in the electronic filing option in order to file financing statements more quickly and thus to expedite the disbursement of crop loans to farmers, but it is unable to file electronically because it is federally prohibited from entering into pre-payment arrangements.

### **Creation of the Fund**

To enable the FSA to file its financing statements electronically, the act creates in the state treasury the Farm Service Agency Electronic Filing Fund, which consists of money reimbursed to the Fund by the FSA together with any money appropriated to the Fund by the General Assembly, effective immediately. The Director of Agriculture must use money credited to the Fund to pay the Secretary of State for fees that the Secretary of State charges in advance for the electronic filing by the FSA of financing statements related to agricultural loans that the FSA disburses. The creation of the Fund enables the Director to pre-pay the filing fees on behalf of the FSA in exchange for the FSA's subsequent reimbursement to the Fund of the amount of the pre-paid filing fees, thus allowing the FSA to avoid the federal pre-payment prohibition.



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

(R.C. 4301.43)

Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to \$1.48 per gallon. From the taxes paid, a portion is credited to the Ohio Grape Industries Fund for the encouragement of the state's grape industry, and the remainder is credited to the General Revenue Fund. The amount credited to the Ohio Grape Industries Fund was scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2003. The act extends the extra 2¢ earmarking through June 30, 2005.

---

### **OHIO ARTS COUNCIL**

- Creates the Gifts and Donations Fund in the state treasury for the Ohio Arts Council's operating expenses.

### *Gifts and Donations Fund*

(R.C. 3379.11)

The act creates in the state treasury, the Gifts and Donations Fund consisting of gifts and donations made to the Ohio Arts Council and fees paid for conferences the Council sponsors. The Fund is to be used to pay for the Council's operating expenses, which include payroll, personal services, maintenance, equipment, and subsidy payments. Fund moneys are to be received and expended pursuant to the Council's duty to foster and encourage the development of the arts in Ohio and the preservation of the state's cultural heritage.

---

### **OHIO ARTS AND SPORTS FACILITIES COMMISSION**

- Eliminates the requirement that a cooperative or management contract entered into by an Ohio arts facility with the Ohio Arts and Sports Facilities Commission be for a term not less than the time remaining to the date of payment or provision for payment of any state bonds issued to pay the costs of the arts project.
- Eliminates, as an element before state funds can be used to pay for an Ohio sports facility, the minimum time period requirement for which the



state must have a property interest in the facility, its site, or a portion of it when it is financed from state bond proceeds.

**Ohio arts facility: term of cooperative or management contracts**

(R.C. 3383.01)

Under ongoing law, an "Ohio arts facility" includes, among other theaters and facilities, any capital facility in Ohio that meets the following requirements: (1) construction of an arts project related to the facility was authorized or funded by the General Assembly under specific statutory authority, and proceeds of state bonds are used for costs of the arts project, and (2) the facility is managed directly by, or is subject to a *cooperative or management contract* with, the Ohio Arts and Sports Facilities Commission, and is used for or in connection with the activities of the Commission, including the presentation or making available of arts to the public and the provision of training or education in the arts.

Prior law also provided that such a cooperative or management contract had to be for a term not less than the time remaining to the date of payment or provision for payment of any state bonds issued to pay the costs of the arts project, as determined by the Director of Budget and Management and certified by the Director to the Commission and the Ohio Building Authority (OBA). The act eliminates this requirement.

**Ohio sports facility: state's property interests**

(R.C. 3383.07)

Ongoing law specifies that one of the elements that must exist before (1) state funds can be used to pay or reimburse more than 15% of the initial estimated construction cost of an Ohio sports facility (excluding any site acquisition costs) or (2) state funds, including any state bond proceeds, can be spent on an Ohio sports facility, is that, if *state bond proceeds* are being used, the state owns or has sufficient property interests in the facility, in the site of the facility, or in the portion or portions of the facility financed from those proceeds. Those property interests formerly were required to extend for a period of not less than the greater of the useful life of the portion of the facility so financed as determined using the guidelines for maximum maturities in the Uniform Public Securities Law, or the period remaining to date of payment or provision for payment of outstanding state bonds allocable to costs of the facility, all as determined by the Director of Budget and Management and certified by the Director to the Commission and OBA. The

act eliminates this minimum time period requirement for the state's property interests.

---

## **OHIO ATHLETIC COMMISSION**

- Removes the requirement that the Ohio Athletic Commission maintain an office in Youngstown and keep all of its permanent records there.
- Increases statutorily established fees that the Commission must charge for licenses and permits required to conduct boxing and wrestling matches and exhibitions, and allows the Commission to increase those fees by up to 50% (instead of 25%) with Controlling Board approval.
- Abolishes the Athlete Agents Registration Fund and requires the Commission instead to deposit money it receives under the Athlete Agents Law to the credit of the Occupational Licensing and Regulatory Fund.

### **Commission office in Youngstown**

(R.C. 3773.33)

The act removes the requirement that the Ohio Athletic Commission maintain an office in Youngstown and keep all of its permanent records there.

### **Fees relative to the regulation of boxing and wrestling**

(R.C. 3773.43)

The act increases fees that the Commission must charge for certain licenses and permits, as follows:

Purpose	Fee
Application for or renewal of a promoter's license for public boxing matches or exhibitions	from \$50 to \$100
Application for or renewal of a license to participate in a public boxing match or exhibition	from \$10 to \$20
Permit to conduct a public boxing match or exhibition	from \$10 to \$50
Application for or renewal of a promoter's license for professional wrestling matches or exhibitions	from \$100 to \$200
Permit to conduct a professional wrestling match or exhibition	from \$50 to \$100

Prior law permitted the Commission, subject to the approval of the Controlling Board, to establish fees in excess of the statutorily prescribed amounts by up to 25%. The act increases this to 50%.

**Athlete Agents Registration Fund**

(R.C. 4743.05 and 4771.22)

The act abolishes the Athlete Agents Registration Fund, which formerly was used to administer the Athlete Agents Law (R.C. Chapter 4771.). The act requires the Commission instead to deposit money it receives under the Athlete Agents Law to the credit of the Occupational Licensing and Regulatory Fund for the continuing administration of that Law.

---

**ATTORNEY GENERAL**

- Revises the refund terms for funds placed in escrow by tobacco manufacturers not participating in the tobacco Master Settlement Agreement.
- Requires tobacco product manufacturers whose cigarettes are sold in this state to certify specified information, including information on escrow account payments and tobacco brands, to the Attorney General by April 30 of each year.
- Requires the Attorney General to develop and publish on the office's website a directory listing all of the tobacco product manufacturers that are in compliance with the certification requirements.



- Prohibits tax stamps from being affixed to cigarettes, and prohibits cigarettes from being sold, offered for sale, or possessed for sale, if the tobacco product manufacturer that produces the cigarettes, or the brand family to which the cigarettes belong, is not included in the directory.
- Establishes criminal and civil enforcement remedies for selling cigarettes in violation of these provisions.
- Establishes procedures for the appointment of an agent for the service of process, and for providing notice and reporting required information from tobacco product manufacturers and stamping agents to the Tax Commissioner or the Attorney General.
- Authorizes the Attorney General and the Tax Commissioner to adopt administrative rules necessary to implement the Tobacco Master Settlement Agreement Law provisions added by the act.
- Modifies the law governing the Attorney General's collection of amounts due the state by (1) authorizing the assessment of collection costs, (2) applying a different rate of interest to such claims, and (3) permitting the addition of fees to recover the cost of processing checks returned for insufficient funds and the cost of providing electronic payment options.
- Prohibits government entities from contracting for goods, services, or construction with persons against whom an "unresolved" finding for recovery has been issued.
- Requires the Attorney General, by December 1, 2003, to report to the Auditor of State the status of collection for all findings for recovery issued by the Auditor of State for calendar years 2001, 2002, and 2003, and requires a quarterly update of this information thereafter.
- Requires the Auditor of State to establish a publicly accessible database of persons by January 1, 2004, against whom an unresolved finding for recovery has been issued, and, beginning January 15, 2004, and quarterly thereafter, to update that database to reflect resolved findings for recovery reported earlier that quarter by the Attorney General.
- Makes the following changes in the Crime Victims Reparations Law:

--Requires the Attorney General to provide for payment of the claimant or providers in the amount of an award of reparations only if the amount of the award is \$50 or more.

--Defines a "claimant" to include the estate of a deceased victim.

--Excludes as a "collateral source" any money, or the monetary value of any property, that is received as a benefit from the Ohio Public Safety Officers Death Benefit Fund.

--Modifies the maximum cumulative "allowable expense" for required care or counseling of "immediate family members" of a victim of criminally injurious conduct consisting of a homicide, a sexual assault, domestic violence, or a severe and permanent incapacitating injury resulting in paraplegia or similar life-threatening condition.

--Permits a "family member" of a victim who died as a proximate result of criminally injurious conduct to be reimbursed as an "allowable expense," up to a specified maximum, for wages lost and travel expenses incurred to attend criminal justice proceedings arising from that conduct.

--Generally includes as an "allowable expense" attorney's fees up to \$2,500, at a maximum allowable rate of \$150 per hour, incurred to successfully obtain a restraining order, custody order, or other order to physically separate a victim from an offender.

--Increases the maximum allowable charges per funeral of a victim and includes as "funeral expense" any wages lost or travel expenses incurred by a "family member" of a victim in order to attend the victim's funeral, cremation, or burial.

--Modifies the definitions of "cost of crime scene cleanup" and "immediate family member" and includes a new definition of "family member."

--Specifies the circumstances in which an award may be made to a minor dependent of a deceased victim for the dependent's economic loss or for counseling as described above.

--Requires a health care provider or medical records company to provide one copy of a patient's medical records without charge to the Attorney General in accordance with the Crime Victims Reparations Awards Law or rules adopted under that Law.

- Modifies the definitions of scheme of chance, educational organization, veteran's organization, fraternal organization, slot machine, charitable instant bingo organization, and expenses for use in the Gambling Law, including the Charitable Bingo Law, defines game flare, historic railroad educational organization, sporting organization, pool not conducted for profit, and skill-based amusement machine for use in that Law, and includes historic railroad educational organization and sporting organization within the definition of "charitable organization" for that Law.
- Modifies the basis of the license fee for the conduct of instant bingo by an organization that previously has been licensed to conduct bingo by basing it on the gross profits received by the charitable organization during a specified prior one-year period and by modifying the formula for calculating the amount of that fee.
- Prohibits a charitable organization from providing a bingo game operator any compensation for conducting instant bingo other than at a bingo session.
- Allows an employee of a veteran's organization, fraternal organization, or sporting organization to sell instant bingo tickets or cards to invited guests of the veteran's organization or fraternal organization if no portion of the employee's compensation is paid by bingo receipts.
- Permits a charitable organization, a public school, a chartered nonpublic school, a community school, or a sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3), 501(c)(4), or 501(c)(7) of the Internal Revenue Code to conduct a raffle to raise money for the organization or school, provides that that organization or school does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit, and prohibits any person that is not one of the above described entities from conducting a raffle drawing that is for profit or a raffle drawing that is not for profit.



- Modifies the records that a charitable organization must maintain with respect to the gross receipts and expenses of each game of instant bingo.
- Modifies the procedure for paying the organizational expenses of a veteran's organization or a fraternal organization for the conduct of instant bingo and makes those procedures applicable to a sporting organization.
- Modifies the types of organizations for which a veteran's or fraternal organization may raise money from the sale of instant bingo other than at a bingo session and with which it must enter into a written contract in order to conduct instant bingo and makes these provisions applicable to a sporting agency.
- Modifies the provisions dealing with the rules or orders of the Division of Liquor Control or the Liquor Control Commission prohibiting a charitable organization that holds a D-4 permit from selling or serving beer or intoxicating liquor in a portion of its premises used for the conduct of a charitable bingo game.
- Modifies the percentage of net profit from the proceeds of the sale of instant bingo a veteran's organization or fraternal organization may distribute for the organization's own charitable purposes and may deduct and retain for the organization's expenses in conducting the instant bingo game and makes those percentages applicable to sporting organizations.
- Provides that a charitable organization other than a veteran's, fraternal, or sporting organization must distribute 100% of the net profits from the sale of instant bingo to certain specified charitable organizations or governmental entities.
- Prohibits a charitable organization from selling or providing any instant bingo ticket or card for a price different from the price printed on the instant bingo ticket or card or on the game flare.
- Provides that a charitable instant bingo organization is not required to enter into a written contract with the owner or lessor of the bingo location for the conduct of instant bingo other than at a bingo session if the owner or lessor does not assist in the conduct of the instant bingo and other conditions are met.

- Allows a volunteer firefighter's organization that is exempt from federal income taxation and is described in subsection 501(c)(3) of the Internal Revenue Code to conduct instant bingo other than at a bingo session at a location where the primary source of retail income from all commercial activity at that location is the sale of instant bingo tickets if the instant bingo is conducted at the location where the organization conducts firefighter training, the organization has conducted instant bingo continuously for at least five years prior to the effective date of the act, and, during each of those five years, the organization had gross receipts of at least \$1.5 million.
- Allows a licensed charitable organization or a bingo game operator to give any person an instant bingo ticket as a prize.
- Increases the fee for a distributor license or a manufacturer license from \$2,500 to \$5,000.
- Specifically permits the Attorney General to perform on site inspections of manufacturers who are selling bingo supplies or applying for a license to do so.
- Modifies the definition of "scheme of chance" to include a "pool conducted for profit" and to specifically exclude a "pool not conducted for profit."

**Tobacco Master Settlement Agreement Law (MSA)**

**Tobacco product manufacturer escrow deposits**

(R.C. 1346.02; Section 172)

Ongoing law requires that tobacco product manufacturers not participating in the Master Settlement Agreement place into an escrow account 1.67539¢ for each cigarette sold in the state. (In 2007, this amount increases to 1.88482¢ per cigarette.) Formerly, to the extent that a tobacco product manufacturer established that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement had it been a participating manufacturer, the excess had to be released from escrow and reverted back to the manufacturer.

The act instead provides that the excess must be released to the manufacturer if the amount the manufacturer was required to place into escrow in a particular year was greater than the payments that the manufacturer would have been required to make if the manufacturer was a party to the Agreement. However, the act reinstates the former refund terms for such escrow accounts if the amendments made by the act are invalidated by a court of competent jurisdiction.

**Certification requirements for tobacco product manufacturers**

(R.C. 1346.04 and 1346.05(A); Section 166; R.C. 1346.01--not in the act)

**In general.** The act requires every tobacco product manufacturer whose cigarettes are sold in this state either directly or through a distributor, retailer, or other intermediary, to execute and deliver to the Attorney General an annual certification. The certification must state that, as of its date, the tobacco product manufacturer is either a participating manufacturer or a nonparticipating manufacturer in full compliance with the ongoing Tobacco Master Settlement Agreement (MSA) Law, including full compliance with all quarterly installment payment requirements, if required to make such payments by an administrative rule adopted by the Attorney General. The certification must be made under penalty of falsification, on a form prescribed by the Attorney General, and filed not later than April 30 of each year.<sup>9</sup> (A "participating manufacturer" is a participating manufacturer as defined in section II(jj) of the Master Settlement Agreement entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers, including all amendments to that agreement. A "nonparticipating manufacturer" is any tobacco product manufacturer that is not a participating manufacturer.)

**Participating manufacturers.** Each participating manufacturer must include in its certification a list of its brand families. "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s." "Brand family" includes cigarettes sold under any brand name (whether that name is used alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indicia of product identification identical or similar to, or identifiable with, a previous brand of cigarettes. Thirty days before making any additions to or modifications of its brand families, a

---

<sup>9</sup> *But, the act provides in uncodified law that a tobacco product manufacturer's first certification is due within 45 days after the act's effective date.*

participating manufacturer must update its brand family list by executing and delivering a supplemental certification to the Attorney General.

**Nonparticipating manufacturers.** Each nonparticipating manufacturer must include all of the following in its certification:

(1) A list of all of its brand families and the number of units sold during the preceding calendar year for each brand family, and a list of all of its brand families that have been sold in the state at any time during the current calendar year. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The list must indicate, by an asterisk, any brand family that was sold in the state during the preceding calendar year and that is no longer being sold in the state as of the date of the certification, and also must identify by name and address any other manufacturer in the preceding or current year of the brand families included on the list. Thirty days before making any additions to or modifications of its brand families, a nonparticipating manufacturer must update its brand family list by executing and delivering a supplemental certification to the Attorney General.

(2) A statement that the nonparticipating manufacturer is registered to do business in Ohio or has appointed an agent for service of process in this state and provided notice of that appointment as required (see "**Agent for service of process**," below).

(3) A certification that the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund as required under the MSA Law and that the fund is governed by a qualified escrow agreement executed by the nonparticipating manufacturer and approved by the Attorney General. A "qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion where the arrangement requires that the financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with the MSA Law.

(4) All of the following information regarding the qualified escrow fund the nonparticipating manufacturer must establish and maintain under the MSA Law and the rules adopted under it: (a) the name, address, and telephone number of the financial institution at which the nonparticipating manufacturer has established the fund, (b) the account number of the fund and any subaccount

number for the state, (c) the amount that the nonparticipating manufacturer deposited in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification the Attorney General deems necessary to confirm those deposits, and (d) the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from any qualified escrow fund into which it ever made payments under the MSA Law or the rules adopted under it.

(5) A statement that the nonparticipating manufacturer is in full compliance with the ongoing MSA Law, the act's provisions requiring tobacco product manufacturers to be registered to do business in Ohio or to appoint an agent for the service of process, and the act's provisions requiring tobacco product manufacturers to document their sales of cigarettes in Ohio (see "**Documentation of cigarettes sold and taxes paid,**" below).

**Miscellaneous.** A participating manufacturer is prohibited from including a brand family in its certification unless it affirms that the cigarettes in the brand family must be deemed its cigarettes for the purpose of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined pursuant to the Agreement. A nonparticipating manufacturer is prohibited from including a brand family in its certification unless the it affirms that the cigarettes in the brand family must be deemed its cigarettes for the purpose of the MSA Law. But, the act's certification provisions do not limit, and cannot be construed to limit, the state's authority to determine that the cigarettes in a brand family constitute the cigarettes of another tobacco product manufacturer for the purpose of calculating payments under the Master Settlement Agreement or for the purpose of the MSA Law.

The act requires each tobacco product manufacturer to maintain all invoices and documentations of sales and other information relied upon for its certification for a period of at least five years.

**Directory of certified tobacco product manufacturers**

(R.C. 1346.04 and 1346.05(B); Section 166)

**In general.** The act requires the Attorney General to develop and publish on the office's website a directory listing all tobacco product manufacturers that have provided current and accurate certifications, and all of the brand families listed in those certifications.<sup>10</sup> The Attorney General must update the directory as

---

<sup>10</sup> *The act requires in uncodified law that the Attorney General publish the directory within 90 days after the act's effective date.*

necessary to correct mistakes or to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the act's requirements.

**Additions to and removal from the directory.** At least ten days before any tobacco product manufacturer or brand family is added to or removed from the directory, the Attorney General must publish notice of the pending addition or removal online in the directory and must notify the Tax Commissioner of those pending changes. Also, at least ten days before the addition or removal, the Tax Commissioner must transmit by electronic mail or other practicable means to each stamping agent notice of the pending addition or removal. A "stamping agent" is a person who is authorized to affix tax stamps to packages or other containers of cigarettes under the Cigarette Tax Law or a person who is required to pay the excise tax imposed on cigarettes and other tobacco products under that Law. Each stamping agent must provide an electronic mail address to the Tax Commissioner for the purpose of receiving the notifications and must update that address with the Tax Commissioner as necessary.

Unless an agreement between a stamping agent and a tobacco product manufacturer otherwise provides, a tobacco product manufacturer that is removed or whose brand family is removed from the directory must refund to the stamping agent any money paid by the agent to the manufacturer for cigarettes that are in the agent's possession at the time the agent receives notice of the pending removal of the manufacturer or brand family from the directory. The Tax Commissioner must notify the Attorney General of any tobacco product manufacturer that fails to make such a refund. The Attorney General must not restore the tobacco product manufacturer or any brand family of the manufacturer to the directory until the manufacturer has paid the required refund to the stamping agent. Once the refund has been paid, the Tax Commissioner must notify the Attorney General of that payment.

The Attorney General must not include or retain in the directory a nonparticipating manufacturer or a brand family of a nonparticipating manufacturer if any of the following applies:

- The nonparticipating manufacturer fails to provide the required certification, or the Attorney General determines that a certification does not comply with the statutory requirements, unless the Attorney General determines, to the Attorney General's satisfaction, that the violation has been cured.
- The Attorney General determines that any escrow payment required under the MSA Law for any period for any brand family of the nonparticipating manufacturer, regardless of whether the brand family is listed by the nonparticipating manufacturer in its

certification, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General.

- The Attorney General determines that the nonparticipating manufacturer has not fully satisfied any outstanding final judgment, including interest, for a violation of the MSA Law.

**Agent for service of process**

(R.C. 1346.06)

**General requirement.** The act requires any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity, before having its brand families included or retained in the directory, to appoint, and to continually engage without interruption the services of, an agent in Ohio to act as agent for the service of all process pertaining to any action or proceeding in an Ohio court against the manufacturer concerning or arising out of the enforcement of the MSA Law. A nonparticipating manufacturer must provide the Attorney General, to the Attorney General's satisfaction, with proof of the appointment of, and notice of the name, address, telephone number, and availability of, the manufacturer's agent. Service on the nonparticipating manufacturer's agent constitutes legal and valid service of process on the manufacturer.

**Termination circumstances.** If a nonparticipating manufacturer decides to terminate its agent's appointment, the manufacturer must provide notice of that termination to the Attorney General 30 calendar days before the termination. In addition, the manufacturer must provide proof, to the Attorney General's satisfaction, of the appointment of a new agent not less than five calendar days before the termination. If a nonparticipating manufacturer's agent decides to terminate the agency, the manufacturer must provide notice of the termination to the Attorney General along with proof, to the Attorney General's satisfaction, of the appointment of a new agent within five calendar days of the termination.

**Deemed appointment.** Any nonparticipating manufacturer whose cigarettes are sold in Ohio and who has not appointed and continually engaged an agent is deemed to have appointed the Secretary of State as the manufacturer's agent and may be proceeded against in any action or proceeding in the courts of this state by service of process on the Secretary of State. However, the deemed appointment of the Secretary of State as a nonparticipating manufacturer's agent does not satisfy the requirement that a nonparticipating manufacturer that has not registered to do business in Ohio appoint an agent for service of process as a

condition precedent to the existence of an accurate certification permitting the manufacturer's brand families to be included or retained in the directory.<sup>11</sup>

**Documentation of cigarettes sold and taxes paid**

(R.C. 1346.04 and 1346.07(A); Section 166; R.C. 1346.01--not in the act)

Not later than the last day of each month, or less frequently if so directed by the Tax Commissioner, each stamping agent must submit information for the previous month or for the relevant time period (if directed by the Tax Commissioner to make the submissions less frequently) which the Tax Commissioner requires to facilitate compliance with the provisions of the MSA Law enacted by the act.<sup>12</sup> The information must include, but is not limited to, a list by brand family of the total number of cigarettes, or, in the case of roll-your-own, the equivalent stick count, for which the stamping agent during the period covered by the report affixed stamps or otherwise paid the tax due. "Roll-your-own" means any tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

The stamping agent is required to maintain and make available to the Tax Commissioner all invoices and documentations of sales of all nonparticipating manufacturer cigarettes, and any other information the agent relies upon in submitting information to the Tax Commissioner, for a period of five years from the date of each submission.

---

<sup>11</sup> *The provision deeming the Secretary of State to be the agent for the service of process for a nonparticipating manufacturer appears to apply only if the manufacturer is illegally selling cigarettes in Ohio. R.C. 1346.05 prohibits a tobacco product manufacturer from selling cigarettes or offering them for sale unless the manufacturer is included in the directory published by the Attorney General. To be included in the directory, a nonresident or foreign nonparticipating manufacturer that is not registered to do business in Ohio must first appoint an agent for the service of process. A nonparticipating manufacturer that fails to so appoint an agent for the service of process, then, cannot legally sell cigarettes in this state.*

<sup>12</sup> *But, the act provides in uncodified law that the first such report of a stamping agent to the Tax Commissioner is due on the last day of the month following the month in which the act takes effect.*

### **Reporting and sharing of reported information**

(R.C. 1346.07 (B), (C), and (D))

At any time, the Attorney General may require a nonparticipating manufacturer to provide proof, from the financial institution in which the manufacturer has established a qualified escrow fund, of the amount of money in the fund, exclusive of interest, the amount and date of each deposit into the fund, and the amount and date of each withdrawal from the fund. The Attorney General also may require a stamping agent or tobacco product manufacturer to submit any additional information necessary to enable the Attorney General to determine whether a manufacturer is in compliance with the act's provisions. The information that the Attorney General may require includes, but is not limited to, samples of the packaging or labeling of each brand family.

The Tax Commissioner and the Attorney General must share information received under the act's provisions for the purpose of determining compliance with and enforcement of those provisions. They also may share information so received with federal, state, or local agencies for the purpose of enforcement of the MSA Law or corresponding laws of other states.

### **Adoption of administrative rules**

(R.C. 1346.08)

The act permits the Tax Commissioner and the Attorney General to adopt administrative rules necessary to implement the act's provisions. Specifically, the Attorney General may adopt an administrative rule requiring a tobacco product manufacturer to make required escrow deposits in quarterly installments during the year in which the sales covered by the deposits are made. If the Attorney General adopts such a rule, the Tax Commissioner may require a tobacco product manufacturer or a stamping agent to produce information sufficient to enable the Tax Commissioner and the Attorney General to determine the adequacy of the amount of an installment deposit.

### **Criminal prohibitions and penalties**

(R.C. 1346.05(C), 1346.10, and 5743.21)

**Under the Tobacco Master Settlement Agreement Law.** The act prohibits a person from doing any of the following:

(1) Affixing a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory;

(2) Selling, offering for sale, or possessing for sale in Ohio cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory;

(3) Selling or distributing cigarettes that have had a tax stamp affixed while the tobacco product manufacturer or brand family of those cigarettes was not included in the directory;

(4) Acquiring, holding, owning, possessing, transporting, importing, or causing to be imported cigarettes that the person knows or should know are intended for distribution or sale in this state and that have had a tax stamp affixed while the tobacco product manufacturer or brand family of those cigarettes was not included in the directory;

(5) Acquiring, holding, owning, possessing, transporting, importing, or causing to be imported cigarettes that the person knows or should know are intended for distribution or sale in Ohio and that are the cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory.

A violation of any of these prohibitions generally is a misdemeanor of the first degree. But, if the offender has a previous conviction for a violation of any of these prohibitions, the violation is a felony of the fourth degree. Any cigarettes sold, offered for sale, or possessed for sale in violation of any of these prohibitions are to be considered contraband under the Cigarette Tax Law and are subject to seizure and forfeiture under that Law. Cigarettes so seized and forfeited cannot be resold and must be destroyed.

In lieu of or in addition to any of these criminal remedies or the injunctive remedy or miscellaneous remedies discussed below, upon a determination that a *stamping agent* violated any of the prohibitions mentioned above or any rule adopted under the act's provisions, the Tax Commissioner may revoke the stamping agent's license. And, in addition to any other penalty, for *each violation* of the prohibitions, the Tax Commissioner may impose a fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000. The fine is to be imposed in accordance with the Cigarette Tax Law, and, for the purpose of this fine, each stamp affixed to a package of cigarettes and each sale or offer for sale of cigarettes constitutes a separate violation.

**Under the Cigarette Tax Law.** The act also prohibits a person from (1) affixing a stamp required by the Cigarette Tax Law to any package that is produced by a tobacco product manufacturer or is part of a brand family that is not included in the directory, and (2) selling or offering to sell any roll-your-own tobacco to any person in Ohio if that tobacco is not included in the directory. Any

roll-your-own tobacco in the possession of a retail dealer in Ohio is prima facie evidence of offering to sell to a person in this state.

In addition to any fine or imprisonment provided under the Cigarette Tax Law, the act specifies that, whenever the Tax Commissioner discovers any packages to which stamps have been affixed in violation of that Law's prohibitions, or any roll-your-own tobacco sold or offered for sale in violation of that Law's prohibitions, the Tax Commissioner may seize the packages or roll-your-own tobacco, which then are forfeited to the state, and must order their destruction.

**Injunctive relief and miscellaneous remedies**

(R.C. 1346.09; Section 165)

**Injunctive relief.** The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of the act's provisions by a stamping agent and to compel the stamping agent to comply with those provisions.

**Disgorged moneys.** If a court determines in a criminal or civil action that a person has violated any of the act's prohibitions or other provisions, the court must order that person's profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state's General Revenue Fund.

**Recoverable amounts.** In any action brought by the state to enforce the act's provisions, the state is entitled to recover the costs of the investigation, expert witness fees, court costs, and reasonable attorney's fees.

**Cumulative nature.** Unless otherwise expressly provided, the remedies and penalties provided under the MSA Law are cumulative to each other and to the remedies or penalties available under other Ohio laws.<sup>13</sup>

---

<sup>13</sup> *The act specifies in uncodified law that, if a court finds any conflict that cannot be harmonized between the ongoing MSA Law's provisions (R.C. 1346.01 to 1346.03) and the act's provisions added to the Law (R.C. 1346.04 to 1346.10), the ongoing provisions control. In addition, if any of the act's provisions added to the Law cause the ongoing provisions to no longer constitute a qualifying or model statute (as defined in the Master Settlement Agreement), the act's provision in question is invalid. Finally, if any part of the act's provisions added to the Law is held to be invalid, unlawful, or unconstitutional, the remaining portion of those provisions remains valid.*

## Collection of moneys due the state

(R.C. 131.02)

Under ongoing law, money collected for the state by state officers, employees, and agents is to be paid by such persons into the state treasury in the manner prescribed by the Treasurer of State by rule. The act clarifies that this requirement also applies to money collected for the state that is to be paid into a *custodial fund* of the Treasurer of State. (Custodial funds are in the custody of the Treasurer of State, but are not part of the state treasury.)

If an amount due the state is not paid within 45 days after payment is due, continuing law requires the officer, employee, or agent to certify the claim to the Attorney General for collection. The Attorney General is authorized by the act to assess the collection cost to the amount due in any manner or amount the Attorney General prescribes.

Ongoing law specifies that interest accrues on each such claim from the day on which the claim became due. Under prior law, the interest rate charged was the base rate per annum for advances and discounts to member banks in effect at the federal reserve bank in the second federal reserve district. Under the act, the rate to be charged is the federal short-term rate, as determined by the Tax Commissioner on October 15 of each year, rounded to the nearest whole number percent, plus 3%.<sup>14</sup>

Ongoing law authorizes the Attorney General and the chief officer of the agency reporting a claim, acting together, to compromise the claim or extend the time for payment of the claim, if such action is in the "best interests of the state." The act also permits them, if in the best interests of the state, to add fees to recover the cost of processing checks or other draft instruments returned for insufficient funds and the cost of providing electronic payment options.

---

<sup>14</sup> "Federal short-term rate" is defined as the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year (R.C. 5703.47(A), not in the act).

**Prohibiting government entities from contracting with persons against whom an unresolved finding for recovery has been issued**

(R.C. 9.24)

On and after January 1, 2004, the act prohibits state agencies and political subdivisions from awarding a contract for goods, services, or construction, paid for in whole or in part with state funds, to a person against whom an "unresolved" finding for recovery has been issued by the Auditor of State.

Under the act, a finding for recovery is unresolved unless one of the following criteria applies:

(1) The money identified in the finding for recovery is certified as paid in full by the state agency or political subdivision to whom it was owed;

(2) The debtor has entered into a repayment plan that is approved by the Attorney General and the state agency or political subdivision to whom the money identified in the finding for recovery is owed. A repayment plan may include a provision permitting a state agency or political subdivision to withhold payment to a debtor for goods, services, or construction provided to or for the state agency or political subdivision pursuant to a contract that is entered into with the debtor after the date the unresolved finding for recovery was issued;

(3) The Attorney General waives a repayment plan described in (2) above for good cause;

(4) The debtor and state agency or political subdivision to whom the money identified in the finding for recovery is owed have agreed to a payment plan established through an enforceable settlement agreement;

(5) The state agency or political subdivision desiring to enter into a contract with a debtor certifies, and the Attorney General concurs, that all of the following are true:

- Essential services that the state agency or political subdivision are seeking to obtain from the debtor cannot be provided by any other person besides the debtor;
- Awarding a contract to the debtor for those essential services is in the best interest of the state;
- Good faith efforts have been made to collect the money identified in the finding for recovery.



(6) The debtor has commenced an action to contest the finding for recovery, and a final determination on the action has not yet been reached.

The act requires the Attorney General to submit an initial report to the Auditor, by December 1, 2003, indicating the status of collection for all findings for recovery issued by the Auditor for calendar years 2001, 2002, and 2003. Beginning on January 1, 2004, the Attorney General must submit to the Auditor, on the first day of the months of January, April, July, and October, a list of all findings for recovery that have been resolved during the calendar quarter preceding the submission of the list and a description of the means of resolution.

Under the act, the Auditor of State must establish a publicly accessible database by January 1, 2004, of persons against whom an unresolved finding for recovery has been issued in calendar years 2001, 2002, and 2003, including the amount identified in the finding. The act requires the Auditor to maintain this database and, beginning January 15, 2004, to update the database by the fifteenth day of the months of January, April, July, and October to reflect resolved findings for recovery that are reported to the Auditor by the Attorney General on the first day of that same month, as described above.

State agencies and political subdivisions, before awarding contracts using state funds, are required by the act to verify that the person to whom the contract is to be awarded does not appear on the Auditor's database.

"Finding for recovery" is defined by the act as a determination issued by the Auditor that public property has been converted or misappropriated or that public money has been: illegally expended, collected but not accounted for, or due but not collected.

### **Crime Victims Reparations Awards**

(R.C. 2743.191, 2743.51, 2743.60, 2743.65, and 3701.741)

#### **Payment of awards**

The Reparations Fund in the state treasury is used for the payment of awards of reparations granted by the Attorney General under the Crime Victims Reparations Awards Law. A former provision of that Law required the Attorney General, in making an award of reparations for victims of crime, to render the award against the state and to provide for payment of the claimant or providers in the amount of the award, whatever that amount was. The act, instead, requires the Attorney General to provide for payment of the claimant or providers in the amount of the award only if the amount of the award is \$50 or more.

## Definitions

The act modifies the definitions of the following terms for purposes of the Crime Victims Reparations Awards Law.

**Claimant.** Under continuing law, "claimant" includes a victim who claims an award of reparations and who, at the time of the criminally injurious conduct: (1) was a resident of the United States or a resident of a foreign country the laws of which permits Ohio residents to recover compensation as victims of offenses committed in that country *or* (2) had a permanent place of residence in Ohio and complied with any one of nine specified conditions. "Claimant" includes, among others, a dependent of a deceased victim. Under the act, "claimant" also includes the estate of a deceased victim.

**Collateral source.** Continuing law defines "collateral source" as a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to the victim or claimant, from any of specified sources. "Collateral source" does not include any money, or the monetary value of any property, that is subject to R.C. 2969.01 to 2969.06 (Recovery of Offender's Profits or "Son of Sam" Law). The act provides that "collateral source" also does not include any money, or the monetary value of any property, that is received as a benefit from the Ohio Public Safety Officers Death Benefit Fund.

**Allowable expense.** Continuing law defines "allowable expense," except for certain charges, as reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for eyeglasses and other corrective lenses. An *immediate family member* (see former definition below) of a victim of criminally injurious conduct consisting of a homicide, a sexual assault, domestic violence, or a severe and permanent incapacitating injury resulting in paraplegia or a similar life-altering condition, who requires psychiatric care or counseling as a result of that conduct, may be reimbursed for that care or counseling as an allowable expense through the victim's application. Former law provided that the cumulative allowable expense for care or counseling of that nature for each *family member* of a victim of that type could not exceed \$2,500. The act provides that the cumulative allowable expense for that care or counseling cannot exceed \$2,500 for each *immediate family member* (see revised definition below) of a victim of that type and \$7,500 in the aggregate for all immediate family members of a victim of that type.

The act also permits a *family member* (see new definition below) of a victim who died as a proximate result of criminally injurious conduct to be



reimbursed as an allowable expense through the victim's application for wages lost and travel expenses incurred in order to attend criminal justice proceedings arising from that conduct. The cumulative allowable expense for those wages lost and travel expenses incurred cannot exceed \$500 for each family member of the victim and \$2,000 in the aggregate for all family members of the victim.

The act includes as "allowable expense" attorney's fees not exceeding \$2,500, at a rate not exceeding \$150 per hour, incurred to successfully obtain a restraining order, custody order, or other order to physically separate a victim from an offender, if the attorney has not received payment under continuing law for assisting a claimant with an application for an award of reparations. The act prohibits any attorney from receiving payment under continuing law regarding payment of attorney's fees for assisting a claimant with an application for an award of reparations if that attorney's fees have been allowed as an expense as described in the preceding sentence.

**Funeral expense.** Prior law defined "funeral expense" as any reasonable charges that are not in excess of \$5,000 per funeral and are incurred for expenses directly related to a victim's funeral, cremation, or burial. The act increases the maximum allowable charges per funeral to \$7,500, and includes as "funeral expense" any wages lost or travel expenses incurred by a *family member* of a victim in order to attend the victim's funeral, cremation, or burial. The act further provides that an award for funeral expenses must be applied first to expenses directly related to the victim's funeral, cremation, or burial. An award for wages lost or travel expenses incurred by a family member of the victim cannot exceed \$500 for each family member and cannot exceed in the aggregate the difference between \$7,500 and the expenses that are reimbursed by the program and are directly related to the victim's funeral, cremation, or burial.

**Cost of crime scene cleanup.** Prior law defined "cost of crime scene cleanup" as reasonable and necessary costs of cleaning the scene where the criminally injurious conduct occurred, not to exceed \$750 in the aggregate per claim. The act defines "cost of crime scene cleanup" as reasonable and necessary costs of cleaning the scene *and repairing, for the purpose of personal security, property damaged at the scene*, where the criminally injurious conduct occurred, not to exceed \$750 in the aggregate per claim.

**Immediate family member.** Former law defined "immediate family member" as an individual who is related to a victim *within the first degree* by affinity or consanguinity. The act defines "immediate family member" as an individual *who resided in the same permanent household as a victim at the time of the criminally injurious conduct* and who is related to the victim by affinity or consanguinity.

**Family member.** The act adds "family member" as a new term for purposes of the Crime Victims Reparations Awards Law and defines "family member" as an individual who is related to a victim by affinity or consanguinity.

**Denial of claim or reduction of award**

**Continuing law.** Continuing law prohibits the Attorney General, a panel of commissioners, or a judge of the Court of Claims from making an award to a claimant if any of the following applies:

(1) The victim or the claimant was convicted of a felony within ten years prior to the criminally injurious conduct that gave rise to the claim or is convicted of a felony during the pendency of the claim.

(2) It is proved by a preponderance of the evidence that the victim or the claimant engaged, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim, in an offense of violence, any of the offenses involving trafficking in drugs, or any substantially similar offense that also would constitute a felony under the laws of Ohio, another state, or the United States.

(3) The claimant was convicted of endangering children or domestic violence or of any state law or municipal ordinance substantially similar to either offense within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim.

Under continuing law, the Attorney General, a panel of commissioners, or a judge of the Court of Claims must *reduce* an award of reparations or deny a claim for an award to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim. When the Attorney General decides whether a claim should be denied because of an allegation of contributory misconduct, the burden of proof on that issue is upon the claimant if either (1) the victim was convicted of a felony more than ten years prior to the criminally injurious conduct that is the subject of the claim or has a record of felony arrests under the laws of Ohio, another state, or the United States or (2) there is good cause to believe that the victim engaged in an ongoing course of criminal conduct within five years or less of the criminally injurious conduct that is the subject of the claim.

**Former law.** Former law provided that for purposes of the above provisions, if it is proven by a preponderance of the evidence that the victim engaged in conduct at the time of the criminally injurious conduct that was a felony violation of R.C. 2925.11 (possession of drugs), the conduct is *presumed* to

have contributed to the criminally injurious conduct and must result in a complete denial of the claim.

**Operation of the act.** The act eliminates the provision described in "**Former law**," above. Instead, it specifically prohibits the Attorney General, a panel of commissioners, or a judge of the Court of Claims from making an award to a claimant if it is proved by a preponderance of the evidence that the victim at the time of the criminally injurious conduct that gave rise to the claim engaged in conduct that was a felony violation of R.C. 2925.11 (possession of drugs) or engaged in any substantially similar conduct that would constitute a felony under the laws of Ohio, another state, or the United States.

The act permits the Attorney General, a panel of commissioners, or a judge of the Court of Claims to make an award to a minor dependent of a deceased victim for the dependent's economic loss or for counseling required as described above in "**Allowable expense**" under "**Definitions**" if (1) the minor dependent is not ineligible as described above in "**Continuing law**" due to the minor dependent's criminal history and (2) the victim was not killed while engaging in illegal conduct that contributed to the criminally injurious conduct that gave rise to the claim. For purposes of this provision and the provisions in continuing law, the use of illegal drugs by the deceased victim is not deemed to have contributed to the criminally injurious conduct that gave rise to the claim.

#### **Cap on reparations**

Former law provided that reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or the death of that victim could not exceed \$50,000 in the aggregate. The act provides that if the Attorney General, a panel of commissioners, or a judge of the Court of Claims reduces an award as described above in "**Continuing law**" under "**Denial of claim or reduction of award**," the maximum aggregate amount of reparations payable as described in the preceding sentence must be reduced proportionately to the reduction of that award.

#### **Medical records**

Continuing law, through December 31, 2004, generally requires each health care provider and medical records company to provide, upon request, copies of a patient's medical records, and permits a charge for providing those copies subject to specified maximum sums. The law also requires a health care provider or medical records company to provide one copy without charge to specified state agencies or certain types of patients.

The act requires a health care provider or medical records company to provide one copy of a patient's medical records without charge to the Attorney General in accordance with the Crime Victims Reparations Awards Law and any rules that may be adopted under that Law.

### **Gambling and Charitable Bingo Laws**

Continuing and prior law as it appears in the act is continuing and prior law, as enacted or amended by Am. Sub. H.B. 512 of the 124th General Assembly.

#### **Sporting organizations**

(R.C. 2915.01(H) and (CCC), 2915.08(A)(2)(d), 2915.09(D)(3), 2915.091(A)(2)(b), 2915.092, 2915.101(A), and 2915.13)

The act includes within the definition of "charitable organization" a "sporting organization" that is exempt from federal income taxation under subsection 510(a) and described in subsection 501(c)(9) of the Internal Revenue Code thereby allowing a sporting organization to obtain a license to conduct bingo, instant bingo at a bingo session, and instant bingo other than at a bingo session. The act also generally treats "sporting organizations" within the Charitable Bingo Law the same as veteran's organizations and fraternal organizations.

The act defines a "sporting organization" as a hunting, fishing, or trapping organization, other than a college or high school fraternity or sorority, that is not organized for profit, that is affiliated with a state or national sporting organization, including, but not limited to, the Ohio League of Sportsmen, and that has been in continuous existence in this state for a period of three years.

#### **Historic railroad educational organization**

(R.C. 2915.01(H) and (ZZ))

The act includes within the definition of "charitable organization" a "historic railroad educational organization" thereby allowing a historic railroad educational organization to obtain a license to conduct bingo, instant bingo at a bingo session, and instant bingo other than at a bingo session.

#### **Prohibition against schemes of chance**

(R.C. 2915.01(C), (AAA), and (BBB) and R.C. 2915.02--not in the act)

Continuing law prohibits any person from establishing, promoting, operating, or knowingly engaging in conduct that facilitates any game of chance



conducted for profit or any scheme of chance. The act modifies the definition of "scheme of chance" to include a "pool conducted for profit" and to specifically exclude a "pool not conducted for profit" and a "skill-based amusement machine." The result of this modification is that a person continues to be prohibited from establishing, promoting, operating, or knowingly engaging in conduct that facilitates a pool conducted for profit but is not prohibited from engaging in such activity with respect to a pool not conducted for profit or to a skill-based amusement machine. The act defines a "pool not conducted for profit" as a scheme in which a participant gives a valuable consideration for a chance to win a prize and the total amount of consideration wagered is distributed to a participant or participants. (See "*Skill-based amusement machine*," below.)

### *Bingo license fees*

(R.C. 2915.08(A)(1)(b))

Under continuing law that is modified by the act, the license fee to conduct instant bingo at a bingo session or instant bingo other than at a bingo session for a charitable organization that previously has been licensed to conduct bingo was based upon the total of all money or assets received by a person or the charitable organization from the operation of instant bingo at a bingo session or instant bingo other than at a bingo session during the one-year period ending on October 31 of the year preceding the year for which the license was sought. Under the act, the license fee to conduct instant bingo at a bingo session or instant bingo other than at a bingo session for such an organization is based upon the *gross profits* received by the charitable organization from the operation of instant bingo at a bingo session or instant bingo other than at a bingo session during the previously described year.

Under the act, the license fee to conduct instant bingo at a bingo session or instant bingo other than at a bingo session that is based upon the gross profits received by the charitable organization from the operation of instant bingo at a bingo session or instant bingo other than at a bingo session are as follows (language in italics is added by the act):

- (1) \$500, if the total is \$50,000 or less;
- (2) \$1,250 *plus one-fourth per cent of the gross profit*, if the total is more than \$50,000 but less than \$250,001 (reduced from \$300,001);
- (3) \$2,250 *plus one-half per cent of the gross profit*, if the total is more than \$250,000 but less than \$500,001 (reduced from \$300,000 and \$600,001);

(4) \$3,500 *plus one per cent of the gross profit*, if the total is more than \$500,000 (reduced from \$600,000) but less than \$1,000,001;

(5) \$5,000 *plus one per cent of the gross profit*, if the total is \$1 million or more.

**Compensation of bingo game operators**

(R.C. 2915.09(D))

Continuing law prohibits a charitable organization from providing to a bingo game operator, and prohibits a bingo game operator from receiving or accepting, any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting bingo or providing other work or labor at the site of bingo. This prohibition does not prohibit an employee of a fraternal or veteran's organization from selling instant bingo tickets or cards to the organization's members, as long as no portion of the employee's compensation is paid from any bingo receipts.

The act continues the above provision and also prohibits a charitable organization from providing to a bingo game operator any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting instant bingo other than at a bingo session at the site of instant bingo other than at a bingo session. The act also provides that the above prohibitions do not prohibit an employee of a fraternal organization, a veteran's organization, or a sporting organization from selling instant bingo tickets or cards to the organizations' *invited guests* so long as no portion of the employee's compensation is paid from any receipts of bingo.

**Conducting instant bingo**

(R.C. 2915.01(YY) and 2915.091(A)(2)(b), (6), and (12))

Continuing law provides that a charitable organization is prohibited from conducting instant bingo unless either of the following apply:

(a) The organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a), is described in subsection 501(c)(3) of the Internal Revenue Code, is a charitable organization as defined in the Gambling Law, is in good standing in the state pursuant to R.C. 2915.08, and is in compliance with the Charitable Organization Law.

(b) The organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is exempt from federal income taxation under subsection 501(a), is described in subsection 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, and conducts instant bingo under R.C. 2915.13.

The act includes an organization that is described in subsection 501(c)(7) of the Internal Revenue Code and a veteran's organization described in subsection 501(c)(4) of the Internal Revenue Code in (b) above, so an organization described in subsection 501(c)(7) of the Internal Revenue Code and a veteran's organization that is described in subsection 501(c)(4) of the Internal Revenue Code may conduct instant bingo if it has received a determination letter from the Internal Revenue Service.

Continuing law also prohibits a charitable organization that conducts instant bingo from selling or providing any instant bingo ticket or card for a price different from the price printed on it by the manufacturer. The act modifies this prohibition by providing that a charitable organization is prohibited from selling or providing any instant bingo ticket or card for a price different from the price printed on it by the manufacturer *on either the instant bingo ticket or card or on the game flare*. The act defines "game flare" as the board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information for the game: (1) the name of the game, (2) the manufacturer's name or distinctive logo, (3) the form number, (4) the ticket count, (5) the prize structure, including the number of winning instant bingo tickets by denomination and the respective winning symbol or number combinations for the winning instant bingo tickets, (6) the cost per play, and (7) the serial number of the game.

Under continuing law, a charitable organization is prohibited from allowing instant bingo tickets or cards to be sold to bingo game operators who are performing work or labor at a premises at which the organization sells instant bingo tickets or cards or to be sold to employees of a D permit holder who are working at a premises at which instant bingo tickets or cards are sold on behalf of the organization as described in R.C. 4301.03(B). The act removes from the above provision the phrase "who are performing work or labor" at a premises at which the organization sells instant bingo tickets or cards and removes the reference to the organization as described in R.C. 4301.03(B). The act also provides that the above described prohibition does not prohibit a licensed charitable organization or a bingo game operator from giving any person an instant bingo ticket as a prize.

## **Raffles**

(R.C. 2915.092)

Under prior law, a charitable organization could conduct a raffle to raise money for the charitable organization and did not need a license to conduct bingo in order to conduct a raffle drawing. But it could not conduct a raffle unless that organization was, and had received from the Internal Revenue Service a determination letter that was currently in effect stating that the organization was, exempt from federal income taxation under subsection 501(a) and was described in subsection 501(c)(3) of the Internal Revenue Code. The act permits a charitable organization, a public school, a chartered nonpublic school, a community school, or a sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3), 501(c)(4), or 501(c)(7) of the Internal Revenue Code to conduct a raffle to raise money for the organization or school and states that such an entity does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit.

Prior law prohibited a charitable organization from conducting a raffle unless the organization was, and had received from the Internal Revenue Code a determination letter that was currently in effect stating that the organization was exempt from federal income taxation under subsection 501(a) and described in 501(c)(3) of the Internal Revenue Code, prohibited a charitable organization from conducting more than 36 raffles during a calendar year, prohibited a person from being compensated directly or indirectly for assisting in the conduct or operation of a raffle, prohibited a raffle drawing from being conducted on premises other than premises that a charitable organization uses for its charitable programs, and required a person to use, give, donate, or otherwise transfer the net profit from a raffle to a charitable organization described in R.C. 2915.01(Z). The act removes these provisions and prohibits, except the organizations described in the prior paragraph, a person from conducting a raffle drawing that is for profit or a raffle drawing that is not for profit. A person who violates this provision is guilty of illegal conduct of a raffle, a misdemeanor of the first degree, or, if the offender has previously been convicted of a violation of R.C. 2915.092, a felony of the fifth degree.

## **Regulation of a "charitable instant bingo organization"**

(R.C. 2915.093(C), (D), or (G))

Continuing law requires a charitable instant bingo organization that conducts instant bingo other than at a bingo session to enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted to allow the owner or lessor to assist in the conduct of the instant bingo. The act



provides that a charitable instant bingo organization that conducts instant bingo other than at a bingo session is not required to enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted provided that the owner or lessor is not assisting in the conduct of the instant bingo other than at a bingo session and provided that the conduct of the instant bingo other than at a bingo session at that location is not more than five days per calendar year and not more than ten hours per day.

Continuing law also prohibits a charitable instant bingo organization from conducting instant bingo other than at a bingo session at a location where the primary source of retail income from all commercial activity at that location is the sale of instant bingo tickets. The act exempts from this prohibition a volunteer firefighter's organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, that conducts instant bingo other than at a bingo session on the premises where the organization conducts firefighter training, that has conducted instant bingo continuously for at least five years prior to the effective date of this provision and that, during each of those five years, had gross receipts of at least \$1,500,000.

#### **Maintenance of records**

(R.C. 2915.10(A))

Under continuing law, a charitable organization that conducts a bingo session or a game of chance is required to maintain for at least three years an itemized list of the gross receipts of each bingo session, each game of instant bingo by serial number, each raffle, each punch board game, and each game of chance. The act continues this requirement but modifies the provision by requiring that the charitable organization maintain an itemized list of the gross profits of each game of instant bingo by serial number.

#### **Distribution of the net profits from the proceeds of the sale of instant bingo**

(R.C. 2915.101)

Continuing law modified by the act provides requirements for how a charitable organization must distribute the net profit from the proceeds of the sale of instant bingo. A charitable organization other than a veteran's organization or a fraternal organization that conducts instant bingo was required to distribute the net profit from instant bingo as follows: (a) a minimum of 70% of the net profit to an organization that was described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and was either a governmental unit or an organization

that was tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and (b) 30% of the net profit could be deducted and retained by the organization for its expenses in conducting the instant bingo game. If a charitable organization did not retain the full percentage specified in (b) for the purposes specified, the balance of the net profit not retained for that purpose had to be distributed to an organization described in (a). The act clarifies that the distribution requirements apply to the net profit "from the proceeds of the sale of instant bingo" and provides that a charitable organization other than a veteran's organization, a sporting organization, or a fraternal organization must distribute 100% of the net profit from the proceeds of the sale of instant bingo to an organization that is described in (a) above.

Prior law also specified that a charitable organization other than a veteran's or fraternal organization was not required to itemize its expenses. The act removes this provision from the law.

Under continuing law that is modified by the act, if a veteran's organization or a fraternal organization conducted instant bingo, the organization was required to distribute the net profit as follows: (a) a minimum of 50% had to be distributed to an organization that is described in R.C. 2915.01(Z)(1) or to a department or agency of the federal government, the state, or any political subdivision, (b) 15% could be distributed for the organization's own charitable purposes, and (c) 35% could be deducted and retained by the organization for the organization's expenses in conducting the instant bingo game. The act modifies the percentages by providing that a veteran's organization, fraternal organization, *or sporting organization* may distribute 5% of the net profit from the proceeds of the sale of instant bingo for the organization's own charitable purposes, and may deduct and retain 45% for the organization's expenses in conducting the instant bingo game.

Prior law also provided that a veteran's organization or a fraternal organization was not required to itemize the organization's expenses. The act removes this provision and instead requires a veteran's organization, a fraternal organization, *or a sporting organization* to pay the expenses that are directly for the conduct of instant bingo by check from the checking account devoted exclusively to the bingo session or game and permits such an organization to deduct and retain the remainder of the 35% of the net profit from the proceeds of the sale of instant bingo that is for the organization's expenses in conducting the instant bingo game and to transfer that remainder into the organization's general account.

**Veteran's, fraternal, or sporting organization conduct of instant bingo**

(R.C. 2915.13)

Continuing law that is modified by the act provided that a veteran's organization or a fraternal organization authorized to conduct a bingo session pursuant to the Gaming Law could conduct instant bingo other than at a bingo session if all of the following applied: (1) the veteran's organization or fraternal organization limited the sale of instant bingo to ten consecutive hours per day for up to six days per week, (2) the veteran's organization or fraternal organization limited the sale of instant bingo to its own premises and to its own members and invited guests, and (3) the veteran's organization or fraternal organization was raising money for a charitable organization and executed a written contract with the charitable organization. The act makes these provisions apply to a sporting organization. The act also modifies (3) above by requiring that a veteran's organization, fraternal organization, *or sporting organization* raise money for an organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or a state organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code that is in good standing in this state and executes the required contract with that organization.

Continuing law that is modified by the act also provides that if a veteran's organization or fraternal organization authorized to conduct instant bingo is raising money for another charitable organization, the veteran's organization or fraternal organization must execute a written contract with that charitable organization in order to conduct the instant bingo. The act modifies this provision in a manner consistent with the change described in the prior paragraph including making this provision apply to sporting organizations.

The act makes the remaining provisions of law that regulate a veteran's or fraternal organization's conduct of instant bingo also apply to sporting organizations.

**Liquor law changes**

(R.C. 4301.03 and 4303.17)

Continuing law provides that no rule or order of the Division of Liquor Control or the Liquor Control Commission may prohibit a charitable organization that holds a D-4 permit from selling or serving beer or intoxicating liquor under its permit in a portion of its premises merely because that portion of its premises is used at other times for the conduct of a charitable bingo game. The act clarifies

that this provision applies to the conduct of a bingo game as described in R.C. 2915.01(S) (includes bingo, instant bingo, punch boards, and raffles).

Continuing law also provides that a charitable organization must not sell or serve beer or intoxicating liquor or permit beer or intoxicating liquor to be consumed or seen in the same location in its premises where a charitable bingo game is being conducted while the game is being conducted. The act limits this provision to the conduct of a bingo game as described in R.C. 2915.01(S)(1) (does not include instant bingo, punch boards, and raffles).

### **Prizes**

(R.C. 2915.09(C)(5))

Continuing law prohibits a charitable organization that conducts a bingo game as described in R.C. 2915.01(S)(1) from paying out more than \$3,500 in prizes during any bingo session that is conducted by the charitable organization. The act modifies this prohibition by prohibiting the organization from paying out more than \$3,500 in prizes for bingo games described in R.C. 2915.01(S)(1) and provides that "prizes" does not include awards from the conduct of instant bingo.

### **License fee for manufacturers and distributors of bingo supplies**

(R.C. 2915.081(B) and 2915.082(B))

Continuing law allows the Attorney General to issue a distributor license or manufacturer license to any person that meets the prescribed requirements. Under prior law, the annual fee for the license was \$2,500. The act increases that fee to \$5,000.

### **Contract for conduct of instant bingo other than at a bingo session**

(R.C. 2915.095)

Continuing law provides that the Attorney General, by rule, must adopt a standard contract to be used by a charitable instant bingo organization, a veteran's organization, or a fraternal organization for the conduct of instant bingo other than at a bingo session. The act includes "sporting organization" within the organizations that use the standard contract.

## **Definitions**

(R.C. 2915.01(H), (J), (K), (M), (LL), (ZZ), (AAA), and (CCC))

**Educational organization.** Continuing law modified by the act defined an educational organization as any organization within Ohio that was not organized for profit, the exclusive purpose of which was to educate and develop the capabilities of individuals through instruction, and that operated or contributed to the support of a school, academy, college, or university. The act modifies this definition by replacing "exclusive" with "primary" and specifies that the purpose of the organization is to educate and develop the capabilities of individuals through instruction *by means of operating or contributing to* the support of a school, academy, college, or university (replaces a requirement that it operate or contribute to such support).

**Veteran's organization.** The act modifies the definition of veteran's organization by including within the definition the state headquarters of a national veteran's association, providing that the state headquarters (and also an individual post or auxiliary unit) must have been in continuous existence in this state for at least two years, removing the requirement that an individual post or auxiliary unit of a national veteran's organization be incorporated as a nonprofit corporation for at least two years, and requiring that the state headquarters must have received a letter from the national veteran's association indicating that the state headquarters is in good standing with the national veteran's association.

**Fraternal organization.** The act includes within the definition of "fraternal organization" any not-for-profit state headquarters that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members, and that has been in continuous existence in Ohio for a period of five years.

**Expenses.** The act includes within the definition of "expenses" the reasonable amount of gross profit actually expended for expenses for maintaining and operating a charitable organization's facilities, including, but not limited to, a post home, club house, lounge, tavern, or canteen and any grounds attached to the post home, club house, lounge, tavern, or canteen.

**Historic railroad educational organization.** The act defines "historic railroad educational organization," for the purposes of the Gambling Law, as an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, that owns in fee simple the tracks and the right of way of a historic railroad that the organization restores or maintains and on which the organization provides excursions as part of a program to promote tourism and educate visitors regarding

the role of railroad transportation in Ohio history, and that received as donations from a charitable organization that holds a license to conduct bingo under the Gambling Law an amount equal to at least 50% of that licensed charitable organization's net proceeds from the conduct of bingo during each of the five years preceding June 30, 2003. "Historic railroad" means all or a portion of the tracks and right of way of a railroad that was owned or operated by a for-profit common carrier in this state at any time prior to January 1, 1950.

**Charitable organization.** The act includes within the definition of "charitable organization" that applies to the Gambling Law any tax exempt "historic railroad educational organization" and a "sporting organization." Generally, an organization is tax exempt if it is, and has received from the IRS a determination letter that is currently in effect stating that the organization is, exempt from federal taxation under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the Internal Revenue Code. A "sporting organization" must be tax-exempt under subsection 501(a) and described in subsection 501(c)(7) of the Internal Revenue Code.

**Skill-based amusement machine.** The act defines a skill-based amusement machine as a skill-based amusement device, such as a mechanical, electronic, video, or digital device, or machine, whether or not the skill-based amusement machine requires payment for use through a coin or bill validator or other payment of consideration or value to participate in the machine's offering or to activate the machine, provided that all of the following apply:

(a) The machine involves a task, game, play, contest, competition, or tournament in which the player actively participates in the task, game, play, contest, competition, or tournament.

(b) The outcome of an individual's play and participation is not determined largely or wholly by chance.

(c) The outcome of play during a game is not controlled by a person not actively participating in the game.

"Task," "game," and "play" mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single task, game, play, contest, competition, or tournament may be awarded prizes based on the results of play. Advance play for a single task, game, play, contest, competition, or tournament participation may be purchased. The cost of the contest, competition, or tournament participation may be greater than a single non-contest, competition, or tournament play. To the extent that the machine is used in a contest, competition, or tournament, that contest, competition, or tournament has a

defined starting and ending date and is open to participants in competition for scoring and ranking results toward the awarding of prizes that are stated prior to the start of the contest, competition, or tournament.

The act also provides that a skill-based amusement machine is not a "scheme of chance" or a "slot machine."

### **Miscellaneous**

(R.C. 2915.09(A))

Continuing law requires a charitable organization that conducts bingo to use all of the gross receipts from bingo for paying prizes and for other specific listed expenses. It does not specifically refer to using any part of the gross receipts for charitable purposes. Continuing law also specifically requires such an organization to use all of the net profit from bingo, other than instant bingo, for a charitable purpose listed in its bingo license application and described in R.C. 2915.01(Z) or to distribute all of the net profit derived from instant bingo as stated in its bingo license application and in accordance with R.C. 2915.101.

The act specifically states that the requirements for the use of the gross receipts from bingo are subject to the requirements for the use of the net profit from bingo and instant bingo thereby clarifying that the net profit can be used for the statutorily listed charitable purposes. It also replaces "net profit derived from instant bingo" with "net profits from the proceeds of the sale of instant bingo," which is the defined term used in the statutory provisions that regulate the use of the proceeds of instant bingo.

---

## **AUDITOR OF STATE**

- Requires (rather than permits) the Auditor of State to provide, operate, and maintain a uniform and compatible computerized financial management and accounting system known as the "uniform accounting network."
- Authorizes the Auditor of State to provide additional training or educational programs either alone or in collaboration with other public or private entities.
- Expands the time period within which the Auditor of State must hold training programs for newly elected local officials.

### **Uniform accounting network**

(R.C. 117.101)

Under prior law, the Auditor of State was authorized to establish and maintain a uniform and compatible computerized financial management and accounting system known as the "uniform accounting network." The act *requires* the Auditor of State to provide, operate, and maintain this network. (In accordance with ongoing law, the network must be designed to provide public offices, other than state agencies and the Ohio education computer network and public school districts, with efficient and economical access to data processing and management information facilities and expertise.)

### **Training programs**

(R.C. 117.44)

Under continuing law, the Auditor of State provides specified training programs for newly elected township clerks, city auditors, and village clerks, as well as an annual continuing education training program for village clerks. The training programs are designed to enhance local officials' background and working knowledge of government accounting, budgeting and financing, financial report preparation, and the Auditor of State's rules. Any other interested person also may attend a training program upon payment of a registration fee. The act authorizes the Auditor of State's office, alone or in collaboration with any other public or private entity, to provide any other appropriate training or educational programs. Funding for these programs is to be derived from the ongoing State Training Program Fund made up of participants' registration fees.

The training programs for newly elected township clerks, city auditors, and village clerks formerly were conducted after the general election between December 1 and February 15. The act extends this period to April 1.

---

## **OHIO BALLOT BOARD**

- Specifies that the term of office for any member of the Ohio Ballot Board who also is a member of the General Assembly and who was appointed to the Board by an authorized officer of the General Assembly ends on the earlier of (1) the expiration of the term for which the member was



appointed to the Ballot Board or (2) the expiration of the member's General Assembly term.

**Membership term for certain members of the Ohio Ballot Board**

(R.C. 3505.061)

Continuing law requires the Ohio Ballot Board to prescribe the language to be printed on the questions and issues ballot for constitutional amendments proposed by the General Assembly and to prepare the arguments and explanations for certain statewide issues. The Board consists of the Secretary of State and four appointed members; no more than two of the appointed members may be of the same political party. The following persons must each appoint one member of the Board: the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives. Each appointment must be made no later than the last Monday in January in the appropriate year. If any appointment is not made, the Secretary of State must appoint as many qualified members associated with the appropriate political party as necessary. The term of office for those appointed members is four years, with each term ending on the first Monday in February. Any vacancy on the Board is to be filled in the manner provided for original appointments.

The act changes the term of office for members of the Board who also are members of the General Assembly. Under the act, if a member of the General Assembly is appointed to the Board by any of the four authorized General Assembly officers, the member's Board term ends on the earlier of (1) the ending date of the Board term for which the member was appointed or (2) the ending date of the member's term as a member of the General Assembly. Thus, a Board term for a member of the House of Representatives can be no longer than two years, to correspond with the ending date of the member's House of Representatives term. Appointments to fill any vacancies arising from the different ending dates of General Assembly and Board terms are to be filled in accordance with ongoing law.

---

**OHIO BARBER BOARD**

- Increases fees collected by the Ohio Barber Board related to licensure of barbers, barber shops, barber schools, barber teachers, and barber applicants and students.



**Fee increases**

(R.C. 4709.12)

The Ohio Barber Board collects fees related to licensure of barbers, barber shops, barber schools, barber teachers, and barber applicants and students. The act increases these specified fees; however, under continuing law, the Barber Board, subject to approval by the Ohio Controlling Board, retains the ability to charge fees in excess of the amount specified by up to 50% of the specified new amounts. Under the act, the increases in specified fees and those persons to whom the fees apply are as follows:

<b>Barber license and barber shop license</b>	<b>Fees</b>
Barber license examination application	from \$60 to \$90
Application to retake any part of the barber license examination	from \$30 to \$45
Initial barber license	from \$20 to \$30
Biennial renewal of barber license	from \$75 to \$110
Restoration of an expired barber license for each year expired	from \$50 to \$75
Maximum fee for restoration of expired barber license	from \$460 to \$690
Issuance of barber license by reciprocity	from \$200 to \$300
Providing license information about an applicant upon request of the applicant	from \$25 to \$40
Issuance of duplicate barber or barber shop license	from \$30 to \$45
Issuance of barber shop license, inspection of new barber shop, change of ownership, or reopening facilities formerly a barber shop	from \$75 to \$110
Biennial renewal of barber shop license	from \$50 to \$75
Restoration of barber shop license	from \$75 to \$110

<b>Barber school license</b>	<b>Fees</b>
Inspection of new or of relocated licensed barber school premises	from \$500 to \$750
Initial or renewal barber school license	from \$500 to \$1,000
Restoration of barber school license	from \$600 to \$1,000



<b>Barber student registration and teacher licensure</b>	<b>Fees</b>
Barber student registration	from \$25 to \$40
Examination and issuance of initial biennial barber teacher license (eliminates fee for "assistant teachers")	from \$125 to \$185
Renewal of barber teacher license (eliminates fee for "assistant teachers")	from \$100 to \$150
Restoration of barber teacher license/fee per year license expired (eliminates restoration amount/fees for "assistant teachers")	from \$150/\$40 to \$225/\$60
Maximum fee for restoration of expired barber teacher license (eliminates fee for "assistant teachers")	from \$300 to \$450

---

### **OFFICE OF BUDGET AND MANAGEMENT**

- Repeals (1) a requirement that the Office of Budget and Management (OBM), after enactment of an act containing appropriations of federal funds, provide a list of the federal programs associated with the appropriations, and (2) a general statement that a state agency is not required to obtain an executive order to participate in a federal program appearing on that list.
- Modifies a prohibition regarding state agency expenditure of federal funds, to provide that an appropriation authorizes such expenditure even if it does not identify the federal program that is the source of the funds.
- Reestablishes the Family Services Stabilization Fund.
- Permits the transfer to the General Revenue Fund (GRF) of specified amounts that otherwise would have been transferred from the Tobacco Master Settlement Agreement Fund to the Tobacco Use Prevention and Cessation Trust Fund and to the Education Facilities Trust Fund in FY 2004, and requires reimbursement from the Tobacco Master Settlement Agreement Fund in FY 2015 of the amount not transferred to the Tobacco Use Prevention and Cessation Trust Fund in FY 2004 due to the GRF transfer.
- Eliminates the reimbursements required from the Tobacco Master Settlement Agreement Fund in FYs 2013 and 2014, of any amounts

diverted from Ohio's Public Health Priorities Trust Fund in FYs 2002 and 2003.

- Would have required a state agency operating a state institutional facility that the Governor believed should be closed to conduct a survey and analysis of client needs to ensure those needs would be met during the transition and in the client's new setting, and to submit that analysis, devoid of client identification, to the General Assembly at least two months before the closing (VETOED).

### **Federal funds reports and expenditures**

(R.C. 131.35 and 131.38 (repealed))

The act repeals a requirement that, within 60 days after the effective date of an act appropriating any federal funds, the Office of Budget and Management (OBM) provide a list identifying the specific federal programs associated with those funds, by state agency, to the Speaker of the House of Representatives, the President of the Senate, and the Chairpersons of the House and Senate Finance Committees. The act also repeals a general statement that a state agency is not required to obtain an executive order to participate in a federal program appearing on that OBM list.

The act additionally affects a prohibition pertaining to expenditures of federal funds that have been credited to state funds from which the Controlling Board may transfer excess cash balances. Under ongoing law modified by the act, a state agency is prohibited from expending those federal funds unless authorized (1) by a specific appropriation identifying the federal program that is the source of the funds, (2) by the OBM list identifying the associated federal programs (as described above), (3) by the Controlling Board under continuing statutory authority, or (4) by executive order, and until OBM has approved an allotment. The act removes altogether the references to the OBM list in (2), above, and provides that an appropriation authorizes spending even if it does not identify the federal program that is the source of the funds.

### **The Family Services Stabilization Fund**

(R.C. 131.41)

The act reestablishes the Family Services Stabilization Fund in the state treasury, as it existed before its elimination by Am. Sub. H.B. 94 of the 124th General Assembly. The act provides that the Fund is to contain money deposited into it pursuant to acts of the General Assembly, and specifies that any of the Fund's investment earnings are to be credited to the Fund.



Under the act, if there are identified shortfalls for family service activities,<sup>15</sup> the Director of Budget and Management, with advice from the Director of Job and Family Services, may transfer money from the Fund into the General Revenue Fund for the Department of Job and Family Services (ODJFS). Before such a transfer can be made, the Director of Budget and Management is required to exhaust the possibilities for monetary transfers within ODJFS.

The act specifically prohibits using this type of transfer to fund policy changes not contemplated by acts of the General Assembly.

**Transfer and reimbursement of tobacco revenue**

(R.C. 183.02; Section 138)

Ongoing law provides that a certain percentage of the amount credited to the Tobacco Master Settlement Agreement Fund in FY 2004 be transferred to the Tobacco Use Prevention and Cessation Trust Fund and that a certain amount be transferred to the Education Facilities Trust Fund. The act permits the Director of Budget and Management, on or before June 30, 2004, to transfer to the General Revenue Fund specified amounts that otherwise would be transferred to the Tobacco Use Prevention and Cessation Trust Fund and to the Education Facilities Trust Fund. In addition, it requires the Director to transfer to the Tobacco Use Prevention and Cessation Trust Fund, from amounts credited to the Tobacco Master Settlement Agreement Fund in FY 2015, the amount *not* transferred to the Tobacco Use Prevention and Cessation Trust Fund from the Tobacco Master Settlement Agreement Fund in FY 2004 due to the act.

The act also eliminates the requirement that any amounts not transferred to Ohio's Public Health Priorities Trust Fund in FYs 2002 and 2003 due to H.B. 405 and S.B. 242 of the 124th General Assembly be reimbursed from the Tobacco Master Settlement Agreement Fund in FYs 2013 and 2014, respectively. (H.B. 405 and S.B. 242 authorized the diversion of those transfers to the General Revenue Fund for those years.)

**State agency "needs" analyses for facility closures**

(R.C. 107.31)

The Governor vetoed a provision that would have provided a statutory requirement concerning the needs of clients served by a state institutional facility

---

<sup>15</sup> Shortfalls may be due to higher caseloads, federal funding changes, and unforeseen costs due to significant state policy changes.

that the Governor believed should be closed. It would have required the agency operating the facility to conduct a survey and analysis of the needs of each client housed at the facility to ensure that the client's identified needs would be met during the transition and in the client's new setting. A copy of the analysis, devoid of any client identifying information, as well as the agency's proposal for meeting the clients' needs, would have been required to be submitted to the General Assembly at least two months before the closing.

---

### **BOARD OF CAREER COLLEGES AND SCHOOLS**

- Requires the State Board of Career Colleges and Schools to deposit receipts in the Occupational Licensing and Regulatory Fund.

#### **Deposit of funds**

(R.C. 3332.04; Sections 3.04 to 3.06)

The State Board of Career Colleges and Schools regulates most for-profit career schools. Under prior law, receipts of the Board were to have been deposited in the state treasury to the credit of the General Revenue Fund until July 1, 2003, at which time the Career Colleges and Schools Operating Fund was to be created in the state treasury. Receipts of the Board were to be then deposited in this fund. The act eliminates the Career Colleges and Schools Operating Fund and instead directs that receipts of the Board be deposited in the state treasury's Occupational Licensing and Regulatory Fund.

---

### **OHIO CIVIL RIGHTS COMMISSION**

- Requires amounts received by the Ohio Civil Rights Commission, and amounts awarded by a court to the Commission, for attorney's fees, court costs, expert witness fees, and other litigation expenses, to be paid into the state treasury to the credit of the Civil Rights Commission General Reimbursement Fund.

**Civil Rights Commission General Reimbursement Fund**

(R.C. 4112.15)

Ongoing law requires all money paid to the Ohio Civil Rights Commission for copies of Commission documents and for other goods and services furnished by the Commission to be paid into the state treasury and credited to the Civil Rights Commission General Reimbursement Fund. In addition to these moneys, the act requires all amounts received by the Commission, and all amounts awarded by a court to the Commission, for attorney's fees, court costs, expert witness fees, and other litigation expenses, to be paid into the state treasury to the credit of that fund.

---

**DEPARTMENT OF COMMERCE**

- Increases by 100% all current liquor permit fees of \$300 or less and by 25% all such fees of more than \$300.
- Changes the distribution of amounts in the Undivided Liquor Permit Fund so that a greater percentage is distributed to the General Revenue Fund and lesser percentages to the Statewide Treatment and Prevention Fund and to the municipal corporations and townships in which liquor permit premises are located.
- Allows the D-5i liquor permit to be issued to a retail food establishment or food service operation that meets specified criteria and is located in a municipal corporation or township with a population of 75,000 or less.
- Requires the issuance of a Sunday sales permit, whether or not the sales have been authorized by a Sunday sales election, to a liquor permit holder that is a nonprofit corporation that owns or operates a national professional sports museum (D-5g permit holder).
- Authorizes Sunday liquor sales between the hours of 1 p.m. and midnight in a precinct or part of a precinct if those sales are already authorized during those hours and if a question seeking to authorize those sales between the hours of 10 a.m. and midnight is defeated in the precinct.
- Eliminates the 20,000 minimum population of a municipal corporation requirement for the issuance of a D-5j liquor permit to a premises located in a community entertainment district in a municipal corporation.



- Allows the D-5j liquor permit to additionally be issued in a community entertainment district that is located in a township with a population of at least 40,000 or in a municipal corporation with a population of at least 20,000 that contains an amusement park the rides of which have been issued a permit by the state Department of Agriculture or in which not less than \$50 million will be invested in development and construction in the community entertainment district's area located in the municipal corporation.
- Creates the temporary F-5 liquor permit to be issued to the owners or operators of certain riverboats that will be participating in an Ohio riverboat festival.
- Authorizes the Division of Liquor Control to sell at wholesale spirituous liquor in 50 milliliter sealed containers to any holder of a liquor permit that authorizes the sale of spirituous liquor for consumption on the premises where sold rather than limiting the authority of the Division to sell those containers only to hotels that sell spirituous liquor by means of controlled access alcohol and beverage cabinets located in guest rooms as required under prior law.
- Eliminates the registration requirement for travel agencies and tour promoters and the accompanying \$10 registration fee.
- Increases the income of and provides for payment of expenses from the Consumer Finance Fund for the Department of Commerce in administering law relating to high cost mortgages.
- Increases boiler inspection and certificate of operation fees and modifies the boiler and pressure vessel licensing laws.
- Transfers responsibility from the Division of Industrial Compliance to the Board of Building Standards with respect to the inspection of power, refrigeration, hydraulic, heating, and liquefied petroleum gas piping systems except in the case of new systems that may still be inspected by the Division of Industrial Compliance or by local inspectors certified by the Board of Building Standards.
- Codifies into statute, certain existing administrative rules regarding welding and brazing procedures and performance qualifications.

- Establishes regulations for the design, installation, and testing of nonflammable medical gas and vacuum piping systems.
- Clarifies that the Board of Building Standards may place rules for piping systems in the "Ohio Building Code" or with the "Ohio Pressure Piping Systems Rules."
- Increases elevator certificate of operation fees and removes a 50% cap on the authority of the Director of Commerce relative to increasing various elevator, escalator, and moving walkway inspection-related fees.
- Establishes registration requirements and fees for contractors who desire to enter into contracts that are subject to the Prevailing Wage Law and creates the Prevailing Wage Administration Fund to pay the costs to administer that Law.
- Establishes a two-year statute of limitations for the filing of administrative actions with the Director of Commerce alleging a violation of the Prevailing Wage Law.
- Requires an employee who files a written complaint with the Director of Commerce alleging a violation of the Prevailing Wage Law to include documented evidence to support the complaint.
- Extends the time in which an employee may file a lawsuit before being barred from further action under the Prevailing Wage Law from 60 days to 90 days from the date on which the Director of Commerce determines that there has been a violation of the Prevailing Wage Law.

**Increase in liquor permit fees**

(R.C. 4303.02, 4303.021, 4303.03, 4303.04, 4303.05, 4303.06, 4303.07, 4303.08, 4303.09, 4303.10, 4303.11, 4303.12, 4303.121, 4303.13, 4303.14, 4303.141, 4303.15, 4303.151, 4303.16, 4303.17, 4303.171, 4303.18, 4303.181, 4303.182, 4303.183, 4303.184, 4303.19, 4303.20, 4303.201, 4303.202, 4303.203, 4303.204, 4303.21, 4303.22, 4303.23, and 4303.231)

The act increases by 100% all current liquor permit fees that are set at \$300 or less and by 25% all such fees that are set at more than \$300. The specific increase in each liquor permit fee is listed in the table below.

<b>Liquor Permit</b>	<b>Current Fee</b>	<b>Fee Proposed by the Act</b>
<b>A-1</b> (beer manufacturer)	\$3,125 for each plant	\$3,906 for each plant
<b>A-1-A</b> (retail beer and liquor sales on premises of a beer or wine manufacturer)	\$3,125	\$3,906
<b>A-2</b> (wine manufacturer)	\$63 per plant producing 100 wine barrels, of 50 gallons each, or less annually, plus 10¢ per barrel for each such barrel over 100 barrels annually	\$126 per plant producing 100 wine barrels, of 50 gallons each, or less annually, plus 10¢ per barrel for each such barrel over 100 barrels annually
<b>A-3</b> (spirituous liquor manufacturer)	\$3,125 per plant or \$2 per barrel if less than 500 barrels, of 50 gallons each, are produced annually	\$3,906 per plant or \$2 per barrel if less than 500 barrels, of 50 gallons each, are produced annually
<b>A-4</b> (mixed beverage manufacturer)	\$3,125 per plant	\$3,906 per plant
<b>B-1</b> (beer wholesale distributor)	\$2,500 per distributing plant or warehouse	\$3,125 per distributing plant or warehouse
<b>B-2</b> (wine wholesale distributor)	\$250 per distributing plant or warehouse plus 10¢ for each 50-gallon barrel over 1,250 barrels distributed annually	\$500 per distributing plant or warehouse plus 10¢ for each 50-gallon barrel over 1,250 barrels distributed annually
<b>B-3</b> (sacramental wine wholesale distributor)	\$62	\$124
<b>B-4</b> (mixed beverage wholesale distributor)	\$250 per distributing plant or warehouse plus 10¢ for each 50-gallon barrel over 1,000 barrels distributed annually	\$500 per distributing plant or warehouse plus 10¢ for each 50-gallon barrel over 1,000 barrels distributed annually
<b>B-5</b> (wine wholesale distributor)	\$1,250	\$1,563
<b>C-1</b> (beer retailer for sales for off-premises consumption)	\$126	\$252
<b>C-2</b> (wine and mixed beverage retailer for sales for off-premises consumption)	\$188	\$376



<b>Liquor Permit</b>	<b>Current Fee</b>	<b>Fee Proposed by the Act</b>
<b>C-2x</b> (beer retailer for sales for off-premises consumption)	\$126	\$252
<b>D-1</b> (beer retailer for sales for on and off-premises consumption--hotels, certain restaurants, clubs, amusement parks, drug stores, lunch stands, boats, or vessels)	\$188	\$376
<b>D-2</b> (wine and mixed beverage retailer for sales for on- and off-premises consumption--hotels, certain restaurants, clubs, boats, or vessels)	\$282	\$564
<b>D-2x</b> (beer retailer for sales for on- and off-premises consumption)	\$188	\$376
<b>D-3</b> (spirituous liquor retailer for sales for on-premises consumption--hotels, certain restaurants, clubs, boats, or vessels)	\$600	\$750
<b>D-3x</b> (wine retailer for sales for on-premises consumption)	\$150	\$300
<b>D-3a</b> (spirituous liquor retailer for sales for on-premises consumption)	\$750	\$938
<b>D-4</b> (beer and liquor sales at private club)	\$375	\$469
<b>D-4a</b> (beer and liquor sales at airline-sponsored private club at an airport)	\$600	\$750
<b>D-5</b> (beer and liquor sales at restaurant or night club)	\$1,875	\$2,344
<b>D-5a</b> (beer and liquor sales at hotel or motel with at least 50 rooms and a restaurant)	\$1,875	\$2,344



<b>Liquor Permit</b>	<b>Current Fee</b>	<b>Fee Proposed by the Act</b>
<b>D-5b</b> (beer and liquor sales at enclosed shopping center)	\$1,875	\$2,344
<b>D-5c</b> (beer and liquor sales at certain restaurants)	\$1,250	\$1,563
<b>D-5d</b> (beer and liquor sales at restaurants at certain publicly owned airports)	\$1,875	\$2,344
<b>D-5e</b> (beer and liquor sales on riverboats)	\$975	\$1,219
<b>D-5f</b> (beer and liquor sales at restaurants along navigable rivers)	\$1,875	\$2,344
<b>D-5g</b> (beer and liquor sales at a national professional sports museum)	\$1,500	\$1,875
<b>D-5h</b> (beer and liquor sales at a fine arts museum)	\$1,500	\$1,875
<b>D-5i</b> (beer and liquor sales at large restaurants)	\$1,875	\$2,344
<b>D-5j</b> (beer and liquor sales at restaurants in a community entertainment district)	\$1,875	\$2,344
<b>D-5k</b> (beer and liquor sales at a botanical garden)	\$1,500	\$1,875
<b>D-6</b> (Sunday liquor sales)	\$250 (all permits except C-2 permit); \$200 (C-2 permit)	\$500 (all permits except C-2 permit); \$400 (C-2 permit)
<b>D-7</b> (beer and liquor sales in a resort area)	\$375 per month	\$469 per month
<b>D-8</b> (retail sale of tasting samples of beer, wine, and mixed beverages)	\$250	\$500
<b>E</b> (beer and liquor sales on airplanes and railroad cars)	\$250	\$500
<b>F</b> (beer sales at special events)	\$20 per event	\$40 per event
<b>F-1</b> (consumption of beer and liquor by nonprofit)	\$125 per three days	\$250 per three days



<b>Liquor Permit</b>	<b>Current Fee</b>	<b>Fee Proposed by the Act</b>
organizations' members in convention facilities)		
<b>F-2</b> (beer and liquor sales at special events)	\$75 per event	\$150 per event
<b>F-3</b> (beer, wine, and mixed beverage samplings at a beer, wine, or mixed beverages industry convention)	\$150 for five days	\$300 for five days
<b>F-4</b> (wine samplings at wine festivals)	\$30 per day	\$60 per day
<b>G</b> (sale of alcohol for medicinal purposes by pharmacies)	\$50	\$100
<b>H</b> (beer and liquor transportation by common carriers)	\$150	\$300
<b>I</b> (sale of alcohol by wholesale druggists)	\$100	\$200
<b>W</b> (storage of beer and liquor in warehouses by manufacturers and suppliers)	\$1,250 per warehouse	\$1,563 per warehouse

**Changes in the distribution of the Undivided Liquor Permit Fund**

(R.C. 4301.30)

Continuing law requires that all fees that the Division of Liquor Control collects be deposited in the state treasury to the credit of the Undivided Liquor Permit Fund. The act changes how the Fund's moneys must be distributed--in the sense of their *amounts*, not their recipients.

First, the act changes the former requirement that \$50 for each fee received for certain D-2 liquor permits (wine and mixed beverages--hotels, restaurants, clubs, boats, and vessels) and \$25 for each fee received for C-2 liquor permits (wine and mixed beverages retailers) be paid from the Fund into the General Revenue Fund. It instead requires 45% of the Fund be paid into the General Revenue Fund.

Second, the act alters the former requirement that, *prior to the fees received for those D-2 and C-2 liquor permits* being paid into the General Revenue Fund,



21% of the Undivided Liquor Permit Fund be paid into the Statewide Treatment and Prevention Fund. It instead requires generally that 20% of the Undivided Liquor Permit Fund be paid into the Statewide Treatment and Prevention Fund.

Finally, the act changes the former requirement that the *moneys remaining* in the Undivided Liquor Permit Fund (after distribution of moneys as described above) be distributed by the Superintendent of Liquor Control at quarterly calendar periods to municipal corporations and townships in which liquor permit premises are located. It instead requires generally that 35% of the Undivided Liquor Permit Fund be so distributed by the Superintendent.

**Population ceiling for municipal corporations and townships in which the D-5i liquor permit can be issued**

(R.C. 4303.181(I))

Continuing law creates the D-5i permit and allows the holder of this permit to sell beer and intoxicating liquor by the drink in the glass and from the container, for consumption on the premises where sold, and for consumption off the premises where sold in the same manner as holders of D-1 (beer sales) and D-2 (wine and mixed beverages sales) permits may do. Former law allowed the D-5i liquor permit to be issued to a retail food establishment or food service operation that (1) was licensed under the Retail Food Establishments and Food Service Operations Law, (2) met specified criteria relating to seating capacity, square footage, the nature of the meals it offered, the value of its property, and the percentage of its total gross receipts derived from beer and liquor sales, and (3) was located in a municipal corporation or township with a population of 50,000 or less. The act instead allows the D-5i permit to be issued to a retail food establishment or food service operation that is licensed under the Retail Food Establishments and Food Service Operations Law, meets the specified criteria, and is located in a municipal corporation or township with a population of 75,000 or less.

**Sunday sales by a D-5g liquor permit holder**

(R.C. 4303.182)

Under law generally unchanged by the act, D-6 liquor permits, which allow sales between either 10 a.m. and midnight, or 1 p.m. and midnight, on Sunday, generally must be issued to specified liquor permit holders, including a D-5g permit holder (beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for on premises consumption), only if Sunday sales have been authorized in a Sunday sales (local option) election. (R.C. 4303.182(A).) A D-5g permit holder is a nonprofit corporation that is either the owner or the operator of a national professional sports museum (R.C.

4303.181(G)). The act generally retains these provisions but specifically requires the issuance of a D-6 permit to a D-5g permit holder regardless of whether Sunday liquor sales have been authorized at the national professional sports museum in a Sunday sales election. Permitted sales there on Sunday would be between 10 a.m. and midnight. (R.C. 4303.182(A) and (H).)

**Sunday liquor sales hours--special scenario**

(R.C. 4301.361 and 4301.364)

Continuing law authorizes questions to be submitted to the electors of a precinct asking whether the sale of intoxicating liquor, or wine and mixed beverages, on Sunday between the hours of 1 p.m. and midnight or between the hours of 10 a.m. and midnight should be allowed: (1) for consumption on the premises where sold, (2) for consumption on the premises where sold at licensed premises where the sale of food and other goods and services exceeds 50% of the total gross receipts of the permit holder at the premises, or (3) for consumption off the premises where sold. These questions either govern Sunday liquor sales throughout an entire precinct or in just that portion of a precinct where the status of Sunday liquor sales as allowed or prohibited is inconsistent with the status of Sunday liquor sales in the remainder of the precinct. (R.C. 4301.351(B) and (C) and 4301.354(B) and (C), not in the act.)

Under the act, if any of the questions described above relating to Sunday liquor sales in a precinct or portion of a precinct between the hours of 10 a.m. and midnight is submitted to the precinct's voters, if the same question relating to Sunday liquor sales in that precinct or portion of that precinct between the hours of 1 p.m. and midnight was previously submitted to and approved by the voters and is still in effect, and if a majority of the voters voting on the new question vote "no," then sales continue to be allowed in the precinct or portion of the precinct in the manner and under the conditions specified in the previously approved question. Thus, if a question relating to Sunday liquor sales between the hours of 10 a.m. and midnight is submitted in a precinct in which the voters previously approved Sunday liquor sales under the same question between the hours of 1 p.m. and midnight for the precinct or portion of the precinct and that previous election is still in effect, Sunday liquor sales between the hours of 1 p.m. and midnight will continue in the precinct or portion of the precinct even if the voters disapprove the question authorizing Sunday liquor sales between the hours of 10 a.m. and midnight. (R.C. 4301.361(E) and 4301.364(G).)



**Changes in the political subdivisions in which the D-5j liquor permit may be issued**

(R.C. 4303.181(J))

Continuing law creates the D-5j liquor permit, which may be issued to the owner or operator of a retail food establishment or a food service operation licensed under the Retail Food Establishments and Food Service Operations Law. The holder of a D-5j permit may sell beer and intoxicating liquor (1) only by the drink in glass and from the container, for consumption on the premises where sold, and (2) for consumption off the premises where sold similar to the holders of D-1 (beer sales) and D-2 (wine and mixed beverages sales) permits.

Under former law, the D-5j permit could only be issued within a community entertainment district that a municipal corporation with a population of *at least 100,000* designated under procedures specified in continuing law.<sup>16</sup> The act retains this provision but also allows the D-5j liquor permit to be issued in a community entertainment district that is located in (1) a township with a population of at least 40,000, or (2) a municipal corporation with a population of at least 20,000 (a) that contains an amusement park the rides of which have been issued a permit by the state Department of Agriculture or (b) in which not less than \$50 million will be invested in development and construction in the community entertainment district's area located in the municipal corporation.

**Creation of the F-5 permit for riverboats participating in a riverboat festival**

(R.C. 4303.205)

The act creates the F-5 permit and authorizes the Division of Liquor Control to issue it to the owner or operator of a riverboat that has a capacity in

---

<sup>16</sup> "Community entertainment district" means a bounded area that includes or will include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to some or all of the following types of establishments within the district, or other types of establishments similar to these: (a) hotels, (b) restaurants, (c) retail sales establishments, (d) enclosed shopping centers, (e) museums, (f) performing arts theaters, (g) motion picture theaters, (h) night clubs, (i) convention facilities, (j) sports facilities, (k) entertainment facilities or complexes, or (l) any combination of the establishments described in items (a) through (k) that provide similar services to the community (R.C. 4301.80(A), not in the act). Continuing law prohibits (a) more than one D-5j permit from being issued within each community entertainment district for each five acres of land located within the district and (b) more than 15 D-5j permits from being issued within a single community entertainment district.

excess of 55 persons, that is not regularly docked in Ohio, and whose owner or operator has entered into a written contract with a nonprofit organization for the riverboat to participate in a festival. For this purpose, the act defines a "festival" as an event that is organized by a nonprofit organization and includes food, music, and entertainment and the participation of at least five riverboats, and further defines a "nonprofit organization" as any unincorporated association or nonprofit corporation that is not formed for the pecuniary gain or profit of, and whose net earnings or any part of those earnings is not distributable to, its members, trustees, officers, or other private persons, except for the payment of reasonable compensation for services rendered and the distribution of assets on dissolution.

The holder of an F-5 permit may sell beer and any intoxicating liquor, only by the individual drink in glass and from the container, for consumption on the premises where sold until 1 a.m. on any day of the week, including Sunday. But, no F-5 permit can be in effect for more than six consecutive days. Sales under an F-5 permit are not affected by whether sales of beer or intoxicating liquor for consumption on the premises where sold are permitted to be made by persons holding another type of permit in the precinct or at the particular location where the riverboat is located.

The Division must prepare and make available an F-5 permit application form and may require applicants to provide information, in addition to that required by the act, that is necessary for the administration of the F-5 permit law. The Division, however, cannot issue more than one F-5 permit in any one calendar year for the same riverboat. The fee for the F-5 permit is \$180.

#### **Sale of spirituous liquor in 50 milliliter containers**

(R.C. 4301.19)

Under prior law, the Division of Liquor Control was required to sell at wholesale spirituous liquor in 50 milliliter sealed containers to hotels that sell spirituous liquor by means of controlled access alcohol and beverage cabinets in guest rooms, but only for purposes of resale by the hotel in sealed containers by means of controlled access alcohol and beverage cabinets. The act instead authorizes the Division to sell at wholesale spirituous liquor in 50 milliliter sealed containers to any holder of a liquor permit that authorizes the sale of spirituous liquor for consumption on the premises where sold.

**Repeal of travel agency and tour promoter registration requirement**

(R.C. 1333.96, repealed)

The act repeals the section of law that required travel agencies and tour promoters to register with the Director of Commerce and pay a \$10 registration fee, and that also required tour promoters either to have a statement from a licensed financial institution guaranteeing the tour promoter's performance in an amount not less than \$50,000 or to have a bond in the amount of \$50,000 for interstate or international travel or \$20,000 for intrastate travel.

**Consumer Finance Fund; income and expenses administering High Cost Mortgage Law**

(R.C. 1321.21)

Under continuing law, fines collected by the Superintendent of Financial Institutions within the Department of Commerce for violations of law relating to the regulation of so-called "high cost mortgages" are deposited into the Consumer Finance Fund (R.C. 1349.34--not in the act). The Consumer Finance Fund generally (1) is the Fund in the state treasury in which the Superintendent deposits income and pays expenses for administering the Mortgage Lending, Mortgage Broker, Credit Services Organization, Pawnbroker, Precious Metal Dealer, Check Cashing, and Check Cashing Lending Laws, and (2) is a Fund from which administrative costs of the Department of Commerce and the Division of Financial Institutions are paid on a proportionate basis. The act adds that in administering the law relating to high cost mortgages, any *other* fees, charges, penalties, or forfeitures received by the Superintendent under this law and expenses or obligations of the Superintendent and the Department of Commerce incurred pursuant to this law are to be deposited into or paid from the Consumer Finance Fund and to be used as described in (1) and (2) above.

**Boiler and pressure vessel inspections and fees**

(R.C. 4104.01, 4104.02, 4104.04, 4104.06, 4104.07, 4104.08, 4104.15, 4104.18, 4104.19, and 4104.20)

Under prior law, the Board of Building Standards formulated rules for the inspection of boilers and the construction, inspection, and repair of unfired pressure vessels.

The act eliminates the requirement that the Board of Building Standards formulate rules regarding the inspection of either boilers or pressure vessels. Further, the term "unfired pressure vessel" is changed by the act to "pressure

vessel" to more accurately describe the subject of regulation without any apparent substantive effect.

Under prior law, the Superintendent of Industrial Compliance in the Department of Commerce is required to select and contract with one or more persons to maintain responsibility for licensing examinations for steam engineers and high or low pressure boiler operators. The act makes this duty permissive.

Prior law allowed the Director of Commerce, with the advice and consent of the Controlling Board, to raise inspection, licensing, or certificate of operation renewal fees by not more than 50% of the amount of the fee listed in statute. The act eliminates the 50% cap on future fee increases by the Director but retains the requirement that increases are subject to the advice and consent of the Controlling Board.

Under continuing law, the owner of a boiler that is required to be inspected upon installation, and the owner of a boiler that is issued a certificate of inspection, which is later replaced with a certificate of operation must pay a fee to the Superintendent of Industrial Compliance for inspections required upon installation of a boiler and to maintain a certificate of operation. The act increases those fees as follows:

Boilers subject to annual inspection:	\$30 to \$45
Boilers subject to biennial inspection:	\$60 to \$90
Boilers subject to triennial inspection:	\$90 to \$135
Boilers subject to quinquennial inspection:	\$150 to \$225

**Pressure piping systems and welding and brazing regulations**

(R.C. 121.084, 4104.41, 4104.42, 4104.43, 4104.44, 4104.45, 4104.46, 4104.47, and 4104.48; Sections 139.01 and 139.02)

**Pressure piping systems regulation**

Under prior law, the Superintendent of Industrial Compliance issued certificates of competency to persons who have completed an application and successfully passed an examination so that they may act as general, special, or local inspectors of power, refrigerating, hydraulic, heating, and liquefied petroleum gas piping systems. The Director of Commerce then appointed general inspectors of power, refrigerating, hydraulic, heating, and liquefied petroleum gas piping systems from those persons who hold certificates of competency. Under prior law, general inspectors were employees of the state. Any owner or user of a



pressure piping system could designate special inspectors who were employees under the general supervision of registered professional engineers employed by the owner or user to inspect the owner's or user's pressure piping systems. A local inspector was employed by building departments of municipal corporations and counties and, upon application to and approval of the Board of Building Standards, may inspect pressure piping systems for the territory under the jurisdiction of the building department for whom the inspector works.

The act eliminates references to general, special, and local inspectors of pressure piping systems. Instead, the act requires that new power, refrigerating, hydraulic, heating, liquefied petroleum gas, oxygen, and other gaseous piping systems are to be inspected by inspectors designated by the Superintendent of Industrial Compliance in the Department of Commerce or, within jurisdictional limits established by the Board of Building Standards, by individuals certified by the Board who are designated to do so by local building departments, as appropriate. The act also makes corresponding changes to examination and fee requirements to reflect the elimination of references to general, special, or local inspectors.

The act also eliminates the current exemption from inspections and necessity to get a permit for power, refrigerating, hydraulic, heating, and liquefied petroleum gas, oxygen, and gaseous piping systems if the piping is used in air cooling systems in residential or commercial buildings and if the systems do not exceed five tons per system or if the piping is used in air heating systems in residential or commercial buildings and the systems do not exceed 150,000 British thermal units per hour per system.

#### **Welding and brazing procedure regulation**

Under prior law, welding and brazing procedures used in the construction of pressure piping systems were regulated in the Ohio Administrative Code. (See O.A.C. 4101:8-15-01.) The act codifies into statute this rule.

Under the act, no one, other than an individual certified by a private vendor in accordance with rules adopted by the Board of Building Standards is allowed to perform welding or brazing or both in the construction of power, refrigeration, hydraulic, heating, and liquefied petroleum gas, oxygen, or other gaseous piping systems. The act requires each welder or brazer certified by a private vendor to become recertified by a private vendor every five years. The private vendor is required to recertify a welder or brazer who meets the qualifications established by the Board in rule.

Under the act, each manufacturer, contractor, owner, or user of power, refrigerating, hydraulic, heating, liquefied petroleum gas, oxygen, and other

gaseous piping systems is required to conduct tests required in rule by the Board of Building Standards and to certify in writing on forms provided by the Superintendent of Industrial Compliance, that the welding and brazing procedures meet the standards established by the Board. Each manufacturer, contractor, owner, and user is required to maintain at least one copy of the forms provided by the Superintendent and make that copy accessible to any individual certified to make inspections by the Board. The inspector is required to examine the form and determine compliance with the rules adopted by the Board. If the inspector has reason to question the certification or ability of any welder or brazer, the inspector is required to report the concern to the Superintendent of Industrial Compliance. The Superintendent then must investigate those concerns. If the Superintendent finds facts that substantiate the inspectors concerns, then the Superintendent may require the welder or brazer in question to become recertified by a private vendor in the same manner in which five-year recertification is required of each welder and brazer. The Superintendent also has the authority to use the services of an independent testing laboratory to witness the welding or brazing performed on the project in question and to conduct tests on "coupons" to determine whether the coupons meet the requirements of the rules adopted by the Board.

The act also requires each manufacturer, contractor, owner, or user of power, refrigerating, hydraulic, heating, liquefied petroleum gas, oxygen, and other gaseous piping systems to file two complete copies of the aforementioned form with the Superintendent. The Superintendent is required to review the forms to determine whether the welding and brazing procedure specifications and welder and brazer performance qualifications listed on the form comply with rules adopted by the Board. If the procedure specifications and the performance qualifications comply with the rules, the Superintendent is required to indicate approval on the forms and return one copy to the manufacturer, contractor, owner, or user who submitted the forms. If, however, the Superintendent finds to the contrary, the Superintendent is required to indicate on the forms that the procedure specifications and the performance qualifications are not approved and return one copy to the manufacturer, contractor, owner, or user who submitted the forms with an explanation of why the procedure specifications and the performance qualifications were not approved.

### **Intent**

The act expresses the intent of the General Assembly that the provisions of the act are general laws created in the exercise of the state's police power, arising out of matter of statewide concern, and are designed for the health, safety, and welfare of contractors, their employees, and the public. The act also states that it is the intent of the General Assembly that power, refrigerating, hydraulic, heating, and liquefied petroleum gas, oxygen, and other gaseous piping systems will

continue to be inspected as part of the building permit process, enforcement of plumbing and mechanical building codes, and occupancy certification and that the purpose of the act is solely to eliminate duplicative inspection personnel and fees.

**Rules for Gaseous Piping Systems**

(R.C. 4104.44)

The act clarifies that the Board of Building Standards may place the rules it adopts for piping systems either in the "Ohio Building Code," or with the "Ohio Pressure Piping Systems Rules" both of which set of rules the Board is empowered to adopt.

**Elevator certificate of operation fee increase and fee setting authority**

(R.C. 4105.17)

Under prior law, the fee that the Director of Commerce charges for issuing or renewing a certificate of operation for an elevator that is inspected every six months is \$105 plus \$10 for each floor where the elevator stops. The act increases this fee to \$200 and retains the \$10 per floor fee.

Previously, the Board of Building Standards was required to assess a fee of \$3.25, in addition to any other fees charged, for each certificate of operation issued or renewed for a permanent new elevator. Under the act, the Board is required to charge the same \$3.25 fee, in addition to any other fees charged, for each certificate of operation issued or renewed for a permanent new escalator or moving walk, for an elevator that is required to be inspected every six months, and for an elevator that is required to be inspected every 12 months.

Under prior law, the Director of Commerce, subject to the approval of the Controlling Board, could establish fees up to 50% in excess of the fees in statute for inspections or attempted inspections of elevators, escalators, and moving walks and for inspections of elevators, escalators, and moving walks that have been repaired and put back into service.

The act removes the 50% cap on the ability to raise inspection fees and adds that fees charged for issuing or renewing certificates of operation for moving walks, escalators, elevators inspected every six months, and elevators inspected every 12 months also may be increased by any amount by the Director, subject to the approval of the Controlling Board.

## **Prevailing Wage Law**

### **Statute of limitations**

(R.C. 4115.21)

Ohio's Prevailing Wage Law generally requires public authorities engaging in the construction of a public improvement that costs above specified threshold amounts to ensure that workers employed on the project are paid the prevailing wage. The "prevailing wage" is the sum of the basic hourly rate of pay, certain employer contributions to funds, plans, and programs, and fringe benefit costs such as insurance and vacation leave. It is determined by the Director of Commerce and cannot be less than the prevailing wages payable in the same trade or occupation in the locality of the public improvement under collective bargaining agreements.

An interested party may file a complaint with the Director of Commerce alleging a violation of the Prevailing Wage Law. The Director, upon receipt of a complaint, must investigate. If the Director determines that no violation has occurred or that the violation was not intentional, or, if the Director has not ruled on the merits of the complaint within 60 days after its filing, the interested party may appeal the decision to the court of common pleas of the county where the violation is alleged to have occurred.

The act requires an interested party to file the party's complaint with the Director within two years after the completion of the public improvement project upon which the violation is alleged to have occurred.

### **Complaint procedures**

(R.C. 4115.10)

Any employee upon any public improvement who is paid less than the prevailing rate of wages applicable thereto may file a complaint in writing with the Director of Commerce on a form furnished by the Director. The prevailing wage is the rate paid for comparable work in the private sector under collective bargaining agreements in force within the county where the public improvement is to be undertaken. At the written request of any employee paid less than the prevailing rate of wages, the Director is required to take an assignment of a claim in trust for the assigning employee and bring any legal action necessary to collect the claim.

Under the act, an employee who files a written complaint with the Director is required to include with that written complaint, documented evidence to

demonstrate that the employee was paid less than the prevailing wage in violation of the Prevailing Wage Law.

**Procedure for filing a lawsuit**

(R.C. 4115.10)

Prior law allows an employee to file suit for recovery within 60 days of the Director's determination of a violation of the Prevailing Wage Law. Under the act, an employee is allowed to file suit for recovery within 90 days of the Director's determination of a violation of the Prevailing Wage Law.

---

**DEPARTMENT OF DEVELOPMENT**

- Expands the Department of Development's duties to include the promotion of economic growth in Ohio.
- Changes the name of the Ohio One-Stop Business Permit Center to the Ohio First-Stop Business Connection.
- Repeals the statute creating the discontinued Defense Conversion Assistance Program.
- Removes an obsolete requirement that the Director of Development provide the Joint Legislative Committee on Tax Incentives with copies of the Director's determinations on job relocations under the Rural Industrial Park Loan Program.
- Adds the Lieutenant Governor or the Lieutenant Governor's designee as a member of the Clean Ohio Council.
- Removes the Director of Development as the chairperson of the Clean Ohio Council, instead requires the Governor to appoint a member of the Council to serve as chairperson, requires the Director to serve as vice-chairperson unless the Director is appointed chairperson, and requires the Council annually to select a vice-chairperson from among its members if the Director is appointed chairperson.
- Allows investment earnings credited to the Clean Ohio Revitalization Fund to be used indefinitely to pay costs incurred by the Department and



the Environmental Protection Agency for purposes of the brownfield portion of the Clean Ohio program.

- Makes the Innovation Ohio Loan Fund a fund in the state treasury, rather than a custodial fund.
- Directs the Governor to appoint the chairperson of the Ohio Housing Finance Agency and permits any member of the agency to be elected as vice-chairperson.
- Establishes 45 fees that county recorders collect for deposit in the Low- and Moderate-Income Housing Trust Fund, doubling the amount of fees that recorders formerly collected, and revises expenditure requirements for the Fund.
- Transfers the Ohio Coal Development Office, as of July 1, 2003, from the Department to the Ohio Air Quality Development Authority.
- Extends the authority of a municipality or board of county commissioners to enter into enterprise zone agreements, previously scheduled to expire on June 30, 2004, until October 15, 2009, and provides that cities designated as urban clusters in rural statistical areas may designate one or more areas within their boundaries as enterprise zones, and may enter into enterprise zone agreements after the Director certifies a proposed enterprise zone.
- Permits taxpayers who have been granted a nonrefundable tax credit under the Ohio Venture Capital Program to carry forward unused portions of the credit for a period of ten years.

### **Duties of the Department**

(R.C. 122.04)

Continuing law outlines the duties of the Department of Development. These include a variety of specific economic development-related functions. Examples include (1) maintaining a continuing evaluation of the sources available for the retention, development, or expansion of industrial and commercial facilities in the state through both public and private agencies and (2) assisting in the development of facilities and technologies that will lead to increased,

environmentally sound use of Ohio coal. The act adds the promotion of economic growth in Ohio to the list of the Department's duties.

**Office of Small Business**

(R.C. 122.08)

Under ongoing law, the Office of Small Business within the Department of Development must, among other duties, operate a center that assists individuals in identifying and preparing applications for business licenses, permits, and certificates and serves as the central public distributor for all forms, applications, and other information related to business licensing. The act changes the name of the center from the "Ohio One-Stop Business Permit Center" to the "Ohio First-Stop Business Connection."

**Defense Conversion Assistance Program**

(R.C. 122.12)

Prior law provided for the Defense Conversion Assistance Program, which was a program meant to address reduced federal defense spending. The goal of the program was to assist defense-related businesses and their employees in making transitions into other types of industry. The act repeals the statute that created this program because the program has been discontinued.

**Submission of determination on job relocation to the Joint Legislative Committee on Tax Incentives**

(R.C. 122.25)

Under the Rural Industrial Park Loan Program, nonprofit economic development organizations and certain private developers are eligible to receive financial assistance in the form of loans and loan guarantees for land acquisition, construction, renovation, and other projects associated with the development and improvement of industrial parks. An industrial park developed or improved with assistance from the Rural Industrial Park Loan Program can be the site of jobs relocated from elsewhere in Ohio if the Director of Development makes a written determination that the site from which the jobs would be relocated cannot meet the needs of the relocating employer. The Director is required to submit a copy of the written determination to members of the General Assembly whose districts are affected, formerly, to the Joint Legislative Committee on Tax Incentives.

The Joint Legislative Committee on Tax Incentives no longer meets. Accordingly, the act removes the requirement that the Director submit the written determination to the Joint Committee.

### **Clean Ohio Council membership**

(R.C. 122.651)

Continuing law establishes the Clean Ohio Council to award grants and make loans under the brownfield portion of the Clean Ohio Program. The Council consists of the Director of Development or the Director's designee, the Director of Environmental Protection or the Director's designee, the Director of the Ohio Public Works Commission as a nonvoting, ex officio member, a majority member of both the Senate and the House of Representatives, a minority member of both the Senate and the House of Representatives, and seven members appointed by the Governor. The act adds the Lieutenant Governor or the Lieutenant Governor's designee as a member of the Council.

Prior law required the Director of Development to serve as the chairperson of the Council and required the Council annually to select a vice-chairperson from among its members. The act removes the Director as the chairperson and requires the Governor to appoint a member of the Council to serve as chairperson. Further, the act requires the Director to serve as the vice-chairperson of the Council unless appointed chairperson. If the Director is appointed chairperson, the Council annually must select from among its members a vice-chairperson to serve while the Director is chairperson.

### **Use of investment earnings of Clean Ohio Revitalization Fund**

(R.C. 122.658)

The Clean Ohio Revitalization Fund consists of money credited to it from revenue bonds that are issued for purposes of the Clean Ohio program to pay the costs of brownfield remediation projects. Prior law provided that until July 26, 2003, investment earnings credited to the Fund could be used to pay costs incurred by the Department of Development and the Environmental Protection Agency under the brownfield component of the Clean Ohio program. The act removes the deadline, thus allowing the investment earnings to be used for those purposes indefinitely.

### **Innovation Ohio Loan Fund**

(R.C. 166.16)

Prior law created the Innovation Ohio Loan Fund as a special revenue fund and a trust fund in the custody of the Treasurer of State but separate from and not a part of the state treasury. This type of fund is known as a custodial fund of the Treasurer of State, and its assets may be spent without an appropriation.

The act makes the Fund a fund in the state treasury, rather than a custodial fund. Relatedly, the stipulation that the Treasurer of State is to serve as an agent for the Director of Development with respect to the Fund, is removed. The act specifies that all investment earnings on the cash balance in the Fund are to be credited to the Fund, but removes the provision that permitted investment income to be credited to particular accounts in the Fund if so provided in bond proceedings.

**Ohio Housing Finance Agency chairperson and vice-chairperson**

(R.C. 175.03)

The act directs the Governor to appoint the chairperson of the Ohio Housing Finance Agency (OHFA) instead of having the Director of Development or the Director's designee serve as chairperson as under prior law (presumably the Governor still could appoint the Director of Development as chair). The act permits any OHFA member to be elected vice-chairperson instead of limiting the office to one of the nine members appointed by the Governor, thereby qualifying the two ex-officio members, the Director of Commerce and the Director of Development or their designees, to be elected as vice-chairperson.

**Housing trust fund fees**

(R.C. 317.32, 317.36, 319.63, 1563.42, 1702.59, 2505.13, 4141.23, 4509.60, 5111.021, 5310.15, 5719.07, 5727.56, 5733.18, 5733.22, 6101.09, and 6115.09; Section 200)

The act establishes 45 new fees for county recorders to collect to fund the Low- and Moderate-Income Housing Trust Funds. The fees are in addition to the service fees that recorders charge under continuing law. Under the act, those service fees are called "base fees" and the new fees are called "housing trust fund fees." The act directs recorders to charge both the base fee and the housing trust fund fee for 45 various services that recorders perform, including filing maps, zoning resolutions and plats, deeds, mortgages, liens, and release of liens, and photocopying documents and records. The amounts charged as housing trust fund fees are equal to the amounts charged as service fees, thus doubling the amount that county recorders charge in fees.

The new housing trust fund fees are deposited in the Low- and Moderate-Income Housing Trust Fund, which exists under continuing law and is one source of revenue for Department of Development (DOD) and Ohio Housing Finance Agency (OHFA) programs. The new fees provide a dedicated source of funding for the DOD and the OHFA.

The new fees include a \$5 housing trust fund fee charged when maps of abandoned mines are filed, a \$2 fee when a certificate is filed for the release of a property tax lien, a fee of \$50 when a zoning resolution is filed, and a fee of \$1 per page for photocopying a document other than at the time of recording.

The act permits county auditors to retain 1% of the amount collected for expenses if the auditor pays the amounts to the Treasurer of State within the first 30 days of the quarter. The retained amount is to be deposited in the county general fund and used by the county recorder in administering the trust fund fee. The act directs the Treasurer of State to deposit any amount collected over \$50 million annually in the state's General Revenue Fund.

The act specifically establishes August 1, 2003, as the effective date for collecting the new fees.

### **Expenditures from the Housing Trust Fund**

(R.C. 175.21 and 175.22)

The act stipulates new requirements for the expenditure of money from the Low- and Moderate-Income Housing Trust Fund. New areas that receive specified funding amounts under the act include: transitional and permanent housing programs for homeless persons (not more than 6% of any current year appropriation authority); training and technical assistance to nonprofit development organizations in underserved areas (at least \$100,000); the Emergency Shelter Housing Grants Program (not more than 7%); and the Resident Services Coordinator Program in the Department of Aging (at least \$250,000). In another new expenditure area, the act requires that grants and loans be made from the Fund to community development corporations and the Ohio Community Development Finance Fund, a private nonprofit corporation (not more than 5%).

### **Ohio Coal Development Office transfer**

(R.C. 1551.11, 1551.12, 1551.15, 1551.311, 1551.32, 1551.33, 1551.35, 1555.02 to 1555.06, 1555.08, and 1555.17; Sections 13, 38, and 176)

The continuing general purpose of the Ohio Coal Development Office is to support research and development in the use of Ohio coal in an environmentally sound and economical manner, including by financing technology and facilities with the proceeds of state general obligation bonds. The act transfers the Office from the Department of Development, which generally has economic development and energy-related functions, to the Ohio Air Quality Development Authority (OAQDA), which under continuing law issues revenue bonds to provide financing for the installation of air pollution control equipment by private and governmental

entities and to provide financial assistance for energy efficiency and conservation and for ethanol and other bio-fuel production facilities.

The transfer is effective July 1, 2003. The act does not change the authority of the Coal Development Office, but confers on OAQDA all of the prior authority of the Director of Development related to the Office, including the duty to appoint the Office director.

The act provides that upon the transfer, instead of acting with the approval of the Director of Development, the Coal Development Office must act with the affirmative vote of a majority of the seven OAQDA members. Under continuing law, the OAQDA's members consist of the Director of Environmental Protection and the Director of Health, and five members appointed by the Governor with the advice and consent of the Senate.

The act makes several changes regarding the membership of the technical advisory committee that assists the Coal Development Office. Under prior law, the advisory committee consisted of the following: (a) one representative each of coal production companies, the United Mine Workers of America, electric utilities, manufacturers that use Ohio coal, and environmental organizations, appointed by the Office director, (b) two people with coal research and development backgrounds, appointed by the Office director, (c) four legislators, (d) one member of the Public Utilities Commission appointed by the Office director, (e) the Director of Environmental Protection, representing the Environmental Protection Agency (EPA), (f) the Ohio Water Development Authority (OWDA), and (g) the OAQDA. The act replaces OAQDA membership on the advisory committee with membership of the Director of Development, clarifies that OWDA is to be represented by one of its members designated by OWDA, and removes the provision specifying that the Director of EPA represents that agency on the committee.

The act further contains standard, temporary law provisions necessary for the transfer of the Coal Development Office to OAQDA and specifically provides that, subject to the lay-off provisions of continuing law, all of the employees of the Coal Development Office of the Department of Development are transferred to the Coal Development Office of the OAQDA, and they retain their positions and benefits. Under the act, however, all Office employees will be in the unclassified service and serve at the pleasure of OAQDA.



**Authority to designate enterprise zones and enter into enterprise zone agreements extended**

(R.C. 5709.61, 5709.62, 5709.63, and 5709.632)

Continuing law permits municipal corporations and boards of county commissioners to designate certain areas within the municipality or county as "enterprise zones." Under prior law, only a municipal corporation that is defined by the United States Office of Management and Budget as a central city of a metropolitan statistical area could designate areas within the municipality as enterprise zones.

After designating an area as an enterprise zone, the city or board must petition the Director of Development for certification of the designated enterprise zone. Under continuing law, if the Director of Development certifies a designated enterprise zone, the municipality or board may then enter into an enterprise zone agreement with a business for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand its operations within the enterprise zone, or to relocate its operations to the zone, in exchange for tax relief and other incentives. Prior law provided that the authority of a municipality or board to enter into enterprise zone agreements expired on June 30, 2004. The act extends the authority to enter into these agreements until October 15, 2009.

In addition, the act permits a city designated as an urban cluster in a rural statistical area to designate areas within the city as enterprise zones. (The act does not define the phrase "urban cluster in a rural statistical area." Nor does the act specify the entity that designates cities as such.) The act specifies that, like counties and central cities of metropolitan statistical areas, cities designated as urban clusters in rural statistical areas cannot enter into enterprise zone agreements unless the Director of Development has first certified the designated enterprise zone.

**Carry forward of Ohio Venture Capital Program tax credits**

(R.C. Chapter 150. (not in the act); R.C. 5725.19, 5729.08, 5733.49, and 5747.80)

The Ohio Venture Capital Program is a program designed to increase the amount of private investment capital in Ohio for (1) Ohio-based businesses that are in seed or early stages of business development and (2) established Ohio-based businesses that are developing new methods or technologies. Under the program, moneys in a "program fund" are invested in venture capital funds, which in turn invest in the businesses described in (1) and (2) above. The program fund is funded through investment by private investors. Some of the profits from the

program fund are put into the Ohio Venture Capital Fund (OVCF), which is used to secure the private investors against losses. To the extent the moneys in the OVCF are inadequate to secure an investor against losses, the investor is eligible for a tax credit against the income tax, corporate franchise tax, or the franchise taxes on domestic and foreign insurance companies to cover the losses not covered by the OVCF. Investors may select a nonrefundable or refundable credit. (A "nonrefundable" credit is a credit that cannot be claimed to the extent it exceeds a taxpayer's tax liability.)

The act permits taxpayers who have been awarded a nonrefundable credit to carry forward unused portions of their credits for a period of ten years. So, to the extent that a credit exceeds a taxpayer's tax liability in a given year, the taxpayer can carry forward the excess to an ensuing year and use it against the taxpayer's tax liability for that year. The act specifies that the amount of any excess credit allowed in an ensuing year must be deducted from the balance carried forward to the next year.

---

## OHIO BOARD OF DIETETICS

- Increases fees for dietician licenses.

### Board of Dietetics fees

(R.C. 4759.08)

The Ohio Board of Dietetics charges and collects fees for dietician licenses. The act increases specified fees as follows:

- (1) Initial license or reactivation of an inactive license--\$125 (from \$110).
- (2) Reinstatement of a license that has been revoked or suspended or that has lapsed--\$180 (from \$165).
- (3) License renewal--\$95 (from \$80).
- (4) Limited permit or renewal of a limited permit--\$65 (from \$55).



---

## DEPARTMENT OF EDUCATION

- Revises from 2.8% to 2.2% the inflation factor applied to the per pupil base-cost formula amount, which results in base-cost amounts of \$5,058 per pupil in FY 2004 (instead of \$5,088 under prior law) and \$5,169 per pupil in FY 2005 (instead of \$5,230 under prior law).
- Eliminates the statutorily specified base-cost formula amounts for FY 2006 and FY 2007.
- Eliminates the requirement that the General Assembly every six years recalculate the base cost of providing an adequate education.
- Adjusts the cost-of-doing-business factors for the individual counties, but maintains the maximum variance of 7.5% between the base county (Gallia County) and the highest-cost county (Hamilton County).
- Eliminates the practice of substituting a school district's three-year average formula ADM in the base-cost formula, in place of its current-year formula ADM, if the three-year average is greater than the current-year number.
- Reduces from 25% to 20% the percentage of joint vocational school district (JVSD) students that may also be included in the formula ADM of city, local, and exempted village school districts or community schools.
- Requires the Department of Education, by January 1, 2004, to provide to the General Assembly a feasible standard for measuring school district attendance rates.
- Provides additional state transitional aid in FY 2004 and FY 2005 to prevent any school district's state "SF-3 funding plus charge-off supplement" from decreasing by more than 5% from the previous fiscal year.
- Reduces the parity aid phase-in percentages for FY 2004 and FY 2005 to 58% and 76%, respectively, from 60% and 80%, respectively.
- Increases from 3 mills to 3.3 mills the threshold at which school districts qualify for the state excess cost supplement, which is paid to districts



whose combined calculated local shares of special education, vocational education, and transportation funding are disproportionately high.

- Continues the phase-in of the six special education funding weights by establishing an 88% payment rate in FY 2004 and a 90% payment rate in FY 2005.
- Specifies that school districts must use subsidies for speech services only for speech language pathology services.
- Maintains for FY 2004 and FY 2005 several components of school funding formulas as prescribed for FY 2003, including the threshold amounts for reimbursement of special education catastrophic costs, the personnel allowance for the speech services subsidy, and the per pupil subsidy paid to educational service centers.
- Increases the personnel allowance used to calculate the GRADS subsidy from \$46,260 in FY 2003 to \$47,555 in FY 2004 and FY 2005.
- Grants most school districts a 2% increase in their FY 2004 and FY 2005 DPIA subsidies, regardless of any changes in enrollment or in the proportion of children receiving public assistance.
- Requires joint vocational school districts (JVSDs) receiving weighted funding for vocational education and associated services to spend those funds as approved by the Department of Education, and specifies that those expenses approved by the Department for all school districts include only career-technical programming.
- Requires school districts and the Department of Education annually to report data regarding the expenditure of weighted funding for vocational education and associated services.
- Specifies that the portion of the cost of providing special education and related services to a student by a JVSD that exceeds the calculated state and local shares of base-cost and special education payments made to the JVSD must be paid for by the student's resident district or, if the student is enrolled in a community school, by that school.
- Requires that each JVSD spend the amount calculated for combined state and local shares of base-cost and special educational payments for special



education and related services as approved by the Department of Education.

- Beginning FY 2005, establishes new state Head Start programs: "Title IV-A Head Start" and "Title IV-A Head Start Plus" to be operated by the Department of Education and funded with federal money transferred from the Department of Job and Family Services.
- Authorizes the Department of Job and Family Services and the Department of Education to enter into an interagency agreement and to develop procedures for operation of the state Title IV-A Head Start and Title IV-A Head Start Plus programs.
- Beginning September 1, 2003, authorizes the Department of Job and Family Services to license Head Start programs, instead of the Department of Education as under prior law.
- Creates the Head Start Partnership Study Council to provide advice and assistance to the Departments of Education and Job and Family Services in FY 2004 and FY 2005 in designing and implementing the new Title IV-A Head Start Plus Program.
- Requires the Legislative Office of Education Oversight (LOEO) to study partnership agreements between Head Start providers and child care providers and to report findings to the General Assembly by December 31, 2004.
- Permits the Legislative Committee on Education Oversight, by majority vote, to modify the due dates and scope of studies assigned by the General Assembly to LOEO in order to accommodate the availability of data and resources.
- Reinstates students whose only identified disability is a speech and language handicap to the calculation of whether a school district exceeds the maximum average ratio of 25 "regular student population" students per teacher.
- Specifies that vocational, school-age special education, and handicapped preschool units be approved by the Department of Education rather than the State Board of Education.



- Specifies that handicapped preschool units will be available for children who were three years old by December 1, instead of September 30.
- Permits the Department of Education to reassign school buses purchased with state subsidies by county MR/DD boards or school districts when those buses are no longer needed for the transportation of certain special education or nonpublic school students.
- Renames the Auxiliary Services Mobile Unit Replacement and Repair Fund as the "Auxiliary Services Reimbursement Fund."
- Increases, from \$2,500 to \$3,000 per student, the maximum scholarship award amount under the Pilot Project Scholarship Program (Cleveland voucher program) for students in grades kindergarten through eight.
- Expands eligibility for scholarship awards under the Pilot Project Scholarship Program to ninth and tenth graders and sets the maximum award amount for those students at \$2,700 per student.
- Increases the amount of additional tuition a private school may charge a student in kindergarten through eighth grade receiving a scholarship award of 75% of the maximum award under the Pilot Project Scholarship Program, and permits a private school to charge the difference between actual tuition and the scholarship amount for any high school student.
- Directs the state Superintendent of Public Instruction to make payments directly to providers of tutorial assistance through the Pilot Project Scholarship Program instead of to the students' parents.
- Replaces the requirement that a school district in fiscal emergency propose a tax levy to the voters sufficient to eliminate the operating deficit and repay outstanding obligations with an option of proposing (or not proposing) to the voters a tax levy sufficient to generate enough funds to produce a positive fiscal year end cash balance by the fifth year of its five-year forecast.
- Prohibits the Superintendent of Public Instruction from including, in guidelines for declaring a school district to be under a "fiscal caution," a requirement that a district submit financial statements according to "Generally Accepted Accounting Principles" ("GAAP").

- Prohibits a community school whose contract has been terminated from entering into a new contract with another sponsor.
- Allows a community school to enter into a contract with a new sponsor, provided the school notifies its original sponsor within 180 days prior to the contract's expiration that it will not renew the contract.
- Permits an educational service center to sponsor a community school in any "challenged school district."
- Requires the automatic withdrawal of a community school student after missing 105 *consecutive* (rather than *cumulative* under prior law) hours of learning opportunities without legitimate excuse.
- Requires the Department of Education to pay to community schools the per pupil amount of state parity aid funding that otherwise would be paid to their students' resident school districts, and requires the Department to deduct the corresponding amount from the students' resident districts.
- Specifies that the amount paid to community schools and deducted from the state aid of their students' home districts cannot exceed the home districts' total state payments and property tax rollback reimbursement.
- Requires the Department of Education in FY 2004 and FY 2005 to pay a subsidy to certain community schools in which at least half of the total number of enrolled students are severe behavior handicapped students.
- Makes other changes to the community school law.
- Eliminates the requirement that the Department of Education appoint transportation coordinators to oversee transportation of students by school districts.
- Removes a school district's authority to limit textbook purchases to only six subjects per year, and eliminates the prohibition against a school district changing or revising a textbook selection more frequently than once every four years.
- Provides that school district business managers, in general, are to be employed in the same manner as other administrators.

- Requires "academic watch" and "academic emergency" school districts to administer practice versions of the Ohio Graduation Tests (OGT) to ninth graders beginning in the 2003-2004 school year.
- Requires certain high schools in "academic emergency" districts to provide intervention services to students whose scores on the practice OGT indicate that they are unlikely to pass the real OGT to qualify for a diploma.
- Eliminates the requirement that school districts issue annual reports of school progress.
- Eliminates a public school's authority to operate a school savings system for students to deposit money into personal savings accounts.
- Permits the board of education of a local school district to propose severing the district from the educational service center (ESC) to which it currently belongs and instead annexing to an ESC adjacent to its current ESC, subject to approval of the governing board of the ESC to which the district would be annexed and the State Board of Education, and subject to a referendum of the district voters, if a petition is filed within 60 days.
- Eliminates the requirements that the State Board of Education adopt standards for service plans by ESCs, approve such plans developed by ESCs, and evaluate ESCs every five years.
- Eliminates the requirement that ESCs certify their operating budgets to the State Board of Education.
- Clarifies procedures for the Department of Education to follow in calculating payments to ESCs.
- Allows an ESC that sponsors a community school (other than an Internet- or computer-based community school) to receive state per pupil payments for the students of that school in FY 2004 and FY 2005, but only if sufficient funds are appropriated to first pay all ESCs for the students of the school districts they serve.
- Eliminates provisions for ESC superintendents to approve the employment of teachers, administrators, and superintendents by local school districts.

- Specifically permits ESCs to conduct searches and recruitment of candidates for employment in school districts.
- Eliminates provisions for ESC superintendents to approve the assignment of students and staff to respective schools in local school districts.
- Clarifies the method of calculating cost of ESC office space provided by a board of county commissioners.
- Eliminates the requirement that ESCs gather from local school districts and submit to the State Board of Education on their behalf annual reports of district statistics.
- Transfers authority to propose the creation of a new local school district from ESCs to the State Board of Education.
- Eliminates the requirement that the State Board of Education adopt a standard establishing a maximum ratio of 25 pupils to one teacher in classes for bilingual multicultural pupils.
- Eliminates the requirement that each county auditor file with the Superintendent of Public Instruction each school district's certificate that appropriations do not exceed estimated revenues.
- Requires school districts and community schools to convert to a software package that is certified by the Department of Education for the management and reporting of data under the Education Management Information System (EMIS) by July 1, 2004.
- Requires a board of education that receives a petition requesting a transfer of territory to an adjoining district to cause the board of elections to check the sufficiency of signatures on that petition.
- Requires the Department of Education, in consultation with stakeholders, to recommend a plan to the General Assembly for the establishment of an Ohio Regional Education Delivery System (OREDS) by March 31, 2004, to provide "minimum core" services and technical assistance to school districts and chartered nonpublic schools.
- Requires the Department, in consultation with stakeholders, to develop an accountability system for OREDS.

- Requires school districts and schools selected by the Superintendent of Public Instruction for participation in the National Assessment of Educational Progress (NAEP) to participate in the assessment.
- Establishes a temporary pilot project for FY 2004 and 2005 under which the parent of a child identified as autistic who is eligible for special education and related services from the child's resident school district may receive a scholarship of up to \$15,000 (which is deducted from the account of the child's resident district) to pay all or part of the tuition for a special education program provided by another school district, another public entity, or a nonpublic entity.
- Requires the Legislative Office of Education Oversight to conduct a formative evaluation of the pilot project special education program and report findings to the General Assembly by March 1, 2005.
- Requires generally that students initially identified with a disability in the 2004-2005 or 2005-2006 school year undergo, at private expense, a comprehensive eye exam by a licensed optometrist or physician within three months after beginning special education services.
- Requires the Department of Education to provide the results of educator licensure examinations to the Ohio Board of Regents.
- Reduces the stipend for teachers who are National Board certified from \$2,500 to \$1,000 per year if they are accepted into the certification program after May of 2003 or are certified after 2004.

### **Background on state education financing litigation**

In *DeRolph I*, in 1997, the Supreme Court of Ohio ordered the General Assembly to create a new school funding system.<sup>17</sup> In that decision, the Court held that the state's then-current school funding system did not provide a "thorough and efficient system of common schools" as required under Article VI, Section 2 of the Ohio Constitution. Responding to that order, in 1997 and 1998,

---

<sup>17</sup> *DeRolph v. State (1997)*, 78 *Ohio St.3d* 193.

the 122nd General Assembly enacted several bills dealing with the financing and performance management of public schools.<sup>18</sup>

On May 11, 2000, the Court held the new system unconstitutional on essentially the same grounds.<sup>19</sup> In *DeRolph II*, the Court praised the effort made by the legislature but said that more had to be done in order to comply with its order. While the Court did not give the General Assembly precise instructions as how to fix the school funding system, it did highlight several areas that it found needed attention. Those areas were as follows: (1) overreliance on local property taxes, (2) increasing the basic aid formula amount, (3) continued attention to school facilities, (4) improving the school solvency assistance program, (5) funding of all state mandates, (6) eliminating "phantom revenue," and (7) adopting "strict, statewide academic guidelines." The General Assembly was given until June 15, 2001, to come up with a new system.<sup>20</sup>

Building on the previous legislative work, the 124th General Assembly substantially changed the state's academic accountability provisions, including a requirement that the Department of Education develop new academic standards to which new student diagnostic assessments and achievement tests are to be aligned.<sup>21</sup> In addition, in the 2001-2003 biennial budget act, the legislature made changes to the school funding system, including (among other things) enacting a

---

<sup>18</sup> Among these bills were: Am. Sub. H.B. 215, which was the general operating budget for the 1997-1999 biennium; Am. Sub. S.B. 102, which substantially amended the Classroom Facilities Assistance Program and created the Ohio School Facilities Commission; Am. Sub. S.B. 55, which added new academic accountability requirements; Sub. H.B. 412, which changed school district fiscal accountability requirements; and Am. Sub. H.B. 650 and Am. Sub. H.B. 770, which together created a new school funding system. In addition, in 1999, the 123rd General Assembly passed Am. Sub. H.B. 282, which enacted a separate education budget and made some changes to the previous legislation.

<sup>19</sup> *DeRolph v. State* (2000), 89 Ohio St.3d 1.

<sup>20</sup> In 2000, the 123rd General Assembly enacted two other bills also directed at some of the concerns expressed by the Court in its *DeRolph II* order. Am. Sub. S.B. 272 made substantial changes in the school facilities assistance programs. Am. Sub. S.B. 345 amended the school district solvency assistance program and modified requirements of some school district mandates.

<sup>21</sup> Am. Sub. S.B. 1 of the 124th General Assembly.

new parity aid subsidy and creating a new system of six special education funding weights instead of three weights as under prior law.<sup>22</sup>

The state submitted these and the earlier changes to the Court prior to the June 15, 2001, deadline. The Court heard oral arguments on the matter shortly thereafter. On September 6, 2001, the Court issued its third opinion in the case (*DeRolph III*).<sup>23</sup> In that decision, the majority found that most components of the school funding system complied with its earlier orders and held that, if the General Assembly enacted certain changes, the new system would be constitutional. Specifically, the Court instructed the General Assembly to fully fund the new parity aid subsidy by July 1, 2003, and to make adjustments to the method of calculating the base cost of an adequate education (the base cost).

The state moved for reconsideration of the order, offering evidence that the Court's ordered changes relative to the calculation of the base cost of an adequate education were based on questionable data. The Court granted the motion but also ordered the parties to participate in a mediated settlement conference.<sup>24</sup> Settlement efforts were not successful, and the Court ruled again on the merits of the case on December 11, 2002 (*DeRolph IV*).<sup>25</sup> In that order, the Court vacated its *DeRolph III* order and, instead, stated that both of its earlier substantive orders (*DeRolph I and II*) "are the law of the case." The Court also stated that "the current school funding system is unconstitutional."

Subsequently, the plaintiffs filed a motion in the Perry County Court of Common Pleas seeking an order for a compliance conference relative to the Supreme Court's order in *DeRolph IV*. In response, the state filed a motion in the Supreme Court seeking a writ of prohibition against Perry County Common Pleas Judge Linton Lewis, arguing that the Judge was without jurisdiction to hear the plaintiffs' motion before him. On May 16, 2003, the Supreme Court granted the state's motion, holding that "it is beyond doubt that Judge Lewis and the common pleas court patently and unambiguously lack jurisdiction over any post-*DeRolph IV* proceedings." The Court further stated that in granting the writ of prohibition, it was bringing to an "end any further *DeRolph* litigation." According to the Court, "the duty now lies with the General Assembly to remedy an educational

---

<sup>22</sup> *Am. Sub. H.B. 94 of the 124th General Assembly.*

<sup>23</sup> *DeRolph v. State (2001), 93 Ohio St.3d 309.*

<sup>24</sup> *DeRolph v. State (2001), 93 Ohio St.3d 628.*

<sup>25</sup> *DeRolph v. State (2002), 97 Ohio St.3d 434.*

system that has been found by the majority in *DeRolph IV* to still be unconstitutional."<sup>26</sup>

### **Introduction--key concepts of the current school funding system**

State per pupil payments to school districts for operating expenses have always varied according to (1) the wealth of the district and (2) the special circumstances experienced by some districts. Under both the school funding system in place prior to *DeRolph I* and the one in place since then, state operating funding for school districts has been divided primarily into two types: base-cost funding and categorical funding.

#### **Base-cost funding**

Base-cost funding can be viewed as the minimum amount of money required per pupil for those expenses that all school districts experience on a somewhat even basis. The primary costs are for such things as teachers of curriculum courses; textbooks; janitorial and clerical services; administrative functions; and student support employees such as school librarians and guidance counselors.

**Equalization.** Both before and after the *DeRolph* case, state funds have been used to "equalize" school district revenues. Equalization means using state money to ensure that all districts, regardless of their property wealth, have an equal amount of combined state and local revenues to spend for something. In an equalized system, poor districts receive more state money than wealthy districts in order to guarantee the established minimum amount for all districts.

**State and local shares.** The school funding system essentially equalizes 23 mills of property tax for base-cost funding. It does this by providing sufficient state money to each school district to ensure that, if all districts in the state levied exactly 23 effective mills, they all would have the same per pupil amount of base-cost money to spend (adjusted partially to reflect the cost of doing business in the district's county).<sup>27</sup> To accomplish this equalization, the base-cost formula uses five variables to compute the amount of state funding each district receives for its base cost:

(1) The stipulated amount of base-cost funding that is guaranteed per pupil in combined state and local funds (formally called the "**formula amount**").

---

<sup>26</sup> State ex rel. State v. Lewis (2003), 99 Ohio St.3d 97.

<sup>27</sup> One mill produces \$1 of tax revenue for every \$1,000 of taxable property valuation.

(2) An adjustment to the formula amount known as the "**cost-of-doing-business factor**." This variable is a cost factor intended to reflect differences in the cost of doing business across Ohio's 88 counties. Each county is assigned a factor by statute. The formula amount is multiplied by the cost-of-doing-business factor for the appropriate county to obtain the specific guaranteed per pupil formula amount for each school district. In FY 2003, the factors ranged from 1.00 (Gallia County) to 1.075 (Hamilton County).

(3) A number called the "**formula ADM**," which roughly reflects the full-time-equivalent number of district students.

(4) The **total taxable dollar value of real and personal property** subject to taxation in the district, adjusted to phase in increases in valuation resulting from a county auditor's triennial reappraisal or update. (This adjusted valuation is known as "recognized valuation.")

(5) The **local tax rate**, expressed in number of mills, assumed to produce the local share of the guaranteed per pupil funding. The tax rate assumed is 23 mills, although the law only requires districts to actually levy 20 mills to participate in the school funding system.

Each district's state base-cost funding is computed first by calculating the amount of combined state and local funds guaranteed to the district. This is done by adjusting the formula amount for the appropriate cost-of-doing-business factor and multiplying the adjusted amount by the district's formula ADM. Next, the assumed "local share" (commonly called the "charge-off") is calculated by multiplying the district's adjusted total taxable value by the 23 mills attributed as the local tax rate. This local share is then subtracted from the guaranteed amount to produce the district's state base-cost funding.

**Base-cost funding formula.** Expressed as a formula, base-cost funding is calculated as follows:

(formula amount X cost-of-doing-business factor X formula ADM) minus  
(.023 X the district's adjusted total taxable value)

**Sample FY 2003 calculation.** If Hypothetical Local School District were located in a county with a cost-of-doing-business factor of 1.025 (meaning its cost of doing business was assumed to be 2.5% higher than in the lowest cost county), its formula ADM were 1,000 students, and it had an adjusted valuation of \$75 million, its FY 2003 state base-cost funding amount would have been \$3,348,000, calculated as follows:



\$4,949	FY 2003 formula amount
x <u>1.025</u>	District's cost-of-doing-business factor
\$5,073	District's adjusted formula amount
x <u>1,000</u>	District's formula ADM (approximate enrollment)
\$5,073,000	District's base-cost amount
- <u>\$1,725,000</u>	District's charge-off (assumed local share based on 23 mills charged against the district's \$75 million in adjusted property valuation)
<b>\$3,348,000</b>	<b>District's state payment toward base-cost amount</b>
66%	District's state share percentage (per cent of total base cost paid by state)

**How the base-cost amount was established.** The primary difference between the pre- and post-*DeRolph* funding systems in calculating base-cost funding is that the state and local amount guaranteed per pupil (known as the formula amount) before *DeRolph* was stated in statute without any specific method of selecting the amount. Since *DeRolph*, the General Assembly has utilized explicit methodologies for determining the base cost of an adequate education, from which is derived the formula amount. The current methodology relies on the premise that, all other things being equal, most school districts should be able to achieve satisfactory performance if they have available to them the average amount of funds spent by those districts that have met the standard for satisfactory performance.<sup>28</sup> The standard for that performance adopted by the General Assembly in 2001 was meeting in FY 1999 at least 20 of the 27 state academic performance standards. In essence, the General Assembly developed an "expenditure model" by examining the average per pupil expenditures of school districts deemed to be performing satisfactorily. From the initial group of these districts, it eliminated "outriders" (the top and bottom 5% in property wealth and personal income) and arrived at 127 districts to include in the model. The base cost derived from analyzing that group's FY 1999 expenditures was \$4,814 per pupil for FY 2002. That amount was to be increased by an inflation factor of 2.8% for each of the following five fiscal years, through FY 2007.

---

<sup>28</sup> *The fact that "all other things are not equal" is the rationale behind the "categorical" funding provided for school districts with greater needs for transportation funding, DPIA, special education services, and similar requirements that vary from district to district.*

### **Equity aid phase-out**

The pre-*DeRolph* funding system paid a second tier of state aid to school districts whose property wealth fell beneath an established threshold. This "equity aid" was paid beginning in FY 1993 as an add-on to the state base-cost (then called "basic aid") funding. The state has been phasing out equity aid by reducing the number of districts receiving the subsidy and decreasing the number of extra mills equalized under it for each fiscal year. No more equity aid is scheduled to be paid after FY 2005.

### **Parity aid**

In 2001, the General Assembly began phasing in a new subsidy, known as "parity aid," to replace equity aid (and another, former subsidy known as "power equalization"). The new parity aid subsidy pays additional state funds to school districts based on combined income and property wealth. For most eligible school districts, parity aid essentially pays state funds to make up the difference between what 9.5 mills would raise against the district's income-adjusted property wealth versus what 9.5 mills would raise in the district where the income-adjusted property wealth ranks as the 123rd highest (the 80th percentile).<sup>29</sup> These 9.5 mills represent the General Assembly's determination of the average number of "effective operating mills" (including school district income tax equivalent mills) that school districts in the 70th to 90th percentiles of property valuations levied in FY 2001 *beyond* the millage needed to finance their calculated local shares of base-cost, special education, vocational education, and transportation funding.

The amount of parity aid, therefore, varies based on how far below the 123rd district a district's income-adjusted valuation falls, with the 123 districts having the highest income-adjusted valuations being ineligible for aid. Districts need not actually levy any of the 9.5 mills to receive a state payment.

### **Categorical funding**

Categorical funding is a type of funding the state provides school districts in addition to base-cost funding. It can be viewed as money a school district requires because of the special circumstances of some of its students or the special circumstances of the district itself (such as its location in a higher-cost area of the state). Some categorical funding, namely the cost-of-doing-business factor and

---

<sup>29</sup> *There is an alternative formula for calculating parity aid payments for districts that experience a combination of lower incomes, higher poverty, and higher business costs than the statewide medians of these variables.*

some adjustments to local property value, is actually built into the base-cost formula. But most categorical funding is paid separately from the base cost, including:

(1) Special education additional weighted funding, which pays districts a portion of the additional costs associated with educating children with disabilities;

(2) Vocational education additional weighted funding, which pays districts a portion of the additional costs associated with educating students in job training, workforce development, and other career-technical programs;

(3) Gifted education unit funding, which provides funds to districts for special programs for gifted children;

(4) Disadvantaged Pupil Impact Aid, or "DPIA," which provides additional state money to districts where the proportion of low-income students receiving public assistance is a certain percentage of the statewide proportion; and

(5) Transportation funding, which reimburses districts a portion of their costs of transporting children to and from public and private schools.

**Special education and vocational education weights.** The post-*DeRolph* school funding system pays a per pupil amount for special education and vocational education students on top of the amount generated by the base-cost formula for those students. It does this using an add-on formula assigning weights to those students. Weights are an expression of additional costs attributable to the special circumstances of the students in the weight class, and are expressed as a percentage of the formula amount. For example, a weight of 0.25 would indicate that an additional 25% of the formula amount (or, about \$1,237 more dollars for FY 2003) is necessary to provide additional services to a student in that category.

### Special Education Weights

Disabilities	Weight
Speech and language only	0.2892
Specific learning disabled	0.3691
Developmentally handicapped	
Other health handicapped-minor	
Severe behavior handicapped	1.7695
Hearing handicapped	
Vision Impaired	
Orthopedically handicapped	2.3646
Other health handicapped-major	
Multihandicapped	3.1129
Both visually and hearing disabled	4.7342
Autism	
Traumatic brain injury	

### Vocational Education Weights

Categories	Weight
Job-training and workforce development	0.57
Other vocational education programs	0.28



Each school district is paid its state share percentage of the additional weighted amount calculated for special education and vocational education (see "State and local shares of special and vocational education costs," below). In addition, school districts may receive an additional "catastrophic cost" subsidy for some special education students if the district's costs to serve the students exceed a certain amount.

The state also pays subsidies for speech services and for "associated vocational education services" using separate formulas.

Phase-in of special education weights. In 2001, the General Assembly replaced the then-current system of two special education weights for three categories of disabilities with a system of six weights for six categories of disabilities. These six new weights are being phased in. The new weights were paid at 82.5% of their value in FY 2002 and 87.5% in FY 2003.

State and local shares of special and vocational education costs. The funding system equalizes special education and vocational education costs by requiring a state and local share for the additional costs. This is determined for each district from the percentage of the base-cost amount supplied by each. For instance, if the state pays 55% of a district's base-cost amount and the district supplies the other 45%, the state and local shares of the additional special education and vocational funding likewise are 55% and 45%, respectively.

Gifted education funding. The state uses "unit funding" to pay school districts to serve students identified as gifted. A "unit" is a group of students receiving the same education program. In FY 2003, districts and educational service centers received for each approved unit the sum of:

(1) The annual salary the gifted teacher would receive if he or she were paid under the state's former minimum teacher salary schedule in effect prior to 2001 for a teacher with his or her training and experience;

(2) An amount (for fringe benefits) equal to 15% of the salary allowance;

(3) A basic unit allowance of \$2,678; and

(4) A supplemental unit allowance, the amount of which partially depended on the district's state share percentage of base-cost funding. In FY 2003, for each gifted unit, a district received a supplemental unit allowance of \$2,625.50 plus the district's state share percentage of \$5,550 per unit.

Disadvantaged Pupil Impact Aid (DPIA). An additional, nonequalized state subsidy is paid to school districts with threshold percentages of resident children from families receiving public assistance. The amount paid for DPIA

depends largely on the district's DPIA index, which is its percentage of children receiving public assistance compared to the statewide percentage of such children. Three separate calculations determine the total amount of a district's DPIA funds:

(1) Any district with a DPIA index greater than or equal to 0.35 (meaning its proportion of children receiving public assistance is at least 35% of the statewide proportion) receives money for safety and remediation. Districts with DPIA indices between 0.35 and 1.00 receive \$230 per pupil in a public assistance family. The per pupil amount increases proportionately for districts whose indices are greater than 1.00 as the DPIA index increases.

(2) Districts with a DPIA index greater than 0.60 receive an additional payment for increasing the amount of instructional attention per pupil in grades K to 3. The amount of the payment increases with the DPIA index. This payment is called the "third grade guarantee," but is also known as the "class-size reduction" payment.

(3) Districts that have either a DPIA index equal to or greater than 1.00 (having at least the statewide average percentage of public assistance children) or a three-year average formula ADM exceeding 17,500, and that offer all-day kindergarten receive state funding for the additional half day.

However, all districts (regardless of their DPIA indices) are eligible for at least the amount of DPIA funding they received during FY 1998, the last year of the old school funding system.

**Transportation.** In FY 1998, under the pre-*DeRolph* school funding system, state payments to school districts for transportation averaged 38% of their total transportation costs. Following *DeRolph I* the General Assembly established a new transportation funding formula and commenced a phase-in that, by FY 2003, resulted in the state paying districts the *greater* of 60% or the district's base-cost state share percentage of the amount calculated by the new formula.

The formula itself is based on the statistical method of multivariate regression analysis.<sup>30</sup> Under this formula, each district's payment for transportation of students on school buses is based on (1) the number of daily bus miles traveled per day per student in the previous fiscal year and (2) the

---

<sup>30</sup> *Regression analysis is a statistical tool that can explain how much of the variance in one variable (in this case, transportation costs from district to district) can be explained by variance in other variables (here, number of bus miles per student per day and the percentage of students transported on buses).*

percentage of its student body that it transported on school buses in the previous fiscal year (whether the buses were owned by the district board or a contractor).<sup>31</sup> The Department of Education updates the values for the formula and calculates the payments each year based on analysis of transportation data from the previous fiscal year. The Department must apply a 2.8% inflation factor to the previous year's cost data.

In 1999, the General Assembly established a separate "rough road subsidy" targeted at relatively sparsely populated districts where there are relatively high proportions of rough road surfaces.

### **Subsidies addressing reliance on property taxes**

**Charge-off supplement ("gap aid revenue")**. Certain school districts are not able to achieve 23 effective mills to cover their assumed local share of the base cost. In other cases, districts' effective tax rates will not cover their assumed local shares of special education, vocational education, and transportation funding. In such cases, the law provides a subsidy to make up the gap between the districts' effective tax rates and their assumed local shares for base-cost, special education, vocational education, and transportation.

**Excess cost supplement**. Beginning in FY 2003, continuing law limits the amount of local resources that a school district is expected to contribute toward the local share of the calculated amount of its special education, vocational education, and transportation funding. After the state and local share percentages have been calculated for a district in these categories, any amount of attributed local share that exceeds the cap (which the law labels "excess costs") must be paid by the state. In FY 2003, the annual amount of any school district's aggregate calculated local share for these three categories could not exceed the product of 3 mills times the district's "recognized valuation."<sup>32</sup> (The 3 mills worth of resources devoted to these categories are above the 23 mills of local revenue assumed to be applied toward base-cost funding.)

For FY 2004 and 2005, the act prescribes an excess cost threshold of 3.3 mills (see "**Excess cost threshold**," below).

---

<sup>31</sup> *The statute presents the following model of the formula based on an analysis of FY 1998 transportation data:  $51.79027 + (139.62626 \times \text{daily bus miles per student}) + (116.25573 \times \text{transported student percentage})$ . The law directs that the formula be updated each year to reflect new data. (R.C. 3317.022(D)(2).)*

<sup>32</sup> *"Recognized valuation" is a constructed valuation that phases in the assessed valuation increases resulting from a triennial reappraisal or update by a county auditor.*

### State funding guarantee

The funding system guarantees every school district with a formula ADM over 150 that it will receive a minimum amount of state aid based on its state funds for FY 1998. The state funds guaranteed include the sum of base-cost funding, special education funding, vocational education funding, gifted education funding, DPIA funds, equity aid, state subsidies for teachers with high training and experience, and state "extended service" subsidies for teachers working in summer school.

### **Highlights of the Act's Funding Revisions**

	<b>FY 2003</b>	<b>FY 2004 Prior Law</b>	<b>FY 2004 H.B. 95</b>	<b>FY 2005 Prior Law</b>	<b>FY 2005 H.B. 95</b>
Base Cost Amount (Inflation Factor)	\$4,949 (2.8% increase from FY 2002)	\$5,088 (2.8% increase from FY 2003)	\$5,058 (2.2% increase from FY 2003)	\$5,230 (2.8% increase from FY 2004)	\$5,169 (2.2% increase from FY 2004)
Special ed. phase-in %	87.5%	Unspecified	88%	Unspecified	90%
Excess cost threshold	3 mills	3 mills	3.3 mills	3 mills	3.3 mills
Parity aid phase-in %	40%	60%	58%	80%	76%

### Adjustment of base-cost inflation factor

(R.C. 3317.012)

The General Assembly calculated the per pupil base-cost amount in 2001 based on FY 1999 expenditure data (see "How the base-cost amount was established," above). It then applied an annual inflation factor of 2.8% to the FY 1999 figure to arrive at the per pupil amounts for the six-year period from FY 2002 through FY 2007.

The act revises the inflation factor for FY 2004 and FY 2005 from 2.8% to 2.2%, which results in base cost amounts of \$5,058 per pupil (rather than \$5,088) in FY 2004 and \$5,169 per pupil (rather than \$5,230) in FY 2005.<sup>33</sup>

**Update of cost-of-doing-business factors**

(R.C. 3317.02)

The act adjusts the cost-of-doing-business factors for the individual counties to reflect the Department of Education's latest determination of the relative costs among the counties. But the act maintains the maximum variance of 7.5% between the base county (Gallia County) and the highest-cost county (Hamilton County).

**Elimination of three-year averaging of formula ADM**

(R.C. 3317.022(A) and (B) and 3317.16(A) and (B))

The act eliminates the practice of substituting a school district's three-year average formula ADM in the base-cost formula, in place of its current-year formula ADM, if the three-year average is greater than the current-year number. (The three-year average was calculated using the district's formula ADM for the current and previous two fiscal years.)

**Measurement of attendance**

(Section 41.38)

While it continues the use of the current-year's formula ADM, the act requires the Department of Education to provide to the General Assembly, by January 1, 2004, "a feasible standard for measuring school district attendance rates."

**Percentage of JVSD students counted in the formula ADM of school districts**

(R.C. 3317.03(A)(3), 3313.981(C)(4), 3314.08(B)(2)(e), and 3317.023(A)(4))

The act reduces from 25% to 20% the percentage of joint vocational school district (JVSD) students that may also be included in the formula ADM of city, local, and exempted village school districts or community schools.

---

<sup>33</sup> Moreover, the act eliminates the statutorily prescribed per pupil amounts for FY 2006 and FY 2007. See "**Amendments to statutes in anticipation of new funding system,**" below.

Under continuing law, JVSD students are counted on a full-time equivalency basis not only in the formula ADM of their JVSDs, but they each are also partially counted in the formula ADM of the city, local, or exempted village school districts where they otherwise are entitled to attend school (or, in some circumstances, in the enrollment of a community school). That is, a full-time JVSD student is counted as a full-time student in the JVSD's formula ADM and as a part-time (20%) student in the formula ADM of the student's city, local, or exempted village school district (or the student's community school). Therefore each JVSD student generates additional state funds for the city, local, or exempted village district (or community school). Presumably, this additional funding to the school district or community school is to cover any administrative duties the district or school has relative to JVSD students.

### **Transitional aid**

(Section 41.37)

For FY 2004 and FY 2005, the act directs that no school district's "SF-3 funding plus charge-off supplement" decrease by more than 5%. If any district's calculated payments decrease by more than 5%, the Department must pay the district additional state funds to reduce the decrease to 5%.

A district's "SF-3 funding plus charge-off supplement" comprises most of the state subsidies paid to school districts, including base-cost, special education, vocational education, transportation, DPIA, gifted education units, parity aid, and the charge-off supplement. In FY 2004, the Department must calculate the transitional aid subsidy based on the FY 2003 amount *less* the budget cuts ordered by the Governor in March 2003.

### **Parity aid phase-in percentages**

(R.C. 3317.0217)

The General Assembly began phasing in the parity aid subsidy in FY 2002, when it directed that 20% of the amount calculated by the parity aid formula be paid. In the following year, FY 2003, 40% was paid. Prior law directed that 60% would be paid in FY 2004, 80% in FY 2005, and 100% in subsequent years.

The act reduces the FY 2004 and FY 2005 phase-in percentages to 58% and 76%, respectively. It does not affect the requirement that 100% of the formula calculation be paid after FY 2005.



**Excess cost threshold**

(R.C. 3317.022(F))

The act increases from 3 mills to 3.3 mills the threshold at which a school district becomes eligible for the state excess cost supplement. Thus, if a district's combined, calculated local share for special education, vocational education, and transportation exceeds 3.3 mills times its recognized valuation, the state must pay the district a subsidy equal to the amount by which the district's combined, calculated local share for these categories exceeds that threshold.

**Amendments to statutes in anticipation of new funding system**

**Elimination of future school funding features**

(R.C. 3317.012 and 3317.0217)

In apparent anticipation of the General Assembly enacting a new school funding system in the future, the act revises several statutes to prevent their application beyond FY 2005, as follows:

(1) The act eliminates the statutory base-cost amounts for FY 2006 and FY 2007 (R.C. 3317.012(A)).

(2) It eliminates the requirement that the General Assembly form a committee every six years (a) to recommend a rational methodology for calculating the base cost of an adequate education and (b) to update the parity aid calculation (R.C. 3317.012(C) and 3317.0217).

(3) It eliminates requirements that the General Assembly (a) recalculate the base cost of an adequate education every six years, (b) biennially determine the state share percentage of base cost and parity aid funding, and (c) enact methods to keep that state share percentage within 2.5%, plus or minus, of that percentage for the fiscal year in which the base cost was last calculated (R.C. 3317.012(D)).

**Two-year extension of other school funding components**

(R.C. 3317.022, 3317.11, and 3317.16)

The act extends into fiscal years 2004 and 2005 the following school funding components from fiscal year 2003:

(1) The \$25,700 threshold for "catastrophic" special education costs in categories two through five of the special education weights (R.C. 3317.022(C)(3)(b)(i));<sup>34</sup>

(2) The \$30,840 threshold for "catastrophic" special education costs in category six of the special education weights (R.C. 3317.022(C)(3)(b)(ii));

(3) The \$30,000 personnel allowance used to calculate the subsidy paid to school districts for speech services rendered to students who are not special education students (R.C. 3317.022(C)(4) and 3317.16(D)(2)); and

(4) The \$37 per pupil state subsidy paid to most educational service centers (R.C. 3317.11(F)(1)).

### **GRADS personnel allowance**

(R.C. 3317.024(R))

The act increases the GRADS personnel allowance from \$46,260 in FY 2003 to \$47,555 in FY 2004 and FY 2005. The GRADS program ("Graduation, Reality, and Dual-Role Skills") serves pregnant and parenting teen students. Participating school districts receive state funding equal to their district state share percentage times the GRADS personnel allowance for every full-time-equivalent number of approved GRADS teachers.

### **Across-the-board DPIA payment increase for FY 2004 and FY 2005**

(Section 41.10)

An uncodified provision of the act directs that every school district receive a 2% increase in its FY 2004 and FY 2005 DPIA payment, unless it has received the same DPIA payment every year since FY 1998 because it is on the DPIA "guarantee," which entitles districts to receive no less in DPIA funds than they received under the old, pre-*DeRolph* DPIA program. This across-the-board increase appears to apply regardless of whether the district experiences an increase or decrease in its "DPIA index," which is a calculated figure that represents the district's concentration of children whose families receive public assistance, relative to the state as a whole, and governs the amount and type of DPIA payment

---

<sup>34</sup> *If a school district or community school incurs costs beyond the threshold amount for serving a disabled student, it becomes eligible for additional partial state reimbursement of the costs exceeding the threshold.*

district may receive (see the DPIA background description "*Disadvantaged Pupil Impact Aid (DPIA)*," above).

This uncodified stipulation of an across-the-board 2% increase for FY 2004 and FY 2005, therefore, appears to defer a change in the calculation of the DPIA index, which prior law had scheduled to take effect in FY 2004. The old DPIA index measurement accounted only for children whose families receive assistance under the Ohio Works First program. Beginning in FY 2004, the new measurement was to have included children receiving assistance under any one of several different programs: Ohio Works First, Medicaid, the Children's Health Insurance program ("CHIP"), the Food Stamp program, or the state Disability Assistance program. But the mandate for a straight 2% increase would appear to supersede any changes in DPIA payments that otherwise would have resulted from this change in calculating the index.

### *Special education funding weights*

(R.C. 3317.013)

During the 2001-2003 biennium, the state was phasing in a system of six special education weights (see "*Phase-in of special education weights*," above). Prior to this act, no phase-in percentage was specified in statute after FY 2003.

The act continues the phase-in by specifying payment percentages of 88% for FY 2004 and 90% for FY 2005.

The act requires the Department to submit a report to OBM by May 30 of 2004 and 2005 that specifies for each school district the amount of local, state, and federal pass-through funds allocated for special education and related services.

### *Speech language pathology services*

(R.C. 3317.022(C) and 3317.16(D))

Each special education weight creates a state subsidy for school districts for the provision of special education services to students in the weighted category. Category One, which has the lowest weight, covers services associated with speech and language disabilities. The percentage of funds generated from the special education weights that is paid by the state is typically the same as the state-share percentage of a district's base cost funding (see "*Special education and vocational education weights*" and "*State and local shares of special and vocational education costs*" above). Those funds must be spent on special education and related services approved by the Department of Education. Approved expenditures itemized in prior law included the identification of

handicapped children, compliance with state rules regarding their education, the provision of a variety of program options, and administrative costs.

Another subsidy exists in continuing law for districts that provide speech services to students. The speech subsidy consists of the state-share percentage for the district of a personnel allowance (\$30,000 for the 2003-2005 biennium) for every 2,000 students in the district's formula ADM. While the personnel allowance may benefit special education students with disabilities, it is not exclusively a special education subsidy. Speech services covered by the subsidy include those provided to any student, regardless of whether the student has an individualized education program (IEP).

The act retains the list of approved expenditures of special education funding and adds the provision of speech language pathology services to that list. It also clarifies that the speech subsidy that is separate from the Category One weight must be used only for the provision of speech language pathology services to students. Finally, the act establishes a minimum amount that districts must spend for speech language pathology services. This minimum is the combined total of the state funds received by the district for its Category One special education students and the amount of the district's speech subsidy.<sup>35</sup> In other words, under the act, districts are required to spend state subsidies for speech services to regular and special education students solely for the provision of speech language pathology services.

**Expenditure of vocational education funding and reporting of that expenditure**

(R.C. 3317.014, 3317.022(E), and 3317.16(C)(1))

The act provides some new statutory instruction as to how school districts are to spend vocational education weighted funding. Specifically, it requires that each joint vocational school district receiving weighted funding for vocational education and associated services spend those funds for such services as approved by the Department of Education. This provision is similar to one under preexisting law that applies to city, exempted village, and local school districts. The act further specifies that the vocational educational expenses approved by the

---

<sup>35</sup> This amount is represented mathematically by the following equation:

*(the district's state share percentage X the base cost formula amount X the district's total special education weight for Category One students) + [(the district's ADM divided by 2,000) X \$30,000 X the district's state share percentage] = minimum district expenditure for speech language pathology services*

Department for *all* school districts include only expenses "connected to the delivery of career-technical programming to career-technical students."

In addition, the act requires the Department to require each city, exempted village, local, and joint vocational school district to report data annually so that the Department may monitor the district's compliance with the requirements regarding the manner in which vocational education funding may be spent. Finally, the act requires the Department to annually report to the Governor and the General Assembly the amount of weighted funding for vocational education and associated services that is spent by each school district and joint vocational school district specifically for those services.

### **Joint vocational school district special education funding and expenditures**

Joint vocational school districts (JVSDs) are special taxing districts that provide career-technical instruction to high school students. They are formed by agreements among two or more member school districts. The member districts send their students who wish to enroll in career-technical programs to the JVSD for those services. In addition, JVSDs may enter into contracts with nonmember districts and schools to provide services specified in the contracts.

#### **Attribution and payment of excess costs**

(R.C. 3314.083, 3317.023(M), and 3317.16(G)(2) to (4))

In addition to weighted vocational education amounts, each joint vocational school district receives the calculated base-cost and weighted special education amounts attributed to the students enrolled in the JVSD. These amounts, calculated on a full-time-equivalency basis, are the amounts that otherwise would be paid to a student's resident district (the regular school district in which the student is entitled to attend school free of tuition) or to a community school, if the student is enrolled in such a school.<sup>36</sup> However, a JVSD is not the entity responsible for developing a disabled student's individualized education program (IEP) and for guaranteeing that the student receives the services called for in the

---

<sup>36</sup> *A community school, established under R.C. Chapter 3314., is an independent public school that is governed under a contract with a sponsoring entity. It receives state funding that is deducted from the account of the school district in which each student enrolled in the school is otherwise entitled to attend school. The amount of such funding is equal to the base-cost formula amount plus special education weights, vocational education weights, and Disadvantaged Pupil Impact Aid attributed to the student enrolled in the community school.*

IEP. Instead, such a student's resident district or community school is legally responsible for the student's IEP.<sup>37</sup>

In some cases, the sum of the money a JVSD receives from the calculated state and local shares may not cover the actual cost of providing special education and related services to the disabled students enrolled in the JVSD. In such case, the act specifies that the portion of the cost of providing those services by a JVSD that exceeds the sum of the calculated state and local shares of base-cost and special education funding be paid by the student's resident district or, if the student is also enrolled in a community school, by that school. The act requires the Department of Education to deduct the amount of these excess costs from the account of the applicable resident district or community school and to pay that amount to the JVSD.

**Requirement that joint vocational school districts spend the formula-calculated amounts on special education and related services**

(R.C. 3317.16(D)(3))

The act specifically requires each JVSD to spend the amount calculated for combined state and local shares of base-cost and special education payments for special education and related services as approved by the Department of Education. Those purposes approved by the Department must include, but are not limited to, compliance with state rules governing the education of handicapped children, providing the services prescribed in the IEP, and the portion of a JVSD's overall administrative and overhead costs that are attributable to its special education student population. The Department must require JVSDs to report data annually to allow for monitoring of their compliance with this provision. In addition, the Department must annually report to the Governor and the General Assembly the amount of money spent by each JVSD for special education and related services.

A similar provision applying to city, local, and exempted village school districts was enacted in 2001.<sup>38</sup>

---

<sup>37</sup> See, R.C. 3323.01(G) and 3323.012, neither section in the act.

<sup>38</sup> See, division (C)(4) of R.C. 3317.022.

### *Head Start and Head Start Plus*

(R.C. 3301.31, 3301.33, 3301.34, 3301.35, 3301.36, 3301.38, 3301.40, and 5104.01(T); Sections 3.13, 3.14, 3.15, 41.19, and 59.33)

Head Start programs provide instruction and health care services to preschool children living in low-income families. Local agencies, including school districts, may receive direct grants from the federal government to operate Head Start programs. In addition, the state, through an inter-agency agreement between the Department of Job and Family Services and the Department of Education, continues to operate a Head Start funding program that provides assistance to local agencies in operating their programs. These Head Start programs are funded separately from any state-funded "preschool" programs operated by school districts.

For fiscal year 2004, the act continues authorization for the preexisting Head Start funding program operated by the Department of Education.<sup>39</sup> Beginning in FY 2005, however, the act replaces that authorization with authorization for two new programs: "Title IV-A Head Start" and "Title IV-A Head Start Plus." (It does not affect the federal direct aid to Head Start agencies.) The new state programs are to be operated by the Department of Education and funded with federal TANF moneys transferred from the Department of Job and Family Services to the Department of Education.<sup>40</sup> The two departments are authorized under the act to enter into an interagency agreement to develop procedures for the operation of the programs. Title IV-A Head Start will provide traditional Head Start services and Title IV-A Head Start Plus will provide year-round Head Start services along with child care services. Both programs are restricted to providing only Title IV-A (TANF-eligible) services to only individuals who are eligible for TANF services under a Head Start program. Only agencies that are approved by the Department of Education for participation in the programs may receive reimbursements for services provided to eligible individuals. The eligible services are those that are allowable under Title IV-A of the Social Security Act, but they cannot be benefits and services that federal

---

<sup>39</sup> *It does add a requirement that Head Start agencies that enroll in fiscal year 2004 children whose families receive child care subsidies from the state to partner with child care centers or family day care homes, "where appropriate" (Section 41.19, ninth paragraph).*

<sup>40</sup> *TANF is a block grant program authorized by Title IV-A of the Social Security Act, 42 U.S.C. 601, that provides "temporary assistance for needy families." The program provides federal funds to states to serve low-income families with children.*

regulations include in the term "assistance."<sup>41</sup> Under both programs, the Department of Education will contract directly with Head Start agencies to provide local services and will reimburse those agencies directly for services provided to eligible persons.<sup>42</sup>

Each county department of job and family services is required under the act to determine the eligibility of individuals for those Title IV-A services. In addition, each county department is required to assist the Department of Education in administering the Head Start Plus programs by establishing co-payment requirements in accordance with state Department of Job and Family Services rules. The act would have required the county departments to ensure that all reimbursements paid by the Department of Education to a Title IV-A Head Start

---

<sup>41</sup> *Accordingly, these services cannot include "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)." It must, however, include:*

*(1) "Nonrecurrent, short-term benefits . . . designed to deal with a specific crisis situation or episode of need [that are] not intended to meet recurrent or ongoing needs, and [that will] not extend beyond four months;*

*(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);*

*(3) Supportive services such as child care and transportation provided to families who are employed;*

*(4) Refundable earned income tax credits;*

*(5) Contributions to, and distributions from, Individual Development Accounts;*

*(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and*

*(7) Transportation benefits provided under a Job Access or Reverse Commute project . . . to an individual who is not otherwise receiving assistance." (45 C.F.R. 260.31(a) and (b).)*

<sup>42</sup> *The act also prescribes that costs for developing and administering a Title IV-A Head Start or Title IV-A Head Start Plus program may not exceed 15% of the total approved costs of the program.*



Plus agency are for allowable services. However, the Governor vetoed that language.

The act also prescribes other administrative duties of the Department of Education. Among others, it requires the Department of Education:

(1) To adopt policies and procedures for the approval, suspension, and removal of Title IV-A Head Start and Title IV-A Head Start Plus agencies from the list of approved providers;

(2) To provide technical assistance to Title IV-A Head Start agencies and to both Head Start Plus agencies and the child care partners with whom those agencies contract for day care services;

(3) To distribute the programs' funds on a per-pupil basis, which the Department may adjust so that the per pupil amount multiplied by the number of eligible children enrolled and receiving services on December 1 (or the first business day following that date) equals the amount allocated;

(4) To prescribe an assessment instrument and target levels for critical performance indicators to assess Title IV-A Head Start and Head Start Plus agencies; and

(5) To require Title IV-A Head Start and Head Start Plus agencies to do all of the following:

(a) Address federal Head Start education and assessment performance standards and state pre-kindergarten math and literacy content standards;

(b) Comply with the Department's prescribed assessment requirements (which are to be aligned with the assessment system for kindergarten through twelfth grade);

(c) Comply with federal Head Start performance standards for comprehensive services in health, nutrition, mental health, family partnership, and social services as required by federal regulations;

(d) Require teachers to attend a minimum of 20 hours of professional development regarding the implementation of content standards and assessment; and

(e) Document and report child progress using research-based indicators as prescribed by the Department.

### **Corrective action plan**

(R.C. 3301.38(I))

The act requires a Title IV-A Head Start or Title IV-A Head Start Plus agency to propose and implement a corrective action plan that has been approved by the Department of Education when the Department determines either of the following:

(a) The financial practices of the agency are not in accordance with "standard accounting principles" and federal requirements or do not meet financial standards required in the agency's contract with the Department; or

(b) The agency fails to substantially meet the Head Start performance standards prescribed by the Department (see just above) or exhibits below average performance as measured against those performance indicators.

The corrective action plan must include a schedule of monitoring by the Department of Education. The Department may withhold funding to the agency, and if it fails to satisfactorily complete a corrective action, the Department may suspend or terminate part or all of the funding to the agency and may remove the agency from the list of approved providers.

### **Licensing of Head Start agencies**

(R.C. 3301.37, 3301.52 to 3301.55, 3301.57, 3301.58, 5104.02, and 5104.32(B)(4), and repealed R.C. 3301.581)

Under prior law, all Head Start agencies were licensed by the Department of Education as preschool programs. Beginning September 1, 2003, the act eliminates the Department of Education's authority to license Head Start agencies and instead authorizes the state Department of Job and Family Services to license the agencies as child day-care centers, according to procedures prescribed in R.C. Chapter 5104.<sup>43</sup> However, the act permits agencies currently holding valid Head Start licenses issued by the Department of Education to continue to operate under those licenses until the earlier of the expiration date specified on that license or

---

<sup>43</sup> *The act does not affect the Department of Education's authority to license regular preschool programs operated by school districts.*

September 1, 2005. To continue operating after that date, an agency must obtain a license issued by the Department of Job and Family Services.<sup>44</sup>

**Head Start Partnership Study Council**

(Section 41.35)

The act creates a temporary "Head Start Partnership Study Council" to provide advice and assistance to the Departments of Education and Job and Family Services in planning and implementing the new Title IV-A Head Start Plus programs. The Council is to consist of the following 22 members:

(1) Four representatives appointed by the Director of Job and Family Services, two of whom are employees of the Department of Job and Family Services;

(2) Four representatives appointed by the Superintendent of Public Instruction, two of whom are employees of the Department of Education;

(3) Three members of the House of Representatives, not more than two of whom are members of the same political party, appointed by the Speaker;

(4) Three members of the Senate, not more two of whom are members of the same political party, appointed by the President of the Senate;

(5) Three representatives of Head Start agencies, two of whom are appointed by the Ohio Head Start Association and one of whom is appointed by the Ohio Association of Community Action Agencies;

(6) Two representatives of child care providers appointed by the Ohio Association of Child Care Providers;

(7) One representative appointed by the Ohio Day Care Advisory Council;

(8) One representative appointed by the County Commissioner's Association of Ohio; and

(9) One representative appointed by the Association of Directors of County Departments of Job and Family Services.<sup>45</sup>

---

<sup>44</sup> Prior to 1998, Head Start licenses were issued by the Department of Human Services, the predecessor to the current Department of Job and Family Services. (See Sub. H.B. 396 of the 122nd General Assembly, effective 01-30-98.)

The act specifies that in FY 2004, the Council is to advise the Departments in the design and implementation of the Title IV-A Head Start Plus Program and to report to the General Assembly on the plans for that program by December 31, 2003. It also specifies that in FY 2005, the Council must monitor the implementation of the Title IV-A Head Start Plus program and provide advice to the Departments in that implementation. Finally, it prescribes that unless reauthorized by the General Assembly, the Council will cease to exist on July 1, 2005.

**LOEO study of Head Start and child care partnership agreements**

(Section 160)

The act directs the Legislative Office of Education Oversight to study partnership agreements between Head Start providers and child care providers. As part of the study, LOEO is directed to examine the technical features and operation of such agreements, the financial and intangible costs and benefits to children and providers, the impact on literacy-readiness, and whether any administrative entity, such as a county department of job and family services oversees the agreements. In addition, if an administrative entity does oversee the agreements, the Office is to examine to what extent that oversight is performed by the entity and what overhead costs the entity incurs in overseeing the agreements. LOEO must submit its study to the General Assembly by December 31, 2004.

**Modification of due dates and scope of LOEO studies**

(R.C. 3301.68)

The Legislative Committee on Education Oversight is established by statute as a subcommittee of the Legislative Service Commission. Its membership consists of five members of the House, appointed by the Speaker, and five members of the Senate, appointed by the Senate President. The Committee directs the work of the Legislative Office on Education Oversight (LOEO), which conducts studies of specific education-related issues at the request of the Committee or the entire General Assembly. Generally, the directive for such a study outlines the topics to be examined and the date by which LOEO must issue a final report.

---

<sup>45</sup> *The Speaker of the House and the President of the Senate are to jointly appoint the chairperson of the Council.*

The act permits the Committee, by a majority vote, to modify the scope and due date of any study assigned to LOEO by the General Assembly to accommodate the availability of necessary data and resources.

**Pupil-teacher ratio formula adjustment**

(R.C. 3317.023(A)(4) and (B))

Continuing law specifies that a school district's base-cost funding must be adjusted if the school district exceeds the maximum average ratio of 25 "regular student population" students per teacher. The formula used to calculate the "regular student population" previously excluded all vocational education students and special education students, including students whose only identified disability is a speech and language handicap.

The act adjusts the formula used to calculate the "regular student population" by requiring the inclusion of special education students whose only identified disability is a speech and language handicap. (Until FY 2002, these students were included in this calculation. They were excluded for only two years. The act, therefore, restores the calculation in effect two years ago.)<sup>46</sup>

**Changes in "unit" funding for certain services**

(substantive changes in R.C. 3317.05; conforming changes in R.C. 3317.03, 3317.032, 3323.16, and 5126.12)

State funding for some educational services to some entities is determined and paid on a "unit" basis. A unit is generally a pre-determined cost of paying the salary and benefits of a teacher to provide those services to a set number of students (see, for example, "Gifted education funding," above). The number of units available for particular services is determined annually based on appropriations. Unit funding is used to pay for the following services:

- Handicapped preschool services (preschool-age special education) provided by school districts, educational service centers, and county MR/DD boards.
- Vocational, handicapped preschool, and school-age special education services provided by institutions operated by the Departments of Mental

---

<sup>46</sup> It is unclear whether this change could result in certain school districts exceeding the maximum average ratio of 25 "regular student population" students per one teacher.

Health, Mental Retardation and Developmental Disabilities, Youth Services, and Rehabilitation and Correction;

- Gifted education provided by school districts; and
- Supervisory teachers for local school districts provided by educational service centers.

The act specifies that vocational, school-age special education, and handicapped preschool units be approved by the Department of Education, rather than the State Board as under prior law.<sup>47</sup> In addition, it conforms the law regarding approval of units for handicapped preschool education to the federal law on reporting the ages of affected children. In this regard, it specifies that such funding units will be available for children who were three years old by December 1 of any year, instead of September 30 as under prior unit-funding law.

### **Reassignment of school buses**

(R.C. 3317.07)

School districts and county MR/DD boards receive state subsidies for the purchase of school buses. If a bus is purchased by a county MR/DD board for the transportation of children in special education programs operated by the board, the subsidy the State Board of Education pays to the MR/DD board is 100% of the cost of the bus. Similarly, if a school district purchases a bus for transporting special education or nonpublic school students, the subsidy paid by the State Board equals 100%. However, if a bus is used by a school district for transporting other students, such as students attending the district's public schools, it is the responsibility of the State Board to determine the amount of the subsidy.

The act adds a provision regarding what may happen to a bus that is purchased by a school district or county MR/DD board with a state subsidy if that bus is no longer needed for the transportation of certain students. It specifies that the Department of Education may reassign a bus paid for with a state subsidy in several circumstances. First, if a county MR/DD board no longer needs a bus for transporting special education students to a program operated by the MR/DD board, the Department can reassign the bus. Second, the Department can reassign a bus purchased by a school district for the transportation of special education or nonpublic school students if the school district is no longer transporting such

---

<sup>47</sup> *Preexisting law already specified that gifted education units and educational service center supervisory units are approved by the Department, rather than the State Board.*

students to a nonpublic school or special education program. In reassigning buses, the Department may reassign the bus to either a county MR/DD board for the transportation of special education students or to a school district for the transportation of special education or nonpublic school students.

**Renaming the Auxiliary Services Mobile Unit Repair and Replacement Fund**

(R.C. 3317.064)

The act renames the Auxiliary Services Mobile Unit Replacement and Repair Fund as the "Auxiliary Services Reimbursement Fund." It makes no other changes to the law governing the fund, other than the name change. It maintains the law that the fund consist of excess money transferred from the Auxiliary Services Personnel Unemployment Compensation Fund. It also maintains the law that the fund can only be used to (1) make payments to school districts to relocate, replace, or repair mobile classroom units used to render certain services at chartered nonpublic schools and (2) to offer incentives for early retirement and severance to school district personnel who provide services to students of chartered nonpublic schools.

**Changes to the Pilot Project Scholarship Program**

**Background**

The Pilot Project Scholarship Program provides scholarships ("vouchers") to attend alternative schools, including private schools, and tutorial assistance grants to certain students who reside in any school district that is or has been under a federal court order requiring supervision and operational management of the district by the state Superintendent of Public Instruction. Currently, only students residing in the Cleveland City School District are eligible for participation.

**Eligibility for scholarships--expansion to tenth grade**

(R.C. 3313.975(C) and 3313.977(A)(2))

Prior law limited eligibility for participation in the scholarship program to students in kindergarten through eighth grade. After eighth grade, students either had to return to the public school to which they were assigned by the district superintendent, enroll in a community school, or pay full tuition at a private school.

The act expands eligibility for scholarships to ninth graders beginning in the 2003-2004 school year and to tenth graders in the 2004-2005 school year.

Students must have been awarded a scholarship previously to receive one in the ninth or tenth grade.<sup>48</sup>

**Scholarship amounts**

(R.C. 3313.978(C)(1))

The act increases the maximum amount of a scholarship award (voucher amount) under the program to \$3,000 per student for students in grades kindergarten through eight. Previously, the maximum scholarship award for those students was \$2,500. For ninth and tenth graders, who are newly eligible for scholarships under the act, the maximum award is \$2,700 per student.<sup>49</sup>

**Additional tuition charges**

(R.C. 3313.976(A))

Under the program, a student is eligible for a scholarship of either 90% or 75% of the maximum award amount, depending upon family income. The remaining 10% or 25%, respectively, is provided by "a political subdivision, a private nonprofit or for profit entity, or another person."<sup>50</sup>

Under prior law, a school enrolling a student under the program in any of grades kindergarten through eight could not charge any tuition to "low-income families" in excess of 10% of the maximum award amount. In other words, under prior law, the most any such student's family was charged was \$250 (10% of the maximum \$2,500 scholarship). The act does not change this 10% tuition cap for

---

<sup>48</sup> *Continuing law specifies that, in the event the scholarship program is terminated, students attending alternative schools are entitled to attend those schools through the highest grade served in the same manner as under the program, except that a parent can be charged tuition if no funds are appropriated for scholarships. While this entitlement existed only up to the eighth grade under prior law, the act extends it to the tenth grade to correspond with the availability of high school scholarships. Also, under the act, ninth and tenth grade students who were enrolled in a private school in the previous year must be given priority for admittance to the school in the following year.*

<sup>49</sup> *Partial funding for the program is deducted from the amount of Disadvantaged Pupil Impact Aid (DPIA) allocated to the Cleveland School District. The act earmarks a maximum of \$11.9 million from Cleveland's allocation in each of FY 2004 and FY 2005 for operation of the program. An additional \$10.5 million from the General Revenue Fund is appropriated for program operations over the biennium. (Section 41.10.)*

<sup>50</sup> R.C. 3313.978(C)(4).

students in kindergarten through eighth grade who receive 90% of the maximum award amount. However, for such students who receive 75% of the maximum award amount, the act permits a private school to charge the difference between the school's actual tuition charge and 75% of the maximum award amount. For example, a second grader eligible for a 75% scholarship could receive \$2,250 (75% of the act's new \$3,000 maximum). If the school's actual tuition charge is \$3,000, the parent could be charged the entire \$750 balance.

Private high schools are also permitted to charge the family of a recipient of a high school scholarship the difference between the student's actual tuition and the scholarship amount. This charge can be levied on any ninth or tenth grader who receives a scholarship, regardless of whether the award is 90% or 75% of the maximum amount.

### **Payments to tutorial assistance providers**

(R.C. 3313.979)

Continuing law specifies that upon a student's application and using criteria established by the Department of Education, the state Superintendent awards a certain number of tutorial assistance grants to students who remain enrolled in the Cleveland City School District. The student, then, may use the grant to obtain tutorial assistance from a provider approved by the Department.<sup>51</sup> As mandated by former law, tutorial assistance grants were payable to the parent of a student entitled to the grant upon the parent's submission of a statement specifying the services provided and the cost of those services. The parent was responsible for paying the tutorial assistance provider.

The act requires the Superintendent to directly pay the tutorial assistance provider upon the submission of a statement specifying the services provided and the cost of those services. This statement must be signed by the provider and verified by the chief administrator having supervisory control over the tutoring site.

This change affects only the tutorial assistance grants offered under the pilot project and not the scholarships ("vouchers") paid for Cleveland students attending private schools. Scholarships to attend private schools continue to be paid to the parents and not the schools.<sup>52</sup>

---

<sup>51</sup> R.C. 3313.978.

<sup>52</sup> In 2002, the U.S. Supreme Court evaluated the constitutionality of the Pilot Project Scholarship Program in *Zelman v. Simmons-Harris*, 536 U.S. 639. On the basis of the

## **Modification of a school district's tax levy obligation when in fiscal emergency**

(R.C. 3316.08)

The Auditor of State has the authority to declare a school district in a state of fiscal emergency if the district is experiencing severe financial difficulties, such as having a certified operating deficit of more than 15% and the voters have failed to pass a levy sufficient to reduce the deficit below that amount.<sup>53</sup> Upon a fiscal emergency designation, a financial planning and supervision commission is established for the purpose of developing and implementing a financial recovery plan.

Prior law required, as one consequence of a fiscal emergency designation, that either the district board of education or the financial planning and supervision commission adopt a resolution to submit a tax levy request to the voters. The tax levy request had to be for an amount sufficient (1) to eliminate the district's operating deficit and (2) to repay all outstanding obligations incurred by the district for the purpose of reducing or eliminating operating deficits.

The act removes the requirement that a board of education or financial planning and supervision commission of a school district in fiscal emergency must propose to the voters such a tax levy. Instead, it directs the financial planning and supervision commission to request the school district board of education to "work with" either the county auditor or tax commissioner to estimate the amount and rate of a tax levy that is needed to generate a positive fiscal year end cash balance by the fifth year of the district's five-year forecast. The board of education then must explain to the commission whether it supports or opposes asking the voters

---

*Establishment Clause of the First Amendment, the program was challenged as impermissibly aiding religious schools (most of the private schools participating in the program are religiously affiliated). The Supreme Court held that the program did not violate the Establishment Clause because the Scholarship Program is a program of "true private choice" and "provides benefits directly to a wide spectrum of individuals" who then choose where the public funds will be spent. By directing the state Superintendent of Public Instruction to pay tutorial assistance providers directly, one of the features of the Scholarship Program that perhaps led the Supreme Court to uphold the constitutionality of the program--direct payments to parents--is no longer present as applied to tutorial assistance grants. Whether this modification to the Scholarship Program is significant enough to create a new constitutional question is unclear from the Zelman v. Simmons-Harris opinion.*

<sup>53</sup> For a complete list of the circumstances that give rise to a declaration of fiscal emergency, see R.C. 3316.03 (not in the act).

for such a tax levy. Taking into consideration the board of education's recommendation, the commission must adopt a resolution specifying whether a tax levy is submitted to the voters. If a tax levy request is made, the act does *not* require the request be for a tax levy at the rate and in an amount necessary to generate a positive fund balance by the fifth year of the district's five-year forecast.

**Accounting requirements for school district "fiscal caution" designations**

(R.C. 3316.031(A))

Under continuing law, the Auditor of State may declare a school district to be in either a state of "fiscal watch" or "fiscal emergency" if current information about its revenues and expenditures indicate that the district is or will shortly be operating under a budget deficit.<sup>54</sup> In addition, the state Superintendent of Public Instruction may declare a district to be under a "fiscal caution" if the Superintendent determines from the district's five year forecast that it is engaging in practices that could, if uncorrected, result in a future declaration of fiscal watch or fiscal emergency. Upon such a declaration, the district must submit written proposals for correcting these practices or budgetary conditions that resulted in the declaration.<sup>55</sup> The Superintendent in consultation with the Auditor of State is required to develop guidelines for identifying the practices that may be used as a basis for placing a district under a fiscal caution.

The act specifies that these guidelines for placing districts under a fiscal caution are not to include a requirement that a school district submit financial statements according to "Generally Accepted Accounting Principles" (often referred to as "GAAP").

GAAP are standardized accounting rules published by the Financial Accounting Standards Board and the Governmental Accounting Standards Board. Currently, the Auditor of State requires the use of GAAP by school districts and other local subdivisions in submitting their annual financial statements.<sup>56</sup> Failure to use GAAP in those filings has been included in the "Guidelines for Fiscal Caution," and according to the Department of Education, 12 districts have been

---

<sup>54</sup> R.C. 3316.03 and 3316.04, neither section in the act. Upon such declarations, the district must establish a plan to alleviate its adverse fiscal conditions and may be subject to various levels of other state intervention depending upon the severity and duration of the conditions.

<sup>55</sup> R.C. 3316.031(B) and (C).

<sup>56</sup> Section 117-2-03 of the Ohio Administrative Code.

placed under a fiscal caution for non-use of GAAP. Under the act, the Superintendent would not be permitted to place a district under a fiscal caution for failure to use GAAP, but the act does not prohibit the Auditor of State from requiring the use of GAAP.

### **Changes to community school law**

#### **Background**

Community schools (often called "charter schools") are public, nonprofit, nonsectarian schools that operate independently of any school district but under a contract with a sponsoring entity.<sup>57</sup> The schools are exempt from many education laws and regulations and often serve a limited number of grades or a particular purpose. Conversion community schools may be sponsored by any school district in the state. Start-up community schools are new schools that may be sponsored only in "challenged school districts," which for purposes of the Community School Law are defined as the following:

(1) A school district that is in a state of either academic watch or academic emergency;

(2) A "Big-Eight" school district;

(3) An "Urban-21" school district that is not one of the Big-Eight districts;

or

---

<sup>57</sup> *The sponsor of a start-up community school, which must be approved by the Department of Education, may be any of the following: the school district in which the school is located, a school district located in the same county as the district in which the school will be located has a major portion of its property, a joint vocational school district serving the same county as the district in which the school will be located has a major portion of its property, an educational service center, a sponsoring authority appointed by the board of trustees of a state university under certain specified conditions, and a qualified federally tax exempt entity under certain specified conditions. Until the enactment of Sub. H.B. 364 of the 124th General Assembly, effective April 8, 2003, the State Board of Education was authorized to sponsor start-up community schools. That act permits the State Board to continue to sponsor schools for up to two school years while the school looks for new sponsors, after which time the State Board may sponsor any community schools only in specified exigent circumstances. That act also permits certain other sponsors under prior law to continue to sponsor existing and new schools without being subject to Department of Education approval as a sponsor.*

(4) A school district located in the Pilot Project Area (Lucas County).<sup>58</sup>

The schools are funded with state funds that are deducted from the state aid account of the school districts in which the enrolled students are entitled to attend school (their resident school districts). (See "Payments to community schools" below.)

**Sponsorship of community schools by ESCs**

(R.C. 3314.02(C)(1)(d))

Prior law imposed a geographical restriction on where an educational service center (ESC) could sponsor a start-up community school. Specifically, an ESC could sponsor a community school only in a challenged school district located in a county within the territory of the ESC or in a county contiguous to such county. The act removes this restriction and permits an ESC to sponsor a community school in *any* challenged school district.

**New sponsors after contract termination or nonrenewal**

(R.C. 3314.07)

Under continuing law, a sponsor may terminate a contract with a community school prior to its expiration date, or choose not to renew the contract, for any of the following reasons: (1) failure of the school to meet student performance requirements outlined in the contract, (2) fiscal mismanagement, (3) violations of state or federal law or provisions of the contract, or (4) other good cause. Notification of a sponsor's intent to terminate or not renew a contract must be given to the community school at least 90 days before the termination or nonrenewal.

The act prohibits a community school whose sponsor has *terminated* its contract from entering into a new contract with another sponsor.

Also, under the act, if a community school does not wish to renew a contract with its sponsor, the school must notify the sponsor in writing of its

---

<sup>58</sup> The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown. The other 13 large urban districts (that together with the Big-Eight districts are referred to as the "Urban-21" districts) are Cleveland Heights, East Cleveland, Elyria, Euclid, Hamilton, Lima, Lorain, Mansfield, Middletown, Parma, South-Western, Springfield, and Warren.

decision at least 180 days prior to the contract's expiration date. Once the contract expires, the community school may enter into a contract with a new sponsor.

**Automatic withdrawal of community school students**

(R.C. 3314.03(A)(6)(b))

Prior law required the governing authority of a community school to automatically withdraw a student who failed without legitimate excuse to participate in 105 *cumulative* hours of learning opportunities offered to the student. The act requires instead automatic withdrawal of a student after missing 105 *consecutive* hours of learning opportunities without excuse.

**Internet- or computer-based community schools**

(R.C. 3314.02(A)(7) and 3314.08(N))

**Definition.** Under continuing law, an "Internet- or computer-based community school" (sometimes called an "electronic school" or "e-school") is a community school "in which the enrolled students work primarily from their residences on assignments provided via an Internet- or other computer-based instructional method that does not rely on regular classroom instruction." The act adds to this definition by specifying that the students' assignments are "in non-classroom-based learning opportunities." It also adds that instruction at an e-school may be provided "via comprehensive instructional methods that include Internet-based, other computer-based, and non-computer-based learning opportunities."<sup>59</sup> (R.C. 3314.02(A)(7).)

**"Enrollment" for funding purposes.** Prior law specified that a student was not considered enrolled in an Internet- or computer-based community school until the student had been provided with all necessary hardware and software materials and those materials are "fully operational." The act specifies instead that a student is considered enrolled for the purpose of funding when the school has provided the student with "operational" hardware and software necessary to enable the student to participate fully in the learning opportunities prescribed in the school's contract.<sup>60</sup> (R.C. 3314.08(N).)

---

<sup>59</sup> *Continuing law provides that the classroom-based and non-classroom-based learning opportunities offered to students enrolled in a community school must be described in the school's contract with its sponsor (R.C. 3314.03(A)(23)).*

<sup>60</sup> *Another provision, not changed by the act, requires an Internet- or computer-based community school to provide each student enrolled in the school with a computer.*

**Notification to parents of community school students**

(R.C. 3314.041)

The act requires each community school to distribute in writing a statutorily prescribed statement to parents of students at the time the students enroll in the school. This statement explains that community schools are public schools and that students enrolled in them are subject to achievement testing and other requirements stipulated by law. Prior law required that the statement be placed in a conspicuous manner in all documents distributed to parents and the general public.

**Payments to community schools**

(R.C. 3314.08(A)(10), (C), and (D))

As noted above, under continuing law, each community school receives a payment from the state for each student that attends the school. The payment is deducted from the state money that the school district in which the student is entitled to attend school would otherwise receive for each student attending the community school. This payment is the sum of the formula amount (the base cost attributed to all students) times the cost-of-doing-business factor for the county in which the student's resident school district is located, any special education weights and vocational education weights (including local share) calculated for the student, and some Disadvantaged Pupil Impact Aid calculated for the student. (Beginning in FY 2004, this payment will also include a per pupil amount of parity aid. See "Parity aid funding for community schools," below.)

The act specifies that the amount of state funds paid to community schools and deducted from the state aid of their students' home districts cannot exceed the total of the home districts' state payments and property tax rollback reimbursement.<sup>61</sup> If the total state payments calculated for all students attending community schools from a particular district is greater than the state payments

---

*However, at the option of a parent who has more than one child enrolled in the school, the school may provide fewer than one computer per student as long as the household receives at least one computer. (R.C. 3314.032(A), not in the act.)*

<sup>61</sup> *For the purpose of this provision, the act defines the total state payment to a school district as the "SF-3 payment" (in reference to the worksheet used to calculate state payments to districts). This payment includes the formula amount, special education and vocational education weighted funding, gifted education units, transportation, and other categorical funding, as well as adjustments prescribed by law.*

plus the property tax rollback reimbursement calculated for that district, the payment to each community school must be prorated to balance the state aid distributed to the community schools and the district.

**Parity aid funding for community schools**

(R.C. 3314.08(C)(6) and (D)(7))

The act requires the Department of Education to pay to each community school the per pupil amount of state parity aid funding calculated for each school district, in which students who are enrolled in the community school are entitled to attend school (the students' resident districts), times the number of each district's students enrolled in the community school.<sup>62</sup> That amount is then to be deducted from each school district's state aid account in the same manner as most other payments to a community school. (See "**Parity aid**" and "**Payments to community schools**" above.)

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

(Section 41.32)

Community schools receive funds in addition to the formula amount for each special education student they enroll (see "**Payments to community schools**" above).<sup>63</sup> An additional subsidy is available under the act for certain community schools to assist them in meeting special education costs.

The act establishes a subsidy for fiscal years 2004 and 2005 for any community school in which the number of students receiving special education and related services for "severe behavior handicap" conditions (SBH students) in each of those fiscal years is at least 50% of the total number of students enrolled in the school. This subsidy is *not* deducted from any amounts calculated for any

---

<sup>62</sup> *The number of enrolled students multiplied by the per pupil amount of parity aid funding is the number of the district's students in grades one through twelve, plus one-half the number of the district's students in kindergarten, which is the same way students are counted for the district's state aid.*

<sup>63</sup> *The additional amount for a special education student depends upon the "weight" assigned the student based upon the student's special need classification. The weight attributed to each class is multiplied by the formula amount to determine the amount of additional payment for each special education student in that class. (R.C. 3317.022; see also R.C. 3314.08.)*

school district. The amount of the subsidy for each fiscal year is the difference between the aggregate amount calculated for all the SBH students enrolled in the community school for that fiscal year and the aggregate amount calculated for such students for fiscal year 2001. If the difference is a negative number, the amount of the subsidy is zero.

For fiscal year 2001, the special education weight attributed to a SBH student was 3.01, but for fiscal years 2004 and 2005 under the act, that weight is 1.5572 and 1.5926, respectively.<sup>64</sup> Even though the formula amounts for fiscal years 2004 and 2005 are higher than for fiscal year 2001, the reduced SBH weights could result in lower payments to community schools for each SBH student than in fiscal year 2001, when the special education weights were higher.<sup>65</sup> The act, then, would essentially hold these community schools harmless for their fiscal year 2001 per pupil aid for SBH students. A similar provision was enacted for the 2002-2003 biennium.<sup>66</sup> Under the act, each subsidy must be paid from the Department of Education's appropriation for base cost funding.

### **Transportation coordinators**

(R.C. 3327.01 and 3327.011)

Under preexisting law, not changed by the act, school districts are generally required to transport to and from school their resident students in grades K through 8 who live more than two miles from the public or nonpublic schools in which they are enrolled. Districts may transport students in other grades and students who live less than two miles from school and may receive state funding for transporting most students they transport. Each school district employs at least one transportation coordinator to oversee the scheduling and management of its student transportation operations.

Prior law also required the Department of Education to appoint "coordinators of transportation" to oversee student transportation by school districts. The act eliminates the requirement that the Department appoint such coordinators.

---

<sup>64</sup> *Continuing law sets the full weight for a SBH student at 1.7695, but all special education weights are phased in under the act at 88% of their full value in FY 2004 and 90% of their full value in FY 2005 (R.C. 3317.013).*

<sup>65</sup> *Under the act, the formula amount for fiscal year 2004 is \$5,058 and for fiscal year 2005 is \$5,169 (R.C. 3317.012). For fiscal year 2001, that amount was \$4,294.*

<sup>66</sup> *Section 38 of Am. Sub. H.B. 405 of the 124th General Assembly.*

### **School district textbook and electronic textbook purchases**

(R.C. 3329.06 and 3329.08)

Continuing law requires a school district to supply students with textbooks or electronic textbooks, free of charge. A school board determines what textbooks are necessary for classes in the district and all such textbooks are the property of the school district and are loaned to the students.

Prior law prohibited a school district board of education from changing or revising a textbook or electronic textbook selection more frequently than once every four years. Additionally, it authorized a school district board to limit purchases of textbooks and electronic textbooks to only six subjects per year, the cost of which did not exceed 25% of the "entire cost of adoption."<sup>67</sup> The act eliminates both of these provisions. Thus, a school district board is permitted to change or revise textbooks as frequently as it chooses. Also, a school district board is no longer permitted to limit textbook purchases to only six subjects per year.

### **Employment of school district business managers**

(R.C. 3319.02(A), 3319.03, and repealed R.C. 3319.06)

A school district is permitted to hire a business manager who is responsible for real and personal property of the school district and school district supplies and equipment. The business manager is also responsible for executing contracts and assisting in the preparation of the annual appropriation resolution.<sup>68</sup> Prior law specified that a school district could hire a business manager, licensed by the state board of education, in one of two manners. A business manager could either be elected by the school board, or a business manager could be appointed by the district superintendent and confirmed by the school board (R.C. 3319.03).

The act changes the terms of employment for a business manager. Under the act, a business manager is to be employed in the same manner as assistant superintendents, principals, assistant principals, and other administrators. This requirement means that a business manager is first appointed by the board of education of the school district (R.C. 3319.03(B)). However, a business manager cannot be initially *employed* unless the superintendent of the school district nominates the person as business manager (R.C. 3319.02(C)).

---

<sup>67</sup> What is meant by the "entire cost of adoption" is unclear.

<sup>68</sup> R.C. 3319.04, not in the act.

After appointment and nomination, a business manager would be employed under an initial contract of up to three years. Upon the expiration of the initial contract, a board of education may reemploy a business manager provided either the superintendent of the school district nominates the individual for reemployment, or the board, with a vote of three-fourths of its members, votes to reemploy the business manager if the superintendent refuses to nominate the individual. Renewal contracts are typically for terms of two to five years.<sup>69</sup> If a school board fails to renew a contract or notify a business manager that it will not renew a contract, the contract automatically renews for a one- or two-year term, depending on how long the school board has employed the business manager.

In the same manner as for other school administrators, the act requires a school district to follow procedures for an annual performance review of a business manager that would enable the school board to decide whether to renew a business manager's contract. Finally, a school board would only be permitted to terminate the contract of a business manager, for good cause, after a due process hearing.<sup>70</sup>

One issue the act does not address is the status of a business manager who is employed by a school district at the time the act takes effect. Assuming a currently employed business manager has a contract with the school district, the U.S. and Ohio Constitutions generally prohibit a law from impairing a preexisting contract unless there is an important government purpose. Thus, the changes to the terms of employment of a business manager made by the act may not apply to a currently employed business manager until the expiration of the business manager's current term of employment. Whether this is the intended result is unclear.

Another issue that is unclear, because of two conflicting provisions, is whether a business manager's compensation can be reduced during a contract period. The compensation of "other administrators," which includes business managers by operation of the act, can be reduced if the reduction is part of a uniform plan affecting the entire district (R.C. 3319.02(C)). However, another provision of the Revised Code specifies that the compensation of business

---

<sup>69</sup> *The board of education is permitted to renew a contract, once, for a one-year term if the superintendent of the district recommends (R.C. 3319.02(C)).*

<sup>70</sup> *The procedures for a termination hearing are included in R.C. 3319.16, not in the act.*

managers shall not be decreased during the business manager's term of office.<sup>71</sup> Which section of law controls the issue is not addressed by the act.

### **Administration of OGT practice tests to ninth graders**

(R.C. 3301.0710 and 3301.0711; Section 146)

#### **Background on OGT**

Under preexisting law, the Class of 2007 is the first class of students required to pass the Ohio Graduation Tests (OGT) to be eligible for a high school diploma. The OGT are achievement tests given in the subject areas of reading, writing, math, science, and social studies. Students will take the five OGT for the first time in the spring of 2005 when they are in the tenth grade. They generally must attain at least the score designated by the State Board of Education on each test to qualify for a diploma.<sup>72</sup> Students who do not achieve the required scores on one or more tests in the tenth grade have multiple opportunities to retake those tests in the eleventh and twelfth grades.

#### **Practice versions of the OGT**

Under the act, in the 2003-2004 school year, when the Class of 2007 is in the ninth grade, each "academic watch" and "academic emergency" school district must give a half-length practice version of each OGT to all ninth grade students in the district.<sup>73</sup> Beginning in the 2004-2005 school year, *full-length* practice tests must be given annually to ninth grade students in those districts. This one-year delay in administering full-length versions of the OGT is necessary to allow time

---

<sup>71</sup> R.C. 3319.05, not in the act.

<sup>72</sup> To receive a diploma from a public school (including a community school) or chartered nonpublic school, a student must (1) successfully complete the curriculum required by the student's high school or the individualized education program (IEP) developed for the student and (2) pass all five OGT (R.C. 3313.61, 3313.611, 3313.612, 3314.03(A)(11)(f), and 3325.08 (none in the act); see also R.C. 3313.614, not in the act).

Alternative graduation testing requirements exist for students who must take the OGT to graduate from high school, but who fail one of the tests by ten points or less. (R.C. 3313.615, not in the act.)

<sup>73</sup> An "academic watch" school district is one that meets six to eight of 17 performance indicators adopted by the State Board or an equivalent number of indicators if the State Board adopts more than 17 total indicators. An "academic emergency" district meets five or fewer of the performance indicators, or the equivalent. (R.C. 3302.03.)

for the development of the tests. Although all practice tests must be given in September, districts may choose the specific days, times, and method of administration. Each district must also score the practice tests.

### **Intervention services**

"Academic emergency" districts must require their high schools to provide intervention services to students who perform poorly on the practice tests to the extent that the districts receive state funding appropriated for the services. The requirement to provide intervention services does not apply to "academic watch" districts, but such districts could offer remediation at their discretion using other funds. If an academic emergency district does not receive sufficient state funds to provide intervention services in all of its high schools, it must determine which high schools will receive all or part of the available funds and, consequently, must offer intervention services. Priority in allocating the state funds must be based on each school's graduation rate and scores on the practice tests. Districts must also consider the scores attained by ninth graders on reading and math achievement tests in the eighth grade when deciding how to distribute money for intervention services. The act does not prohibit academic emergency districts from supplementing their state funds for intervention services with funds from other sources to increase the number of high schools that participate in the intervention program.

High schools selected to provide intervention services must offer them to each student whose practice test results indicate that the student is making unsatisfactory progress toward being able to pass the OGT.<sup>74</sup> The intervention services must be provided in each skill in which the student scored poorly and must be commensurate with the student's test performance. Schools can offer the intervention services at any one, or a combination, of the following times: (1) during the ninth grade year, (2) in the summer after ninth grade, or (3) during the tenth grade year.

### **Annual school progress reports**

(Repealed R.C. 3313.94)

Prior law required each school district to issue an annual report of school progress for each school under its control and for the district as a whole. The following information had to be included in the report: (1) a ten-year projection of

---

<sup>74</sup> *Special education students are exempted from receiving these intervention services under the act because their IEPs dictate their course of instruction.*

enrollment by year and grade level, (2) financial data, including district revenue by source; per pupil expenditures; and expenditures for personnel, textbooks and other educational materials, utilities, permanent improvements, equipment, transportation, and extracurricular activities, (3) contact information for members of the State Board of Education and the General Assembly elected from districts within which the school district has territory, and (4) information about achievements, problems, plans, and improvements in the district. Copies of the report had to be provided to local residents upon request.

The act eliminates the requirement that school districts produce these annual reports. This change does not affect existing law requiring districts to submit five-year budget projections to the Department of Education or to develop continuous improvement plans when the district, or a school it operates, receives a report card rating lower than "effective."

### **Elimination of a public school's authority to operate a school savings system**

(Repealed R.C. 3313.82 and 3313.83)

The act repeals the law permitting a public school to operate a school savings system, by which students could deposit money with the superintendent, principal, or some other person designated by the board of education. (Under this law, the school official who collected the money then had to deposit the funds with a savings institution, such as a bank. Either the school official established separate accounts for each student or the school official established an account in the official's name in which the students' funds were to be deposited in trust.)

### **Changes affecting educational service centers**

#### **Background**

An educational service center (ESC) is a regional public entity that provides some administrative oversight and a variety of other services to all "local" school districts within its service area. For providing these services, an ESC receives payments both from the state and from those local districts. In addition, ESCs are permitted to provide services to "city" and "exempted village" school districts that enter into agreements for those services.<sup>75</sup> ESCs do not have taxing authority and have only limited authority to issue bonds. Each ESC is

---

<sup>75</sup> A city or exempted village school district that contracts for services from an educational service center is known as a "client school district" (R.C. 3313.843 and 3317.11(A)(1)). A client school district cannot have a total student population that exceeds 13,000 students.

administered by its own superintendent and is under the oversight of its own elected "governing board." An ESC governing board employs teachers and other professionals as necessary to carry out the ESC's functions. The territory of an ESC consists of the combined territory of the "local" school districts that receive its services. The members of an ESC governing board are generally elected by and must themselves be resident electors of the "local" school districts that make up the territory of the ESC.<sup>76</sup>

Until 1995, ESCs were called "county school districts" and their governing boards were called "county boards of education." In that year, along with providing for some consolidation of ESCs, the General Assembly changed the names of these entities to "educational service centers" but did not change their respective functions.<sup>77</sup>

**Local school district option to change ESC membership**

(R.C. 3311.059; conforming changes in R.C. 3311.05 and 3319.19)

Continuing law authorizes the transfer of a local school district from the territory of its present ESC to the territory of an adjoining ESC, either by proposal of the ESC governing board wishing to transfer the territory or of the voters certified in a petition. In some circumstances the action by the ESC governing board to accept the transfer is subject to a referendum election. The transferred school district becomes part of another local school district that is located in the territory of the adjoining ESC. The transferred district loses its identity as a separate district.<sup>78</sup>

---

<sup>76</sup> R.C. 3311.05 and 3311.054, neither section in the act.

<sup>77</sup> Since 1995, certain ESCs that serve fewer than 8,000 students have been required to merge with other ESCs, thus reducing the total number of ESCs. However, due to recent amendments fewer ESCs will be required to merge. (Section 45.32 of Am. Sub. H.B. 117 of the 121st General Assembly as most recently amended by Am. Sub. H.B. 282 of the 123rd General Assembly.) According to the Legislative Office of Education Oversight, as of July 1999 there were 61 ESCs in the state. (LOEO, "Status Report on the Consolidation of Educational Service Centers.")

<sup>78</sup> R.C. 3311.231, not in the act. Presumably, a new school district made up of the territory of the old transferred district could be created under a separate statutory mechanism that requires approval of the State Board of Education, but for a while at least the old transferred district must become part of another local school district.

The act provides an alternative method for a local school district to change its ESC membership under which the district may retain its identity as a separate local school district. Under the act, a local school district board of education, by a resolution approved by a majority of all its members, may propose to sever the district from the territory of the ESC in which the district is currently included and to annex the district to the territory of another ESC that is adjacent to the district's current ESC. The resolution must be filed with the governing board of each ESC affected by the proposal and with the Superintendent of Public Instruction. The resolution may not be effective unless it is approved by *both* the governing board of the ESC to which the board of education proposes to annex the district and the State Board of Education. In addition, the proposal may be subject to a referendum election of the voters of the local school district if a petition asking for such an election is filed with the applicable board of elections within 60 days after the resolution proposing the change is adopted by the local school district board. The petition must be signed by a number of the school district's voters equal to 20% of the number of those who voted for the office of Governor in the most recent general election.<sup>79</sup>

If approved, the change may not be effective until one year after the first day of July that next succeeds the later of (1) the date that the governing board of the ESC to which the local school district is proposed to be annexed approves the resolution or (2) the date the board of elections certifies the results of the referendum election if one is held. Upon the effective date of the change of membership, the act requires the governing board of each ESC affected to take steps for the election of members and organization of the governing board. The act also stipulates that a school district severed from an ESC and annexed to another under the act's provisions cannot be severed from its new ESC and annexed to another one again (presumably including its old ESC) sooner than five years after the effective date of the previous action.

---

<sup>79</sup> *Under the act, the petition must be filed with the board of elections of the county in which the local school district is located. If the district is located in more than one county, the petition must be filed with the board of elections of the county in which the majority of the district's territory is located. The referendum election must be held on the date of the next general or primary election that is at least 75 days after the board of elections certifies the validity and sufficiency of the signatures on the petition.*

### **Elimination of minimum standards for service to school districts**

(Repealed R.C. 3301.0719)

Under prior law, each ESC had to develop a service plan for the school districts within its territory. The plan was to be approved by the State Board of Education. In addition, the State Board was required to establish minimum standards that generally outlined the functions an ESC must perform, including the following: (1) fiscal monitoring of local districts, (2) evaluation of classroom activities, (3) provision of professional development, (4) curriculum services, (5) enforcement of the Compulsory Attendance Law, and (6) assistance in the provision of special accommodations and classes for disabled students. To monitor compliance with its standards, the State Board was required to evaluate each ESC every five years. If an ESC was found to not be complying with its service plan, the State Board had to revoke the ESC's charter. The State Board also could dissolve the ESC and transfer its territory to another ESC.

The act eliminates all of these requirements.

### **Payments to ESCs**

(R.C. 3313.843 and 3317.11; Section 41.25)

**Background.** Under continuing law, an ESC receives \$37 per pupil (or \$40.52 per pupil if formed from a merger of three or more smaller ESCs) from the state and \$6.50 per pupil from each district served. It also receives an amount from each school district it serves for providing supervisory teachers to the district. ESCs may also receive additional payments from school districts for other contractual services.

The act does not change the amounts of state and school district funding for ESCs, but it makes some changes in the administration of those payments.

**Certification of budgets.** Prior law required that the governing board of each ESC annually prepare a budget in a format approved by the State Board of Education and certify that budget to the State Board. The budget was to indicate an amount for providing supervisory teachers to each local school district in the ESC's territory and a separate amount for specified per pupil payments from the state and each school district served. The act eliminates the requirement that each ESC governing board certify its annual budget to the State Board.

**Payment procedures.** The act reenacts new, simpler language that essentially leaves unchanged the method the Department of Education uses to calculate payments to ESCs. Under the act, as under prior law, the Department calculates the amounts due to each ESC and deducts the necessary amounts from

each school district's state formula aid account. The act does, however, add a provision permitting a majority of school districts served by a particular ESC (both local and other client districts) to agree to pay for a greater number of supervisory units than otherwise specified by law. If the majority of districts agree on higher amounts, the act specifies that all districts served by the ESC are to pay the higher amounts and the Department is required to make such a deduction from each district's account.

**State payments for pupils of contracting city and exempted village school districts.** In calculating their state per pupil payments, continuing law allows ESCs to receive payment not only for the pupils of their constituent local school districts, but also for the pupils of the city and exempted village school districts that have contracted to receive services from the ESCs. But since FY 2000, budget legislation has stipulated that ESCs may receive state per pupil funding for the students of city and exempted village districts only if the contract was entered into prior to January 1, 1997. The act continues this stipulation for FY 2004 and FY 2005. An exception to that requirement is made, as in prior biennia, for a local district that converts to a city district if the contract with the ESC is entered into within one year of the conversion.

**Payment for students of ESC-sponsored community schools.** The act allows an ESC that sponsors a community school to receive a state per-pupil payment in FY 2004 and FY 2005 for students of that community school. The payment is to equal the per pupil amount paid to ESCs for students in the school districts they serve. However, the payment can be made only if there first is sufficient funding to fully pay all ESCs for the students in the school districts they serve (see "**Contingency in the event of insufficient appropriation,**" below). Moreover, no ESC may receive payment for any student enrolled in an Internet- or computer-based community school ("e-school").

The act states that the General Assembly's intent is to provide an incentive for ESCs to take over sponsorship of community schools from the State Board of Education. The State Board's authority to sponsor community schools is being phased out over the next two years under Sub. H.B. 364 of the 124th General Assembly.

**Contingency in the event of insufficient appropriation.** In past biennia, the General Assembly has prescribed directions for the Department of Education to prioritize state payments to ESCs if the amount appropriated for the payments turns out to be insufficient. The act continues this custom for FY 2004 and FY 2005, directing the Department to distribute state per pupil funding to ESCs in the following order of priority:



(1) First, the Department must pay each ESC \$37 (\$40.52 if the ESC consists of three or more former ESCs that merged) for each pupil enrolled in the ESC's constituent local school districts.

(2) Second, the Department must distribute remaining funds among the ESCs for students in the city and exempted village school districts that contracted with them before January 1, 1997.

(3) Third, and only if the Department was able to distribute the full per pupil amount to all ESCs for the students enrolled in the school districts they serve, the Department may pay ESCs for the students enrolled in community schools that they sponsor (except for Internet- or computer-based schools).

**Elimination of ESC approval of employment by local school districts of teachers, administrators, and superintendents**

(R.C. 3319.01, 3319.02, 3319.07, and 3319.36)

Prior law provided that the employment by a local school district of teachers, administrators, and superintendents was subject to the approval and oversight of the superintendent of the ESC. Generally, a local district board could not employ or reemploy a superintendent, assistant superintendent, principal, assistant principal, or teacher unless nominated by the ESC superintendent. Prior law did permit the local district board to employ or reemploy such persons that the ESC superintendent refused to nominate only by a 3/4 vote of all the board members. In the case of the local district superintendent, the vote to employ or reemploy a person not nominated by the ESC superintendent could be taken only after the board had considered two persons for that position.

The act eliminates all provisions requiring ESC boards or superintendents to approve the employment of superintendents, assistant superintendents, principals, assistant principals, other administrators, or teachers. It does, however, specifically permit a local school district board to contract with its ESC to conduct searches and recruitment activities for candidates for such positions.

**Elimination of ESC approval of the assignment of local school district staff and students**

(R.C. 3319.01)

Prior law required that the assignment of staff and students to the schools of a local school district be approved by the superintendent of the ESC, unless the district board had entered into an agreement with the ESC board under which the district superintendent was authorized to make the assignments. The act

eliminates any requirement that the ESC superintendent approve the assignment of local school district staff and students.

**Calculation of the cost of ESC office space**

(R.C. 3319.19)

Prior to 2002, the board of county commissioners of the county in which an ESC is located was required to provide and equip office space and furnish water, light, heat, and janitorial services, for the ESC. If the service area of an ESC comprised territory in more than one county, the ESC governing board was required to designate one board of county commissioners to provide the office space, and the other boards of county commissioners had to share in the costs. Recent legislation established a four-year phase-out of the responsibility of any board of county commissioners to provide office space for an ESC. In fiscal year 2007 and thereafter, a board of county commissioners may provide office space and other facilities for an ESC by contract, but it is not required to do so.

During the phaseout, the costs are to be divided between the county and the ESC. The county is responsible to pay the following:

- In fiscal year 2003, 80% of the final estimated cost;
- In fiscal year 2004, 60% of the final estimated cost;
- In fiscal year 2005, 40% of the final estimated cost;
- In fiscal year 2006, 20% of the final estimated cost.

Educational service centers themselves are responsible for the remaining portion of the costs of office space and for any unanticipated or unexpected increase beyond the final estimated costs. In fiscal year 2007 and thereafter, no board of county commissioners is required to provide office space for an ESC or to pay any cost of providing such space.

The act defines "actual cost per square foot" for purposes of estimating costs of office space provided to an ESC by the board of county commissioners. Under the act, "actual cost per square foot" means all cost on a per square foot basis incurred by the board under a lease or rental agreement of property rented or leased by the board, or the fair rental value of property owned in fee simple by the board. In addition, the act clarifies that in fiscal year 2006 an ESC is responsible

for paying the remainder of the actual cost of office space that is above 20% of the estimated cost.<sup>80</sup>

**Elimination of ESC annual report on activities of local school districts**

(R.C. 3319.33; repealed R.C. 3319.34; conforming amendment in R.C. 3317.09)

Continuing law provides that annually by August 1, each city and exempted village school district board must report to the State Board of Education "the school statistics of its district," including among other things information about litigation in which the district is involved. Prior law required each *local* school district board to submit its report to the ESC and for the ESC by August 15 to submit to the State Board an abstract of the local district returns. The act eliminates the requirement that the ESC gather and submit this data and, instead, requires local school district boards to submit the data directly to the State Board in the same manner as city and exempted village school districts.

**Transfer of authority to propose new local school districts**

(R.C. 3311.26)

Prior law established procedures whereby the governing board of an educational service center (ESC) could propose the creation of a new local school district from all or part of one or more existing local school districts. Except for requests made to an ESC prior to the effective date of the amendments made by the act, as discussed below, the act eliminates the authority of ESCs to propose the creation of new local school districts and transfers that authority to the State Board of Education.<sup>81</sup> However, the general process for creating a new local school district remains substantially the same.

Thus, under the act, the State Board must adopt a resolution by a majority vote of its members proposing the creation of a new local school district. A copy

---

<sup>80</sup> *This corrects a technical error made in the original enactment.*

<sup>81</sup> *Continuing law permits the State Board to propose the consolidation of contiguous local school districts, or parts of such districts, after conducting a study of possible improvements in district organization and the desires of affected residents. However, the newly created district need not be a local school district. (See R.C. 3311.37, not in the act.) The act does not affect the authority of an ESC to propose the transfer of all or part of a local school district to an adjoining city or exempted village school district (see R.C. 3311.231, not in the act).*

of the proposal, including a map of the affected territory, must be filed with each school district that would be altered by the proposal. At the State Board's next regular meeting that occurs not earlier than 30 days after the adoption of the resolution, the State Board must adopt another resolution making the creation of the new district effective before the start of the next school year. If, prior to the end of the 30-day period, however, at least 35% of qualified voters residing within the territory of the proposed district and voting in the last general election file a petition of referendum against the new district with the Superintendent of Public Instruction, the State Board must arrange for the board of elections to place the proposal on the ballot at the next general or primary election, or at a special election if necessary, occurring at least 75 days later. If the proposal is approved by a majority of the voters voting on it, then the State Board must create the new district before the next school year starts.

Once a new local school district is created, the State Board must appoint a board of education for the district until members are duly elected. It also must equitably divide the existing funds of any district losing some of its territory to the new district between the remaining part of that district and the new local school district. An accurate map of the new district's boundaries must be filed by the State Board with the county auditor of each county affected by the creation of the new district. Finally, if the new district consists of territory in two or more counties, the State Board must determine to which ESC the new local school district is assigned.

As mentioned above, the act does provide a window of time during which a local school district board of education or a group of citizens may request that the applicable ESC, instead of the State Board of Education, propose the creation of a new local school district. A local school district or a group of citizens may make a proposal to the ESC before the amended section is effective (within 90 days of the effective date of the act). If such a request is made, the ESC has one year from the date of request to adopt a resolution proposing a new local school district in the same manner as it could before the act transferred this authority from the ESC to the State Board of Education.

### **Pupil-teacher ratios in bilingual multicultural classes**

(Repealed R.C. 3301.078 and 3301.0724)

Prior law required the State Board of Education to adopt a standard restricting the size of any class providing services to bilingual multicultural students to no more than 25 pupils for one teacher licensed to teach such students. The act eliminates this maximum ratio requirement, and thus a class for bilingual multicultural students could have more than 25 students.

### **Certified software packages for reporting EMIS data**

(R.C. 3301.0714 and 3314.17)

Under continuing law, the Department of Education maintains the Education Management Information System (EMIS), which serves as a database of information on school districts and schools. The data compiled by EMIS includes information on student academic performance, personnel, classroom enrollment, discipline, and fiscal expenditures. All school districts and community schools are required to report data electronically to EMIS. Some districts rely on data acquisition sites around Ohio, which offer centralized computer services for their member districts, to report the necessary data to EMIS.

Prior law permitted the Department, after consultation with the Ohio Education Computer Network, to provide uniform computer software to districts free of charge for use in reporting data to EMIS. Districts, however, were not required to use the Department's software if they were already reporting EMIS data on time and in a format compatible with the Department's computer system.

The act removes these provisions. Instead, under the act, school districts, community schools, and data acquisition sites cannot acquire, change, or update their student software packages used for EMIS reporting unless the new packages are certified by the Department.

### **Common core of EMIS standards**

(Section 41.06)

For the purpose of this certification process, the act directs the Department to develop and implement a "common core" of EMIS "data definitions and data format standards," and mandates that all school districts and community schools implement them by July 1, 2004. Districts and community schools that are not in compliance by that date must have their state EMIS funding withheld until they comply. Once the standards are developed and approved, any software that meets the standards must be designated as approved.

The Department's standards are subject to the approval of the Education Data Advisory Council, which was established by the Department and consists of educators and business representatives. Moreover, they must be developed in consultation with another advisory group, also to be appointed by the Department, representing school districts, community schools, and other educational entities. This latter advisory group must meet annually to review the EMIS standards and recommend changes and enhancements to reflect best practices, federal initiatives, and the needs of school districts.

### **Filing of school district revenue certificates**

(R.C. 5705.39)

Preexisting law, not changed by the act, provides that an appropriation measure of any subdivision is not effective until the county auditor files with the appropriating authority a certificate stating that the total appropriations do not exceed the official estimate of revenues. Prior to the act, the law further required that, in the case of school district appropriations, the county auditor also transmit the certificate to the Superintendent of Public Instruction.<sup>82</sup> The act eliminates this latter provision.

### **Verification of signatures on school district transfer petitions**

(R.C. 3311.24)

Continuing law permits the voters of a city, exempted village, or local school district to petition to transfer territory from the school district to an adjoining school district. In order for a petition to be valid, it must be signed by 75% of the qualified voters voting at the last general election who reside within the portion of the school district proposed to be transferred.

Prior law did not specify who is responsible for verifying the sufficiency of signatures on such a petition. However, the Attorney General interpreted the provision as requiring the board of education of the district in which the proposal originates to verify those signatures. (1964 O.A.G. 1043.) Under the act, a board of education of a school district that receives a petition of transfer must cause the board of elections to check the sufficiency of signatures on the petition.

### **Ohio Regional Education Delivery System**

(Section 41.34)

By March 31, 2004, the Department of Education must recommend a plan to the General Assembly for the establishment of an Ohio Regional Education Delivery System (OREDS) to provide "minimum core" services and technical assistance to school districts and chartered nonpublic schools.<sup>83</sup> The Department's

---

<sup>82</sup> *The law did not indicate what action the Superintendent was to take in regard to this document.*

<sup>83</sup> *Although assistance to chartered nonpublic schools in meeting their obligations under Ohio law must be part of the Department's plan, the system need not offer additional services to such schools beyond those provided to school districts.*

plan must address how OREDS would take over the state-funded core services currently provided by various regional entities, including educational service centers (ESCs), regional professional development centers, special education regional resource centers, area media centers, school improvement facilitators, Ohio SchoolNet regional service providers, data acquisition sites, and educational technology centers. All recommendations regarding OREDS must be developed by the Department in consultation with stakeholders.

Regional service centers recommended as part of the system cannot exceed 19 in number and must be distributed geographically throughout the state. Each region established under the plan must have a fiscal agent in the form of a regional educational service agency, which is selected by a majority vote of the school districts in the region. In voting, the districts must consider the service agency's audit record, demonstrated fiscal capacity, and availability of staff and other resources. All selections are subject to final approval by the State Board of Education.

The Department must also recommend an accountability system for OREDS or any part of the system, as necessary, that includes minimum standards for operation and the provision of core services. The accountability system must include benchmarks for performance based on each of the following: (1) student achievement, (2) the effectiveness and efficiency of service delivery, (3) the quality of implementation of state initiatives, and (4) satisfaction of school districts and other users with the system.

Finally, the Department must recommend rules regarding the general organization of OREDS, including (1) procedures for reconfiguring the system and for changing the boundaries of regions and (2) a governance structure that incorporates a Regional Education Delivery Center Board and functional area advisory boards. The rules must also require regional service centers, as a prerequisite for state funding, to submit annual strategic plans and budgets aligned with the state's strategic plan. These plans must demonstrate how the regional service center provides and coordinates services and technical assistance to client service providers, school districts, and schools. State education initiatives implemented by the regional service centers are to be funded in accordance with a methodology recommended by the Department.

**Participation in National Assessment of Educational Progress (NAEP)**

(Section 41.28)

The National Assessment of Educational Progress (NAEP) is a set of tests administered to a nationally representative sample of students in various subject areas such as reading, math, science, and history. Results are used to determine

long-term trends in student performance.<sup>84</sup> Continuing law grants the Department of Education authority to require school districts to participate in NAEP as a means of conducting research on factors that improve district performance. The act states the General Assembly's intent that the Superintendent of Public Instruction provide for districts to take part in NAEP for this purpose. Any school district or school chosen by the Superintendent to participate in NAEP must do so.

### **Pilot Project Special Education Scholarship Program**

(Section 41.33)

The act establishes a new temporary pilot program to pay scholarships to the parents of certain autistic children to be used toward paying tuition at public or nonpublic special education programs. Under the program, in FY 2004 and FY 2005, the Department of Education is required to pay a scholarship of up to \$15,000 to the parent of a child identified as autistic and who is entitled to receive special education and related services at the child's resident school district in any grade from preschool to 12th grade.

The scholarship is to be used solely to pay part or all of the cost of sending the child to a public or nonpublic special education program other than the one provided by the child's resident school district. The act further prescribes that the scholarship is to be used to pay for only those services specified in the child's "individualized education program."<sup>85</sup> Moreover, the act specifies that a scholarship may not be awarded to the parent of a child who attends a public special education program under a contract, compact, or other bilateral agreement between the student's resident school district and another district or other public provider. Nor may a scholarship be awarded to the parent of a child who attends a community school (charter school). In addition, the act specifies that a scholarship is not to be paid to any parent as long as the child's IEP is in the process of being developed by the child's resident district, or as long as any administrative or

---

<sup>84</sup> Also, under the "No Child Left Behind Act of 2001," states must participate in biennial administrations of NAEP in reading and math in the fourth and eighth grades as a gauge of the validity of the results from their own state assessments (20 U.S.C. 6311(c)(2)).

<sup>85</sup> Under both federal and state law, an "individualized education program" (or IEP) must be developed for each child identified as disabled and eligible for special education and related services at a public school. The IEP specifies the services which the child is entitled to by right and are therefore guaranteed by law. It is developed by a team, including representatives of the child's resident school district (or community school) and the child's parent or the parent's counsel. (See R.C. 3323.01, not in the act, and 20 U.S.C. 1400 et seq.)

judicial mediation or proceedings with respect to the content of the IEP are pending.

The amount of the scholarship is to be deducted from the state aid account of the child's resident school district. That district is authorized under the act to count the child in its formula ADM (for purposes of base cost, categorical, and parity aid funding) and its category six special education ADM (for purposes of its weighted special education funding) (see '**Special Education Weights**' (chart) and "**Special education funding weights**" above). The district, then, will retain the balance of any state funding it receives for the child in excess of the scholarship paid to the parent. The Department must proportionally reduce the amount of the scholarship in the case of a child who does not enroll in the special education program, for which the scholarship was awarded, for the entire school year.

The act requires the State Board of Education, by January 1, 2004, to adopt rules prescribing procedures for the implementation of the program. These rules are to include at minimum application procedures and deadlines and procedures for the Department of Education to use in approving nonpublic providers.

Finally, the act requires the Legislative Office of Education Oversight (LOEO) to conduct a "formative evaluation" of the program and to report its findings to the General Assembly by March 1, 2005. In conducting this study, LOEO is required to the extent possible to gather comments from parents who have been awarded scholarships under the program, school district officials, and representatives of registered private providers, educators, and representatives of educational organizations.

#### **Eye exams for disabled students**

(Section 41.36)

Under the act, in the 2004-2005 and 2005-2006 school years, school districts must require each student who is identified for the first time as having a disability to undergo a comprehensive eye exam within three months after beginning any special education services under the individualized education program (IEP) prepared for the student. This requirement does not apply to students who have already begun receiving special education services before July 1, 2004. Moreover, newly identified special education students who underwent a comprehensive eye exam in the nine months prior to identification need not have another exam. All eye exams must be performed by a licensed optometrist or by a licensed physician who is "comprehensively trained and educated in the treatment of the human eye, eye disease, or comprehensive vision services" (presumably, an ophthalmologist).

The act specifies that neither the state nor the school district is responsible for covering the cost of an eye exam, unless a student is entitled to an exam as part of the identification process or provision of subsequent services. Presumably, a student's parent must pay for the exam or otherwise arrange for it if the student is not so entitled.<sup>86</sup> District superintendents, in determining whether a student has met the eye exam requirement, may take into account any special circumstances of the student or the student's family that could prevent the student from having the exam before starting special education services. Districts, however, cannot withhold special education services from a student who does not undergo an eye exam as required.<sup>87</sup>

**Sharing of results of educator licensure examinations with the Board of Regents**

(R.C. 3319.22(A)(2))

Under continuing law, the State Board of Education establishes the standards and eligibility requirements for various types of educator licenses. Current State Board rules specify that to qualify for a provisional educator license, an applicant must pass an examination of subject matter knowledge and general skills known as the Praxis II test. All applicants for a professional teacher license must successfully complete an entry-year program and the Praxis III assessment, which involves observations of teachers' skills in the classroom.<sup>88</sup>

The act directs the Department of Education to provide the results of any examinations required by the State Board for licensure and received by the Department to the Ohio Board of Regents if state or federal law permits the

---

<sup>86</sup> *Some districts conduct a "Healthcheck" program for their students who are Medicaid recipients. Each Healthcheck program provides a thorough medical examination, including a vision assessment, by a physician or nurse. If a student is found to need a service deemed medically necessary and the student is eligible for Medicaid, that service is covered by Medicaid. (See R.C. 3313.714 (not in the act) and R.C. 5111.016.)*

<sup>87</sup> *The federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.) requires states to provide a free appropriate public education to all students with disabilities. It is possible that basing a student's access to special education services on undergoing and paying for a comprehensive eye exam would be construed to violate a disabled student's right to a free appropriate public education under IDEA. However, the act does stipulate (1) the student's entitlement to have the district pay for an eye exam if it is required as part of the IDEA process and (2) that no student can be denied special education services for failure to receive an eye exam.*

<sup>88</sup> *See O.A.C. 3301-24-05 for the requirements for educator licenses.*

transfer of such information.<sup>89</sup> Presumably, this provision would apply to results of both the Praxis II and Praxis III assessments. All results must be provided to the Board of Regents in the form and manner it requests.

**Stipend for National Board certified teachers**

(R.C. 3319.55)

Under continuing law, public school teachers who hold valid teaching certificates issued by the National Board for Professional Teaching Standards are eligible for annual state-funded stipends. The National Board is an independent organization that awards certificates to teachers whose instructional practices, as demonstrated by evaluations of content knowledge and classroom performance, meet rigorous standards of teaching quality. Certificates are valid for ten years.

National Board certified teachers must submit evidence of their eligibility for the stipend to the state Superintendent of Public Instruction by August 1 of each year. This evidence must consist of proof that the teacher holds a valid certificate from the National Board and that the teacher was employed full-time by an Ohio school district in the preceding school year.

Under prior law, the stipend amount was \$2,500 per year. If insufficient funds were appropriated for the full amount, the stipend was determined by dividing the total appropriation by the number of teachers who submitted proof of their eligibility that year.

The act reduces the annual stipend to \$1,000 for teachers who are admitted into the National Board certification program after May 31, 2003, or who are issued their certificates by the National Board after 2004. Teachers who enter the certification program prior to the end of May 2003 *and* are awarded their certificates by December 31, 2004, remain eligible for the \$2,500 stipend for the life of the certificate as under prior law. In the event of insufficient funds in any year, under the act, the state Superintendent must prorate the amount of the stipend for each qualifying teacher. All teachers must submit evidence of the date they were accepted into the National Board certification program when applying for a stipend so that the state Superintendent can determine the award for which they are eligible.

---

<sup>89</sup> *It is possible that the federal Privacy Act of 1974, codified at 5 U.S.C. § 552a, and the Ohio Privacy Act, codified in R.C. Chapter 1347., impose limitations on the transfer of information from the Department of Education to the Board of Regents.*

---

## BOARD OF EMBALMERS AND FUNERAL DIRECTORS

- Increases licensing and filing fees paid to the Board of Embalmers and Funeral Directors.
- Permits an embalmer or funeral director who has been licensed for 50 or more years and is not actually in charge of an embalming facility or a manager or actually in charge of and ultimately responsible for a funeral home to apply to the Board for an exemption from continuing education requirements.

### Licensing fees

(R.C. 4717.07)

The act increases licensing fees paid to the Board of Embalmers and Funeral Directors as shown in the following chart.

Licensing fee	Current fee	Fee under the act
Initial embalmer or funeral director license	\$5	\$140
Biennial renewal of an embalmer or funeral director license	\$120	\$140
Initial issuance of license to operate a funeral home	\$125	\$250
Initial issuance of license to operate an embalming facility	\$100	\$200
Initial issuance of license to operate a crematory facility	\$100	\$200

### Exemption from continuing education

(R.C. 4717.09)

Continuing law requires that licensed embalmers and funeral directors attend between 12 and 30 hours of continuing education every two years. The act allows a licensed embalmer or funeral director who has been licensed for 50 years or longer and "is not actually in charge of an embalming facility or a manager" or

"actually in charge of and ultimately responsible for a funeral home" to apply to the Board for an exemption from the continuing education requirement.

---

## STATE EMPLOYMENT RELATIONS BOARD

- Establishes specific duties of the State Employment Relations Board's chairperson in statute, including the duty to prepare the Board's biennial budget and to employ, promote, supervise, and remove certain Board employees.
- Shifts some of the Board's duties directly to the chairperson, including the duty to appoint attorneys and attorney-trial examiners and, with the consent of one other Board member, to appoint an Executive Director.
- Establishes specific duties of the Board's Executive Director in statute, including the duty to ensure that all Board employees comply with Board rules.
- Allows either party to a collective bargaining agreement to request a fact-finding panel any time after a mediator is appointed, requires the parties to share the entire cost of the panel, and requires the Board to appoint a panel within 15 days after receiving a request.

### *Duties of the Chairperson and Executive Director*

(R.C. 4117.02)

The act specifies that the State Employment Relations Board's Chairperson is the Board's chief executive officer and that the Chairperson must exercise all administrative powers and duties conferred on the Board. The act establishes specific duties of the State Employment Relations Board's Chairperson in statute, including the duty (1) to prepare the Board's biennial budget, (2) to manage the daily operations of the Board's office in Columbus, and (3) to employ, promote, supervise, remove, and assign or reassign duties of Board employees. Some of the Board's duties are shifted directly to the Chairperson under the act, including the duty to appoint attorneys and attorney-trial examiners and, with the consent of one other Board member, to appoint an Executive Director. Under continuing law, the Board appoints the Executive Director, so the practical effect of this change is that

the Chairperson initially selects the Executive Director and seeks consent thereafter.

Under the act, the Executive Director serves at the pleasure of the Chairperson and is the chief administrative officer for the Board. The act requires the Executive Director to do all things necessary for the efficient and effective implementation of the Board's duties and to ensure that all Board employees comply with Board rules. However, the act specifies that these duties of the Executive Director do not relieve the Chairperson from final responsibility for the performance of these duties.

**Appointment and cost of fact-finding panels for collective bargaining**

(R.C. 4117.14)

The act specifies that either party to a collective bargaining agreement under the Public Employees Collective Bargaining Law (R.C. Chapter 4117.) may request a fact-finding panel any time after a mediator is appointed. In addition, the act requires the State Employment Relations Board to appoint a panel within 15 days after receiving such a request.

Additionally, the act requires the parties to share the cost of the fact-finding panel in a manner agreed to by the parties instead of requiring the state to pay half the cost and each party to pay one quarter of the cost as previously was the case.

---

## ENVIRONMENTAL PROTECTION AGENCY

- Allows investment earnings credited to the Clean Ohio Revitalization Fund to be used indefinitely to pay costs incurred by the Department of Development and the Environmental Protection Agency for purposes of the brownfield portion of the Clean Ohio Program.
- Allows investment earnings credited to the Clean Ohio Operating Fund to be used indefinitely to pay administrative costs incurred by the Director of Environmental Protection for purposes of the brownfield portion of the Clean Ohio Program.
- Abolishes the Hazardous Waste Facility Board, transfers its duties and responsibilities to the Director of Environmental Protection for purposes of permitting hazardous waste facilities, and revises several of the criteria to be used when determining whether to approve or disapprove a permit application.

- Extends the authority for the Environmental Protection Agency to use money in the Hazardous Waste Clean-up Fund for the Emergency Response Program and the Voluntary Action Program through October 15, 2005.
- Extends through June 30, 2006, the fee on the disposal of solid wastes that is used to fund the solid and infectious waste and construction and demolition debris management programs, and increases the fee from 75¢ per ton to \$1 per ton beginning July 1, 2003.
- Increases from \$60 to \$70 the fee that is required to file an appeal with the Environmental Review Appeals Commission, and allows the Commission to reduce rather than waive the fee if the appellant demonstrates by affidavit that payment of the full amount would cause extreme hardship.
- Eliminates the fee schedules for permits to operate and variances issued for air contaminant sources prior to January 1, 1994, and replaces the fee schedule for permits to install for such air contaminant sources with the former fee schedules for permits to install for air contaminant sources issued on or after January 1, 1994, but applies the fee schedules only for such permits to install issued before July 1, 2003.
- Establishes new fee schedules for permits to install for air contaminant sources issued on or after July 1, 2003, by applying and modifying the schedules for permits issued on or after January 1, 1994, as follows: (1) includes in fuel-burning equipment, in addition to boilers as in law largely retained by the act, furnaces or process heaters that are used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer, and increases several of the fees by 25% to 50%, (2) establishes new fees of \$25 to \$2,000, based on generating capacity, for combustion turbines and stationary internal combustion engines designed to generate electricity, (3) increases the fees for incinerators by 25% to 50%, (4) for processes (based on process weight rate), increases most of the fees by 25%, specifies that a combustion turbine or stationary internal combustion engine that is designed to generate electricity must be assessed the fee described in (2), above, increases the fees for mining processes by 20% to 33%, and corrects a computer error in the fee schedule for mining processes, and (5) for

storage tanks, revises the fee range levels, and increases the fees for the higher levels.

- Applies the annual emissions fees established under previously enacted law that are paid by holders of air pollution control permits to operate or variances, other than holders of Title V permits and owners or operators of synthetic minor facilities, only through December 31, 2003, replaces the fees beginning January 1, 2004, with a new schedule that includes increased fees of \$100 and \$200 for lower amounts of emissions, but retains fees unchanged by the act for higher amounts of emissions, requires fees to be collected under the new schedule beginning in 2005, and extends the sunset on the annual emissions fees for synthetic minor facilities until June 30, 2006.
- Extends for two years the sunset of the annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law and application fees for industrial water pollution control certificates issued under that Law.
- Extends for two years the levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law.
- Extends for two years the sunset of annual license fees for public water system licenses issued under the Safe Drinking Water Law, and increases the fees for public water systems that are community water systems by 8% to 11%, for public water systems that are not community water systems and serve nontransient populations by 9% to 14%, and for public water systems that are not community water systems and serve transient populations by 14%.
- Replaces the classification of systems supplied by surface water, springs, or dug wells with systems designated as using a surface water source, but retains the license fee of \$792 as in law unchanged by the act for public water systems that are in that classification and that are not community water systems and serve transient populations; and requires public water systems designated as using a surface water source to pay a license fee that is the greater of \$792 or the amount calculated using the fee schedules for either public water systems that are community water systems or public water systems that are not community water systems and serve nontransient populations.

- Increases the fee for plan approval for a public water supply system from \$100 plus .2 of 1% of the estimated project cost to \$150 plus .35 of 1% of the estimated cost, extends for two years the establishment of a higher cap on the total fee due and the decrease of that cap at the end of the two years, and increases the higher cap from \$15,000 to \$20,000 and the lower cap from \$5,000 to \$15,000.
- Extends for two years the levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law, and makes the following changes in the fees: (1) for the higher fees, which must be assessed triennially for each laboratory, divides the microbiological category into three subcategories and establishes a fee for each, increases the fees for the remaining categories by 55%, and establishes a \$1,800 fee for each additional survey that is requested during the three-year period for the purpose of adding analytical methods or personnel, (2) increases the lower fees by 560% to 1,300%, (3) renames the inorganic chemical category and the chemical/radiological category as trace metals, and (4) generally aligns the categories within the two schedules for evaluation so that the categories are the same regardless of whether an evaluation occurs before or after July 1, 2006, and establish new fees as necessary to complete the schedules.
- Extends for two years the levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable, and makes the following changes: (1) increases the higher application fee from \$25 to \$45 and the lower application fee from \$10 to \$25, (2) adds certification as a Class A operator and sets the higher examination fee for such certification at \$35 and the lower fee at \$25, (3) increases the higher examination fees for certification in the continuing categories of operator certification by 24% to 33% and the lower fees by 36% to 80%, (4) establishes a new biennial certification renewal fee ranging from \$25 to \$65 depending on the class of certification and a late renewal fee ranging from \$45 to \$85, (5) requires a person who requests a replacement certificate to pay a \$25 fee at the time the request is made, and (6) revises the timeframes for

applying the fees for both the applications and the examinations for certification.

- Extends for two years the levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.
- Generally enables an applicant to submit an electronic application for a registration certificate, permit, variance, or plan approval under the Solid, Infectious, and Hazardous Waste Law, Safe Drinking Water Law, or Water Pollution Control Law, requires the payment of the applicable application fee as expeditiously as possible after such submission, and prohibits the review or processing of a registration certificate, permit, variance, or plan approval until the required fee is paid.
- Clarifies that an applicant who has entered into an agreement with the Clean Ohio Council for a grant or loan under the brownfield portion of the Clean Ohio Program and who is issued a covenant not to sue under the Voluntary Action Program Law is not required to pay the fee for the issuance of a covenant not to sue that is established in rules adopted under the Voluntary Action Program Law.

#### *Use of investment earnings of Clean Ohio Revitalization Fund*

(R.C. 122.658)

The Clean Ohio Revitalization Fund in continuing law consists of money credited to it from revenue bonds that are issued for purposes of the Clean Ohio program to pay the costs of brownfield remediation projects and of payments of principal and interest on loans that are made from the Fund. Law retained in part by the act provides that until July 26, 2003, investment earnings credited to the Fund may be used to pay costs incurred by the Department of Development and the Environmental Protection Agency under the brownfield component of the Clean Ohio Program. The act removes the deadline, thus allowing the investment earnings to be used for those purposes indefinitely.

### **Use of investment earnings of Clean Ohio Operating Fund**

(R.C. 3745.40)

The Clean Ohio Operating Fund in continuing law consists of money transferred to it from the Clean Ohio Revitalization Fund as certified by the Director of Development to the Director of Budget and Management. That money consists of excess investment earnings that are available to be transferred from the Clean Ohio Revitalization Fund. Law retained in part by the act provides that until July 26, 2003, investment earnings credited to the Fund may be used to pay administrative costs incurred by the Director of Environmental Protection under the brownfield component of the Clean Ohio Program. The act removes the deadline, thus allowing the investment earnings to be used to pay administrative costs incurred by the Director indefinitely.

### **Elimination of Hazardous Waste Facility Board**

(R.C. 3734.02, 3734.05, 3734.12, 3734.123, 3734.124, 3734.18, 3734.42, 3734.44, 3734.46, and 3745.14; Sections 132.09, 132.10, and 145.03)

Former law established the five-member Hazardous Waste Facility Board to approve or disapprove applications for hazardous waste facility installation and operation permits for new hazardous waste storage, treatment, and disposal facilities and applications for certain modifications to existing permits. The Board was scheduled to expire on December 31, 2004, unless it was renewed by the enactment of legislation. The act abolishes the Board on its effective date and transfers its duties and responsibilities to the Director of Environmental Protection for purposes of permitting hazardous waste facilities. Under the act, the Director also is responsible for all permit modifications rather than just for specified types of modifications as under prior law.

To effect the transfer, the act abolishes on its effective date all of the rules adopted by the Board and requires the Director of the Legislative Service Commission to remove the rules from the Administrative Code as if they had been rescinded. The act also specifies that on and after the its effective date and until the Director of Environmental Protection adopts rules that eliminate references to the Hazardous Waste Facility Board, whenever the Hazardous Waste Facility Board or Board, when "Board" refers to the Hazardous Waste Facility Board, is referred to in a rule, the reference must be deemed to refer to the Environmental Protection Agency or the Director of Environmental Protection, whichever is appropriate. As expeditiously as possible after the effective date, the Director must adopt rules eliminating references to the Hazardous Waste Facility Board.

Permits or modifications issued by the Board under the Solid, Hazardous, and Infectious Waste Law as that law existed prior to its amendment by the act must continue in effect as if the Director had issued the permits or modifications under that Law after the effective date of its amendment by the act. Any application pending before the Hazardous Waste Facility Board on the act's effective date must be transferred to the Environmental Protection Agency for approval or disapproval by the Director. All records, files, and other documents of the Hazardous Waste Facility Board must be transferred to the Environmental Protection Agency.

Prior law required the Board to hold a public hearing after receiving a completed application and to hold an adjudication hearing at which it had to hear and decide all disputed issues respecting the approval or disapproval of the application. The act requires a permit applicant, prior to submitting a complete application to the Director, to hold at least one meeting in the township or municipal corporation in which the facility is proposed to be located, whichever is geographically closer to the proposed location. The meeting must be open to the public and be held to inform the community of the proposed hazardous waste management activities and to solicit questions from the community concerning the activities.

The act also requires the Director, after determining whether a permit application complies with specified requirements in both statutes and rules, to issue either a draft permit or a notice of intent to deny the permit. The Director also must provide public notice of the application and the draft permit or notice of intent to deny the permit, provide an opportunity for public comments, and, if significant interest is shown, schedule a public meeting in the affected county and give public notice of it. Not later than 180 days after the end of the public comment period, the Director, without prior hearing, must issue or deny the permit in accordance with the Environmental Protection Agency Law, which allows for appeals to the Environmental Review Appeals Commission.

Law retained in part by the act precludes the Board from approving an application unless it makes specific findings and determinations regarding the proposed facility and its owner or operator. The act applies the same preclusion to the Director, but modifies several of the findings and determinations. Under law retained in part by the act, a determination must be made that a facility represents the minimum risk of all of the following: (1) contamination of ground and surface waters, (2) fires or explosions from treatment, storage, or disposal methods, (3) accident during transportation of hazardous waste to or from the facility, (4) impact on the public health and safety, (5) air pollution, and (6) soil contamination. The act eliminates items (1), (5), and (6). It changes item (3) to



"release of hazardous waste" during transportation and item (4) to "adverse impact" on the public health and safety.

In addition, the act retains a requirement that a finding and determination must be made that, if the owner or operator has been involved in any prior activity involving the transportation, treatment, storage, or disposal of hazardous waste, that person has a history of compliance with state and federal environmental requirements. The act allows the Director, in making such a finding and determination for off-site facilities, to use as a basis the investigative reports prepared by the Attorney General under the state's background investigation requirements.

Finally, under law revised by the act, the Board must find and determine that the active areas where acute hazardous waste or toxic organic waste is being stored, treated, or disposed of and where the aggregate design capacity of all hazardous waste in those areas is greater than 250,000 gallons are not located or operated within specified areas, including any flood hazard area if the applicant cannot show that the facility will be designed, constructed, operated, and maintained to prevent washout by a 100-year flood or that procedures will be in effect to remove the waste before flood waters can reach it. While the act requires the Director generally to make the same finding and determination, it removes the option for the applicant to show that procedures will be in effect to remove the waste before flood waters can reach it.

#### **Hazardous Waste Clean-up Fund**

(R.C. 3734.28)

Under continuing law, the Environmental Protection Agency must use money from the Hazardous Waste Clean-up Fund for specified purposes. Through June 30, 2003, those purposes included the Emergency Response Program and the Voluntary Action Program. The act extends the authority to use money in the Fund for those purposes through October 15, 2005.

#### **Continuation of and increase in solid waste disposal fee**

(R.C. 3734.57)

Ongoing law levies a fee on the disposal of solid wastes to fund the Environmental Protection Agency's solid and infectious waste and construction and demolition debris management programs. Under former law, the fee was set at 75¢ per ton and was scheduled to sunset on June 30, 2004. The act continues the fee through June 30, 2006, and, beginning on July 1, 2003, increases the fee to \$1 per ton.

**Environmental Review Appeals Commission filing fee**

(R.C. 3745.04)

Continuing law establishes the Environmental Review Appeals Commission to hear appeals of actions of the Director of Environmental Protection. An appeal must be filed with the Commission and must set forth the action complained of and the grounds on which the appeal is based. Under law retained in part by the act, an appeal must be accompanied by a filing fee of \$60; however, the Commission, in its discretion, may waive it in cases of extreme hardship. The act increases the fee to \$70 and instead provides that the Commission, in its discretion, may reduce the fee if by affidavit the appellant demonstrates that payment of the full amount of the fee would cause extreme hardship.

**Fees for permits issued under Air Pollution Control Law**

(R.C. 3745.11(B) and (F))

**Fees for previously issued permits and variances**

Law retained in part by the act requires each person issued a permit to operate, variance, or permit to install under the Air Pollution Control Law prior to January 1, 1994, to pay fees according to specified fee schedules. The act eliminates the fee schedules for permits to operate and variances and provides that each person who is issued a permit to install under the Air Pollution Control Law prior to July 1, 2003, must instead pay the fees established in former law for such permits for air contaminant sources issued on or after January 1, 1994 (see tables below). Thus, the act replaces the fee schedules for permits to install for such air contaminant sources with the former fee schedules for permits to install for air contaminant sources issued on or after January 1, 1994, but applies the fee schedules only to such permits to install issued before July 1, 2003.

**Fees for permits to install issued on or after July 1, 2003**

Under law largely retained by the act, each person who is issued a permit to install under the Air Pollution Control Law on or after January 1, 1994, is required to pay the fees specified in schedules for fuel-burning equipment, incinerators, process, storage tanks, gasoline/fuel dispensing facilities, dry cleaning facilities, and registration status. The act instead applies those fees to permits to install issued on or after July 1, 2003. It also increases the fees in several of the schedules, modifies the criteria specified in several other schedules, and establishes one new schedule. Those changes are discussed below.

**Fuel-burning equipment.** Under law largely retained by the act, the fees for permits to install for fuel-burning equipment apply to boilers. The act adds furnaces and process heaters in addition to boilers and qualifies that the boilers, furnaces, or process heaters must be used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. It also increases the fees. The table below shows the fees prior to the act and the fees under the act:

<b>Input capacity (max.) under current law (million Btu's/hr)</b>	<b>Former fee for permit to install issued on or after 1/1/94</b>	<b>Fee under the act for permit to install issued on or after 7/1/03</b>
More than 0, but less than 10	\$200	\$200
10 or more, but less than 100	\$400	\$400
100 or more, but less than 300	\$800	\$1,000
300 or more, but less than 500	\$1,500	\$2,250
500 or more, but less than 1,000	\$2,500	\$3,750
1,000 or more, but less than 5,000	\$4,000	\$6,000
5,000 or more	\$6,000	\$9,000

**Combustion turbines and stationary internal combustion engines designed to generate electricity.** The act establishes a new fee schedule for permits to install issued for combustion turbines or stationary internal combustion engines designed to generate electricity. The table below shows the proposed fee schedule:

<b>Generating capacity (mega watts)</b>	<b>Fee under the act for permit to install issued on or after 7/1/03</b>
0 or more, but less than 10	\$25
10 or more, but less than 25	\$150
25 or more, but less than 50	\$300
50 or more, but less than 100	\$500
100 or more, but less than 250	\$1,000
250 or more	\$2,000



**Incinerators.** The act increases all of the fees for permits to install for incinerators except for the lowest level of input capacity. The table below shows the fee levels prior to the act and the fee levels under the act:

<b>Input capacity (pounds per hour)</b>	<b>Former fee for permit to install issued on or after 1/1/94</b>	<b>Fee under the act for permit to install issued on or after 7/1/03</b>
0 to 100	\$100	\$100
101 to 500	\$400	\$500
501 to 2,000	\$750	\$1,000
2,001 to 20,000	\$1,000	\$1,500
More than 20,000	\$2,500	\$3,750

**Process.** Law largely retained by the act establishes a fee schedule for permits to install that are issued for a process and specifies that in any process where process weight rate cannot be ascertained, the minimum fee must be assessed. The act increases all of the fees except for the lowest fee level in the schedule. It adds that a boiler, furnace, combustion turbine, stationary internal combustion engine, or process heater designed to provide direct heat or power to a process not designed to generate electricity must be assessed a fee described in the table below. It also clarifies that a combustion turbine or stationary internal combustion engine designed to generate electricity must be assessed a fee as discussed above. The following table shows the fee levels prior to the act and the fee levels under the act:

<b>Process weight rate (pounds per hour)</b>	<b>Former fee for permit to install issued on or after 1/1/94</b>	<b>Fee under the act for permit to install issued on or after 7/1/03</b>
0 to 1,000	\$200	\$200
1,001 to 5,000	\$400	\$500
5,001 to 10,000	\$600	\$750
10,001 to 50,000	\$800	\$1,000
More than 50,000	\$1,000	\$1,250

Similarly, law largely retained by the act requires a person to pay a fee for a permit to install for certain mining processes that are identified by the applicable classification code. The processes include all of the following: bituminous coal and lignite mining; bituminous coal and lignite mining services; dimension stone;

crushed and broken limestone; crushed and broken stone, not elsewhere classified; construction sand and gravel; industrial sand; cut stone and stone products; and minerals and earth, ground or otherwise treated. The act corrects a computer error in the fee schedule for permits issued on or after January 1, 1994, applies the fee schedule instead to permits issued on or after July 1, 2003, and increases the fees for all but one of the fee levels. The table below shows all of the fee levels:

<b>Process weight rate (pounds per hour)</b>	<b>Former fee for permit to install issued on or after 1/1/94</b>	<b>Fee under the act for permit to install issued on or after 7/1/03</b>
0 to 10,000	\$200	\$200
10,001 to 50,000	\$300	\$400
50,001 to 100,000	\$400	\$500
100,001 to 200,000	\$500	\$600
200,001 to 400,000	\$600	\$750
400,001 or more	\$700	\$900

**Storage tanks.** Under law retained in part by the act, each person who is issued a permit to install for storage tanks is required to pay a fee according to the statutory schedule. The act reduces the number of fee levels from seven to five in the fee schedule and changes two of the fees that correspond to the change in levels. The table below shows the change in fee levels, the former fees, and the fees under the act:

<b>Gallons (max. useful capacity) under former law</b>	<b>Gallons (max. useful capacity) under the act</b>	<b>Former fee for permit to install issued on or after 1/1/94</b>	<b>Fee under the act for permit to install issued on or after 7/1/03</b>
0 to 20,000	0 to 20,000	\$100	\$100
20,001 to 40,000	20,001 to 40,000	\$150	\$150
40,001 to 100,000	40,001 to 100,000	\$200	\$250
100,001 to 250,000	100,001 to 500,000	\$250	\$400
250,001 to 500,000	----	\$350	----
500,001 to 1,000,000	500,001 or greater	\$500	\$750
1,000,001 or greater	----	\$750	----

**Gasoline/fuel dispensing facilities, dry cleaning facilities, and registration status.** The act retains continuing law's \$100 fee for a permit to install for each gasoline/fuel dispensing facility and dry cleaning facility and \$75 fee for each source covered by registration status.

**Emissions fees for holders of air pollution control permits to operate or variances other than holders of Title V permits and owners or operators of synthetic minor facilities**

(R.C. 3745.11(D))

Law largely retained by the act requires holders of air pollution control permits or variances, but who are not required to obtain Title V permits and who are not owners or operators of synthetic minor facilities, to pay annual emissions fees beginning January 1, 1994, based on the sum of the actual annual emissions from the facilities of the regulated pollutants particulate matter, sulfur dioxide, nitrogen oxides, organic compounds, and lead. The act applies the previously enacted fee schedule through December 31, 2003, and establishes a new emissions fee schedule beginning January 1, 2004. The new fee schedule establishes one new fee level category and increases the fee for the lowest fee level category. In addition, the act requires the new fees to be collected annually no sooner than April 15, commencing in 2005. The table below shows the fee schedule that will expire on December 31, 2003, and the new fee schedule under the act:

<b>Total tons per year of regulated pollutants emitted under previously enacted law</b>	<b>Annual emissions fee per facility beginning 1/1/94 under previously enacted law</b>	<b>Total tons per year of regulated pollutants emitted under the act</b>	<b>Annual emissions fee per facility beginning 1/1/04 under the act</b>
		More than 0, but less than 10	\$100
More than 0, but less than 50	\$75	10 or more, but less than 50	\$200
50 or more, but less than 100	\$300	50 or more, but less than 100	\$300
100 or more	\$700	100 or more	\$700

**Synthetic minor facility fees**

Under continuing law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic

compounds, and lead in accordance with a fee schedule. "Synthetic minor facility" means a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under ongoing law. Former law required the fee to be paid through June 30, 2004. The act extends the fee through June 30, 2006.

### **Water pollution control fees**

(R.C. 3745.11(L) and (P))

Under law retained in part by the act, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of \$100 plus .65 of 1% of the estimated project cost, up to a maximum of \$15,000, when submitting an application through June 30, 2004, and a fee of \$100 plus .2 of 1% of the estimated project cost, up to a maximum of \$5,000, on and after July 1, 2004. Under the act, the first fee is extended through June 30, 2006, and the second applies to applications submitted on or after July 1, 2006.

Continuing law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under former law, the fees were due by January 30, 2002, and January 30, 2003. The act extends payment of the fees and the fee schedules to January 30, 2004, and January 30, 2005.

In addition to the fee schedules described above, law largely retained by the act imposes a \$7,500 surcharge to the annual discharge fee applicable to industrial dischargers that is required to be paid by January 30, 2002, and January 30, 2003. The act extends the surcharge and requires it to be paid annually not later than January 30, 2004, and January 30, 2005.

Under continuing law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180. Under prior law, the fee was due annually not later than January 30, 2002, and January 30, 2003. The act continues the fee and requires it to be paid annually by January 30, 2004, and January 30, 2005.

Under law retained by the act, any person submitting an application for an industrial water pollution control certificate must pay a nonrefundable fee of \$500 at the time the application is submitted. Formerly, the fee was applicable through June 30, 2004. The act extends the fee through June 30, 2006.

**Safe drinking water fees**

(R.C. 3745.11(M) and (N) and 6109.21)

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in continuing law. Under former law, the fee for initial licenses and license renewals was required in statute through June 30, 2004, and had to be paid annually prior to January 31, 2004. The act extends the initial license and license renewal fee through June 30, 2006, and requires the fee to be paid annually prior to January 31, 2006.

The act also increases the fees for each of the three basic categories of public water systems. The following table describes the fees for public water systems that are community water systems under former law and the act:

<b>Number of Service Connections</b>	<b>Former Fee</b>	<b>Fee Under the Act</b>	<b>Former Average Cost per Connection</b>	<b>Average Cost per Connection Under the Act</b>
Not more than 49	\$56	\$112		
50 to 99	\$88	\$176		
100 to 2,499			\$.96	\$1.92
2,500 to 4,999			\$.92	\$1.48
5,000 to 7,499			\$.88	\$1.42
7,500 to 9,999			\$.84	\$1.34
10,000 to 14,999			\$.80	\$1.16
15,000 to 24,999			\$.76	\$1.10
25,000 to 49,999			\$.72	\$1.04
50,000 to 99,999			\$.68	\$ .92
100,000 to 149,999			\$.64	\$ .86
150,000 to 199,999			\$.60	\$ .80
200,000 or more			\$.56	\$ .76



The following table describes the fees for public water systems that are not community water systems and serve a nontransient population under former law and the act:

<b>Population Served</b>	<b>Former Fee</b>	<b>Fee Under the Act</b>
Fewer than 150	\$56	\$112
150 to 299	\$88	\$176
300 to 749	\$192	\$384
750 to 1,499	\$392	\$628
1,500 to 2,999	\$792	\$1,268
3,000 to 7,499	\$1,760	\$2,816
7,500 to 14,999	\$3,800	\$5,510
15,000 to 22,499	\$6,240	\$9,048
22,500 to 29,999	\$8,576	\$12,430
30,000 or more	\$11,600	\$16,820

Finally, the following table describes the fees for public water systems that are not community water systems and serve a transient population under former law and the act:

<b>Number of Wells Supplying System</b>	<b>Former Fee</b>	<b>Fee Under the Act</b>
1	\$56	\$112
2	\$56	\$112
3	\$88	\$176
4	\$192	\$278
5	\$392	\$568
<b>System designated as using a surface water source (system supplied by surface water, springs, or dug wells in prior law)</b>	\$792	\$792

The act also requires a public water system designated as using a surface water source to pay \$792 or the amount calculated using the tables for public

water systems that are community water systems or that are not community water systems and serve a transient population, whichever is greater.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water system to obtain approval of the plans from the Director. Law retained by the act establishes a fee for such plan approval. Under former law, the fee was \$100 plus .2 of 1% of the estimated project cost. The fee could not exceed \$15,000 through June 30, 2004, and \$5,000 on and after July 1, 2004. The act increases the fee for plan approval to \$150 plus .35 of 1% of the estimated project cost. In addition, the act increases the higher cap from \$15,000 to \$20,000 and the lower cap from \$5,000 to \$15,000. The act specifies that the \$20,000 limit applies to persons applying for plan approval through June 30, 2006, and the \$15,000 limit applies to persons applying for plan approval on and after July 1, 2006.

Law retained in part by the act establishes two schedules of fees that the Environmental Protection Agency charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. Formerly, a schedule with higher fees was applicable through June 30, 2004, and a schedule with lower fees was applicable on and after July 1, 2004. The act continues the higher fee schedule through June 30, 2006, but increases those fees (see table below) and applies the lower fee schedule to evaluations conducted on and after July 1, 2006, but also increases those fees (see table below). In addition, the act divides the microbiological category in the higher fee schedule into three subcategories and establishes a fee for each. The act continues through June 30, 2006, a provision stating that an individual laboratory cannot be assessed a fee more than once during a three-year period. However, it establishes a \$1,800 fee for each additional survey that is requested during the three-year period for the purpose of adding analytical methods or analysts.

The following table describes the former categories, the categories and subcategories under the act, the former fees, and the fees under the act for evaluations conducted through June 30, 2006:

<b>Fee Category under Former Law</b>	<b>Fee Category or Subcategory under the Act</b>	<b>Former Fee</b>	<b>Fee under the Act</b>
Microbiological		\$1,650	
	MMO-MUG		\$2,000
	MF		\$2,100
	MMO-MUG and MF		\$2,550

Fee Category under Former Law	Fee Category or Subcategory under the Act	Former Fee	Fee under the Act
Organic Chemical		\$3,500	\$5,400
Inorganic Chemical	Trace Metals	\$3,500	\$5,400
Standard Chemistry		\$1,800	\$2,800
Limited Chemistry		\$1,000	\$1,550

The act defines "MF" to mean microfiltration, "MMO" to mean minimal medium ONPG, "MUG" to mean 4-methylumbelliferyl-beta-D-glucuronide, and "ONPG" to mean o-nitrophenyl-beta-D-galactopyranoside.

The following table describes the former categories, the categories under the act, the former fees, and the fees under the act for evaluations conducted on and after July 1, 2006:

Fee Category under Former Law	Fee Category under the Act	Former Fee	Fee under the Act
Microbiological		\$250	\$1,650
	Organic Chemicals		\$3,500
Chemical/Radiological	Trace Metals	\$250	\$3,500
	Standard Chemistry		\$1,800
Nitrate/Turbidity	Limited Chemistry	\$150	\$1,000

**Certification of operators of water supply systems or wastewater systems**

(R.C. 3745.11(O))

Law unchanged in part by the act establishes a \$25 application fee to take the examination for certification as an operator of a water supply system under the Safe Drinking Water Law or a wastewater system under the Water Pollution Control Law through June 30, 2004, and a \$10 application fee on and after July 1, 2004. The act increases the \$25 fee to \$45 on and after December 1, 2003, and requires that fee to be paid through November 30, 2006. In addition, the act increases the \$10 fee to \$25 and requires that fee to be paid on and after December 1, 2006.

Upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a statutory schedule. Under former law, a higher schedule was established through June 30, 2004, and a lower schedule applied on and after July 1, 2004. The act applies the previously enacted higher fee schedule through November 30, 2003, establishes an increased higher fee schedule from December 1, 2003 through November 30, 2006, and applies the previously enacted lower fee schedule on and after December 1, 2006. However, it also increases the fees in the lower fee schedule and adds certification as a class A operator to the higher and lower fee schedules. The following table shows the classes of operators and the corresponding fees under all of those schedules:

<b>Class of Operator</b>	<b>Previously Enacted Fee through June 30, 2004 (November 30, 2003 under the Act)</b>	<b>Fee under the Act through November 30, 2006</b>	<b>Former Fee on and after July 1, 2004</b>	<b>Fee under the Act on and after December 1, 2006</b>
A	-	\$35	-	\$25
I	\$45	\$60	\$25	\$45
II	\$55	\$75	\$35	\$55
III	\$65	\$85	\$45	\$65
IV	\$75	\$100	\$55	\$75

In addition, the act establishes a biennial certification renewal fee for each class of certification as operators of water supply systems or wastewater systems. The act also establishes a late certification renewal fee schedule for a renewal fee that is received by the Director more than 30 days, but not more than one year after the expiration date of the certification. The following table describes the classes of operator, the biennial certification renewal fees, and the late certification renewal fees:

<b>Class of Operator</b>	<b>Biennial Certification Renewal Fee</b>	<b>Late Biennial Certification Renewal Fee</b>
A	\$25	\$45
I	\$35	\$55
II	\$45	\$65
III	\$55	\$75
IV	\$65	\$85



Finally, the act requires a person who requests a replacement certificate to pay a \$25 fee at the time the request is made.

**Application fees under Water Pollution Control Law and Safe Drinking Water Law**

(R.C. 3745.11(S))

Law unchanged in part by the act requires any person applying for a permit other than an NPDES permit, variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of \$100 at the time the application is submitted through June 30, 2004, and a nonrefundable fee of \$15 if the application was submitted on or after July 1, 2002. The act extends the \$100 fee through June 30, 2006, and applies the \$15 fee on and after July 1, 2006.

Similarly, under law retained in part by the act, a person applying for an NPDES permit through June 30, 2004, must pay a nonrefundable fee of \$200 at the time of application. On and after July 1, 2004, the nonrefundable application fee is \$15. The act extends the \$200 fee through June 30, 2006, and applies the \$15 fee on and after July 1, 2006.

**Electronic submission of certain applications to Environmental Protection Agency**

(R.C. 3745.11(S)(1))

Continuing law requires a person applying for a registration certificate, permit, variance, or plan approval under the Solid, Infectious, and Hazardous Waste Law, Safe Drinking Water Law, or Water Pollution Control Law to pay the applicable application fee at the time an application is submitted. The act provides that if a person submits an electronic application for such a registration certificate, permit, variance, or plan approval for which an application fee is established in statute, the person must pay the applicable application fee as expeditiously as possible after the submission of the electronic application. The act prohibits the review or processing of an application for a registration certificate, permit, variance, or plan approval until the required fee is paid.

**Fee for covenant not to sue under brownfield portion of Clean Ohio Program**

(R.C. 3746.13)

Continuing law provides that an applicant who has entered into an agreement with the Clean Ohio Council for a grant or loan under the brownfield portion of the Clean Ohio Program and who is issued a covenant not to sue under

the Voluntary Action Program is not required to pay the fee that is established in rules adopted under the Voluntary Action Program Law. The act clarifies that such an applicant meeting those requirements is not required to pay the fee for the issuance of a covenant not to sue that is established in rules adopted under the Voluntary Action Program Law.

---

## OHIO ETHICS COMMISSION

- Increases, effective January 1, 2004, the fees that must be paid by candidates and officeholders filing required financial disclosure statements with the appropriate ethics commission.
- Changes, effective January 1, 2004, from one-half of the applicable filing fee to \$10, the late filing fee that the appropriate ethics commission must assess for each day that a person fails to timely file a required financial disclosure statement, and increases from \$100 to \$250 the maximum total late filing fee that may be imposed.

### *Filing and late fees for financial disclosure statements*

(R.C. 102.02; Section 202)

Continuing law generally requires candidates, persons elected or appointed to elective offices, persons holding specific positions in state government, and certain other officeholders, public officials, and public employees to file financial disclosure statements with the appropriate ethics commission identifying their sources of income, property owned, persons to whom they owe debts, sources of gifts received, and other specified information. At the time the statement is filed, candidates and officeholders must pay a filing fee. For each day that a required financial disclosure statement is not timely filed, the candidate or officeholder also must pay a late filing fee.

Beginning January 1, 2004, the act increases the amount of the filing fees that must be paid in conjunction with the filing of required financial disclosure statements with the appropriate ethics commission for all candidates and the holders of all offices. The former filing fee and the new filing fee established by the act for each affected office is identified in the table below.



<b>Office</b>	<b>Former filing fee</b>	<b>New filing fee</b>
State office, except the office of member of the State Board of Education	\$50	\$65
Member of United States Congress and General Assembly member	\$25	\$40
County office	\$25	\$40
City office	\$10	\$25
Office of member of the State Board of Education	\$20	\$25
Office of member of a city, local, exempted village, or cooperative education board of education or educational service center governing board	\$5	\$20
Position of business manager, treasurer, or superintendent of a city, local, exempted village, joint vocational, or cooperative education school district or educational service center	\$5	\$20
All other required offices or positions	\$25	\$40

If a required financial disclosure statement is not filed by the date on which it is required to be filed, continuing law requires the appropriate ethics commission to assess the person required to file the statement a late filing fee. Under former law, the person had to be assessed a late filing fee equal to one-half of the applicable filing fee for each day that the statement was not filed, up to a maximum total late filing fee of \$100. Beginning January 1, 2004, the act requires a late filing fee of \$10 to be assessed for each day that the statement is not timely filed, up to a maximum total late filing fee of \$250.

---

### **GENERAL ASSEMBLY**

- Creates the Legislative Audit Commission Study Committee to study how other states provide for a legislative auditing function.

### Legislative Audit Commission Study Committee

(Section 171)

The act creates the Legislative Audit Commission Study Committee consisting of the four members mentioned below. The committee must study how other states provide for a legislative auditing function within their respective legislative branches of government and must make recommendations (1) on how Ohio should address the legislative auditing function and (2) on the funding levels necessary to accomplish the objectives recommended. The committee must publish its findings and recommendations in a report to the Governor, the Speaker and the Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate, not later than December 31, 2003. Upon submission of the report, the committee must cease to exist.

Two members of the committee must be members of the Senate appointed by the President of the Senate, each of whom must be a member of a different political party. The other two members of the committee must be members of the House of Representatives appointed by the Speaker of the House of Representatives, each of whom must be a member of a different political party. All vacancies in the membership of the committee must be filled in the same manner prescribed for original appointments. The members of the committee must serve without compensation, but must be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

The act specifies that the committee members must select a chairperson from among themselves. The Legislative Service Commission must provide necessary support to the committee.

---

### **OFFICE OF THE GOVERNOR**

- Creates the Governor's Office of Faith-based and Community Initiatives.

### Governor's Office of Faith-based and Community Initiatives

(R.C. 107.12; Section 59.07a)

The act establishes within the office of the Governor the Governor's Office of Faith-based and Community Initiatives. The Office is to serve as a clearinghouse of information on federal, state, and local funding for charitable services performed by organizations; encourage organizations to seek public



funding for their charitable services; and act as a liaison between state agencies and organizations.<sup>90</sup> The Office must also advise the Governor, General Assembly, and the Advisory Board of the Governor's Office of Faith-based and Community Initiatives on the barriers that exist to collaboration between organizations and governmental entities and on ways to remove the barriers.

The act requires the Governor to appoint an executive assistant to manage the Office and perform or oversee the performance of the Office's duties. In addition, the act establishes the Advisory Board for the Governor's Office of Faith-based and Community Initiatives. It is to provide direction, guidance, and oversight to the Office. Advisory Board members are to serve one-year terms and are not to be compensated for their service. Any vacancy that occurs on the Board must be filled in the same manner as the original appointment. The following individuals must be appointed to the advisory board within 30 days of the effective date of this provision of the act:

(1) One employee from each of the Departments of Aging, Alcohol and Drug Addiction Services, Rehabilitation and Correction, Health, Job and Family Services, Mental Health, and Youth Services, designated by the department's Director;

(2) Two members of the House of Representatives appointed by the Speaker, each from a different political party. In addition, at least one of the appointees must be a member of the legislative Black Caucus, appointed by the Speaker in consultation with the President of the Black Caucus.

(3) Two members of the Senate appointed by the Senate President, each from a different political party;

(4) Nine representatives of the nonprofit, faith-based and other nonprofit community, three each appointed by the Governor, Speaker of the House, and Senate President.

At its initial meeting, the Advisory Board must elect a chairperson from among its members who are also members of the House of Representatives. The Advisory Board must publish an annual report of the Office's activities, on or before August 1 of each year, and provide a copy of the report to the Governor, the

---

<sup>90</sup> *The act defines "organization" as a faith-based or other organization that provides charitable services to needy Ohio residents and is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.*

Speaker and Minority Leader of the House, and the Senate and Minority Leader of the Senate.

---

## DEPARTMENT OF HEALTH

- Abolishes the Department of Health's hemophilia program and, subject to available funds, requires the Department to create a new program.
- Requires the Department to continue to pay insurance premiums for individuals enrolled in the hemophilia program abolished by the act until rules are adopted for the new hemophilia program.
- Abolishes the Hemophilia Advisory Council.
- Establishes a hemophilia advisory subcommittee under the Medically Handicapped Children's Medical Advisory Council.
- Decreases the maximum amount of general property tax duplicate each county is required to provide annually after fiscal year 2005 to the Department of Health for the program for medically handicapped children from 3/10 to 1/10 of a mill.
- Eliminates the Office of Women's Health Initiatives in the Department of Health, and creates the Women's Health Program in the Department.
- Codifies the Help Me Grow Program and prohibits home visiting under the program unless requested by the child's parents.
- Increases fees for the Department's Quality Monitoring and Inspection Program.
- Includes in the Revised Code provisions of uncodified law regarding the continued applicability of the conditions on which long-term care facilities received Certificates of Need under statutes that no longer exist, including conditions that prevent Medicaid certification of beds that were recategorized as intermediate care beds.
- Eliminates the requirement that a notice of intent be filed with the Director of Health and relevant health service agency prior to commencing high-cost and high-technology health activities that were removed from certificate of need review under laws enacted in 1995.



- Continues until July 1, 2005, the moratorium on accepting certificate of need applications for certain long-term care beds.
- Requires the Public Health Council to adopt rules prescribing fees for certain services provided by the Department of Health's Office of Vital Statistics, including issuance of a copy of a vital record.
- Prohibits a board of health from prescribing a fee for issuing a copy of a vital record that is less than that charged by the Office of Vital Statistics.
- Requires the Office of Vital Statistics and boards of health to collect an additional \$5 fee for each vital record copy issued to be used to fund the modernization and automation of Ohio's vital records system.
- Eliminates the availability of uncertified copies of Ohio vital records.
- Requires the issuance of a certificate recognizing the delivery of a stillborn infant if a parent requests a certificate.
- Requires the Director of Health to develop guidelines by rule for the form of a certificate recognizing the delivery of a stillborn infant.
- Specifies that a certificate recognizing the delivery of a stillborn infant is not proof of a live birth for tax purposes.
- Increases by 5% fees charged maternity hospitals and hospital maternity units for an initial or renewed license.
- Increases the application and annual renewal licensing and inspection fee for nursing homes and residential care facilities.
- Subject to approval from the United States Secretary of Health and Human Services, creates the Nursing Facility Regulatory Reform Task Force.
- Requires the Task Force to develop an alternative regulatory procedure for nursing facilities subject to federal regulation.
- Requires the Director of Health, at the request of the General Assembly, to apply for a federal waiver to implement the Task Force's recommendations.

- Increases fees paid to the Board of Examiners of Nursing Home Administrators.
- Provides a definition of "home health agency" for purposes of law requiring a criminal records check of home health agency employees and other sections of law using that definition.
- Increases licensing fees for agricultural labor camps.
- Eliminates the requirement that at least one Department of Health permanent staff member assigned to inspect agricultural labor camps speaks English and Spanish fluently and eliminates the requirement of two post-licensing inspections of the camps during occupancy.
- Increases fees for granting and renewing licenses, certifications, and approvals for persons involved in asbestos hazard abatement.
- Increases from \$25 to \$65 the fee that an asbestos hazard abatement contractor must pay to the Department of Health for each asbestos hazard abatement project the contractor conducts.
- Increases to 13 (from 5) the number of people that a food service operation may serve during a day without having to be licensed.
- Increases radiology inspection fees.
- Increases fees for hearing aid dealer's and fitter's licenses.

**Hemophilia program and advisory council**

(R.C. 3701.021, 3701.022, 3701.029, 3701.0210, 3701.144 (repealed), and 3701.145 (renumbered); Section 52.05)

The act repeals law that required the Department of Health to establish a program for care and treatment of persons suffering from hemophilia. The repealed law required the program to include establishment of a blood donor recruitment program and assistance to persons who required continuing treatment with blood and blood derivatives to avoid crippling, extensive hospitalization, and other effects associated with hemophilia. The program had to provide medical care and assistance for persons suffering from this condition who were unable to pay their own medical expenses.

The act requires the Department to establish and administer a hemophilia program to provide payment of health insurance premiums for Ohio residents diagnosed with hemophilia or related bleeding disorder who are at least age 21. The program is subject to available funds.

The act requires the Public Health Council in the Department of Health to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing eligibility requirements for the hemophilia program, including income and hardship requirements.

Under the act, the Director of Health must continue to provide, through contracts with or grants to hemophilia treatment centers, for health insurance premiums to be paid for individuals who (1) are at least 21 years of age, (2) have been diagnosed with hemophilia or a related bleeding disorder, and (3) receive that type of assistance from the existing hemophilia program that the act abolishes. The assistance is to continue until the effective date of initial rules adopted to govern the new hemophilia program that the act requires the Department to establish and mandates that those rules be adopted within 12 months.

The act abolishes the Hemophilia Advisory Council the Director of Health was required to establish and requires the Medically Handicapped Children's Medical Advisory Council to establish a hemophilia advisory subcommittee to advise the Director of Health and Council on matters pertaining to the care and treatment of individuals with hemophilia. The subcommittee's duties are to include the monitoring of care and treatment of children and adults who suffer from hemophilia or from other similar blood disorders. The subcommittee is to have 15 members from varying geographic areas appointed to four-year terms. They are to serve without compensation but may be reimbursed for travel expenses to and from subcommittee meetings. Of the members, five must have hemophilia or have family members with hemophilia, five must be providers of health care services to individuals with hemophilia, and five must be experts in fields of importance to treatment of individuals with hemophilia, including infectious diseases, insurance, and law. The act exempts the subcommittee from law that would cause it to be abolished (sunset) in four years.

**Funding for program for medically handicapped children**

(R.C. 3701.024)

The Department of Health operates a program for medically handicapped children. To be eligible, an applicant must meet medical and financial eligibility requirements established by Public Health Council rules and the Department's manual of operational procedures and guidelines for the program. The program

pays for treatment services, service coordination, and related goods provided to eligible medically handicapped children.

The Department is required to determine the amount each county is to provide annually for the program. The amount is based on a proportion of the county's total general property tax duplicate. Prior law provided that, starting fiscal year 2006, the amount was not to exceed 3/10 of a mill. The act provides that the amount is not to exceed the amount continuing law specifies it cannot exceed through fiscal year 2005: 1/10 of a mill. In other words, the maximum amount is not to increase to 3/10 of a mill in fiscal year 2006.

**Office of Women's Health Initiatives replaced by Women's Health Program**

(R.C. 3701.141 and repeals 3701.142)

The act eliminates the Office of Women's Health Initiatives that existed in the Department of Health and consisted of the Chief of the Office, an administrative assistant, and other positions determined necessary by the Director of Health. In its place, the act creates the Women's Health Program in the Department to perform some of the Office's duties. The program must assist the Director of Health in the coordination of women's and infant's health programs, advocate for women's health by requesting that the Department fund research and establish programs for women's health, and collect research and provide access to that research. Whereas the Office was required to generate grant activities, the program must apply for grant opportunities.

**Help Me Grow**

(R.C. 3701.61)

Ohio provides early childhood services to children under age three through the Help Me Grow Program. The Program is directed by the Department of Health and coordinated at the county level by family and children first councils. The act includes in the Revised Code provisions authorizing the existing Help Me Grow Program.

Help Me Grow services are primarily in the nature of providing information to families about child development, identifying infants and toddlers who have or are at risk of having a disability or developmental delay, and making referrals for and coordinating specialized services. Families may also receive home visits under the Help Me Grow Program. The act prohibits home visiting under the Help Me Grow Program unless requested by the child's parents.

### **Quality Monitoring and Inspection Program fees**

(R.C. 3702.31)

The Department of Health establishes quality standards for the following services: organ and bone marrow transplantation, stem cell harvesting and reinfusion, cardiac catheterization, open-heart surgery, obstetric and newborn care, pediatric intensive care, operation of linear accelerators, operation of cobalt radiation therapy units, and operation of gamma knives. (R.C. 3702.11 (not in the act.) The Department charges health care facilities licensing and inspection fees for these services under the Quality Monitoring and Inspection Program. The act increases the maximum annual fee for each service to \$1,750 (from \$1,250). It does not change the total fees (\$5,000) that may be charged a single facility annually.

### **Continuing effect of Certificates of Need**

(R.C. 3702.63; Section 137.23)

In 1995, Am. Sub. S.B. 50 of the 121st General Assembly repealed statutes requiring the Director of Health to issue Certificates of Need (CONs) to the following: (1) retirement communities that applied for CONs before August 15, 1987, (2) rest homes (now known as "residential care facilities") in eight southwestern Ohio counties that recategorized beds as intermediate care beds in nursing homes and applied for CONs before December 31, 1987, and (3) rest homes that recategorized beds as long-term care beds for persons with Alzheimer's Disease and related disorders. S.B. 50, in provisions of law not included in the Revised Code, or "uncodified law," specified that the holders of the CONs continue to be subject to all conditions on which the CONs were granted. In the case of recategorized rest homes beds in southwestern Ohio, the conditions were modified by Am. Sub. H.B. 405 of the 124th General Assembly, which allowed the CON holders to seek Medicare certification of the beds but maintained the prohibition against seeking Medicaid certification.<sup>91</sup>

The act establishes in the Revised Code the same provisions in uncodified law regarding the continued applicability of the conditions on which the CONs were granted. The act eliminates the corresponding provisions of uncodified law.

---

<sup>91</sup> *The counties included in this provision are Butler, Hamilton, Warren, Clermont, Clinton, Brown, Highland, and Adams counties.*

### **Notice of intent before commencing health activities**

(R.C. 3702.581, primary (repealed); 3702.529, 3702.53, 3702.532, 3702.54, 3702.543 (repealed), 3702.544, 3702.55, 3702.60, and 3702.61)

In 1995, Am. Sub. S.B. 50 of the 121st General Assembly eliminated the requirement of obtaining a CON to engage in certain high-cost and high-technology health activities. S.B. 50 required however, that any person or government entity proposing to engage in one of these activities file a "notice of intent" at least 60 days before commencing the activity. The act eliminates this requirement and the penalty for failing to provide the notice.<sup>92</sup> The act retains references to the eliminated requirement and penalty where necessary for clarity and to provide for settlement of pending cases.

### **Moratorium on long-term care beds**

(R.C. 3702.68; Sections 132.11 and 132.12)

Continuing law prohibits building or expanding the capacity of a long-term care facility without a CON issued by the Director of Health. The act continues, until July 1, 2005, a provision scheduled to expire July 1, 2003, prohibiting the

---

<sup>92</sup> *The following activities were subject to the notice of intent requirement: (1) the obligation by or on behalf of a health care facility of a capital expenditure associated with the provision of a health service, other than to acquire an existing health care facility, in an amount of \$2 million or more, (2) the addition of a health service with an average annual operating cost of \$750,000 or more for the first three full years of operation that was not offered by or on behalf of a health care facility within the preceding 12 months, (3) the addition of a megavoltage radiation therapy service operated by or on behalf of a health care facility, (4) the addition of an extracorporeal shockwave lithotripsy service, (5) the acquisition of medical equipment with a cost of \$1 million or more, (6) the establishment, development, or construction of a new health care facility or change from one category of health care facility to another, other than a situation that remains subject to CON review, (7) a change in bed capacity of a health care facility other than a change in long-term care, perinatal, or pediatric intensive care bed capacity, and (8) the acquisition, regardless of cost, of a magnetic resonance imaging unit, a cobalt radiation therapy unit, a linear accelerator, extracorporeal shockwave lithotripsy equipment, cardiac catheterization equipment or a cardiac catheterization laboratory, or a gamma knife. The penalty had been a civil money penalty in an amount equal to 10% of the gross revenue of the health activity for the period beginning with initial operation of the activity and ending with the Director's discovery of the violation.*

Director of Health from accepting for review any application for a CON for any of the following purposes:

(1) Approval of beds in a new health care facility or an increase in beds in an existing health care facility, if the beds are proposed to be licensed as nursing home beds;

(2) Approval of beds in a new county home or county nursing home, or an increase of beds in an existing county home or county nursing home, if the beds are proposed to be certified as skilled nursing facility beds under Medicare or nursing facility beds under Medicaid;

(3) An increase of hospital beds registered as long-term care beds or skilled nursing facility beds or recategorization of hospital beds that would result in an increase of beds registered as long-term care beds or skilled nursing facility beds.

The Director continues to be required to accept for review a CON application for nursing home beds in a health care facility, or skilled nursing facility beds or nursing facility beds in a county home or county nursing home, if the application concerns replacing or relocating existing beds within the same county. The Director also must accept for review an application seeking CON approval for existing beds located in an infirmary that is operated exclusively by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and was providing care exclusively to members of the religious order on January 1, 1994.

A prohibition against the Director accepting an application for a CON to recategorize hospital beds as skilled nursing beds continues indefinitely beyond July 1, 2005.

### **Vital records**

#### **Fees for vital records**

(R.C. 3705.24 and 3709.09)

Under prior law repealed by the act, the Public Health Council was required to prescribe the amount of the fee for a certified copy of a vital record or certification of birth issued by the Department of Health's Office of Vital Statistics. The repealed law also required the Office of Vital Statistics to charge \$3 for each hour or fraction of an hour required to make a special search of its files and records to determine the date or place contained in a record on file. The act

requires the Public Health Council to adopt rules prescribing fees for the following documents and services provided by the Office of Vital Statistics:

- (1) A certified copy of a vital record or certification of birth;<sup>93</sup>
- (2) A search by the Office of Vital Statistics of its files and records pursuant to a request for information, regardless of whether a copy of a record is provided;
- (3) A copy of a record provided pursuant to a request;
- (4) Replacement of a birth certificate following an adoption, legitimation, paternity determination or acknowledgment, or court order;
- (5) Filing of a delayed registration of a vital record;
- (6) Amendment of a vital record that is requested later than one year after the filing date of the vital record;
- (7) Any other documents or services for which the Public Health Council considers the charging of a fee appropriate.<sup>94</sup>

The fee for any of the following must be no less than \$7: a certified copy of a vital record or certification of birth, a search of records or files pursuant to a request for information, or a copy of a record pursuant to such a request.

The act prohibits the board of health of a city or general health district from prescribing a fee for issuing a certified copy of a vital record or certification of birth that is less than that charged by the Office of Vital Statistics.

The act requires the Office of Vital Statistics and health district boards of health to collect an additional \$5 fee for each certified copy of a vital record or certification of birth. Each board of health must forward the revenues generated by this additional fee to the Ohio Department of Health by no later than 30 days after the end of each calendar quarter. The act provides that the revenues

---

<sup>93</sup> A vital record is the certificate or report of a birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment, and any related documents. (R.C. 3705.01.) A certification of birth is usually issued when a birth record is requested. It must contain the name, sex, date of birth, registration date, and place of birth of the person whose birth it attests. (R.C. 3705.23.)

<sup>94</sup> These fees do not apply to heirloom birth certificates or to copies of the contents of an adoption file (R.C. 3705.24(H) and 3705.241).

generated by this additional fee must be used solely toward the modernization and automation of Ohio's vital records system.

The act eliminates a prohibition against a certified copy of a vital record or certification of birth being issued without payment of a fee unless otherwise specified by statute.

**Uncertified vital records**

(R.C. 3705.23)

The act repeals a law that permitted the state registrar or a local registrar, on request, to provide uncertified copies of Ohio vital records.

**Certificate recognizing delivery of a stillborn infant**

(R.C. 3705.01 and 3705.23)

Continuing law includes the vital records categories of "live birth" and "fetal death," which refer to whether a child was born alive or dead after 20 weeks of gestation. Continuing law requires that a birth certificate be registered for each live birth and a fetal death certificate be registered for each fetal death.

The act introduces the term "stillborn," which means an infant suffered a fetal death, and requires the Director of Health or the State Registrar to prepare a certificate recognizing the delivery of a stillborn infant on the receipt of an application signed by either parent. The act also requires the Director to prescribe by rule guidelines for the form of the certificate, and specifies minimum content of the certificate. The act specifies that no fee may be charged for the certificate and that the certificate is not proof of a live birth for purposes of federal, state, and local taxes.

**Maternity licensure program fees**

(R.C. 3711.021)

Maternity hospitals and hospital maternity units are licensed by the Department of Health. The act increases by 5% the fees charged maternity hospitals and units for an initial or renewed license. The fees are based on the number of births in the hospital or unit. Under the act the fees will be as follows:

Not more than 99	\$1,417
100-449 births	\$1,942
450-649 births	\$2,467



650-999 births	\$2,992
1,000-1,999 births	\$3,517
2,000 or more births	\$4,042

**Nursing home and residential care facility licensing fees**

(R.C. 3721.02)

The Department of Health licenses and inspects nursing homes and residential care facilities. The fee for an application and annual renewal licensing and inspection was \$100 for each 50 persons in the home or facility's licensed capacity. The act increases the fee to \$105 for each 50 persons in the home or facility's licensed capacity.

**The Nursing Facility Regulatory Reform Task Force**

(Section 147)

The act requires the Director of Health to request approval from the U.S. Secretary of Health and Human Services to develop an alternative regulatory procedure for nursing facilities. If the Secretary assents, the Director must convene the Nursing Facility Regulatory Reform Task Force and serve as its chair. The Task Force is to include the Director of Aging, the Director of Job and Family Services, the State Long-Term Care Ombudsman, or persons they designate; a member of the Governor's staff designated by the Governor; and the following individuals appointed by the Director of Health:

- (1) Two representatives of the Ohio Health Care Association;
- (2) Two representatives of the Association of Ohio Philanthropic Homes and Housing for the Aging;
- (3) Two representatives of the Ohio Academy of Nursing Homes;
- (4) Two representatives of the American Association of Retired Persons (AARP);
- (5) Two representatives of Families for Improved Care;
- (6) A representative from the Ohio Association of Regional Long-Term Care Ombudsmen Programs;
- (7) A representative of the 1199 League of Registered Nurses;



(8) A representative of the American Federation of State, County, and Municipal Employees.

Except to the extent that service on the Task Force is part of their employment, Task Force members are not to be compensated for their services or reimbursed by the state for expenses incurred in carrying out their duties on the Task Force.

The Scripps Gerontology Center at Miami University is to provide technical and support services for the Task Force.

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

(1) Review the effectiveness of current regulatory procedures regarding the quality of care and quality of life of nursing facility residents and develop recommendations for improvements to the procedures;

(2) Evaluate the potential effects that elimination of long-term care facility provisions of the Certificate of Need program may have on nursing facility residents;<sup>95</sup>

(3) Develop possible demonstration projects to present how proposed changes to the regulatory procedures may increase the quality of care and life of nursing facility residents.

The Task Force must submit to the Speaker and Minority Leader of the House of Representatives and to the President and Minority Leader of the Senate a report of its findings and recommendations, including an explanation of any statutory changes required to implement the recommendations. On submitting the report, the Task Force is to cease to exist. If, by adoption of a joint resolution, the General Assembly so requests, the act requires the Director of Health to apply to the U.S. Secretary of Health and Human Services for a waiver to implement the Task Force's recommendations.

---

<sup>95</sup> *Ohio law prohibits, with certain exceptions, building or expanding the capacity of a long-term care facility without a certificate of need (CON) issued by the Director of Health.*

### **Nursing home administrator licensing fees**

(R.C. 4751.06 and 4751.07)

Under prior law the Board of Examiners of Nursing Home Administrators charges an original license fee for a nursing home administrator of \$210. The act increases the fee to \$250. It increases the annual fee for a new nursing home administrator certificate of registration to \$250 (from \$210).

### **Definition of "home health agency"**

(Primary R.C. 3701.881; R.C. 1337.11 and 2133.01)

Under continuing law, a chief administrator of a home health agency must ask the Superintendent of the Bureau of Criminal Identification and Investigation to conduct a criminal records check with respect to each applicant for appointment or employment with a home health agency. In addition, the laws regarding durable power of attorney for health care and do-not-resuscitate orders also use the term "home health agency." However, "home health agency" was not defined in the Revised Code because the definition was repealed by Sub. H.B. 94 of the 124th General Assembly.

The act defines a "home health agency" as a private or government entity, other than a nursing home, residential care facility, or hospice care program, that has the primary function of providing the following services to a patient at a place of residence used as the patient's home: (1) skilled nursing care, (2) physical therapy, (3) speech-language pathology, (4) occupational therapy, (5) medical social services, and (6) home health aide services.<sup>96</sup>

### **Agricultural labor camps**

#### **Camp licensing fees**

(R.C. 3733.43)

Agricultural labor camps are areas established as temporary living quarters for two or more families, or five or more people, who are engaged in agriculture or

---

<sup>96</sup> *The act defines "home health aide services" as any of the following services provided by an individual employed with or contracted for by a home health agency: (1) hands-on bathing or assistance with a tub bath or shower, (2) assistance with dressing, (3) catheter care but not insertion, and (4) meal preparation and feeding.*

food processing. The Department of Health licenses agricultural labor camps. The act increases the following annual license fees:

- (1) License to operate an agricultural labor camp, \$75 (from \$20).
- (2) License to operate an agricultural labor camp if the application for the license is made on or after April 15, \$100 (from \$40).
- (3) Additional fee for each housing unit, \$10 (from \$3).
- (4) Additional fee for each housing unit if application for the license is made on or after April 15, \$15 per housing unit (from \$6).

**Camp inspections**

(R.C. 3733.45)

The act eliminates the requirement that at least one member of the permanent staff assigned by the Department of Health to conduct inspections of agricultural labor camps speaks both English and Spanish fluently. The act also eliminates the requirement that the Director of Health perform at least two post-licensing inspections during occupancy, at least one of which is an unannounced evening inspection conducted after 5 p.m. The act eliminates the requirement that persons who conduct evening inspections determine and record housing unit occupancy and the requirement that all designees of the Director who conduct evening inspections be fluent in both English and Spanish.

**Fee increases for persons involved in asbestos hazard abatement**

(R.C. 3710.05)

The act increases statutorily established fees for granting and renewing licenses, certifications, and approvals, as applicable, for the following categories of persons involved in asbestos hazard abatement as follows:

Asbestos Hazard Abatement Contractors	from \$500	to \$750
Asbestos Hazard Abatement Project Designers	from \$125	to \$200
Asbestos Hazard Abatement Workers	from \$25	to \$50
Asbestos Hazard Abatement Specialists	from \$125	to \$200
Asbestos Hazard Evaluation Specialists	from \$125	to \$200
Asbestos Hazard Training Providers	from \$750	to \$900

The Public Health Council may adopt rules to increase these fees under continuing law unchanged by the act.

**Asbestos Hazard Abatement Project Fee**

(R.C. 3710.07)

The act increases the fee an asbestos hazard abatement contractor must pay to the Department of Health for each asbestos hazard abatement project the contractor conducts from \$25 to \$65.

**Food service operations**

(R.C. 3717.42)

Under prior law, a food service operation that served more than five people during a single day had to be licensed by the Department of Health. The act increases this limit so that a food service operation must be licensed only if it serves more than 13 people during a single day.<sup>97</sup>

**Radiation control program fees for health care and radioactive waste facilities**

(R.C. 3748.07 and 3748.13)

Continuing law requires the Director of Health to register and inspect sources of radiation. The act increases registration and inspection fees by 25% to 33% as shown in the following chart.

<b>Inspection or registration fee</b>	<b>Prior fee</b>	<b>New fee</b>
Biennial registration	\$160	\$200
First dental x-ray tube	\$94	\$118
Each additional x-ray tube at a location	\$47	\$59
First medical x-ray tube	\$187	\$235
Each additional medical x-ray tube at a location	\$94	\$125
Each unit of ionizing radiation-	\$373	\$466

<sup>97</sup> "Food service operation" is defined in continuing law as a place where food intended to be served in individual portions is prepared or served for a charge or required donation. (R.C. 3717.01.)



<b>Inspection or registration fee</b>	<b>Prior fee</b>	<b>New fee</b>
generating equipment capable of operating at or above 250 kilovoltage peak		
First nonionizing radiation-generating equipment of any kind	\$187	\$235
Each additional nonionizing radiation-generating equipment at a location	\$94	\$125
Assembler-maintainer inspection	\$233	\$291
Inspection for unlicensed or unregistered facility without pending license or registration	\$290	\$363
Review of shielding plans or the adequacy of shielding	\$466	\$583

**Hearing Aid Dealers and Fitters Licensing Board fees**

(R.C. 4747.05, 4747.06, 4747.07, and 4747.10)

Under continuing law the Hearing Aid Dealers and Fitters Licensing Board charges fees for hearing aid dealer's or fitter's licenses. The act increases fees as follows:

- (1) Initial license, to \$262 (from \$250).
- (2) License renewal on or before February 1, to \$157 (from \$150); on or before March 1, to \$183 (from \$175); and after March 1, to \$210 (from \$200).
- (3) Duplicate copy of a license, to \$16 (from \$15).
- (4) Trainee permit, to \$150 (from \$100).
- (5) Renewal of a trainee permit, to \$105 (from \$100).

---

**OHIO HIGHER EDUCATION FACILITY COMMISSION**

- Provides that private college or university facilities used for sectarian instruction or religious worship are eligible for revenue bond financing from the Higher Education Facility Commission, but not facilities used exclusively for devotional activities.

- Specifies that a private college or university receiving financing is not prohibited from requesting of its applicants that they demonstrate beliefs or principles consistent with the mission of the college or university.

### **Eligibility for financing**

(R.C. 3377.01 and 3377.06)

Under continuing law, the Higher Education Facility Commission is authorized to issue revenue bonds and bond anticipation notes to provide money to pay project costs associated with constructing, furnishing, or otherwise improving buildings, structures, or improvements used in connection with the operation of private colleges and universities. A condition of eligibility is that the commission must determine that the college or university admits students without discrimination by reason of race, creed, color, or national origin prior to issuing the bonds or notes. Additionally, under prior law, facilities used for sectarian instruction, devotional activities, or religious worship were not eligible for commission financing.

Under the act, only those facilities used exclusively as a place for devotional activities are excluded from eligibility for commission financing. Facilities used for sectarian instruction or religious worship are eligible. Additionally, while the college or university still is required to admit students without discrimination by reason of race, creed, color, or national origin to be eligible for commission financing, the act specifies that the college or university is not prohibited from requesting that its applicants for admission demonstrate beliefs or principles consistent with the college or university's mission.

---

## **OHIO HISTORICAL SOCIETY**

- Requires the Ohio Historical Society to charge Ohio public libraries a reasonable price, not to exceed 110% more than the total cost of publication, for specified materials rather than supplying those materials at no charge and to charge Ohio schools a reasonable price, not to exceed 110% more than the total cost of preparation and delivery, for specified materials on Ohio history rather than providing those materials at cost or near cost of preparation.
- Authorizes the Archives Administration in the Society to establish a fee schedule, which may include the cost of labor, for specified activities



related to providing copies of public records, and requires revisions of the fee schedule to be subject to the approval of the board of trustees of the Society.

**Charges for specified materials**

(R.C. 149.30)

Continuing law authorizes the General Assembly to appropriate money to the Ohio Historical Society each biennium to carry out certain public functions. An appropriation by the General Assembly to the Society constitutes an offer to contract with the Society to carry out those functions for which appropriations are made. An acceptance by the Society of the appropriated funds constitutes an acceptance by the Society of that offer and is considered an agreement to perform those functions in accordance with the terms of the appropriation and the law and to expend the funds only for the purposes for which they have been appropriated.

Under law unchanged by the act, one of those functions is to publish books, pamphlets, periodicals, and other publications about history, archaeology, and natural science. Former law required the Society to supply one copy of each regular periodical issue to all Ohio public libraries without charge. The act requires the Society to offer, rather than supply, one copy of each of those periodicals to public libraries and to charge a reasonable price, not to exceed 110% more than the total cost of publication, for them.

Another function specified under continuing law is to provide Ohio schools with materials that the Society may prepare to facilitate the instruction of Ohio history. Prior law required the Society to provide the materials at cost or near cost. The act instead requires the Society to charge Ohio schools a reasonable price, not to exceed 110% more than the total cost of preparation and delivery, for the materials on Ohio history.

**Charges for specified activities performed by the Archives Administration**

(R.C. 149.31)

Under law unchanged by the act, the Society functions as the Archives Administration for the state and its political subdivisions and, as such, must preserve government archives, documents, and records of historical value that may come into its possession from public or private sources. The act authorizes the Archives Administration, notwithstanding any other provision of state law to the contrary, to establish a fee schedule, which may include the cost of labor, for

researching, retrieving, copying, and mailing copies of public records in the state archives. Revisions to the fee schedule are subject to approval by the board of trustees of the Society.

---

## INSPECTOR GENERAL

- Would have authorized the Inspector General to accept from private parties, state agencies, or other entities reimbursement of costs of investigations resulting in judicial or administrative proceedings against the parties, agencies, or entities (VETOED).
- Would have modified the definition of "state agency" for purposes of the Inspector General Law to *generally include* the Ohio Retirement Study Council (ORSC), Public Employees Retirement System, State Teachers Retirement System, School Employees Retirement System, Ohio Police and Fire Pension Fund, State Highway Patrol Retirement System, and Ohio Historical Society, but to *exclude* members of the ORSC or of a retirement board of any of these systems who are under the jurisdiction of the Joint Legislative Ethics Committee or the Board of Commissioners on Grievances and Discipline of the Supreme Court (VETOED).

### Background

Continuing law requires the Inspector General, among other duties, to (1) investigate the management and operation of state agencies on the Inspector General's own initiative in order to determine whether wrongful acts and omissions have been or are being committed by state officers or employees and (2) receive complaints from any person alleging wrongful acts and omissions, determine whether the information contained in those complaints allege facts that give reasonable cause to investigate, and, if so, investigate to determine if there is reasonable cause to believe that the alleged wrongful act or omission has been or is being committed by a state officer or employee. Each state agency and every state officer and employee must cooperate with, and provide assistance to, the Inspector General and any Deputy Inspector General in the performance of any investigation. (R.C. 121.42(A) and (B) and 121.45--not in the act.)

For purposes of the Inspector General Law, "state agency" is defined generally as every organized body, office, or agency established by the laws of the state for the exercise of any function of state government--other than the General



Assembly, any court, or the Secretary of State, Auditor of State, Treasurer of State, or Attorney General and their respective offices. (R.C. 121.41; R.C. 1.60--not in the act.)

The Attorney General rendered two opinions regarding the investigative authority of the Inspector General. In 1996 Op. Atty. Gen. No. 032, the Attorney General stated that the Inspector General has no jurisdiction to investigate the Public Employees Retirement System, Police and Firemen's Disability and Pension Fund, State Teachers Retirement System, School Employees Retirement System, and State Highway Patrol Retirement System, because the systems are not state agencies, as that term is defined in R.C. 121.41(D) and R.C. 1.60, for purposes of the statutes governing the powers and duties of the Inspector General. In 1997 Op. Atty. Gen. No. 048, the Attorney General stated that because the trustees, officers, and employees of the Ohio Historical Society are not "state officers" or "state employees," as those terms are defined in R.C. 121.41(F) and (E), respectively, R.C. 121.42(B) does not authorize the Inspector General to investigate whether those persons have committed wrongful acts or omissions. ("State employee" means any person who is an employee of a *state agency* or any person who does business with the state, and "state officer" means any person who is elected or appointed to a public office in a *state agency* (R.C. 121.41(E) and (F)).)

### **The act**

#### **Reimbursement of investigation costs**

(R.C. 121.48)

The Governor vetoed a provision that would have authorized the Inspector General to accept from private parties, state agencies, or other entities reimbursement of the costs of investigations by the Inspector General that result in judicial or administrative proceedings against the parties, agencies, or entities.

#### **Definition of "state agency"**

(R.C. 121.41(D))

The Governor vetoed a provision that would have expanded the definition of "state agency" for purposes of the Inspector General Law to *generally include* the Ohio Retirement Study Council (ORSC), Public Employees Retirement System, State Teachers Retirement System, School Employees Retirement System, Ohio Police and Fire Pension Fund, State Highway Patrol Retirement System, and Ohio Historical Society. The Governor also vetoed a provision that would have *excluded* from the expanded definition any member of the ORSC or of

the retirement board of any of those retirement systems who is under the jurisdiction of the Joint Legislative Ethics Committee or the Board of Commissioners on Grievances and Discipline of the Supreme Court.

---

## DEPARTMENT OF INSURANCE

- Postpones, to 2014, scheduled changes to limitations on the use of genetic screening and testing in connection with applications for health care coverage.
- Eliminates a cap on interest charged on funds advanced to domestic insurers and health insuring corporations.
- Extends to October 16, 2005, the date of repeal (sunset) of a provision requiring a health insuring corporation to cover, if certain conditions exist, medically necessary skilled nursing care provided to a person in a facility that does not have a contract with the health insuring corporation.
- Permits health insuring corporations to use deductibles in health care plans and imposes new limits on copayment charges under these plans.

### **Limitations on insurers' use of genetic testing to be continued**

(R.C. 3901.491 and 3901.501; Section 2 of Am. Sub. H.B. 71 of the 120th General Assembly and Section 6 of Am. Sub. S.B. 67 of the 122nd General Assembly)

Continuing law, previously scheduled for repeal in 2004, prohibits sickness and accident insurers, self-insured government entities, and health insuring corporations, from taking any of the following actions in processing an application for health care coverage: (1) requiring the applicant to submit to genetic screening or testing, (2) taking the results of genetic screening or testing into consideration, (3) inquiring about the results of genetic screening or testing, (4) making a decision adverse to the applicant based on entries in medical records or other reports of genetic screening or testing, (5) canceling or refusing to issue or renew coverage based on the results of genetic screening or testing, and (6) limiting policy or plan benefits based on the results of genetic screening or testing. Under the act, these prohibitions would not be repealed until February 9, 2014, ten years later than the scheduled repeal date under prior law.

Law unaffected by the act defines "genetic screening or testing" as a laboratory test of a person's genes or chromosomes for abnormalities, defects, or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, or other disorders, whether physical or mental, which test is a direct test for abnormalities, defects, or deficiencies, and not an indirect manifestation of genetic disorders.

After the repeal of prohibitions (1) through (6), health insuring corporations, sickness and accident insurers, and self-insured government entities would be prohibited from both of the following: (A) considering any information obtained from genetic screening or testing in processing an application or in determining individual's insurability, and (B) inquiring, directly or indirectly, into the results of genetic screening or testing, or using the results, in whole or in part, to cancel, refuse to issue or renew, or limit benefits under, a health care policy, plan, contract, or agreement. The Superintendent of Insurance and the courts would continue to be permitted to take action against, and impose penalties on, persons violating either (A) or (B).

**Interest charged on money advanced to domestic insurers and HMOs**

(R.C. 3901.72)

The act eliminates a cap that the Revised Code placed on the amount of interest a person may charge on funds advanced to domestic insurers and HMOs. Interest was capped at 10% per year or the total of 400 basis points plus the rate on United States treasury notes or bonds closest in maturity to the final repayment date of the money, whichever is greater. Under continuing law persons may advance funds needed by an insurer or HMO for business, to comply with the law, or for use as a cash guarantee fund, and the funds and interest are to be repaid only out of the insurer's or HMO's surplus earnings.

**Health insuring corporation policy to cover return to long-term care facility**

(Sections 137.05 and 137.06)

The act extends, until October 16, 2005, a requirement under which, if certain conditions exist, a health insuring corporation that provides benefits for skilled nursing care through a closed panel plan must provide reimbursement for medically necessary covered skilled nursing care services an enrollee receives in a

skilled nursing facility, even though the facility does not participate in the plan.<sup>98</sup> This requirement was to expire October 16, 2003. (R.C. 1751.68, not in the act.)

The following are the conditions that must exist:

(1) The enrollee or the enrollee's spouse, on or before September 1, 1997, resided in or had a contract to reside in the facility.

(2) The enrollee or the enrollee's spouse, immediately prior to the enrollee being hospitalized, resided in the facility or had a contract to reside in the facility and, following the hospitalization, the enrollee resides in a part of the facility that is a skilled nursing facility, regardless of whether the enrollee or spouse resided in or had a contract to reside in a different part of the facility prior to the hospitalization.

(3) The facility or home provides the enrollee the level of skilled nursing care the enrollee requires.

(4) The facility is willing to accept from the health insuring corporation all of the terms and conditions that apply to a facility that provides skilled nursing care and is participating in the corporation's closed panel plan.

#### **Maximum deductibles and copayments for HMO plans**

(R.C. 1751.12, 1751.05, 1751.11, 1751.13, 1751.16, and 1751.60)

The Revised Code currently does not authorize the use of deductibles in health insuring corporation (HMO) health care plans; the act permits their use. Under the act, HMOs may require enrollees to pay an annual deductible of up to \$1,000 per enrollee or \$2,000 per family. The act allows the Superintendent of Insurance to adopt rules defining different annual deductible amounts for plans with an employer-sponsored medical savings account, health reimbursement arrangement, or flexible spending account.

Under continuing law, HMO health care plans may impose copayment charges. However, copayments were limited to: 30% of the total cost of providing any single covered health care service (excluding physician office visits and emergency services); 50% of the total cost of providing any single covered health care service out-of-network, in open-panel plans; and, in any contract year,

---

<sup>98</sup> A closed panel plan is one in which services are covered only if provided by a facility or provider that has a contract with the health insuring corporation.

to 200% of the total annual premium rate (subject to listed exclusions). The act amends these limits.

Under the act, an HMO may choose between limiting copayment charges for a single covered basic health care service and limiting total annual copayment charges. If chosen by the HMO, copayment charges on any *single covered basic health care service* would be limited to 40% of the average cost to the HMO of providing the service. Alternatively, if chosen, *annual copayment charges* would be limited to 20% of the total annual cost to the HMO of providing all covered basic health care services, aggregated as to all persons covered under the health care plan, and, as to any individual enrollee, to 20% of the total annual cost of providing all covered basic health care services to that enrollee. Additionally, the act limits copayment charges in any contract year to 200% of the average annual premium rate for subscribers and enrollees. Under continuing law, HMOs are prohibited from imposing lifetime maximums on basic health care benefits.

---

## DEPARTMENT OF JOB AND FAMILY SERVICES

### I. General

- Authorizes the Director of the Ohio Department of Job and Family Services (ODJFS) to enter into one or more fiscal agreements with each board of county commissioners, rather than requiring the Director to enter into a partnership agreement with each board.
- Specifies what a fiscal agreement must do, including providing for ODJFS to award financial assistance for the family services duties included in the agreement.
- Provides that a board of county commissioners is not required to conduct a public hearing or consult with the county family services planning committee before entering into or amending a fiscal agreement.
- Establishes conditions and requirements for ODJFS awarding financial assistance for family services duties when there is no fiscal agreement in effect between the Director of ODJFS and a board of county commissioners.
- Permits the Director of ODJFS to enter into one or more operational agreements with boards of county commissioners.

- Requires ODJFS to require a county department of job and family services (CDJFS), child support enforcement agency (CSEA), or public children services agency (PCSA) to develop, submit to ODJFS for approval, and comply with a corrective action plan if ODJFS determines that the CDJFS, CSEA, or PCSA has failed to comply with a performance or other administrative standard, other than a standard required by federal law or established for an incentive.
- Eliminates the authority of a board of county commissioners to designate any private or government entity to serve as the county's workforce development agency.
- Provides that fiscal agreements are not required to (1) permit the exchange of information needed to improve services and assistance to individuals and families and the protection of children, (2) be coordinated and not conflict with certain plans and procedures, or (3) prohibit discrimination in hiring and promotion against applicants for and participants of the Ohio Works First program and the Prevention, Retention, and Contingency program.
- Provides that ODJFS may, at its sole discretion and subject to available federal funds and appropriations made by the General Assembly, reimburse county expenditures for administration of food stamps and Medicaid even though the expenditures meet or exceed the maximum allowable reimbursement if the board of county commissioners has entered into a fiscal agreement.
- Revises the law governing ODJFS taking action against a board of county commissioners, CDJFS, CSEA, or PCSA regarding family services duties, including modifying the reasons why ODJFS may take action and modifying and increasing the actions ODJFS may take.
- Revises the administrative review process available under certain circumstances to a board of county commissioners, CDJFS, CSEA, or PCSA against which ODJFS proposes to take action.
- Permits ODJFS to certify a claim to the Attorney General for the Attorney General to take action against the responsible entity to recover funds that ODJFS determines the responsible entity owes ODJFS for certain actions ODJFS takes against the responsible entity.

- Permits ODJFS to adopt rules establishing reporting requirements for family services duties.
- Would have required, rather than permitted, ODJFS to maximize its receipt of federal revenue (VETOED).
- Changes dates for submission of ODJFS program participation reports.
- Limits the activities of ODJFS and its divisions as a designated voter registration program agency to the duties and requirements prescribed by the Secretary of State and state and federal law.
- Provides for establishment of procedures to be followed when releasing information regarding a public assistance recipient.
- Requires law enforcement agencies to provide, on request, certain information about a public assistance recipient to ODJFS or a county agency to enable ODJFS or the county agency to determine public assistance eligibility.
- Specifies that appeals of decisions involving family services programs are not subject to reimbursement of attorney fees.

## **II. Unemployment Compensation**

- Creates the Federal Operating Fund for the deposit of certain federal unemployment compensation funds received by the state related to the operation of public employment offices.
- Eliminates job-listing requirements for any person or corporation contracting to do business with the state.
- Eliminates an obsolete reference to private industry councils created by a federal act that has been repealed.
- Renames accounts where federal money is deposited with the state of Ohio for purposes of paying unemployment benefits, job search, relocation, transportation, and subsistence allowances and alters the purposes for which federal money may be spent under the federal acts from which the funds are received.

### **III. Workforce Development**

- Allows the Director of ODJFS to enter into agreements with one-stop operators and one-stop partners to implement workforce development activities.

### **IV. Child Welfare**

- Requires that ODJFS rules governing Title IV-E foster care and adoption assistance requirements applicable to private child placing agencies and private noncustodial agencies be adopted in accordance with the Administrative Procedure Act.
- Requires ODJFS to establish (1) a single form for government entities that provide Title IV-E reimbursable placement services to children to report costs reimbursable under Title IV-E and costs reimbursable under Medicaid and (2) procedures to monitor cost reports submitted by those government entities.
- Requires ODJFS to take specified actions against a government entity providing Title IV-E reimbursable placement services to children if the entity fails to comply with fiscal accountability procedures.
- Provides for the Attorney General to take recovery actions if an inclusion or omission in a cost report for reimbursement of Title IV-E services causes a federal disallowance.
- Permits counties to use funds allocated for child welfare to pay for any child welfare services authorized by Revised Code provisions governing public children services agencies, rather than only for specified services.
- Eliminates a requirement that a county's allocation be reduced if the county's expenditure for child welfare services in the previous calendar year was less than in the year preceding that year.
- Requires a county to return unspent funds within 90 days after the end of each state fiscal biennium, rather than the end of each fiscal year.
- Provides that the Director of ODJFS is permitted, rather than required, to adopt rules prescribing county reports on expenditures, and exempts the rules from notice and public hearing requirements.

- Revises the law regarding provision of State Adoption Maintenance Subsidy (SAMS) and Post Adoption Special Services Subsidy (PASSS) payments on behalf of a child.
- Eliminates the State Adoption Special Services Subsidy (SASSS) Program, but permits a public children services agency to continue to make SASSS payments on behalf of a child for whom SASSS payments were being made prior to July 1, 2004, based on the child's individual need for services.
- Permits the director of a public children services agency to waive the requirement that a newly hired caseworker undergo 90 hours of in-service training during the first year of employment if the caseworker is a social work graduate and participated in the University Partnership Program.
- Permits ODJFS to use surplus funds in the Putative Father Registry Fund for costs of promoting adoption of children with special needs and developing, publishing, and distributing forms and materials provided to parents who voluntarily deliver a child to an emergency medical service worker, peace officer, or hospital employee.
- Eliminates a requirement that ODJFS provide state matching funds to qualify for federal funds for former foster children under the "Foster Care Independence Act of 1999."
- Eliminates a requirement that the Director of ODJFS provide domestic violence training programs to caseworkers in county departments of job and family services and public children services agencies.
- Eliminates a requirement that ODJFS reimburse public children services agencies for providing preplacement and continuing training for foster caregivers.
- Permits ODJFS to subsidize the operation of regional training centers by making grants to public children services agencies that maintain centers.
- Requires the Ohio Child Welfare Training Program to provide training for foster caregivers and adoption assessors.

- Requires ODJFS to provide, instead of reimbursement, an allowance for each hour of preplacement and continuing training provided by private child placing agencies or private noncustodial agencies.
- Permits a private child placing agency or private noncustodial agency operating an approved training program for foster caregivers to contract with an individual or public or private entity to administer the training.

## **V. Child Day-Care**

- Requires the Director of ODJFS to send to each licensed day-care provider notice, rather than copies, of proposed rules pertaining to licensure and permits the Director to send copies of adopted rules in either paper or electronic form.
- Eliminates the requirement that the Director send to county directors of job and family services copies of proposed and adopted rules regarding day-care provider licensure and notice of hearings on proposed rules.
- Requires the Director to send to each county director of job and family services notice of proposed rules and electronic copies of adopted rules regarding the certification of Type B family homes and in-home aides.
- Requires the Director to give 30 days' advance public notice of hearings on proposed rules regarding the certification of Type B homes and in-home aides.
- Permits payments, in addition to reimbursements, to be made to providers of publicly funded child day-care.
- Prohibits ODJFS from reducing the initial and continued eligibility level for publicly funded child day-care below 150% of the federal poverty line during fiscal years 2004 and 2005.
- Prohibits ODJFS from disenrolling, during the fiscal biennium, families that have incomes at or below 165% of the federal poverty line and do not otherwise cease to qualify for publicly funded child day-care if (1) the family enrolls in the program before June 9, 2003 or (2) the family's income at the time of enrollment is at or below 150% of the federal poverty line.

## **VI. Food Stamp Program**

- Requires ODJFS to implement a federally authorized exemption to the Food Stamp Program's work requirement for fiscal years 2004 and 2005.

## **VII. Title IV-A Temporary Assistance for Needy Families**

- Provides that federal funds available under the Temporary Assistance for Needy Families (TANF) block grant are among the funds ODJFS may distribute for publicly funded child day-care.
- Provides that a minor who is not married is no longer to be considered a "minor head of household" for purposes of Ohio Works First (OWF) and, therefore, is not subject to certain requirements, including work activity requirements.
- Eliminates the requirement that the Director of ODJFS evaluate the Learning, Earning, and Parenting (LEAP) component of OWF.
- Limits participation in LEAP, which encourages school attendance by OWF recipients who are parents or pregnant, to individuals who are under age 18, or age 18 and in school, instead of under age 20.
- Requires county departments of job and family services to provide LEAP participants with support services, including publicly funded day-care, transportation, and other services.
- Provides that the disqualification for Ohio Works First that is applicable to individuals residing in a jail or other public institution does not apply to a child in a prison nursery program.
- Eliminates the requirement that ODJFS develop a model design for the Prevention, Retention, and Contingency (PRC) Program.
- Requires each county department of job and family services (CDJFS) to adopt a written statement of policies governing the PRC Program for the county no later than October 1, 2003 and update the statement at least every two years thereafter.
- Establishes requirements for a CDJFS adopting the statement of policies, including a requirement that either (1) public and local government

entities be provided at least 30 days to submit comments or (2) the county family services planning committee review the statement.

- Requires that a county's statement of policies include the board of county commissioners' certification that the CDJFS complied with state law governing the PRC Program.
- Provides that eligibility for a benefit or service under a county's PRC Program is to be certified if the benefit or service does not have a financial need eligibility requirement and to be based on an application and verification if the benefit or service has a financial need eligibility requirement.
- Provides that a board of county commissioners may contract with a private or government entity to make eligibility determinations and certifications for the county's PRC Program.
- Provides that each CDJFS is responsible for funds expended or claims under the county's PRC Program that are determined to be expended or claimed in an impermissible manner.
- Provides that the county share of public assistance expenditures for the Ohio Works First and Prevention, Retention, and Contingency programs is at least 75% and no more than 82% of the county share of expenditures during fiscal year 1994 under the former Aid to Dependent Children and Job Opportunities and Basic Skills Training Program and cannot exceed the state's maintenance of effort percentage for Temporary Assistance for Needy Families.

## **VIII. Medicaid**

- Would have enacted in the Revised Code a current ODJFS rule governing the treatment of certain trusts when determining Medicaid eligibility (VETOED).
- Requires the person responsible for the estate of a decedent who was age 55 or older to investigate whether the decedent received services under Medicaid and to notify the Medicaid Estate Recovery Program if services were received.
- Requires the administrator of the Medicaid Estate Recovery Program to file a claim against the estate within 90 days after receiving notice of the

decedent's receipt of Medicaid assistance or within one year of the decedent's death, whichever is later.

- Permits a financial institution to release the decedent's account proceeds to the administrator of the Medicaid Estate Recovery Program in certain circumstances.
- Would have required ODJFS to inform parents, both by oral and written communication, of the components of a Medicaid Health Check examination of a child (VETOED).
- Would have required ODJFS to obtain parental consent before performing a Health Check examination on a child (VETOED).
- Eliminates provisions that require ODJFS to establish a program for substance abuse assessment and treatment referral of pregnant Medicaid recipients required to receive medical services through a managed care organization.
- Requires ODJFS to establish in some or all counties a "care management system" in which designated Medicaid recipients are required or permitted to participate.
- Would have required, by July 1, 2004, that some of the designated participants include Medicaid recipients who are aged, blind, and disabled (VETOED).
- Would have required ODJFS to develop a pilot program under which chronically ill children would have been included among the Medicaid recipients required to participate in the care management system (VETOED).
- Permits ODJFS to require a health insuring corporation under a Medicaid contract to provide prescription drug coverage to its enrollees.
- Requires ODJFS to appoint a temporary manager for a managed care organization under contract with ODJFS if ODJFS determines that the managed care organization has repeatedly failed to meet substantive requirements in federal Medicaid law.

- Permits ODJFS to disenroll Medicaid recipients from a managed care organization if ODJFS proposes to terminate or not to renew the organization's contract.
- Eliminates provisions referring to the Medicaid Managed Care Study Committee, which no longer exists.
- Would have created the Medication Management Incentive Payment Program to reimburse participating pharmacy providers that reduce Medicaid costs by providing consulting services (VETOED).
- Eliminates from the Director of ODJFS's examination of instituting a Medicaid copayment program a determination of which groups of recipients are appropriate for a program designed to reduce inappropriate and excessive use of medical goods and services.
- Would have specified that, if the Director of Job and Family Services establishes a Medicaid supplemental rebate program with a drug manufacturer under continuing law, drugs produced by the manufacturer for the treatment of mental illness, HIV, or AIDS would have to be exempt from the program and from "prior authorization or any other restriction" unless there was a generic equivalent (VETOED).
- Would have required that an advisory council be appointed to review proposals submitted by individuals and private entities seeking to contract with ODJFS to administer the preferred drug list and supplemental drug rebate program under Medicaid and to select the individual or private entity to be awarded the contract (VETOED).
- Would have required the Medicaid program to continue to cover dental, podiatric, and vision care services for fiscal years 2004 and 2005 in at least the amount, duration, and scope it had been covering those services (VETOED).
- Eliminates chiropractors from the definition of "physician" for the purpose of the Medicaid program.
- Includes, subject to federal approval, assertive community treatment and intensive home-based mental health services as reimbursable services under the community mental health component of Medicaid.

- Requires ODJFS to request federal approval by May 1, 2004, for the assertive community treatment and intensive home-based mental health services.
- Requires the Director of ODJFS to adopt rules, on receipt of the federal approval, establishing statewide access and acuity standards for partial hospitalization and for assertive community treatment and intensive home-based mental health services provided under the community mental health component of Medicaid.
- Eliminates the requirement that Medicaid reimbursement for community mental health services be based on the prospective cost of providing the services.
- Requires the Director of ODJFS to modify the manner or establish a new manner in which community mental health facilities and providers of alcohol and drug addiction services are paid under the Medicaid program.
- Would have required that the modified or new manner include a provision for obtaining federal financial participation (VETOED).
- Subjects to the approval of the Director of Budget and Management contracts between ODJFS and the Department of Mental Health or Department of Alcohol and Drug Addiction Services regarding administration of a Medicaid component.
- Provides that the Department of Mental Health or Department of Alcohol and Drug Addiction Services, as appropriate, and boards of alcohol, drug addiction, and mental health services must pay the nonfederal share of any Medicaid payment to a provider for services included in such a contract.
- Requires ODJFS to pay children's hospitals an amount that equals the inflation adjustment not paid for the period beginning January 1, 2003 and ending May 31, 2003.
- Requires that Medicaid payments to children's hospitals for fiscal years 2004 and 2005 include the inflation adjustment provided for in rules in effect on December 30, 2002.

- Provides for a specified inflation adjustment under Medicaid for hospital outpatient services for each year in the 2004-2005 biennium.
- Establishes caps on the mean total per diem rate that Medicaid is to pay nursing facilities and intermediate care facilities for the mentally retarded for fiscal years 2004 and 2005.
- Would have provided, with exceptions, that the number of ICF/MR beds eligible for Medicaid payments during fiscal years 2004 and 2005 could not be higher than the number of such beds eligible for such payments on what would have been the effective date of this provision (VETOED).
- Requires that a nursing facility filing its 2003 and 2004 Medicaid cost reports report as a non-reimbursable expense the cost of 76.74% of the franchise permit fee that the facility pays for the time covered by those cost reports and that a nursing facility's 2005 cost report report as a non-reimbursable expense the cost of 76.74% of the franchise permit fee that the facility pays for the first half of that cost reporting period.
- Provides that the amount of the ICF/MR franchise permit fee for fiscal years 2004 and 2005 is the same as in fiscal year 2003 (\$9.63 per bed per day).
- Eliminates a requirement that ODJFS provide copies of proposed and final Medicaid rules and proposed rules to nursing facilities and ICFs/MR that participate in Medicaid.
- Requires a nursing facility participating in Medicaid to qualify all of the facility's Medicaid-certified beds in the Medicare program.
- Adds a representative of Medicaid recipients residing in nursing facilities to the Nursing Facility Reimbursement Study Council.
- Requires the Nursing Facility Reimbursement Study Council to meet quarterly beginning August 1, 2003, and, in addition to issuing periodic reports, to issue a report on its activities, findings, and recommendations to the Governor, Speaker of the House of Representatives, and President of the Senate by July 30, 2004.
- Would have required the Director of Job and Family Services to seek federal funds to defray certain administrative costs incurred by a county

MR/DD board pursuant to its Medicaid local administrative authority if the county board has claimed the costs in accordance with rules promulgated by ODJFS (VETOED).

- Permits the Director of Mental Retardation and Developmental Disabilities to request that the Director of ODJFS apply for Medicaid waivers for home and community-based services for individuals with mental retardation or developmental disabilities as an alternative to placement in ICFs/MR.
- Permits ODJFS to seek approval for one or more Medicaid waivers under which home and community-based services are provided in the form of either or both of the following: (1) early intervention services for children under age three that are provided or arranged by county board of mental retardation and developmental disabilities, (2) therapeutic services for children who have autism and are under age six at the time of enrollment.
- Includes in the Revised Code provisions previously enacted in uncodified law that authorize the Director of ODJFS to establish the Ohio Access Success Project, which may provide benefits to help a Medicaid recipient make the transition from a nursing facility to a community setting.
- Authorizes a request to be made for federal Medicaid waivers under which two programs for home and community-based services may be created and implemented in place of the existing Ohio Home Care Program.
- Permits the replacement programs to have a maximum number of enrollees, a maximum amount that may be spent for each enrollee each year, and a maximum aggregate amount that may be expended for all enrollees each year.
- Authorizes elimination of the Ohio Home Care Program after all eligible individuals have been transferred to the replacement programs.
- Requires criminal records checks of applicants for a position to provide home and community-based waiver services to persons with disabilities through an ODJFS-administered home and community-based waiver agency.

- Requires criminal records checks of independent providers in an ODJFS-administered home and community-based services program providing home and community-based waiver services to consumers with disabilities.
- Creates the Ohio Commission to Reform Medicaid to conduct a comprehensive review of Ohio's Medicaid program.
- Requires the Department of Job and Family Services to complete a study by June 1, 2004, of the feasibility of expanding Medicaid coverage for breast and cervical cancer treatment by including women who received screenings that were not paid for with federal funds distributed as grants to early detection programs.
- Provides that during the period beginning April 1, 2003 and ending June 30, 2004, the reimbursement rate for all Medicaid service expenditures paid by state or local entities is to be the "non-enhanced rate."

#### **IX. Hospital Care Assurance Program**

- Delays the termination date of the Hospital Care Assurance Program (HCAP) from October 16, 2003 to October 16, 2005.
- Removes a reference to the termination date of HCAP from the provisions that describe the moneys included in the Health Care Services Administration Fund.
- Grants the Director of ODJFS authority to set penalties for failure of hospitals to comply with HCAP requirements.
- Shifts the deposit of penalty revenue from the General Revenue Fund to the Health Care Services Administration Fund, which is to be used to pay costs of administering the Medicaid program.

#### **X. Disability Financial and Medical Assistance**

- Replaces the Disability Assistance Program with separate programs for financial assistance (Disability Financial Assistance) and medical assistance (Disability Medical Assistance).
- Limits eligibility for Disability Financial Assistance to persons who are either (1) unable to do any substantial or gainful activity due to physical

or mental impairment lasting at least nine months or (2) age 60 or older on the day before the effective date of this provision of the act and applied before that deadline.

- Limits eligibility for Disability Medical Assistance to persons who are "medication dependent," but permits medical assistance to continue for persons receiving it under the prior program until their eligibility has been redetermined.
- Authorizes the adoption of rules for either program that establish maximum benefits, time-limits for receiving assistance, limits on the total number of persons to receive assistance, procedures for suspending acceptance of new applications, and other revisions for limiting program costs.
- Permits contracts to be entered into with any public or private entity for the administration of Disability Medical Assistance.

## **XI. Title XX Social Services**

- Provides that state law governing the administration of Title XX social services funds does not apply to funds received from a federal funding source other than the Title XX social services block grant.

### **I. General**

#### **Agreements between Director of ODJFS and boards of county commissioners**

(R.C. 307.98, 307.981, 329.06, 5101.21, 5101.211 (renumbered 5101.214), 5101.211 (new), 5101.212 (new), 5101.213 (new), and 5101.97; ancillary sections: 127.16, 329.04, 329.05, 3125.12, 5101.212 (renumbered 5101.215), and 5153.16)

#### **Background**

Under prior law, the Director of the Ohio Department of Job and Family Services (ODJFS) was required to enter into a written partnership agreement with each board of county commissioners. Each partnership agreement had to include provisions regarding all of the following: administration and design of the Ohio Works First program; the Prevention, Retention, and Contingency program; family services activities that were not assigned to county departments of job and family services (CDJFSs) by state law but that a county department assumed pursuant to

an agreement; any other CDJFS duties that the Director and a board mutually agreed to include in the agreement; and, if a county board served a local area under state law governing workforce development activities, workforce development activities provided by the county's workforce development agency. Each partnership agreement was permitted to include provisions regarding the administration and design of the duties of child support enforcement agencies (CSEAs) and public children services agencies (PCSAs) included in a plan of cooperation that the Director and a board agreed to include in the agreement.<sup>99</sup>

### **Fiscal agreements to replace partnership agreements**

The act replaces partnership agreements with fiscal agreements and permits, rather than requires, the Director and boards of county commissioners to enter into agreements. A fiscal agreement is to provide for the award of financial assistance for family services duties included in the agreement. Unlike a partnership agreement, a fiscal agreement is not to include provisions regarding workforce development.<sup>100</sup> Prior law defined "family services duties" as a duty state law requires or allows a CDJFS, CSEA, or PCSA to assume. The act provides that family services duties include financial and general administrative duties.

The act provides for boards of county commissioners to select the family services duties to include in a fiscal agreement. If a board of county commissioners elects to include family services duties of PCSAs and a county children services board serves as the county's PCSA, the board of county commissioners and county children services board must jointly enter into the fiscal agreement with the Director. If a board of county commissioners elects to include family services duties of a CSEA and the entity serving as the county's CSEA is an elected official of the county, the board of county commissioners and county elected official must jointly enter into the fiscal agreement with the Director.

The act requires a fiscal agreement to do the following:

---

<sup>99</sup> *Prior law required each board of county commissioners to enter into a written plan of cooperation with the CDJFS, CSEA, PCSA, and workforce development agency to enhance the administration of the Ohio Works First Program; Prevention, Retention, and Contingency Program; and other family services duties and workforce development activities the board and agencies agreed to include in the plan.*

<sup>100</sup> *The act provides for workforce development issues to be addressed in grant agreements. See "**Grant agreements to replace partnership agreements**," below.*

(1) Specify the family services duties included in the agreement and private and government entities designated to serve as the CDJFS, CSEA, or PCSA to perform the family services duties;<sup>101</sup>

(2) Provide for ODJFS to award financial assistance for the family services duties included in the agreement in accordance with a methodology for determining the amount of the award established by rules ODJFS is required to adopt;

(3) Specify the form of the award of financial assistance, which may be an allocation, cash draw, reimbursement, property, or, to the extent authorized by an appropriation made by the General Assembly and to the extent practicable and not in conflict with a federal or state law, a consolidated allocation for two or more family services duties included in the agreement;

(4) Provide that the award of financial assistance is subject to the availability of federal funds and appropriations made by the General Assembly;

(5) Specify annual financial, administrative, or other incentive awards, if any, to be provided in accordance with law regarding incentive awards to county agencies;

(6) Include the assurance of the board of county commissioners, and county children services board and CSEA county elected official if required to sign the agreement, that they will (a) ensure that the financial assistance is used, and the family services duties are performed, in accordance with requirements for the duties established by ODJFS, a federal or state law, or any of the following that concern family services duties included in the agreement and are published by ODJFS: state plans for receipt of federal financial participation, federal grants, and executive orders issued by the Governor, (b) ensure that the board, CDJFS, CSEA, and PCSA utilize a financial management system and other accountability mechanisms for the financial assistance that meet requirements ODJFS establishes, (c) require the CDJFS, CSEA, and PCSA to monitor all private and governmental entities that receive a payment from the financial assistance to ensure that each entity uses the payment in accordance with requirements for the family services duties and take action to recover payments that are not used in accordance with the requirements, (d) require the CDJFS, CSEA, and PCSA to promptly reimburse ODJFS the amount that represents the amount an agency is responsible for of funds ODJFS pays to any entity because of an adverse audit finding, adverse quality control finding, final disallowance of federal financial

---

<sup>101</sup> See "*Designation of entity to serve as county family services agency*" below.

participation, or other sanction or penalty, (e) require the CDJFS, CSEA, and PCSA to take prompt corrective action, including paying amounts resulting from an adverse finding, sanction, or penalty, if ODJFS, the Auditor of State, federal agency, or other entity authorized by federal or state law to determine compliance with requirements for a family services duty determines compliance has not been achieved, and (f) require, if ODJFS establishes a consolidated funding allocation for two or more family services duties included in the agreement, the CDJFS, CSEA, or PCSA to use funds available in the consolidated funding allocation only for the purpose for which the funds are appropriated;<sup>102</sup>

(7) Comply with all of the requirements for the family services duties established by ODJFS, federal or state law, state plan for receipt of federal financial participation, federal grant, or executive order;

(8) Provide for dispute resolution procedures in accordance with the provision of the act regarding ODJFS taking action against counties;<sup>103</sup>

(9) Except as provided in rules, begin on the first day of July of an odd-numbered year and end on the last day of June of the next odd-numbered year.

As was required under prior law for a partnership agreement, the act also requires a fiscal agreement to do all of the following:

(1) Specify annual financial, administrative, or other incentive awards, if any, to be provided;

(2) Provide for ODJFS taking action against the board, CDJFS, CSEA, or PCSA under certain circumstances;<sup>104</sup>

(3) Provide for audits required by federal and state law and require prompt release of audit findings and prompt action to correct problems identified in an audit;<sup>105</sup>

---

<sup>102</sup> See "ODJFS publishing fiscal agreement materials," below.

<sup>103</sup> See "ODJFS taking action against a county regarding family services duties" below.

<sup>104</sup> See "ODJFS taking action against a county regarding family services duties" below.

<sup>105</sup> The act requires a fiscal agreement to provide for timely audits.

(4) Establish the method of amending or terminating the agreement and an expedited process for correcting terms or conditions of the agreement that the parties agree are erroneous.

Also as required under prior law for a partnership agreement, the act requires ODJFS to make payments authorized by a fiscal agreement on vouchers it prepares and permits ODJFS to include any funds appropriated or allocated to it for carrying out the family services duties, including funds for personal services and maintenance. Unlike prior law governing partnership agreements, the act does not provide that family services duties included in a fiscal agreement are vested in the board. The act maintains, however, authority for ODJFS to take action against a board, CDJFS, CSEA, or PCSA regarding family services duties.<sup>106</sup> A board is required by the act to enter into the agreement on behalf of the CDJFS, CSEA, and PCSA, other than a CSEA or PCSA that signs the agreement.

#### **Contracts and grants incorporated into partnership agreement**

Continuing law authorizes the Director of ODJFS to enter into a written agreement with one or more state agencies and state universities and colleges to assist in the coordination, provision, or enhancement of family services duties and workforce development activities. The Director may also enter into written agreements or contracts with, or issue grants to, private and government entities under which funds are provided for the enhancement or innovation of family services duties or workforce development activities on the state or local level.

Former law provided that the terms of the agreements, contracts, and grants could be incorporated into a partnership agreement if all parties agree. The act does not provide for the terms of the agreements, contracts, or grants to be incorporated into a fiscal agreement.

#### **Retroactive effective date**

The act authorizes the Director of ODJFS to provide for a fiscal agreement to have a retroactive effective date on the first day of July of an odd-numbered year if (1) the agreement is entered into after that date and before the last day of that July, (2) the board of county commissioners requests the retroactive effective date, and (3) the board provides the Director good cause satisfactory to the Director for the reason the agreement was not entered into on or before the first day of that July. Regarding a fiscal agreement for the 2004-2005 biennium, the Director may provide for the agreement to have a retroactive effective date of July

---

<sup>106</sup> See "**ODJFS taking action against a county regarding family services duties**" below.

1, 2003, if the agreement is entered into after July 1, 2003 and before August 29, 2003, and the board of county commissioners requests the retroactive effective date.

### **ODJFS publishing fiscal agreement materials**

ODJFS is required by the act to publish in a manner accessible to the public all of the following that concern family services duties included in fiscal agreements: state plans for receipt of federal financial participation, grant agreements between ODJFS and a federal agency, and executive orders issued by the Governor. ODJFS is permitted to publish the materials electronically or otherwise.

### **Requirement for hearing and planning committee review eliminated**

Former law required a board of county commissioners to conduct a public hearing and consult with the county family services planning committee before entering into or substantially amending a partnership agreement. The act does not require a board to conduct a public hearing or consult with the planning committee before entering into or amending a fiscal agreement.

### **Rules governing fiscal agreements**

The act requires that the Director of ODJFS adopt rules governing fiscal agreements. The rules are exempt from Joint Committee on Agency Rule Review (JCARR) requirements, but the Director is required to give the public an opportunity to review and comment on the proposed rules before adopting them. The rules must establish methodologies to be used to determine the amount of financial assistance to be awarded under the agreements and establish terms and conditions under which an agreement may be entered into after the first day of July of an odd-numbered year. The rules may (1) govern the establishment of consolidated funding allocation and specify the time period for which a consolidated funding allocation is to be provided if the effective date of the agreement is after the first day of July of an odd-numbered year, which may include a time period before the effective date of the agreement, (2) govern the establishment of other allocations, (3) specify allowable uses of the financial assistance, and (4) establish reporting, cash management, audit, and other requirements the Director determines are necessary to provide accountability for the use of the financial assistance and determine compliance with requirements established by ODJFS, a federal or state law, state plan for receipt of federal financial participation, federal grant, or executive order. The act provides that a requirement of a fiscal agreement established by a rule is applicable to a fiscal agreement without having to be restated in the agreement.

### **Report**

ODJFS was required by former law to complete a progress report on the partnership agreements not later than the first day of each July. The report had to include a review of whether CDJFSs, CSEAs, PCSAs, and workforce development agencies satisfied performance standards included in the agreements and whether ODJFS provided assistance, services, and technical support specified in the agreements to aid the agencies in meeting the performance standards. The act does not require ODJFS to continue the reports for fiscal agreements.<sup>107</sup>

### **When a fiscal agreement is not in effect**

The act provides that if a fiscal agreement between the Director and a board of county commissioners is not in effect, all of the following apply:

(1) ODJFS is to award to the county the board serves financial assistance for family services duties in accordance with a methodology for determining the amount of the award established by rules.

(2) The financial assistance may be provided in the form of allocations, cash draws, reimbursements, and property, but may not be made in the form of a consolidated funding allocation.

(3) The award of the financial assistance is subject to the availability of federal funds and appropriations made by the General Assembly.

(4) The county family services agencies performing the family services duties for which the financial assistance is awarded must (a) use the financial assistance, and perform the family services duties, in accordance with requirements for the duties established by ODJFS, a federal or state law, or any of the following that concern the duties: state plans for receipt of federal financial participation, grant agreements between the department and a federal agency, and executive orders issued by the Governor, (b) utilize a financial management system and other accountability mechanisms for the financial assistance that meet requirements ODJFS establishes, (c) monitor all private and government entities that receive a payment from the financial assistance to ensure that each entity uses the payment in accordance with requirements for the family services duties and take action to recover payments that are not used in accordance with the requirements for the family services duties, (d) promptly reimburse ODJFS the amount that represents the amount an agency is responsible for of funds ODJFS

---

<sup>107</sup> *Unlike former law governing partnership agreements, the act does not provide for a fiscal agreement to establish performance or other administrative standards.*

pays to any entity because of an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty, (e) take prompt corrective action, including paying amounts resulting from an adverse finding, sanction, or penalty, if ODJFS, the Auditor of State, a federal agency, or other entity authorized by federal or state law to determine compliance with requirements for a family services duty determines compliance has not been achieved.

The Director is required to adopt rules as necessary to implement this provision of the act. The rules are exempt from JCARR requirements but the Director must give the public an opportunity to review and comment on the proposed rules before adopting them. The rules must establish methodologies to be used to determine the amount of financial assistance to be awarded and may do any or all of the following:

- (1) Govern the establishment of funding allocations;
- (2) Specify allowable uses of the financial assistance;

(3) Establish reporting, cash management, audit, and other requirements the Director determines are necessary to provide accountability for the use of the financial assistance and determine compliance with requirements established by ODJFS, a federal or state law, state plan for receipt of federal financial participation, grant agreement between ODJFS and a federal entity, and executive order.

### **Operational agreements**

(R.C. 5101.216)

The Director of ODJFS is permitted by the act to enter into one or more written operational agreements with boards of county commissioners to do one or more of the following regarding family services duties:

- (1) Provide for the Director to amend or rescind a rule the Director previously adopted;
- (2) Provide for the Director to modify procedures or establish alternative procedures to accommodate special circumstances in a county;
- (3) Provide for the Director and board to jointly identify operational problems of mutual concern and develop a joint plan to address the problems;

(4) Establish a framework for the Director and board to modify the use of existing resources in a manner that is beneficial to ODJFS and the county the board serves and improves family services duties for the recipients of the services.

**Performance and other administrative standards**

(R.C. 5101.22, 5101.221, and 5101.222)

ODJFS is permitted under continuing law to establish performance and other administrative standards for the administration and outcomes of family services duties and workforce development activities and determine at intervals ODJFS decides the degree to which a CDJFS, CSEA, PCSA, or workforce development agency complies with a standard. This standard does not apply to a CDJFS, CSEA, PCSA, or workforce development agency if a different standard is specified for the agency's administration of the family services duty or workforce development activity pursuant to a partnership agreement. This exception is not continued for fiscal agreements. The act also eliminates ODJFS's authority to establish performance and other administrative standards for the administration and outcomes of workforce development activities.

If ODJFS determines that a CDJFS, CSEA, or PCSA has failed to comply with a performance or other administrative standard, other than a standard required by federal law or established for an incentive, ODJFS must require the agency to develop, submit to ODJFS for approval, and comply with a corrective action plan. If a CDJFS, CSEA, or PCSA fails to develop, submit to ODJFS, or comply with a corrective action plan, or ODJFS disapproves the agency's corrective action plan, ODJFS may require the agency to develop, submit to ODJFS for approval, and comply with a corrective action plan that requires the agency to commit existing resources to the plan. ODJFS may not require a CDJFS, CSEA, or PCSA to develop a corrective action plan for failure to comply with a performance or other administrative standard if federal law requires ODJFS to establish the standard or the standard is established for an incentive.

The act permits the Director of ODJFS to adopt rules to implement ODJFS's authority to establish the performance and other administrative standards. The rules are not subject to notice, public hearing, or JCARR requirements.

**Designation of entity to serve as county family services agency**

(R.C. 307.981)

Law retained in part by the act permits a board of county commissioners to designate any private or government entity within the state to serve as any of the following:

- (1) The CDJFS, CSEA, or PCSA;
- (2) The CDJFS and CSEA or PCSA;
- (3) The CDJFS, CSEA, and PCSA;
- (4) The workforce development agency;
- (5) The workforce development agency and CDJFS;
- (6) The workforce development agency, CDJFS, and one or two of the other agencies (CSEA and/or PCSA).

Law unchanged by the act allows a board to make a redesignation by designating another private or government entity. A board's authority to make the designation is limited to the extent permitted by federal and state law.

The act provides that a board's authority to make a redesignation is similarly limited. The act eliminates a board's authority to designate and make redesignations regarding the workforce development agency.

Former law permitted the Director of ODJFS to require a partnership agreement to be amended if the Director determined that a designation or redesignation constituted a substantial change from what was in the partnership agreement. The act permits the Director to require a fiscal agreement to be amended if a designation or redesignation constitutes a change from the designation in the fiscal agreement.

**Exchange of information to improve services and other requirements**

(R.C. 307.987)

Former law provided that, to the extent permitted by federal and state law, the following were required to permit the exchange of information needed to improve services and assistance to individuals and families and the protection of children; be coordinated and not conflict with each other; prohibit discrimination in hiring and promotion against applicants for and participants of the Ohio Works First program and the Prevention, Retention, and Contingency program; comply with federal and state law; be adopted by resolution of a board of county commissioners; and specify how they may be amended:

- (1) A partnership agreement;

(2) A contract designating a private or government entity to serve as a CDJFS, CSEA, PCSA, or workforce development agency or to perform a family services duty or workforce development activity;

(3) A plan of cooperation between a board and CDJFS, CSEA, PCSA, and workforce development agency to enhance the administration of the Ohio Works First program; Prevention, Retention, and Contingency program; and other family services duties and workforce development activities;

(4) A regional plan of cooperation to enhance the administration, delivery, and effectiveness of family services duties and workforce development activities;<sup>108</sup>

(5) A transportation work plan regarding the transportation needs of low income residents seeking or striving to retain employment;

(6) Procedures for providing services to frequently relocated children.

The act maintains former law except to provide that fiscal agreements are not subject to these requirements.

**Reimbursement of county expenditures for food stamps and Medicaid**

(R.C. 5101.162)

ODJFS was permitted under former law to use available federal funds to reimburse county expenditures for county administration of food stamps or Medicaid even though the county expenditures exceed the maximum allowable reimbursement established by ODJFS rules if the board of county commissioners had not entered into a partnership agreement. The act provides instead that ODJFS may, at its sole discretion, make such reimbursement, subject to available federal funds and appropriations made by the General Assembly, even though the county expenditures meet or exceed, rather than just exceed, the maximum allowable reimbursement if the board has, rather than has not, entered into a fiscal agreement.

---

<sup>108</sup> A board of county commissioners may enter into a regional plan of cooperation with (1) one or more other boards of county commissioners, (2) the chief elected official of one or more municipal corporations that, for the purpose of the state's workforce development system, are single unit local areas, or (3) both boards of county commissioners and such chief elected officials.

**ODJFS action against a county regarding family services duties**

(R.C. 5101.24 and 5101.242; ancillary section: 5101.46)

**Causes for taking action against the responsible entity**

ODJFS was permitted by prior law to take certain actions against a board of county commissioners, CDJFS, CSEA, or PCSA if ODJFS determined any of the following applied:

(1) The CDJFS, CSEA, or PCSA failed to meet a performance standard specified in a partnership agreement or established by ODJFS for a family services duty;

(2) The CDJFS, CSEA, or PCSA failed to comply with a requirement established by federal or state law for a family services duty;

(3) The CDJFS, CSEA, or PCSA was solely or partially responsible for an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanction or penalty regarding a family services duty.

Whether ODJFS could take action against the board or CDJFS, CSEA, or PCSA depended on which was the responsible entity. Prior law defined "responsible entity" as the board if the family services duty involved was included in the board's partnership agreement with the Director of ODJFS or as the CDJFS, CSEA, or PCSA if the family services duty was not included in the partnership agreement.

The act revises the reasons for which ODJFS may take action and the definition of "responsible entity." Under the act, ODJFS may take action against the responsible entity if ODJFS determines any of the following are the case:

(1) A requirement of a fiscal agreement that includes the family services duty is not complied with;

(2) A CDJFS, CSEA, or PCSA fails to develop, submit to ODJFS, or comply with a corrective plan that requires the agency to commit existing resources to the plan, or ODJFS disapproves the plan;

(3) A requirement for the family services duty established by ODJFS, federal or state law, state plan for receipt of federal financial participation, federal grant, or executive order issued by the Governor is not complied with;

(4) The responsible entity is solely or partially responsible, as determined by the Director of ODJFS, for an adverse audit finding, adverse quality control

finding, final disallowance of federal financial participation, or other sanction or penalty regarding the family services duty.

The definition of "responsible entity" is changed to mean a board of county commissioners or CDJFS, CSEA, or PCSA, whichever the Director of ODJFS determines is appropriate to take action against. The fact that a family services duty is performed by a CDJFS, CSEA, or PCSA, a private or government entity designated to serve as the CDJFS, CSEA, or PCSA, or a private or government provider of family services duties does not affect the Director's authority to determine whether the board or the CDJFS, CSEA, or PCSA is the responsible entity.

### **Actions ODJFS may take**

The act also revises the law governing the actions that ODJFS make take against the responsible entity. Former law permitted ODJFS to take one or more of the following actions:

(1) Require the responsible entity to submit to and comply with a corrective action plan pursuant to a time schedule ODJFS specifies;

(2) Require the responsible entity to share with ODJFS a final disallowance of federal financial participation;

(3) Require the responsible entity to pay the federal government or another entity the amount, or reimburse ODJFS the amount ODJFS pays the federal government or another entity that represents the amount, the agency is responsible for of an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanction or penalty issued by the federal government or other entity;

(4) Impose a financial or administrative sanction or adverse audit issued by ODJFS against the responsible entity;

(5) Perform, or contract with a government or private entity for the entity to perform, the family services duty until ODJFS is satisfied that the responsible entity ensures that the duty will be performed satisfactorily and spend funds in the county treasury appropriated for the duty or withhold funds allocated to the responsible entity for the duty and spend the withheld funds for the duty;

(6) Ask the Attorney General to bring mandamus proceedings to compel the responsible entity to take or cease the action that enables ODJFS to take action against the responsible entity.

The act modifies some of the actions that ODJFS may take. If ODJFS requires the responsible entity to submit to a corrective action plan, the plan is to be established or approved by ODJFS and may or may not require a CDJFS, CSEA, or PCSA to commit existing resources to the plan that the agency identifies. If ODJFS performs or contracts with an entity to perform a family services duty, ODJFS is not required to choose either to spend funds in the county treasury for the duty or to withhold funds allocated for the duty but, rather, may take either or both actions. Also, ODJFS may withhold reimbursements due to the responsible entity for the family services duty, rather than just withhold allocations. The act also authorizes ODJFS to take additional actions. ODJFS may require the responsible entity to pay ODJFS the final amount that represents the amount the responsible entity is responsible for of an adverse audit finding or adverse quality control finding. If ODJFS is authorized to take action because a requirement for a family services duty is not complied with, ODJFS may withhold funds allocated or reimbursement due to the responsible entity until ODJFS determines that the responsible entity is in compliance with the requirement. ODJFS must release the funds when ODJFS determines that compliance has been achieved. Finally, the act eliminates ODJFS's authority to impose a financial sanction or adverse audit but maintains ODJFS's authority to impose an administrative sanction.

#### **Notice of proposed action**

ODJFS is required by continuing law to notify the responsible entity and county auditor if ODJFS decides to take action against the responsible entity. The act requires the notice if ODJFS proposes to take action and provides that the notice must specify the action ODJFS proposes to take. ODJFS is required by the act to send the notice by regular United States mail.

#### **Administrative review**

Continuing law permits the responsible entity to request an administrative review of a proposed action, other than a proposed action to request that the Attorney General bring mandamus proceedings. To request an administrative review, the responsible entity must send a written request to ODJFS within a certain amount of time. If the proposed action is for the responsible entity to submit to a corrective action plan, the responsible entity must send the request not later than 15 days after ODJFS mails the notice. Under former law, if the proposed action was for the responsible entity to share a final disallowance of federal financial participation; the responsible entity to pay, or reimburse ODJFS for, an amount the responsible entity was responsible for; ODJFS to impose a sanction or adverse audit; or ODJFS to perform, or contract with another entity to perform, a family services duty, the responsible entity had to send the request not later than 45 days after ODJFS mailed the notice. If a timely request for an



administrative review was made, ODJFS was required to attempt to resolve the dispute with the responsible entity within a certain amount of time. The time was 15 days if the proposed action was for the responsible entity to submit to a corrective action plan. Otherwise, the time was 60 days. If the administrative review did not resolve the dispute, ODJFS had to conduct an adjudication hearing in accordance with the Administrative Procedure Act.

The act revises the administrative review process. It continues to provide that the process is not available for ODJFS's request that the Attorney General begin mandamus proceedings and provides that the process is also not available for any of the following:

(1) ODJFS requiring the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible if the federal government, State Auditor, or entity other than ODJFS has identified a CDJFS, CSEA, or PCSA as being solely or partially responsible for an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty;

(2) An adjustment to an allocation, cash draw, advance, or reimbursement to a CDJFS, CSEA, or PCSA that ODJFS determines necessary for budgetary reasons;

(3) Withholding of a cash draw or reimbursement due to noncompliance with a reporting requirement established in ODJFS rules.<sup>109</sup>

The act provides that the 15 days that the responsible entity has to request an administrative review if ODJFS proposes to require the responsible entity to submit to a corrective action plan is 15 *calendar* days. This applies only if the plan does not require the commitment of existing resources. The act reduces from 45 days to 30 calendar days the time the responsible entity has to request an administrative review if ODJFS proposes that the responsible entity share a final disallowance of federal financial participation; the responsible entity pay, or reimburse ODJFS for, an amount the responsible entity is responsible for; ODJFS impose a sanction; or ODJFS perform, or contract with another entity to perform, a family services duty. The 30 calendar day time limit is also applied to a request for an administrative review of ODJFS's proposal to (1) require the responsible entity to pay ODJFS the amount that represents the amount the responsible entity is responsible for of an adverse audit finding or adverse quality control finding, (2)

---

<sup>109</sup> See "Reporting requirements" below.

require the responsible entity to submit to a corrective action plan that requires the commitment of existing resources, or (3) withhold funds allocated or reimbursement due to the responsible entity.

A request for an administrative review must state specifically (1) the proposed action for which the review is requested, (2) the reason why the responsible entity believes the proposed action is inappropriate, (3) all facts and legal arguments that the responsible entity wants ODJFS to consider, and (4) the name of the person who will serve as the responsible entity's representative in the review. If ODJFS's notice specifies more than one proposed action and the responsible entity does not specify all of the proposed actions in its request, the proposed actions not specified in the request are not subject to administrative review and the parts of the notice regarding those proposed actions are final and binding on the responsible entity. If the responsible entity requests an administrative review for ODJFS's proposal to require the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible, the request may not include disputes over a finding, final disallowance of federal financial participation, or other sanction or penalty issued by an entity other than ODJFS.

The act provides that the responsible entity loses the right to request an administrative review, and the notice becomes final and binding on the responsible entity, if the responsible entity fails to request the review within the required time.

If the responsible entity requests the administrative review within the required time, ODJFS must postpone taking the proposed action to allow a representative of ODJFS and a representative of the responsible entity an informal opportunity to resolve the dispute. The postponement is for 15 calendar days if the proposed action is to require the responsible entity to submit to a corrective action plan that does not require the commitment of existing resources. For any other proposed action, the postponement is for 30 calendar days. In either case, however, the Director of ODJFS and representative of the responsible entity may enter into a written agreement extending the time period for attempting an informal resolution of the dispute.

If the responsible entity and ODJFS are unable to resolve the dispute informally within the regular or extended time period, the Director of ODJFS is required by the act to appoint an administrative review panel to conduct the review. The panel must consist of ODJFS employees and one director or other representative of a CDJFS, CSEA, or PCSA, whichever type of agency is the subject of the dispute, that serves a county other than the county served by the responsible entity. No individual involved in ODJFS's proposal to take action against the responsible entity may serve on the review panel. The panel is required to review the responsible entity's request and may require that ODJFS and

the responsible entity submit additional information and schedule and conduct an informal hearing to obtain testimony or additional evidence. As under former law, a review of a proposal to require the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible is to be limited solely to the issue of the amount the responsible entity must share, reimburse, or pay. The panel is not required to make a stenographic record of its hearing or other proceedings.

An administrative review panel is required to submit a written report to the Director of ODJFS setting forth its findings of fact, conclusions of law, and recommendations for action after finishing the review. The Director is permitted to approve, modify, or disapprove the recommendations. If the Director modifies or disapproves the recommendations, the Director must state the reasons and actions to be taken against the responsible entity. The Director's approval, modification, or disapproval is final and binding on the responsible entity and is not subject to further ODJFS review.

**Other actions not subject to these provisions**

The act provides that the provision of state law authorizing ODJFS to take these actions against the responsible entity does not apply to other actions ODJFS takes against the responsible entity pursuant to authority granted by another state law unless the other state law requires ODJFS to take the action in accordance with this provision of state law.

**Request for Attorney General to seek recovery against responsible entity**

The act permits ODJFS to certify a claim to the Attorney General for the Attorney General to take action against the responsible entity to recover funds that ODJFS determines the responsible entity owes ODJFS for certain actions ODJFS takes against the responsible entity.<sup>110</sup> The actions are (1) requiring the responsible entity to submit to a corrective action plan that requires the commitment of existing resources, (2) requiring the responsible entity to share a final disallowance of federal financial participation, (3) requiring the responsible entity to pay, or reimburse ODJFS for, an amount the responsible entity is responsible for, (4) ODJFS imposing a sanction, and (5) ODJFS performing, or contracting with another entity to perform, a family services duty.

---

<sup>110</sup> ODJFS's certification of such a claim is not subject to the administrative review process.

### **Reporting requirements**

(R.C. 5101.243)

The Director of ODJFS is permitted by the act to adopt rules establishing reporting requirements for family services duties. The rules are not subject to JCARR requirements but the Director must give the public an opportunity to review and comment on the proposed rules before adopting them.

### **Maximization of federal funds**

(R.C. 5101.12)

The Governor vetoed a provision that would have required ODJFS to maximize its receipt of federal revenues. The act provides instead that ODJFS may enter into contracts to maximize federal revenue without the expenditure of state money. In selecting private entities with which to contract, ODJFS must engage in a request for proposals process. The act specifically authorizes ODJFS, subject to the approval of the controlling board, to directly enter into contracts with public entities that provide revenue maximization services.

The Governor also vetoed a provision that would have required the Office of Budget and Management to compile data concerning the amount of federal revenue received by ODJFS and to establish procedures and requirements for ODJFS to follow in preparing and submitting a report outlining ODJFS's success in maximizing federal revenue.

### **Dates for ODJFS reports**

(R.C. 5101.97)

ODJFS must submit a semiannual report on the characteristics of ODJFS program participants and recipients, and the outcomes of participation. This report must include information on all of the following: work activities, developmental activities, and alternative work activities of participants in the Ohio Works First program; programs of publicly funded child day-care; child support enforcement programs; and births to Medicaid recipients.

Under former law, the date for the submission of the report on participant characteristics was the first day of July and January. The act changes the date to the last day of those months and requires that the reports be for the six-month periods ending June 30 and December 31, respectively.

### **Voter Registration Program**

(R.C. 3503.10)

The National Voter Registration Act of 1993 requires each state to designate agencies for the registration of voters in federal elections, including all offices in the state that provide public assistance (42 U.S.C. 1973gg-5). Because ODJFS provides public assistance through several of its programs, such as the Ohio Works First program, ODJFS is designated a voter registration agency.

The Act requires that voter registration agencies make available all of the following services:

- (1) Distribution of voter registration application forms;
- (2) Unless refused by the applicant, assistance to applicants in completing voter registration application forms;
- (3) Acceptance of completed voter registration application forms for transmittal to the appropriate state election official.

In accordance with federal law, state law also requires a voter registration agency to provide the services listed above in the home of a person with disabilities if the agency is primarily engaged in providing services to persons with disabilities under a state-funded program and provides those services in the person's home.

The act limits the activities of ODJFS pertaining to the administration of the Voter Registration Program to those requirements prescribed by the Secretary of State, state law and the federal law.

### **Disclosure of information regarding public assistance recipients**

(R.C. 5101.26 and 5101.27)

In general, continuing law prohibits a person or government entity from soliciting, disclosing, receiving, using, or knowingly permitting or participating in the use of any information regarding a public assistance recipient for any purpose not directly connected to the administration of a public assistance program.<sup>111</sup>

---

<sup>111</sup> *Public assistance is financial assistance, medical assistance, or social services administered by ODJFS or a county agency, including Temporary Assistance for Needy Families (TANF), publicly funded day-care, Medicaid, and Disability Assistance. A*

### **Mandatory release of information**

To the extent permitted by federal law, ODJFS and county agencies were required by former law to do all of the following:

(1) Release information regarding a public assistance recipient for purposes directly connected to program administration to a government entity responsible for administering a public assistance program or any other state, federal, or federally assisted program that provided cash or in kind assistance or services directly to individuals based on need or for the purpose of protecting children to a government entity responsible for administering a children's protective services program;

(2) Provide information to a law enforcement agency for the purpose of any investigation, prosecution, or criminal or civil proceeding relating to the administration of that public assistance program.

(3) Provide access to information regarding a public assistance recipient to the recipient, the recipient's authorized representative, the parent or guardian of the recipient, and the recipient's attorney (if the attorney had the recipient's written authorization).

The act changes former law by eliminating the requirement that ODJFS and county agencies release information concerning public assistance recipients to other state, federal, or federally assisted programs that provide cash or in kind assistance or services to individuals based on need if the release is not directly connected to the administration of a public assistance program. Additionally, ODJFS and county agencies are no longer required to provide information to a government entity responsible for administering a children's protective services program for the purpose of protecting children. Further, under the act, access to information regarding a public assistance recipient must be provided to the recipient's legal guardian, rather than to the recipient's parent or guardian.

### **Discretionary release of information**

Under prior law, ODJFS and county agencies were permitted to release information about a public assistance recipient if the recipient gave voluntary, written consent that specifically identified the persons or government entities to which the information could be released. ODJFS and county agencies could release the information only to the persons or government entities specified in the

---

*county agency is a county department of job and family services or a public children services agency.*

consent, which could be time-limited or ongoing and may be rescinded at any time. The act instead permits ODJFS and county agencies to release information about a public assistance recipient when the recipient consents only if the consent is provided in a written authorization containing information specified by the act.

The act also permits ODJFS and county agencies to release information about a public assistance recipient to other state, federal, or federally assisted programs that provide cash or in kind assistance or services to individuals based on need even if the release is not directly connected to the administration of a public assistance program. Further, ODJFS and county agencies may provide information to a government entity responsible for administering a children's protective services program for the purpose of protecting children. Under former law, the release of this information was mandatory.

**Special restrictions governing the release of information regarding recipients of medical assistance**

Under prior law, ODJFS or a county agency could release information regarding the receipt of Medicaid only if (1) the release of information was for purposes directly connected to the administration of the Medicaid program or services provided under programs created within the Medicaid program and (2) the information was released to persons or government entities that were subject to standards of confidentiality and safeguarding information substantially comparable to those established for the Medicaid program.

The act broadens these restrictions to encompass other medical assistance programs. Under the act, ODJFS or a county agency is permitted to release information concerning the receipt of medical assistance provided under a public assistance program<sup>112</sup> only if all of the following conditions are met:

- (1) The release of information is for purposes directly connected to the administration of or provision of medical assistance provided under a public assistance program;
- (2) The information is released to persons or government entities that are subject to standards<sup>112</sup> of confidentiality and safeguarding information substantially

---

<sup>112</sup> "Medical assistance provided under a public assistance program" means medical assistance provided under Medicaid, the Disability Assistance Program, Refugee Assistance Program, State Legalization Impact Assistance Program, Children's Health Insurance Program, and the State Child Health Plan. R.C. 5101.26(E).

comparable to those established for medical assistance provided under a public assistance program;

(3) ODJFS or the county agency has obtained consent that meets the act's requirements.

Information concerning the receipt of medical assistance under a public assistance program may be released only if the release complies with the act and rules adopted by ODJFS or, if more restrictive, the federal Health Insurance Portability and Accountability Act of 1996 and regulations adopted by the United States Department of Health and Human Services to implement that Act.

**Authorization form for release of information**

(R.C. 5101.27 and 5101.271)

For purposes of release of information regarding a public assistance recipient, the act requires that authorization be made on a form that uses language understandable to the average person and contains all of the following:

(1) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;

(2) The name or other specific identification of the person or class of persons authorized to make the requested use or disclosure;

(3) The name or other specific identification of the person or governmental entity to which the information may be released;

(4) A description of each purpose of the requested use or disclosure of the information;<sup>113</sup>

(5) The date on which the authorization expires or an event related either to the individual who is the subject of the request or to the purposes of the requested use or disclosure, the occurrence of which will cause the authorization to expire;

---

<sup>113</sup> *When an individual requests information regarding the individual's receipt of public assistance and does not wish to provide a statement of purpose, the statement "at the request of the individual" is a sufficient description for purposes of describing each purpose of the requested use or disclosure of the information.*

(6) A statement that the information used or disclosed pursuant to the authorization may be disclosed by the recipient of the information and may no longer be protected from disclosure;

(7) The signature of the individual or the individual's authorized representative and the date on which the authorization was signed;

(8) If signed by an authorized representative, a description of the representative's authority to act for the individual;

(9) A statement of the individual or authorized representative's right to prospectively revoke the written authorization in writing, along with one of the following:

(a) A description of how the individual or authorized representative may revoke the authorization;

(b) If the ODJFS's privacy notice contains a description of how the individual or authorized representative may revoke the authorization, a reference to that privacy notice.

(10) A statement that treatment, payment, enrollment, or eligibility for public assistance cannot be conditioned on signing the authorization unless the authorization is necessary for determining eligibility for the public assistance program.

Unless release of information regarding a public assistance recipient is required as described above, ODJFS or the county agency may release information only in accordance with the written authorization. ODJFS or the county agency must provide a free copy of each written authorization to the individual who signed it.

**Sharing information regarding public assistance recipients with law enforcement agencies**

(R.C. 5101.28)

Former law required ODJFS to enter into written agreements with law enforcement agencies to share information concerning applicants for, or recipients or former recipients of, public assistance. This information sharing could be used only to assist law enforcement agencies, ODJFS, and county agencies in determining whether an individual was a fugitive felon or was violating a condition of probation, a community control sanction, parole, or a post-release control sanction.

The act provides instead that, at the request of ODJFS or a county agency, a law enforcement agency must provide information regarding public assistance recipients to enable ODJFS or the county agency to determine for eligibility purposes whether an individual is a fugitive felon or is violating a condition of probation, a community control sanction, parole, or a post-release control sanction. A county agency may enter into a written agreement with a local law enforcement agency establishing procedures concerning access to information and providing for compliance with reporting requirements that exist under continuing law.

In addition to requiring the information sharing agreements, law largely retained by the act requires ODJFS and county agencies to provide information regarding recipients of TANF or Disability Assistance to a law enforcement agency on request for the purpose of any investigation, prosecution, or criminal or civil proceeding that is within the scope of the law enforcement agency's official duties. The act maintains this requirement to the extent permitted by federal law, with the exception of information directly related to the receipt of medical assistance or medical services.

**No reimbursement of fees by an applicant, participant, or recipient of a family services program for appealing an administrative appeal decision**

(R.C. 5101.35)

The act specifies that the appeal of an administrative appeal decision of the Director of Job and Family Services by an applicant, participant, or recipient of a family services program to a court of common pleas is not governed by the provision of the Administrative Procedure Act that allows an eligible prevailing party to file a motion to receive compensation for fees the party incurred in connection with the hearing.

## **II. Unemployment Compensation**

**Federal Operating Fund**

(R.C. 4141.04)

Under prior law, certain federal unemployment compensation moneys received by the state to pay for the operation of public employment offices were paid into the special employment service account in the Unemployment Compensation Administration Fund.

Under the act, those same moneys are to be deposited into the state treasury to the credit of the special employment service account in the newly created Federal Operating Fund.



**Job listings by persons or corporations that contract with the state**

(R.C. 4141.044)

The act repeals the requirement that any person or corporation contracting to do business with the state must (1) provide to the Director of ODJFS a listing of all available job vacancies within the person's or corporation's power to fill and (2) attempt to fill those vacancies with persons registered with the Director, unless that person or corporation proposes to fill the position from within its organization or pursuant to a traditional employer-union hiring arrangement.

**Private industry councils**

(R.C. 4141.045)

Under prior law, the membership of local private industry councils created pursuant to the federal "Job Training Partnership Act," was required to reflect the race and sex composition of the total population within an established service delivery area as defined in federal law.

The act eliminates this provision that is now obsolete due to the July 1, 2000, repeal of the federal "Job Training Partnership Act."

**Unemployment compensation fund updates to coordinate with federal trade act law changes**

(R.C. 4141.09)

Under continuing law, the federal government makes available to Ohio and other states certain moneys to pay for assistance to workers who experience job loss or dislocation due to U.S. foreign trade agreements, most notably, the North American Free Trade Act.

Under prior law, the Ohio Treasurer of State, under the direction of the Director of ODJFS, was required to deposit funds received by the Director pursuant to the federal "Trade Act of 1974" into the Trade Act Account, which was created in Ohio law for the purpose of paying for benefits, training, and support services under that act. Federal funds received by the Director pursuant to the "North American Free Trade Agreement Implementation Act," were required to be deposited into the North American Free Trade account, which was created in Ohio law for the purpose of paying unemployment benefits, training, and support services under that act.

Under the act, the "Trade Act" account is renamed the "Trade Act Benefit" account and money deposited into that account for the payment of unemployment

benefits, job search, relocation, transportation, and subsistence allowances may be used for making payments specified under the following federal acts: "Trade Act of 1974," the "North American Free Trade Implementation Act of 1993," and the "Trade Act of 2002." The act also renames the "North American Free Trade Act" account the "Trade Act Training and Administration" account and specifies that money deposited into that account by the Director for unemployment training and administration purposes may be used for making payments specified under any of the following federal acts: the "Trade Act of 1974," the "North American Free Trade Implementation Act of 1993," and the "Trade Act of 2002."

### **III. Workforce Development**

#### **Agreements with one-stop operators and one-stop partners**

(R.C. 5101.214)

The Workforce Development Law unchanged by the act requires each local area to participate in a one-stop system for workforce development activities.<sup>114</sup> Each board of county commissioners and the chief elected official of a municipal corporation must ensure that at least one physical location is available in the local area for the provision of workforce development activities. A one-stop system may be operated by a private entity or a public agency, including a workforce development agency; any existing facility or organization that is established to administer workforce development activities in the local area; and a county family services agency.

The act allows the Director of ODJFS to enter into agreements with one-stop operators and one-stop partners for the purpose of implementing the federal "Workforce Investment Act of 1998."

---

<sup>114</sup> A "local area" is a (1) municipal corporation that is authorized to administer and enforce the "Workforce Investment Act of 1998," and is not joining in partnership with any other political subdivisions in order to do so, (2) single county, (3) consortium of (a) a group of two or more counties in the state, (b) one or more counties and one municipal corporation in the state, or (c) one or more counties with or without one municipal corporation in the state and one or more counties with or without one municipal corporation in another state, on the condition that those in another state share a labor market area with those in the state.

## IV. Child Welfare

### **Foster care and adoption assistance**

(R.C. 5101.141, 5101.142, 5101.145, 5101.146, 5101.1410, and 5153.78)

Continuing law requires ODJFS to act as the single state agency to administer federal payments for foster care and adoption assistance made pursuant to Title IV-E of the Social Security Act. The Director of ODJFS is required to adopt rules to implement this authority.

### **Notice, public hearing, and JCARR rule-making requirements**

Prior law provided that the rules governing financial and administrative requirements applicable to private child placing agencies (PCPAs) and private noncustodial agencies (PNAs) were not subject to notice, public hearing, and Joint Committee on Agency Rule Review (JCARR) requirements. The act subjects rules governing requirements applicable to PCPAs and PNAs to those rule-making requirements. Rules governing financial and administrative requirements for government entities that provide Title IV-E reimbursable placement services to children are exempted by the act from those rule-making requirements. Rules governing such requirement for public children services agencies (PCSAs) continue to be exempt from those rule-making requirements.

### **Single cost reporting form and cost report monitoring procedures**

Continuing law requires ODJFS to establish (1) a single form for PCSAs, PCPAs, and PNAs to report costs reimbursable under Title IV-E and costs reimbursable under Medicaid and (2) procedures to monitor cost reports submitted by PCSAs, PCPAs, and PNAs. ODJFS must establish the form and procedures in rules regarding financial requirements applicable to PCSAs, PCPAs, and PNAs. The act requires that ODJFS also establish the form and procedures in rules regarding financial requirements applicable to government entities that provide Title IV-E reimbursable placement services to children.

### **Actions taken when fiscal accountability procedures not met**

Continuing law requires that ODJFS take action if a PCSA, PCPA, or PNA fails to comply with procedures ODJFS establishes to ensure fiscal accountability. For an initial failure, ODJFS and the agency must jointly develop and implement a corrective action plan according to a specific schedule.<sup>115</sup> The act requires ODJFS

---

<sup>115</sup> *ODJFS is required, if requested by the agency, to provide technical assistance to ensure the fiscal accountability procedures and goals of the plan are met.*

to take this action against a government entity providing Title IV-E reimbursable placement services to children if the entity fails to comply with the fiscal accountability procedures.

Under prior law, if a PCSA failed to comply with the fiscal accountability procedures a second or subsequent time or failed to achieve the goals of the corrective action plan, ODJFS could impose a financial or administrative sanction or adverse audit. The act eliminates ODJFS's authority to impose a financial sanction or adverse audit but maintains its authority to impose an administrative sanction. ODJFS also maintains its authority to perform, or contract with another entity to perform, the service or to request that the Attorney General bring mandamus proceedings against the PCSA.<sup>116</sup>

Additionally, the act requires ODJFS to cancel any Title IV-E allowability rates for a government entity, other than PCSA, that provides Title IV-E reimbursable placement service to children if the entity fails to comply with the fiscal accountability procedures a second or subsequent time or fails to achieve the goals of the corrective action plan.

#### **Recovery of Title IV-E funds**

The act gives ODJFS authority to certify a claim to the Attorney General for the Attorney General to take recovery actions against a PCSA, PCPA, PNA, or government entity providing Title IV-E reimbursable placement services to children if all of the following are the case:

- (1) The agency or entity files a cost report with ODJFS;
- (2) ODJFS receives and distributes federal Title IV-E reimbursement funds based on the cost report;
- (3) The agency's or entity's misstatement, miscalculation, overstatement, understatement, or other inclusion or omission of any cost included in the cost report causes the United States Department of Health and Human Services to disallow all or part of the funds and is not the result of written directives ODJFS gave to the agency or entity.

---

<sup>116</sup> *The act does not change the actions ODJFS is to take against a PCPA or PNA that fails to comply with the fiscal accountability procedures a second or subsequent time or fails to achieve the goals of the corrective action plan; ODJFS must cancel any Title IV-E allowability rates for the agency or revoke the agency's certificate to operate.*

### **Child welfare subsidy**

(R.C. 5101.14, 5101.144, and 5111.0113)

Prior law required ODJFS to make payments, within available funds, to counties for a part of their costs for services provided to children and provided that the funds had to be used for purposes specified in the Revised Code. The act provides instead that ODJFS must distribute funds to counties eliminates the list of services for which a county is permitted to use the funds, allowing counties to use them to pay for any child welfare services authorized by Revised Code provisions governing public children services agencies. The distribution of funds is subject to available funds.

The act eliminates a law that required ODJFS to reduce a county's child welfare allocation if the amount the county spent on child welfare services in the preceding calendar year was less than the total expended in the second preceding calendar year. ODJFS was permitted to reallocate to other counties unspent child welfare funds it withheld in the form of whole or partial waivers.

Prior law required each county to return any unspent child welfare allocation funds to ODJFS within 90 days after the end of each fiscal year. The act requires each county to return unspent funds after the end of each state fiscal biennium, rather than the end of each fiscal year.

The act provides that the Director of ODJFS is permitted rather than required to adopt rules prescribing reports on expenditures that are to be submitted by the counties as necessary. The rules are exempted by the act from notice and public hearing requirements.

### **State-funded adoption subsidy programs**

(R.C. 5103.154 and 5153.163; Section 205)

The act revises the law governing state-funded adoption assistance programs.

### **State Adoption Maintenance Subsidy (SAMS)**

Prior law provided for a public children services agency to enter into a pre-adoption agreement with a prospective adoptive parent of a child with special needs for the purpose of making payments on behalf of the child but did not refer to the payments as "state adoption maintenance payments." The act names these payments state adoption maintenance subsidy (SAMS) payments and provides that a public children services agency is to enter into a SAMS agreement with a prospective adoptive parent before the adoption of a child with special needs is

finalized if (1) the child is placed in the adoptive home by a public children services agency or private child placing agency and may be legally adopted, (2) the adoptive parent has the capability of providing the permanent family relationships the child needs, (3) acceptance of the child as a member of the adoptive parent's family would not be in the child's best interest without the SAMS payments, (4) the gross income of the adoptive parent's family does not exceed 120% of the median income of a family of the same size, including the child, and (5) the child is ineligible for federal Title IV-E adoption assistance payments.<sup>117</sup> The act requires that the SAMS agreements be made by either the public children services agency that has permanent custody of the child or the public children services agency of the county in which the public children services agency that has permanent custody of the child is located. SAMS payments must be made in accordance with the agreement between the public children services agency and the prospective adoptive parent and are subject to an annual redetermination of need.

### **Post Adoption Special Services Subsidy (PASSS)**

Prior law provided that a public children services agency was permitted, and to the extent state funds were appropriated for this purpose was required, to enter into an agreement with the adoptive parent of a child meeting certain requirements. The agreement was entered into after the child's adoption and the agency was to make payments on the child's behalf under the agreement. The act provides that a public children services agency may, to the extent state funds are appropriated for this purpose, enter into an agreement with an adoptive parent after the adoption of a child meeting those requirements is finalized.<sup>118</sup> The agency is to make PASSS payments on the child's behalf under the agreement. ODJFS is required by the act to establish clinical standards to evaluate a child's physical or developmental handicap or mental or emotional condition and assess the child's need for services. The total dollar value of PASSS payments made on a child's behalf cannot exceed \$10,000 in any fiscal year, unless ODJFS determines that extraordinary circumstances exist that necessitate further funding of services

---

<sup>117</sup> *In addition to altering eligibility requirements for the payments, the act eliminates what the payments are to include. Prior law provided that the payments included medical, surgical, psychiatric, psychological, counseling, maintenance, and other costs incidental to the child's care.*

<sup>118</sup> *The act does not change the eligibility requirements. The child must (1) reside in the county the agency serves, (2) be in need of public care or protective services, and (3) have a physical or developmental handicap or mental or emotional condition that the agency determines is beyond the adoptive parent's economic resources.*

for children for the child. Under such extraordinary circumstances, the value of the payments cannot exceed \$15,000 in any fiscal year. The act requires the adoptive parent to pay at least 5% of the total cost of all services provided to the child unless the public children services agency waives this requirement.<sup>119</sup>

### **Age limitation**

Prior law provided that state-funded adoption assistance was not available for an adoptee age 21 or older. The act provides that neither SAMS nor PASSS payments may be made on behalf of a person age 18 or older beyond the end of the school year during which the person attains the age of 18 or on behalf of a mentally or physically handicapped person age 21 or older.

### **State Adoption Special Services Subsidy (SASSS)**

The act eliminates the SASSS program effective July 1, 2004, but permits, subject to findings of an annual redetermination process and the child's individual need for services, a public children services agency to continue to make SASSS payments for a child for whom SASSS payments are made prior to that date. The Revised Code did not explicitly provide for the SASSS program but, according to an ODJFS representative, the SASSS program was available to a child whose adoptive family annually earned more than 120% of the federal poverty guidelines and was eligible for federal adoption maintenance costs assistance. SASSS provided assistance for unusual needs and could not be used for maintenance costs. SASSS assistance could be used to cover a child's medical, psychiatric, psychological, or counseling services.

### **Rules**

The act requires the Director of ODJFS to adopt rules in accordance with the Administrative Procedure Act to establish (1) the process whereby a child's continuing need for SAMS is annually redetermined, (2) the method of determining the amount, duration, and scope of services provided to a child under PASSS, and (3) any other rule, requirement, or procedure ODJFS considers appropriate for the implementation of the state-funded adoption assistance programs.

---

<sup>119</sup> *The public children services agency may waive the requirement if the gross annual income of the child's adoptive family is not more than 200% of the federal poverty guidelines.*

### **ODJFS disciplinary actions**

Continuing law requires ODJFS to maintain a list of individuals who wish to adopt children and individuals who wish to adopt special needs children. At least quarterly, ODJFS must forward the list to all public children services agencies and private child placing agencies to assist them in locating appropriate homes for children.<sup>120</sup> A public children services agency may find after a determination process that a special needs child cannot be placed with any individual who appears on the ODJFS list, and may then place the child in a setting other than with an individual seeking to adopt the child. Each public children services agency must report to ODJFS its reasons for so placing a child. Prior law provided that no public children services agency that failed to comply with the determination and reporting requirements could receive more than 50% of the state funds for children services to which the agency would otherwise be eligible for that part of the fiscal year following the inappropriate placement. The act authorizes ODJFS to instead take disciplinary action, including a financial or administrative sanction, against a PCSA that fails to meet its reporting requirements.

### **University Partnership Program participants**

(R.C. 5153.122)

Caseworkers employed by a public children services agency must undergo 90 hours of in-service training during the first year of employment. The act permits the director of a public children services agency to waive the in-service requirement for University Partnership Program participants. The University Partnership Program provides financial support, in the form of grants, to social work students who are interested in pursuing a career in public child welfare. The grants cover tuition and fees for three quarters of study at a participating school. Program participants are required to have a field placement in a public children services agency and to work for one year in an Ohio public children services agency after graduation.<sup>121</sup>

In addition to in-service training for the first year of employment with a public children services agency, caseworkers must complete 36 hours of training

---

<sup>120</sup> R.C. 5103.154.

<sup>121</sup> As of March 2003, there were nine students at The Ohio State University and six students at the University of Akron participating in the program. (R.C. 5101.141; The Public Children Services Association of Ohio, [www.pcsao.org](http://www.pcsao.org) visited 5-27-03.)

annually thereafter. A supervisor hired by a public children services agency must complete at least 60 hours of in-service training during the first year of continuous employment in that position and 36 hours of training annually thereafter. The act requires the Director of ODJFS to adopt rules in accordance with the Administrative Procedure Act as necessary to implement the training requirements for the caseworkers and supervisors.

**Putative Father Registry Fund**

(R.C. 2101.16, 2151.3529, 2151.3530, and 5103.155)

Continuing law permits a parent to voluntarily deliver a child who is not more than 72 hours old to an emergency medical service worker, peace officer, or hospital employee.<sup>122</sup> The Director of ODJFS is required to promulgate forms designed to gather pertinent medical information concerning a deserted child and the child's parents. The Director is also required to promulgate written materials to be given to the parents of a deserted child describing services available to assist parents and newborns, including information directly relevant to situations that might cause parents to desert a child and procedures for a person to follow to reunite with a child the person deserted.

The act provides that if it determines that there are surplus funds in the Putative Father Registry Fund, ODJFS may use them to finance costs related to the development, publication, and distribution of the forms and materials ODJFS is required to provide.<sup>123</sup>

---

<sup>122</sup> *Ohio Revised Code Section 2151.3516 (not in the act).*

<sup>123</sup> *A "putative father" is a man who may be a child's father and to whom all of the following apply: he is not married to the child's mother at the time of the child's conception or birth; he has not adopted the child; and paternity has not been established. The Putative Father Registry is a database established and maintained by ODJFS containing the names and addresses or telephone numbers of putative fathers. A man who has sexual intercourse with a woman is on notice that if a child is born as a result and he is the putative father of the child, the child may be adopted without his consent unless he registers with the Registry within 30 days after the child's birth. To register, a putative father must submit a completed registration form provided by ODJFS. (R.C. 3107.01, 3107.061, and 3107.062 not in the act.)*

### **Independent living for young adults**

(R.C. 2151.83 and 2151.84)

A public children service agency or private child placing agency must enter into an agreement with a young adult who has been in foster care to provide independent living services for a young adult who requests the services.<sup>124</sup>

The act eliminates requirements that (1) the agreement be developed based on funds available for the independent living services and (2) ODJFS, for the purpose of facilitating the provision of independent living services, provide funds to draw down federal funds for independent living services.

### **Repeal of domestic violence training program**

(Repeals R.C. 5101.251)

The act repeals law that required that the Director of ODJFS to provide a training program to assist caseworkers in county departments of job and family services and public children services agencies in understanding the dynamics of domestic violence and the relationship domestic violence has to child abuse.

### **Ohio Child Welfare Training Program**

#### **Training programs for foster caregivers and adoption assessors**

(R.C. 5103.031, 5103.033, 5103.034, 5103.036, 5103.037, 5103.038, 5153.60, and 5153.69)

Continuing law requires ODJFS to establish a statewide program to provide training that caseworkers and supervisors of public children services agencies must complete as part of their jobs. The program is called the Ohio Child Welfare Training Program and is operated by a training coordinator under contract with ODJFS. Monitoring and evaluation of the program to ensure that it is satisfying the caseworker and supervisor training requirements are the duties of the Training Program Steering Committee established by ODJFS.

---

<sup>124</sup> "Young adult" is defined as a person age 18 or older but under age 21 who was in the temporary or permanent custody of, or was provided care in a planned permanent living arrangement by, a public children services agency or private child placing agency on the date the person attained age 18. (R.C. 2151.81.)

The act makes mandatory what had been permissive; that ODJFS provide, as part of the Ohio Child Welfare Training Program, preplacement and continuing training that foster caregivers must obtain for issuance or renewal of a foster home certificate. The act also requires the Program to provide education programs for adoption assessors.<sup>125</sup>

The act also eliminates the requirement that ODJFS approve and reimburse preplacement and continuing training programs offered by public children services agencies. The act permits the Ohio Child Welfare Training Program, a private child placing agency, or a private noncustodial agency operating a preplacement or continuing training program approved by ODJFS to condition the enrollment of a foster caregiver in a program on availability of space in the program. It also permits the Ohio Child Welfare Training Program to condition enrollment of a foster caregiver on assignment to the Program of compensation received by the foster caregiver's recommending agency from ODJFS for providing training (see "**Reimbursement of agencies for providing training programs**" below).<sup>126</sup> Private child placing agencies and private noncustodial agencies are also permitted if applicable to condition the enrollment of a foster caregiver in a training program on the payment of an instruction or registration fee, if any, by the foster caregiver's recommending agency.

The act permits a private child placing agency or private noncustodial agency to contract with an individual or public or private entity to administer the agency's approved preplacement and continuing training programs.

**Reimbursement of foster caregivers for attending training**

(R.C. 5103.0312)

A recommending agency must pay a stipend to reimburse a foster caregiver for attending training courses provided by the Ohio Child Welfare Training Program or an ODJFS-approved preplacement or continuing training program.

---

<sup>125</sup> *An adoption assessor is a person who performs various duties in connection with the adoption process. To be an adoption assessor, an individual must meet certain requirements, including completing educational programs required by rules adopted by ODJFS. The educational programs must include courses on adoption placement practice, federal and state adoption assistance programs, and post adoption support services. (R.C. 3107.014, 3107.015, and 3107.016 (not in the act).)*

<sup>126</sup> *A recommending agency is a public or private agency that recommends that ODJFS issue, deny, or renew a foster home certificate.*

The act eliminates a requirement that the foster caregiver have at least one foster child placed in the caregiver's home in order to be eligible for the stipend.

**Reimbursement of agencies for providing training programs**

(R.C. 5103.038, 5103.0313, 5103.0314, 5103.0315, and 5103.0316)

Current law requires that every other year by a date specified in rules adopted by ODJFS each private child placing agency and private noncustodial agency that seeks to operate a preplacement training program or continuing training program submit to ODJFS a proposal outlining the program. The act eliminates a requirement that each proposal include a budget for the program. The act also removes a provision that requires ODJFS to disapprove a proposed program if the program's budget is inconsistent with rules adopted by the Department.

Prior law required ODJFS to reimburse the Ohio Child Welfare Training Program and public and private agencies for the cost of procuring or providing training programs for foster caregivers. The reimbursement had to be (a) the same no matter whether the provider of the training is an agency or the Program, (b) on a per diem basis, and (c) limited to the cost associated with the trainer, obtaining a training site, and the administration of the training. The act changes the reimbursement to compensation provided by ODJFS to a private child placing agency or private noncustodial agency in the form of an allowance for each hour of preplacement and continuing training provided to foster caregivers who are recommended for initial certification or recertification as a foster parent by the agency.

**Grants to regional training centers**

(R.C. 5153.72)

Continuing law requires each of the public children services agencies of each of eight counties to establish and maintain a regional training center. The act authorizes ODJFS to make a grant to a public children services agency to wholly or partially subsidize the operation of its regional training center.

**Effective date**

The act makes the changes governing the training of foster caregivers and adoption assessors effective January 1, 2004.

## **V. Child Day-Care**

### **Day-care rules**

(R.C. 5104.011)

#### **Background**

Continuing law requires a facility that provides day-care for a certain number of children at one time to be licensed. A facility that provides day-care for 13 or more children, or seven or more children if not the home of the administrator, is licensed as a day-care center. A Type A family day-care home is the home of the administrator and that provides child day-care for seven to 12 children at one time or four to 12 children at one time if four or more are under age two. A Type B family day-care home is not required to be licensed, but must be certified by the county department of job and family services of the county in which it is located to be eligible to provide publicly funded day-care. A Type B home may provide child day-care to one to six children at one time, if not more than three of the children are under age two.

#### **Licensed Type A homes and day-care centers**

The act eliminates a requirement that the Director of ODJFS send to each county director of job and family services copies of any proposed or adopted rules governing licensure. Under the act, the Director must send notice, rather than copies, of proposed rules to each licensed day-care provider. The Director must still provide copies of adopted rules to each provider, but may do so in either paper or electronic form. The act also eliminates a requirement that the Director give county directors a written public notice, delivered either in person or by certified mail, of hearings on any proposed rules.

#### **Type B homes and in-home aides**

The act requires the Director to send to each county director of job and family services notice of proposed rules regarding the certification of Type B homes and in-home aides. The notice must include an internet web site address where the proposed rules may be viewed. The act also requires the Director to give at least 30 days' advance public notice of hearings on the proposed rules. In addition, the Director must provide to each county director an electronic copy of each adopted rule prior to the rule's effective date.

### **Payments to providers of publicly funded day-care**

(R.C. 5104.04, 5104.30, and 5104.32)

Continuing law requires ODJFS to distribute state and federal funds for publicly funded child day-care, including appropriations of federal funds available under the Child Care and Development Block Grant. Eligible day-care providers previously received reimbursement only for services provided. In addition to reimbursing providers, the act permits payments to be made to providers. Payment rates are to be based on information obtained from annual surveys of the amounts charged by day-care centers and Type A family day-care homes.

### **Eligibility for publicly funded child day-care**

(Section 59.24)

ODJFS is required by continuing law to adopt rules specifying the maximum amount of income a family may have for initial and continued eligibility for publicly funded child day-care. The maximum amount may not exceed 200% of the federal poverty line. Current law also requires ODJFS to monitor the anticipated future expenditures of county departments of job and family services for publicly funded child day-care and compare the anticipated future expenditures to available federal and state funds for day-care. Whenever ODJFS determines that the anticipated future expenditures will exceed the available funds, ODJFS must promptly notify the county departments and, before the available funds are used, issue and implement an administrative order. The order may do any or all of the following: (1) suspend enrollment of all new participants, (2) limit enrollment of new participants to those with incomes at or below a specified percentage of the federal poverty line, and (3) disenroll existing participants with income above a specified percentage of the federal poverty line.

The act prohibits ODJFS from reducing the initial and continued eligibility level for publicly funded child day-care below 150% of the federal poverty line during fiscal years 2004 and 2005. The act also prohibits ODJFS from disenrolling, during the fiscal biennium, families that have incomes at or below 165% of the federal poverty line and do not otherwise cease to qualify for publicly funded child day-care if (1) the family enrolls in the program before June 9, 2003 or (2) the family's income at the time of enrollment is at or below 150% of the federal poverty line.

## **VI. Food Stamp Program**

The Food Stamp Program is a federal program administered by ODJFS and county departments of job and family services. It is designed to raise the nutritional levels of low-income individuals and families.

### **Food Stamp Program work requirements**

(Section 59.35)

Under federal law governing the Food Stamp Program, no physically and mentally fit individual age 18 to 50 is eligible for food stamp benefits if, during the preceding 36-month period, the individual received food stamp benefits for not less than three months during which the individual failed to (1) work at least 20 hours per week, averaged monthly, (2) participate in and comply with the requirements of a work program for 20 hours or more per week, or (3) participate in and comply with the requirements of a workfare program. The federal law provides certain exceptions to this work requirement.

One of the exceptions is that a state may request that the United States Secretary of Agriculture waive the applicability of the work requirement to any group of individuals in the state if the Secretary makes a determination that the area in which the individuals reside has an unemployment rate of over 10% or does not have a sufficient number of jobs to provide employment for the individuals. The act requires ODJFS to request the Secretary to waive the applicability of the work requirement during fiscal years 2004 and 2005 to food stamp benefit recipients who reside in a county of this state that ODJFS determines has had an unemployment rate of over 10% for each of the four months before the month in which the waiver is in effect for the county. ODJFS is required to make monthly determinations of which counties the waiver is to be in effect in. No individual may be exempted from the work requirements for more than a total of nine months during the fiscal biennium.

ODJFS is required by the act to report to the Speaker and Minority Leader of the House of Representatives and President and Minority Leader of the Senate on receipt or rejection of the waiver.

## **VII. Title IV-A Temporary Assistance for Needy Families**

Continuing law requires that ODJFS prepare and submit to the United States Department of Health and Human Services a Title IV-A state plan. Title IV-A refers to the part of the Social Security Act governing the Temporary Assistance for Needy Families (TANF) block grant. The state plan must provide for the following TANF programs: (1) Ohio Works First (OWF), (2) Prevention,

Retention, and Contingency (PRC), and (3) other TANF programs established by the General Assembly or an executive order issued by the Governor that are administered or supervised by ODJFS.<sup>127</sup>

**TANF funds for publicly funded child day-care**

(R.C. 5101.80, 5104.01, and 5104.30)

Continuing law requires ODJFS to distribute state and federal funds for publicly funded child day-care. The act provides that the funds ODJFS may distribute for publicly funded child day-care include federal funds available under the TANF block grant.

**Ohio Works First**

Ohio Works First (OWF) is Ohio's TANF program of time limited cash assistance to low income families with children.

**Minor heads of household**

(R.C. 5107.02)

The act provides that a minor who is not married is not considered a "minor head of household" for purposes of OWF and, therefore, is not subject to certain requirements, including work requirements.

**Learning, Earning, and Parenting (LEAP) Program**

(R.C. 5107.30, 5107.40, and 5107.60)

The Learning, Earning, and Parenting (LEAP) Program encourages school attendance by OWF recipients who are parents or pregnant. The act eliminates the requirement that the Director of ODJFS evaluate LEAP. The act limits participation in the LEAP Program to individuals who are under age 18, or age 18 and in school, instead of under age 20.

The act also requires county departments of job and family services, subject to availability of funds, to provide LEAP participants with support services, including publicly funded day-care, transportation, and other services.

---

<sup>127</sup> *The Title IV-A state plan must also provide for components of OWF, PRC, and other ODJFS administered or supervised TANF programs that the state plan identifies as components.*

### **Prison nursery program**

(R.C. 5107.37)

An individual who resides in a county home, city infirmary, jail, or other public institution is ineligible to participate in Ohio Works First. The act provides that the disqualification does not apply to a child residing with his or her mother who participates in a prison nursery program. The Department of Rehabilitation and Correction is permitted by continuing law to establish a prison nursery program in one or more of the institutions for women the Department operates. An inmate participating in a prison nursery program is permitted to reside in the institution with a child born to the inmate while the inmate is in the Department's custody.

### **Prevention, Retention, and Contingency Program**

(Primary R.C. 5108.01; R.C. 5101.83, 5108.03, 5108.04, 5108.05, 5108.06, 5108.07, 5108.09, 5108.10, 5108.11, and 5108.12)

### **Background**

The Prevention, Retention, and Contingency (PRC) Program is a TANF program that is intended to help persons overcome immediate barriers to achieving and maintaining self-sufficiency and personal responsibility. ODJFS is required to administer the program in accordance with the federal TANF block grant, federal TANF regulations, state law, and the state TANF plan submitted to the United States Secretary of Health and Human Services.

The help provided under the PRC Program may be, with one restriction, any allowable use of federal TANF funds. This means that it must be reasonably calculated to (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives, (2) end the dependency of needy parents on government benefits by promoting job preparation, work, and marriage, (3) prevent and reduce the incidence of out-of-wedlock pregnancies, or (4) encourage the formation and maintenance of two-parent families. PRC help is also an allowable use of federal TANF fund if the state could have used federal funds under the former Aid to Families with Dependent Children Program or Job Opportunities and Basic Skills Training Program, as those programs existed on September 30, 1995, or, at the state's option, August 21, 1996, to provide the help.

The restriction is that PRC help may not be "assistance," as that term is defined in a federal TANF regulation, but must be help of a type excluded from the definition. The federal regulations define "assistance" as including cash, payments, vouchers, and other forms of benefits designed to meet a family's

ongoing basic needs for such things as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. "Assistance" includes such benefits even when they are provided in the form of payments to individual recipients and conditioned on participation in work experience, community service, or other work activities provided by federal TANF law. Unless specifically excluded, "assistance" also includes supportive services such as transportation and child care provided to unemployed families.

The following types of help may be given under the PRC Program because they are excluded from the definition of "assistance":

- (1) Nonrecurrent, short-term benefits that are designed to deal with a specific crisis situation or episode of need, are not intended to meet recurrent or ongoing needs, and will not extend beyond four months;
- (2) Work subsidies such as payment to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;
- (3) Supportive services such as child care and transportation provided to employed families;
- (4) Refundable earned income tax credits;
- (5) Contributions to, and distributions from, Individual Development Accounts;
- (6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support;
- (7) Transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.

Consistent with the requirement that it not be "assistance," the PRC Program provides help in the form of benefits and services.

### **The act**

**Written statement of policies governing the PRC Program** (R.C. 5108.03, 5108.04, 5108.05, 5108.051, 5108.06, and 5108.07). The act eliminates a requirement that ODJFS develop a model design for the PRC Program. Under prior law, a county department of job and family services (CDJFS) could adopt the model design or develop its own policies for the program. Under the act, each

CDJFS must adopt a written statement of policies governing the program for the county. The statement of policies must be adopted by October 1, 2003 and updated at least once every two years. The county director of job and family services is required to sign and date the statement of policies and any amendment to it. Within ten calendar days of adopting it, the CDJFS must provide ODJFS a written copy of the statement of policies or any amendment.

In adopting its statement of policies, each CDJFS is to establish or specify all of the following:

- (1) The benefits and services to be provided under the program;
- (2) Restrictions on the amount, duration, and frequency of the benefits and services;
- (3) Eligibility requirements;
- (4) Fair and equitable procedures for the certification of eligibility for benefits and services that do not have a financial need eligibility requirement and for the determination and verification of eligibility for benefits and services that have a financial need eligibility requirement;
- (5) Objective criteria for the delivery of benefits and services;
- (6) Administrative requirements;
- (7) Other matters the CDJFS determines are necessary.

The statement of policies may also specify the benefits and services to be provided under the PRC Program that prevent and reduce the incidence of out-of-wedlock pregnancies or encourage the formation and maintenance of two-parent families and how the CDJFS will certify individuals' eligibility for the benefits and services.

The statement of policies must be consistent with the plan of cooperation developed by the board of county commissioners and the review and analysis of the county family services committee. The CDJFS must either give the public and local government entities at least 30 days to submit comments on the statement of policies or have the county family services planning committee review the statement of policies before the county director signs and dates it.<sup>128</sup> Each

---

<sup>128</sup> *A county department of job and family services is not required to give the public and local government entities time to submit comments on an amendment to the statement of*

statement of policies must also include the board of county commissioners' certification that the CDJFS complied with the law governing the PRC Program in adopting the statement of policies. The board must revise its certification if an amendment to the statement of policies that the board considers to be significant is adopted.

**Hearings and administrative appeals** (R.C. 5108.09). Under prior law, the decision in a hearing or administrative appeal regarding the PRC Program was to be based on the ODJFS model design if the CDJFS had adopted it or on the CDJFS's written statement of policies and any amendments to the statement. Under the act, the decision is to be based on the CDJFS's written statement of policies and amendments to the statement if the CDJFS provides a copy of the statement of policies and all amendments to the hearing officer, director, or director's designee at the hearing or appeal.

**Application and determination of eligibility** (R.C. 5108.10). Under prior law, an assistance group seeking to participate in the PRC Program had to apply to a CDJFS using an application containing information the CDJFS requires. When a CDJFS received the application, it had to make a prompt investigation and record of the circumstances of the applicant in order to ascertain the facts surrounding the application and to obtain such other information as was required. On completion of the investigation, the CDJFS was required to determine whether the applicant was eligible to participate, the benefits or services the applicant should receive, and the approximate date when participation was to begin.

The act requires that eligibility for a benefit or service under the PRC Program be certified in accordance with CDJFS's statement of policies if the benefit or service does not have a financial need requirement. Eligibility for the benefit or service is to be determined in accordance with the statement of policies and based on an application containing information the CDJFS requires if the benefit or service has a financial need eligibility requirement. When a CDJFS receives an application for such benefits and services, it must follow verification procedures established by the statement of policies in order to ascertain the facts surrounding the application and to obtain such other information as may be required. On completion of the verification procedure, the CDJFS must determine whether the applicant is eligible for the benefits and services and the approximate date the benefits and services are to begin.

---

*policies or have the county family services planning committee review such an amendment.*



**Contracts to make eligibility determinations and certifications** (R.C. 5108.11). The act permits a board of county commissioners to enter into a contract with a private or government entity to certify eligibility for benefits and services that do not have a financial need eligibility requirement and accept applications and determine and verify eligibility for benefits and services that have a financial need eligibility requirement. If the board does so, the CDJFS must do all of the following: (1) ensure that eligibility is certified, or determined and certified, in accordance with its statement of policies, (2) ensure that the entity maintains all records that are necessary for audits, (3) monitor the private or government entity for compliance with federal and state law and the statement of policies, and (4) take actions that are necessary to recover any funds that are not spent in accordance with federal law or the law governing the PRC Program.

**Funds expended or claimed in an impermissible manner** (R.C. 5108.12). The act provides that each CDJFS is responsible for funds expended or claimed under the county's PRC Program that ODJFS, Auditor of State, United States Department of Health and Human Services, or other government entity determines is expended or claimed in a manner that federal or state law or policy does not permit.

**Benefits and services for groups with common needs** (R.C. 5101.83 and 5108.05). Prior law eliminated by the act provided that the ODJFS model design and a CDJFS's policies could establish eligibility requirements for, and specify benefits and services to be provided to, types of groups, such as students in the same class, that shared a common need for the benefits and services. The ODJFS model design and a CDJFS's policies could also specify benefits and services that a CDJFS could provide for the general public, including billboards that promoted the prevention and reduction in the incidence of out-of-wedlock pregnancies or encouraged the formation and maintenance of two-parent families.

**County share of public assistance expenditures**

(R.C. 5101.16)

Counties are responsible for a share of the costs of certain public assistance programs, including the Ohio Works First (OWF) and Prevention, Retention, and Contingency (PRC) programs. A county's share of the costs of OWF and PRC for a state fiscal year is the county's share of program and administrative expenditures during federal fiscal year 1994 for assistance and services, other than child day-

care, provided under the former Aid to Dependent Children and Job Opportunities and Basic Skills Training Programs.<sup>129</sup>

The act provides that henceforth a county's share of the costs of OWF and PRC for a state fiscal year is a percentage of what would otherwise be the county's share of those expenditures, as established by rule adopted by the Director of ODJFS. The rules must provide for a percentage of at least 75% and not more than 82%. The act provides further that the percentage cannot exceed the state's maintenance of effort (MOE) percentage for Temporary Assistance for Needy Families.<sup>130</sup>

The Director is permitted by the act to amend the rule as an internal management rule, in consultation with the Director of Management and Budget, to modify the percentage if the Director determines that the amount the General Assembly appropriates for TANF programs makes the change necessary.

### **VIII. Medicaid**

Medicaid is a health care program for low-income children and families, and for aged, blind, and disabled persons. The program is funded with federal, state, and county funds and was established by Congress in 1965 as Title XIX of the Social Security Act. Federal Medicaid law requires states participating in Medicaid to cover certain groups of persons and types of benefits and gives states options for covering other groups of persons and types of benefits.

---

<sup>129</sup> *The Aid to Dependent Children and Job Opportunities and Basic Skills Training programs were replaced by TANF programs.*

<sup>130</sup> *The MOE percentage is obtained by determining the percentage that the state's qualified state expenditures is of the state's historic state expenditures. Under federal law, "qualified state expenditures" refers to the total expenditures by the state for cash assistance, child care assistance, educational activities designed to increase self-sufficiency, job training, and work with respect to eligible families, as well as administrative costs in connection with those expenditures and other allowable uses of funds. "Historic state expenditures" means the amount the state spent in federal fiscal year 1994 under the former Aid to Dependent Children and Job Opportunities and Basic Skills Training Programs. In order to receive the annual block grant, Ohio is required to meet an MOE percentage of 80% of what it spent in federal fiscal year 1994, which can be lowered to 75% if the state meets its work participation requirements. According to ODJFS, Ohio is currently meeting its work participation rates, and the MOE spending level for fiscal year 2003 is 77%.*

### **Treatment of trusts in Medicaid eligibility determinations**

(R.C. 5111.151)

The Governor vetoed a provision of the act that would have enacted in the Revised Code (that is, codified) an administrative rule dealing with the treatment of trusts in Medicaid eligibility determinations.

### **Medicaid Estate Recovery**

When a person's eligibility for Medicaid coverage of nursing home costs is determined, certain assets are exempt from consideration. However, once the person dies, some of those assets are recoverable, and federal and state laws require that the state attempt to collect from the person's estate. The Medicaid Estate Recovery Program has this responsibility (R.C. 5111.11, not in the act).

### **Investigation regarding receipt of services**

(R.C. 2117.06 and 2117.061)

Under the act, the person responsible for the estate of a decedent who was at least 55 years old at the time of death is required to determine whether the decedent was a Medicaid recipient.<sup>131</sup> If the decedent was a recipient, the person responsible for the estate must notify the administrator of the Medicaid Estate Recovery Program. This notice must be in writing and be provided within 30 days after the occurrence of any of the following: (1) the granting of letters testamentary, (2) the administration of the estate, or (3) the filing of an application for release from administration.<sup>132</sup> The person responsible for the estate must indicate compliance with this requirement by marking the appropriate box on a probate form.

### **Claims against the estate**

(R.C. 2117.06 and 2117.061)

All claims against an estate must be presented within one year of the decedent's death. The act permits the administrator of the Medicaid Estate

---

<sup>131</sup> *The "person responsible for the estate" is the executor, administrator, commissioner, or person who files for release from administration of an estate. (R.C. 2117.061(A)).*

<sup>132</sup> *"Letters testamentary" is defined as "the instrument by which a probate court approves the appointment of an executor under a will and authorizes the executor to administer the estate." Black's Law Dictionary 918 (7th ed. 1999).*

Recovery Program to present claims the later of one year after the decedent's death or 90 days after receiving notice from the person responsible for the estate that the decedent was a Medicaid recipient.

**Release of the decedent's account proceeds**

(R.C. 2113.041)

When a person who has received Medicaid benefits dies, the state can seek to recover the costs of Medicaid benefits correctly provided to the decedent.<sup>133</sup>

The act permits the administrator of the Medicaid Estate Recovery Program to present an affidavit to a financial institution requesting the release of the decedent's account proceeds. The affidavit must specify: (1) the decedent's name, (2) the name of anyone who notified the Program of the decedent's receipt of Medicaid assistance and that person's relationship to the decedent, (3) the name of the financial institution, (4) the account number, (5) a description of the claim for estate recovery, and (6) the amount of funds sought. A financial institution may release account proceeds only if all of the following apply: (1) the decedent held an account at the financial institution, (2) the account was held in the decedent's name only, (3) no estate has been opened, (4) it is reasonable to assume that no estate will be opened, (5) the decedent has no outstanding debts known to the Program's administrator, and (6) the financial institution has received no objections to the release, or has determined that no valid objections to the release have been received. The release of funds is permissive.

If ODJFS receives notice of a valid claim to funds released pursuant to the act that has a higher priority than that of the Medicaid Estate Recovery Program, ODJFS is permitted to release those funds either to the financial institution or to the person or government entity making the claim.

**Priority of claims**

(R.C. 2117.25)

Continuing law specifies the order in which a decedent's debts are to be paid. The act provides that claims of the Medicaid Estate Recovery Program are to be given the same priority as other amounts owed to the state. (These amounts are seventh in the list of nine priorities.)

---

<sup>133</sup> R.C. 5111.11.

### Liens

(R.C. 5111.111)

Continuing law permits ODJFS to place a lien on the property of a Medicaid recipient or a recipient's spouse to facilitate recovery under the Medicaid Estate Recovery Program.<sup>134</sup> On the filing of a certificate with the appropriate county recorder's office, the lien attaches to all of the recipient's or spouse's real property described in the certificate to cover all Medicaid subsequently paid. The act provides that the lien is for all amounts paid before filing as well as amounts paid afterwards.

### Health Check

(R.C. 5111.016)

ODJFS provides medical examinations known as "Health Checks" to children of Medicaid recipients. Once a child has undergone a Health Check examination, the child is eligible to receive any medically necessary services under the Medicaid program. The Governor vetoed a provision of the act that would have provided that ODJFS must obtain parental consent before performing a Health Check examination on a child and specified that the Department could not require a parent to consent to a Health Check examination for the child as a condition of receipt of other Medicaid services. The vetoed provision also would have required that, before a Health Check examination could be performed on a child, ODJFS had to also inform the child's parent, through both oral and written communication, that the examination could include the following components: (1) a mental evaluation, (2) a physical assessment, and (3) an unclothed physical examination of the child's reproductive system, including a genital examination.

### Medicaid prenatal care and substance abuse screening

(R.C. 5111.017, repealed)

The act eliminates a law that required ODJFS to establish a program for substance abuse assessment and treatment referral for pregnant Medicaid recipients required by statute or ODJFS rule to receive medical services through a managed care organization. The elimination extends to corresponding provisions

---

<sup>134</sup> *The lien is only available when permitted by federal law. Further, ODJFS may not place a lien on the property of the recipient of home and community-based services (or the property of the recipient's spouse) in order to recover under the Medicaid Estate Recovery Program.*

that apply to Medicaid-participating managed care organizations and the persons who provide prenatal care. Under those provisions, a screening for alcohol and other drug use had to occur at the woman's first prenatal medical examination. If it was determined that there could be a substance abuse problem, the woman had to be referred to a certified treatment program and be given information on the possible effects of alcohol and drug use on the fetus.

### **Care management system within Medicaid**

(R.C. 5111.16 and 5111.17)

Under prior law, ODJFS was permitted to establish a managed care system in some or all counties under which designated Medicaid recipients were required to obtain health care from providers designated by ODJFS. ODJFS was permitted to enter into contracts with managed care organizations to authorize the organizations to provide, or arrange for the provision of, health care services to Medicaid recipients participating in a managed care system.

The act requires ODJFS to establish in some or all counties a "care management system" as part of the Medicaid program. If necessary, ODJFS must submit a request to the United States Department of Health and Human Services for a waiver of federal Medicaid requirements that would otherwise be violated in the implementation of the system. ODJFS must implement the system in some or all counties and designate the Medicaid recipients who are required or permitted to participate in the system.

The Governor vetoed a provision of the act that would have required that the care management system include, by July 1, 2004, a portion of the Medicaid recipients who are aged, blind, or disabled. This provision of the act would have specified, however, that aged, blind, or disabled Medicaid recipients would not be designated for system participation unless they resided in a county in which other Medicaid recipients were participating in the system.<sup>135</sup>

Under the care management system, ODJFS may do both of the following:

---

<sup>135</sup> *The vetoed provision of the act would have provided that if ODJFS required or permitted aged, blind, or disabled Medicaid recipients to obtain health care services through managed care organizations, a "request for proposals" process had to be used in selecting the managed care organizations to be used by the aged, blind, and disabled participants. It would have further provided that these individuals could not be required to obtain services through such organizations unless they were at least age 21.*

(1) Require or permit participants in the system to obtain health care services from providers ODJFS designates;

(2) Require or permit participants to obtain health care services through managed care organizations under contract with ODJFS.

The act authorizes ODJFS to adopt rules to implement the care management system. Rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

**Pilot program for care management of chronically ill children**

(R.C. 5111.161; Section 3.26)

The Governor vetoed a provision that would have required ODJFS to develop a pilot program under which chronically ill children were included among the Medicaid recipients required to participate in the act's care management system. The pilot program would have included children who were not more than 21 years of age and met the federal standards to be considered blind or disabled for purposes of the Supplemental Security Income Program.

**Managed care organizations under Medicaid contracts**

(R.C. 5111.17)

Neither prior law nor the act specifies the meaning of "managed care organization" when referring to ODJFS's authority to enter into contracts with such organizations. The act, however, provides that managed care organizations include health insuring corporations.

**Prescription drug coverage by health insuring corporations**

(R.C. 5111.02 and 5111.172)

Under prior law, a health insuring corporation that had a contract to provide health care services to Medicaid recipients was prohibited from restricting the availability to its enrollees of any prescription drugs included in the Ohio Medicaid drug formulary. The act instead authorizes ODJFS to require a health insuring corporation to provide prescription drug coverage to Medicaid recipients enrolled in the health insuring corporation. In providing the required coverage, the corporation is permitted, subject to ODJFS approval, to use strategies for the management of drug utilization.

### **Appointment of temporary manager**

(R.C. 5111.173)

The act requires ODJFS to appoint a temporary manager for a managed care organization under a Medicaid contract if ODJFS determines that the managed care organization has repeatedly failed to meet substantive requirements specified in federal statutes or regulations. The act specifies that appointing a temporary manager does not preclude ODJFS from imposing other sanctions against the managed care organization.

The act requires the managed care organization to pay all costs of having the temporary manager perform the temporary manager's duties, including all costs incurred in performing those duties. If the temporary manager incurs cost or liabilities on behalf of the managed care organization, the organization is required to pay those costs and be responsible for those liabilities.

The act provides that the appointment of a temporary manager is not subject to the Administrative Procedure Act (R.C. Chapter 119.), but the organization is permitted to request a reconsideration of the appointment. Reconsiderations are to be requested and conducted in accordance with rules the Director of ODJFS is to adopt in accordance with the Administrative Procedure Act.

The act specifies that the appointment of a temporary manager does not cause the managed care organization to lose the right to appeal, under the Administrative Procedure Act, any proposed termination or decision not to renew the organization's Medicaid provider agreement. The managed care organization also does not lose the right to initiate the sale of the organization or its assets.

In addition to the rules that the act requires to be adopted, the Director of ODJFS is authorized to adopt any other rules necessary to implement the act's provisions concerning the appointment of temporary managers. The rules must be adopted in accordance with the Administrative Procedure Act.

### **Disenrollment of Medicaid recipients**

(R.C. 5111.174)

Under the act, ODJFS may disenroll some or all Medicaid recipients enrolled in a managed care organization under contract with ODJFS if ODJFS proposes to terminate or not to renew the contract and determines that the recipients' access to medically necessary services is jeopardized by the proposal. The disenrollment is not subject to the Administrative Procedure Act, but the managed care organization may request reconsideration of the disenrollment.

Reconsiderations are to be requested and conducted in accordance with rules the Director of ODJFS is to adopt in accordance with the Administrative Procedure Act. ODJFS is prohibited from delaying the disenrollment to provide a reconsideration.

In addition to the rules that the act requires to be adopted, the Director of ODJFS is authorized to adopt any other rules necessary to implement the act's provisions concerning disenrollment of Medicaid recipients. The rules must be adopted in accordance with the Administrative Procedure Act.

**Technical changes**

(R.C. 5111.071, 5111.08, 5111.16, 5111.173 (repealed), and 5111.175)

The act eliminates provisions that refer to the Medicaid Managed Care Study Committee, which no longer exists. The act renumbers certain sections of the Revised Code to accommodate the act's provisions dealing with care management and managed care contracting within the Medicaid program.

**Medication Management Incentive Payment Program**

(Section 142)

The Governor vetoed a provision of the act that would have required ODJFS to establish the Medication Management Incentive Payment Program for state fiscal years 2004 and 2005 to reimburse participating pharmacy providers that reduced pharmacy costs by providing consulting services. These consulting services could have included recommendations for eliminating unnecessary and duplicative drug therapies, modifying inefficient drug regimens, and implementing safe and cost-effective drug therapies. Any pharmacy provider who provided pharmacy services to Medicaid recipients other than those living in a nursing facility or an intermediate care facility for the mentally retarded could have elected to participate in the program.<sup>136</sup>

ODJFS would have been required to do each of the following:

(1) Determine the statewide monthly average cost of providing pharmacy services to Medicaid recipients other than those residing in a nursing home or

---

<sup>136</sup> An ODJFS rule deals with consulting for pharmacy services provided to Medicaid recipients living in nursing facilities and intermediate care facilities for the mentally retarded. (O.A.C. 5101:3-9-08.)

intermediate care facility for the mentally retarded during the last quarter of the biennium that ends June 30, 2003;

(2) Establish a reimbursement rate for pharmacy services provided under the Medication Management Incentive Payment Program for the first quarter of the biennium ending June 30, 2005.

If a participating pharmacy provider's average monthly cost of providing pharmacy services to a certain number of Medicaid recipients (specified by ODJFS) in a quarter after the first quarter of the biennium ending June 30, 2005, was equal to or exceeded the statewide average cost of providing pharmacy services during the last quarter of the biennium ending June 30, 2003, the pharmacy provider would have been reimbursed at the rate established by ODJFS. If the pharmacy provider's average monthly cost of providing pharmacy services to a certain number of Medicaid recipients (specified by ODJFS) was less than the statewide average monthly cost of providing pharmacy services during the last quarter of the biennium ending June 30, 2003, the pharmacy provider would have been reimbursed at an enhanced rate established by ODJFS.

#### **Medicaid copayment program**

(R.C. 5111.0112)

Continuing law requires the Director of ODJFS to examine instituting a Medicaid copayment program. The act eliminates a requirement that the examination include a determination of which groups of Medicaid recipients are appropriate for a copayment program designed to reduce inappropriate and excessive use of medical goods and services.

#### **Supplemental rebates**

(R.C. 5111.082)

Under continuing law, if the Director of ODJFS establishes a program under which drug manufacturers are required to pay ODJFS a supplemental rebate as a condition of having their drugs covered by Medicaid without prior approval, drugs produced by a manufacturer for the treatment of mental illness, HIV, or AIDS must be exempt from the program. The Governor vetoed a provision that would have required drugs produced by a manufacturer to treat mental illness,

HIV, or AIDS to also be exempt from "prior authorization or any other restriction" unless there was a generic equivalent.<sup>137</sup>

**Advisory council to select Medicaid drug managers**

(R.C. 5111.083)

The Governor vetoed a provision of the act that would have provided that, each time before the Director of ODJFS contracted with an individual or private entity to administer the Medicaid program's preferred drug list or supplemental drug rebate program, an advisory council be appointed. The advisory council would have been required to review the proposals submitted by individuals and private entities seeking the contract and to select the individual or private entity that was to be awarded the contract.

All of the following were to serve on an advisory council:

- (1) The Director of ODJFS;
- (2) Two members of the House of Representatives, one from each party, appointed by the Speaker of the House;
- (3) Two members of the Senate, one from each party, appointed by the Senate President;
- (4) Two representatives of patient advocates, one appointed by the Speaker and one appointed by the Senate President;
- (5) One representative of the Ohio State Medical Association, appointed by that association's executive director;
- (6) One representative of large businesses, appointed by the president of the Ohio Chamber of Commerce;
- (7) One representative of small businesses, appointed by the state director of the Ohio chapter of the National Federation of Independent Businesses;
- (8) One representative of local government, appointed by the executive director of the County Commissioners' Association of Ohio.

---

<sup>137</sup> *The act does not indicate what was meant by "prior authorization or any other restriction."*

An advisory council would have been required to elect a chairperson from among its members. A council would have been subject to the open meetings law. A council's members would have been permitted to vote to select the individual or private entity to be awarded the contract to administer the Medicaid program's preferred drug list or supplemental drug rebate program only if a quorum of the members was present at the meeting at which the vote was taken. A council's members would not have been reimbursed for their expenses incurred in their work on the council. A council would have been authorized to seek grants, donations, or other funds to pay for its activities. A council was to cease to exist when it selected the individual or private entity to be awarded the contract.

**Medicaid coverage of dental, podiatric, and vision care services**

(Sections 59.25, 59.26, and 59.27)

Continuing law authorizes the Director of ODJFS to adopt rules establishing the amount, duration, and scope of medical services to be included in the Medicaid program. The Director has adopted rules under which dental, podiatric, and vision care services are covered by the Medicaid program.<sup>138</sup>

The Governor vetoed a provision of the act that would have required the Medicaid program to continue to cover those services for fiscal years 2004 and 2005 in at least the amount, duration, and scope that it does under those rules on what would have been the effective date of this provision of the act. The Governor stated in the veto message, however, that "[s]ince the General Assembly authorized adequate funding for this purpose, [the Governor has] instructed ODJFS to continue to offer these services."

**Medicaid coverage of chiropractic services**

(R.C. 4734.15)

The act removes chiropractors from the definition of "physician" for the purpose of the Medicaid program.

**Assertive community treatment and intensive home-based mental health services**

(R.C. 5111.022)

Under continuing law, the state Medicaid plan must include the provision of specified mental health services when provided by community mental health

---

<sup>138</sup> *Ohio Administrative Code Chapters 5101:3-5, 5101:3-6, and 5101:3-7.*

facilities that have quality assurance programs accredited by the Joint Commission on Accreditation of Healthcare Organizations or certified by the Department of Mental Health or Department of ODJFS. Those services include partial hospitalization mental health services of three to 14 hours per service day, rendered by persons directly supervised by a mental health professional. The act requires the Director of ODJFS to seek federal approval to include assertive community treatment and intensive home-based mental health services in the community mental health component of Medicaid. The Director is required to seek the federal approval not later than May 1, 2004.

The act also requires the Director to adopt rules, on receipt of the federal approval, establishing statewide access and acuity standards for partial hospitalization and for assertive community treatment and intensive home-based mental health services provided under the community mental health Medicaid component. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The Director is required to consult with the Department of Mental Health in adopting the rules.

**Mental health and alcohol and drug addiction services**

(R.C. 340.03, 5101.11, 5101.022, 5111.025, 5111.911, 5111.912, 5111.913, and 5119.61)

The act eliminates a requirement that the reimbursement for community mental health services covered by Medicaid be based on the prospective cost of providing the services. The act instead requires ODJFS to adopt rules modifying or establishing a new manner in which community mental health facilities and providers of alcohol and drug addiction services are paid under Medicaid. The act specifies that the Director's authority in this regard is not limited by existing state rules that govern the way Medicaid pays for mental health and alcohol and drug addiction services, regardless of what state agency adopted the rules. The Governor vetoed a provision of the act that would have required that ODJFS, in modifying the manner or establishing a new manner, include a provision for obtaining federal financial participation for the cost each board incurs in its administration of alcohol, drug addiction, and mental health services.

Prior law required that a contract between ODJFS and the Department of Mental Health specify (1) that the Department of Mental Health and boards of alcohol, drug addiction, and mental health services had to provide state and local matching funds for reimbursement of mental health services and (2) how community mental health facilities would be paid for providing mental health services. The act provides that any contract ODJFS enters into with the Department of Mental Health or Department of Alcohol and Drug Addiction Services regarding a Medicaid component is subject to the approval of the

Director of Budget and Management. Additionally, any such contract must require or specify the following:

(1) In the case of a contract with the Department of Mental Health, that the Department of Mental Health and boards of alcohol, drug addiction, and mental health services comply with a requirement the act establishes for the Department of Mental Health and boards to pay the nonfederal share of any Medicaid payment to a provider of services under the component, or aspect of the component, the Department of Mental Health administers;

(2) In the case of a contract with the Department of Alcohol and Drug Addiction Services, that the Department of Alcohol and Drug Addiction Services and boards of alcohol, drug addiction, and mental health services comply with a requirement the act establishes for the Department of Alcohol and Drug Addiction Services to pay the nonfederal share of any Medicaid payment to a provider of services under the component, or aspect of the component, the Department of Alcohol and Drug Addiction Services administers;

(3) How providers will be paid for providing the services;

(4) The Department of Mental Health's or Department of Alcohol and Drug Addiction Services' responsibilities for reimbursing providers, including program oversight and quality assurance.

### **Medicaid payments to children's hospitals**

(Section 59.22)

ODJFS has adopted a rule (Ohio Administrative Code 5101:3-2-074(G)) that prescribes how ODJFS is to adjust for inflation the Medicaid payment rate that applies to children's hospitals. Under the current rule, for the rate year beginning January 1, 2003, and ending December 31, 2003, there is no adjustment from January 1, 2003 to May 31, 2003. From June 1, 2003 to December 31, 2003, the composite inflation factor is to be adjusted to 1.029. For other periods, the inflation values that are applied to produce a new composite inflation factor are based on the estimate of 23 price and wage indexes set forth in the rule.<sup>139</sup>

---

<sup>139</sup> *The categories included in the wage and price indexes used to determine the composite inflation factor include, for example, wages, benefits, professional fees, utilities, prescription pharmaceuticals, medical instruments, chemicals, machinery and equipment, food, and telephone services.*

Under the act, ODJFS is required to pay to each hospital participating in the Medicaid program an amount equal to the inflation adjustment not paid for the period beginning January 1, 2003 and ending May 31, 2003. The act requires ODJFS to use the inflation adjustment provided for in the rule as it existed on December 30, 2002. Therefore, under the act, the composite inflation factor for January 1, 2003 through May 31, 2003 is market basket minus 1%.

The act also provides that for fiscal years 2004 and 2005, the Medicaid payments to children's hospitals must include the adjustment for inflation specified in the rule as it existed on December 30, 2002. Therefore, for June 1, 2003 through June 30, 2003, the composite inflation factor is to be adjusted to 1.029. For July 1, 2003 through December 31, 2003, the composite inflation factor must be adjusted to market basket minus 1%. For the period beginning January 1, 2004 and ending June 30, 2005, the composite inflation factor is to be based on the estimate of 23 price and wage indexes set forth in the rule as it existed on December 30, 2002. Those factors and the weights assigned them did not change when the new rule went into effect on December 31, 2002.

### **Medicaid inflation adjustment factor for hospital outpatient services**

(Section 59.23)

The act requires ODJFS to increase the total amount it pays all hospitals, other than children's hospitals, under the Medicaid program for outpatient services provided during fiscal years 2004 and 2005. For each fiscal year, the increase is to be the maximum amount possible using \$9,811,136.<sup>140</sup> ODJFS is required to make the increase in accordance with an inflation adjustment factor for outpatient hospital services the Director of ODJFS is to establish in rules. The rules must be adopted in accordance with the Administrative Procedure Act.

### **Medicaid reimbursement of long-term care services**

#### **Background**

Continuing law requires ODJFS to pay the reasonable costs of services that a nursing facility or intermediate care facility for the mentally retarded (ICF/MR) with a Medicaid provider agreement provides to Medicaid recipients.<sup>141</sup> The

---

<sup>140</sup> Of the \$9,811,136, \$4,000,000 is state share. The remaining amount is the federal match. Because the increase is for fiscal years 2004 and 2005, the total state cost of the increase is \$8,000,000.

<sup>141</sup> A cost is reasonable if it is an actual cost that is appropriate and helpful to develop and maintain the operation of patient care facilities and activities and does not exceed

amount ODJFS pays a nursing facility or ICF/MR is determined by formulas established in the Revised Code.

**2004 and 2005 reimbursement rates for nursing facility services**

(Section 59.37)

The act establishes limitations for the Medicaid rates to be paid nursing facilities for fiscal years 2004 and 2005. For fiscal year 2004, the mean total per diem rate for all nursing facilities in the state, weighted by May 2003 Medicaid days and calculated as of July 1, 2003, may not exceed \$156.68.<sup>142</sup> For fiscal year 2005, the mean total per diem rate for all nursing facilities in the state, weighted by May 2004 Medicaid days and calculated as of July 1, 2004, may not exceed \$159.00, plus any difference between \$156.68 and the mean total per diem rate for all nursing facilities in the state for fiscal year 2004, weighted by Medicaid days and calculated as of July 1, 2003. If the mean total per diem rate for all nursing facilities in the state for fiscal year 2004 or 2005, as weighted and calculated in accordance with the act, exceeds the limitation the act creates, ODJFS must reduce the total per diem rate for each nursing facility by a percentage that is equal to the percentage by which the mean total per diem rate exceeds the limitation the act creates for that fiscal year. The act provides that, subsequent to any such reduction, a nursing facility's rate is subject to any adjustments required or authorized by state law during the remainder of the fiscal year.

ODJFS is required by the act to continue to implement state Medicaid rules regarding Medicaid payments to nursing facilities that are in effect on the effective date of this provision of the act. However, ODJFS is not to continue to implement a rule that is inconsistent with the act and may adopt, amend, or rescind rules in a manner consistent with the act.

---

*what a prudent buyer pays for a given item or services. Reasonable costs may vary from provider-to-provider and from time-to-time for the same provider.*

<sup>142</sup> *The act defines "Medicaid days" as all days during which a resident who is a Medicaid recipient occupies a bed in a nursing facility that is included in the facility's certified capacity under Medicaid. Therapeutic or hospital leave days for which Medicaid payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate for those days.*



### **2004 and 2005 reimbursement rates for ICF/MR services**

(Section 59.36)

The act also establishes limitations for the Medicaid rates to be paid nursing facilities for fiscal years 2004 and 2005. For fiscal year 2004, the mean total per diem rate for all ICFs/MR in the state, weighted by May 2003 Medicaid days and calculated as of July 1, 2003, is not to exceed \$221.43. For fiscal year 2005, the mean total per diem rate for all ICFs/MR in the state, weighted by May 2004 Medicaid days and calculated as of July 1, 2004, is not to exceed \$225.86. If the mean total per diem rate for all ICFs/MR for fiscal year 2004 or 2005, weighted and calculated in accordance with the act, exceeds the limitation the act establishes, ODJFS must reduce the total per diem rate for each ICF/MR by a percentage that is equal to the percentage by which the mean total per diem rate exceeds the limitation the act establishes for that fiscal year. The act provides that, subsequent to any reduction required by the act, the Medicaid rate of an ICF/MR is subject to any adjustments required or authorized by state law during the remainder of the year.

### **Cap on ICF/MR beds eligible for Medicaid payments**

(R.C. 59.30)

The Governor vetoed a provision of the act that would have provided, with exceptions, that the number of ICF/MR beds eligible for Medicaid payments during fiscal years 2004 and 2005 could not be higher than the number of such beds eligible for such payments on what would have been the effective date of this provision. ODJFS would have been permitted to issue one or more waivers of the cap in the event that an emergency exists.

### **Medicaid reimbursement of nursing facility franchise permit fee**

(Sections 134.12 and 134.13)

ODJFS is required to assess an annual franchise permit fee on long-term care beds in nursing homes and hospitals.<sup>143</sup> 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.

---

<sup>143</sup> ODJFS 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.

The franchise permit fee is \$4.30 for fiscal years 2003 through 2005.<sup>144</sup> 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, ODJFS 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 2003 through 2005 in an amount equal to 76.74% of the franchise permit fee a nursing facility pays for the fiscal year ODJFS 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.<sup>145</sup>

Under prior law eliminated by the act, ODJFS was required, in making Medicaid payments to a nursing facility, to exclude from a nursing facility's other protected costs the cost of 76.74% of the franchise permit fee that the nursing facility pays for fiscal years 2003, 2004, and 2005 if the nursing facility received payments from the Nursing Facility Stabilization Fund for 76.74% of those franchise permit fees.<sup>146</sup> The act provides instead that a nursing facility filing its 2003 and 2004 Medicaid cost reports must report as a non-reimbursable expense the cost of 76.74% of the franchise permit fee that the facility pays for the time covered by those cost reports. The act also requires that a nursing facility's 2005 cost report report as a non-reimbursable expense the cost of 76.74% of the franchise permit fee that the facility pays for the first half of that cost reporting period.

---

<sup>144</sup> *The franchise permit fee was \$3.30 per bed per day for fiscal year 2002. For other fiscal years, the fee is \$1 per bed per day.*

<sup>145</sup> *ODJFS is also required to use funds in the Nursing Facility Stabilization Fund to make payments to nursing facilities under the law governing Medicaid payments to nursing facilities and in an amount equal to \$2.25 per Medicaid day for the purpose of enhancing quality of care.*

<sup>146</sup> *Other protected costs is one of four cost categories used in determining nursing facilities' Medicaid reimbursement rates. Medicaid reimburses nursing facilities for their other protected costs. Included in these costs are costs for medical supplies, natural gas, electricity, and franchise taxes. Because nursing facilities are reimbursed a portion of the franchise permit fee (tax) from funds in the Nursing Facility Stabilization Fund, former law provided that nursing facilities were not also to be reimbursed that portion of the fee as part of their other protected costs.*

**ICF/MR franchise permit fee**

(R.C. 5112.31)

Continuing law imposes a franchise permit fee on each ICF/MR for the purpose of generating revenue for home and community-based services for individuals with mental retardation or a developmental disability. In fiscal year 2003, the amount of the fee is \$9.63 multiplied by the product of (1) the number of Medicaid-certified beds on the first day of May of the calendar year in which the fee is determined and (2) the number of days in the fiscal year beginning on the first day of July of the same calendar year.

Ordinarily ODJFS is required to adjust the fee for each fiscal year in accordance with a composite inflation factor established in rules. The act provides that the fee is to remain at \$9.63 per bed per day for fiscal years 2004 and 2005 and adjusted in accordance with the composite inflation factor for subsequent fiscal years.

**Copies of Medicaid rules**

(R.C. 5111.22)

The act eliminates a requirement that ODJFS provide copies of proposed and final Medicaid rules to nursing facilities and ICFs/MR that participate in Medicaid.

**Medicare certification**

(R.C. 5111.21)

Under prior law, a nursing facility that elected to obtain and maintain eligibility for payments under Medicare was permitted to qualify all or part of the facility in the Medicare program. The act provides instead that a nursing facility that elects to obtain and maintain Medicaid eligibility is required to qualify all of the facility's Medicaid-certified beds in the Medicare program. The Director of ODFJS is given authority to adopt rules to establish the time frame in which a nursing facility must comply with the requirement. If adopted, the rules must be adopted in accordance with the Administrative Procedure Act.

**Nursing Facility Reimbursement Study Council**

(R.C. 5111.34)

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

Medicaid program and recommend any changes it determines are necessary. The Council is also required to issue periodic reports on its activities, findings, and recommendations to the Governor, Speaker of the House of Representatives, and President of the Senate.

The act increases the Council's membership to 18 by adding a representative of Medicaid recipients residing in nursing facilities. The Governor is required to make the appointment within 90 days. The act also requires the Council to meet quarterly beginning August 1, 2003 and to issue, in addition to its periodic reports, a report on activities, findings, and recommendations to the Governor, Speaker of the House of Representatives, and President of the Senate by July 30, 2004.

**Federal financial participation for county MR/DD board administrative costs**

(R.C. 5126.058, 5111.92)

The Governor vetoed a provision of the act that would have required the Director of ODJFS to seek federal funds to defray certain administrative costs incurred by a county MR/DD board pursuant to its Medicaid local administrative authority if the county board has claimed the costs in accordance with rules promulgated by ODJFS.<sup>147</sup> The Director would have been required to seek federal funding for the following costs if they were associated with home and community-based services, habilitation center services, or the service and support administration provided in conjunction with either of those services: business management, contract management, general administration, and personnel management.

**Medicaid waivers for alternatives to ICF/MR placement**

(R.C. 5111.87)

Federal law allows the Secretary of Health and Human Services to waive requirements for a state's Medicaid program on application by the state. A waiver under division (c) of § 1915 of the Social Security Act (42 U.S.C. 1396n) allows a state to include under Medicaid services provided in a home or community setting that are normally provided in a nursing home or other institution. (42 Code of Federal Regulations 430.25(c)(2).)

---

<sup>147</sup> Continuing law provides that a county MR/DD board has Medicaid local administrative authority to conduct various activities, including the performance of assessments and evaluations. (R.C. 5126.055.)

Under continuing law the Director of ODJFS may apply to the United States Secretary of Health and Human Services for Medicaid waivers under which home and community-based services are provided to individuals with mental retardation and other developmental disabilities as an alternative to placement in an ICF/MR. The act permits the Director of Mental Retardation and Developmental Disabilities to request that the Director of ODJFS apply for these waivers.

**Medicaid waivers for early intervention services for young children and therapeutic services for children with autism**

(R.C. 5111.87 and 5111.871)

The act authorizes the Director of ODJFS to apply to the United States Secretary of Health and Human Services for Medicaid waivers that operate for three to four years each under which home and community-based services are provided in the form of either or both of the following:

(1) Early intervention services for children under the age of three years that are provided or arranged by county boards of mental retardation and developmental disabilities;

(2) Therapeutic services for children who have autism and are under age six at the time of enrollment.

The act provides that no individual may receive services under the autism component for more than three years. An individual who receives intensive therapeutic services under the autism waiver is forever ineligible to receive intensive therapeutic services under any other Medicaid component.

ODJFS may enter into a contract with the Department of Mental Retardation and Developmental Disabilities (ODMRDD) under which ODMRDD administers one or both of these components of the Medicaid program in accordance with the waivers.

**Ohio Access Success Project**

(R.C. 5111.88)

The Ohio Access Success Project, which ODJFS is permitted to establish, is authorized by uncodified (or "temporary") law. The act includes the uncodified section that authorizes the project (Section 62.18 of Am. Sub. H.B. 94 of the 124th General Assembly) in the Revised Code.

To the extent funds are available, the Ohio Access Success Project may provide assistance to help Medicaid recipients make the transition from residing in a nursing facility to residing in a community setting. The project may be established as a separate non-Medicaid program or integrated into new or existing Medicaid-funded home and community-based waiver services.

Under the act, to be eligible for benefits under the Ohio Access Success Project, a Medicaid recipient must satisfy all of the following requirements:

- (1) At the time of applying for the benefits, be a recipient of Medicaid-funded nursing facility care;
- (2) Have resided continuously in a nursing facility for not less than 18 months prior to applying to participate;<sup>148</sup>
- (3) Need the level of care provided by nursing facilities;
- (4) For participation in a non-Medicaid program, receive services to remain in the community with a projected cost not exceeding 80% of the average monthly Medicaid cost of individual Medicaid recipients' nursing facility care;
- (5) For participation in a program established as part of a home and community-based services program established under a Medicaid waiver, meet waiver enrollment criteria.

Benefits provided under the Ohio Access Success Project may include payment of (1) the first month's rent in a community setting, (2) rental deposits, (3) utility deposits, (4) moving expenses, and (5) other expenses not covered by Medicaid that facilitate a Medicaid recipient's move from a nursing facility to a community setting. No person is to receive more than \$2,000 worth of benefits under the project if the project is a non-Medicaid program.

The Director of ODJFS may create a Medicaid home and community-based services waiver program to serve individuals who are eligible for participation in the Ohio Access Success Project. The Director may adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the programs.

---

<sup>148</sup> Under the uncodified provision the recipient had to have resided continuously in a nursing facility since January 1, 2001.

## Ohio Home Care Program

(R.C. 5111.97)

ODJFS currently operates the Ohio Home Care Program pursuant to rule. The Program serves three categories of Medicaid recipients: (1) those under age 60 whose medical condition or functional abilities would otherwise require them to live in a nursing home, (2) those of any age whose chronic, unstable medical condition would otherwise require long-term hospitalization or institutional placement, and (3) those of any age who have both a developmental disability and a physical or cognitive impairment that would otherwise require institutional placement. Individuals may be eligible for one of several benefit packages offered by ODJFS depending on the level of care (hours of home care service, number of nursing and skilled therapy visits, and so on) that a recipient needs per week.<sup>149</sup> The benefit package for recipients who receive no more than 14 hours of services per week is the Core package. Core Plus provides services to those who receive more than 14 hours per week.

The act authorizes the Director of ODJFS to request a waiver from the United States Secretary of Health and Human Services under which two Medicaid programs for home and community-based services may be created and implemented to replace the Ohio Home Care Program. The act permits the Director to specify the following regarding the two replacement programs:

(1) That one of the replacement programs will provide home and community-based services to individuals in need of nursing facility care, including individuals enrolled in the Ohio Home Care Program;

(2) That the other replacement program will provide services to individuals in need of hospital care, including individuals enrolled in the Ohio Home Care Program;

(3) That there will be a maximum number of individuals who may be enrolled in the replacement programs in addition to the number of individuals transferred from the Ohio Home Care Program;

(4) That there will be a maximum amount ODJFS may expend each year for each individual enrolled in the replacement programs;

(5) That there will be a maximum aggregate amount ODJFS may expend each year for all individuals enrolled in the replacement programs;

---

<sup>149</sup> O.A.C. 5101:3-12-03.

(6) Any other requirement the Director selects for the replacement programs.

If the Secretary grants the Director's request, the Director may create and implement the replacement programs in accordance with the waiver. The replacement programs are to be administered by ODJFS. As the replacement programs are implemented, the act requires the Director to reduce the maximum number of individuals who may be enrolled in the Ohio Home Care Program by the number of individuals who are transferred to the replacement programs. When all individuals who are eligible to be transferred to the replacement programs have been transferred, the Director may submit to the Secretary an amendment to the state Medicaid plan to eliminate the Ohio Home Care Program.

### **Criminal records checks for waiver agency employees**

(R.C. 5111.95; Sections 109.57 and 109.572)

#### **Initiating the criminal records check**

The act requires the chief administrator of a "waiver agency" to inform each person, at the time of initial application for a position that involves providing "home and community-based waiver services" to a person with a disability, that the person is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the person comes under final consideration for employment.<sup>150</sup>

The chief administrator of a waiver agency is required to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check with respect to each "applicant."<sup>151</sup> If an

---

<sup>150</sup> "Waiver agency" means a person or government entity that is not certified under the Medicare program and is accredited by the community health accreditation program or the joint commission on accreditation of health care organizations or a company that provides "home and community-based waiver services" to persons with disabilities through an ODJFS-administered home and community-based waiver.

"Home and community-based waiver services" means services furnished under federal regulations that permit individuals to receive services in a home setting rather than a nursing facility or hospital. Home and community-based waiver services are approved by the Centers for Medicare and Medicaid for specific populations and are not otherwise available under the Medicaid state plan.

<sup>151</sup> "Applicant" means a person who is under final consideration for employment or, after the effective date of this provision of the act, an existing employee with a waiver agency

applicant for whom a criminal records check request is required does not present proof of having been an Ohio resident for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the Superintendent has requested information about the applicant from the FBI in a criminal records check, the chief administrator must request that the Superintendent obtain information from the FBI as part of the criminal records check of the applicant. Even if an applicant for whom a criminal records check request is required presents proof of having been an Ohio resident for the five-year period, the chief administrator may request that the Superintendent include information from the FBI in the criminal records check.

Under the act, the chief administrator must provide to each applicant for whom a criminal records check request is required a copy of the BCII prescribed form used to obtain the information necessary to conduct a criminal records check and a standard fingerprint impression sheet and must obtain the completed form and impression sheet from the applicant. The chief administrator must then forward the completed form and impression sheet to the Superintendent of BCII. An applicant provided the form and fingerprint impression sheet who fails to complete the form or provide fingerprint impressions may not be employed in any position in a waiver agency for which a criminal records check is required.

#### **Offenses disqualifying an applicant from employment**

Except as provided in rules adopted by ODJFS and subject to the conditional employment provisions described below, the act prohibits a waiver agency from employing a person in a position that involves providing home and community-based waiver services to persons with disabilities if the person has been convicted of or pleaded guilty to any of the following:

(1) Aggravated murder; murder; voluntary manslaughter; involuntary manslaughter; reckless homicide; felonious assault; aggravated assault; assault; failing to provide for a functionally impaired person; aggravated menacing; patient abuse; gross patient neglect; patient neglect; kidnapping; abduction; criminal child enticement; extortion; coercion; rape; sexual battery; unlawful sexual conduct with a minor; gross sexual imposition; sexual imposition; importuning; voyeurism; public indecency; compelling prostitution; promoting prostitution; procuring;

---

*in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities. "Applicant" also means an existing employee with a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities after the effective date of this provision of the act.*

prostitution; engaging in prostitution after a positive HIV test; disseminating matter harmful to juveniles; pandering obscenity; pandering obscenity involving a minor; pandering sexually oriented matter involving a minor, illegal use of minor in nudity-oriented material or performance; aggravated robbery; robbery; aggravated burglary; burglary; breaking and entering; any theft offense; unauthorized use of a vehicle; unauthorized use of property; unauthorized use of computer, cable, or telecommunications property; passing bad checks; misuse of credit cards; forgery; forging identification cards or selling or distributing forged identification cards; Medicaid fraud; securing writings by deception; insurance fraud; receiving stolen property; unlawful abortion; contributing to the unruliness or delinquency of a child; domestic violence; illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of cash onto the grounds of a detention facility; carrying concealed weapons; having weapons while under disability; improperly discharging a firearm at or into a habitation, in a school safety zone, or with intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function; corrupting another with drugs; any trafficking in drugs offense; illegal manufacture of drugs or cultivation of marihuana; funding of drug or marihuana trafficking; illegal administration of distribution of anabolic steroids; any drug possession offense; permitting drug abuse; deception to obtain a dangerous drug; illegal processing of drug documents; placing a harmful or hazardous object or substance in any food or confection; felonious sexual penetration in violation of former state law; a violation of the offense of child stealing as it existed prior to July 1, 1996; a violation of the prohibition against interference with custody that would have been a violation of the offense of child stealing as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(2) An existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in the preceding paragraph.

A waiver agency may employ conditionally an applicant for whom a criminal records check request is required prior to obtaining the results of a criminal records check regarding the individual, provided that the agency requests a criminal records check regarding the individual not later than five business days after the individual begins conditional employment. A waiver agency that employs an individual conditionally must terminate the individual's employment if the results of the criminal records check request, other than the results of any request for information from the FBI, are not obtained within the period ending 60

days after the date the request is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the individual has been convicted of or pleaded guilty to any of the disqualifying offenses described above, the agency is required to terminate the individual's employment unless the agency chooses to employ the individual pursuant to the rules described in the following paragraph. The Governor vetoed a provision of the act that would have provided that, if the individual made any attempt to deceive the agency about the individual's criminal record, termination of employment under this provision was considered just cause for discharge for purposes of disqualifying the individual from unemployment compensation benefits.

The act requires ODJFS to adopt rules in accordance with the Administrative Procedure Act to implement the above-described records check provisions. The rules must specify circumstances under which a waiver agency may employ a person who has been convicted of or pleaded guilty to a disqualifying offense but meets personal character standards set by ODJFS.

### **Fees**

The act requires each waiver agency to pay to BCII the fee prescribed by BCII under existing law for each criminal records check conducted pursuant to a request made under the provisions described under "**Initiating the criminal records check**," above. A waiver agency may charge an applicant a fee not exceeding the amount the agency pays to BCII, but the agency may collect the fee only if it notifies the person at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment.

### **Confidentiality**

The report of the criminal records check is not a public record for the purposes of the Public Records Law and must not be made available to any person other than the following:

- (1) The individual who is the subject of the criminal records check or the individual's representative;
- (2) The chief administrator of the agency requesting the criminal records check or the administrator's representative;
- (3) A court, hearing officer, or other necessary individual involved in a case dealing with a denial of employment of the applicant or dealing with employment or unemployment benefits of the applicant.

### **Special provision for existing employees**

A person who, on the effective date of the provisions described in "**Criminal records checks for waiver agency employees**," is an employee of a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities must comply with these provisions within 60 days after the effective date of these provisions unless all of the following apply:

(1) On the effective date of these provisions, the person is an employee of a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities.

(2) The person previously had been the subject of a criminal background check relating to that position.

(3) The person has been continuously employed in that position since that criminal background check had been conducted.

### **Conforming change in the BCII Law**

The act makes related changes in the BCII Law to authorize BCII to conduct the criminal records check.

### **Criminal records checks for independent home and community-based services providers**

(R.C. 5111.96; Sections 109.57 and 109.572)

### **Initiating the criminal records check**

The act requires ODJFS to inform each independent provider, at the time of initial application for a provider agreement that involves providing home and community-based waiver services to consumers with disabilities, that the independent provider is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the person is to become an independent provider in an ODJFS-administered home and community-based waiver program. Also, beginning on the effective date of this provision, the act requires ODJFS to inform each enrolled Medicaid independent provider on or before time of the anniversary date of the provider agreement that involves providing home and community-based waiver services to consumers with

disabilities that the independent provider is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted.<sup>152</sup>

Under the act, ODJFS must require the independent provider to complete a criminal records check prior to entering into a provider agreement with the independent provider and at least annually thereafter. If an independent provider for whom a criminal records check is required does not present proof of having been an Ohio resident for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) has requested information about the applicant from the FBI in a criminal records check, ODJFS must request the independent provider obtain through the Superintendent a criminal records request from the FBI as part of the criminal records check of the independent provider. Even if an independent provider for whom a criminal records check request is required presents proof of having been an Ohio resident for the five-year period, ODJFS may request that the independent provider obtain information through the Superintendent from the FBI in the criminal records check.

The act requires ODJFS to provide information to each independent provider for whom a criminal records check request is required a copy of the BCII prescribed form used to obtain information necessary to conduct a criminal records check and a standard fingerprint impression sheet and to obtain the completed form and impression sheet and fee from the independent provider. ODJFS then is required to forward the completed form, impression sheet, and fee to the Superintendent of BCII. An independent provider given information about obtaining the form and fingerprint impression sheet who fails to complete the form

---

<sup>152</sup> *"Independent provider" means a person who is submitting an application for a provider agreement or who has a provider agreement as an independent provider in an ODJFS-administered home and community-based services program providing home and community-based waiver services to consumers with disabilities.*

*"Home and community-based waiver services" means services furnished under federal regulations that permit individuals to live in a home setting rather than a nursing facility or hospital. Home and community-based waiver services are approved by the county medical services section of ODJFS for specific populations and are not otherwise available under the Medicaid state plan.*

*"Anniversary date" means the later of the effective date of the provider agreement relating to the independent provider or 60 days after the effective date of this provision of the act.*

or provide fingerprint impressions may not be approved as an independent provider.

**Offenses disqualifying a person from being an independent provider**

Except as provided in rules adopted by ODJFS described below, ODJFS may not issue a new provider agreement to, and must terminate an existing provider agreement of, an independent provider if the person has been convicted of or pleaded guilty to any of the following:

(1) Aggravated murder; murder; voluntary manslaughter; involuntary manslaughter; reckless homicide; felonious assault; aggravated assault; assault; failing to provide for a functionally impaired person; aggravated menacing; patient abuse; gross patient neglect; patient neglect; kidnapping; abduction; criminal child enticement; extortion; coercion; rape; sexual battery; unlawful sexual conduct with a minor; gross sexual imposition; sexual imposition; importuning; voyeurism; public indecency; compelling prostitution; promoting prostitution; procuring; prostitution; engaging in prostitution after a positive HIV test; disseminating matter harmful to juveniles; pandering obscenity; pandering obscenity involving a minor; pandering sexually oriented matter involving a minor, illegal use of minor in nudity-oriented material or performance; aggravated robbery; robbery; aggravated burglary; burglary; breaking and entering; any theft offense; unauthorized use of a vehicle; unauthorized use of property; unauthorized use of computer, cable, or telecommunications property; passing bad checks; misuse of credit cards; forgery; forging identification cards or selling or distributing forged identification cards; Medicaid fraud; securing writings by deception; insurance fraud; receiving stolen property; unlawful abortion; contributing to the unruliness or delinquency of a child; domestic violence; illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of cash onto the grounds of a detention facility; carrying concealed weapons; having weapons while under disability; improperly discharging a firearm at or into a habitation, in a school safety zone, or with intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function; corrupting another with drugs; any trafficking in drugs offense; illegal manufacture of drugs or cultivation of marihuana; funding of drug or marihuana trafficking; illegal administration of distribution of anabolic steroids; any drug possession offense; permitting drug abuse; deception to obtain a dangerous drug; illegal processing of drug documents; placing a harmful or hazardous object or substance in any food or confection; felonious sexual penetration in violation of



former state law; a violation of the offense of child stealing as it existed prior to July 1, 1996; a violation of the offense of interference with custody that would have been a violation of the offense of child stealing as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(2) An existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in the preceding paragraph.

The act requires ODJFS to adopt rules in accordance with the Administrative Procedure Act to implement the above-described records check provisions. The rules must specify circumstances under which ODJFS may issue a provider agreement to an independent provider who has been convicted of or pleaded guilty to a disqualifying offense but meets personal character standards set by ODJFS.

### **Fees**

The act requires each independent provider to pay to BCII the fee prescribed by BCII under existing law for each criminal records check conducted pursuant to a request made under "**Initiating the criminal records check**," above.

### **Confidentiality**

The report of any criminal records check conducted by BCII is not a public record for the purposes of the Public Records Law and must not be made available to any person other than the following:

(1) The person who is the subject of the criminal records check or the person's representative;

(2) The administrator at ODJFS who is requesting the criminal records check or the administrator's representative;

(3) Any court, hearing officer, or other necessary individual involved in a case dealing with a denial or termination of a provider agreement related to the criminal records check.

### **Conforming change in the BCII Law**

The act makes related changes in the BCII Law to authorize BCII to conduct the criminal records check.

### **Ohio Commission to Reform Medicaid**

(Section 59.29)

The act establishes the Ohio Commission to Reform Medicaid to conduct a complete review of Ohio's Medicaid program and make recommendations for comprehensive reform and cost containment. The Commission must submit a report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate by January 1, 2005.

The act specifies that the Commission is to have nine members: three appointed by the Governor, three by the Speaker of the House of Representatives, and three by the President of the Senate.<sup>153</sup> The members must be appointed within 90 days after this provision of the act becomes effective, and the Commission may hire a staff director and other employees to provide technical support. The act provides that all members serve at the pleasure of the appointing authority and are not to be compensated.

The act also requires the Director of ODJFS to seek federal financial assistance for the administrative costs of the Commission.

### **Study expanding Medicaid coverage for breast and cervical cancer treatment**

(Section 59.34)

Am. Sub. H.B. 94 of the 124th General Assembly enacted a provision requiring the Director of ODJFS to seek an amendment to the state Medicaid plan from the United States Secretary of Health and Human Services for purposes of implementing the Breast and Cervical Cancer Prevention and Treatment Act of 2000.<sup>154</sup> Pursuant to this amendment, certain women would qualify for Medicaid during the period for which treatment for breast or cervical cancer was needed. To qualify, a woman had to (1) be under age 65, (2) not otherwise be eligible for Medicaid, (3) meet the definition of "screened for breast and cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program," (4) need treatment for breast or cervical cancer, and (5) not

---

<sup>153</sup> *Vacancies are to be filled in the same manner.*

<sup>154</sup> *Revised Code § 5111.0110.*

otherwise be covered under creditable coverage.<sup>155</sup> The amendment was approved and rules issued to implement it.<sup>156</sup>

Beginning in January 2001, the Centers for Medicare and Medicaid Services (CMS) issued guidance to assist state health officials in their implementation of the Breast and Cervical Cancer Prevention and Treatment Act of 2000.<sup>157</sup> As part of this guidance, CMS stated that the CDC allows Title XV grantees (the various states) the flexibility to expand the population of women qualifying for Medicaid by extending the definition of "screened for breast and cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program" to include two additional groups of women: (1) those who are screened under a Title XV-funded Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program but whose screenings were not paid for with Title XV funds distributed as grants, and (2) those who are screened by any provider or entity and the state has elected to include screening activities by that provider or entity as Title XV screening activities.<sup>158</sup>

The act requires ODJFS to complete a study and to prepare a report by June 1, 2004, considering the feasibility of extending Medicaid coverage to include the women in the two additional groups.

---

<sup>155</sup> *All of the following are creditable coverage: (1) a group health plan, (2) health insurance, (3) Part A or B of Medicare, (4) Medicaid, other than for pediatric vaccines, (5) United States armed forces medical and dental care, (6) a medical care program of the Indian Health Service or a tribal organization, (7) a state health benefits risk pool, (8) a health plan offered under federal law to federal government employees, (9) a public health plan, and (10) a health benefit plan under the Peace Corps Act.*

<sup>156</sup> *Ohio Administrative Code Chapter 5101:1-4.*

<sup>157</sup> *Breast and Cervical Cancer Prevention and Treatment Act of 2000* <<http://cms.hhs.gov/bccptfaq.pdf>> (visited June 2, 2003).

<sup>158</sup> *Title XV of the Public Health Service Act, 42 United States Code Annotated 201 et seq., permits the United States Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, to make grants to the states to establish programs to detect and control breast and cervical cancer.*

### **Federal Jobs and Growth Tax Relief Reconciliation Act of 2003**

(Section 145)

The federal Jobs and Growth Tax Relief Reconciliation Act of 2003 temporarily increases the share of Medicaid expenditures that the federal government will pay. The increase applies to the period starting April 1, 2003 and ending June 30, 2004.

The act provides that during this period, the reimbursement rate for all Medicaid service expenditures paid by state or local entities is to be the non-enhanced rate. The act does not define "non-enhanced rate."

The act also provides that, during the calendar quarters in which the federal share of Medicaid expenditures is increased, when drawing federal Medicaid funds to the state treasury for Medicaid services paid by ODJFS or other state or local entities, ODJFS must deposit the amount of federal revenue attributable to the increased federal funds to a new fund the act creates, the Federal Fiscal Relief Fund.

### **IX. Hospital Care Assurance Program**

Under the Hospital Care Assurance Program (HCAP), (1) hospitals are annually assessed an amount based on their total facility costs and (2) government hospitals make annual intergovernmental transfers to ODJFS. Assessments and intergovernmental transfers are made in periodic installments. ODJFS distributes to hospitals money generated by assessments, intergovernmental transfers, and federal matching funds generated by the assessments and transfers. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty 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. Also, of the amount ODJFS 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.

### **Delayed termination of HCAP**

(Sections 137.09 and 137.10)

The funding mechanism for HCAP was scheduled to terminate on October 16, 2003. The act delays the termination until October 16, 2005.



### **Health Care Services Administration Fund**

(R.C. 5111.94)

The Health Care Services Administration Fund is used to pay Medicaid administrative costs. Money deposited into the Fund includes amounts from assessments on hospitals and intergovernmental transfers by government hospitals under HCAP. The act removes a reference to HCAP's former October 16, 2003 termination date from the provisions that describe the moneys included in the Health Care Services Administration Fund.

### **Changes to HCAP penalties**

(R.C. 5112.99)

Continuing law requires the Director of ODJFS to impose a penalty for each day after the statutory deadline that a hospital fails to report information required for HCAP. If a hospital fails to pay assessments or make transfers as required by law, the Director must impose another penalty.

Under prior law, the penalty for failure to report the information was \$100 per day. The act grants the Director the authority to set penalties for HCAP. As regards failure to pay assessments or make transfers, ODJFS is required to impose a penalty of 10% of the amount due. The act eliminates a provision capping the penalty at \$20,000. The act also shifts the deposit of penalty revenue from the General Revenue Fund to the Health Care Services Administration Fund.

## **X. Disability Financial and Medical Assistance**

Under prior law, the Disability Assistance Program which consisted of a financial assistance component and medical assistance component. Generally, low income persons were eligible for Disability Assistance if they were ineligible for assistance under the Ohio Works First Program, the federal Supplemental Security Income Program, and Medicaid. To be eligible, a person had to be one of the following:

- (1) Under 18 years of age;
- (2) Age 60 or older;
- (3) Pregnant;
- (4) Unable to do any substantial or gainful activity by reason of a medically determinable physical or mental impairment that could be expected to

result in death or had lasted or could be expected to last for not less than nine months;

(5) A resident of a residential treatment center certified as an alcohol or drug addiction program by the Ohio Department of Drug and Alcohol Addiction Services;

(6) Medication dependent, as determined by a physician, who had certified to a county department of job and family services that the person was receiving ongoing treatment for a chronic medical condition requiring continuous prescription medication for an indefinite, long-term period of time and for whom loss of the medication would result in a significant risk of medical emergency and loss of employability lasting at least nine months. Persons in this category received medical assistance but not financial assistance.

### **Separation of financial and medical assistance**

(R.C. 5115.01 and 5115.10)

The act separates the Disability Assistance Program into the Disability Financial Assistance Program and the Disability Medical Assistance Program. Distinct requirements, eligibility determination procedures, administrative rules, and potential limitations are to be established by ODJFS for each of the programs.

### **Eligibility for Disability Financial Assistance**

(R.C. 5115.01; Section 59.32)

The act establishes two categories under which a person may be eligible for the Disability Financial Assistance Program. A person's eligibility is subject to all other eligibility requirements established by statute and the rules that apply to the program.

**Physical or mental impairment:** Under this provision, a person may be eligible if the person is unable to do any substantial or gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for not less than nine months.

**Attaining age 60 prior to the act:** Under this provision, a person may be eligible if, on the day before the effective date of this provision of the act, the person was 60 years of age or older and one of the following is the case:

(1) The person was receiving or scheduled to begin receiving financial assistance on the basis of being age 60 or older;



(2) An eligibility determination was pending regarding the person's application to receive financial assistance on the basis of being age 60 or older and, on or after the effective date of this provision of the act, the person receives a determination of eligibility based on that application.

In addition, the act requires that up to \$2,176,269 of Disability Financial Assistance funds be used in each fiscal year of the 2004-2005 biennium for residents of residential treatment centers certified as an alcohol or drug addiction program by the Department of Alcohol and Drug Addiction Services. The Governor vetoed a provision that would have provided that the funds be used to provide *services* to those residents.

**Termination of existing financial assistance eligibility**

(Section 59.31(B))

Notwithstanding any determination through administrative or judicial order or otherwise, the act provides that a person who was receiving financial assistance under the Disability Assistance Program prior to the effective date of this provision of the act ceases to be eligible for financial assistance under the Disability Financial Assistance Program, unless one of the following is the case:

(1) The person was receiving financial assistance on the basis of being physically or mentally impaired or being age 60 or older;

(2) The person reapplies for assistance and receives a determination of eligibility based on being physically or mentally impaired.

**Financial assistance amounts**

(R.C. 5115.03)

Prior law required ODJFS to establish financial assistance payments based on state appropriations. In the 2002-2003 general appropriations act, the monthly grant levels were specified. For example, a single person received a maximum of \$115 per month, two persons received a maximum of \$159, and three persons received a maximum of \$193.

Under the act, the Director is authorized to adopt rules specifying or establishing maximum payment amounts. The amounts are to be based on state appropriations, which the act identifies as appropriations *for the program*.

### **Eligibility for Disability Medical Assistance**

(R.C. 5115.10)

The act provides that a person may be eligible for the Disability Medical Assistance Program only if the person is medication dependent, not as determined by a physician as specified in prior law, but as determined by ODJFS. A person's eligibility is subject to all other eligibility requirements established by statute and the rules that apply to the program.

The Director is required to adopt rules for purposes of implementing the act's provisions pertaining to a person being medication dependent. The rules may specify or establish the following:

(1) Standards for determining whether a person is medication dependent, including standards under which a person may qualify as being medication dependent only if it is determined that (a) the person is receiving ongoing treatment for a chronic medical condition that requires continuous prescription medication for an indefinite, long-term period of time and (b) loss of the medication would result in a significant risk of medical emergency and loss of employability lasting at least nine months;

(2) A requirement that a person's medical condition be certified by a physician;

(3) Limitations on the chronic medical conditions and prescription medications that may qualify a person as being medication dependent.

### **Extension of existing medical assistance eligibility**

(Section 59.31(C))

Notwithstanding the requirements that limit eligibility under the Disability Medical Assistance Program to persons who are medication dependent, the act permits the Director of ODJFS to adopt rules providing for and governing temporary provision of medical assistance to person who were eligible prior to the effective date of this provision of the act. The act specifies that a person's eligibility for medical assistance may continue pursuant to the rules until ODJFS or a county department of job and family services conducts a redetermination of the person's eligibility according to the act's eligibility requirements.

### **Medical services available**

(R.C. 5115.10 and 5115.12)

Prior law required the medical assistance component of the Disability Assistance Program to consist of a "system of managed primary care." Recipients could be required to enroll in a health insuring corporation or other managed care program. ODJFS was permitted to limit the number or type of health care providers from which a recipient could obtain services. The Director of ODJFS had to designate medical services providers for the program and services could be rendered only by the designated providers. The Director was required to adopt rules governing the program, including rules that specified the maximum authorized amount, scope, duration, or limit of payment for services.

The act requires the Director to adopt rules governing the Disability Medical Assistance Program. In place of the former provisions describing the manner in which services could be provided, the act permits the Director to adopt rules specifying or establishing the health care services that are included in the program. Under the act, the Director is authorized, rather than required, to specify the maximum authorized amount, scope, duration, or limit of payment for services.

### **Time limits and program limits**

(R.C. 5115.03 and 5112.12)

For both the Disability Financial Assistance and Disability Medical Assistance Programs, the act permits the Director of ODJFS to adopt rules that establish or specify either or both of the following:

- (1) Limits on the length of time an individual may receive assistance;
- (2) Limits on the total number of individuals who may receive assistance.

For purposes of limiting the cost of either program, the act permits the Director to revise previously adopted rules. The act specifies that the Director may revise the program's eligibility requirements, the maximum benefits, or any other requirement or standard the Director has established or specified by rule.

Also for purposes of limiting program costs, the act permits the Director to suspend acceptance of applications for assistance. During a suspension, no person can receive a determination or redetermination of eligibility for assistance unless the person was receiving the assistance during the month immediately preceding the suspension's effective date or the person submitted an application prior to the

suspension's effective date and receives a determination of eligibility based on that application. The act authorizes the adoption of rules governing suspensions.

### **Delegation of administrative duties**

(R.C. 5115.04 and 5115.13)

Prior law required ODJFS to supervise and administer the Disability Assistance Program, but allowed it to require county departments of job and family services to perform any administrative function specified in rules. The act gives ODJFS this authority for both the Disability Financial Assistance and Disability Medical Assistance Programs, with the following differences:

(1) In the Disability Financial Assistance Program, the act eliminates the duty of ODJFS to make final determinations regarding physical and mental impairment;

(2) In the Disability Medical Assistance Program, the act permits the Director of ODJFS to contract with any private or public entity in Ohio to perform any administrative function or to administer any or all of the program. The Director is permitted either to adopt rules or include provisions in the contract governing the entity's performance of the functions. The act specifies that the entity is required to perform the functions in accordance with the requirements established by the Director.

### **Investigations of administrative compliance**

(R.C. 5115.03, 5115.04, and 5115.13)

The Director of ODJFS is authorized to conduct investigations to determine whether Disability Assistance is being administered in compliance with statutes and rules. The act specifies that these investigations involve activities being performed by county departments of job and family services and entities under contract to perform administrative duties.

### **Disability advocacy programs**

(R.C. 5115.20)

The act extends the Director's investigatory authority to the administration of disability advocacy programs, which are operated by county departments of job and family services to assist persons in applying for financial assistance under the federal Supplemental Security Income Program. With regard to the rules that govern the program, the act changes the rule-making procedures that must be used from those specified in the Administrative Procedure Act (R.C. Chapter 119.) to

those specified in R.C. 111.15, which does not include requirements for public hearings.

**Recovery of erroneous payments**

(R.C. 5115.23)

ODJFS, and county departments of job and family services at ODJFS's request, must take action to recover erroneous payments made in the Disability Assistance Program. Under the act, ODJFS is required to adopt rules specifying the circumstances under which action is to be taken to recover erroneous payments under Disability Financial Assistance and Disability Medical Assistance.

**Eligibility determinations**

(R.C. 5115.01, 5115.02, 5115.011 (repealed), 5115.05, 5115.06 (repealed), 5115.11, and 5115.14; Section 146.04)

For both the Disability Financial Assistance and Disability Medical Assistance Programs, the act continues the duty of the Director of ODJFS to adopt rules governing application and verification procedures. The act grants the Director authority to establish or specify eligibility requirements. With regard to these application and eligibility determination processes, the act does the following:

(1) Allows rules to be adopted that include any procedures the Director considers necessary in administering the application process;

(2) Eliminates provisions requiring the Director to adopt rules defining terms and establishing standards for determining whether a person meets a condition of eligibility;

(3) Eliminates provisions requiring the adoption of rules defining "assistance group" and "family group" and provisions specifying the manner in which the terms may be defined;

(4) Eliminates provisions requiring that one automobile be excluded from consideration as a resource when determining eligibility;

(5) Eliminates provisions specifying reasons for which a person is rendered ineligible for medical assistance;

(6) Adds the following as reasons for which a person is rendered ineligible for financial assistance: (a) being eligible for financial assistance under a state or federal program not expressly identified in statute but similar to the assistance

provided under the Disability Financial Assistance Program, as determined by ODJFS, (b) terminating employment without just cause, as applied in the Ohio Works First Program, (c) being involved in a strike or having someone in the assistance group who is involved in a strike, and (d) being a minor parent who does not reside with a parent, guardian, custodian, or other relative, as required by the Ohio Works First Program.

### **Report to the General Assembly**

(R.C. 5115.012 (repealed))

The act eliminates a requirement that ODJFS, each July, provide a report to the General Assembly on the number of children who are rendered ineligible for Disability Assistance because they are ineligible for participation in the Ohio Works First Program because of time-limits on benefits or program requirements.

### **Rule-making authority**

(R.C. Chapter 5115.)

The authority or duty of the Director of ODJFS to adopt rules for the Disability Assistance Program is implemented primarily through the rule-making procedures that do not require public hearings (R.C. 111.15). In some cases, the rule-making process to be used is not specified. In these cases, the act specifies that the rules are to be adopted in accordance with R.C. 111.15.

### **Transition**

(Section 59.31(A))

The act provides that the Disability Financial Assistance Program constitutes a continuation of the financial assistance component of the Disability Assistance Program and the Disability Medical Assistance Program constitutes a continuation of the medical assistance component of the Disability Assistance Program. This continuation, however, is subject to the changes the act makes to those components. Any business commenced but not completed on behalf of the Disability Assistance Program is to be completed in the name of the Disability Financial Assistance and Disability Medical Assistance Programs. The act provides for the continuation of rules, orders, and determinations made under the Disability Assistance Program and specifies that references to the program in any law, contract, or other document are deemed to refer to the renamed programs.

### **Cross-reference changes**

For purposes of changing the name of the Disability Assistance Program, as well as reflecting the separation of the program into distinct financial assistance and medical assistance programs, the act includes changes to the following sections of the Revised Code: 117.45, 127.16, 131.23, 323.01, 329.03, 329.04, 329.051, 2305.234, 2329.66, 2715.041, 2715.045, 2716.13, 2921.13, 3111.04, 3119.01, 3123.952, 3317.029, 3317.10, 3702.74, 4123.27, 4731.65, 4731.71, 5101.16, 5101.18, 5101.181, 5101.36, 5101.58, 5101.59, 5112.03, 5112.08, 5112.17, 5115.07, 5123.01, 5502.13, and 5709.64.

### **XI. Title XX Social Services**

Title XX of the Social Security Act establishes a federal social services block grant. Funds from the block grant must be used to meet the goals of (1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency, (2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency, (3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families, (4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, and (5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

Federal law governing Title IV-A Temporary Assistance for Needy Families (TANF) provides that a state may use a portion of its federal TANF funds for Title XX social services. The act provides that state law governing the administration of Title XX funds does not apply to funds received from a federal funding source other than the Title XX social services block grant. ODJFS is permitted to adopt rules that are necessary to carry out this provision of state law.

---

### **JOINT COMMITTEE ON AGENCY RULE REVIEW**

- Requires the Chief Administrative Officer of the House of Representatives and the Clerk of the Senate to determine, by mutual agreement, which of them will act as the fiscal agent for the Joint Committee on Agency Rule Review.



### **Fiscal agent**

(Section 10)

Section 15 of Am. Sub. H.B. 94 of the 124th General Assembly required, for the 2002-2003 biennium, the Chief Administrative Officer of the House of Representatives and the Clerk of the Senate to determine, by mutual agreement, which of them would act as the fiscal agent for the Joint Committee on Agency Rule Review (JCARR). The act establishes the same process for determining the fiscal agent for JCARR for the 2004-2005 biennium.

---

### **JOINT LEGISLATIVE ETHICS COMMITTEE**

- Increases from \$10 to \$25 the registration fee that each legislative agent and employer, and each executive agency lobbyist and employer, are charged for filing an initial registration statement.
- Specifies that all money collected from these registration fees must be deposited into the General Revenue Fund rather than the Joint Legislative Ethics Committee Fund.
- Generally requires the Joint Legislative Ethics Committee (JLEC) to impose a late filing fee of \$12.50 per day, up to a maximum fee of \$100, upon an executive agency lobbyist or a lobbyist's employer who fails to file a registration statement or an amended registration statement within a 15-day period after receiving a specified notice.
- Eliminates the requirement that JLEC notify the Attorney General and other public officials of an executive agency lobbyist's or the lobbyist's employer's failure to so file a registration statement or amended registration statement.

### **Registration fees**

(R.C. 101.34, 101.72(E), and 121.62(E))

Under continuing law, each legislative agent and employer, and each executive agency lobbyist and employer, within ten days following the engagement of a legislative agent or an executive agency lobbyist, must file with the Joint Legislative Ethics Committee (JLEC) an initial registration statement. Prior law established a registration fee of \$10 for filing an initial registration statement.



The act increases from \$10 to \$25 the registration fee that each legislative agent and employer, and each executive agency lobbyist and employer, must pay when filing an initial registration statement. The act also specifies that all moneys collected from these registration fees must be deposited into the General Revenue Fund, rather than the Joint Legislative Ethics Committee Fund as prior law required.

**Late filing fee for executive agency lobbyists and their employers**

(R.C. 121.62(G))

As noted above, continuing law requires an executive agency lobbyist and the lobbyist's employer to file an initial registration statement with JLEC within ten days following the lobbyist's engagement. Thereafter, the executive agency lobbyist and employer must file an updated registration statement not later than the last day in January, May, and September of each year. The Executive Director of JLEC is responsible for reviewing each registration statement filed and determining whether it contains the required information. If JLEC determines that a registration statement does not contain all of the required information or that an executive agency lobbyist or the lobbyist's employer has failed to file a registration statement, JLEC must send a written notification by certified mail to the person who filed the registration statement regarding the deficiency in the statement or to the person who failed to file the registration statement regarding the failure. Any person so notified must file, not later than 15 days after receiving the notice, a registration statement or an amended registration statement that contains all of the required information.

Under prior law, if a person who received a notice failed to file a registration statement or an amended registration statement within that 15-day period, JLEC was required to notify the Attorney General. The Attorney General was authorized to investigate and, in the event of an apparent violation, was required to report the findings of the investigation to the Franklin County prosecuting attorney, who then had to institute appropriate proceedings. If JLEC notified the Attorney General, JLEC also had to notify each elected executive official and the director of each state administrative department of the pending investigation.

The act eliminates the requirement that JLEC notify the Attorney General, each elected executive official, and the director of each state administrative department regarding the failure of an executive agency lobbyist or the lobbyist's employer to file a required registration or amended registration statement; the Attorney General would retain, however, independent authority to conduct an investigation for compliance of individuals with the Executive Agency Lobbying Law and the duty to refer violations found to the Franklin County prosecuting

attorney for appropriate proceedings (R.C. 121.69--not in the act). Instead, under the act, if an executive agency lobbyist or the lobbyist's employer fails to file a registration statement or an amended registration statement within the 15-day period after receiving a notice, JLEC generally must assess a late filing fee of \$12.50 per day, up to a maximum fee of \$100, upon that person. However, JLEC may waive the late filing fee for good cause shown.

---

## JUDICIARY

- Creates one additional judge for the Richland County Court of Common Pleas to be elected in 2004 as judge of the Juvenile Division of the court.
- Specifies which cases will be assigned to and heard by the judge of the Domestic Relations Division and judge of the Juvenile Division of the Richland County Court of Common Pleas.
- Increases from \$11 to \$15 the additional costs a court generally is required to impose upon an offender who is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, and increases from \$11 to \$15 the amount that the court is required to add to any bail to be paid by a person who is charged with any offense other than a traffic offense that is not a moving violation.
- Increases from \$11 to \$15 the additional costs a juvenile court generally is required to impose upon a child who is found to be a delinquent child or a juvenile traffic offender for committing an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation.
- Would have limited the right to appointed counsel in juvenile court in certain actions relating to the custody and support of a child and certain proceedings conducted under the Parentage Laws (VETOED).

### *Additional judge for Richland County Court of Common Pleas*

#### *Prior law*

The Richland County Court of Common Pleas previously had four judges: two judges of the general division, one judge of the probate division, and one



judge of the domestic relations division (R.C. 2101.01, not in the act, R.C. 2301.02(B) and R.C. 2301.03(G)).

The judge of the domestic relations division had all of the powers relating to juvenile courts, and all cases under Chapters 2151. and 2152. of the Revised Code, all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases were to be assigned to that judge, except in cases that for some special reason are assigned to some other judge of the Court of Common Pleas. (R.C. 2301.03(G).)

### **Operation of the act**

The act creates a juvenile division for the Richland County Court of Common Pleas and adds a new judge for that court to be elected specifically to the new division and designated as the judge of the Court of Common Pleas, Juvenile Division. The new judge is to be elected initially in 2004 for a term to begin January 3, 2005. The new judge has the same qualifications, exercises the same powers and jurisdiction, and receives the same compensation as other judges of the Richland County Court of Common Pleas. The judge has the powers and jurisdiction of the juvenile judges as provided in Revised Code Chapters 2151. and 2152. Except in cases that are subject to the exclusive jurisdiction of the juvenile court, the judge of the juvenile division does not have jurisdiction or the powers to hear, and must not be assigned, any case pertaining to paternity, custody, visitation, child support, or the allocation of parental rights and responsibilities for the care of children or any post-decree proceeding arising from any case pertaining to any of those matters. The judge of the juvenile division does not have jurisdiction or the power to hear, and must not be assigned, any proceeding under the Uniform Interstate Family Support Act contained in Revised Code Chapter 3115.

The juvenile judge will be the administrator of the juvenile division and its subdivisions and departments. The judge also will have charge of the employment, assignment, and supervision of the personnel of the juvenile division who are engaged in handling, servicing, or investigating juvenile cases, including any magistrates whom the judge considers necessary for the discharge of the judge's various duties. The judge of the juvenile division also must designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and must fix their duties. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases and providing any counseling, conciliation, and mediation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services. (R.C. 2301.03(G)(2).)

The domestic relations judge will have assigned to that judge and hear all divorce, dissolution of marriage, legal separation, and annulment cases that come before the court and hear all proceedings under the Uniform Interstate Family Support Act contained in Revised Code Chapter 3115. Except in cases that are subject to the exclusive original jurisdiction of the juvenile court, the domestic relations judge must have assigned to that judge and hear all cases pertaining to paternity, custody, visitation, child support, or the allocation of parental rights and responsibilities for the care of children and all post-decree proceedings arising from any case pertaining to any of those matters. (R.C. 2301.03(G)(1).)

**Additional court costs or bail**

(R.C. 2949.091)

Under Ohio law, largely unchanged by the act, the court in which any person was convicted of or pled guilty to any offense other than a traffic offense that was not a moving violation<sup>159</sup> was required to impose the sum of \$11 as costs in the case in addition to any other court costs that the court was required by law to impose upon the offender. Similarly, the juvenile court in which a child was found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that was not a moving violation was required to impose the sum of \$11 as costs in the case in addition to any other court costs that the court was required or permitted by law to impose upon the delinquent child or juvenile traffic offender.

Whenever a person was charged with any offense other than a traffic offense that was not a moving violation and posted bail,<sup>160</sup> prior law largely unchanged by the act required the court to add to the amount of the bail the \$11 required to be paid by the preceding paragraph.

---

<sup>159</sup> "Moving violation" means any violation of any statute or ordinance, other than the Mandatory Seatbelt Law or a substantially equivalent municipal ordinance, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles. (R.C. 2949.091(D)(1) by reference to R.C. 2743.70(D)(1).)

<sup>160</sup> "Bail" means cash, a check, a money order, a credit card, or any other form of money that is posted by or for an offender to prevent the offender from being placed or held in a detention facility (R.C. 2949.091(D)(1) by reference to R.C. 2743.70(D)(2)).

Continuing law prescribes procedures by which the additional moneys collected as costs are transmitted to the Treasurer of State for deposit into the General Revenue Fund. Continuing law also prescribes procedures by which the additional bail is either returned to the person or transmitted to the Treasurer of State for deposit into the General Revenue Fund. A court may waive the payment of the additional costs only in specified circumstances, and a person may not be placed or held in a detention facility for failing to pay the additional costs or bail.

The act increases this additional court cost or bail from \$11 to \$15.

**Appointed counsel in juvenile court**

(R.C. 2151.352)

Under continuing law, a child and the child's parents, custodian, or other person in loco parentis of the child are entitled to representation by legal counsel at all stages of the proceedings. If, as an indigent person, any such person is unable to employ counsel, that person is entitled to have counsel provided for the person pursuant to the Public Defender Law. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel must be provided for each of them.

The Governor vetoed a provision in the act that would have provided that the right to appointed counsel described above does not confer the right to court appointed counsel in the following types of civil actions:

(1) Actions to determine the custody of any child not a ward of another Ohio court;

(2) Actions relating to custody and support of children duly certified by the court of common pleas to the juvenile court after a divorce decree has been granted;

(3) Actions relating to child custody and child support matters under R.C. 3109.04, 3109.21 to 3109.36, and 5103.20 to 5103.28 and in child support matters under R.C. 3109.05;

(4) Proceedings conducted under the Parentage Laws relating to: (a) the duty of support, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child, (b) the payment of the reasonable expenses of the mother's pregnancy and confinement, (c) petitions of the father requesting that the father be designated the residential parent and legal custodian of the child or requesting visitation rights in a proceeding separate from any action to establish paternity, and (d) if the mother is unmarried, a

complaint filed by the father, the parents of the father, any relative of the father, the parents of the mother, or any relative of the mother requesting the granting of reasonable companionship or visitation rights with respect to the child.

---

### LEGAL RIGHTS SERVICE COMMISSION

- Modifies the authority of the Legal Rights Service Commission and of the administrator of the Legal Rights Service.

#### Commission authority

(R.C. 5123.60)

The act modifies the authority of the Legal Rights Service Commission. It specifies that the policy guidelines established by the Commission for the Legal Rights Service may include guidelines for the commencement of litigation. It gives rulemaking authority to the Commission to carry out its purposes, and provides that rules adopted by the administrator of the Legal Rights Service may not conflict with the rules of the Commission. The act requires the administrator (1) to provide the Commission with a copy of the Service's proposed budget at least 30 days before submitting the budget to the General Assembly and to include the Commission's written comments when it submits the budget, and (2) on request, to report to the Commission on specific litigation issues. The act authorizes the Commission to advise the administrator in establishing and annually reviewing a strategic plan and to create a procedure for the determination of grievances against the Service by individuals who have been represented or denied representation by the Service. Under that procedure, any such person may appeal the decision of the Service on the grievance to the Commission, notwithstanding any objections of their legal guardian. Lastly, the act changes the tenure of the administrator from a term of five years, subject to removal for incapacity to perform the duties of the office, certain convictions, or other good cause, to serving at the pleasure of the Commission.

---

### OHIO LOTTERY COMMISSION

- Amends the definition of "court of competent jurisdiction" for purposes of the Lottery Prize Award Transfer (LPAT) Law.



- Eliminates the requirement in the LPAT Law that, in order for a court to approve a transfer of a lottery prize award when the transferor is a prize winner, the court must find that the prize winner has established that the transfer is fair and reasonable and in the prize winner's best interest.
- Provides in the LPAT Law that, if all other conditions necessary for a court's approval of a transfer of a lottery prize award are met, the transfer must be presumed to be fair and reasonable and in the best interests of the prize winner.
- Eliminates the State Lottery Commission's power to conduct lotteries in order to disburse unclaimed prize awards as well as the Unclaimed Lottery Prizes Fund.
- Requires all unclaimed lottery prize awards to be returned to the State Lottery Fund.
- Requires the Commission's Director to deduct from lottery prize award payments amounts in satisfaction of certain state-owed debts.

### **Transfer of lottery prize awards**

(R.C. 3770.10 and 3770.12; R.C. 3770.13 (not in the act))

#### **Overview**

Under continuing provisions of the Lottery Prize Award Transfer Law, a lottery prize winner can enter into a "transfer agreement." This agreement provides for the transfer of all or any part of the prize winner's lottery prize award to a transferee. But, before the transfer can occur, a court of competent jurisdiction must approve the transfer agreement. Former law defined a "court of competent jurisdiction" as the probate court of the county in which the prize winner resides, or, if the prize winner is not an Ohio resident, the probate court of Franklin county or a federal court having jurisdiction over the lottery prize award.

Under former law too, in order to approve a transfer, the court of competent jurisdiction had to find that certain conditions existed. Examples of those conditions included the following when the transferor was a prize winner:

- That the transferee had provided to the prize winner a specified disclosure statement, and the prize winner had confirmed receipt of the disclosure statement.
- That the prize winner had established that the transfer was fair and reasonable and in the best interests of the prize winner.
- That the prize winner had received independent professional advice regarding the legal and other implications of the transfer.

### **Changes made by the act**

The act makes two changes to the Lottery Prize Award Transfer Law. First, the definition of "court of competent jurisdiction" is expanded to mean the *general division* or the *probate division* of the court of common pleas of the county in which the prize winner resides or, if the prize winner is not an Ohio resident, the *general division* or the *probate division* of the court of common pleas of Franklin county (or, as in continuing law, a federal court having jurisdiction over the lottery prize award), rather than just "the probate court" as under former law.

Second, the act eliminates former law's requirement that, in order for a court of competent jurisdiction to approve a transfer of a lottery prize award when a prize winner is the transferor, the court must find that the prize winner has established that the transfer is fair and reasonable and in the prize winner's best interest. The act replaces this requirement with a presumption: if the court determines that all other conditions necessary for approval of a transfer are met, the transfer of the lottery prize award must be presumed to be fair and reasonable and in the best interests of the prize winner.

### **Unclaimed lottery prizes**

(R.C. 1309.109, 3770.07, 3777.10, and 3770.99)

Under former law, when lottery prize awards went unclaimed, they were transferred to the Unclaimed Lottery Prizes Fund in the state treasury. In order to disburse those unclaimed prize awards, the State Lottery Commission could conduct lotteries, the prize awards of which included all or part of the unclaimed prize awards.

The act eliminates the Commission's power to conduct the unclaimed prize award lotteries and the related statutory provisions governing those lotteries. Additionally, as part of this change, the act does away with the Unclaimed Lottery Prizes Fund and instead requires all unclaimed lottery prize awards to be returned to the State Lottery Fund.

**Deduction of state-owed debts from lottery prize award payments**

(R.C. 3770.07(D)(1) and 3770.073)

The act requires the Director of the State Lottery Commission or the Director's designee to deduct from payments of lottery prize awards worth \$5,000 or more and pay to the Attorney General an amount in satisfaction of certain debts that have become final and that the person entitled to the lottery prize award owes. The debts include any tax, workers' compensation premium, unemployment contribution, payment in lieu of unemployment contribution, or charge, penalty, or interest arising from the previously listed debts.

If the prize award will be paid in a *lump sum* and the amount of the award is less than the amount of the debt, the entire amount of the prize award must be deducted and paid in partial satisfaction of the debt; but, when the amount of a lump sum award is more than the amount of the debt, the requisite amount to satisfy the debt fully must be deducted, and the remainder of the prize award paid to the person. If the prize award will be paid in *annual installments*, the deduction must be made on the date the initial installment payment is due and, if necessary to collect the full amount of the debt, on the dates of any subsequent annual installments, until the debt is fully satisfied.

Finally, if the person owes more than one debt and one of the debts is a tax debt resulting from the person being personally liable for a corporation's, limited liability company's, or business trust's failure to file either income or sales tax returns and make payment, deductions from prize awards must first be used to satisfy this tax debt.

---

**DEPARTMENT OF MENTAL HEALTH**

- Requires the Director of Mental Health to include assertive community treatment and intensive home-based mental health services in rules establishing certification standards for community mental health services.

**Assertive community treatment in certification standards**

(R.C. 5119.611)

The Director of Mental Health is required by continuing law to adopt rules establishing certification standards for community mental health services. The rules must be consistent with nationally recognized applicable standards and

facilitate participation in federal assistance programs. The act requires that assertive community treatment and intensive home-based mental health services be included in the Director's rules establishing the certification standards. The Director must satisfy this requirement not later than July 1, 2004.

---

## **DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

- Requires that the rules of the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) for licensing and regulating residential facilities include rules for intermediate care facilities for the mentally retarded (ICFs/MR) and provides that those rules may differ from the rules for other residential facilities.
- Provides that, when a resident of a residential facility is committed to a state-operated ICF/MR, ODMR/DD must reduce by one the number of residents for which the facility is licensed, unless certain criteria are met.
- Permits the Ohio Department of Job and Family Services (ODJFS), if the licensed capacity of a residential facility that is an ICF/MR is reduced, to transfer to ODMR/DD the nonfederal share of Medicaid expenditures saved, which are to be used to cover the committed resident's care in the state-operated ICF/MR.
- Repeals the moratorium on new residential facility beds in effect until October 15, 2003, and establishes a permanent cap on the number of beds in residential facilities licensed by the Director of ODMR/DD.
- Would have required, if certain conditions were satisfied, the Director of ODMR/DD to issue one or more residential facility licenses to an applicant without requiring the applicant to have development plans submitted, reviewed, or approved and notwithstanding the cap on the number of beds in residential facilities (VETOED).
- Would have provided that an ICF/MR that obtained a residential facility license pursuant to the vetoed provision of the act regarding licensure without development approval was subject to a \$24.59 cost of ownership per diem cap under Medicaid, rather than a \$19.76 cap (VETOED).

- Makes ODMR/DD responsible for the nonfederal share of Medicaid claims for ICF/MR services if (1) the services are provided on or after July 1, 2003, (2) the ICF/MR receives initial ICF/MR certification on or after June 1, 2003, (3) the ICF/MR, or a portion of it, is licensed as a residential facility, and (4) there is a valid Medicaid provider agreement for the ICF/MR.
- Requires, with certain exceptions, ODMR/DD to use funds otherwise allocated to a county board of mental retardation and developmental disabilities (county MR/DD board) to cover the nonfederal share of the cost of Medicaid services to an individual committed to a state-operated ICF/MR if the individual received supported living or home and community-based services funded by the county MR/DD board.
- Establishes a priority category in waiting lists established by county MR/DD boards for individuals residing in a nursing facility who are eligible for home and community-based services and willing and able to move.
- Provides that a county MR/DD board may use until December 31, 2005, rather than December 31, 2003, rules establishing criteria for determining the order in which two or more individuals with the same priority for Medicaid-funded home and community-based services administered by ODMR/DD may be offered the services.
- Continues for the 2004 and 2005 biennium a limitation that not more than 400 individuals may receive priority on county MR/DD boards' waiting lists for ODMR/DD-administered home and community-based services on the basis of being under age 22 and meeting certain other conditions.
- Requires ODMR/DD to distribute certain existing payments to county MR/DD boards quarterly.
- Eliminates provisions requiring that measures be taken to apprehend a person who escapes from an institution controlled by ODMR/DD and that the institution bear the cost of the person's return.
- Allows a person discharged from an institution controlled by ODMR/DD to be given the personal items purchased in implementing the person's habilitation plan, regardless of the funding source used to purchase the items.

- Creates the Ohio Autism Task Force consisting of 22 members to study and make recommendations regarding the growing incidence of autism in Ohio and ways to improve the delivery of autism services in Ohio.
- Provides that the Task Force ceases to exist on submission of a report of its recommendations to the Governor, Speaker of the House of Representatives, and President of the Senate.

**Residential facilities for individuals with mental retardation or a developmental disability**

**Background**

Continuing law prohibits operation of a residential facility for individuals with mental retardation or a developmental disability without a license from the Director of the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD).<sup>161</sup> In general, a residential facility is a home or facility in which a person with mental retardation or a developmental disability resides.<sup>162</sup> A residential facility that wants to participate in the Medicaid program must obtain certification from the Director of Health as an intermediate care facility for the mentally retarded (ICF/MR).<sup>163</sup>

---

<sup>161</sup> R.C. 5123.20 (not in the act).

<sup>162</sup> *The following are not considered to be a residential facility even if an individual with mental retardation or a developmental disability resides in it: the home of a relative or legal guardian of an individual with mental retardation or a developmental disability, respite care homes certified by a county board of mental retardation and developmental disabilities, county-operated and multi-county-operated homes, and dwellings in which the only residents with mental retardation or a developmental disability are in an independent living arrangement or are being provided supported living services. Also, a residential facility is not required to obtain a license from the Director of ODMR/DD if the facility is required to obtain a license or certificate as a nursing home, residential care facility, adult care facility, institution or association for the care of children, or hospital for the treatment of mentally ill persons.*

<sup>163</sup> *Certain facilities with ICF/MR beds are subject to nursing home licensing requirements rather than residential facility licensing requirements. These are nursing homes that on June 30, 1987 had beds that obtained ICF/MR certification before that date and nursing homes that on that date had an application pending to convert intermediate care facility beds to ICF/MR beds. However, such a nursing home becomes*

**Rule-making authority**

(R.C. 5123.19)

Continuing law requires the Director of ODMR/DD to adopt rules for licensing and regulating the operation of residential facilities. The act requires that the rules include rules for ICFs/MR. The rules for ICFs/MR may differ from the rules for other residential facilities.

**Licensed bed capacity**

(R.C. 5123.19 and 5123.198)

Among the rules the Director of ODMR/DD must adopt for licensing and regulating residential facilities are rules establishing the maximum number of persons who may be served in a particular type of residential facility. This number is sometimes referred to as the licensed bed capacity of the facility.

Under the act, when a resident of a residential facility is committed to a state-operated ICF/MR, ODMR/DD must reduce by one the facility's licensed bed capacity. A reduction is to be done pursuant to an adjudication order issued in accordance with Chapter 119. of the Revised Code (the Administrative Procedure Act). However, the reduction in licensed bed capacity is not to happen if any of the following are the case:

- (1) The resident who is committed to a state-operated ICF/MR resided in the residential facility because of the closure, on or after the effective date of this provision of the act, of another state-operated ICF/MR;
- (2) The residential facility admits within 90 days of the commitment an individual who resides on the date of the commitment in a state-operated ICF/MR;
- (3) ODMR/DD fails, within 90 days of the date of the commitment, to identify an individual who resides on the date of the commitment in a residential facility, who has indicated to ODMR/DD an interest in relocating to the residential facility or has a parent or guardian who has indicated to ODMR/DD an interest for

---

*subject to residential facility licensing requirements if the home's certification or provider agreement as an ICF/MR is subject to a final order of nonrenewal or termination with respect to which all appeal rights have been exhausted and the home intends to apply for recertification. Also, such a nursing home must seek a residential facility license for new ICF/MR beds added after June 30, 1987. (R.C. 5123.192, not in the act.)*

the individual to relocate to the residential facility, and for whom ODMR/DD determines has needs that the residential facility can meet;

(4) ODMR/DD fails, within 90 days of the date of the commitment, to provide the residential facility with information about an individual that the residential facility needs in order to determine whether the facility can meet the individual's needs;<sup>164</sup>

(5) If ODMR/DD does not fail to complete the actions specified in (3) and (4) above within the required time, the residential facility, not later than 90 days after the date of the commitment, evaluates the information provided by ODMR/DD, assesses the identified individual's needs, and determines that the residential facility cannot meet the identified individual's needs.

ODMR/DD may reduce the residential facility's licensed capacity even though the residential facility completes the actions within the required time if (1) ODMR/DD disagrees with the residential facility's determination that the residential facility cannot meet the identified individual's needs, (2) ODMR/DD issues a written decision pursuant to the uniform procedures for admissions, transfers, and discharges established by ODMR/DD rules that the residential facility should admit the identified individual, and (3) after ODMR/DD issues the written decision, the residential facility refuses to admit the identified individual.

The act requires a residential facility that admits, refuses to admit, transfers, or discharges a resident under this provision of the act to comply with the uniform procedures for admissions, transfers, and discharges established by ODMR/DD rules.

### **Transfer of Medicaid savings**

(R.C. 5123.198)

The act permits ODMR/DD to notify the Ohio Department of Job and Family Services (ODJFS) of any reduction in the licensed bed capacity of a residential facility that is an ICF/MR made when a resident of the ICF/MR is committed to a state-operated ICF/MR. On receipt of the notice, ODJFS may transfer to ODMR/DD the nonfederal share of Medicaid expenditures saved, which are to be used to cover the resident's care in the state-operated ICF/MR.

---

<sup>164</sup> *The individual must have resided in another residential facility on the date of the commitment and have indicated to ODMR/DD an interest in relocating to the residential facility or have a parent or guardian who has indicated to ODMR/DD an interest for the individual to relocate to the residential facility.*

The act requires ODJFS to consider the Medicaid payments for the remaining residents of the ICF/MR in which the resident resided in determining the amount of the savings.

**Cap on number of residential facility beds**

(R.C. 5123.19 and 5123.196; Section 137.19)

Am. Sub. H.B. 94 of the 124th General Assembly extended, until October 15, 2003, a prohibition on ODMR/DD's issuance of development approval for or licensure of any new residential facility beds. The act repeals this moratorium and establishes a permanent cap on the number of beds in residential facilities licensed by the Director of ODMR/DD.

With exceptions, the number of beds in residential facilities licensed by the director is capped at 10,838, minus (1) the number of beds that cease to be residential facility beds on or after July 1, 2003, because a residential facility license is revoked, terminated, not renewed, for any reason or is surrendered and (2) the number of beds for which the license holder voluntarily converts to use for supported living on or after July 1, 2003.<sup>165</sup> The maximum number is not to be reduced by a bed that ceases to be a residential facility bed if the Director determines that a bed is needed to provide services to a person with mental retardation or a developmental disability who resided in the residential facility in which the bed was located. The cap does not bar ODMR/DD from issuing an interim license to a residential facility or issuing a waiver allowing a residential facility to admit more residents than the facility is licensed to admit.<sup>166</sup>

---

<sup>165</sup> "Supported living" means services provided for as long as 24 hours a day to an individual with mental retardation or other developmental disability that enhance the individual's reputation in community life and advance the individual's quality of life by providing the support necessary to enable an individual to live in a residence of the individual's choice, encouraging the individual's participation in the community, promoting the individual's rights and autonomy, and assisting the individual in developing the skills necessary to live successfully in the individual's residence. (R.C. 5126.01(S).)

<sup>166</sup> Law unchanged by the act authorizes ODMR/DD to issue an interim residential facility license to an applicant for a permanent license if ODMR/DD determines that (1) an emergency exists requiring immediate placement of persons in a residential facility, insufficient licensed beds are available, and the facility is likely to receive a permanent license within 30 days after issuance of the interim license or (2) the issuance of an interim license is necessary to meet a temporary need for a residential facility. An interim license is valid for 30 days and may be renewed for up to 150 days.

### *Obtaining a license without development approval*

(R.C. 5111.251, 5123.19, 5123.196, and 5123.1910)

One of the requirements for obtaining a residential facility license is that the Director of ODMR/DD be provided a copy of an ODMR/DD-approved plan for the proposed facility. To obtain development approval, an individual or entity must seek a recommendation from the county board of mental retardation and developmental disabilities (county MR/DD board) or, if the county MR/DD board is an applicant to provide residential services in the county, a committee the Director of ODMR/DD appoints. In determining whether to approve a proposed MR/DD residential facility, ODMR/DD must consider the county MR/DD board or committee's recommendation, the availability of funds, and whether the individual or entity seeking approval meets the eligibility criteria for providing residential services established by ODMR/DD rules.

The Governor vetoed a provision of the act that would have required the Director of ODMR/DD to issue, if certain conditions were satisfied, one or more residential facility licenses to an applicant without requiring the applicant to have development plans submitted, reviewed, or approved and notwithstanding the cap created by the act on the number of beds in residential facilities. The following would have been the conditions:

(1) The applicant had to meet the requirements for the license established by statute and rules, other than any rule that requires an applicant to have development plans submitted, reviewed, or approved for the residential facility.

(2) The applicant had to operate at least one licensed residential facility.

(3) The applicant had to provide services to individuals with MR/DD who have a chronic, medically complex, or technology-dependent condition that requires special supervision or care, the majority of whom received habilitation services from the applicant before attaining age 18.

(4) The applicant had to have created directly or through a corporate affiliate a research center that has the mission of funding, promoting, and carrying on scientific research in the public interest related to individuals with MR/DD for the purpose of improving the lives of such individuals.

(5) If the applicant sought two or more residential facility licenses, the facilities for which a license was sought had to be located on the same or adjoining property sites.

(6) The facilities for which the applicant sought licensure did not have more than eight beds each and 48 beds total.



(7) The applicant, one or more of the applicant's corporate affiliates, or both employed or contracted for, on a full-time basis, at least one physician certified by the American Board of Pediatrics or would be eligible for a certificate from that board if the physician passed an examination necessary to obtain certification from that board.

(8) The applicant, one or more of the applicant's corporate affiliates, or both had educational facilities suitable for the instruction of individuals under age 18 with MR/DD who have a medically complex or technology-dependent condition.

(9) The applicant had a policy for giving individuals with MR/DD who meet certain conditions priority over all others in admissions to one of the licensed residential facilities that the applicant operated. The conditions would have been to (a) be under age 18, (b) have a chronic, medically complex, or technology-dependent condition that requires special supervision or care, (c) be eligible for Medicaid, and (d) reside in a nursing home or hospital prior to being admitted to the residential facility.

The vetoed provision included a provision regarding Medicaid reimbursement of residential facilities that would have been licensed under this provision of the act and obtained ICF/MR certification. ICFs/MR are subject to a maximum, or capped, cost of ownership per diem as part of their capital cost reimbursement under Medicaid. The amount of the cap differs for different ICFs/MR. The cap a particular ICF/MR is subject to depends on different factors: the number of beds in the facility, the date of the facility's licensure or development approval, when substantial commitments of funds were first made, and whether or not ODJFS gave the facility prior approval for construction. The cost of ownership per diem cap is \$24.59 for an ICF/MR with eight or fewer beds that has a date of licensure or development approval on or after July 1, 1993, if substantial commitments of funds were not made before that date and the ICF/MR received ODJFS prior construction approval. Such an ICF/MR that did not receive prior approval for construction from ODJFS is subject to a \$19.76 cost of ownership per diem.

The vetoed provision would have provided that an ICF/MR that obtained a residential facility license pursuant to this provision of the act was subject to the \$24.59 cost of ownership per diem cap, rather than the \$19.76 cap, regardless of whether it received prior construction approval from ODJFS.

**Responsibility for nonfederal share of ICF/MR services**

(R.C. 5111.21 and 5111.211; Section 71.06)

The act provides that ODMR/DD is responsible for the nonfederal share of claims submitted for services that are covered by Medicaid and provided to an eligible Medicaid recipient by an ICF/MR if all of the following are the case:

- (1) The services are provided on or after July 1, 2003;
- (2) The ICF/MR receives initial certification by the Director of Health as an ICF/MR on or after June 1, 2003;
- (3) The ICF/MR, or a portion of it, is licensed by the Director of ODMR/DD as a residential facility;
- (4) There is a valid Medicaid provider agreement for the ICF/MR.

ODJFS is required by the act to invoice ODMR/DD each month by interagency transfer voucher for the claims that the act makes ODMR/DD responsible for.

If one or more beds obtain ICF/MR certification on or after the effective date of this provision of the act, the Director of ODMR/DD is required to transfer funds to ODJFS to pay the nonfederal share of the cost under Medicaid for those beds. The Director must use only the following funds for the transfer:

- (1) If the beds are located in a county served by a county MR/DD board that does not initiate or support the beds' certification, funds appropriated to ODMR/DD for home and community-based services and supported living for which the Director is authorized to make allocations to county MR/DD boards;
- (2) If the beds are located in a county served by a county MR/DD board that initiates or supports the beds' certification, funds appropriated to ODMR/DD for family support services, service and support administration, and other services for which the Director is authorized to make allocations to counties.

The act provides that the funds that the Director transfers to pay for beds located in a county served by a county MR/DD board that initiates or supports the beds' certification must be funds that the Director has allocated to that county unless the amount of the allocation is insufficient to pay the entire nonfederal share of the cost under Medicaid for those beds. If the allocation is insufficient, the Director is required to use as much of those funds allocated to other counties as needed to make up the difference.

**Use of county allocations for costs of state-operated ICF/MR**

(R.C. 5123.38)

The act requires ODMR/DD to use funds otherwise allocated to a county MR/DD board to cover the nonfederal share of the cost of Medicaid services to an individual committed to a state-operated ICF/MR if the individual received supported living or home and community-based services funded by the county MR/DD board. ODMR/DD may not do this if the county MR/DD board, not later than 90 days after the date of the commitment of an individual receiving supported living or home and community-based services, commences funding of supported living or home and community-based services for an individual who resides in a state-operated ICF/MR on the date of the other individual's commitment or another eligible individual designated by ODMR/DD.

**Priority category for county MR/DD board waiting list**

(R.C. 5111.872 and 5126.042)

A county MR/DD board that determines that available resources are insufficient to meet the needs of all eligible individuals who request services is required by continuing law to establish waiting lists for the services. A county MR/DD board must establish specific priorities for waiting lists in certain circumstances and may give an individual priority in an emergency.

For the purpose of obtaining additional federal Medicaid funds for certain services, including home and community-based services, a county MR/DD board is required under continuing law to (1) give an individual who is eligible for home and community-based services priority for those services that include supported living, residential services, or family support services if the individual is age 22 or older and receives supported living or family support services, and (2) give an individual who is eligible for home and community-based services priority for those services that include adult services if the individual resides in the individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in home and community-based services and receives adult services from the board. As federal Medicaid funds become available because of the above priorities, a county MR/DD board is required to give an individual who is eligible for home and community-based services, but who does not currently receive residential services or supported living, priority in circumstances specified in statute. The act continues to limit until July 1, 2005, the individuals who may receive this latter priority to not more than 400 individuals.

The act requires, in addition, that a county MR/DD board give priority for home and community-based services to individuals who are eligible for those services, reside in a nursing facility, and choose to move to another setting.

Under the act, ODMR/DD is required to adopt rules specifying both of the following for the new priority category: (1) the number of years, not to exceed five, that the priority category will be in effect, and (2) the date that the priority category is to go into effect. The act limits the number of individuals who may receive priority for services under this category to 40 per year that the priority category is in effect. Under continuing law, no individual is to receive priority for services over an individual placed on a waiting list on an emergency basis.

The act provides that if two or more individuals on a county MR/DD board waiting list for home and community-based services have priority for the services pursuant to the act, a county MR/DD board is permitted to use criteria specified in ODMR/DD rules in determining the order in which the individuals with priority will be offered the services. A county MR/DD board may use the criteria until December 31, 2005. Otherwise, a county MR/DD board must offer the home and community-based services to the individuals in the order they are placed on the waiting list.<sup>167</sup>

### **Distribution of county MR/DD board subsidies**

#### **General purpose subsidy**

(R.C. 5126.12)

ODMR/DD is required to pay each county board of MR/DD a general purpose subsidy in semiannual installments of equal amounts. The act changes the payment of general purpose subsidies to county MR/DD boards by ODMR/DD from semiannual installments of equal amounts to quarterly installments of equal amounts made no later than September 30, December 31, March 31, and June 30.

---

<sup>167</sup> *The act provides that a county MR/DD board may use, until December 31, 2005, rather than December 31, 2003, the criteria specified in ODMR/DD rules to determine the order in which individuals with priority under continuing law for services will be offered the services if two or more individuals on the county MR/DD board's waiting list for the services meet the priority conditions.*

**Subsidy for employment of a business manager**

(R.C. 5126.121)

Continuing law provides that a county board of MR/DD may be eligible to receive a subsidy from ODMR/DD for the employment of a business manager if the county board employs the business manager in accordance with standards adopted by ODMR/DD in rules. The act specifies that the subsidy be distributed to eligible county boards in quarterly installments of equal amounts, to be paid not later than September 30, December 31, March 31, and June 30.

**Family support services subsidy**

(R.C. 5126.11)

County boards of MR/DD are required to establish a family support services program under which the board makes payments to an individual with MR/DD or the family of such an individual who desires to remain in and be supported in the family home.<sup>168</sup> ODMR/DD was required by prior law to distribute to county boards money appropriated for family support services on July 1 of each year. The act requires instead that the money be distributed in quarterly installments of equal amounts, not later than September 30, December 31, March 31, and June 30.

**Service and support administration subsidy**

(R.C. 5126.15)

Subject to available funds, continuing law requires ODMR/DD to pay county boards of MR/DD an annual subsidy for service and support administration.<sup>169</sup> The act changes the distribution of the subsidy from semiannual

---

<sup>168</sup> *Payments are made for costs incurred or estimated to be incurred for services that would promote self-sufficiency and normalization, prevent or reduce inappropriate institutional care, and further the unity of the family by enabling the family to meet the individual's special needs and live as much like other families as possible.*

<sup>169</sup> *Individuals employed by or under contract with a county board of MR/DD as service and support administrators are required to (1) establish eligibility for services, (2) assess individual needs for services, (3) develop individual service plans, (4) establish budgets for services, (5) assist individuals in making provider selections, (6) ensure that services are effectively coordinated and provided by appropriate providers, (7) establish and implement a system of monitoring the individual service plans, (8) perform quality assurance reviews, (9) incorporate the results of quality assurance reviews and identified*

installments paid no later than August 31 and January 31 to quarterly installments of equal amounts to be paid no later than September 30, December 31, March 31, and June 30.

**Supported living services**

(R.C. 5126.44)

ODMR/DD is required to make allocations to county boards of MR/DD to be used for planning, development, contracting for, and providing supported living pursuant to rules it adopts. Under prior law, the money is to be distributed in two installments annually, which were to be paid no later than July 31 and December 31. The act requires instead that the money be distributed to the county boards of MR/DD in quarterly installments, to be paid no later than September 30, December 31, March 31, and June 30.

**Tax equity payments**

(R.C. 5126.18)

ODMR/DD is required by continuing law to provide for payment to each county board (from money appropriated for the purpose) of the amount by which the statewide yield per enrollee exceeds the county yield per enrollee multiplied by the adult services enrollment of the county board, subject to certain reductions.<sup>170</sup> Under prior law, the money was to be paid on or before September 30 of each year. The act provides instead that ODMR/DD must make the payments in quarterly installments of equal amounts, to be paid no later than September 30, December 31, March 31, and June 30.

---

*trends and patterns of unusual incidents and major unusual incidents into amendments of an individual's service plan, and (10) ensure that each individual receiving services has a designated person responsible for providing the individual with representation, advocacy, advice, and assistance with coordination of service in accordance with the individual's service plan.*

<sup>170</sup> *The county yield per enrollee means the product obtained by multiplying the statewide average tax millage by the per-mill yield of the county board divided by the adult enrollment of the board. The statewide yield per enrollee means the quotient obtained by dividing the sum of the county yields of all county board by the sum of the adult enrollments of all county boards.*

**Apprehension of MR/DD institution escapees**

(R.C. 5123.801)

The act repeals a law that required the managing officer of an institution under the control of ODMR/DD to take all proper measures for the apprehension of an escaped resident. The act also repeals a corresponding provision that required the institution to bear the expense of returning an escaped resident.

**Personal items provided on discharge from MR/DD institutions**

(R.C. 5123.851)

Under continuing law, each resident of an institution under the control of ODMR/DD must have a habilitation plan and receive habilitation and care consistent with the plan. Habilitation is defined as the process by which the staff of an institution assists a resident in acquiring and maintaining those life skills that enable the resident to cope more effectively with the demands of the resident's own person and of the resident's environment and in raising the level of the resident's physical, mental, social, and vocational efficiency.

Under the act, when a resident is discharged, the institution's managing officer is permitted to provide the resident with all personal items that were purchased in implementing the resident's habilitation plan. The act specifies that the personal items may be provided regardless of the source of the funds used to purchase them.

**Ohio Autism Task Force**

(Section 152)

**Membership**

The act creates the Ohio Autism Task Force consisting of the following 22 members:

- (1) The following persons appointed by the Governor:
  - (a) A person diagnosed with autism;
  - (b) Four persons who are parents of children diagnosed with autism;
  - (c) A special education administrator of an Ohio school district;
  - (d) A representative of the Ohio Association of County Boards of Mental Retardation and Developmental Disabilities;

- (e) A representative of the Ohio Developmental Disabilities Council;
  - (f) A representative of the Autism Society of Ohio;
  - (g) A developmental pediatrician who is a member of the Ohio Association of Pediatricians;
  - (h) Two representatives from private schools in Ohio that provide special education services to children diagnosed with autism;
  - (i) Two representatives from Ohio hospitals that provide services to children diagnosed with autism;
- (2) Two members of the House of Representatives, one from the majority party and one from the minority party, appointed by the Speaker of the House of Representatives;
- (3) Two members of the Senate, one from the majority party and one from the minority party, appointed by the President of the Senate;
- (4) The Director of ODMR/DD or the Director's designee;
- (5) The Director of Job and Family Services or the Director's designee;
- (6) The Superintendent of Public Instruction or the Superintendent's designee;
- (7) The Director of Health or the Director's designee.

All appointments and designations to the Task Force must be made not later than 30 days after the effective date of this provision of the act. Any vacancy that occurs on the Task Force must be filled in the same manner as the original appointment. The initial meeting of the Task Force must be held not later than 60 days after the effective date of this provision of the act. At its initial meeting, the Task Force must elect from its membership a chairperson and other officers it considers necessary. Thereafter, the Task Force is required to meet on the call of the chairperson. Task Force members are not to receive compensation for performing their duties as members. ODMR/DD is required to provide meeting space and other support as necessary for the Task Force.

### **Report on recommendations**

The act requires the Task Force to study and make recommendations about both of the following:

- (1) The growing incidence of autism in Ohio;



(2) Ways to improve the delivery of autism services in Ohio.

Not later than one year after the effective date of this provision of the act, the Task Force is to submit a written report of its recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The Task Force ceases to exist on submission of its report.

---

## DEPARTMENT OF NATURAL RESOURCES

- Repeals the Civilian Conservation Law, thus eliminating the Division of Civilian Conservation in the Department of Natural Resources, the Civilian Conservation Advisory Council, civilian conservation programs, and all related statutory provisions.
- Beginning not later than five years after the applicable effective date, requires one of the seven members of the Reclamation Commission to be an attorney who is familiar with mining issues.
- Indefinitely extends authorization for investment earnings of the Clean Ohio Trail Fund, which are credited to the Fund, to be used to pay costs incurred by the Director of Natural Resources in administering the Clean Ohio recreational trails grants program.
- With respect to the fee that must be paid to obtain a permit from the Chief of the Division of Water for the construction of a dam, increases the amounts in the statutorily established fee schedule, authorizes the Chief to adopt rules establishing fee amounts that supersede the amounts in that schedule, and requires political subdivisions to pay the higher fee amounts that are applicable to all other permit applicants.
- With respect to the annual fee that an owner of a dam must pay to the Division of Water, requires the Chief to adopt rules establishing fee amounts that supersede the amounts in the statutorily established fee schedule, increases the fee amount in that schedule for Class I dams, subjects political subdivisions to the fee requirement, and clarifies that the federal government is exempt from the fee requirement.
- Increases the fees for hunting and fishing licenses, permits, and stamps that are issued by the Division of Wildlife.

- Requires free hunting, trapping, and fishing licenses to be issued to Ohio residents applying for them who were born on or before December 31, 1937, rather than to those who are 66 years of age or older as under former law, requires Ohio residents who are at least 66 years of age, other than those born on or before that date, to purchase special senior fishing, hunting, fur taking, and deer or wild turkey licenses or permits, establishes the fee for each as one-half the regular license or permit fee, requires such residents to pay the regular fee for wetlands habitat stamps, and eliminates the exemption that allows residents who are at least 66 years old to take or catch frogs and turtles without a fishing license.
- Requires applicants for a hunting license who are nonresidents of Ohio and who are under 16 years of age to obtain the special youth hunting license created under continuing law rather than the more expensive nonresident hunting license that they were required to obtain under prior law, and creates a special youth deer permit and a special youth wild turkey permit, the fee for which is one-half of the regular special deer or wild turkey permit fee.
- Removes permission for managers and their children who reside on lands in Ohio to hunt and trap on those lands without obtaining the necessary license or permit to do so.
- Expands the nonprofit organizations that are eligible to receive contributions from the Wetlands Habitat Fund to include such organizations in the United States.
- Authorizes, rather than requires, licenses, stamps, and permits that are required under the law governing hunting and fishing to be issued by authorized officials and agents; revises both the information that applicants for certain licenses, stamps, and permits must provide and the manner in which the information must be provided; allows the purchase of licenses, stamps, and permits via the internet; and provides for the payment by applicants of a nominal fee for credit card transactions.
- Increases fees for various other licenses, permits, and stamps that are issued by the Division of Wildlife, increases the amount of royalty fees for specified species of fish taken commercially, and increases the per-net fee for persons authorized to use nets in specified areas of the Ohio River.

- Requires proceeds from the sale of wildlife conservation stamps to be deposited into the Nongame and Endangered Wildlife Fund instead of into the Wildlife Fund.
- Eliminates the authority for the Chief of the Division of Wildlife to issue permits for the propagation and sale of live fish and fish food for stocking private ponds.
- Abolishes the Magee Marsh State Public Hunting Area.
- Authorizes rather than requires the Division to issue a commercial propagating license, noncommercial propagating license, or raise to release license if specified requirements are met.
- Allocates 25% of the money from the sale of standing timber from state forest lands and nurseries to the State Forest Fund and 75% to the General Revenue Fund rather than 100% to the GRF as in former law; clarifies that the money that is distributed to counties, townships, and school districts from the sale of products from state forest lands consists of amounts that have been credited to the GRF from the sale of standing timber; and changes the amount that is so distributed from 80% of the gross value to 65% of the net value of the standing timber.
- Repeals uncodified law that established a new two-year formula for the distribution of money from the salvage and sale of timber and other forest products from the state forests other than the Shawnee Wilderness Area that had been felled or damaged by weather or other natural forces or conditions.
- Prohibits the Department of Natural Resources from charging a fee in fiscal years 2004 and 2005 for the privilege of entering a state park or a nature preserve.
- Recreates the Muskingum River Advisory Council that expired on December 31, 2002.



## *Repeal of Civilian Conservation Law*

(R.C. 121.04, 1501.04, 1553.01 to 1553.10, 1553.99, and 3517.092; Section 148)

The act repeals the Civilian Conservation Law, thus eliminating the Division of Civilian Conservation, the Civilian Conservation Advisory Council, civilian conservation programs, and all related statutory provisions.

Former law established the Division of Civilian Conservation in the Department of Natural Resources. The Chief of the Division of Civilian Conservation was required to establish residential and nonresidential civilian conservation programs that the Chief considered appropriate; establish, in accordance with certain statutory provisions, eligibility standards for selecting applicants for participation in conservation programs; and adopt rules to carry out the purposes of the Civilian Conservation Law.

Former law required the Chief to ensure that each program established under the Civilian Conservation Law provided participants with educational advancement opportunities, life skill development opportunities, and work experience related to the conservation, development, and management of natural resources and recreational areas, restoration of historic structures, and assistance in the development of related community programs. The work experience could have included planting, pruning, and cutting of trees; forest management, including fire protection; reclaiming strip-mined land; wildlife habitat development; drainage control; prevention of shore and soil erosion; litter removal; trail development; cleaning or repair of drainage ditches or streams; highway and community beautification; construction of lakes, ponds, and waterways to be used as fishing and hunting sites and for other recreational purposes; flood control projects; urban parks and recreational site development; assistance in times and places of natural disasters; insect and pest control; construction and renovation of facilities; restoration of historic structures; and any other similar work experience considered appropriate by the Chief. The programs could have been carried out on any publicly owned land or, with the prior written approval of the person owning, administering, or controlling the land, on privately owned land.

Under prior law, a participant in a conservation program was required to be a resident of this state who was at least 18 years of age, but who was younger than the maximum age for participation established by the Chief and was required to satisfy eligibility standards established by the Chief. In considering each application, the Chief had to determine whether the applicant would benefit by participation in a program and whether the applicant had the ability and desire to participate in a program. Former law required participants in a conservation program to serve, generally, for a period between six and twenty-four months.



The Division was required to compensate each participant in an amount not less than minimum wage and to provide each participant in residential camps with lodging, food, and necessary work clothing and any other services that the Chief considered appropriate.

Former law required the Chief to establish rules of conduct for conservation program participants and procedures for disciplining them and established limits on certain practices that involved conservation programs, such as soliciting participants for political activity. In addition, former law created in the Division of Civilian Conservation the Civilian Conservation Advisory Council, which consisted of nine members who recommended to the Chief broad policies for the Division and a long-range plan to implement the policies, evaluated the Division's needs to meet its policy objectives, and recommended to the Chief ways of cooperating with other conservation programs administered by private and public agencies.

### **Membership of Reclamation Commission**

(R.C. 1513.05)

Continuing law creates the Reclamation Commission, which hears appeals of decisions of the Chief of the Division of Mineral Resources Management. The Commission generally consists of seven members appointed by the Governor with the advice and consent of the Senate, except that when hearing appeals that involve mine safety issues, the Commission includes two additional members. Terms of office are for five years.

Two of the seven regular appointees to the Commission must be persons who, at the time of their appointment, own and operate a farm or are retired farmers. One of the appointees must be a person who, at the time of appointment, is the representative of an operator of a coal mine. Another appointee must be a person who is a representative of the public. One of the appointees must be a person who is learned and experienced in modern forestry practices. An additional appointee must be a person who is learned and experienced in agronomy. Finally, one of the appointees must be either a person who is capable and experienced in earth-grading problems or a civil engineer. Not more than four appointees can be members of the same political party. The act adds that, beginning not later than five years after the applicable effective date, at least one of the seven regular appointees to the Commission must be an attorney at law who is admitted to practice in Ohio and is familiar with mining issues.

### *Use of investment earnings of Clean Ohio Trail Fund*

(R.C. 1519.05)

Continuing law creates the Clean Ohio Trail Fund for the purpose of providing matching grants to nonprofit organizations and local political subdivisions to purchase land or interests in land for recreational trails and for the construction of such trails. Investment earnings of the Fund must be credited to it. Law retained in part by the act provides that until July 26, 2003, investment earnings credited to the Fund may be used to pay costs incurred by the Director of Natural Resources in administering the law that governs the issuance of the grants. The act eliminates that deadline, thus authorizing investment earnings credited to the Fund to be used indefinitely for that purpose.

### *Dam construction permit fees*

(R.C. 1521.06)

Continuing law generally requires a person or governmental agency that desires to construct a dam, dike, or levee to obtain a construction permit issued by the Chief of the Division of Water. An application for a permit must be accompanied by a filing fee. Except for a political subdivision (see below), the amount of the filing fee is based on a detailed cost estimate for the proposed construction that must be filed with and approved by the Chief.

The act doubles the fee amounts in the filing fee schedule that is established under continuing law. The table below reflects the statutory fee amounts established in former law and by the act:

<b>Construction cost estimate</b>	<b>Former law's fee amount (% of construction cost estimate)</b>	<b>Act's fee amount (% of construction cost estimate)</b>
For the first \$100,000 of estimated cost	2%	4%
For the next \$400,000 of estimated cost	1.5%	3%
For the next \$500,000 of estimated cost	1%	2%
For all costs in excess of \$1,000,000	.25%	.5%

The act also authorizes the Chief to adopt rules in accordance with the Administrative Procedure Act that establish filing fee amounts that supersede the amounts in the statutorily established fee schedule described above.

Continuing law provides for minimum and maximum filing fees. Formerly, the minimum filing fee was \$200, and the maximum filing fee was \$50,000. The act increases the minimum filing fee to \$1,000 and the maximum filing fee to \$100,000.

Under former law, the filing fee schedule described above did not apply to political subdivisions, which instead were required to pay a filing fee of \$200. The act eliminates this provision, thus making applicable to political subdivisions the higher fee amounts that are established in the statutory filing fee schedule or the fees that are established in rules and that are applicable to all other permit applicants.

### **Annual fees for dams**

(R.C. 1521.063)

Continuing law specifies that, except for a political subdivision, the owner of any dam for which a construction permit was required must pay to the Division of Water an annual fee that is based on the height of the dam. The annual fee is due on or before June 30 of each year, and the amount of the fee is prescribed in a statutorily established fee schedule. The act requires the Chief of the Division of Water to adopt rules in accordance with the Administrative Procedure Act that establish annual fee amounts that supersede the amounts in the statutorily established fee schedule.

Under prior law, the amount in the statutorily established fee schedule of the annual fee for any dam classified as a Class I dam under rules adopted by the Chief was \$30 plus \$3 per foot of height of dam. The act increases the annual fee amount for Class I dams in the statutorily established fee schedule to \$30 plus \$10 per foot of height of dam.

Under former law, political subdivisions were exempt from the annual fee requirement. The act eliminates this exemption, thus requiring a political subdivision that owns a dam for which a construction permit was required to pay an annual fee in the same amount that must be paid by all other owners of such dams. However, the act clarifies that the federal government is exempt from the annual fee requirement.

**Hunting and fishing license, permit, and stamp requirements and fees**

(R.C. 1533.10, 1533.101, 1533.11, 1533.111, 1533.112, 1533.12, 1533.13, and 1533.32)

Continuing law establishes fees for hunting and fishing licenses, permits, and stamps issued by the Division of Wildlife. The act increases the fees as follows:

<b>License, permit, or stamp</b>	<b>Prior fee</b>	<b>New fee</b>
Hunting license for resident	\$14	\$18
Hunting license for nonresident whose state has reciprocity agreement with Ohio	\$14	\$18
Hunting license for nonresident whose state does not have reciprocity agreement	\$90	\$124
Tourist's hunting license (renamed small game license by act)	\$24	\$39
Fishing license for resident	\$14	\$18
Fishing license for nonresident whose state has reciprocity agreement with Ohio	\$14	\$18
Fishing license for nonresident whose state does not have reciprocity agreement	\$23	\$39
Tourist's fishing license	\$14	\$18
One-day fishing license	40% of tourist's fishing license fee	55% of tourist's fishing license fee
Fur taker permit	\$10	\$14
Special deer or special wild turkey permit	\$19	\$23
Wetlands habitat stamp	\$10	\$14
Reissuance of licenses, permits, or stamps	\$2	\$4

Former law specified that every resident of the state who was 66 years of age or older had to be issued an annual fishing license, hunting license, fur taker permit, deer or wild turkey permit, or wetlands habitat stamp, or any combination of those licenses, permits, and stamp, free of charge when application was made to the Chief of the Division of Wildlife in the manner prescribed by and on forms



provided by the Chief. The act instead requires the free licenses, permits, and stamp to be issued to state residents applying for them who were born on or before December 31, 1937. It then requires state residents who at the time of application are at least 66 years old, other than those born on or before that date, to purchase a special senior fishing license, special senior hunting license, special senior fur taker permit or special senior deer or wild turkey permit. The fee for each such license or permit is one-half of the regular license or permit fee. In addition, those residents must pay the regular fee for wetlands habitat stamps. The act thus phases out free hunting and fishing licenses, permits, and stamps for senior citizens. It also eliminates the exemption that allows residents who are at least 66 years old to take or catch frogs and turtles without a fishing license.

Under continuing law, every applicant for a hunting license who is an Ohio resident and is under 16 years of age must obtain a special youth hunting license, the fee for which is one-half of the regular hunting license fee. Under prior law, an applicant who was a nonresident and was under 16 years of age was required to obtain a nonresident hunting license, the fee for which is specified above. The act instead requires nonresident applicants who are under 16 years of age to obtain the special youth hunting license rather than the more expensive nonresident hunting license.

Continuing law prohibits a person from hunting deer or wild turkeys on the land of another without obtaining an annual special deer permit or an annual special wild turkey permit. The act creates a new special youth deer permit and a new special youth wild turkey permit. Under the act, each applicant who is under 16 years of age must procure a special youth deer or wild turkey permit, the fee for which is one-half of the regular special deer or wild turkey permit fee.

Prior law allowed managers and their children who resided on lands in Ohio to hunt or trap on those lands without obtaining a hunting license, special deer or wild turkey permit, or fur taker permit. The act eliminates this permission.

Under continuing law, money from the sale of wetlands habitat stamps must be credited to the Wetlands Habitat Fund. Under law slightly revised by the act, 60% of the money in the Fund must be used for projects that the Division approves for the acquisition, development, management, or preservation of waterfowl areas in Ohio, and 40% must be used for contribution by the Division to an appropriate nonprofit organization for the acquisition, development, management, or preservation of lands and waters in Canada that provide or will provide habitat for waterfowl with migration routes that cross Ohio. The act expands the nonprofit organizations that may receive those contributions from the Fund to include such organizations in the United States.

Former law required hunting and fishing licenses, wetlands habitat stamps, deer and wild turkey permits, and fur taker permits to be issued by the clerk of the court of common pleas, village and township clerks, and other authorized agents designated by the Chief. The act instead authorizes such clerks or authorized agents to issue such licenses, stamps, and permits and adds that they may issue any other licenses, permits, or stamps that are required under the law governing the Division of Wildlife or governing hunting and fishing together with any reissued license, permit, or stamp (see below).

Former law required every applicant for a hunting or fishing license, deer or wild turkey permit, or fur taker permit, unless otherwise provided by Division rule, to make and subscribe an affidavit setting forth the applicant's name, age, weight, height, occupation, place of residence, personal description, and citizenship. The act eliminates the requirement that an applicant make and subscribe an affidavit setting forth the information and instead requires an applicant to provide his name, date of birth, weight, height, place of residence, and any other information that the Chief may require.

Under continuing law, the Chief may require an applicant who wishes to purchase a license, stamp, or permit by mail or telephone to pay a nominal fee for postage and handling. The act adds that licenses, stamps, and permits may be purchased via the Internet and authorizes the Chief to require applicants to pay a nominal fee for credit card transactions.

Continuing law requires an applicant for a license, stamp, or permit issued under the law governing hunting and fishing to pay a \$1 fee to the issuing agent of the license, stamp, or permit. Under former law, this fee was discussed in each of the statutes governing the licenses, stamps, or permits. The act instead consolidates into one statute the authority of authorized issuing agents to charge the \$1 fee for issuing the licenses, stamps, and permits.

**Additional Division of Wildlife license, permit, and stamp requirements and fees**

(R.C. 1531.26, 1533.06, 1533.08, 1533.151, 1533.19, 1533.23, 1533.301, 1533.35, 1533.39, 1533.40, 1533.54, 1533.631, 1533.632, 1533.71, and 1533.82)

Continuing law establishes fees for additional licenses, permits, and stamps issued by the Division of Wildlife. The act increases the fees as follows:



License, permit, or stamp	Prior fee	New fee
Wild animal collecting permit	\$10	\$25
Wildlife conservation stamp	\$5	No more than wetland habitat stamp fee
Field trial permit	\$25	\$50
Fur dealer's permit	\$50	\$75
Permit to transport fish	\$50	\$65
Permit for sales of minnows, crayfish, or hellgrammites	\$25	\$40
Permit to handle commercial fish at wholesale	\$50	\$65
Commercial propagating license	\$25	\$40
Noncommercial propagating license	\$10	\$25

Continuing law establishes royalty fees for specified species of fish when those fish are taken commercially. Different fees are established for species taken for which an allowable catch or quota has been established by rule and for those for which an allowable catch or quota has not been so established. For species for which a catch or quota has been established, former law established a royalty fee of 2¢ per pound. The act increases that fee to 5¢ per pound. For species for which a catch or quota has not been established, former law established a fee of 1¢ per pound on that portion taken that exceeded one-half of the previous year's taking of the species. The act increases those royalty fees to 2¢ per pound and eliminates the requirement that they only be paid on the portion taken that exceeds one-half of the previous year's taking. Former law defined the previous year's taking as the amount reported for that previous year by the holder of a commercial fishing device license to the Division pursuant to reporting procedures established in the Hunting and Fishing Law and the Division of Wildlife Law.

Under law revised in part by the act, persons authorized to use fishing nets in specified areas of the Ohio River must pay a fee of \$10 per net. The act increases the fee to \$50 per net.

Former law required money from the sale of wildlife conservation stamps to be credited to the Wildlife Fund to be used exclusively by the Division for specified purposes, including the education of hunters and trappers, the management and protection of wild birds and wild quadrupeds, the acquisition of

lands for game preservation and public hunting grounds, and the management of all forms of wildlife for its ecological and nonconsumptive recreational value. The act instead requires money from the sale of wildlife conservation stamps to be credited to the Nongame and Endangered Wildlife Fund to be used exclusively by the Division for specified purposes, including the management and preservation of wild animals that are not commonly taken for sport or commercial purposes, the protection of species threatened with statewide extinction, and the promotion and development of nonconsumptive wildlife recreational opportunities involving wild animals.

Former law authorized the Chief of the Division of Wildlife to issue permits for the propagation and sale of live fish and fish food for stocking private ponds. A license was required to contain specified information prescribed by the Chief.<sup>171</sup> The annual license fee was \$10. Former law also established requirements governing specified activities of such permit holders. The act eliminates the Chief's authority to issue such permits and the requirements governing permit holders.

Former law established the Magee Marsh State Public Hunting Area on Department of Natural Resources lands and waters in Lucas and Ottawa Counties. The Chief was authorized to provide a special daily hunting permit for all persons allowed to hunt on the area. The permit fee was \$5 per day unless the Chief adopted rules establishing a lower fee. The issuance of the permit did not alter or supersede the laws requiring a hunting license. The act abolishes the hunting area.

Finally, continuing law establishes commercial propagating licenses, noncommercial propagating licenses, and raise to release licenses. Former law required the Division, when it appeared that an application for any of those licenses was made in good faith, and upon payment of the fee for the license, if applicable, to issue the applicable license to the applicant. The act authorizes rather than requires the Division to issue a commercial propagating license, noncommercial propagating license, or raise to release license if the specified requirements are met.

---

<sup>171</sup> Former law appeared to use "permit" and "license" interchangeably.

State timber sales

Allocation and distribution of money from state timber sales

(R.C. 1503.05)

Continuing law authorizes the Chief of the Division of Forestry to sell timber and other forest products from the state forest and state forest nurseries whenever the Chief considers such a sale desirable. The Chief also may grant mineral rights on a royalty basis on state forest lands and nurseries with the approval of the Attorney General and the Director of Natural Resources. Under prior law, all moneys received from the sale of standing timber were required to be deposited into the General Revenue Fund. Under continuing law, all moneys received from the sale of other forest products and minerals taken from those lands and nurseries, together with royalties from mineral rights, must be paid into the State Forest Fund, which must be used for the development, administration, and maintenance of the state forests, forest nurseries, and forest programs.

Under law retained in part by the act, at the time of making such a payment or deposit, the Chief must determine the amount and gross value of all such products sold or royalties received (see below) from lands and nurseries in each county and in each township and school district within the county. After making the determination, the Chief must ensure that an amount equal to a specified percentage of the gross value of the products and royalties (see below) is transferred to the county. The county auditor then must retain one-fourth of the transferred amount for the use of the county general fund, pay one-fourth of that amount into the general fund of any affected township, and pay one-half of the amount into the appropriate fund or funds identified by the board of education of any affected school district.

The act revises the allocation and distribution of money from the sale of standing timber. First, it requires 25% of the moneys from the sale of standing timber to be credited to the State Forest Fund and 75% to be credited to the General Revenue Fund. The crediting of moneys from the sale of other forest products, minerals, and royalties from mineral rights to the State Forest Fund remains unchanged. Next, the act clarifies that the distribution of money to counties, townships, and school districts is from money that has been credited to the General Revenue Fund from the sale of standing timber. The act also specifies that when the Chief initially deposits money from the sale of standing timber into the General Revenue Fund, he must determine the net value, rather than the gross value, of all such standing timber sold from lands and nurseries in each county and in each township and school district within the county. Finally, the act changes the percentage of money that is distributed to counties, townships, and school districts from 80% of the gross value to 65% of the net value of the standing

timber that was sold. The formula for distributing the money among counties, townships, and school districts is unchanged.

**Elimination of new formula for the distribution of money from the sale of state timber felled or damaged by natural conditions**

(Section 132.14B)

The act repeals an uncodified provision enacted by Am. Sub. H.B. 87 of the 125th General Assembly (the transportation budget bill) that provided, for a two-year period, for the redistribution of money from state timber sales and that authorized the Chief of the Division of Forestry to salvage and sell timber and other forest products from the state forests, with the exception of the Shawnee Wilderness Area, that had been felled or damaged by weather, natural forces, or other conditions with the approval of the Attorney General and the Director of Natural Resources.

**Prohibition against entrance fees for state parks and nature preserves**

(Section 73.02)

It has been the practice of the Department of Natural Resources to not charge entrance fees for state parks or nature preserves. The act ensures that this will continue during fiscal years 2004 and 2005 by prohibiting the Department from charging a fee during those years for the privilege of entering a state park or a nature preserve.

**Muskingum River Advisory Council**

(R.C. 1501.25)

The Muskingum River Advisory Council existed until December 31, 2002. Membership consisted of four members of the General Assembly--two from the House of Representatives and two from the Senate, four persons interested in the development of recreational and commercial uses of the river appointed by the Governor, two representatives of the Department of Natural Resources, one representative of the Department of Development, one representative of the Environmental Protection Agency, one representative of the Department of Transportation, one representative of the Ohio Historical Society, 12 persons appointed by county commissioners and mayors from the four counties through which the river flows, and one representative of the Muskingum Watershed Conservancy District. The Council was required to prepare an annual report on the conditions of the river area, the Council's activities, any recommendations for actions by the General Assembly or any state agency, and estimates of the cost of the recommendations. The Council also was authorized to conduct various

activities and provide various services concerning the river and river area (see below). The Department of Natural Resources was required to provide staff assistance to the Council as needed.

The act recreates the Muskingum River Advisory Council. The requirements governing membership and the Council's authority and responsibilities are the same as in prior law. Thus, the Council is required to prepare an annual report and is authorized to provide all of the following: coordination among local governments, state agencies, and federal agencies that are involved in river-related activities; aid to civic groups and individuals who want to make improvements to the river; information and planning aid to state and local agencies responsible for historic, commercial, and recreational development of the area; and updated information to the United States Army Corps of Engineers, the Department of Natural Resources, and the Muskingum Conservancy District concerning potential hazards to flood control or navigation, erosion problems, debris accumulation, and deterioration of locks or dams. The Department must continue to provide staff assistance.

Under the act, the Council is not exempt from continuing law that requires boards and commissions to sunset four years after their creation. Thus, the Council will sunset at that time.

---

## **OHIO BOARD OF NURSING**

- Permits a licensed practical nurse to qualify for an intravenous therapy card through a course of study completed in a prelicensure education program and specifies that an issuance fee for the card is not to be charged to nurses who qualify in this manner.
- Provides that licensed practical nurses who seek an intravenous therapy card by completing a 40-hour post-licensure course must successfully demonstrate the skills needed for safe performance of intravenous procedures rather than successfully perform three venipunctures.
- Permits the Board of Nursing to sponsor and collect fees for continuing education activities.
- Creates new and increases certain existing Board of Nursing fees.

- Creates the Nurse Education Grant Program to award joint grants to nurse education programs and health care facilities to fund partnerships that increase the enrollment capacity of nurse education programs.
- Requires \$10 of each biennial nursing license renewal fee to be deposited in the Nurse Education Grant Program Fund to fund the grants and administration of the program.
- Repeals the law authorizing the Nurse Education Grant Program on December 31, 2013.
- Clarifies that specified funds of the Board of Nursing are deposited into the Special Nursing Issue Fund and not into the Occupational Licensing and Regulatory Fund.
- Specifies that a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may supervise services provided by a home health agency if such supervision is permitted by the nurse's standard care arrangement with a physician or podiatrist.
- Provides for the certification of community health workers by the Board of Nursing.

### **Administration of intravenous therapy to adults**

(R.C. 4723.08 and 4723.17)

Except in limited circumstances, a licensed practical nurse (LPN) may administer adult intravenous therapy only if authorized to do so by the Board of Nursing.<sup>172</sup> The Board may provide authorization to an LPN who has a current

---

<sup>172</sup> *An LPN who demonstrates the knowledge, skills, and ability to perform the procedure safely, may, at the direction of a registered nurse or licensed physician, dentist, optometrist, or podiatrist who is either on the premises or accessible by some form of telecommunication, do the following without Board authorization: (1) verify the type of peripheral intravenous solution being administered, (2) examine a peripheral infusion site and the extremity for possible infiltration, (3) regulate a peripheral intravenous infusion according to the prescribed flow rate, (4) discontinue a peripheral intravenous device at the appropriate time, and (5) perform routine dressing changes (R.C. 4723.171).*

license that includes authorization to administer medications and successfully completes a 40-hour course that includes a testing component. Once authorized by the Board, the LPN may administer intravenous therapy only when directed to do so by (1) a licensed physician, dentist, optometrist, or podiatrist who is present and readily available at the facility where the procedure is performed, or (2) a registered nurse (RN).

The act also permits an LPN to obtain authorization on completion of a prelicensure education program approved by the Board or its equivalent in another jurisdiction. The prelicensure program must include didactic and clinical components, and must require the nurse to perform a successful demonstration of intravenous procedures, including all skills needed to perform them safely. The program must also include the curriculum requirements adopted by the Board.

The act further alters the authorization requirements by changing the requirements of the testing component of the postlicensure class requirements. Prior law required the testing component require the successful performance of three supervised venipunctures. The act changes this language to require the LPN to perform only one successful demonstration. That demonstration, however, must include the intravenous procedures and all skills necessary to perform them safely.

The act requires the Board to issue an intravenous therapy card to an LPN who satisfies either the prelicensure or postlicensure course requirements. The Board may charge a fee of up to \$25 for intravenous therapy cards issued pursuant to the postlicensure provisions. The Board cannot charge a fee for cards received pursuant to the prelicensure education program.

### **Board of Nursing fees**

(R.C. 4723.06, 4723.08, and 4723.082)

Under continuing law the Board of Nursing approves continuing education programs. The act permits the Board to also sponsor continuing education activities that directly relate to statutes and rules pertaining to the practice of nursing in this state.

The act creates the following new Board of Nursing fees: issuance of an intravenous therapy card after completion of a postlicensure education program, \$25; out-of-state survey visits of nursing education programs operating in Ohio, \$2,000; replacement copy of a certificate to practice, intravenous therapy card, or frameable certificate, \$25; participation in a board-sponsored continuing education activity, up to \$15. The receipts from board-sponsored continuing education activities are to be deposited in the Special Nursing Issue Fund.

The act increases Board of Nursing fees as shown in the following chart.

License	Current fee	Fee under the act
Application for licensure by examination or endorsement	\$50	\$75
Replacement copy of a nursing license	\$15	\$25
Replacement copy of a certificate of authority	\$15	\$25
Replacement copy of a dialysis technician certificate	\$15	\$25

Under prior law, the fee for the biennial renewal of a nursing license that expired on or before August 31, 2003, was \$35 and the fee for the biennial renewal of a nursing license that expired on or after September 1, 2003, was \$45. The act provides that the fee for the biennial renewal of a nursing license that expires on or after August 31, 2003, but before January 1, 2004, is \$45 and the fee for the biennial renewal of a nursing license that expires on or after January 1, 2004, is \$65.

### **Nurse Education Grant Program**

(R.C. 4723.063; Section 3.19)

The act requires the Nursing Board to establish and administer the Nurse Education Grant Program from January 1, 2004, until December 31, 2013, when the law authorizing the program is repealed. During this period, \$10 of each biennial nursing license renewal fee is to be deposited in the Nurse Education Grant Program Fund to fund the grants and administration of the program.

Under the program, the Board is to award grants to nurse education programs that have partnerships with other education programs, community health agencies, or health care facilities to fund partnerships to increase the enrollment capacity of nurse education programs.<sup>173</sup> Methods of increasing enrollment capacity may include: hiring faculty and preceptors, purchasing education equipment and materials, and other actions acceptable to the Board. Grant money cannot be used to construct or renovate buildings.

---

<sup>173</sup> As used in the act, "nurse education program" means a prelicensure nurse education program approved by the Nursing Board or a postlicensure nurse education program approved by the Board of Regents. (R.C. 4723.06 and 3333.06.)

Any of the following facilities is, for purposes of the act, a "health care facility":

- (1) A hospital registered with the Ohio Department of Health;
- (2) A nursing home licensed by the Department or by a political subdivision certified by the Department to license nursing homes;
- (3) A county home or county nursing home certified by the Medicare or Medicaid program;
- (4) A freestanding dialysis center;
- (5) A freestanding inpatient rehabilitation facility;
- (6) An ambulatory surgical facility;
- (7) A freestanding cardiac catheterization facility;
- (8) A freestanding birthing center;
- (9) A freestanding or mobile diagnostic imaging center;
- (10) A freestanding radiation therapy center.

Partnerships may be between a nurse education program and one or more other nurse education programs and health care facilities. In awarding grants, the act requires the Board to give preference to partnerships between nurse education programs and hospitals, nursing homes, and county homes or county nursing homes, but the Board may also award grants to fund partnerships with other health care facilities.

Under the act, the Board must adopt rules in accordance with R.C. Chapter 119. (the Administrative Procedure Act) to establish the following:

- (1) Eligibility requirements for receipt of a grant;
- (2) Grant application forms and procedures;
- (3) The amounts in which grants may be made and the total amount that may be awarded to a nurse education program that has a partnership with other education programs, a community health agency, or a health care facility;
- (4) A method whereby the Board may evaluate the effectiveness of a partnership between joint recipients in increasing the nurse education program's enrollment capacity;

(5) The percentage of the money in the fund that must remain in the fund at all times to maintain a fiscally responsible fund balance;

(6) The percentage of available grants to be awarded to licensed practical nurse education programs, registered nurse education programs, and graduate programs;

(7) Any other matters incidental to the operation of the program.

**Deposit of funds into Special Nursing Issue Fund**

(R.C. 4743.05)

The act clarifies that specified funds the Ohio Board of Nursing collects or receives are to be deposited into the state treasury to the credit of the Special Nursing Issue Fund and *not* into the Occupational Licensing and Regulatory Fund, as is the case for other fees the Board collects. The specified funds are: (1) fees the Board collects for Board-sponsored continuing education activities and (2) grants the Board receives to develop and maintain a program addressing patient safety and health care issues related to the supply of and demand for nurses and other health care workers.

**Supervision of home health agency services**

(R.C. 4723.431)

Under continuing law, a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner must practice in accordance with a standard care arrangement entered into with each physician or podiatrist with whom the nurse collaborates. A standard care arrangement is a written agreement that includes criteria for referral of a patient by these kinds of nurses and processes and procedures the nurses must follow in working with physicians and podiatrists and providing patient services.

The act specifies that a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may supervise services provided by a home health agency if such supervision is permitted by the nurse's standard care arrangement.

### **Community health worker certification program**

(R.C. 4723.81, 4723.01, 4723.06, 4723.07, 4723.08, 4723.271, 4723.34, 4723.35, 4723.63, 4723.82, 4723.83, 4723.84, 4723.85, 4723.86, 4723.87, and 4723.88)

#### **Community health workers**

(R.C. 4723.81 and 4723.82)

Under the act, the Board of Nursing must develop and implement a program for the certification of community health workers and begin issuing certificates by not later than February 1, 2005.<sup>174</sup> Only the holder of a current, valid community health worker certificate may use the title, "certified community health worker" or "community health worker," and when providing services within the community, may represent to the public that the certificate holder is providing services under either title. However, the certificate program does not require an individual to obtain a community health worker certificate as a means of authorizing the individual to perform any of the activities that certified community health workers perform.

The act requires the certification program to "reflect the Board's recognition of individuals who, as community representatives, advocate for individuals and groups in the community by assisting them in accessing community health and supportive resources through the provision of such services as education, role modeling, outreach, home visit, and referral services." These services may be targeted toward an individual, family, or entire community. The certification program must also "reflect the Board's recognition of the individuals as members of the community with a unique perspective of community needs that enables them to develop culturally appropriate solutions to problems and translate the solutions into practice."

#### **Certification**

(R.C. 4723.83, 4723.84, and 4723.85)

Under the act, an individual seeking a community health worker certificate must apply to the Board for a certificate. The application must include the application fee established by the Board in rules. To receive a certificate, the applicant must be 18 years of age or older, possess a high school diploma or a high

---

<sup>174</sup> *The act defines "certified community health worker" as an individual who holds a current, valid certificate as a community health worker issued by the Board of Nursing. The act addresses only certified community health workers.*

school equivalence diploma, and have completed a community health worker training program approved by the Board.<sup>175</sup> The applicant must also undergo a criminal records check by the Bureau of Criminal Identification and Investigation.<sup>176</sup> The Board must issue a certificate to each applicant who meets the requirements specified in the act and in rules adopted by the Board.

Certificates expire biennially and may be renewed in accordance with a schedule and procedures established by the Board in rules. To renew a certificate, the holder must successfully complete the continuing education requirements and meet all other renewal requirements established by the Board.

### **Community health workers--supervision**

(R.C. 4723.82)

A community health worker certificate does not authorize its holder to administer medications or perform any other activity that requires judgment based on nursing knowledge or expertise. Nursing-related activities must be delegated to a community health worker by a registered nurse in accordance with procedures established by the Board in rules. Further, to perform any nursing-related activity, a certified community health worker must be under the supervision of a registered nurse, and when performing any health-related activities, under the supervision of a health professional acting within the scope of the professional's practice. A registered nurse who supervises a certified community health worker must do so in accordance with procedures established by the Board in rules, including rules limiting the number of certified community health workers who may be supervised at any one time.

---

<sup>175</sup> *The act permits this requirement to be waived for an applicant employed in a capacity that is substantially the same as that of a community health worker. To be eligible, the applicant must meet certain requirements established by the Board in rules and must provide documentation from the employer attesting to the employer's belief that the applicant is competent to perform activities as a certified community health worker (R.C. 4723.84(B)).*

<sup>176</sup> *The results of any criminal records check requested for the purposes of applying for community health worker certification, and any report containing those results, are not public records and must not be made available to any person except for use in determining whether the individual who is the subject of the check should be issued a community health worker certificate. The results may also be made available to the individual who is the subject of the records check or that individual's representative (R.C. 4723.83(B)).*

The act provides to a registered nurse who delegates activities to or supervises a certified community health worker immunity from any liability for civil damages to any person or government entity that allegedly arises from an action or omission of the certified community health worker in performing the activities, provided that the nurse delegated the activities or provided the supervision in accordance with rules adopted by the Board.

### **Disciplinary actions**

(R.C. 4723.34 and 4723.86)

The Board may, by vote of a quorum, deny, revoke, or suspend a community health worker certificate. The act also permits the Board to impose one or more sanctions against an applicant or certificate holder for reasons established by the Board in rules.<sup>177</sup>

The act requires every employer of certified community health workers to report to the Board the name of any current or former employee who holds a community health worker certificate who has engaged in conduct that constitutes grounds for disciplinary action by the Board. The act also requires community health worker associations to report to the Board the name of any certified community health worker who has been investigated and found to constitute a danger to the public health, safety, and welfare because of conduct that constitutes grounds for disciplinary action by the Board. An association is not, however, required to report the individual's name if the individual is maintaining satisfactory participation in a peer support program approved by the Board.

The act also requires that, if the prosecutor in a case involving a charge of a misdemeanor committed in the course of employment, a felony charge, or a charge of gross immorality or moral turpitude, including a case dismissed on technical or procedural grounds, knows or has reason to believe that the person charged holds a community health worker certificate, the prosecutor must notify the Board.

---

<sup>177</sup> *The rules specify that the reasons for the imposition of sanctions should be "substantially similar" to those for which sanctions are imposed on registered nurses, licensed practical nurses, and dialysis technicians under R.C. 4723.28. These reasons may be generalized as ethical and legal infractions.*

### **Community health worker training programs**

(R.C. 4723.87)

A person or government entity that seeks to operate a training program to prepare individuals to become certified community health workers must apply to the Board for approval by submitting to the Board a completed application and the application fee specified by the Board in rules. To receive approval, the Board must ensure that the program meets certain minimum standards. The Board's approval of a training program expires biennially and may be renewed in accordance with the schedule and procedures adopted by the Board in rules.

If an approved training program ceases to meet the Board's standards for approval, the Board must withdraw its approval of the program, refuse to renew its approval of the program, or place the program on provisional approval. In placing a program on provisional approval, the Board must specify the period of time for which the provisional approval is valid. At the end of that period, the Board must reconsider whether the program meets the standards for approval. If the program does meet the standards, the Board must either reinstate its full approval or renew its approval of the program. If the program does not meet the standards, the Board must either withdraw its approval or refuse to renew its approval of the program.

### **Administrative procedures**

(R.C. 4723.06, 4723.07, 4723.08, 4723.271, 4723.35, 4723.63, and 4723.88)

The act requires the Board of Nursing to adopt rules to administer and enforce the community health workers certification program. In addition to the rules specifically required by the act, the rules must also include any other standards or procedures the Board considers necessary and appropriate for the administration and enforcement of the certification program. All rules must be adopted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.) and must establish the following:

(1) Standards and procedures for issuance of community health worker certificates;

(2) Standards for evaluating the competency of an individual who applies to receive a certificate on the basis of having been employed in a capacity substantially the same as a community health worker before the Board implemented the certification program;

(3) Standards and procedures for renewal of community health worker certificates, including the continuing education requirements that must be met for renewal;

(4) Standards governing the performance of activities related to nursing care that are delegated by a registered nurse to certified community health workers. In establishing the standards, the Board must specify limits on the number of certified community health workers a registered nurse may supervise at any one time.

(5) Standards and procedures for assessing the quality of the services that are provided by community health workers;

(6) Standards and procedures for denying, suspending, and revoking a community health worker certificate, including reasons for imposing the sanctions that are substantially similar to the reasons that sanctions are imposed by the Board on registered nurses, licensed practical nurses, and dialysis technicians;

(7) Standards and procedures for approving and renewing the Board's approval of training programs that prepare individuals to become certified community health workers. In establishing the standards, the Board must specify the minimum components that must be included in a training program, require that all training programs offer the standardized curriculum, and ensure that the curriculum enables individuals to use the training as a basis for entering programs leading to other careers, including nursing education programs.

(8) Standards and procedures for withdrawing the Board's approval of a training program, refusing to renew the approval of a training program, and placing a training program on provisional approval;

(9) Fee amounts for the following: application for a certificate, verification of a certificate to another jurisdiction, written verification of a certificate when the verification is performed for purposes other than verification to another jurisdiction, providing a replacement copy of a certificate, biennial renewal of a certificate, processing of a late application for renewal of a certificate, reinstatement of a lapsed certificate, applications for approval of a training program, and biennial renewal of the approval of a training program.

The act also extends many of the Board of Nursing's existing administrative powers and duties pertaining to its regulation of nurses to the act's requirement that the Board regulate community health workers. These powers and duties include the following:

(1) The duty to approve peer support programs for community health workers and to maintain a list of approved programs;

(2) The duty to adopt rules establishing requirements for restoring an inactive or lapsed certificate and for reinstating a suspended certificate;

(3) The duty to provide a replacement copy of a certificate and to verify a person's certification to another jurisdiction;

(4) The authority to impose fees on community health workers;

(5) The duty to collect and maintain a file of all community health worker certificates granted by the Board.

In addition, the act authorizes the Board to contract for services pertaining to the process of providing written verification of a nursing license, certificate of authority, dialysis technician certificate, or community health worker certificate when the verification is performed for purposes other than providing verification to another jurisdiction. The contract may include provisions regarding the collection of the fee charged for providing the verification service, and the Board may permit the contractor to retain a portion of the fees as compensation, before any amounts are deposited in the state treasury.

---

### **STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS**

- Removes the sunset provision in prior law that eliminated on December 31, 2004, the State Board of Orthotics, Prosthetics, and Pedorthics and the law it administers.

#### **Elimination of sunset**

(R.C. 4779.08, 4779.17, 4779.18; Section 3 of Am. Sub. S.B. 238 of the 123rd General Assembly)

The fields of orthotics, prosthetics, and pedorthics deal with rehabilitative treatment of conditions affecting the musculoskeletal system. The State Board of Orthotics, Prosthetics, and Pedorthics oversees the licensure of professionals in those fields.



Under former law, the Board was scheduled to be "sunsetting" on December 31, 2004, which had the effect of eliminating the Board and the law that it administers unless the laws that created the Board and its licensing authority and duties was reenacted by the General Assembly on or before that date. The act removes this sunset provision so that the Board and the law that it administers will continue beyond December 31, 2004.

---

### **STATE PERSONNEL BOARD OF REVIEW**

- Specifies that the State Personnel Board of Review must use the money in the Transcript and Other Documents Fund to defray the cost of producing an "administrative record."

#### **Transcript and Other Documents Fund**

(R.C. 124.03)

The State Personnel Board of Review (SPBR) hears appeals of employees in the classified state service from specified final decisions of appointing authorities or the Director of Administrative Services as well as appeals of appointing authorities from specified final decisions of the Director. The SPBR is funded by General Revenue Fund appropriations.

Ongoing law provides that all moneys received by the SPBR for copies of documents, rule books, and transcriptions must be paid into the state treasury to the credit of the Transcript and Other Documents Fund. Under prior law, the Fund was to be used to defray the cost of furnishing or making available those copies, rule books, and transcriptions. The act provides that the SPBR instead must use the money in the Fund to defray the cost of producing an administrative record (presumably related to the appeals mentioned above).

---

### **PUBLIC DEFENDER COMMISSION**

- Would have frozen at the level in effect on March 1, 2003, the maximum amounts for which the state will reimburse counties for legal services for indigent criminal defendants (VETOED).



**State reimbursement to counties for legal services to indigent defendants**

(Section 84)

The Governor vetoed a provision of the act that would have frozen at the level in effect on March 1, 2003, the maximum amounts for which the state will reimburse counties for the period from July 1, 2003, through June 30, 2005, for legal services for indigent criminal defendants.

---

**STATE BOARD OF PHARMACY**

- Allows a pharmacist to administer adult immunizations, regardless of the method of administration.

**Administration of adult immunizations by pharmacists**

(R.C. 4729.01 and 4729.41)

Under law changed by the act, a pharmacist who has undergone the appropriate training may administer immunizations to adults against influenza, pneumonia, tetanus, and hepatitis A and B. Under prior law, the pharmacist could administer the immunizations by injection only. The act removes the limitation that the immunizations be administered by injection so that a pharmacist who has undergone the appropriate training may administer these immunizations to adults, regardless of the method of administration.

---

**DEPARTMENT OF PUBLIC SAFETY**

- Would have provided that if the United States Congress repeals the federal mandate requiring the withholding of a percentage of a state's federal-aid highway money if that state has not enacted a drunk driving law that provides for a blood alcohol concentration threshold of 0.08 of 1% in its *per se* DUI provision, or if a federal court with jurisdiction over Ohio declares the mandate to be invalid, the prohibited blood alcohol concentrations specified in Ohio's DUI laws revert to the previous thresholds of 0.10 of 1% or the equivalent (VETOED).
- Requires the Department of Public Safety to coordinate all homeland security activities of all state agencies and be a liaison between state



agencies and local entities for those activities and related purposes, and creates a Division of Homeland Security within the Department to perform those duties.

- Places the Division of Homeland Security in charge of the systems operations of the multi-agency radio communications system (MARCS) (VETOED).
- Revises Commercial Driver's License Law regarding certain criminal violations, background checks, employer requirements, and the driving record for a holder of a restricted license for farm-related service industries.
- Eliminates the \$25 maximum limit on the tuition fee that may be charged for the Motorcycle Safety and Education Program if earmarked funds prove insufficient, and provides instead that a "reasonable" tuition fee, as determined by the Director of Public Safety, may be charged.
- Permits the Director to authorize private entities to offer the safety course, but makes them ineligible for any kind of reimbursement or subsidy from the state Motorcycle Safety and Education Fund.
- Excludes commercial buses from the staggered and biennial registration periods established by Am. Sub. H.B. 87 of the 125th General Assembly.
- Eliminates a requirement for an electronic motor vehicle dealer or an electronic dealer in special vehicles, or a watercraft vender to retain original documents when the dealer or vendor files an application for a certificate of title electronically.

**0.08 blood alcohol concentration reverter**

(R.C. 4511.198)

The Governor vetoed a provision that would have provided that if the United States Congress repeals the federal mandate requiring the Secretary of Transportation, beginning in fiscal year 2004, to withhold a percentage of a state's federal-aid highway money if that state has not enacted and is not enforcing a law that provides that any person with a blood alcohol concentration of 0.08 of 1% or more while operating a motor vehicle in the state is deemed to have committed a

*per se* driving while intoxicated offense, or if a federal court with jurisdiction over Ohio declares the mandate to be unconstitutional or otherwise invalid, the prohibited alcohol concentrations specified in Ohio's boating, driving, and implied consent DUI laws would revert to their previous levels, to wit:

(1) The prohibited alcohol concentration in a person's whole blood would have been 0.10 of 1% by weight of alcohol per unit volume.

(2) The prohibited alcohol concentration in a person's breath would have been 0.10 of one gram by weight of alcohol per 210 liters of breath.

(3) The prohibited alcohol concentration in a person's blood serum or plasma would have been 0.12 of 1% by weight per unit of volume.

(4) The prohibited alcohol concentration in a person's urine would have been 0.14 of one gram by weight of alcohol per 100 milliliters of urine.

### **Creation of the Division of Homeland Security**

(R.C. 5502.01 and 5502.03)

The act requires the Department of Public Safety to coordinate "all homeland security activities of all state agencies" and be a liaison between state agencies and local entities for those activities and related purposes.<sup>178</sup> To carry out those duties, the act creates a Division of Homeland Security within the Department. The act also establishes the intent of the General Assembly that the creation of the Division of Homeland Security not result in an increase of funding appropriated to the Department.

The act requires the Director of Public Safety to appoint an executive director, who serves at the pleasure of the Director and heads the Division of Homeland Security. The executive director regularly must advise the Governor and the Director on matters pertaining to homeland security. Subject to the direction and control of the Director, the executive director is authorized to appoint and maintain necessary staff and enter into any necessary agreements.

---

<sup>178</sup> *The act does not detail the extent of authority the Department of Public Safety or the Division of Homeland Security has when coordinating all homeland security activities of all state agencies. For example, it is not clear under the act how the authority to coordinate all homeland security activities may interact with health-related statutory duties such as quarantine, mandatory vaccinations, or drug stock piling that are given to a particular state agency but that may arise as security issues.*

The Division is required by the act to "coordinate all homeland security activities of all state agencies" and be the liaison between state agencies and local entities for the purposes of "communicating homeland security funding and policy initiatives." The act states that, except as otherwise provided by law, it is not to be construed to give the Director or the executive director authority over the incident management structure or responsibilities of local emergency response personnel.

The Governor vetoed a provision that would have placed the Division in charge of the systems operations of the multi-agency radio communications system (MARCS), in accordance with any rules that the Director adopted. The vetoed provision would have required the Director to appoint a steering committee to advise the Director in the operation of the MARCS. The steering committee would have been comprised of persons who represented the users of that system.

### **Commercial driver's licenses (CDL)**

(R.C. 4506.14 (and future version), 4506.15 (and future version), 4506.16 (and future version), 4506.20 (and future version), and 4506.24)

In compliance with federal law, continuing law requires a commercial driver's license (CDL) to drive a commercial motor vehicle (generally, large trucks, buses, and vehicles transporting hazardous material). A CDL holder may be required to have an endorsement, or authorization to operate a specific type of commercial motor vehicle. Commercial driver's license holders are subject to criminal prohibitions that apply only to the operation of a commercial motor vehicle; CDL holders also are subject to being administratively disqualified from operating a commercial motor vehicle, and may have their vehicles placed out of service for certain violations.

The act makes all of the following changes to the CDL law: (1) specifically prohibits a person from using a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance and makes violation of the prohibition a first degree misdemeanor (under prior law this is one element used to determine a period of CDL disqualification), (2) requires a person renewing a CDL who wishes to retain an endorsement to transport hazardous material to submit to any background check required by federal law, (3) prohibits a person from driving a commercial motor vehicle in violation of state, federal, and local railroad grade crossing laws and makes violation of the prohibition a first degree misdemeanor, (4) establishes that a CDL holder who violates railroad grade crossing laws is subject to disqualification for 60 days for a first offense, 120 days for a second offense within three years, and one year for a subsequent offense within three years (in addition to the criminal penalty), (5) prohibits the employer of a CDL holder from knowingly allowing the person to operate a commercial motor vehicle in violation

of the alcohol and other prohibitions that apply to CDL holders and establishes a fine of up to \$10,000 for the violation, and (6) in regard to a restricted CDL for farm-related service industries, changes the time period during which an applicant for such a license must have a good driving record from one year to two years. In general, these changes ensure continued compliance with federal CDL requirements.

### **Motorcycle Safety and Education Program**

(R.C. 4508.08)

The Department of Public Safety administers the state's Motorcycle Safety and Education Program, which under prior law was comprised of courses that met standards established by the Motorcycle Safety Foundation. The act instead requires the program courses to meet standards in rules the Department adopts in accordance with the Administrative Procedure Act.

If sufficient funds were not available in the state Motorcycle Safety and Education Fund to pay all the costs of the program, prior law allowed a tuition fee not exceeding \$25 per student to be charged. The act permits any reasonable tuition fee, as determined by the Director of Public Safety. The act also permits the Director to authorize private organizations or corporations to offer the course without any tuition fee restrictions, but these entities are not eligible for subsidies or any reimbursement of expenses from the Fund.

### **Vehicle registration periods for buses**

(R.C. 4503.101 and 4503.103)

Am. Sub. H.B. 87 of the 125th General Assembly (effective June 30, 2003) required the Registrar of Motor Vehicles to adopt rules for reassigning commercial cars, buses, trailers and semitrailers, and rental car fleets to registration expiration dates so that the registrations of approximately 1/12 of the vehicles expire on the last day of each month of a calendar year, thus evenly spreading out the number of expirations each month of the year. The act excludes commercial buses from the staggered registration periods established by Am. Sub. H.B. 87. Under the act, no specific provision of law establishes a registration date or period for commercial buses; presumably, the registration of such buses will be established under the general authority of the Registrar to adopt rules to establish a system of motor vehicle registration based on the type of vehicle to be registered, the type of ownership of the vehicle, the class of license plate to be issued, and other relevant factors determined by the Registrar.

Am. Sub. H.B. 87 also required the Registrar to adopt rules to permit an application for certain motor vehicle registrations to be made for the next two succeeding registration years. Under that act, persons receiving an apportioned license plate for commercial vehicles (under the International Registration Plan) and the owners of commercial cars used solely in intrastate commerce are not eligible for biennial registration. The act also excludes the owner of a commercial bus from the option for biennial registration.

**Motor vehicle certificate of title document retention**

(R.C. 1548.06, 4505.06, and 4519.55)

Generally, when a person applies for a certificate of title to (1) a motor vehicle, an off-highway motorcycle, or all-purpose vehicle or (2) a watercraft or an outboard motor, the application is made to a clerk of a court of common pleas and the clerk retains the evidence of title presented by the applicant. If an electronic motor vehicle dealer, an electronic dealer in special vehicles, or a watercraft vendor electronically files an application for a certificate of title on behalf of a purchaser, law unaffected by the act requires the clerk to retain the completed electronic record to which the dealer or vendor converted the certificate of title application and other required documents. However, prior law also required the dealer or vendor to forward the actual application and all other documents relating to the sale to any clerk within 30 days after the certificate of title is issued.

The act eliminates the requirement for the dealer or vendor to forward the actual application and documents to a clerk within 30 days of the title being issued. It retains a requirement for the Registrar of Motor Vehicles (in regard to motor vehicles, off-highway motorcycles, and all-purpose vehicles) and the Chief of the Division of Watercraft (in regard to watercraft and outboard motor) each to consult with the Attorney General and then adopt rules governing the location and manner of storing the actual application and all other documents relating to the sale when an electronic dealer or vendor files the application for a certificate of title electronically on behalf of the purchaser. The clerks continue to retain the electronic records, but will no longer receive the actual application documents unless the rules of the Registrar or the Chief so provide.

**State Highway Safety Fund**

(R.C. 4501.06)

Continuing law lists those sections of the Revised Code that direct the taxes, fees, and fines imposed by those sections to be deposited into the State Highway Safety Fund. The act adds two conforming Revised Code cross-

references to that list. Specifically, the references are to the new \$11 fee for vehicle registration and the new \$5 fee for a temporary license placard, both of which were established in Am. Sub. H.B. 87 of the 125th General Assembly and both of which are required to be deposited into the State Highway Safety Fund.

---

## **PUBLIC UTILITIES COMMISSION OF OHIO**

- Codifies the creation of the Special Assessment Fund in the state treasury, to be used for Public Utilities Commission (PUCO) investigations.
- Codifies the creation of the Gas Pipe-line Safety Fund in the state treasury, to be used for PUCO oversight of intrastate transportation by pipeline.
- Codifies the creation of the Motor Carrier Safety Fund in the state treasury, to be used for PUCO oversight of interstate motor carrier transportation safety.

### **Special Assessment Fund**

(R.C. 4903.24)

The act codifies the creation of the Special Assessment Fund in the state treasury. The fund was established in 1982 by the Controlling Board and continues under the act to consist of money from fees, expenses, or costs required to be paid either by utilities that the Public Utilities Commission (PUCO) finds have unlawful rates or classes of service or by other parties to an investigation or hearing. The act authorizes the PUCO to use the fund to cover the costs of investigations or hearings regarding any public utility.

### **Gas Pipe-line Safety Fund**

(R.C. 4905.91)

The act codifies the creation of the Gas Pipeline Safety Fund in the state treasury and renames it the Gas Pipe-line Safety Fund. The original fund was established in 1973 by the Controlling Board, and continues under the act to consist of any federal grants-in-aid, cash, and reimbursements available to the PUCO under its authority regarding gas pipeline safety. The act authorizes the

PUCO to use the fund to carry out its duties regarding intrastate transportation by pipeline.

**Motor Carrier Safety Fund**

(R.C. 4919.79)

The act codifies the creation of the Motor Carrier Safety Fund in the state treasury. The fund was established in 1984 by the Controlling Board and continues under the act to consist of any grants-in-aid, cash, and reimbursements available pursuant to continuing authority for the PUCO to enter into cooperative agreements with federal agencies. The act authorizes the PUCO to use the fund to carry out its duties regarding interstate motor carrier transportation safety.

---

**PUBLIC WORKS COMMISSION**

- Indefinitely extends authorization for investment earnings of the Clean Ohio Conservation Fund to be used to pay administrative costs incurred by the Ohio Public Works Commission in administering the Clean Ohio conservation grants program.

**Use of investment earnings of Clean Ohio Conservation Fund**

(R.C. 164.27)

Ongoing law creates the Clean Ohio Conservation Fund for the purpose of providing grants to local political subdivisions and nonprofit organizations for natural resources and parks and recreation projects. The Fund is administered by the Ohio Public Works Commission. Investment earnings of the Fund must be credited to it. Prior law provided that, until July 26, 2003, investment earnings credited to the Fund could be used to pay costs incurred by the Commission in administering the law governing the issuance of the grants. The act eliminates that deadline, thus authorizing investment earnings credited to the Fund to be used indefinitely for that purpose.

---

**STATE RACING COMMISSION**

- Requires, from July 1, 2003, to June 30, 2004, the entire ½ of 1% of all moneys wagered on wagering pools other than win, place, and show which is retained by horse-racing permit holders to be paid to the Tax



Commissioner and deposited into the State Racing Commission Operating Fund.

- Requires the State Racing Commission, not later than January 1, 2004, to conduct a specified performance study and to make recommendations to the Governor and the General Assembly regarding possible staff reductions and ways to improve the efficiency of its operations.

**Deposit of entire ½ of 1% of all amounts wagered on exotic wagering into the State Racing Commission Operating Fund**

(R.C. 3769.087)

In general, continuing law requires horse-racing permit holders to retain an additional ½ of 1% of all moneys wagered on wagering pools other than win, place, and show. Of this additional amount, ¼ of 1% must be paid as a tax to the Tax Commissioner, who in turn must pay this percentage into the State Racing Commission Operating Fund. The remaining ¼ of 1% must be retained by the permit holder with ½ of it to be used for purse money and the permit holder to retain the remainder.

The act retains these provisions, but requires, from July 1, 2003, through June 30, 2004, that the entire ½ of 1% of all moneys wagered on wagering pools other than win, place, and show which is retained by horse-racing permit holders be paid as a tax to the Tax Commissioner, who in turn must pay the amount into the State Racing Commission Operating Fund.

**State Racing Commission performance study**

(Section 162)

The act requires the State Racing Commission to conduct a performance study of the Commission based upon its current level of full-time employees. Not later than January 1, 2004, the Commission must make recommendations to the Governor and the General Assembly regarding possible staff reductions and ways to improve the efficiency of the Commission's operations.

---

## OHIO BOARD OF REGENTS

- Increases the Ohio Instructional Grants (OIG Grants) for most eligible independent students with dependents at percentage increases that grow larger the farther the student is from maximum grant eligibility.
- Creates an Instructional Grant Reconciliation Fund in the state treasury consisting of refunds of OIG payments owed to the state to be used to pay any outstanding OIG obligations to higher education institutions.
- Denies state-supported financial assistance at an institution of higher education to any person who is convicted of certain riot-related offenses for two years following application for assistance.
- Requires a state-supported institution of higher education to immediately dismiss a student who is convicted of rape or sexual battery, and prohibits a state-supported institution of higher education from admitting an individual of that nature for one academic year after the individual applies for admission to a state-supported institution of higher education.
- Establishes a cap of 6% (9% for The Ohio State University) on annual increases of in-state undergraduate instructional and general fees at state institutions of higher education, but allows institutions to increase fees an additional 3.9% if the increase is used exclusively to fund scholarships for low-income students or for the provision of technology services to students.
- Recognizes the Miami University pilot tuition restructuring plan, which provides that all in-state undergraduate students attending the Oxford campus will be charged the same tuition as out-of-state students, with in-state students receiving financial assistance from the university.
- Requires the Board of Regents to study the operation and effectiveness of co-located institutions, with particular attention to improved responsiveness to community needs and improved transfer of course work.
- Directs the Ohio Board of Regents to implement several policies that are intended to facilitate the transfer of students and credits between state institutions of higher education.

- Eliminates the requirement that at least five members of the board of trustees of the University of Cincinnati be residents of the city of Cincinnati.
- Requires the Board of Regents to recognize the conversion of Belmont Technical College to a community college named Belmont Community College (VETOED).
- Directs the Board of Regents to consider the conversion of Belmont Technical College to a community college.
- Directs the Commission on Higher Education and the Economy to study ways to improve Ohio's higher education system.
- Permits, on a pilot basis, the operation of a partnership between the Warren County Career Center joint vocational school and higher education institutions.
- Establishes a new community college housed in the Warren County Career Center that is authorized to carry out only organizational activities in fiscal years 2004 and 2005.

**Increase in Ohio Instructional Grant (OIG) amounts**

(R.C. 3333.12; Section 89.06)

The Board of Regents administers an instructional grant program. This program basically pays instructional grants to full-time, Ohio resident students who attend a public, private nonprofit, or career institution of higher education in Ohio and are enrolled in a program leading to an associate or bachelor's degree. The Board of Regents establishes all rules concerning application for the grants.

Grant amounts are generally based on whether an applicant is financially dependent or independent; the combined family income (if dependent) or the student and spouse income (if independent); the number of dependents; and whether the applicant attends a private nonprofit, public, or career institution. The amount of the grant cannot exceed the total instructional and general fees charged by the student's school.

Separate tables in each fiscal year set forth the grant amounts, one for each category of student (based on type of institution and financial dependence or

independence). Each table has headings for income ranges and the number of dependents (up to five) in the family, with a grant amount for each income range and family size. The act maintains in both FY 2004 and FY 2005 the current maximum base amounts of gross income a student may have for grant eligibility. Thus, for dependent students attending a private, career, or public institution the maximum gross income level for grant eligibility remains \$39,000. For an independent student attending a private, career, or public institution the maximum gross income level for grant eligibility remains \$35,300.

The act also does not change any grant amounts for dependent students in FY 2004 and FY 2005 from the FY 2003 awards. Thus, a dependent student attending a private institution may receive a maximum grant award of \$5,466 and a minimum award of \$444. A dependent student attending a career institution may receive a maximum grant award of \$4,632 and a minimum award of \$372. A dependent student attending a public institution may receive a maximum grant award of \$2,190 and a minimum award of \$174.

For independent students attending public, private, and career institutions, however, the act does increase many of the grant amounts. While both the maximum grant awards (\$5,466 at private institutions, \$4,632 at career institutions, and \$2,190 at public institutions) and the grant awards for independent students with no dependents are unchanged from FY 2003 awards, the grant awards for independent students with dependents who do not qualify for the maximum grant (because of income) are increased by the act in both FY 2004 and FY 2005. The further a student falls from the maximum grant, the larger the percentage increase in grant amounts from year to year. Additionally, the minimum grants available under the act are available to students with higher incomes and smaller family sizes.

### **Creation of the Instructional Grant Reconciliation Fund**

(R.C. 3333.121; Section 89.19)

The act creates the Instructional Grant Reconciliation Fund consisting of refunds of Ohio Instructional Grant (OIG) payments owed to the state. The fund is a "state fund" in the state treasury and as such requires appropriations from the General Assembly in order for money to be spent from it. Any money in the fund is to be used by the Board of Regents to pay institutions of higher education outstanding obligations owed from the prior year for the OIG program. Any amount in the fund that exceeds the amount necessary to reconcile prior year payments must be transferred to the General Revenue Fund.

### **Denial of financial aid to students convicted of riot-related offenses**

(R.C. 3333.38(A) and (B))

If an individual is convicted of, pleads guilty to, or is adjudicated delinquent for certain riot-related offenses, the act bars that individual from receiving any student financial assistance supported with state funds at any public or private Ohio institution of higher education (including career schools) for two calendar years from the time the individual applies for assistance. The offenses that trigger denial of student aid are the following:

(1) Aggravated riot, in violation of R.C. 2917.02;

(2) Riot, in violation of R.C. 2917.03;

(3) Failure to disperse, in violation of R.C. 2917.04, provided the violation (a) is a misdemeanor of the fourth degree and (b) occurs within the proximate area where four or more others are acting in the course of disorderly conduct, in violation of R.C. 2917.11;

(4) Misconduct at an emergency, in violation of R.C. 2917.13, provided the violation (a) is either a misdemeanor of the first or fourth degree and (b) occurs within the proximate area where four or more others are acting in the course of disorderly conduct, in violation of R.C. 2917.11.

### **Dismissal of students convicted of rape or sexual battery**

(R.C. 3333.38(C))

If an individual is convicted of, pleads guilty to, or is adjudicated a delinquent child for a violation of R.C. 2907.02 (rape) or 2907.03 (sexual battery), and if the individual is enrolled in a state-supported institution of higher education, the institution must immediately dismiss the individual.<sup>179</sup> The act furthermore prohibits a state-supported institution of higher education from admitting an individual "of that nature" for one academic year after the individual applies for admission to a state-supported institution of higher education. The act states that this provision does not limit or affect the ability of a state-supported institution of higher education to suspend or otherwise discipline its students.

---

<sup>179</sup> Note: The crimes references in this provision appear to be erroneous. The intent may have been to reference aggravated riot (R.C. 2917.02) and riot (R.C. 2917.03) instead of rape (R.C. 2907.02) and sexual battery (R.C. 2907.03).

### **Cap on tuition charges at state-assisted institutions of higher education**

(Section 89.05)

The act imposes a limit on the amount of in-state undergraduate instructional and general fees the board of trustees of a state university, community college, state community college, technical college, and university branch (collectively, "state institutions") may charge. In general, the boards of trustees of these state institutions may only increase instructional and general fees for in-state undergraduate students 6% from the amount of such fees in the prior academic year. Although the act does not explicitly state in which academic years this 6% cap is effective, presumably the act means the 2003-2004 and 2004-2005 academic years. The Ohio State University, however, may increase such fees at the main campus up to 9% from the amounts charged in the prior academic year for the 2003-2004 and 2004-2005 academic years.

The act permits state institutions to impose an additional 3.9% increase on instructional and general fees in each academic year, if the proceeds of this increase are used for either "Access Scholarship Grants," which are scholarships for low-income students, or to provide "additional or improved" technology services to students. Except for the board of trustees of The Ohio State University, no board of trustees of these state institutions may authorize an increase in excess of 6% in a single vote. The Ohio State University may authorize an increase of up to 9% in a single vote.

### **Miami University pilot tuition restructuring plan**

(Sections 89.05 and 89.18)

In the spring of 2003, the board of trustees of Miami University adopted a new tuition plan whereby all undergraduate students attending the Oxford campus are charged the same tuition, based on the nonresident tuition, regardless of whether the student is a resident or nonresident of Ohio.<sup>180</sup> This tuition plan took effect in the summer term of 2003. According to the university, the increase in tuition for students who enroll prior to August of 2004 will only be an increase "on paper." These students will actually pay the amount the student was charged in the preceding year plus any increases approved by the board of trustees.

In the spring term of 2003, Miami charged resident students approximately \$7,600 and nonresident students approximately \$16,300. Beginning with the 2003

---

<sup>180</sup> All background information about this tuition plan is available from Miami University's website: <http://www.muohio.edu>.

summer term, tuition charges for both resident and non-resident students is \$18,103. The university will then award student financial assistance to resident students in the form of an Ohio Resident Scholarship and an Ohio Leader Scholarship.

An Ohio Resident Scholarship is an amount that represents state funding the university receives through the state share of instruction and the success challenges. In fiscal year 2004, the university has established the amount of this scholarship at \$5,000. In subsequent years, the university will establish the amount based on any increases or decreases in state funding. An Ohio Leader Scholarship is given to Ohio residents in an amount based on financial need, academic qualifications, and state priorities. In fiscal year 2004, this scholarship award has been established at an amount of \$4,750. Both scholarship awards are guaranteed until a student graduates or for six academic years, whichever occurs first.

The act recognizes this plan and, to enable Miami to implement the plan, the act allows Miami University certain exceptions from provisions otherwise applicable to all state institutions of higher education. First, under the act all state institutions of higher education, except Miami, are required to charge a tuition surcharge to nonresident students. Thus, Miami can charge nonresident students the same tuition as resident students. Second, all state institutions of higher education, except Miami, are required to delineate the amount of instructional fees, general fees, and the tuition surcharge for nonresident students on students' statements of account.

With respect to the issue of tuition caps, the act specifies that while Miami University is exempted from any caps for the first term of implementation (summer of 2003), the university is subject to any tuition caps imposed by the General Assembly for all academic terms thereafter.<sup>181</sup>

### **Study of co-located institutions**

(Section 89.14)

Co-located institutions of higher education are those institutions that have agreements to share facilities, student services, or other necessities of operating a

---

<sup>181</sup> *As Miami University adopted and implemented this tuition plan before July 1, 2003, it would appear that exempting the university from any tuition cap for the first term of implementation is not strictly necessary, as prior law, which expired June 30, 2003, imposed no tuition caps on state universities.*

college. Currently, seven of Ohio's eight technical colleges are co-located with a university branch.

The act requires the Board of Regents to study the operation and effectiveness of co-located university branch campuses and technical colleges, with particular attention to improved responsiveness to community needs and improved transfer of coursework. The Board must report its findings and recommendations to the General Assembly by May 15, 2004.

**Transfer of students between state institutions of higher education**

(R.C. 3333.16)

Currently, Ohio has an Articulation and Transfer Policy, developed by the Ohio Board of Regents, that is intended to ensure that credits will transfer between state institutions of higher education.<sup>182</sup> Under the policy, the transfer of credits and the application of those credits to the transferring student's program of study is dependent on whether the transferring student has completed an associate degree, the student's grade point average, and what courses the student has completed. For example, a transferring student who intends to major in physics would need to take calculus-based physics in order to have a physics class count toward a physics major at the receiving institution.

In addition, the Policy requires state institutions to develop a "transfer module," which is a set of general education curriculum courses, such as English composition, mathematics, social and behavioral sciences, arts and humanities, and natural and physical sciences, that represent a common body of knowledge required at all state institutions. A student who completes transfer module courses at one institution can transfer those courses to another state institution and have those courses fulfill the corresponding general education courses at the receiving institution.

The act modifies this existing transfer structure by directing the Board of Regents to implement several policies designed to further facilitate the transfer of students and credits between state institutions of higher education. However, except for these modifications, the act states that the existing Policy remains in effect.

---

<sup>182</sup> *The Policy is available through the Ohio Board of Regents' website: <http://www.regents.state.oh.us>. The General Assembly required the development of the policy in Am. Sub. S.B. 268 and Am. Sub. H.B. 111 of the 118th General Assembly.*

First, the Board must establish policies and procedures with which all state institutions must comply that ensure that students can transfer from one state institution to another without unnecessary duplication of coursework or institutional barriers. In complying with these policies and procedures a state institution is required to strengthen course content, if necessary, so that a particular course is transferable to another state institution.

Second, the Board must develop and implement a "universal course equivalency classification system" to be used by all state institutions of higher education.

Third, the Board is directed to develop a transfer system so that a student who completes an associate degree program that includes approved transfer module courses will be admitted to a baccalaureate program at another state institution, will have priority in admittance over out-of-state students with associate degrees and transfer students without such degrees, and will compete for admission to "specific programs" on the same basis as students native to that institution. Presumably, this third provision means that if a state institution has competitive admission to a specific degree program within the college or university, an associate degree transfer student is to be treated in the same manner as any other student at the college or university when seeking admission to the degree program.

Fourth, the act directs the Board to study the feasibility of developing a transfer marketing agenda through which Ohioans are informed of the availability of transfer options, and adults are encouraged to return to higher education.

Fifth, the act directs the Board to study the feasibility of articulation and transfer policies for students with associate degrees from career schools and colleges that have certificates of registration from the State Board of Career Colleges and Schools who transfer to state institutions of higher education. According to the act, these policies should be based on any criteria developed by the Board of Regent's Articulation and Transfer Advisory Council.

Finally, the act requires all state colleges and universities, in advising transfer students, to fully implement the Course Applicability System. The Course Applicability System is an internet-accessible database that provides information on course equivalency between participating institutions.<sup>183</sup>

---

<sup>183</sup>The Course Applicability System is available at <http://miami.transfer.org/cas/index.jsp>.

By April 15, 2004, the Board of Regents must report to the General Assembly on its progress in meeting these requirements.

**Residency for board of trustee members of the University of Cincinnati**

(R.C. 3361.01)

Continuing law, unchanged by the act, vests the responsibility for the governance of the University of Cincinnati in a board of trustees. The board consists of 11 members appointed by the Governor, with the advice and consent of the Senate. Two of the 11 members are students of the university, appointed for two-year terms. The other nine members are appointed for nine-year terms. Only the nine members appointed for nine-year terms have voting power.

Prior law required that at least five of the nine voting members be residents of the city of Cincinnati.<sup>184</sup> The act eliminates this residency requirement. Thus, the members of the board of trustees of the University of Cincinnati may reside anywhere and still be appointed as members of the board.

**Conversion of Belmont Technical College to Belmont Community College**

(Section 89.15 and 89.20)

A technical college is a two-year state-supported institution of higher education that is only authorized to offer programs that are technical in nature.<sup>185</sup> To carry out this mission, technical colleges have the statutory authority to propose the issuance of bonds and the imposition of a tax levy to the voters of the technical college district.<sup>186</sup> A community college is a two-year state institution of higher education that is permitted to offer both arts and sciences and technical programs. Community colleges also have the authority to issue bonds and impose tax levies upon voter approval.<sup>187</sup>

While current law contains a mechanism whereby a technical college may convert to a *state* community college, current law contains no similar mechanism

---

<sup>184</sup> *This residency requirement for membership on university boards of trustees is unique to the University of Cincinnati.*

<sup>185</sup> *See Chapter 3357. of the Revised Code.*

<sup>186</sup> *R.C. 3357.11, not in the act.*

<sup>187</sup> *R.C. 3354.11, not in the act.*

for conversion from a technical college to a community college.<sup>188</sup> The act contains two conflicting provisions with respect to the conversion of Belmont Technical College to a community college. One provision would have required the Board of Regents to recognize the conversion of Belmont Technical College from a technical college to a community college named Belmont Community College. The Governor vetoed this provision. (Section 89.15.)

The other provision, which was not vetoed, directs the Board of Regents to *consider* a proposal from Belmont Technical College for conversion to a community college by June 26, 2004. In considering this proposal the Board is to evaluate the demonstrated need for a community college in the area, the most effective use of state resources to fund a conversion, and the regional benefits of a conversion to a community college. The act does not address how such a conversion would take place if the Board of Regents decided in favor of conversion, as the Revised Code currently contains no mechanism for conversion from a technical college to a community college. (Section 89.20.)

### **Commission on Higher Education and the Economy**

(Section 89.01)

The Governor has appointed various individuals, including representatives of higher education, government officials, and members of the business community, to the Commission on Higher Education and the Economy. The purpose of the Commission is to study ways to improve Ohio's higher education system. As part of its function, the act directs the Commission to recommend a strategy to improve the quality and efficiency of Ohio's higher education system which must include studying the elimination of unnecessary duplication and ways to harmonize higher education with the goals of the Third Frontier initiative. The act also instructs the Commission to study a ten-year plan for higher education in the context of curricula, the number of higher education institutions, and the types

---

<sup>188</sup> *State community colleges, authorized under Chapter 3358. of the Revised Code, and community colleges, authorized under Chapter 3354. of the Revised Code, are similar in that both are two-year institutions permitted to offer arts and sciences and technical programs. Where the two entities differ, however, is (1) in the ability to generate funds from local levies and bonds and (2) in what court suit may be brought against the institution. State community colleges are unable to generate funds from local levies and bonds whereas community colleges have this authority. State community colleges must be sued in the Court of Claims whereas community colleges are sued in courts of common pleas.*

of degrees as relate to meeting the needs of the Third Frontier and other high technology economic initiatives.

**Higher education programs at the Warren County Career Center**

(Sections 89.16 and 89.17)

The act creates two programs at the Warren County Career Center: (1) a pilot partnership through which institutions of higher education may offer courses at the Career Center, and (2) the creation of a new community college to share facilities with the Career Center. By June 30, 2005, the board of education of the joint vocational school district and the board of trustees of the community college must submit a report to the Board of Regents on the status of both of these pilot programs.

**Pilot joint vocational-college partnership program**

The act requires the Board of Regents to approve a partnership between the Warren County Career Center and institutions of higher education on a pilot basis in FY 2004 and 2005. However, the Career Center's board of education must approve the partnership before the pilot may be implemented. Additionally, the Career Center and the local workforce policy board must submit to the Board of Regents a plan for the partnership that is similar to the program operated through the Lorain County Community College's University Center.<sup>189</sup>

If the Career Center's board of education approves the partnership and a plan is submitted to the Board of Regents, the Career Center is required to act as a host for programs offered by institutions of higher education. The act contains no restrictions on which institutions of higher education may participate. Thus, any institution of higher education, including public Ohio institutions, private institutions located in or outside Ohio, career schools, and private for-profit institutions may participate.

In hosting these programs, the Career Center's board of education must select the programs to be offered at the Career Center and contract with those institutions of higher education that choose to offer courses at the Career Center. Contracts with participating institutions of higher education must specify that the Career Center is to provide facilities for classrooms, laboratories, a library, and

---

<sup>189</sup> *Lorain County Community College has partnerships with various Ohio four-year universities whereby students may take university courses at the community college. The effect of these partnerships is that students may obtain four-year degrees in certain fields at the community college site.*

other necessary facilities. Also, contracts must specify that the Career Center is to advertise the availability of higher education courses to the community, and that the Career Center is to coordinate any other administrative functions necessary for operation of the partnership. Participating institutions of higher education are responsible for compensating the Career Center at a reasonable rate for services rendered by the Career Center.

The act prohibits this partnership from receiving any state financial assistance for capital improvements or other financial assistance that is available to institutions of higher education. (Section 89.16.)

### **Creation of a new community college**

In addition to allowing institutions of higher education to offer courses at the Warren County Career Center, the act creates a new community college district comprised of the territory of Warren County and requires the Board of Regents to issue a charter for a new community college to be operated jointly with the Career Center. This charter must be granted after the Career Center's board of education approves the college's creation and after the board of education and the local workforce policy board submit a community college plan to the Board of Regents that is approved by the Board.<sup>190</sup> Once a charter is issued, a board of trustees must be appointed by the Governor and the Warren County board of county commissioners.<sup>191</sup>

The act, however, does not authorize the new community college to offer courses or request approval of associate degree programs from the Board of Regents until after July 1, 2005. Instead, the board of trustees of the college is only permitted to carry out organizational activities in FY 2004 and 2005. After July 1, 2005, the joint vocational-community college is permitted to offer both career-technical education to secondary school students and two-year arts and sciences and technical programs for postsecondary school students. The joint vocational-community college is also authorized to provide arts and sciences and technical instruction programs for secondary school students participating in the Post Secondary Enrollment Options program.

In fulfilling its educational duties, the joint vocational-community college is ineligible to receive state assistance for capital improvements otherwise

---

<sup>190</sup> *The community college plan must conform to the requirements of R.C. 3354.07, not in the act.*

<sup>191</sup> *See R.C. 3354.05.*

available to community colleges. However, it is eligible to receive classroom facilities assistance through the Ohio School Facilities Commission (OSFC) as long as the project receiving classroom facilities funds would benefit secondary school students receiving career-technical education from the joint vocational component of the joint vocational-community college. If a project would exclusively benefit community college purposes, it is prohibited from receiving classroom facilities assistance through the OSFC.<sup>192</sup> Presumably, the FY 2006 and 2007 budget would address whether the new community college receives state aid such as the State Share of Instruction.

Finally, as community college districts and joint vocational school districts are both permitted to issue bonds and levy taxes, the act specifies that all revenues received to carry out joint vocational education duties are to be kept separate from all revenues received to carry out community college duties. (Section 89.17.)

---

## DEPARTMENT OF REHABILITATION AND CORRECTION

- Provides an administrative procedure for the resolution of claims of inmates of state correctional institutions for the loss of or damage to property that do not exceed \$300.
- Would have required the Parole Board to review the appropriateness of the length of sentences of current prisoners who were sentenced under the Felony Sentencing Law that was in effect prior to July 1, 1996, and to determine whether the length of any of those sentences should be adjusted; would have required the Parole Board to submit a report of its findings and recommendations to the General Assembly within one year after the section's effective date (VETOED).

### *Administrative resolution of small claims of inmates*

(R.C. 2743.02)

Under prior law, an inmate of a state correctional institution who wanted to pursue a claim against the state for property damage had to bring a civil action in the Court of Claims, regardless of the size of the claim. The act requires that an

---

<sup>192</sup> See R.C. 3318.40(C), not in the act.

inmate who has a claim of \$300 or less for the loss of or damage to property first attempt to settle the claim through an administrative procedure established by rule by the Director of Rehabilitation and Correction. The inmate must file the claim within the time allowed for bringing an action in the Court of Claims. If the state admits or compromises the claim, the Director is to make payment from a fund designated by the Director for that purpose. If the state denies or fails to compromise the claim at least 60 days before the expiration of the time allowed for commencing a civil action in the Court of Claims, the inmate may bring an action in the Court of Claims.

**Parole Board study of appropriateness of "pre-S.B. 2" sentences**

(Section 154)

Am. Sub. S.B. 2 and Am. Sub. S.B. 269 of the 121st General Assembly revised the Felony Sentencing Law and took effect on July 1, 1996. Among the changes these acts made was to change felony sentences from indefinite sentences to definite sentences. A person sentenced under an indefinite sentence was given a minimum sentence that the offender was required to serve before becoming eligible for parole and a maximum sentence beyond which the offender could not be imprisoned for the offense. Under certain circumstances, the minimum term could be reduced. A person sentenced under a definite sentence is given a specific term that generally may not be reduced, but additional types of terms, such as repeat violent offender terms, may also be imposed.

The Governor vetoed a provision in the act that would have required the Parole Board to review the sentences of prisoners who are confined in state correctional institutions and who were sentenced under the Felony Sentencing Law that was in effect prior to July 1, 1996, to determine the appropriateness of those sentences and to determine whether the length of any of those sentences should be adjusted. The Parole Board would have been required to conduct this review in cooperation with the Department of Rehabilitation and Correction. The act would have required the Parole Board to prepare a report that contains its findings and makes recommendations regarding further action. Not later than one year after the effective date of the section, the Parole Board would have been required to submit the report to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, the chair of the House Criminal Justice Committee, and the chair of the Senate Judiciary Committee on Criminal Justice.

---

## RETIREMENT SYSTEMS

- Establishes public notice and hearing requirements for certain Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), and School Employees Retirement System (SERS) retirants continuing in or returning to their PERS-, STRS-, or SERS-covered position.
- Modifies an exception to law penalizing the retirement benefits of a PERS retirant who is elected to the public office held at the time of retirement by changing the deadline for filing a notice of intent to retire.

### **Public notice and meeting for reemployed PERS, STRS, and SERS retirants**

(R.C. 145.38, 145.381, 3307.01, 3307.35, 3307.353, 3309.341, and 3309.345)

Continuing law provides that a person who retires under the Public Employees Retirement System (PERS) may be employed in a position covered by PERS, a person who retires under the State Teachers Retirement System (STRS) may be employed in a position covered by STRS, and a person who retires under the School Employees Retirement System (SERS) may be employed in a position covered by SERS. However, if the retirant has received a retirement allowance for less than two months when the employment begins, the retirant forfeits his or her retirement allowance for any month the retirant is employed before the expiration of the two-month period.<sup>193</sup>

The act establishes new conditions on certain PERS, STRS, and SERS retirants continuing in or returning to their PERS-, STRS-, or SERS-covered position. The conditions apply only if the retirant is or most recently has been

---

<sup>193</sup> *If a PERS retirant enters into a contract to provide services as an independent contractor to the employer by which the retirant was employed at the time of retirement or, less than two months after the retirement allowance begins, begins providing services as an independent contractor with another public employer, the retirant forfeits the pension portion of the retirement allowance (the portion funded by employer contributions) for the period beginning the first day of the month following the month in which the services begin and ending on the first day of the month following the month in which the services end. The annuity portion of the retirement allowance (the portion funded by employee contributions) is suspended on the day the services begin and accumulate to the retirant's credit to be paid in a single payment after the services end.*

employed in a PERS-, STRS-, or SERS-covered position that is customarily filled by a vote of members of a board or commission or, in the case of a PERS retiree, by the legislative authority of a county, municipal corporation, or township. If this is the case for the retiree and the board, commission, or legislative authority proposes to continue the retiree's employment in, or rehire the retiree to, the same position, the board, commission, or legislative authority is required to do both of the following in accordance with administrative rules:

(1) Not less than 60 days before the employment as a reemployed retiree is to begin, give public notice that the retiree is or will be retired and is seeking employment with the board, commission, or legislative authority;

(2) Between 15 and 30 days before the employment is to begin and after complying with the public notice requirement, hold a public meeting on the issue of the reemployment.

The public notice must include the time, date, and location at which the public meeting is to take place.

The act requires the PERS Board, STRS Board, and SERS Board to adopt rules as necessary to implement this provision of the act.

### **Elected official's retirement allowance penalty**

(R.C. 145.38)

With exceptions, a Public Employees Retirement System (PERS) member who retires while holding a state or local elective office and then is elected or appointed to the same office for the remainder of the term or the subsequent term is subject to a retirement allowance penalty, the penalty is forfeiture of the pension portion of the retirement allowance and suspension of the annuity portion.<sup>194</sup> The penalty continues until the reemployment terminates. The annuity portion accumulates to the member's credit to be paid in a single payment after the reemployment terminates. The retirement allowance resumes on the first day of the first month after reemployment terminates.

The act changes one of the exceptions. Under prior law, the official could avoid the penalty by filing with the county board of elections, not less than 90

---

<sup>194</sup> A PERS retirement allowance consists of a pension and an annuity. The annuity portion is based on the member's contributions during employment. The pension portion is funded by the employer's contributions made on behalf of the member and PERS's investment earnings.

days before the election, a written declaration of intent to retire before the end of the term. The act changes this exception by moving up the deadline for filing the notice to not less than 90 days before the primary election or, if no primary is scheduled, 90 days before the date on which a primary would have been held.<sup>195</sup>

---

## STATE BOARD OF SANITARIAN REGISTRATION

- Increases various registration fees for sanitarians and sanitarians-in-training.

### Sanitarian and sanitarian-in-training registration fees

(R.C. 4736.12)

Ongoing law requires the State Board of Sanitarian Registration to charge various fees for a person to apply to be a sanitarian-in-training, for a sanitarian-in-training to apply for registration as a sanitarian, for a person other than a sanitarian-in-training to apply for registration as a sanitarian, and for renewal of registration by a registered sanitarian and a sanitarian-in-training.

Under the act, the fee to apply to be a sanitarian-in-training and for a sanitarian-in-training to apply for registration as a sanitarian is increased from \$57 to \$75. The fee for persons other than sanitarians-in-training to apply for registration as sanitarians is increased from \$114 to \$150. The provision that required the Board to fix the renewal fee for registered sanitarians and sanitarians-in-training at no more than \$61 is removed by the act and replaced with a set renewal fee of \$69 for both sanitarians and sanitarians-in-training.

---

<sup>195</sup> *The act does not change the other two exceptions. The penalty can be avoided by retiring at least 90 days before the election. If the official is appointed to the office, the penalty can be avoided by notifying the person or entity making the appointment that the official is already retired or intends to retire before the end of the term for which the appointment is made.*

---

## OHIO SCHOOL FACILITIES COMMISSION

- Terminates the following programs administered by the Ohio School Facilities Commission: the Short-Term Loan program, the Emergency School Repair program, and the Disability Access program.
- Permits school districts with territories larger than 300 square miles to participate in the Exceptional Needs program regardless of wealth ranking.
- Directs the Commission to allocate solely to the Classroom Facilities Assistance program any leftover funds that had been appropriated and allocated during a biennium to any other programs administered by the Commission.
- Eliminates the restriction against certain low-wealth school districts simultaneously participating in the Expedited Local Partnership program and the Exceptional Needs program.
- Repeals and reenacts law that permits a school district to dedicate the proceeds of a permanent improvement levy or school district income tax to leverage securities to pay its local share of a state-funded school facilities project or to generate funds for maintenance of those facilities, and adds a new provision requiring the district to continue levying the tax as long as the securities are outstanding.
- Removes the requirement that an existing permanent improvement levy be for at least two mills in order to satisfy the maintenance obligation under a state-assisted classroom facilities project.
- Repeals the provision that permitted a school district participating in most classroom facilities assistance programs to apply certain expenditures of local resources made 18 months prior to notice of eligibility for state funds toward the district's share of the project costs.
- Except for continued application to certain school districts, repeals the provision that permitted a school district participating in the Expedited Local Partnership program to apply certain expenditures of local resources made 18 months prior to September 14, 2000, toward the district's share of the project costs.

- Permits a school district to renovate rather than replace an existing classroom facility under a state-assisted project using project funds up to the estimated amount of new construction as long as certain conditions are satisfied.
- Lengthens the maximum period of the reimbursement schedule from five years to ten years for a school district to pay back its share of additional costs incurred to correct oversights or deficiencies in the initial assessment of the district's facilities needs.
- Prohibits the School Facilities Commission from releasing state funds for a state-assisted classroom facilities project to a school district, except for certain funds for demolition, until the district has complied with the continuing requirement to first offer for sale to start-up community schools within the district any real property the district plans to dispose of.
- Specifically permits the School Facilities Commission to delegate to any of its members, executive director, or other employees the Commission's powers and duties.

### **Classroom facilities assistance programs--background**

State law authorizes several programs administered by the Ohio School Facilities Commission to help school districts construct, repair, or renovate school buildings. The main program is the Classroom Facilities Assistance program (CFAP), which is intended to eventually permit all districts to receive state money to address all of their facilities needs in a single project.<sup>196</sup> It is a graduated, cost-sharing program where a school district's priority for funding and its portion of the cost of its project are based on the relative wealth of the district. Lower-wealth districts are served first and receive a larger percentage of their total needs from the state than wealthier districts will receive when it is their turn to be served.

There are other programs designed to meet the special needs of certain districts. The Exceptional Needs School Facilities Assistance program provides money to certain districts to construct a new facility needed to protect the health

---

<sup>196</sup> *The Classroom Facilities Assistance Program is generally codified in R.C. 3318.01-3318.20 (not all sections in the act).*

and safety of students on the same cost-sharing basis as under CFAP.<sup>197</sup> Under the Accelerated Urban School Building Assistance program, the six remaining "Big-Eight" districts that have not yet received assistance under CFAP may begin applying for assistance.<sup>198</sup> This program essentially permits those districts to begin their projects earlier than they otherwise would be able to under CFAP. Finally, under the School Building Assistance Expedited Local Partnership program, most districts that have not already been served under CFAP may enter into agreements with the School Facilities Commission permitting them to apply the expenditure of school district money on approved parts of their needs prior to their eligibility under CFAP toward their respective portions of their CFAP projects when they finally become eligible for that program.<sup>199</sup>

To participate in these programs, generally, a district board with voter approval must issue bonds backed by a property tax to pay its portion of the cost of the project. It also must levy an additional property tax of one-half mill for 23 years to generate money for maintenance of the new facilities. Recent legislation provides other options that the district may use to generate money to meet its obligations under the programs, including (among others) the use of donated money, credit for certain previously issued bonds to construct facilities, and the dedication of certain existing taxes to leverage new bonds.

In addition to these programs and provisions designed to serve the facilities needs of city, exempted village, and local school districts, in 2003 joint vocational school districts (JVSD) will be eligible for classroom facilities assistance under a new program. Called the Vocational School Facilities Assistance program, it is similar to CFAP but is designed specifically to address the circumstances of JVSDs.<sup>200</sup>

---

<sup>197</sup> R.C. 3318.37.

<sup>198</sup> R.C. 3318.38 (not in the act). The six districts to which this program applies are Akron, Cincinnati, Columbus, Cleveland, Dayton, and Toledo.

<sup>199</sup> R.C. 3318.021, 3318.36, 3318.361, and 3318.362 (none in the act).

<sup>200</sup> See, R.C. 3318.40 to 3318.46, not all sections in the act.

**Termination of three programs administered by the School Facilities Commission**

(Repealed R.C. 3318.35; Section 141)

The act terminates the following programs administered by the School Facilities Commission: the Short-Term Loan program, the Emergency School Repair program, and the Disability Access program. The Disability Access program is terminated effective March 31, 2004. The other programs are terminated immediately upon the effective date of the act.

The Short-Term Loan program allowed the Commission to make loans for up to three years to a school district that needs emergency repairs because of faulty design or construction and which flaws the school district is contesting with the contractor. The Emergency School Repair program, which has not been funded for several years, provided emergency assistance to low-wealth districts to repair life safety systems. The Disability Access program provided funding to lower wealth, non-urban school districts that need assistance improving access to school buildings for individuals with physical disabilities.

**Allocation of classroom facilities project funds**

(R.C. 3318.024)

The act requires the School Facilities Commission, in the first year of a capital biennium, to use only for CFAP any funds that are left over from the previous capital biennium that had been appropriated and allocated for any of the classroom facilities programs operated by the Commission. Presumably, under prior law the Commission could allocate unspent, unencumbered funds to classroom facilities programs other than CFAP. The act also requires the Commission, in the second year of a capital biennium, to use only for CFAP any funds that are appropriated to the Commission for classroom facilities projects that are left over from the previous year to the extent that the funds exceed half of the appropriations for classroom facilities programs during the biennium.

**Authorization for certain large land area districts to participate in the Exceptional Needs program**

(R.C. 3318.37(A)(1))

Under continuing law, the Exceptional Needs School Facilities Assistance program provides assistance to school districts in the 50 lowest-wealth percentiles so that they may construct new facilities that are needed to protect the health and safety of students. To support the program, the School Facilities Commission is

authorized to set aside up to 25% of the appropriations it receives for classroom facilities projects.

The act also permits any school district with a territory larger than 300 square miles (referred to as a "large land area school district") to participate in the program, regardless of the district's wealth ranking.

**Participation in both the Exceptional Needs and the Expedited Local Partnership programs**

(R.C. 3318.37(A)(2) and (3) and (C))

Under prior law, no school district could simultaneously participate in the School Building Assistance Expedited Local Partnership program and the Exceptional Needs School Facilities Assistance program. The act eliminates this restriction for certain specified school districts. Under the act, the Exceptional Needs program is available to Expedited Local Partnership districts that were selected for participation in that latter program prior to the effective date of Am. Sub. S.B. 272 of the 123rd G.A. (September 14, 2000). That act expanded the scope of the Expedited Local Partnership program to include all school districts, instead of only low-wealth school districts. Prior to that date, the School Facilities Commission could serve only five low-wealth school districts each year.<sup>201</sup> The act, therefore, permits those ten districts that were selected in 1999 and 2000 to participate in both programs.

The act also specifies that no district may receive assistance under the Exceptional Needs program for a classroom facility that has been included in the discrete part of the district's needs identified and addressed pursuant to an Expedited Local Partnership agreement.

**Use of existing taxes to generate revenue for classroom facilities projects**

(R.C. 3318.052)

Under continuing law, a school district generally finances its share of a state-funded school facilities project and meets its obligation to raise funds to maintain the buildings by having its voters approve a bond issuance and a property tax levy. As an alternative, a district has the option (without voter approval) to use

---

<sup>201</sup> For purposes of the program, low-wealth school districts were those in the 50 lowest wealth percentiles. The Commission used a lottery to select the ten districts for participation in the Expedited Local Partnership program in 1999 and 2000 from among the districts that applied.

the proceeds of an existing or newly approved permanent improvement levy or school district income tax, or both, to leverage bonds toward all or part of its local share and to generate funds to meet all or part of its obligation to raise funds for building maintenance. Prior law, however, did not guarantee that the taxes earmarked for those purposes could not be revoked or reduced by the district board or by the voters.

The act repeals the prior statute and enacts a new one that authorizes the same dedication of taxes for classroom facilities projects, but adds a new provision requiring the continued collection of the taxes as long as the securities issued to pay the district's local share are outstanding. Under the act, a district board must continue to collect the dedicated tax at a rate that the board reasonably estimates will produce an amount equal to the annual debt charges on the securities. In the case of a dedicated school district income tax, that rate must be "rounded up to the nearest one-fourth of one per cent."<sup>202</sup>

The act's new language also permits school districts to issue notes in anticipation of receiving the proceeds from the dedicated taxes.

**Use of an existing permanent improvement levy for maintenance**

(R.C. 3318.05(C), 3318.06(A)(2)(b), and 3318.08(C)(2)(b))

In 1999, the General Assembly permitted a school district that had in place an existing permanent improvement levy of at least two mills that could be used for maintenance of facilities to dedicate the proceeds of that tax to pay the maintenance obligation of the district under its state-assisted classroom facilities project.<sup>203</sup> The act removes the requirement that the existing levy be for at least two mills.

---

<sup>202</sup> Apparently, this latter provision is intended to correspond to statutory language authorizing school district income taxes, which requires that school district income taxes be levied in quarter per cent increments (see R.C. 5748.04, not in the act).

<sup>203</sup> This provision was enacted in Am. Sub. H.B. 282 of the 123rd General Assembly about one year prior to the enactment of R.C. 3318.052, which permits a broader use of existing taxes to raise both the district portion of the project cost and the required funds for maintenance. See "**Use of existing taxes to generate revenue for classroom facilities projects**" above.

## **Repeal of credit for previous expenditures**

### **Most programs**

(Repealed R.C. 3318.033; conforming changes in R.C. 3318.01, 3318.03(B), 3318.05(A), 3318.06(A)(1), 3318.08(A), and 3318.41)

Prior law required the School Facilities Commission to count toward a district's portion of the cost of its project any bonds issued for classroom facilities within 18 months prior to notification that the district is eligible for state assistance, as long as the facilities supported by the bond issue comply with the Commission's specifications. The act repeals this provision.

### **Expedited Local Partnership program**

(Section 137.22)

In 2000, in Am. Sub. S.B. 272, the 123rd General Assembly expanded the scope of the Expedited Local Partnership program making most school districts eligible to enter into an agreement to spend local resources for future credit in advance of eligibility for state funding. At that time, the General Assembly also permitted districts participating in the program to receive credit for some bond- or tax-supported expenditures made prior to entering into an Expedited agreement with the School Facilities Commission. Specifically, under that prior law, if a school district's voters approved within 18 months of the effective date of that act (Am. Sub. S.B. 272, effective September 14, 2000) a bond issue or tax levy for the construction of or additions or major repair to any classroom facility that complied with the Commission's specifications, the district could apply that expenditure toward its share under the Expedited program.

The act repeals that provision, except for application to certain school districts already participating in the Expedited Local Partnership program. To qualify for credit for those prescribed previous expenditures, a district must meet both of the following conditions by no later than 180 days after the effective date of the repeal (which is 90 days after the effective date of the act):

(1) The district must have entered into an agreement with the Commission to acquire the discrete part of the project under the Expedited program, as identified by the school district board; and

(2) The district's project must have been conditionally approved by the Commission and subsequently approved by the Controlling Board.



**Renovation of existing facilities in lieu of replacement by new construction**

(R.C. 3318.03(C))

The School Facilities Commission has a policy to recommend replacement rather than renovation of a facility if the estimated cost of renovation is 66% or greater of the estimated cost of new construction. However, the Commission has approved renovation costs in excess of that amount, up to 100% of the cost of new construction, in cases of special circumstances. The act specifically permits a school district to renovate rather than replace an existing facility under a state-assisted project, using project funds up to the estimated cost of new construction, as long as:

(1) The school district board has made a determination that the facility has historical value or for other good cause that the facility should be renovated; and

(2) The facility when completed will be "operationally efficient," will meet the future needs of the district, conforms to "sound educational practice" (as required under continuing law) and will have a capacity of at least 350 students (also as required under continuing law).

**Additional assistance to correct oversights or deficiencies**

(R.C. 3318.042)

Generally, once a school district has been served under CFAP, it may not receive additional assistance under the program for 20 years after its original project was begun. Continuing law, however, does permit a district whose project is under construction, and that meets prescribed conditions related to the discovery of oversights or deficiencies in the initial assessment or plan, to receive additional assistance to correct those conditions. If the School Facilities Commission provides the additional assistance, the school district is to pay its portion of the additional cost. The district's portion of this additional cost is the same percentage of that cost as was the district's portion of the original project cost. If after making a financial evaluation of the district, the Commission determines that the district is unable without undue hardship to pay its portion of the increase, the state and the school district must enter into an agreement whereby the state will pay the portion of the cost increase attributable to the school district and the district must thereafter reimburse the state (without interest).

The Commission is responsible for establishing the district's schedule for reimbursing the state, which under prior law could not extend beyond five years. The act lengthens to ten years the maximum period of the reimbursement schedule. In addition, it permits the Commission to lengthen the term of any

existing reimbursement schedule as long as the total term is not longer than ten years.

**Disposal of real property by school districts**

(R.C. 3318.08(U) and (V))

Under continuing law, when a school district decides to dispose of real property that is suitable for classroom space, the district must first offer the property for sale at fair market value to start-up community schools located within the district. If no community school accepts the offer within 60 days, the district may proceed to sell the property at public auction or dispose of it in any other manner permitted by law.<sup>204</sup>

Under the act, if a school district plans to dispose of real property as part of a state-assisted classroom facilities project, the School Facilities Commission cannot release most state funds to the district for the project until the district has complied with the requirement to offer the property for sale to start-up community schools in the district. The act specifically requires that the Commission include in its agreement with the school district a stipulation requiring the district to comply with the right to first refusal provision throughout the project in order for the district to be eligible for continued release of state funds for the project. It also clarifies that the Commission may not approve a contract for demolition of a facility unless (1) the district has complied or (2) the demolition is to clear a site for construction of a replacement facility included in the district's project. Finally, the act requires that the agreement document contain a provision requiring the school district board to notify both the Department of Education and the Ohio Community School Association when the board plans to dispose of a facility by sale.

**Delegation authority of the School Facilities Commission**

(R.C. 3318.30 and 3318.31)

The School Facilities Commission is made up of three voting members--the Director of Budget and Management, the Director of Administrative Services, and the Superintendent of Public Instruction or their respective designees--and four legislative, nonvoting members. The Commission is authorized to appoint an executive director, who in turn may appoint other employees to manage and direct the operations of the Commission's programs. The act specifically permits the

---

<sup>204</sup> R.C. 3313.41(G), not in the act.

Commission "[i]n its discretion . . . [to] delegate to any of its members, executive director, or other employees any of the Commission's powers and duties to carry out its functions."

---

## **OHIO SCHOOLNET COMMISSION**

- Adds two voting members appointed by the Governor to the Ohio SchoolNet Commission.

### **Membership of Ohio SchoolNet Commission**

(R.C. 3301.80)

The Ohio SchoolNet Commission provides financial and technical assistance to school districts and other educational entities in the acquisition and use of educational technology. Under former law, the Commission consisted of seven voting members: the Superintendent of Public Instruction, Director of Budget and Management, Director of Administrative Services, Chairperson of the Public Utilities Commission, and Director of the Ohio Educational Telecommunications Network Commission, or their respective designees; one public member appointed by the Speaker of the House; and one public member appointed by the President of the Senate. Continuing law provides also for four nonvoting legislative members, one each from the majority and minority parties in the House and Senate.

The act adds two voting members to the Commission, bringing the voting membership to nine and the total membership to 13. The two additional members are appointed by the Governor. As with voting members appointed by the Speaker of the House and the President of the Senate, the Governor's appointees serve two-year terms but may be removed at any time. They are also eligible for reappointment and reimbursement for official expenses.

---

## **SECRETARY OF STATE**

- Changes the requirement that a person appointed as a notary public be a citizen of Ohio or be a non-citizen of Ohio who is an attorney admitted to the practice of law in Ohio, to a requirement that the person be a legal resident of Ohio or a nonresident of Ohio who is an attorney admitted to the practice of law in Ohio.



- Increases from \$5 to \$15 the fee that each nonattorney receiving a commission as a notary public must pay to the Secretary of State.
- Increases from \$10 to \$15 the fee that each attorney admitted to the practice of law by the Ohio Supreme Court receiving a commission as a notary public must pay to the Secretary of State.
- Provides that the Secretary of State, not the Governor, is responsible for all duties concerning the commissioning of certain special police officers and raises the application fee for such a commission.
- Changes from the 75th day before the general election to the 60th day before the general election the date by which candidates nominated by the national convention of a political party and candidates selected by an intermediate or minor political party must be certified to the Secretary of State for placement on the presidential ballot.
- Changes from the 60th day before the general election to the 55th day before the general election the date on which the Secretary of State must certify the form of the official presidential ballot to the county boards of elections.
- Increases from 1,000 to 1,400 the maximum number of electors that a board of elections may assign to a precinct after taking into consideration the type and amount of available equipment, prior voter turnout, the size and location of each polling place, available parking, availability of poll workers, and handicapped and other accessibility to each polling place.
- Includes in the list of election supplies that boards of elections must provide to each polling place any materials, postings, or instructions required to comply with state or federal law.
- Requires boards of elections to follow the instructions and advisories of the Secretary of State in the production and use of polling place supplies.
- Permits the Secretary of State, in approving the form of an official ballot, to authorize the use of fonts, type face settings, and ballot formats other than those prescribed by statute.
- Would have prohibited the Secretary of State from issuing instructions requiring a board of elections to be in full compliance with the Help

America Vote Act of 2002 prior to January 1, 2005, or otherwise specifying a date earlier than January 1, 2005 by which a board of elections must be in full compliance with that act (VETOED).

- Would have required the Secretary of State to apply for a waiver of any applicable deadlines for the implementation of the Help America Vote Act of 2002 earlier than January 1, 2005, except that the application could not have precluded a county board of elections from choosing to fully comply with that act prior to that date (VETOED).
- Would have prohibited the Secretary of State from deciding any tie votes or disagreements of a board of elections regarding whether it would fully comply with the Help America Vote Act of 2002 prior to January 1, 2005 (VETOED).
- Specifies that, for the purpose of signing or affixing signatures to petitions or other documents filed under the Election Law, a "signature" generally means a person's written, cursive-style legal mark, written in the person's own hand; but that, for a person who does not use a cursive-style legal mark in the course of the person's regular business and legal affairs, "signature" instead means the person's other legal mark that the person uses during the course of those affairs that is written in the person's own hand.
- Requires the mark of an elector as it appears on the elector's voter registration record to be considered the legal mark of that elector for the purpose of the Election Law.

### **Notary public qualifications and fee increase**

(R.C. 147.01 and 147.37)

Continuing law permits the Secretary of State to appoint as notaries public as many persons who meet the qualifications of notary public as the Secretary of State considers necessary. In order to qualify to be appointed and commissioned as a notary public under former law, a person had to have attained the age of 18 years and to be one of the following: (1) a citizen of Ohio who was not an attorney admitted to the practice of law, (2) a citizen of Ohio who was an attorney admitted to the practice of law by the Ohio Supreme Court, or (3) a non-citizen of Ohio who was an attorney admitted to the practice of law by the Ohio Supreme

Court and had the person's principal place of business or primary practice in this state. Former law also required each person described in item (1) above to pay a fee of \$5, and each person described in items (2) and (3) above to pay a fee of \$10, to the Secretary of State when receiving a notary public commission.

The act changes the qualifications for a person to be appointed and commissioned as a notary public. Instead of requiring a person to be a citizen of Ohio or a non-citizen attorney with the person's principal place of business or primary practice in Ohio, the act requires that the person be a legal resident of Ohio or that a person who is not a legal resident of Ohio be an attorney admitted to the practice of law in Ohio who has the person's principal place of business or primary practice in Ohio. The act also increases to \$15 the fee that each person receiving a commission as a notary public must pay to the Secretary of State; the fee no longer varies depending on whether the person is an attorney admitted to practice in Ohio.

### **Certification of special police**

(R.C. 1541.10 and 4973.17)

Under prior law, the Governor was responsible for issuing, upon the recommendation of the Chief of the Divisions of Parks and Recreation, to each park officer a commission indicating authority to make arrests. Continuing law specifies that each officer who is so commissioned has the authority to make arrests on lands and waters owned, controlled, maintained, or administered by the Department of Natural Resources and on highways adjacent to those lands and waters for violations of laws and rules governing those lands and waters. If that authority is exercised on lands or waters administered by another division of the Department, it may be done so only pursuant to an agreement with the chief of that division or to a request for assistance by an enforcement officer of that division in an emergency.

Further, the Governor, upon the application of any bank, building and loan association, or association of banks or building and loan associations in this state; any company owning or using a railroad in this state; any company under contract with the United States Atomic Energy Commission for the construction or operation of a plant at a site owned by the Commission; or any hospital that is operated by a public hospital agency or a nonprofit hospital agency and that employs and maintains its own proprietary police department or security department, also could appoint and commission persons to act as police officers for and on the premises listed above, when directly in the discharge of their duties. In addition to other application requirements, prior law required a fee of \$5 be paid for each Commission applied for at the time the application was made.

Under the act, the authority to appoint and commission persons to act as police officers in the above mentioned circumstances is transferred from the Governor to the Secretary of State. Further, the act increases the application fee to \$15 for officers commissioned for entities other than the Department of Natural Resources.

### **Election Law changes**

#### **Presidential ballot certification deadlines**

(R.C. 3505.01 and 3505.10)

**First change.** Under continuing law, persons may be nominated or certified as candidates for President or Vice-President of the United States in one of three ways: (1) by nomination at the national convention of a political party to which delegates and alternates were elected in Ohio at the preceding primary election, (2) by nominating petition, or (3) by certification by authorized party officials of an intermediate or minor political party that has held a state or national convention for the purpose of choosing those candidates or that is permitted, without a convention, to certify those candidates in accordance with the procedure authorized by its party rules.

Former law required the nomination or certification to be made for all candidates on or before the 75th day before the day of the general election. The act changes this time period with respect to candidates (1) nominated at the national convention of a political party to which delegates and alternates were elected in Ohio at the preceding primary election or (2) certified by authorized party officials of an intermediate or minor political party that has held a state or national convention for the purpose of choosing those candidates or that is permitted, without a convention, to certify those candidates in accordance with the procedure authorized by its party rules. Under the act, the names of those candidates must be certified to the Secretary of State on or before the 60th day before the day of the general election. Candidates nominated by nominating petition must continue to file nominating petitions on or before the 75th day before the day of the general election. The act specifies that the additional time for candidates nominated by nominating petition is to provide sufficient time to verify the sufficiency and accuracy of signatures on the petition.

**Second change.** Under continuing law, the Secretary of State must certify to the board of elections of each county the forms of the official ballots to be used at the next general election, together with the names of the candidates to be printed on those ballots whose candidacy is to be submitted to the electors of the entire state. In the case of a presidential ballot for a general election, former law required that certification be made on the 60th day before the day of the general

election. The act changes the date on which the Secretary of State must make that certification from the 60th day to the 55th day before the day of the general election.

**Election precinct size**

(R.C. 3501.18)

Under continuing law, a board of elections is permitted to divide a political subdivision within its jurisdiction into precincts and establish, define, divide, rearrange, and combine precincts within its jurisdiction when necessary to maintain the requirements as to the number of voters in a precinct and to provide for the convenience of the voters and the proper conduct of elections. Precincts generally must contain a number of electors that the board determines to be reasonable after taking into consideration the type and amount of available equipment, prior voter turnout, the size and location of each selected polling place, available parking, availability of an adequate number of poll workers, and handicap and other accessibility to each polling place. Under former law, that number could not exceed 1,000 electors, but a board could apply to the Secretary of State for a waiver of this limit when the use of United States Census geographical units would cause a precinct to contain more than 1,000 electors.

The act increases the maximum precinct size from 1,000 to 1,400 electors. Thus, after taking the required factors into consideration, a board of elections may assign up to 1,400 electors to a precinct. If the use of United States Census geographical units will cause a precinct to contain more than 1,400 electors, the board may apply to the Secretary of State for a waiver of the limit.

**Election supplies; ballot approval**

(R.C. 3501.30 and 3505.08)

Under continuing law, boards of elections must provide for each polling place the necessary ballot boxes, official ballots, cards of instructions, registration forms, pollbooks or poll lists, and other supplies necessary for casting and counting the ballots and recording the results of the voting at the polling place. Among the required supplies must be (1) a large map of each appropriate precinct, which must be displayed prominently to assist persons who desire to register or vote on election day, (2) a United States flag, approximately 2.5 feet in length, which must be displayed outside the entrance to the polling place during the time it is open for voting, and (3) two or more small United States flags, which must be placed at a distance of 100 feet from the polling place, to mark the distance within which persons other than election officials, witnesses, challengers, police officers, and electors waiting to mark, marking, or casting their ballots must not loiter,

congregate, or engage in election campaigning. After the time for voting expires, all required supplies must be returned to the board.

In addition to the supplies required under this continuing law, the act requires a board of elections to provide for each polling place any materials, postings, or instructions that are required to comply with state or federal law. And, boards of elections, under the act, must follow the instructions and advisories of the Secretary of State in the production and use of polling place supplies.

Existing law provides detailed instructions for the printing of official ballots. For example, the color of ink, weight of the paper on which ballots are printed, width of attached ballot stubs, font, and type size all are specified for the printing of official ballots. Notwithstanding the detailed specifications, the act permits the Secretary of State, in approving the form of an official ballot, to authorize the use of other fonts, type face settings, and ballot formats.

### **Implementation of the Help America Vote Act of 2002**

(R.C. 3506.20)

Federal law generally requires states that accept certain funds that are made available through the Help America Vote Act of 2002, 116 Stat. 1666, 42 U.S.C. 15301 (hereafter, HAVA), to replace or otherwise upgrade voting machines and other equipment by a specified deadline. Under HAVA, states may apply for a waiver of the applicable deadline.

The Governor vetoed a provision that would have prohibited the Secretary of State from doing either of the following:

(1) Issuing instructions by a rule, directive, or advisory to any county board of elections requiring it to be in full compliance with HAVA by a date earlier than January 1, 2005;

(2) Otherwise specifying a date earlier than January 1, 2005, by which a county board of elections would have to be in full compliance with HAVA.

The vetoed provision also would have required the Secretary of State to apply for a waiver, pursuant to HAVA, of any applicable deadline for its implementation earlier than January 1, 2005. However, the provision would not have precluded a county board of elections from fully complying with HAVA prior to that date if it chose to do so. Finally, under the vetoed provision, the Secretary of State would have been prohibited from deciding, and a county board of elections would have been prohibited from submitting to the Secretary of State, any tie vote or disagreement of the board on whether it would fully comply with HAVA before January 1, 2005.



## Election Law signature requirements

(R.C. 3501.011)

Various continuing provisions of the Election Law require documents filed with a board of elections or with the office of the Secretary of State to be signed by the person filing the document or to contain the signatures of electors. For example, petitions filed under that law must be signed by a specified number of electors, and the circulator of a petition must sign a statement regarding the validity of the signatures contained within the petition. However, that law formerly did not define what constitutes a "signature" for these purposes. Thus, it was unclear whether a person could "sign" a petition or a statement under the Election Law by printing the person's name or using another mark.

The act *generally* specifies that, for the purpose of signing or affixing a signature to a petition and of signing or affixing a signature to any other document filed with or transmitted to a board of elections or the Secretary of State under the Election Law, "sign" or "signature" means the person's written, cursive-style legal mark written in the person's own hand. But, for persons who do not use a cursive-style legal mark during the course of their regular business and legal affairs, "sign" or "signature" means the person's other legal mark that the person uses during the course of that person's regular business and legal affairs that is written in the person's own hand. And, the general rule also does not apply if another provision of the Election Law contains a contrary signature requirement.

Under the act, any voter registration record requiring a person's signature must be signed using the person's legal mark used in the person's regular business and legal affairs. And, for the purpose of the Election Law, the legal mark of a registered elector must be considered to be the mark of that elector as it appears on the elector's voter registration record.

---

## DEPARTMENT OF TAXATION

### I. Sales and Use Tax

- Increases the sales and use tax rate and the vendors' excise tax from 5% to 6% for sales made between July 1, 2003, and June 30, 2005, but reduces the rate back to 5% on and after July 1, 2005.
- Adds tax rate schedules to the existing schedules, specifying the brackets to be applied during the period the tax rate increases to 6%.



- On and after August 1, 2003, makes new types of service transactions subject to the sales tax.
- Makes the storage of tangible personal property subject to the sales tax on and after August 1, 2003.
- Eliminates the sales tax exemption for using or consuming a thing transferred in the process of reclamation, and for motor vehicles used in vanpool arrangements.
- Requires that delivery charges and bundled telecommunication and cable television services be included in "price" for sales tax purposes, and places the burden of proving any nontaxable charges on the vendor.
- Makes sales of property and services to persons who use them to transport persons exempt from the sales tax.
- Provides that sales to a mobile telecommunications vendor or satellite broadcasting service vendor of tangible personal property and service used in transmitting, receiving, or recording electromagnetic communications are exempt from taxation.
- Exempts from taxation the sale of telecommunications service to a provider of mobile telecommunications service for use in providing mobile telecommunications service.
- Exempts from taxation sales of telecommunications service that is used to perform the functions of a call center.
- Exempts sales of certain parts and repair services for aircraft used primarily in a fractional aircraft ownership program from sales and use tax.
- Partially exempts sales of fractional ownership program aircraft from the sales tax, so that the maximum tax on each program aircraft does not exceed \$800.
- Raises the threshold for paying sales and use taxes by electronic funds transfer (EFT) from \$60,000 to \$75,000.
- Requires that direct payment permit holders and vendors that are required to pay sales taxes by EFT, and sellers and consumers that must pay use



taxes in the same manner, pay those taxes on or before three specified dates each month.

- Prohibits the Tax Commissioner from imposing a penalty on a person that makes sales or use tax payments for April, May, and June 2003, but fails to make them on or before the accelerated due dates for each of those months, or when the person did not receive notice from the Commissioner that payments must be made in an accelerated manner.
- Increases the vendor discount for the timely filing of sales tax returns and payment of taxes from .75% to .9%, but reduces the discount to .75% on and after July 1, 2005.
- Requires that the Tax Commissioner recover from counties or transit authorities the amount of refunds paid from current sales tax receipts that did not arise out of a tax or fee levied by the state.
- Extends to direct payment permit holders personal liability under existing law for failure to file a return or pay sales tax due, and creates a similar personal liability provision in the use tax law.
- Revises sales and use tax definitions to conform them to the major tax base definitions in the Streamlined Sales and Use Tax Agreement.
- Consolidates exemptions and exceptions to sales and use taxation into one provision to meet the simplification requirements of the Agreement.
- Revises existing law regarding how local tax rates are levied or changed, to reflect the requirements in the Agreement.
- Eliminates the tax rate schedules, effective July 1, 2006, and changes how rounding should occur when computing the tax owed, to comply with the Agreement.
- Adopts the uniform standards in the Agreement for attributing the source of transactions to taxing jurisdictions for direct mail purchases; sales, leases, and rentals of transportation equipment; lease and rentals of tangible personal property; and sales of telecommunications service, information service, and mobile telecommunications service.
- Establishes how bad debt refunds and allowances should be claimed in accordance with the Agreement.



- Delays until January 1, 2004, the effective date of existing sales tax laws regarding the issuance of direct payment permits to consumers, the timing of local sales tax rate increases or decreases, and the uniform sourcing standards for determining where sales occur.

## **II. Municipal Taxation**

- Provides that appeals from final decisions issued by municipal appellate boards may be taken to the Board of Tax Appeals or a court of common pleas.
- Eliminates the requirement that nonresident employers withholding from employees more than \$150 in municipal income taxes for the calendar year withhold municipal income taxes for the next three consecutive years regardless of the total amount of tax withheld from employees in each of those three years.
- Establishes a withholding tax base for municipal income taxes.
- Prohibits municipalities from requiring a municipal income tax return to be filed on any date other than April 15, the due date for filing the federal income tax return.
- Provides that when a taxpayer has requested an extension to file a federal income tax return, the due date for filing the municipal income tax return is extended to the last day of the month following the month to which the due date of the federal return has been extended.
- Permits taxpayers subject to a municipal tax on net business profit to use the Ohio Business Gateway to file municipal income tax returns and payments.
- Provides that a taxpayer who is subject to a municipal tax on net business profit and who uses the Ohio Business Gateway to notify the Tax Commissioner of an extension to file a federal income tax return automatically receives an extension to file the municipal income tax return to the last day of the month to which the due date of the federal return has been extended.
- Permits employers to use the Ohio Business Gateway to report and remit municipal income taxes withheld from employees' compensation.

- Grants the Tax Commissioner rulemaking authority with respect to the Ohio Business Gateway.
- Creates the Ohio Business Gateway Steering Committee.
- Prohibits municipalities from taxing businesses' net profits using any base other than adjusted federal taxable income, but this restriction does not apply to electric companies, telephone companies, or sole proprietors.
- Authorizes municipalities to exempt from taxation certain compensation attributable to stock options and nonqualified deferred compensation plans.
- Specifies that net profit from rental activity not constituting a business or profession is subject to tax only by the municipal corporation in which the property that generated the profit is located.
- Provides that with respect to net profit from rental activity required to be reported on Internal Revenue Code Schedule E, or with respect to net profit from a sole proprietorship required to be reported on Internal Revenue Code Schedule C or F, municipalities are prohibited from using as the tax base any amount other than the net profit from rental activities or from the sole proprietorship required to be reported by the taxpayer on Schedule E, C, or F for the taxable year.
- Clarifies the types of intangible income that are exempt from municipal taxation.
- Requires municipalities to extend a tax credit to taxpayers for certain losses associated with nonqualified deferred compensation plans.
- Eliminates a business' option of apportioning net profit for purposes of municipal income taxation on the basis of its books and records and requires that taxpayers apportion on the basis of the existing three-part statutory formula.
- Requires that businesses use the original cost of their real and tangible personal property rather than the property's net book value when apportioning net profits among different municipalities.
- Extends a tax credit to S corporation shareholders whose incomes from an S corporation are subject to taxation by multiple municipalities.

### **III. Taxation of Local Exchange Telephone Companies**

- By tax year 2007, reduces to 25% the tax assessment rate for all tangible personal property of a telephone company.
- Removes telephone companies from the public utility excise tax on gross receipts, and requires them to pay the corporation franchise tax, beginning in tax year 2005.
- Transfers, from the public utility excise tax to the corporation franchise tax, the 9-1-1 service tax credit and the tax credit for telephone service programs for the communicatively impaired, and permits telephone companies to apply them against franchise tax liability.
- Creates a nonrefundable tax credit against corporation franchise tax liability for small telephone companies with less than 25,000 access lines.
- Subjects telephone companies to income taxation by municipal corporations, beginning January 1, 2004.
- Subjects sales of telecommunications services by telephone companies to sales or use taxes for all such sales billed on and after January 1, 2004.

### **IV. Other Areas of Taxation**

- Grants a special, nonrefundable tax credit to a call center corporation to offset any additional tax liability that might result from any future legislation expanding the addback for intercompany expenses.
- Revises the definition of "land devoted exclusively to agricultural use," for purposes of determining the current agricultural use value of real property for tax purposes, to include tracts, lots, or parcels of land or portions thereof that are used for soil conservation practices, provided that the land so used comprises 25% or less of the total of the tracts, lots, or parcels of land included as being devoted exclusively to agricultural use, and authorizes the supervisors of a soil and water conservation district to assist the county auditor upon request to determine whether a conservation activity is a soil conservation practice for that purpose.
- Withdraws from the Tax Commissioner and grants to housing officers jurisdiction to hear complaints concerning real property tax exemptions

for property located in community reinvestment areas, and provides additional limitations on the Commissioner's involvement with these property tax exemptions.

- Specifies that the classification of a multiple unit structure or remodeling of a multiple unit structure in a community reinvestment area is to be determined by examining how the legislative authority of the area classified the property in a resolution or ordinance or, in the absence of such a resolution or ordinance, by the classification of the use of the structure under applicable zoning regulations.
- Eliminates the bond requirement in connection with paying cigarette taxes by cigarette dealers in good credit standing and requires cigarette dealers who are not required to file a bond to remit cigarette taxes electronically.
- Prohibits operating certain commercial cars and commercial tractors with a suspended or surrendered motor fuel use permit, and creates a penalty.
- Expands the Tax Commissioner's power to conduct inspections related to enforcement of the motor fuel and motor fuel use tax laws, and permits the Commissioner to authorize employees to conduct inspections at designated inspection sites.
- Allows persons paying motor fuel and motor fuel use taxes to obtain refunds for taxes paid on fuel that contains at least 9% water, when water was intentionally added to it. Refunds must equal the amount of taxes paid on 95% of the water.
- Creates the Motor Fuel Tax Administration Fund to pay the expenses of the Department of Taxation incident to the administration of the motor fuel tax laws, and requires that .275% of motor fuel tax receipts be credited to the Fund, after the Tax Refund Fund and Waterways Safety Fund are credited.
- Deducts a local government share of the "use tax" phase-out on a monthly, rather than annual, basis.
- Modifies the gas tax reimbursement available to school districts by allowing a joint vocational school district or educational service center to



file for reimbursement and allowing reimbursement for any motor fuel used for school district or service center operations.

- Expands the permissible uses for money in county real estate assessment funds.
- Extends the maximum period for which a taxpayer may receive a credit for creating or retaining jobs from ten to 15 years, and provides that if a municipal corporation grants a corresponding job creation or retention credit against its income tax, the maximum term of the credit is to be 15 rather than ten years.
- Authorizes the Director of Development to issue a job retention tax credit certificate to an employer who has retained less than 90% of the full time employment positions required under the agreement between the taxpayer and the Tax Credit Authority as long as the Authority has, by resolution and in the agreement, authorized a lower rate of job retention.
- Defers the income tax liabilities of members of the armed forces serving in Operation Iraqi Freedom.
- Extends the Tax Commissioner's authority to disregard sham transactions--currently limited to corporate franchise tax assessments, income tax assessments, and the up-front collection of sales taxes on certain leases--to every tax administered by the Tax Commissioner.
- Diverts a portion of the state reimbursement for real property tax rollbacks to the Property Tax Administration Fund created by the act, to be applied to the Department of Taxation's costs of administering property taxation.
- Increases the annual reduction in the assessment rate for inventory property from 1% to 2%, beginning in tax year 2005, subject to a "trigger" in the first two years.
- Phases out the state reimbursement to local taxing districts for the \$10,000 exemption for business personal property.
- Temporarily authorizes the Tax Commissioner to abate the collection of past-due taxes that have been charged against certain exempt property because a tax exemption application was not filed.



- Consolidates and revises the laws governing tax treatment of pollution control, energy conversion, industrial noise control, and other similar special-purpose property, to be administered by the Department of Taxation, and changes the application fee for such treatment.
- Creates a general "reasonable cause" basis for property tax penalties to be forgiven, and specifies that real property and manufactured home tax penalties may be forgiven for that reason only by a county board of revision.
- Reposes in the county auditor and treasurer, rather than the Tax Commissioner, the authority to forgive real property and manufactured home tax penalties for reasons other than "reasonable cause."
- Prescribes the method for taxpayers to appeal refusals to forgive such to the Tax Commissioner.
- Eliminates the tangible personal property tax filing requirement for businesses with no more than \$10,000 in taxable property.
- Provides personal property tax replacement payments to taxing districts having a nuclear power plant for losses incurred due to a reduction in the assessed value of electric company tangible personal property between tax years 2000 and 2001.
- Increases the maximum lodging tax that may be levied by counties with populations of one million or more from 3% to 5% with the additional levy authority to be used to finance convention centers, and permits these counties to use the proceeds of existing levies to finance convention centers.
- Authorizes counties with populations of one million or more to extend for a period not to exceed an additional 40 years a tax levied for a port authority educational and cultural facility and to deposit proceeds of that tax no longer needed for their original purpose in the county general fund.
- Authorizes counties with populations of one million or more to levy a 2% food and beverage tax to finance convention centers.



- Authorizes use of or an increase in a county lodging tax to provide revenue for the operating expenses of a port authority that operates a port authority military-use facility.
- Exempts preneed funeral trusts from the temporary tax on trust income even if they are not "qualified" funeral trusts.
- Offsets most of the Ohio business tax effects of enhanced "bonus" depreciation deductions recently enacted by Congress.
- Adopts the business income/nonbusiness income distinction for the purpose of allocating and apportioning a corporation's franchise tax base, and alters how income from intangible property is allocated.
- Increases the minimum corporation franchise tax from \$50 to \$1,000 for corporations with worldwide annual gross receipts of \$5 million or more or employing at least 300 persons worldwide.
- Spells out the conditions under which lottery proceeds are allocable to Ohio under the corporate franchise tax, and clarifies that lottery prize awards and related gain with respect to lotteries sponsored outside Ohio are allocable outside Ohio.
- Allows the Tax Commissioner to withhold income tax refunds from business entities or individuals who owe debts to the state for unpaid workers' compensation premiums or unpaid unemployment compensation contributions or payments in lieu of contributions.
- Expands provisions in the existing Corrupt Activity Forfeiture Law, Felony Drug Abuse Offense Forfeiture Law, and Contraband Forfeiture Law that pertain to distribution of the proceeds of a sale of forfeited property or of forfeited cash to specifically provide for distribution to the Department of Taxation Enforcement Fund (created by the act) when the Department's Enforcement Division substantially conducted the investigation or made the seizure of the property or cash; and in the existing Felony Drug Abuse Offense Forfeiture Law and Contraband Forfeiture Law, provides that if the Department obtains forfeiture of seized property under federal law, all interest and earnings earned regarding the forfeited property must be deposited into the Fund.

## **I. Sales and Use Tax**

### **How state and local sales and use taxes work**

Under continuing law, an excise tax is levied on each retail sale made in Ohio (the sales tax), and on the storage, use, or other consumption in Ohio of tangible personal property or the benefit realized in Ohio of any service provided (the use tax). Local sales or local use taxes also may be levied by counties and transit authorities on each retail sale, subject to certain limitations. If state and local sales taxes are paid on a retail sale, state and local use taxes do not apply, and vice versa. If the retail sale of tangible personal property or services, or the property or service itself, is exempt from state and local sales taxes, the sale is also exempt from state and local use taxes. In any case, local sales or use taxes cannot be levied on a retail sale if the state sales or use tax does not apply to it.

### **State sales and use tax rate temporarily increased**

(R.C. 5739.02(A), 5739.025(A) to (C), 5739.10, and 5741.02(A); Section 158(D))

State sales and use taxes are imposed at the rate of 5% per dollar. (Continuing law specifies the brackets to be applied to fractions of a dollar when sales are not in exact dollar amounts.) The act temporarily increases the state sales and use tax rate from 5% to 6%. The temporary increase applies to sales occurring between July 1, 2003, and June 30, 2005. (The increase also applies to sales occurring on those dates.) The act provides that on and after July 1, 2005, the sales and use tax rates are 5%.

The act adds tax rate schedules specifying the brackets to be applied during the period the tax increases to 6%.

The act also temporarily increases the vendors' excise tax for the privilege of engaging in the business of making retail sales from 5% to 6% on and after July 1, 2003, and on and before June 30, 2005. On and after July 1, 2005, the tax drops back down to 5%.

### **Additional services made subject to sales and use taxation**

(R.C. 165.09, 902.11, 4981.20, 5739.01, 5739.012, 5739.03, 5739.17, and 5741.02)

Continuing law provides that "sale" and "selling" include transactions for a consideration in any manner, whether for a price or rental, in money or by exchange, and by any means whatsoever. The law lists the types of transactions



that are sales subject to sales or use taxes. The act adds to the list certain transactions that involve sales of tangible personal property or services.

Under the act, transactions involving the following services are "sales" that are subject to sales or use taxes:

- On and after August 1, 2003, laundry and dry cleaning services. Under prior law, industrial laundry cleaning services for items used in a trade or business were subject to sales or use taxes. The act expands this to include removing soil or dirt from any item, regardless of whether it is used in a trade or business, and supplying towels, linens, articles of clothing, or other fabric items. This service does not include self-service facilities for use by consumers (R.C. 5739.01(B)(3)(d) and (BB)).
- Telecommunications service that is billed to persons on or after January 1, 2004, by telephone companies (R.C. 5739.01(B)(3)(f) and (AA)). The act expands the existing definition of "telecommunications service" to include related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling.
- On and after August 1, 2003, satellite broadcasting service. Under the act, "satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with provision of the service (R.C. 5739.01(B)(3)(q) and (XX)).
- On and after August 1, 2003, personal care service, meaning skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services, but not the cutting, coloring, or styling of an individual's hair or a service provided by or on the order of a licensed physician or licensed chiropractor (R.C. 5739.01(B)(3)(r)).
- On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft, when the transportation is entirely within Ohio, except for transportation provided by an ambulance service, by a public



transit bus, and transportation provided by a United States citizen holding a certificate of public convenience and necessity as an air carrier under federal law (R.C. 5739.01(B)(3)(s) and 5739.02(B)(11)).

- On and after August 1, 2003, motor vehicle towing service. Under the act, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle. (R.C. 5739.01(B)(3)(t).)
- On and after August 1, 2003, snow removal service. The act defines "snow removal" as the removal of snow by any mechanized means, but does not include provision of that service by a person that has less than \$5,000 in sales of the service during the calendar year. (R.C. 5739.01(B)(3)(u).)

Under the act, on and after August 1, 2003, transactions by which tangible personal property is or is to be stored, except such property that the consumer of the storage holds for sale in the regular course of business, are considered sales subject to sales or use taxes (R.C. 5739.01(B)(8)).

#### **Sales and use tax exemptions eliminated**

(R.C. 5739.01(E)(4) and 5739.02(B)(38))

Prior law exempted from taxation any sale in which the purpose of the consumer was to use or consume the thing transferred in the process of surface mining reclamation. The act eliminates this exemption.

Under prior law, the sale of a motor vehicle that was used exclusively for a vanpool ridesharing arrangement to a person participating in the vanpool was exempt, if the vendor was selling the vehicle pursuant to a contract between the vendor and the Department of Transportation. The act eliminates this exemption.

#### **Determination of "price"--items included in it**

(R.C. 5739.01(H)(1) to (4) and 5741.01(G)(1), (2), and (6))

Continuing law defines "price" for purposes of determining the aggregate value in money of anything paid or delivered in the complete performance of a retail sale, rental, or lease. "Price" is the amount on which sales and use taxes are levied. The act revises the definition for purposes of the Streamlined Sales and Use Tax Administration Agreement (see **"Revision of major tax base definitions and the impact on the tax base,"** below, for an explanation).

The act also provides that, in the case of a transaction in which telecommunications service, mobile telecommunications service, or cable television service is sold in a bundled transaction with other distinct services for a single price that is not itemized, the entire price is subject to state and local sales taxes, unless the vendor can reasonably identify the non-taxable portion from its books and records kept in the regular course of business. Upon the consumer's request, the vendor must disclose the selling price for the taxable services included in the selling price for the taxable and non-taxable services billed on an aggregated basis. The burden of proving any non-taxable charges is on the vendor. (Telecommunication and mobile telecommunications services are defined in continuing law and in the act, but cable television service is not defined.)

**Sales that are not subject to sales or use taxes**

(R.C. 5739.01 and 5739.02)

The act provides that sales and use taxes do not apply to any of the following sales:

- Sales, to a person providing taxable transportation services, of tangible personal property and services used directly and primarily in providing those services (R.C. 5739.01(B)(3)(s) and 5739.02(B)(42)).
- Sales of telecommunications service to a provider of mobile telecommunications service for use in providing mobile telecommunications service (R.C. 5739.01(AA)). The act expands the definition of mobile telecommunications service on and after August 1, 2003, to include related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling (R.C. 5739.01(VV)). (Sales of telecommunications service to a provider of that service for use in providing that service is already exempt from sales and use taxes.)
- Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. The act defines a "call center" as any physical location where telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least 50 individuals that engage in call center activities on a full-time basis, or a sufficient number of individuals to fill 50 full-time equivalent positions (R.C. 5739.01(AA) and 5739.02(B)(46)). (This exemption generally replaces the exemptions eliminated by the act for sales of wide area transmission

(WATS) service, 1-800 service, and private service that entitles the purchaser to exclusive use of channels between exchanges.)

- Sales to a satellite broadcasting service vendor or mobile telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications through the use of any medium (R.C. 5739.02(B)(34)). (Sales to a telecommunications service vendor of these items are already exempt from sales and use taxes.)
- Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services (R.C. 5739.02(B)(45)). The act defines a "fractional aircraft ownership program" as a program in which persons within an affiliated group sell and manage fractional ownership program aircraft, provided that at least 100 airworthy aircraft are operated in the program and the program meets all of the following criteria:
  - (1) Each program aircraft is owned or possessed by at least one fractional owner. "Program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program.
  - (2) Management services are provided by at least one program manager within an affiliated group on behalf of the fractional owners.<sup>205</sup> The act defines "management services" as administrative and aviation support services furnished under a fractional aircraft ownership program in accordance with a management services agreement, and offered by the program manager to the fractional owners, including, at a minimum, establishment and implementation of safety guidelines; coordination of the scheduling of the program aircraft and crews; program aircraft

---

<sup>205</sup> An "affiliated group" is defined in continuing law as two or more persons related in such a way that one person owns or controls the business operations of another member of the group. For corporations, one corporation owns or controls another if it owns more than 50% of the other corporation's common stock with voting rights.

maintenance; program aircraft insurance; crew training for crews employed, furnished, or contracted by the program manager or the fractional owner; satisfaction of record keeping requirements; and development and use of an operations manual and a maintenance manual for the fractional aircraft ownership program.

- (3) Each fractional owner owns or possesses at least a 1/16 interest in at least one fixed-wing program aircraft.
- (4) A dry-lease aircraft interchange arrangement is in effect among all the fractional owners;
- (5) Multi-year program agreements are in effect regarding the fractional ownership, management services, and dry-lease aircraft interchange arrangement aspects of the program (R.C. 5739.01(KKK)).

**Partial exemption for sales of fractional ownership program aircraft**

(R.C. 5739.01(KKK) and 5739.025(G); Section 158(A))

Effective July 1, 2003, the act partially exempts sales of fractional ownership program aircraft from the sales tax by amending the law that contains the sales tax schedules. With respect to a sale of program aircraft used primarily in a fractional aircraft ownership program, including all accessories attached to the aircraft, the state and local sales taxes apply, but the act requires the Tax Commissioner to modify the tax calculations so that the maximum tax on each program aircraft is \$800. In the case of a sale of a fractional interest that is less than 100% of the program aircraft, the tax charged on the transaction is \$800 multiplied by a fraction, the numerator of which is the percentage of ownership or possession in the aircraft being purchased in the transaction, and the denominator of which is 100%. The act requires that the tax paid with respect to the sale of program aircraft be credited to the General Revenue Fund.

**Filing returns and paying taxes by electronic funds transfer; change in dates for accelerated tax payments**

(R.C. 5739.032, 5739.122, and 5741.121)

Under prior law, a direct payment permit holder or a vendor paid sales taxes, and a seller or consumer paid use taxes, by electronic funds transfer (EFT) if the total amount of tax required to be paid by it in a calendar year equaled or exceeded \$60,000. Am. Sub. H.B. 40 of the 125th General Assembly established an accelerated tax payment schedule by requiring that direct payment permit holders and consumers pay on or before the 11th, 18th, and 25th of each month ¼ of their total tax liability for the same month in the preceding calendar year, and

on or before the 23rd of each month, pay taxes due for the previous month minus amounts already paid for that month. H.B. 40 required that vendors and sellers pay taxes the same way as direct payment permit holders and consumers, or they could elect to pay taxes collected during the first seven days of the month on or before the 11th, during the 8th through the 14th day of the month on or before the 18th, and during the 15th through the 21st day of the month on or before the 25th. On or before the 23rd of each month, they paid taxes collected for the previous month minus amounts already paid for that month.

Beginning July 1, 2003, the act raises the EFT trigger to \$75,000, and requires that tax payments be made three times a month, rather than four. Under the act, direct payment permit holders and consumers are required to pay on or before the 15th and 25th days of each month 37.5% of their total tax liability for the same month in the preceding calendar year, and on or before the 23rd day of each month, pay taxes due for the previous month minus amounts already paid for that month. The act requires vendors and sellers to pay taxes collected during the 1st through 11th days of the month on or before the 15th, and during the 12th through the 21st days of the month on or before the 25th, and on or before the 23rd day of each month to pay taxes collected for the previous month minus amounts already paid for that month. Alternatively, the act permits vendors and sellers to elect to pay taxes the same way as direct payment permit holders and consumers do.

### **Accelerated sales and use tax payments**

(Section 174)

The act provides that any person required to make accelerated state and local sales or use tax payments that makes full payment of those taxes for the April 2003 reporting period on or before May 23, 2003, makes full payment of the taxes for the May 2003 reporting period on or before June 23, 2003, and makes all three of the required accelerated tax payments for the June 2003 reporting period on or before June 25, 2003, cannot be charged the additional penalty allowed by continuing law for failure to make the tax payments (of up to 5% of the unpaid amount) for the reporting periods of April 2003, and May 2003.

In addition, under the act, a person required to make accelerated state and local sales or use tax payments that has not been notified by the Department of Taxation of the requirement to make accelerated payments is not subject to that additional charge for any reporting period prior to the receipt of the notice, or until the September 2003 reporting period, whichever is earlier.



**Increased discount for vendors**

(R.C. 5739.12(B))

Under prior law, a vendor that, on or before the due date for a tax return, filed the return and paid the amount of tax shown on it to be due was entitled to a discount of .75% of the amount due. The act increases this discount on and after July 1, 2003, but before July 1, 2005, to .9% of the amount shown on the return to be due. On and after July 1, 2005, the discount drops back down to the prior discount of .75%.

**Sourcing of and licensing for the new services subject to taxation**

(R.C. 5739.033 and 5739.17)

Continuing law provides that a person making retail sales subject to the sales tax must have a license. For selling most of the services and property now subject to taxation under the act, a vendor's license is required. For selling satellite television service and snow removal service, the act requires a person to obtain a service vendor's license.

Continuing law requires that certain standards be followed to determine where a sale occurs (the situs or source) so that taxes are paid to the appropriate local taxing jurisdiction. The situs of the sale of certain services, such as recreation and sports club service, is the vendor's place of business where the service is performed or the contract for the service was made or the purchase order was received. The act adds sales of personal care service, transportation service of persons by motor vehicle or aircraft, motor vehicle towing service, and the storage of tangible personal property to the sales sited in this manner. Continuing law also provides that if a vendor provides certain services, such as landscaping and lawn care service, the situs of the sale of the service is the location of the consumer where the service is performed or received. The act adds satellite television service and snow removal service to sales sited in this manner.

**Recovery of sales tax refund amounts**

(R.C. 5703.052 and 5739.21)

Under continuing law, tax refunds of most taxes are paid out of the Tax Refund Fund.

Under prior law, when a tax refund or tax credit refund was certified to the Treasurer of State, the Treasurer was authorized, but not required, to place the amount certified to the credit of the Tax Refund Fund. The amount certified was transferred from current receipts of the tax from which the refund arose, or in the

case of a tax credit refund, from current receipts of sales and use taxes. However, if a tax refund arose from a tax payable to the General Revenue Fund, and current receipts from that tax were inadequate to transfer the amount certified, the Treasurer was authorized, but not required, to transfer the amount certified from current receipts of the sales tax.

Under the act, the Treasurer of State must place the amount certified to the credit of the Tax Refund Fund, and, if current receipts are inadequate to make the transfer, must transfer the amount from current sales tax receipts. The act further provides that when the Treasurer of State provides for the payment of a refund from current sales tax receipts, and the refund is for a tax or fee that is not levied by the state, the Tax Commissioner must recover the amount of that refund from the next distribution of that tax or fee that otherwise would be made to the local taxing jurisdiction. If the amount to be recovered would exceed 25% of the next distribution, the Commissioner may spread the recovery over more than one future distribution, taking into account the amount to be recovered and the amount of anticipated future distributions. In no event may the Commissioner spread the recovery over a period to exceed 24 months.

Continuing law requires that where a county or transit authority levies a local sales tax, the Commissioner must certify the amount of the proceeds of those taxes that are to be returned to the county or transit authority. The act provides that the amount to be returned to a county or transit authority must be reduced by the amount of any county or transit authority tax refunds paid to vendors or consumers who pay taxes directly to the Treasurer of State or the Commissioner, or refunds made from the Tax Refund Fund.

On a periodic basis, using the best information available, the act requires the Commissioner to distribute any amount of a county or transit authority tax that cannot be distributed under the procedures in continuing law. Through audit or other means, the Commissioner must attempt to obtain the information necessary to make distributions under continuing law and, on receipt of that information, must make adjustments to distributions previously made on a periodic basis.

**Personal liability for failure to file returns or remit taxes**

(R.C. 5739.33 and 5741.25)

Continuing law provides that if any corporation, limited liability company, or business trust that is required to file returns and pay sales taxes fails to do so, its employees or officers who have fiscal responsibility are personally liable for the failure. The act adds holders of direct payment permits to the responsible entities to which this personal liability provision applies.

The act also creates a new personal liability provision in the use tax law. The provision is similar to the one in the sales tax law.

### **Revisions made to comply with the Streamlined Sales and Use Tax Agreement**

#### **Background**

In 2002, Am. Sub. S.B. 143 of the 124th General Assembly enacted the Simplified Sales and Use Tax Administration Act (R.C. Chapter 5740.), a model act recommended by the National Conference of State Legislatures for the development of a voluntary, streamlined system for collection of sales and use taxes from remote sellers. S.B. 143 required Ohio to participate in multi-state discussions to develop the system through a Streamlined Sales and Use Tax Agreement (interstate agreement) recommended by NCSL, which provides states with a structure for simplifying their sales and use collection systems by changing state statutes to establish the system envisioned by the model act. In S.B. 143, Ohio revised some of its state and local sales and use tax laws to reflect simplification and administration requirements contained in the model act that were required for Ohio to become one of the Streamlined Sales and Use Tax Implementing States with power to develop and amend the interstate agreement.

Since that time, Ohio has been participating in the multi-state discussions and, on November 12, 2002, the Implementing States approved the interstate agreement. To come into effect, at least ten states comprising at least 20% of the total population of all states imposing a state sales tax must be found to be in compliance with the interstate agreement's requirements. This means that some states will have to revise their laws to reflect the requirements contained in the current interstate agreement in order to become member states under the agreement, which entitles a state to collect taxes from sellers that have registered with the central electronic registration system established by the member states.

Generally, the interstate agreement focuses on improving collection systems through state-level administration of sales and use tax collections, uniformity in state and local tax bases, uniformity of major tax base definitions, a central, electronic registration system for all member states, simplification of state and local tax rates, uniform sourcing rules for all taxable transactions, simplified administration of exemptions, simplified tax returns, protection of consumer privacy, and simplification of tax remittances.

To reflect the requirements in the interstate agreement, the act revises sales and use tax definitions, sourcing provisions, the tax rate schedules, and the laws regarding how local tax rates are levied or changed. Except as indicated otherwise in each topic heading, the effective date of most of the act's streamlined sales and use tax revisions is July 1, 2003.

### **Major tax base definitions and their impact on the tax base**

The act revises the following definitions to conform them to the major tax base definitions in the interstate agreement:

(1) **"Price."** Generally, the differences between prior law's definition of "price" and the interstate agreement's definition is that the agreement includes in its definition of "price," delivery charges (on and after August 1, 2003), money received as a deposit refundable to a consumer upon return of a beverage container or a carton or case used for returnable containers, and consideration received as a refundable security deposit for the use of tangible personal property (R.C. 5739.01(H)(1)). Thus, sales or use taxes will be levied on these items since the "price" of tangible personal property or a service is the base on which those taxes are levied. Additionally, under the use tax, the act provides that if a consumer produces tangible personal property for sale and removes that property from inventory for the consumer's own use, the price is the produced cost of that tangible personal property (R.C. 5741.01(G)).

(2) **"Lease" or "rental."** The act revises the definition of "lease" by also calling it a "rental," by covering leases or rentals for any fixed or indefinite term (not just those for longer than 30 days), and by expanding the existing definition to include future options to purchase or extend, and qualified motor vehicle operating agreements that contain terminal rental adjustment clauses (described in 26 U.S.C. 7701(h)(1)) covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property (R.C. 5739.01(UU) and 5741.01(O)). The new definition does not apply to leases or rentals that existed before the new definition's effective date. The definition has this meaning regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code (commercial transactions), or other federal, state, or local laws.

Under the act, "lease" or "rental" excludes (1) a transfer of possession or control of tangible personal property under a security agreement or a deferred payment plan that requires the transfer of title upon completion of the required payments, or under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total required payments, and (2) providing tangible personal property along with an operator for a fixed or indefinite period of time, if the operator is necessary for the property to perform as designed. (The operator must do more than maintain, inspect, or set-up the tangible personal property.)

(3) **"Food."** The sales tax does not apply to sales of food for human consumption off the premises where sold, to school students in a cafeteria or



dormitory, or to persons using food stamps (R.C. 5739.02(B)(2) and (3)). The prior definition of "food" specifically named the items that were or were not food. The interstate agreement's definition is broader and defines the term as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Alcoholic beverages, dietary supplements, soft drinks, and tobacco expressly are excluded from the interstate agreement's definition. (The exclusion of alcoholic beverages and soft drinks continues prior law's taxation of those items.) But the definition includes gum, blended fruit juices, bottled water, distilled water, mineral water, ice, and carbonated water, so those items are no longer subject to the sales tax. The act adopts the interstate agreement's definition, effective July 1, 2004. An "alcoholic beverage" is a beverage suitable for human consumption that contains  $\frac{1}{2}$  of 1% or more of alcohol by volume. A "soft drink" is a nonalcoholic beverage that contains natural or artificial sweeteners. (Beverages that contain milk or milk products; soy, rice, or similar milk substitutes; or more than 50% vegetable or fruit juice by volume are not "soft drinks.") "Tobacco" is cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. And a "dietary supplement" is any product, other than tobacco, that is intended to supplement the diet and that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food for use as a sole item of a meal or of the diet; that is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label, as required by federal law; and that contains a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any of these ingredients (R.C. 5739.01(EEE)).

The act adds the following definitions to the sales tax law to comply with the major tax base definitions in the interstate agreement:

(1) ***"Tangible personal property."*** The interstate agreement's definition of "tangible personal property" is personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of the sales and use tax laws, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software (R.C. 5739.01(YY)).

Although defined by the interstate agreement as "tangible personal property," and thus made subject to sales and use taxation, sales of natural gas by a natural gas company, sales of water by a water-works company, and sales of steam by a heating company, all if delivered through pipes or conduits, continue to be

exempt from taxation. Sales of electricity delivered through wires are expressly exempted from sales and use taxation under the act. (R.C. 5739.02(B)(7).)

The act defines "prewritten computer software" as computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement is not prewritten computer software. (R.C. 5739.01(DDD).)

(2) **"Direct mail," "computer," "computer software," and "delivered electronically."** These definitions are used in the act's sourcing standards that are required by the interstate agreement, discussed below under **"Uniform standards for attributing the source of transactions to taxing jurisdictions."**

(3) **"Drug" and "prescription."** Under prior law, sales of drugs dispensed by a licensed pharmacist upon the order of a licensed health professional are exempt from sales and use taxes, along with certain listed medical items, such as epoetin alfa for treatment of end-stage renal disease (R.C. 5739.02(B)(18)). Prior law did not define "drug," nor did it use the term "prescription" in the exemption, but the interstate agreement did. Under the act, the exemption is reworded to exclude from taxation sales of drugs for a human being, dispensed pursuant to a prescription. The act defines a "drug" as a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body (R.C. 5739.01(FFF)). A "prescription" is an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by Ohio law to issue a prescription (R.C. 5739.01(GGG)). These

changes broaden the number of drugs that are exempt from taxation. The act also retains the tax exemption for the listed medical items, but broadens the exemption for sales of epoetin alfa for treatment for "medical" disease, rather than limiting it to end-stage renal disease (R.C. 5739.02(B)(8)).

(4) **"Durable medical equipment," "mobility enhancing equipment," and "prosthetic device."** Prior law exempted from sales and use taxes sales of artificial limbs, braces, crutches, prosthetic devices, wheelchairs, and other similar tangible personal property (R.C. 5739.02(B)(19)). Prior law did not define these items; rather, it listed the items with some description of them in the exemption. The interstate agreement defines "durable medical equipment," "mobility enhancing equipment," and "prosthetic device," so the act revises the exemption to exempt sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

The act adopts the interstate agreement's definitions. "Durable medical equipment" is equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body (R.C. 5739.01(HHH)). "Mobility enhancing equipment" is equipment, including repair and replacement parts for such equipment, that is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either in a home or a motor vehicle, that is not generally used by persons with normal mobility, and that does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer (R.C. 5739.01(III)). A "prosthetic device" is a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the human body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body, but does not include corrective eyeglasses, contact lenses, or dental prosthesis (R.C. 5739.01(JJJ)).

#### **Collection of sales and use taxes on leases and rentals**

(R.C. 5739.02(A)(2) and (3) and 5741.02(A)(2) and (3))

Under the prior definition of "price," the sales tax was collected for the lease of a motor vehicle that did not carry a load of more than one ton, a watercraft, an outboard motor, or an aircraft, and for the lease of tangible personal property to be used in business. The definition also specified how the tax should be calculated on such a lease (R.C. 5739.01(H)(4), 5739.02(A)(2), and 5741.02(A)). The act moves this provision into the statutes that levy the sales and

use taxes, and provides that, in the case of the lease or rental of those types of property, with a fixed or indefinite term of more than 30 days, the sales or use tax must be collected by the vendor or seller at the time the lease or rental is consummated and calculated by the vendor or seller on the basis of the total amount to be paid by the lessee or renter under the lease or rental agreement. If the total amount of the consideration for the lease or rental includes amounts that are not calculated at the time the lease or rental is executed, the tax must be calculated and collected by the vendor or seller at the time such amounts are billed to the lessee or renter.

For an open-end lease or rental, the sales or use tax must be calculated by the vendor or seller on the basis of the total amount to be paid during the initial fixed term of the lease or rental, and for each subsequent renewal period as it comes due.

If the price consists in whole or part of the lease or rental of tangible personal property, other than the property just discussed, continuing law requires that sale or use taxes be measured by the installments of that lease or rental.

#### **Simplification of administering exemptions**

(R.C. 5739.01(E) and 5739.02(B)(43))

By virtue of being amended many times throughout the years, Ohio's sales and use tax laws had exceptions and exemptions to taxation spread out in various provisions. The act consolidates many of those exceptions and exemptions into the tax levy and exemption statute, R.C. 5739.02, to simplify administering exemptions, as required by the interstate agreement. In particular, the act moves the retail sales exceptions to the list of sales and use tax exemptions. The only exception the act eliminates is the exception for "things transferred" for reclamation (see "Exemptions eliminated," above).

#### **Restrictions on frequency of changes in local tax rates**

(R.C. 5739.021, 5739.022, 5739.023, and 5739.026; Sections 134.14 to 136, 158(B), and 183(C))

The interstate agreement requires member states to restrict the frequency of local sales and use tax rate changes to lessen the difficulties faced by sellers when there is a change in a tax rate or base. S.B. 143 revised the local sales and use tax laws to require that a resolution that levies or changes local sales and use taxes becomes effective on the first day of a calendar quarter following the expiration of 60 days from the date of its adoption. If a vendor that is registered with the central electronic registration system makes a sale in Ohio by printed catalog, and the



consumer computed the tax on the sale based on local rates published in the catalog, S.B. 143 required that the tax levied or rate changed could not apply until the first day of a calendar quarter following the expiration of 120 days from the date of notice by the Tax Commissioner to the vendor, or to the vendor's certified service provider, if the vendor had selected one. These changes were to have taken effect July 1, 2003.

The act delays the effective date of these local tax rate provisions until January 1, 2004. The act provides that a resolution that levies or changes local sales and use taxes becomes effective on the first day of a calendar quarter following the expiration of 65, rather than 60, days from the date of its adoption. The act provides that the Tax Commissioner, upon receipt from a board of county commissioners or board of elections of a certified copy of a resolution or notice of the results of an election, must give notice of a tax rate change in a manner that is reasonably accessible to all affected vendors, at least 60 days prior to the effective date of the rate change. The act also applies the catalog notice provision to the law regarding the repeal or increase of local permissive sales taxes adopted as an emergency measure.

### **Tax rate schedules**

(R.C. 5739.025(E), 5739.10, 5741.021, 5741.022, and 5741.023; Sections 158(D) and 183(D) and (E))

The interstate agreement requires that a uniform method of calculating and rounding the amount of taxes owed be used to simplify state and local tax rates. Under law that continues until 2006, a vendor or seller calculates and collects sales and use taxes based on schedules set forth in the sales tax law. In lieu of collecting the tax pursuant to the schedules, a vendor or seller may compute the tax so that, on sales of 15¢ or less, no tax applies, and on sales in excess of 15¢, the price is multiplied by the aggregate rate of state and local sales or use taxes in effect. The computation must be carried out to six decimal places, and then increased to the next highest cent.

Effective January 1, 2006, the act eliminates the schedules and the exemption on sales of 15¢ or less, and requires vendors to compute the tax on each sale by multiplying the price by the aggregate rate of taxes in effect. The computation must be carried out to three decimal places, and if the tax owed is a fractional amount of a cent, the tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. A vendor may elect to compute the tax due on a transaction on an item or an invoice basis.



**Uniform standards for attributing the source of transactions to taxing jurisdictions**

**Sourcing standards for most transactions.** Under the interstate agreement, member states must have uniform standards for attributing the source of transactions to taxing jurisdictions. These standards are used to determine where a sale occurred (sometimes termed the "situs" or the "source"). Under S.B. 143, Ohio's general sourcing law that applies to most transactions was revised to conform with the agreement's uniform sourcing proposal, and was to have taken effect July 1, 2003. The act delays the effective date of that law until January 1, 2004 (Sections 3.16 to 3.18 and 134.14 to 136).

The act makes further changes to that law, once it takes effect in 2004, to comply with the interstate agreement (Section 3.16). The act provides that the general sourcing law applies only to a vendor's or seller's obligation to collect and remit state and local sales or use taxes, and does not affect the obligation of a consumer to remit use taxes on the storage, use, or other consumption of tangible personal property or on the benefit realized of any service provided to the jurisdiction of that storage, use, or consumption, or benefit realized.

The act revises the part of the general sourcing law that requires consumers to file with vendors multiple points of use exemption forms when consumers purchase tangible personal property or a service for use in business, and the property or service is available for use in more than one taxing jurisdiction. The act applies the law to "computer software delivered electronically" or a service for use in business, rather than to tangible personal property. Under the act, a "computer" is an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions; "computer software" is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task; and "delivered electronically" means delivery of computer software from the seller to the purchaser by means other than tangible storage media (R.C. 5739.01(AAA) to (CCC)).

**Sourcing standards for direct mail purchases.** The act also establishes in the general sourcing law a new sourcing requirement for a purchaser of "direct mail" that is not a holder of a direct payment permit (Section 3.16). The act requires that type of purchaser to provide to the vendor in conjunction with the purchase either a direct mail form prescribed by the Tax Commissioner, or information to show the jurisdictions to which the direct mail is delivered to recipients. The act defines "direct mail" as printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the consumer or at the direction of the consumer when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by

the consumer to the direct mail vendor for inclusion in the package containing the printed material, but excludes multiple items of printed material delivered to a single address (R.C. 5739.01(ZZ)).

Upon receipt of a direct mail form, the vendor is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay that tax on a direct pay basis. A direct mail form remains in effect for all future sales of direct mail by the vendor to the purchaser until it is revoked in writing.

Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the vendor is required to collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the vendor is relieved of any further obligation to collect tax on any transaction where the vendor has collected tax pursuant to the delivery information provided by the purchaser.

If the purchaser of direct mail does not have a direct payment permit and does not provide the vendor with either a direct mail form or delivery information, the vendor must collect the tax under an existing sourcing provision that requires that the sale be sourced to the address from which tangible personal property was shipped, or from which the service was provided, disregarding any location that merely provided an electronic transfer of the property sold or service provided. This provision does not limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

If a purchaser of direct mail provides the vendor with documentation of direct payment authority, the purchaser cannot be required to provide a direct mail form or delivery information to the vendor.

**Sourcing standards for sales, leases, and rentals of transportation equipment.** Under the act, a sale, lease, or rental of transportation equipment must be sourced under the continuing general sourcing law. For purposes of sourcing (and the interstate agreement), the act defines "transportation equipment" as locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce; trucks and truck-tractors with a gross vehicle weight rating of greater than 10,000 pounds, trailers, semi-trailers, or passenger buses that are registered through the International Registration Plan and are operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce; or aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate or foreign commerce. Containers designed for use on and component

parts attached to or secured on these items are also "transportation equipment" (Section 3.16).

**Sourcing standards for leases and rentals of tangible personal property without recurring payments.** The act provides that a lease or rental of tangible personal property that does not require recurring periodic payments must be sourced under the continuing general sourcing law (Section 3.16).

**Sourcing standards for leases or rentals of tangible personal property with periodic payments.** The act establishes a sourcing provision for the lease or rental of tangible personal property that requires recurring periodic payments (Section 3.16). The act provides that recurring periodic payments must be sourced as follows:

- In the case of a motor vehicle, other than a motor vehicle that is transportation equipment, the lease or rental must be sourced to the primary property location, determined as follows:<sup>206</sup>

(1) For a lease or rental for which the tax is collected by the vendor at the time the lease or rental is consummated and is calculated on the basis of the total amount to be paid by the lessee or renter under the agreement, the primary property location is the address of the lessee or renter used for titling the motor vehicle under the law regarding applications for certificates of title at the time the lease or rental is consummated.

(2) For a lease or rental for which the tax is measured by the installments of the lease or rental, the primary property location for each lease or rental installment is the primary property location for the period covered by the installment.

- In the case of an aircraft, other than an aircraft that is transportation equipment, the lease or rental must be sourced to the primary property location as follows:

(1) For a lease or rental for which the tax is collected by the vendor at the time the lease or rental is consummated and is calculated on the basis of the total amount to be paid by the lessee or renter under the agreement, the primary

---

<sup>206</sup> *The act defines the "primary property location" as an address for tangible personal property provided by the lessee or renter that is available to the lessor or owner from its records maintained in the ordinary course of business, when use of that address does not constitute bad faith.*

property location is the primary property location at the time the lease or rental is consummated.

(2) For a lease or rental for which the tax is measured by the installments of the lease or rental, the primary property location for each lease or rental installment is the primary property location for the period covered by the installment.

- In the case of a watercraft or an outboard motor required to be titled in Ohio under the watercraft certificate of title law, the lease or rental must be sourced to the primary property location as follows:

(1) For a lease or rental for which the tax is collected by the vendor at the time the lease or rental is consummated and is calculated on the basis of the total amount to be paid by the lessee or renter under the agreement, the primary property location is the address of the lessee or renter shown on the title.

(2) For a lease or rental for which the tax is measured by the installments of the lease or rental, the primary property location for the initial lease or rental installment is the address of the lessee or renter shown on the title. For each subsequent installment, the primary property location is the primary property location for the period covered by the installment.

- In the case of a lease or rental of all other tangible personal property, other than transportation equipment, the lease or rental must be sourced as follows:

(1) For a lease or rental for which the tax is collected by the vendor at the time the lease or rental is consummated and is calculated on the basis of the total amount to be paid by the lessee or renter under the agreement, the lease or rental must be sourced under the existing general sourcing provision at the time the lease or rental is consummated.

(2) For a lease or rental for which the tax is measured by the installments of the lease or rental, the initial lease or rental installment must be sourced under the existing general sourcing provision. Each subsequent installment must be sourced to the primary property location for the period covered by the installment.

**Sourcing telecommunications sales.** S.B. 143 enacted a law for determining the source of sales of mobile telecommunications service, which took effect August 1, 2002. Since that time, the interstate agreement established a sourcing standard for sales of various types of telecommunications. The act repeals the existing mobile telecommunications sourcing law and adopts the interstate agreement's sourcing standard, effective July 1, 2003 (R.C. 5739.034).

Under the act, the amount of state and local sales taxes due on sales of telecommunications service, information service, or mobile telecommunications service is the sum of those taxes imposed at the sourcing location of the consummation of the sale, determined as follows:

(1) Except for the telecommunications services described in (3), below, the sale of telecommunications service sold on a call-by-call basis must be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or each level of taxing jurisdiction where the call either originates or terminates and in which the service address also is located. Under the act, "call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls. "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid, or if that location is not known, the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If neither location is known, "service address" means the location of the customer's place of primary use.

(2) Except for the telecommunications services described in (3), below, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use. "Customer" means the person or entity that contracts with a seller of telecommunications service, but excludes a reseller of telecommunications or mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area. If the end user (person who utilizes the service) of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Place of primary use" means the residential street address or primary business street address where the customer's use of the telecommunications service primarily occurs. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider (generally, the facilities-based carrier or reseller with which the customer contracts for service).

(3) The sale of the following telecommunications services must be sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications service, other than air-to-ground radiotelephone service (common carriers provide this service for hire to subscribers in aircraft) and prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications



Sourcing Act. Under continuing law, "mobile telecommunications service" is commercial mobile radio service--generally, a mobile service that is provided for profit, is interconnected with the public switched network, and is available to the public.

(b) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by the service provider's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service, and includes a telecommunications service that would be a prepaid calling service, but for the fact that it is not exclusively a telecommunications service.

(c) A sale of prepaid calling service made prior to January 1, 2004, is sourced in accordance with the existing general sourcing law. On or after January 1, 2004, a sale of mobile telecommunications service that is a prepaid telecommunications service must be sourced to the consumer's shipping address or, if no item has been shipped, to the consumer's billing address--but in lieu of sourcing sale of the service in that manner, the service may be sourced to the location associated with the mobile telephone number (R.C. 5739.033 and Section 3.16). "Prepaid calling service" means the right to access exclusively a telecommunications service that must be paid for in advance, that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

### **Bad debt**

(R.C. 5739.121)

Under the concepts of simplified tax returns and simplification of tax remittances, the interstate agreement addresses how bad debt refunds should be obtained. The act follows this concept. Continuing law provides that a vendor may deduct from its taxable receipts the amount of bad debt it has incurred. Generally, bad debt is any debt that has become worthless or uncollectible for at least six months and that may be claimed as a federal tax deduction, but does not include, among other items, any accounts receivable that have been sold to a third party for collection. Under the act, bad debt includes accounts receivable that have been sold to a third party for collection.

The act also provides that in any reporting period in which the amount of bad debt exceeds the amount of taxable sales for the period, the vendor may file a refund claim for any tax collected on the bad debt in excess of the tax reported on the return. The refund claim must be filed in accordance with the procedure in continuing law, except that the claim may be filed within four years of the due date of the return on which the bad debt first could have been claimed.

When a vendor's filing responsibilities have been assumed by a certified service provider, the certified service provider must claim the bad debt allowance on behalf of the vendor. The certified service provider must credit or refund to the vendor the full amount of any bad debt allowance or refund.

The act provides that no person, other than the vendor in the transaction that generated the bad debt or a certified service provider may claim the bad debt allowance.

### **Delay of certain sales and use tax provisions**

(Sections 134.07 to 134.09, 134.14 to 134.16, and 136)

The act delays until January 1, 2004, the effective date of the sales tax law in S.B. 143 and other acts, regarding the issuance of direct payment permits to consumers so that they can pay sales taxes directly to the state (R.C. 5739.031).

## **II. Municipal Taxation**

### **Appeals from municipal tax administrators' decisions**

(R.C. 718.11, 5717.011, 5717.03, and 5717.04 (not in the act))

Under continuing law, a taxpayer may appeal a decision issued by a municipal tax administrator to an appellate board created by the legislative authority of the municipality.<sup>207</sup> The act provides that a taxpayer or a tax administrator can take an appeal from a municipal appellate board to the Board of

---

<sup>207</sup> *The act defines "tax administrator" as being the individual who is charged with direct responsibility for administration of a municipality's income tax, including the central collection agency and the regional income tax agency and their successors in interest; another entity organized to perform functions similar to those performed by the central collection agency and the regional income tax agency; a municipality acting as the agent of another municipality; and a person retained by a municipality to administer the municipality's income tax, but only if the person is not compensated in whole or in part on a contingency basis.*

Tax Appeals or court of common pleas by filing a notice of appeal with the Board of Tax Appeals or court of common pleas (whichever the case may be), the municipal appellate board, and the opposing party (either the taxpayer or the tax administrator) within 60 days after the municipal appellate board gives the appealing party written notification of its decision. The taxpayer may file the notice of appeal in person or by certified mail, express mail, or delivery service. If notice of appeal is filed by mail or by delivery service, the date of the postmark on the sender's mailing receipt or the date of receipt recorded by the delivery service is considered the date of filing. The act requires that the notice of appeal have attached to it a true copy of the municipal appellate board's decision, that the decision be incorporated by reference into the notice, and that the taxpayer specify the alleged errors in the decision. Failure to attach a copy of the decision or to incorporate it by reference does not invalidate an appeal, however. The act provides that, upon the filing of the notice of appeal with the Board of Tax Appeals, the municipal appellate board must certify to the Board of Tax Appeals a transcript of the proceedings before it and all of the evidence considered by it.

The act authorizes the Board of Tax Appeals to hear the appeal at its Columbus office or in the county in which the appellant resides. Alternatively, the Board may have its examiners conduct hearings and report to it their findings for affirmation or rejection. While the Board may order the appeal to be heard upon the record and the evidence certified to it by the municipal appellate board, the Board must hear additional evidence when requested to do so by any interested party. The Board may make any investigation concerning the appeal that it considers appropriate. If an issue being appealed is addressed in the municipality's ordinances or regulations, the tax administrator, upon the Board's request, must provide a copy of the ordinance or regulation to the Board.

The Board of Tax Appeals must send its order and the date of entry of its order upon its journal to every person who was a party to the appeal. The parties may appeal the Board's decision to the Ohio Supreme Court or to the court of appeals for the county in which the municipality in which the dispute arose is primarily situated.

### **Municipal income tax withholding requirements**

#### **Automatic three-year withholding requirement eliminated**

(R.C. 718.03 (repealed))

Under prior law, a municipality could not require an employer that was not situated in the municipality to withhold municipal income taxes from an employee unless the total amount of tax required to be deducted and withheld for the municipality on account of all of the employer's employees exceeded \$150 for the



calendar year. If the total amount withheld by an employer exceeded \$150 for the year, the municipality could require the employer to deduct and withhold taxes in each of the following three years even if the total amount deducted and withheld in each of those three years did not exceed \$150. The act eliminates the three-year withholding requirement.

**Withholding tax base established**

(R.C. 718.01 and 718.03)

Under prior law, each municipality could define the tax base for employers to use when withholding municipal income taxes from their employees' compensation. For taxable years beginning after 2003, the act prohibits municipalities from requiring any employer to withhold tax from any compensation other than qualifying wages.<sup>208</sup> The act defines "qualifying wages" as wages, as defined under the Internal Revenue Code, with the following adjustments:<sup>209</sup>

(1) Deduction of any amount included in wages that is compensation attributable to a cafeteria plan described in section 125 of the Internal Revenue Code. (A "cafeteria plan" is a written benefit plan that an employer maintains under which all participants are employees and each participant has the opportunity to select particular benefits.)

(2) Addition of any amount not included in wages solely because the employee was employed by the employer prior to April 1, 1986.

(3) Addition of any amount not included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a

---

<sup>208</sup> *The act defines "taxable year" as the corresponding tax reporting period as prescribed for a taxpayer under the Internal Revenue Code. A "taxpayer" is any person who is subject to a tax levied by a municipal corporation. "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.*

<sup>209</sup> *The Internal Revenue Code defines "wages" as all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash. The Internal Revenue Code sets forth an extensive list of payments that are excluded from the definition of wages. Among the payments excluded are payments made on account of sickness or accident disability, tips paid in a medium other than cash, and payments required for an employee under a state unemployment compensation plan (26 U.S.C. 3121(a)).*

stock option, or the sale, exchange, or other disposition of stock purchased under a stock option, and the municipality has not, by resolution or ordinance, exempted the amount from withholding and taxation (see "**Municipal corporations authorized to exempt certain income**," below).

(4) Addition of any amount not included in wages if the amount is a cash or deferred arrangement described in section 401(k) of the Internal Revenue Code or a deferred compensation plan of the state government, a local government, or a tax-exempt organization described in section 457 of the Internal Revenue Code. (The act specifies that this addition is required only for employee contributions and employee deferrals.)

(5) Addition of any amount that constitutes supplemental unemployment compensation not included in wages.

(6) Deduction of any amount attributable to a nonqualified deferred compensation plan or program if the compensation is included in wages and the municipality has, by resolution or ordinance, exempted that amount from taxation (see "**Municipal corporations authorized to exempt certain income**," below).<sup>210</sup>

(7) Deduction of any amount included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of a stock purchased under a stock option, and the municipality has, by resolution or ordinance, exempted the amount from withholding and taxation.

Under the act, an employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation for which the stock option was issued. The act also provides that compensation deferred before the act's immediate effective date is not subject to municipal income a municipal income tax withholding requirements to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed to the employee.

---

<sup>210</sup> A "nonqualified deferred compensation plan" is a retirement plan or other type of deferred compensation plan that does not meet the requirements imposed on qualified deferred compensation plans by the Internal Revenue Code. One of the principal advantages of a nonqualified plan is that it can be offered to a few, select employees. Generally, nonqualified plans defer an employee's recognition of income, which means that the employee is not taxed on the compensation deferred until the employee receives it. These plans also defer the date on which an employer may claim a deduction for the compensation.

The act provides, further, that an employer's failure to withhold taxes from qualifying wages or an employer's exemption from withholding requirements does not relieve the employee from liability for the tax. However, if an employer fails to remit withheld taxes, the employee is relieved from responsibility for the taxes withheld, provided that the failure to remit did not result from collusion on the part of the employer and employee.

**Erroneous payment of tax or withholding**

(R.C. 718.121)

The act provides that if tax or withholding is paid to a municipality and the time period for seeking a refund of the amounts paid lapses, a second municipality imposing a tax on that income or wages must allow a nonrefundable credit for the amounts paid to the first municipal corporation. If the tax rate in the second municipality is less than the tax rate in the first municipality, the credit is calculated on the basis of the second municipality's tax rate. The credit cannot be carried forward.

**Municipal income tax filing deadlines**

**Uniform deadline for filing municipal income tax returns**

(R.C. 718.05)

While prior law prohibited municipalities from establishing municipal income tax return filing deadlines that were earlier than the deadline required for filing the federal income tax return, prior law did not prohibit municipalities from establishing a later deadline. As a result, filing deadlines could vary from municipality to municipality.

The act establishes April 15, the date for filing the federal return, as a uniform deadline for the filing of municipal income tax returns. The act prohibits municipalities from establishing any other filing deadline for taxable years beginning after 2003.

**Uniform extension periods**

(R.C. 718.05)

Continuing law provides that any taxpayer who has requested an extension for filing a federal income tax return may request an extension for filing a municipal income tax return by filing a copy of the request for federal extension with the administrator of the municipal income tax. Under prior law, a municipality had to grant the extension for a period that is at least as long as the

federal extension. Prior law did not prohibit a municipality from extending the deadline for the municipal income tax return beyond the deadline for filing the federal return. The length of the extension granted by municipalities could therefore vary from municipality to municipality.

The act establishes a uniform extension period for the filing of municipal income tax returns for taxable years beginning after 2003. Under the act, the extended due date of any municipal income tax return is the last day of the month following the month to which the due date for the federal income tax return has been extended.

### **Ohio Business Gateway**

(R.C. 125.30 (not in the act) and 718.051)

The act establishes special filing requirements for taxpayers that file municipal income tax returns or requests for extension using the Ohio Business Gateway. The Ohio Business Gateway is an online computer network system that was initially created by the Department of Administrative Services under a statutory mandate to create an online computer network system that allows private businesses to electronically file business reply forms with state agencies.

The act provides that, for taxable years beginning on or after January 1, 2005, a taxpayer subject to a municipal tax on business net profit may file a municipal income tax return or estimated income tax return and pay any taxes due by using the Ohio Business Gateway or any electronic filing and payment system that the state may later develop. Similarly, beginning January 1, 2005, a taxpayer who is subject to a municipal tax on business net profit and who has received an extension to file a federal income tax return may use the Ohio Business Gateway or any successor electronic system to notify the Tax Commissioner of the federal extension. If a taxpayer notifies the Commissioner of the federal extension through the Ohio Business Gateway on or before the date for filing the municipal income tax return, then the taxpayer is not required to provide any notification to the municipal corporation. Under the act, the taxpayer's municipal income tax return would then be due on the last day of the month to which the due date for filing the federal income tax return has been extended. The act provides that an extension of time to file is not an extension of time in which to pay any tax due. Use of the Ohio Business Gateway does not affect due dates for employer tax withholding returns.

Finally, the act permits employers to use the Ohio Business Gateway or any successor electronic system to report and remit the amount of municipal income tax withheld from qualifying wages paid on or after January 1, 2007. (For a definition of "qualifying wages" see "Withholding tax base established," above.)

**Municipal corporations not responsible for operation and maintenance of the Ohio Business Gateway**

(R.C. 718.051)

The act provides that municipal corporations are not required to pay any fees or charges for the operation or maintenance of the Ohio Business Gateway. In addition, the act provides that the use of the Ohio Business Gateway by municipalities or taxpayers in no way affects their legal rights. Similarly, the act specifies that use of the Ohio Business Gateway does not by itself make the state a party to the administration of municipal income taxes or to an appeal of a municipal income tax matter (see "**Appeals from tax administrators' decisions**," above) and does not limit or remove a municipality's ability to administer, audit, and enforce its income tax.

**Tax Commissioner granted rulemaking authority with respect to the Ohio Business Gateway**

(R.C. 718.051(H))

The act grants the Tax Commissioner limited rulemaking authority with respect to the Ohio Business Gateway (for a definition of "Ohio Business Gateway," see "**Ohio Business Gateway**," above). Specifically, the act specifies that the Commissioner is to adopt rules establishing the format of documents to be used by taxpayers to file returns and make payments through the Ohio Business Gateway and specifying the information taxpayers are to submit with filing municipal income tax returns through the Ohio Business Gateway (see "**Ohio Business Gateway**," above). The act requires that the Commissioner consult with the Ohio Business Gateway Steering Committee before adopting these rules (see "**Ohio Business Gateway Steering Committee created**," below).

**Ohio Business Gateway Steering Committee created**

(R.C. 5703.57; Section 157)

The act creates the Ohio Business Gateway Steering Committee and charges it with the responsibility of directing the continuing development of the Ohio Business Gateway and overseeing its operations (for a definition of "Ohio Business Gateway," see "**Ohio Business Gateway**," above). The act requires that the Committee consider all banking, technological, administrative, and other issues associated with the Ohio Business Gateway and make recommendations to the Department of Administrative Services about enhancements that will improve the system and recommendations regarding the type of reporting forms and other

tax documents that are to be filed through the system. The act makes the Committee part of the Department of Taxation for administrative purposes.

The act establishes the membership of the Committee. Specifically, the act specifies that the Committee consists of the following individuals appointed by the Governor with the advice and consent of the Senate:<sup>211</sup>

- (1) Not more than two representatives of the business community;
- (2) Not more than three representatives of municipal tax administrators;
- (3) Not more than two tax practitioners.

In addition, the Committee consists of the following state officials:

(1) The director or other highest officer of each state agency that has tax reporting forms or other tax documents filed with it through the Ohio Business Gateway or that person's designee;

(2) The Secretary of State or the Secretary of State's designee;

(3) The Treasurer of State or the Treasurer of State's designee;

(4) The Director of Budget and Management or the Director's designee;  
and

(5) The Director of Administrative Services or the Director's designee;

(6) The Tax Commissioner or the Commissioner's designee.

A member who is appointed to the Committee is to serve until the member resigns or is removed by the Governor. The act provides that vacancies on the Committee are to be filled in the same manner as the original appointment. Under the act, a vacancy on the Committee does not impair the right of the other members to exercise all of the functions of the Committee.

The presence of a majority of the members of the Committee constitutes a quorum. The concurrence of at least a majority of the members of the Committee is necessary for any action to be taken by the Committee. The act provides that members of the Committee are to be reimbursed on request for actual and necessary expenses incurred by them in the discharge of their Committee duties.

---

<sup>211</sup> *The Governor is to make initial appointments to the Ohio Business Gateway Steering Committee within 30 days after the act's immediate effective date.*

The act requires that, each year, the Governor select a member of the Committee to serve as its chairperson. The Chairperson must appoint an official or employee of the Department of Taxation to act as the Committee's secretary. The secretary is required to keep minutes of the Committee's meetings and to maintain a journal of all of the Committee's meetings, proceedings, findings, and determinations. The Committee is to hire necessary professional, technical, and clerical staff. The Committee is to meet as often as necessary to perform its duties.

### **Municipal taxation of business net profit**

#### **Uniform tax base established**

(R.C. 718.01(A)(1) and (D)(2) and 5745.01)

A business is subject to a municipality's tax on its net profit to the extent the profit is attributable to business conducted in the municipality. The act establishes a uniform tax base for purposes of municipal taxation of net profits. Under the act, the net profit subject to municipal taxation is the taxpayer's adjusted federal taxable income, which the act defines as a C corporation's federal taxable income before net operating losses and special deductions, adjusted as follows:

(1) Deduction of intangible income to the extent the taxpayer includes it in federal taxable income. The deduction is allowed regardless of whether the intangible income relates to assets used in a trade or business or held for the production of income.

(2) Addition of 5% of the intangible income deducted under (1) above but not that portion of intangible income that directly relates to the sale, exchange, or other disposition of capital assets described in section 1221 of the Internal Revenue Code (e.g., stock in trade that would properly be included in the taxpayer's inventory at the close of the taxable year, a copyright, or a government publication not acquired by purchase at the price at which it is sold to the public).

(3) Addition of any losses allowed as a deduction in computing federal taxable income if the losses directly relate to the sale, exchange, or other disposition of a capital asset described in section 1221 or 1231 of the Internal Revenue Code.

(4) Deduction of income and gain included in federal taxable income to the extent the income and gain directly relates to the sale, exchange, or other disposition of a capital asset described in section 1221 or 1231 of the Internal Revenue Code. However, this deduction is not required to the extent the income

or gain is income or a gain from the disposition of certain depreciable property under section 1245 or 1250 of the Internal Revenue Code.

(5) Addition of taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.

(6) In the case of a real estate investment trust and regulated investment company, addition of all amounts with respect to dividends, distributions, and amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.

Beginning in 2004, a municipality may not tax a business' net profit using any base other than the taxpayer's adjusted federal taxable income. However, this restriction does not apply to the net profits of electric companies, telephone companies, and sole proprietorships.

**Taxpayers that are neither individuals nor C corporations**

(R.C. 718.01(A)(1)(g))

The act provides that if a taxpayer is neither a C corporation nor an individual, the taxpayer must compute adjusted federal taxable income as if the taxpayer were a C corporation; however, the act specifies that guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member are not deductible expenses. In addition, with respect to each of the taxpayer's owners or owner-employees, no deduction may be taken for amounts paid or accrued to a qualified self-employed retirement plan or amounts paid or accrued to health or life insurance.

**Unintended effects negated**

The act specifies that it is not to be construed as allowing a taxpayer to add or deduct an amount more than once, or as allowing a taxpayer to deduct any amount paid or accrued for purposes of the federal self-employment tax. Nor is the act to be construed as limiting or removing a municipality's ability to administer, audit, and enforce its income tax. And nothing in the act requires or prohibits a net operating loss carryforward.

**Municipal corporations authorized to exempt certain income**

(R.C. 718.01(E))

The act authorizes a municipality's legislative authority to exempt from its income tax and withholding requirements the following amounts:



(1) Compensation arising from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option; or

(2) Compensation attributable to a nonqualified deferred compensation plan or program.

The act provides that any municipal legislative authority that wishes to exempt these amounts must do so by passing an ordinance or adopting a resolution.

**Net profit from sole proprietorships and rental activity**

(R.C. 718.01(E) and 718.02)

The act provides that with respect to net profit from a sole proprietorship required to be reported on Internal Revenue Code Schedule C or F, municipalities are prohibited from taxing or using as the tax base any amount other than the net profit from the sole proprietorship required to be reported by the taxpayer on Schedule C or F for the taxable year.

The act provides that with respect to net profit from rental activity required to be reported on Internal Revenue Code Schedule E, municipalities are prohibited from taxing or using as the tax base any amount other than the net profit from rental activities required to be reported by the taxpayer on Schedule E for the taxable year. The act provides, further, that net profit from rental activity that does not constitute a business or a profession is subject to tax only by the municipal corporation in which the property generating the net profit is located.

**Apportionment of net profit**

(R.C. 718.02)

A business that operates both inside and outside of a municipality's boundaries must apportion its income among the various municipalities in which it operates. Under prior law, if a business' books and records accurately show the portion of its net profit that is attributable to business conducted within the municipality, the tax may be calculated on that portion. However, in the absence of such business records, the taxpayer had to use a statutory apportionment formula. The statutory formula is a three-part formula that examines the payroll, sales, and real and tangible personal property (whether owned or rented) within and outside the municipality to determine the portion of the net profit of the business that is attributable to the municipality.

The act eliminates the option of apportioning net profit on the basis of books and records and requires that taxpayers apportion on the basis of the statutory formula (unless the formula does not produce an equitable result in which case another basis may be substituted). In addition, in calculating the ratio of real and tangible personal property used within and outside a municipality, the act requires taxpayers to use the original cost of the property instead of its net book value, as required under prior law.

**Definition of "intangible income" altered**

(R.C. 718.01(A)(5) and (F)(3))

Continuing law prohibits municipal corporations from taxing intangible income, which is income of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including investments, deposits, money, or credits. To these types of "intangible income," the act adds capital gains, patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. The act expressly excludes from "intangible income" prizes, awards, and other income associated with lottery winnings or other similar games of chance.

**Tax credit for "qualifying losses" on nonqualified deferred compensation plans**

(R.C. 718.021)

The act requires that municipalities extend to taxpayers a refundable credit for certain qualified losses incurred with respect to nonqualified deferred compensation plans. (A "refundable" credit is a credit that can be claimed by a taxpayer regardless of whether the amount of the credit exceeds the taxpayer's tax liability.) A "nonqualified deferred compensation plan" is a retirement plan or other type of deferred compensation plan that does not meet the requirements imposed on qualified deferred compensation plans by the Internal Revenue Code. One of the principal advantages of a nonqualified plan is that it can be offered to a few, select employees. Generally, nonqualified plans defer an employee's recognition of income for any compensation for which there is a "substantial risk of forfeiture." This means that the employee is not taxed on the compensation deferred until the employee receives it. However, there is no deferral of taxation on deferred compensation that is not subject to a substantial risk of forfeiture. The act requires municipalities to extend a refundable tax credit to taxpayers who pay municipal income tax on nonqualified deferred compensation before the compensation is received but then never receive the deferred compensation because the taxpayer's employer has become insolvent or because the employee

failed to satisfy all of the terms and conditions necessary to receive the nonqualified deferred compensation.

The amount of the credit allowed under the act is equal to the product of the taxpayer's "qualifying loss" and "qualifying tax rate." The qualifying loss is the amount by which the total amount of compensation deferred under the plan exceeds the cumulative amount of income that the taxpayer has recognized for federal income tax purposes with respect to the nonqualified deferred compensation plan. If the taxpayer has not paid municipal income tax on the entire amount of compensation deferred, the qualifying loss is the excess of the total amount of compensation deferred over the cumulative amount recognized for federal income tax purposes multiplied by that percentage of the total amount of compensation deferred upon which the taxpayer has paid municipal income tax. (A taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution under the nonqualifying deferred compensation plan.)

The qualifying tax rate is the applicable tax rate for the taxable year for which the taxpayer paid municipal income tax with respect to any portion of the total amount of compensation deferred. If different tax rates applied for different taxable years, the qualifying tax rate is the weighted average of those different tax rates. The qualifying tax rate is multiplied against the qualifying loss to arrive at the amount of the credit.

The act requires a taxpayer to claim the credit from each municipality to which the taxpayer paid municipal income tax with respect to the nonqualified deferred compensation. If a taxpayer paid tax to more than one municipality, then the amount of the credit that may be claimed from each municipality is to be calculated on the basis of each municipality's proportionate share of the total municipal income tax paid by the taxpayer to all municipalities with respect to the nonqualified deferred compensation plan.

Under the act, income taxes that have been withheld with respect to a nonqualified deferred compensation plan are considered to be income taxes paid to the municipality. However, income taxes that have been refunded or otherwise credited for the benefit for the taxpayer are not considered to have been paid to the municipality.



**Municipal taxation of S corporation distributive shares: credit for resident shareholders**

(R.C. 718.01 and 718.14)

**Background**

An S corporation is a corporation that elects special tax treatment under federal income tax law. S corporations, like partnerships, are given pass-through tax treatment under the Internal Revenue Code. "Pass-through tax treatment" means that for tax purposes the entity's attributes (income, deductions, losses, credits) flow through the entity to its owners. S corporations and other pass-through entities record transactions undertaken by the entity and report the results to the government, but pay no federal tax on the results of their operations. Rather, the tax characteristics (i.e., the income, deductions, losses, tax credits, etc.) of the corporation's operating results are passed through the entity directly to its shareholders on a pro rata basis and are reported on the shareholder's individual tax returns for federal and Ohio income tax purposes.

Continuing law prohibits municipalities from taxing an S corporation shareholder's distributive share of net profits to the extent the distributive share would not be allocated or apportioned to Ohio if the S corporation were a corporation subject to the income allocation and apportionment rules of Ohio's corporate franchise tax law. Thus, under continuing law, municipal corporations *may* tax distributive shares that would be income allocated or apportioned to Ohio under the corporate franchise tax law.<sup>212</sup>

**Credit for resident S corporation shareholders**

Under continuing law, effective January 1, 2003, municipal corporations are required to grant a credit to resident owners of pass-through entities for taxes paid to another municipality. The purpose of the credit is to diminish the possibility and extent of multiple municipalities taxing the same pass-through income--once at the entity level, and again at the owner level. Prior law provided that the credit must be extended to every owner of a pass-through entity except a shareholder in an S corporation. The act extends the credit to S corporation shareholders whose incomes from the S corporation are subject to taxation by multiple municipalities.

---

<sup>212</sup> *Municipal corporations are always permitted to tax any portion of a distributive share that represents wages paid to the shareholder or net earnings from self-employment (R.C. 718.01(F)(9)).*

### III. Taxation of Local Exchange Telephone Companies

#### Telephone companies no longer taxed as public utilities

##### Summary

The act contains various tax changes that affect telephone companies. Continuing law provides that any person is a "telephone company" when primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in Ohio. Local exchange telephone service consists of making available or furnishing access and a dial tone to persons within a local calling area for use in originating and receiving voice grade communications over a switched network operated by the service provider within the area, and for gaining access to other telecommunications services (R.C. 5727.01).

The first tax change the act makes is to reduce the tax assessment rate for all telephone company tangible personal property over a period of time, so that by tax year 2007 and thereafter the rate is 25% of true value.

The act also revises the law regarding the public utility excise tax on gross receipts so that telephone companies are no longer subject to that tax. Instead, telephone companies must pay the corporation franchise tax. As a result of that tax change, municipal corporations are allowed to levy income taxes on telephone companies.

Lastly, the act makes sales of services by telephone companies subject to sales or use taxes.

##### Assessment rate reduction for telephone companies

(R.C. 5727.111)

A telephone company pays taxes on its taxable property, which is all tangible personal property that on December 31 of the preceding year was located in Ohio and owned by it, or leased by it under a sale and leaseback transaction. Every year, the Tax Commissioner determines the true value of this taxable property, by a method of valuation using cost as capitalized on the company's books and records, less composite annual allowances prescribed by the Commissioner, and assesses it at a percentage of true value established by law. The resulting assessed value is the portion to which the local tax rate is applied to determine the tangible personal property taxes due.

The percentage used to determine the assessed value of all telephone company taxable property is 25% for taxable property first subject to taxation in Ohio for tax year 1995 or thereafter, and 88% for all other taxable property.



Beginning tax year 2005, the act reduces the percentage for all other taxable property to 67% of true value. For tax year 2006, the percentage is 46%, and for tax years 2007 and thereafter, the percentage is 25% of true value.

**Public utility excise tax**

(R.C. 5727.30(D), 5727.32, 5727.33, 5727.39, and 5727.44; Sections 183 and 186)

**Telephone companies no longer subject to this excise tax.** Under prior law, telephone companies paid an annual excise tax on their gross receipts. The tax was computed by multiplying taxable gross receipts by 4¾%. Under the act, telephone companies are removed from the public utility excise tax and instead subjected to the corporation franchise tax (see "**Corporation franchise tax,**" below).

The act provides that a telephone company's gross receipts derived from customer billings after June 30, 2004, are not subject to the public utility excise tax. Gross receipts from billings before July 1, 2004, must be included in the company's annual statement filed on or before August 1, 2004, which is the last statement or report the company has to file for purposes of the public utility excise tax. A telephone company cannot deduct from its gross receipts included in that last statement any receipts it was unable to collect from its customers for the period of July 1, 2003, to June 30, 2004.

**Repeal and transfer of tax credits.** Effective December 31, 2004, the act repeals two tax credits that telephone companies may claim against their public utility excise tax liability: (1) a credit for eligible nonrecurring charges for a telephone network used in providing 9-1-1 service, subject to an annual ceiling, and (2) a credit for providing a telephone service program to aid the communicatively impaired in accessing a telephone network. The act reestablishes both credits in the corporation franchise tax law, to be applied against a telephone company's corporation franchise tax liability. The credits are fully reviewed below.

**Corporation franchise tax**

(R.C. 4905.79, 4931.45, 4931.47, 4931.48, 5733.04(I)(7) and (P), 5733.05(B)(2), 5733.056(B)(5), 5733.09, 5733.55, 5733.56, 5733.57, and 5733.98; Sections 183 and 186)

**Telephone companies must pay the tax.** Prior law provided that an incorporated company that owned and operated a public utility in Ohio and paid the public utility excise tax was not subject to the corporation franchise tax. The

act removes telephone companies from the public utility excise tax law and no longer requires that they pay that tax; thus, they become subject to the corporation franchise tax. For purposes of the corporation franchise tax law, the act retains the definition of telephone company that is used in the property tax assessment law (R.C. 5727.01).

The act provides that a telephone company that no longer pays the public utility excise tax on its gross receipts from customer billings after June 30, 2004, is first subject to the corporation franchise tax for tax year 2005. For that tax year, a telephone company with a taxable year ending in 2004 is required to compute the corporation franchise tax, and must compute the net operating loss carry forward for tax year 2005, by multiplying the corporation franchise tax owed, net of all nonrefundable credits, or the loss for the taxable year, by 50%.

**Determination of the sales factor in calculating net income.** The value of a corporation's issued and outstanding shares of stock is the base or measure of franchise tax liability. Continuing law requires that in determining the value of that stock, the corporation's net income must be calculated and allocated or apportioned to the state. As part of that calculation, the property, payroll, and sales factors are determined. The sales factor is the ratio of the corporation's total sales in Ohio during the taxable year to its total sales everywhere during the year. In determining the sales factor under continuing law, receipts received by a corporation from a public utility are eliminated from the equation where the reporting corporation owns at least 80% of the issued and outstanding common stock of the utility. The act specifies that a telephone company is not a public utility for this purpose; thus, receipts received from a telephone company are included in the calculation of the sales factor.

The act provides that the Tax Commissioner may adopt rules for alternative allocation and apportionment methods, and alternative calculations of a corporation's base, that apply to corporations engaged in telecommunications.

**Adjustments to net income and the value of stock.** Under the corporation franchise tax law, net income is the corporation's taxable income before operating loss deductions and special deductions, subject to certain adjustments. In determining its net income under that law, a corporation may deduct dividends or distributions received from a public utility if the corporation owns at least 80% of the utility's common stock. The act provides that these dividends or distributions are not deducted from the net income of a corporation, if the stock is telephone company stock.

Financial institutions base their franchise tax liability on the value of their issued and outstanding shares of stock. In calculating that value, a financial institution may exclude a portion of the investments in the capital stock and

indebtedness of public utilities, if the financial institution owns at least 80% of the utility's stock. The act provides that if the stock is telephone company stock, it cannot be excluded from the value calculation.

**9-1-1 service tax credit.** The act transfers to the corporation franchise tax law the tax credit for a telephone company's eligible nonrecurring charges for the telephone network used in providing 9-1-1 service. The credit is similar to the 9-1-1 service tax credit repealed in the public utility gross receipts tax law, but is nonrefundable and based on a fixed ceiling established by the act.

The act provides that, beginning in tax year 2005, a telephone company may take a nonrefundable credit against its corporation franchise tax liability, equal to the amount of its eligible nonrecurring 9-1-1 charges. The credit must be claimed in the company's taxable year that covers the period in which the 9-1-1 service for which the credit is claimed becomes available for use. The credit must be claimed in a particular order under the corporation franchise tax law, after other nonrefundable tax credits are claimed. If the credit exceeds the total corporation franchise taxes due for the tax year, the Tax Commissioner must credit the excess against those taxes due for succeeding tax years until the full amount of the credit is granted.

Under the act, after the last day a return, with any extensions, may be filed by any telephone company that is eligible to claim the 9-1-1 service credit, the Commissioner must determine whether the sum of the credits allowed for prior tax years, beginning with tax year 2005, plus the sum of the credits claimed for the current tax year, exceeds a fixed ceiling of \$15 million claimed by all telephone companies for all tax years. If it does, the credits allowed under the corporation franchise tax law for the current tax year must be reduced by a uniform percentage, such that the sum of the credits allowed for the current tax year do not exceed \$15 million. Thereafter, no credit may be granted under the corporation franchise tax law, except for the remaining portions of any credits allowed under that law.

A telephone company that is entitled to carry forward the 9-1-1 service tax credit against its public utility excise tax liability before the act transferred it to the corporation franchise tax, may carry forward any amount of that credit remaining after its last public utility excise tax payment for the period of July 1, 2003, through June 30, 2004, and claim that amount as a credit against its corporation franchise tax liability. The act does not authorize a telephone company to claim a credit under the corporation franchise tax for any eligible nonrecurring 9-1-1 charges for which it has already claimed a credit under the public utility excise tax.

**Tax credit for telephone service programs for the communicatively impaired.** The act repeals the tax credit against public utility excise tax liability for providing telephone service programs to aid the communicatively impaired in accessing a telephone network. But the act reestablishes the credit in the corporation franchise tax law, with some changes, to be applied against a telephone company's corporation franchise tax liability. Beginning in tax year 2005, a telephone company that provides any telephone service program to aid the communicatively impaired in accessing the telephone network under existing Public Utilities Commission law is allowed a nonrefundable credit against the corporation franchise tax. (The credit was refundable under the public utility excise tax law.) The amount of the credit is the cost incurred by the company for providing the telephone service program during its taxable year, excluding any costs incurred prior to July 1, 2004. If the Tax Commissioner determines that the credit claimed by a telephone company is not correct, the Commissioner must determine the proper credit.

The credit must be claimed in a particular order under the corporation franchise tax law, after other nonrefundable tax credits are claimed. If the credit exceeds the total corporation franchise taxes due for the tax year, the Commissioner must credit the excess against franchise taxes due for succeeding tax years until the full amount of the credit is granted. The act does not authorize a telephone company to claim a credit against its corporation franchise tax liability for any cost incurred for providing a telephone service program for which it is claiming a credit against its public utility excise tax liability.

**Tax credit for small telephone companies.** The act creates a new tax credit against corporation franchise tax liability for a "small telephone company." Under the act, a "small telephone company" is a telephone company existing as such as of January 1, 2003, with 25,000 or fewer access lines as shown on the company's annual report filed with the Public Utilities Commission and the Office of Consumers' Counsel for the calendar year immediately preceding the tax year, and is an "incumbent local exchange carrier" under federal law (47 U.S.C. 251(h)).

The act provides that, beginning in tax year 2005, a small telephone company is allowed a nonrefundable credit against corporation franchise tax liability equal to the product obtained by multiplying the "applicable percentage" by the "applicable amount." The "applicable amount" is determined by calculating the corporation franchise taxes due for the tax year, without regard to any credits available to the small telephone company, and subtracting from that the "gross receipts tax amount," which is the product obtained by multiplying 4¾% by the amount of a small telephone company's taxable gross receipts (excluding the continuing \$25,000 deduction) that the Tax Commissioner would have determined under the public utility excise tax law for that small telephone company for the

annual period ending on June 30 of the calendar year immediately preceding the tax year, as that law applied in the tax measurement period from July 1, 2002, to June 30, 2003. The resulting amount is then multiplied by the "applicable percentage," which, under the act, is 100% for tax year 2005, 80% for tax year 2006, 60% for tax year 2007, 40% for tax year 2008, 20% for tax year 2009, and 0% for each subsequent tax year thereafter. This calculation results in the amount of the tax credit the small telephone company may claim.

The credit must be claimed in the order required by existing law. If the applicable amount for a tax year is less than zero, a small telephone company cannot claim the tax credit for that tax year.

**Telephone company income becomes subject to taxation by municipal corporations**

(R.C. 715.013, 718.01(F)(6), 718.02, 5745.01, 5745.02, and 5745.04)

Under continuing law, a municipality may levy an income tax on taxpayers and businesses within the corporation's boundaries, but it cannot levy a tax that is the same as or similar to certain other state taxes, including the public utility excise tax. Additionally, continuing law provides that a municipality cannot tax the income of a public utility when the utility is subject to the public utility excise tax. Once a company is no longer subject to that tax, a municipal corporation is free to tax its income.

On and after January 1, 2004, a municipality may levy a tax on the income of a telephone company, because, under the act, telephone companies no longer pay the public utility excise tax and are transferred to the corporation franchise tax. Thus, if a municipality has a municipal income tax, it is applicable to the income of telephone companies on and after that date. The act requires that the income be taxed under uniform procedures that were originally adopted for administering municipal income taxes levied on electric light companies (R.C. Chapter 5745.).

Generally, under those uniform procedures, the municipal income tax is levied on a uniform tax base, i.e., that portion of a taxpayer's Ohio net income that is apportioned to the municipality. A taxpayer is required to file a single tax return and pay taxes to the state, rather than filing a separate return and making separate tax payments to each municipality within which the taxpayer conducts business. The uniform procedures and enforcement remedies apply in lieu of the various municipal procedures and remedies.

Specifically, a telephone company is subject to municipal income taxes for any taxable year that begins on or after January 1, 2004. If its taxable year ends in

2004, it must compute the tax, or compute its net operating loss carried forward for that taxable year, by multiplying the tax, or the loss for the taxable year, by 50%. The first taxable year any taxpayer is subject to municipal income taxation, the estimated taxes the taxpayer is required to remit must be based solely on the current taxable year and not on the liability for the preceding taxable year.

**Determination of the sales factor in calculating income.** Under the uniform procedures adopted for municipal income taxation of electric light companies, to which telephone companies are now subject, a company's Ohio net income must be calculated and apportioned to a municipality. As part of that calculation, property, payroll, and sales factors are determined. The sales factor is the ratio of the company's total sales in Ohio during the taxable year to its total sales everywhere during the year. In determining the sales factor under prior law, receipts received by an electric company from public utilities were eliminated from the equation where the company owned at least 80% of the issued and outstanding common stock of the utility. The act specifies that a telephone company is not a public utility for this purpose; thus, receipts received from a telephone company are included in the calculation of the sales factor, including in the calculation of a telephone company's sales factor.

The act further provides that the Tax Commissioner may adopt rules providing for alternative apportionment methods for a telephone company.

**Sales by telephone companies are subject to sales or use taxes**

(R.C. 5739.01(B)(3)(f) and (AA) and 5739.02(B)(7))

Under prior law, sales by which telecommunications services were provided were subject to the sales or use tax, except for sales of those services by a company that was subject to the public utility excise tax. The act provides that all sales of telecommunications services by a telephone company that are billed on and after January 1, 2004, are subject to the sales and use tax (see "**Sales and use tax**," above).

**IV. Other Areas of Taxation**

**Call center tax credit to offset future "anti-PIC" legislation**

(R.C. 122.171)

The act authorizes a new, nonrefundable tax credit for any corporation operating a call center and also qualifying for the existing job retention tax credit. The new credit is designed to offset any additional tax liability that a call center might incur under any future change in the law that requires corporations to more fully reflect intercompany transactions in reporting their taxable income. The



credit also is available to companies that are related to the corporation through 20% or more stock ownership or control.

For a corporation or its related companies to qualify for the new credit, the corporation must satisfy the definition of an "applicable corporation." An applicable corporation is defined by five criteria:

(1) For the entire taxable year immediately preceding the tax year, the corporation develops software applications "primarily to provide telecommunication billing and information services through outsourcing or licensing to domestic or international customers." ("Telecommunications" has the same meaning as in the Sales Tax Law and includes services in wireless, wireline, cable, broadband, internet protocol, and satellite.)

(2) Sales and licensing of software generated at least \$600 million in revenue during the taxable year immediately preceding the tax year the corporation is first entitled to claim the job retention tax credit.

(3) The corporation, or one or more of its related companies, for the entire taxable year immediately preceding the tax year, provides "customer or employee care and technical support for clients through one or more contact centers within this state."

(4) The corporation and its related companies together have a daily average, based on a 365-day year, of at least 500,000 "successful customer contacts" through one or more contact centers (which need not be located in Ohio). A successful customer contact is defined as "contact with an end user via telephone, including interactive voice recognition or similar means, where the contact culminates in a conversation or connection other than a busy signal or equipment busy."

(5) The corporation is eligible for the job retention tax credit for the same tax year.

The corporation must claim the credit against the corporation franchise tax. The amount of the credit equals the "applicable difference," which is the tax increase, if any, that would result from any future change in the law that now requires corporations, in computing their taxable income, to reflect certain transactions with related companies. Currently, that law requires corporations to add interest and certain intangibles-related expenses paid to related companies (e.g., royalties and "technical" fees). For example, if the law were to be expanded in the future to require such an add-back for other kinds of expenses, the act allows an "applicable corporation" and its related companies to claim the new credit for an amount that entirely offsets the additional tax resulting from the add-

back--but only if the corporation also qualifies for the job retention tax credit in the same year.

The act also increases the maximum term of the existing job retention tax credit, from ten to 15 years.

### **Current Agricultural Use Valuation**

(R.C. 1515.08 and 5713.30)

The act permits land used for soil conservation to be included among the kind of farmland that qualifies for current agricultural use valuation (CAUV) treatment. CAUV land is valued for property tax purposes on the basis of the capitalized farming income the land is capable of generating, rather than the market value the land would have if it were devoted to the most valuable legal use.

Under the act, land used for soil conservation practices may be treated as CAUV land as long as it does not comprise more than 25% of the other CAUV land considered together with the conservation land. "Conservation practices" are any practices used to abate soil erosion that are required as part of the farming operation's overall land management. They include, but are not limited to, the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops. The act authorizes the supervisors of a soil and water conservation district to assist the county auditor when requested in determining whether a conservation activity that is conducted in conjunction with agricultural operations is a "conservation practice."

### **Exemption of property in community reinvestment areas from real property taxation**

#### **Background**

(R.C. 3735.65 (not in the act), 3735.66, 3735.67, and 3735.671)

Newly constructed or remodeled structures located in a community reinvestment area (CRA) may qualify for an exemption from real property taxation. A CRA is an area in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged. The designation of an area as a CRA is made by a resolution adopted by the legislative authority of the municipality or county in which the area is located.

To obtain an exemption, the owner of the property must file an application with the housing officer for the CRA in which the property is located. ("Housing



officers" are officers or agencies of the municipality or county in which the CRA is located, designated by the legislative authority of the municipality or county, that administer the tax exemptions.) In addition, if any part of the new structure or remodeling to be exempted is to be used for commercial or industrial purposes, the owner and the legislative authority must first enter into a written agreement that authorizes the construction or remodeling before any exemption can be granted.

The exemptions from real property taxation can be granted on a continuing basis for a period of time specified by the legislative authority. The maximum period of exemption is between ten and 15 years depending upon the type of structure exempted.

### **Complaints concerning continued exemption**

(R.C. 3735.67 and 5715.27; Sections 168 and 183)

In *Board of Educ. of Gahanna-Jefferson Local School Dist. v. Zaino*, 93 Ohio St.3d 231 (2001), the Ohio Supreme Court, interpreting prior statutory law, held that the Tax Commissioner has jurisdiction to hear a complaint challenging the continued exemption of property located in a CRA. The act withdraws jurisdiction to hear these complaints from the Tax Commissioner and confers it upon the housing officer that granted the exemption. The act specifies that the Tax Commissioner has jurisdiction to hear complaints against only the continued exemption of property for which the Tax Commissioner has granted an exemption. Because exemptions for property in CRAs are granted by housing officers, the Tax Commissioner lacks jurisdiction under the act to hear complaints relating to these exemptions.

The act provides that any person, board, or officer authorized to file complaints with a county board of revision may file a complaint against continued exemption of CRA property. The act provides, further, that any complaint against exemption must be filed before December 31 of the tax year for which the complainant is requesting that the property be taxed. After determining whether the property that is the subject of the complaint continues to meet the requirements for exemption, the housing officer must certify the housing officer's findings to the complainant. If the housing officer determines that the property does not meet the requirements for exemption, the housing officer must notify the county auditor for the county in which the property is located so that the county auditor may adjust the list of property in the county that is exempt from taxation.

Under the act, the Tax Commissioner must certify to the housing officers for hearing and determination any complaints filed with the Tax Commissioner on or after the act's immediate effective date challenging the continued exemption of property in a CRA. With respect to a complaint filed before the act's immediate



effective date, the act grants the Tax Commissioner the option of hearing and determining the complaint or certifying it to the housing officer for hearing and determination. The act provides that the filing date of any complaint certified to a housing officer by the Tax Commissioner is the date on which the complaint was filed with the Tax Commissioner.

**Additional limitations on Tax Commissioner's involvement with CRA property tax exemptions**

(R.C. 3735.671, 5713.07, and 5713.08)

The act further limits the Tax Commissioner's involvement with CRA property tax exemptions by eliminating the requirement that copies of agreements between legislative authorities and owners of commercial or industrial property be forwarded to the Tax Commissioner. In addition, continuing law specifies that these agreements contain a description of the real property to be exempted under the agreement. Prior law required that the Tax Commissioner adopt rules prescribing the manner in which the property is to be described. The act eliminates this rulemaking function. Finally, under continuing law, county auditors are required to maintain a list of all real and personal property within the county that is exempt from taxation. Continuing law provides that no additions may be made to these lists and no additional items of property may be exempted from taxation without the consent of the Tax Commissioner. However, the act draws a distinction between property exempted by the Tax Commissioner and property exempted by a housing officer. The act specifies that no additional property in a CRA can be added to a list of exempt property without the housing officer's consent.

**Classification of a structure or remodeling composed of multiple units**

(R.C. 3735.66)

As noted above, the designation of an area as a CRA is made by a resolution adopted by the legislative authority for the area. Under continuing law, eligibility for exemption can depend on how property in the CRA is classified. For instance, continuing law permits legislative authorities to stipulate that only new structures or remodeling in a CRA that are classified as to use as commercial, industrial, or residential, or some combination thereof, are eligible for exemption. In addition, as noted above, construction or remodeling of commercial or industrial property cannot be exempted without a written agreement between the legislative authority and the owner of the property.

The act specifies how a multiple unit structure or remodeling of a multiple unit structure in a CRA is to be classified for purposes of the CRA law.

Specifically, the act provides that whether such property is commercial or residential is to be determined by the legislative authority of the area in a resolution or ordinance. The act provides, further, that in the absence of such a determination, the classification of the use of the structure or remodeling is to be determined by examining how the use of the structure or remodeling is classified under applicable zoning regulations.

**Bond requirement for cigarette dealers; electronic payment of cigarette taxes**

(R.C. 5743.05 and 5743.051)

Under continuing law, stamps or meter impressions are sold on credit to retail or wholesale cigarette dealers representing cigarettes for which the Ohio Cigarette Tax must be paid. Currently, a retail or wholesale cigarette dealer must file with the Tax Commissioner a bond in favor of the state, with surety approved by the Treasurer of State, guaranteeing payment for any stamps or meter impressions issued on credit and payable within 30 days of delivery of the stamps or impressions.

The act relieves a retail or wholesale cigarette dealer who has been in good credit standing for five consecutive years preceding the purchase of the stamps or meter impressions from the bond requirement as long as the dealer continues to pay any taxes due within 30 days of the delivery of stamps or impressions. Approval of the surety is transferred from the Treasurer of State to the Tax Commissioner.

The act requires that stamps and meter impressions sold to a dealer not required to file a bond must be sold at face value to the dealer. In addition, the maximum amount that may be sold on credit to such a dealer is 110% of the dealer's average monthly purchases over the preceding calendar year, which maximum amount is to be adjusted to reflect changes in the tax rate. The Tax Commissioner, upon a dealer's application, also is authorized to adjust the maximum amount to reflect changes in the dealer's business operations. The maximum amount applies for the period July through April.

The act prohibits the Treasurer of State from selling any additional stamps or meter impressions to any retail or wholesale cigarette dealer not required to file a bond that does not pay the taxes in full within the 30-day period, until the outstanding taxes are paid, including any penalties and interest prescribed by the Cigarette Tax Law. In addition, the Tax Commissioner may require the dealer to file a bond until the dealer is "restored to good standing."

The act also requires retail or wholesale cigarette dealers not required to file a bond to remit taxes due for tax stamps and meter impressions by electronic funds

transfer. Under the act, the electronic payment is to be in accordance with rules prescribed by the Treasurer of State and within the time required by the Cigarette Tax Law.

With respect to electronic tax payment, the act assigns duties to the Tax Commissioner, including (1) notifying retail or wholesale cigarette dealers of the obligation to pay taxes electronically and keeping an updated list of dealers, (2) adopting procedures for excusing a dealer from this obligation "for good cause shown," for all or a portion of the time requested by the dealer, and (3) upon appropriate contact from the Treasurer of State, assessment of an additional charge equal to 5% of the amount due up to a maximum of \$5,000 if a dealer fails to remit taxes by electronic payment. (The additional charge is in addition to any other penalty or charge under the Cigarette Tax Law, and is considered to be revenue arising from the Cigarette Tax.) In addition, the act specifies that if the Tax Commissioner fails to notify a dealer to remit taxes electronically, such omission does not relieve the dealer of the obligation to remit a tax payment by electronic transfer. However, the act permits a dealer after being notified to remit taxes electronically, to remit taxes by other means twice before an additional charge is assessed by the Tax Commissioner.

**Defer tax recognition of book-tax differences**

(R.C. 5733.04, 5733.0511, and 5745.01)

The act prescribes how any differences between the book value and the tax value (i.e., adjusted basis) of a telephone company's assets are to be treated under the franchise tax and municipal income taxes. If book value exceeds tax value on December 31, 2003, net income is reduced. Conversely, if tax value exceeds book value on December 31, 2003, net income is increased. The tax effects of the difference are to be amortized in equal installments over a ten-year period beginning in 2010, rather than recognized immediately. (Accounting conventions require the current and future effects of tax law changes on book value/tax value differences to be recognized in the year the change takes effect.)

Only assets shown on a company's books and records on December 31, 2003, qualify for this treatment. The provision applies to those assets of a telephone company that was subject to the public utility excise tax during the last 12 months the excise tax applies to telephone companies. It also applies to any other company that received the assets of such a telephone company in a reorganization or series of reorganizations for which gains and losses were not recognized for federal income tax purposes.

## **Motor fuel taxes and their enforcement**

### **Refunds for water intentionally added to fuel**

(R.C. 5735.14, 5735.15, and 5739.02(B)(6))

Continuing law establishes a refund procedure for motor fuel taxes that have been paid on motor fuel used for nonhighway purposes, such as in stationary gas engines. The act provides that any person who uses motor fuel in Ohio must be reimbursed for motor fuel use and motor fuel taxes paid on motor fuel that contains at least 9% water, when that water was intentionally added to the fuel. The refund must equal the amount of taxes paid on 95% of the water. When filing an application for refund, the person must state on the application the quantity of water intentionally added to the motor fuel. No person may claim reimbursement on fewer than 100 gallons of water.

Under continuing law, a person who sells motor fuel to a person who claims to be entitled to a motor fuel tax refund must document that the seller has assumed liability to pay motor fuel taxes, and must state the number of gallons of motor fuel sold, along with other information. The act requires that the seller also document the price paid for or the price per gallon of the motor fuel sold, and the number of gallons of water intentionally added to the motor fuel, and provide that documentation to purchasers.

Continuing law provides that sales of motor fuel on which other taxes have been imposed are exempt from sales taxes, but the exemption does not apply to the sale of motor fuel for which a refund has been given. The Tax Commissioner may deduct the amount of sales tax that applies to the price of motor fuel when granting a refund of motor fuel taxes. The act provides that this exemption and the Commissioner's deduction of sales taxes from motor fuel refunds does not apply where the refund was paid because water was intentionally added to the fuel.

### **Motor fuel use permit violations**

(R.C. 5728.04 and 5728.99)

Continuing law provides that it is unlawful for a person to operate certain commercial cars or commercial tractors without a valid fuel use permit for them; a violation of this prohibition is a fourth degree misdemeanor. The act also makes it unlawful for a person to operate certain commercial cars or commercial tractors with a suspended or surrendered fuel use permit for the car or tractor, and provides that whoever violates this provision is guilty of a misdemeanor of the first degree. In addition, for a violation of continuing law or the provision enacted by the act,

the act provides that the car or tractor involved in either violation may be "detained" until a valid fuel use permit is obtained or reinstated.

**Inspections related to motor fuel**

(R.C. 5735.19 and 5735.99)

Continuing law authorizes the Tax Commissioner to examine records, books, and papers of motor fuel dealers, retail dealers, exporters, terminal operators, purchasers, or common carriers pertaining to motor fuel, to verify accuracy in reports or returns. The Commissioner may hold hearings and conduct investigations, but no person is permitted to disclose the information acquired by the Commissioner, except when required to do so in court.

The act expands the Tax Commissioner's enforcement authority for purposes of the motor fuel use and fuel tax laws. In addition to examining records and books, the Commissioner may examine invoices, storage tanks, and any other equipment related to motor fuel to determine whether motor fuel taxes have been paid. The act eliminates the prohibition against disclosing information.

The act also permits an employee of the Department of Taxation, who is so authorized by the Tax Commissioner, to physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers, and books and records, if any, that are maintained at the place of inspection and are kept to determine motor fuel tax liability. Inspections may be performed at any place at which motor fuel is or may be produced or stored, or at any "designated inspection site." The act defines a "designated inspection site" as any state highway inspection station, weigh station, mobile station, or other similar location designated by the Commissioner to be used as a fuel inspection site.

Under the act, an employee of the Department who is a duly authorized inspection agent may detain any motor vehicle, train, barge, ship, or vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment must be on the premises under inspection or at a designated inspection site. Detainment may continue for a reasonable period of time as is necessary to determine the amount and composition of the fuel.

The act provides that an employee of the Department authorized by the Tax Commissioner, or an employee who is a duly authorized inspection agent, may take and remove samples of fuel in quantities as are reasonably necessary to determine the composition of the fuel, provided the employee has been properly trained.

No person may refuse to allow an inspection, and any person who does so is subject to revocation or cancellation of any license or permit issued under the motor fuel use tax or motor fuel tax laws. Refusing to allow an inspection is a first degree misdemeanor.

**Motor Fuel Tax Administration Fund**

(R.C. 5735.05, 5735.053, 5735.23, 5735.26, 5735.291, and 5735.30)

The act creates in the state treasury the Motor Fuel Tax Administration Fund for the purpose of paying the expenses of the Department of Taxation incident to the administration of the motor fuel laws. After the Treasurer of State, as required by continuing law, out of motor fuel tax receipts, credits the Tax Refund Fund and makes transfers to the Waterways Safety Fund and, under one of the motor fuel taxes, to the Grade Crossing Protection Fund, the Treasurer of State must then transfer to the Motor Fuel Tax Administration Fund .275% of the receipts.

One of the purposes for levying the additional motor fuel taxes under continuing law (R.C. 5735.25 and 5735.29) is to pay the expenses of the Tax Department incident to the administration of the motor fuel laws. The act adds this purpose to two of the motor fuel taxes (R.C. 5735.05 and 5735.30).

**Additional fuel use tax phase-out clarification**

(R.C. 5728.06)

A fuel use tax is levied on the amount of fuel consumed by commercial trucks in Ohio that was purchased outside of Ohio. The current fuel use tax is 3¢ per gallon; this is in addition to the excise tax of 22¢ per gallon. In addition to increasing the excise tax by a total of 6¢ per gallon over the next three years, Am. Sub. H.B. 87 of the 125th General Assembly phased out the additional 3¢ per gallon fuel use tax by reducing it to 2¢ per gallon on July 1, 2004, and eliminating the additional fuel use tax on July 1, 2005. The act revises the language phasing out the additional fuel use tax by specifying that the additional fuel use tax "shall be reduced to" 2¢ per gallon of fuel used "from July 1, 2004 through June 30, 2005." Continuing law specifies that there be no additional fuel use tax on and after July 1, 2005.

**Monthly deduction from local government shares of motor fuel tax**

(R.C. 5735.23)

Am. Sub. H.B. 87 of the 125th General Assembly phases out the additional 3¢ per gallon fuel use tax by July 1, 2005, and also requires specified amounts

annually be deducted from the local government share of the motor fuel tax and credited to the Highway Operating Fund. (These specified amounts presumably are intended as the local governments' "share" of the additional fuel use tax reduction.) The act requires the specified deductions from the local government share of the motor fuel tax be made on a monthly basis, which multiplies the local government deductions in Am. Sub. H.B. 87 by 12.

**Reimbursement of school districts for new motor fuel taxes**

(R.C. 5735.142)

Am. Sub. H.B. 87 of the 125th General Assembly increases one component of the motor fuel tax by 2¢ per gallon effective July 1, 2003, an additional 2¢ per gallon effective July 1, 2004, and an additional 2¢ per gallon effective July 1, 2005. Am. Sub. H.B. 87 also permits any city, local, or exempted village school district that pays the new motor fuel tax increases to file applications with the Tax Commissioner for reimbursement of all but 2¢ of "that tax" paid on motor fuel used for providing transportation for pupils in a vehicle the district owns or leases. The act clarifies that the entire 6¢ of the new taxes are subject to reimbursement. Schools remain liable for the 2¢ per gallon motor fuel tax imposed prior to Am. Sub. H.B. 87.

The act modifies the requirement for the Tax Commissioner to reimburse a school district, as follows: (1) allows a joint vocational school district or educational service center to file for reimbursement of the motor fuel tax, (2) allows the exemption for any motor fuel used for school district or service center operations, rather than only for motor fuel used for transporting pupils in a vehicle the district owns or leases, and (3) prohibits a school district or educational service center from applying for a refund on taxes paid on motor fuel that the district or center sells.

**Real estate assessment fund: permissible uses**

(R.C. 325.31)

The act adds several new purposes for which a county auditor can use money in the county's real estate assessment fund. Under continuing law, the fund is used to defray the cost of assessing real estate and manufactured and mobile homes and, at the county auditor's discretion, to defray expenses incurred by the county board of revision. Under the act, money in the fund also can be used, at the auditor's discretion, to defray one or more of the following: (1) costs and expenses incurred in preparing the list of real and public utility property, (2) costs and expenses incurred in administering real property taxes and special assessments, including administering real property tax rollbacks and the Homestead Exemption,



(3) costs and expenses incurred to support assessments of real property in administrative or judicial proceedings, (4) expenses incurred for geographic information systems, mapping programs, and technological advances in these or similar systems or programs, (5) expenses incurred in compiling the general tax list of tangible personal property, (6) expenses incurred in administering tangible personal property taxes, and (7) costs, expenses, and fees incurred in administering estate taxes.

Following an assessment of real property or of manufactured or mobile homes, if a county's real estate assessment fund exceeds \$5,000, any money in the fund that was not used to defray the cost of the assessment, to defray expenses incurred by the county board of revision, or under the act for any of the new purposes is apportioned ratably to the taxing authorities that contributed to the fund.

**Fee to defray Department of Taxation's property tax administrative costs**

(R.C. 321.24 and 5703.80; Section 166)

The act provides for a percentage of real property tax rollback reimbursements to be diverted to a special fund to be used by the Department of Taxation to defray its costs of administering property taxation and of equalizing real property taxation instead of being distributed to taxing districts. The Department oversees the equalization of real property valuation throughout the state, and administers the assessment of all public utility property and tangible personal property of businesses operating in more than one county.

The fund, named the Property Tax Administration Fund, is to be funded from a portion of the state reimbursement that otherwise is payable to taxing districts for the 10% rollback for real property. The portion diverted to the fund is the sum of the following components:

- 0.3% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes);
- 0.15% of the taxes charged against public utility personal property;
- 0.75% of taxes charged against tangible personal property of businesses owning property in more than one county (the property of such businesses is assessed by the Department).

The fee is to be computed once each fiscal year by the Tax Commissioner between July 1 and July 15, and one-fourth of the computed amount is to be paid

from the General Revenue Fund to the Property Tax Administration Fund four times during each fiscal year, on August 1, November 1, February 1, and May 1. The fee amount is computed separately for each taxing district based on the taxable property in the district, and the amount is deducted from the district's share of the 10% rollback reimbursement. The amount deducted may not be greater than the district's share of the reimbursement. But if the computed deduction exceeds a district's share, the difference must be returned to the General Revenue Fund from the Property Tax Administration Fund.

In fiscal year 2004, the fee may be determined at any time after the act becomes law, and the deductions from reimbursements payable to taxing districts in fiscal year 2004 may be made semiannually at the first and second reimbursement payments in August and February or all at once at the second reimbursement payment in February. The transfer of the fee from the General Revenue Fund to the fund in fiscal year 2004 may occur in three installments rather than four, on November 1, 2003, February 1, 2004, and May 1, 2004. Within 30 days after determining the fee for fiscal year 2004, the Tax Commissioner is required to notify the Department of Education of the amount by which each school district's reimbursement is to be reduced.

**Personal property tax on inventory: accelerated phase-out**

(R.C. 5711.15 (not in the act), 5711.16 (not in the act), 5711.22(E), and 5727.01(H) (not in the act))

Under continuing law, personal property used in business, including the inventories of merchants and manufacturers, is subject to taxation. Inventories are currently listed and assessed at a rate of 23% of their true value in money. Prior law provided that, each tax year up to and including 2006, this assessment rate would be reduced by 1%, but only if the following condition ("trigger") was satisfied: the total statewide collection of tangible personal property taxes for the second preceding year exceeded the total statewide collection of tangible personal property taxes for the third preceding year. So, for example, the 1% reduction would not occur for 2004 unless the total statewide collection of tangible personal property taxes for 2002 exceeded the total statewide collection of tangible personal property taxes for 2001. If no reduction in the assessment rate was made for a year, the rate remained the same as in the preceding year. Under prior law, the annual 1% reduction would have become automatic beginning in tax year 2007, and the assessment rate then would have been reduced each year until it equaled zero.

The act accelerates the rate at which the inventory tax is phased out. It provides that, beginning in tax year 2005, the assessment rate will be reduced by 2% each year. The "trigger" will apply through 2006, but will not apply in 2007

or thereafter; then, the rate will be reduced by 2% each year regardless of whether there is annual growth in other personal property taxes. Under continuing law, if there is no reduction in the assessment rate for a year, the assessment rate remains the same as it was in the preceding year.

Under continuing law, taxes collected from public utilities and interexchange telecommunications companies are not included in the calculation of the trigger.

**Reduce state reimbursement for \$10,000 business property exemption**

(R.C. 319.311 (repeal) and 321.24(G))

Continuing law exempts the first \$10,000 of a business' tangible personal property from property taxation. The state reimburses local taxing districts for the resulting revenue reductions.

The act phases out the state's reimbursement for the exemption over ten years. In fiscal year 2004, the amount of the reimbursement will be reduced to 90% of the fiscal year 2003 reimbursement. The reimbursement then will be reduced by an additional 10% each ensuing fiscal year (measured on the basis of the fiscal year 2003 reimbursement amount) until fiscal year 2013 and thereafter, when no further reimbursement will be paid.

**Eliminate filing requirement for businesses with only exempt property**

(R.C. 5711.02, 5711.13, and 5711.27)

Prior law required all businesses owning tangible personal property to list the property on annual returns filed with county auditors or the Tax Commissioner, even if the total value of the property was not more than \$10,000, and therefore exempted from taxation.

The act eliminates the filing requirement for businesses owning tangible personal property valued at \$10,000 or less, beginning with tax year 2004 returns (i.e., taxes billed in 2004).

**Tax abatement for "qualified property"**

(R.C. 3313.44 (not in the act), 5709.07 (not in the act), 5709.08 (not in the act), 5709.10 (not in the act), 5709.12 (not in the act), 5709.121 (not in the act), and 5709.14 (not in the act); Section 155)

The act provides a temporary procedure whereby certain "qualified property" may be exempted from taxation, and all past-due taxes, penalties, and

interest may be abated, even if more than three years' worth of past-due taxes have accrued because an exemption application was not filed. Under the act, the "qualified property" eligible for abatement and exemption includes all of the following (described below in only general terms):

(1) Real or personal property owned by a board of education (R.C. 3313.44).

(2) Schoolhouses and churches, including the books and furniture within them; property used for church retreats; and public colleges and academies (R.C. 5709.07).

(3) Real or personal property owned by the state or federal government and used exclusively for a public purpose (R.C. 5709.08).

(4) Certain property owned by counties, municipalities, and townships and used for public purposes, including halls, public squares, parking facilities, and fairgrounds (R.C. 5709.10).

(5) Lands, houses, and other buildings belonging to a county, township, or municipality and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes (R.C. 5709.12).

(6) Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes (R.C. 5709.121).

(7) Property owned and used by a nonprofit organization exclusively as a home for the aged.

(8) Real property held by charitable organizations for the purpose of constructing or rehabilitating residences for eventual transfer to low-income families.

(9) Land used exclusively as a graveyard and held by the owner with no view to a profit or to speculating in the sale of the land (R.C. 5709.14).

To qualify for the special abatement and exemption, owners of qualified property are required to apply to the Tax Commissioner within 12 months of the act's immediate effective date. The application must include the name of the county in which the property is located; a legal description of the property; its taxable value; the amount of outstanding taxes, penalties, and interest; the date of acquisition of title to the property; the use of the property during the time the unpaid taxes accrued; and any other information required by the Tax Commissioner. Upon the request of the owner, any of this information must be



supplied by the county auditor. Property owners also must obtain and include with the application for abatement a certificate from the county treasurer indicating that all special assessments have been paid in full, and that any taxes, penalties, and interest that were charged before the property was used for the exempt purpose have been paid in full.

If the Tax Commissioner determines that the applicant qualifies for exemption and abatement under the terms of the act, the Commissioner must issue an order directing that the property be placed on the list of exempt property and that all unpaid taxes, penalties, and interest be abated for every year the property qualified for exemption.

If, however, the Tax Commissioner determines that the property currently is being used for a purpose that would foreclose its right to exemption, the Commissioner must deny the application. If the Commissioner finds that the property is not entitled to exemption and abatement for any of the years for which exemption and abatement is sought, the Commissioner is required to order the county treasurer to collect all of the taxes, penalties, and interest due on the property for those years.

The act permits the Tax Commissioner to apply the act's provisions (1) to any qualified property that is the subject of an application for exemption pending on the immediate effective date of the act, without requiring the property owner to file an additional application, and (2) to such property that is the subject of an application for exemption filed on or after the act's immediate effective date, but within 12 months of the immediate effective date, even if the application does not expressly request abatement of unpaid taxes.

### **Changes to the job creation and job retention tax credits**

(R.C. 122.17, 122.171, 718.15, and 718.151)

Under continuing law, Ohio's Tax Credit Authority may enter into agreements with employers whereby the employer undertakes the creation or retention of Ohio jobs in exchange for tax credits against the corporate franchise and personal income taxes. Similarly, continuing law authorizes municipal corporations to grant job retention or creation tax credits against their income taxes to taxpayers who have been granted a credit from the Tax Credit Authority. Under prior law, the term of a tax credit issued by the Tax Credit Authority or a municipal corporation could not exceed ten years. The act extends the maximum term of the credit from ten to 15 years.

The act also alters the employment requirements that make a taxpayer eligible for the job retention tax credit. Under continuing law, the agreement

between the Tax Credit Authority and an employer for a job retention tax credit must include a requirement that the taxpayer retain a specified number of full-time employment positions for the term of the credit, including a requirement that the taxpayer continue to employ at least one thousand employees in full-time positions at a designated site. If a taxpayer satisfies this and other conditions in the agreement, the Director of Development issues the taxpayer a tax credit certificate demonstrating the taxpayer's eligibility for the credit and specifying the amount of the credit to which the taxpayer is entitled. (The taxpayer must submit the certificate to the Tax Commissioner when claiming the credit.) The Director may not issue a certificate for any year in which the total number of full-time employment positions for each day of the calendar year divided by 365 is less than 90% of the employment positions required to be retained under the taxpayer's agreement with the Tax Credit Authority. Thus, a taxpayer is ineligible for a credit if the taxpayer retains less than 90% of the positions that the taxpayer is required to retain under the agreement with the Tax Credit Authority. The act creates an exception to the 90% retention requirement. Under the act, the 90% retention requirement does not apply if the Tax Credit Authority, in a resolution and in the agreement, authorizes a lower retention rate for the taxpayer.

**Deferment of income tax liability for members of the armed forces serving in Operation Iraqi Freedom**

(R.C. 5747.026)

The act defers the income tax liabilities of service members serving in Operation Iraqi Freedom for taxable years beginning on or after January 1, 2002. Specifically, the deferment is available to any member of the National Guard or member of a reserve component of the United States armed forces called to active or other duty under Operation Iraqi Freedom.

The act provides that eligible military personnel may apply to the Tax Commissioner for an extension for filing income tax returns and paying income taxes for the period of the applicant's duty service under Operation Iraqi Freedom and for 60 days thereafter. An application for deferment must be filed on or before the 60th day after the applicant's duty terminates. An applicant must provide to the Tax Commissioner any information that the Tax Commissioner believes is necessary to support the application.

If the Tax Commissioner determines that an applicant is qualified for deferment, the Tax Commissioner is required to enter into a contract with the applicant for the payment of taxes in installments. The installment payments begin on the 61st day after the applicant's duty under Operation Iraqi Freedom terminates. The applicant is not required to file any return, report, or other tax document before the 61st day after the applicant's duty terminates. The act allows

the Tax Commissioner to establish appropriate contract terms; however, the Tax Commissioner may not treat deferred taxes as delinquent and may not require any payments of penalties or interest with respect to the deferred taxes.

The act directs the Tax Commissioner to adopt rules necessary to administer the deferment program created in the act. Specifically, the Tax Commissioner is directed to establish criteria for eligibility under the program, a schedule for repayment of deferred taxes, and forms and procedures by which applicants may apply for extensions.

The act specifies that the deferment program does not apply to a taxpayer who has received an extension of time in which to file a federal income tax return or pay federal income taxes under the Internal Revenue Code. Under the act, Ohio income taxpayers (including those serving in Operation Iraqi Freedom) who are eligible for an extension under the Internal Revenue Code also receive an extension of time in which to file any income return, report, or other tax document. The act provides, further, that these taxpayers also receive an extension of time in which to pay their Ohio and school district income taxes. The length of the extension is equal to the length of the corresponding extension received by the taxpayer under the Internal Revenue Code. Taxes paid at the conclusion of the extension period are not delinquent and, accordingly, the act prohibits the Tax Commissioner from requiring any payment of penalties or interest in connection with these taxes. Similarly, the act prohibits the Tax Commissioner from including any period of extension granted pursuant to the act when calculating the interest due on unpaid income taxes.

**Extension of Tax Commissioner's power to disregard sham transactions**

(R.C. 5703.56, 5733.059, 5733.0611, 5733.111 (repealed), 5733.45, 5739.01, 5739.012 (repealed), 5741.01, 5741.011 (repealed), 5747.131 (repealed), and 5747.31)

The doctrines of "sham transaction," "economic reality," "step doctrine," and "substance over form" are sometimes used by the Tax Commissioner to identify a taxpayer's true tax liability. Under prior law, the Tax Commissioner could apply these doctrines in making corporate franchise and income tax assessments. The Tax Commissioner was also authorized to apply the doctrines to the up-front sales and use taxes paid on certain leases.

The act extends the Tax Commissioner's authority to employ "sham transaction" and other similar doctrines. The act defines a "sham transaction" as any transaction or series of transactions that have no economic substance because they lack a business purpose or expectation of profit other than obtaining tax benefits. The act provides that the Tax Commissioner may disregard a sham

transaction in ascertaining any taxpayer's liability with respect to any tax. Application of the "economic reality," "substance over form," and "step transaction" doctrines is not foreclosed by the emphasis placed upon "sham transaction."

The act shifts the burden of proof in establishing the existence of a sham transaction depending upon whether the taxpayer involved in the transaction was a member of a "controlled group." The act defines a "controlled group" as two or more persons related in such a way that one person directly or indirectly owns or controls the business operations of another member of the group. In the case of persons with stock or other equity, one person owns or controls another if the person directly or indirectly owns more than 50% of the other person's common stock with voting rights or other equity with voting rights. Under the act, if a transaction occurred between members of a controlled group, then the taxpayer bears the burden of establishing by a preponderance of the evidence that the transaction was not a sham transaction. For taxpayers who are not members of a controlled group, the Tax Commissioner bears the burden of establishing by a preponderance of the evidence that the transaction was a sham.

If the Tax Commissioner disregards a sham transaction, the applicable statute of limitations for assessing the tax, interest, and penalties is extended. The length of the extension is equal to the length of the applicable statute of limitations. The act does not extend applicable limitation periods for claiming tax refunds.

The act authorizes the Tax Commissioner to adopt rules necessary to apply the doctrine of sham transaction and other similar doctrines. Among the rules the Commissioner is authorized to adopt are rules establishing criteria for identifying sham transactions.

**Tax replacement payments for taxing districts having a nuclear power plant**

(R.C. 5727.84, 5727.85, and 5727.86; Section 169)

Electric companies and rural electric companies pay taxes on their tangible personal property. To determine the personal property taxes an electric company or rural electric company must pay, the Tax Commissioner must first identify the taxable property and its true value. Taxable property is assessed each year by the Tax Commissioner at a percentage of true value established by statute. Beginning in 2001, the percentages used to determine the assessed value of electric company and rural electric company property were reduced from their existing rates to 25% for most types of tangible personal property.

As a result of the reduction in assessment rates, taxing districts (i.e., municipalities or townships in which the aggregate rate of taxation is uniform) lost property tax revenue. Under continuing law, this lost revenue is offset through payments to taxing districts from the Local Government Property Tax Replacement Fund and the School District Property Tax Replacement Fund, which are comprised of a percentage of the revenues received from the kilowatt-hour tax. To the extent amounts held in these funds are not sufficient to compensate taxing districts for their lost revenues, continuing law permits the Director of Budget and Management to transfer moneys from the General Revenue Fund to these two funds to cover any deficiencies. The amount of tax replacement payments to which a taxing district is entitled is calculated, in part, on the basis of that taxing district's "electric company tax value loss." Under prior law, electric company tax value loss was calculated by adding the amounts described in (1) and (2) below.

(1)(a) The value of electric company and rural electric company tangible personal property as assessed by the Tax Commissioner for tax year 1998 on a preliminary assessment, or an amended preliminary assessment issued before March 1, 1999, and as apportioned to the taxing district for tax year 1998; minus

(b) The value of electric company and rural electric company tangible personal property as assessed by the Tax Commissioner for tax year 1998 had the property been apportioned to the taxing district for tax year 2001 and assessed at the rates in effect for tax year 2001 (the year in which the tax rates were reduced).

(2)(a) The three-year average for tax years 1996, 1997, and 1998 of the assessed value from nuclear fuel materials and assemblies assessed against a person under the general taxpayer personal property tax law from the leasing of the materials and assemblies to an electric company for those respective years, as reflected in the preliminary assessments; minus

(b) The three-year average assessed value of that same property for tax years 1996, 1997, and 1998, as reflected in the preliminary assessments, using an assessment rate of 25%.

Under the act, in calculating the electric company tax value loss of a taxing district with a nuclear power plant within its territory, an additional amount may be added to the amounts described in (1) and (2) above. To calculate the additional amount, one begins by subtracting the value of electric company tangible personal property as assessed for tax year 2001 on a preliminary assessment or amended preliminary assessment issued before March 1, 2002, and as apportioned to the taxing district for tax year 2001 from the value of such property as assessed for tax year 2000 on a preliminary assessment or amended preliminary assessment issued before March 1, 2001, and as apportioned to the taxing district for tax year 2000. The excess, if any, of this amount over the

amount obtained by doing the calculation described in (1) above is added in the calculation of electric company tax value loss. Thus, under the act, taxing districts with nuclear power plants are eligible for tax replacement payments that compensate the taxing district for losses incurred due to a reduction in the assessed value of electric company tangible personal property between tax years 2000 and 2001, which losses are not covered under existing law.

The act provides that, as soon as is practicable after the act's immediate effective date, the Tax Commissioner is required to redetermine electric company tax value loss and to perform other computations required to make tax replacement payments under continuing law. The computations are to be made in accordance with the act's new provisions on electric company tax value loss described above. The Tax Commissioner is to make these computations notwithstanding the fact that continuing law prescribes deadlines requiring that they have already been made. The act further requires that other state officials responsible for administering tax replacement payments use the Tax Commissioner's redeterminations in computing tax replacement payments to be made during state fiscal year 2004 and subsequent fiscal years.

Finally, the act prohibits transferring General Revenue Fund moneys to the Local Government Property Tax Replacement Fund or the School District Property Tax Replacement Fund for the purpose of making the additional tax replacement payments authorized by the act. So, a taxing district with a nuclear power plant that is eligible for the new tax replacement payments created in the act will not receive those payments if making the payments requires the use of moneys from the General Revenue Fund.

**Extension of county taxation authority to finance convention centers**

**Authority to levy an additional hotel lodging tax and to use proceeds from existing hotel lodging taxes to pay costs associated with convention centers**

(R.C. 307.671 (not in the act), 307.695 (not in the act), 5739.024 (not in the act), and 5739.09(H))

Continuing law authorizes counties to levy a tax on hotel stays (a "lodging tax"). The amount of the tax cannot exceed 3%. The act grants counties with populations of one million or more according to the most recent federal decennial census additional authority with respect to the hotel lodging tax.

First, the act authorizes the legislative authority of a county with a population of one million or more to levy additional lodging taxes. Specifically, the act provides that the legislative authority of a county that levies a lodging tax may, by a resolution adopted by a majority of its members, increase that lodging

tax up to a maximum of 5%. Under the act, the resolution may provide that all collections resulting from the rate levied in excess of 3% be deposited in the county general fund after deducting the real and actual costs of administering the tax.

Second, the act permits the legislative authority of a county with a population of one million or more to adopt a resolution on or before August 30, 2004, by a majority of its members, requiring that all or a portion of the proceeds of the first 3% of lodging taxes levied (i.e., the lodging taxes levied pursuant to continuing law and not the act) be deposited in the county general fund, after deducting the real and actual costs of administering the tax and the amounts required to be returned to townships and municipalities under continuing law. However, these proceeds must be used to satisfy any pledges made by the county pursuant to any agreement entered into between the county and a convention and visitors' bureau operating in the county under which the county agrees to pledge the proceeds of its lodging tax to the construction or equipping of a convention center.

Finally, under the act, the legislative authority of a county with a population of one million or more may, by a resolution adopted by a majority of its members, extend all or a portion of the tax levied under a port authority educational and cultural facility cooperative agreement is to be deposited in the county general fund to the extent the proceeds are no longer needed for their original purpose.<sup>213</sup> The resolution may provide for the extension of the tax for a period not longer than 40 years.

The act provides that any revenue attributable to the new taxing authority created by the act or attributable to county general fund deposits authorized by the act must be used only for paying the direct and indirect costs of constructing, improving, expanding, equipping, financing, or operating a convention center and for the real and actual costs of administering the tax. However, the proceeds may be used to pay the direct and indirect costs of capital improvements, including

---

<sup>213</sup> *Continuing law permits counties to enter into "cooperative agreements" with a municipal corporation and a port authority for the construction of a port authority educational and cultural facility. A port authority educational and cultural facility is located in an economically depressed area and consists of museums, archives, halls of fame, or other educational and cultural facilities. Under these cooperative agreements, the county agrees to levy an additional lodging tax and the municipal corporation and the port authority agree to issue bonds and perform other functions to fund the project. Any additional lodging tax that a county levies to support these facilities cannot exceed 1.5%.*

financing capital improvements, if the county in which the tax is levied and the mayor of the most populous municipality in the county enter into an agreement as to that use. The agreement must be executed before the adoption of the resolution authorizing the tax or deposit. The agreement must be approved by a majority of the mayors of the other municipal corporations in the county or by the association of mayors and city managers, if one exists.

**Contributions to certain convention facilities authorities prohibited**

(R.C. 5739.09(H)(5))

The act provides that revenue attributable to the new taxing authority created in the act or attributable to county general fund deposits authorized by the act may not be contributed to a convention facilities authority, corporation, or other entity created after July 1, 2003, for the principal purpose of constructing, improving, expanding, equipping, financing, or operating a convention center. (A "convention facilities authority" is a governmental body created by a county to administer excise taxes levied to support convention, entertainment, or sports facilities and to perform other functions associated with these facilities (R.C. Chapter 351.)) However, tax proceeds may be contributed to such a conventional facilities authority, corporation, or other entity if the mayor of the municipality in which the convention center is to be operated has consented to the creation of the entity. The act provides, further, that if a county levies the additional taxes authorized by the act for a convention center, the board of county commissioners may determine the manner of selection, qualifications, number, and terms of office of the members of the board of directors of the convention facilities authority, corporation, or other entity established to construct, improve, expand, equip, finance, or operate the convention center.

**Yearly audits required**

(R.C. 5739.09(H)(7))

The act requires that the Auditor of State conduct a yearly audit to determine how counties are using proceeds attributable to the new lodging tax authority granted to them by the act. The Auditor of State is required to prepare a report of the findings and to submit it to the legislative authority of the county, the Speaker of the House of Representatives, the President of the Senate, and the leaders of the minority parties of the House of Representatives and Senate.

**Authority to levy a 2% sales tax on food and beverages**

(R.C. 307.676 and 5703.47 (not in the act))

Under continuing law, an excise tax is levied on each retail sale made in Ohio. Counties may also levy local sales taxes on each retail sale, subject to certain limitations. The act grants new authority to counties with populations of one million or more according to the most recent federal decennial census to levy a tax of up to 2% on every retail sale in the county of food and beverages to be consumed on the premises where sold.

In order to levy the new food and beverage tax, a majority of the county's legislative authority must adopt a resolution on or before August 30, 2004. The resolution must be submitted to the counties' voters and approved by a majority of those voting upon it. Specifically, the county must submit the question of levying the tax to the county's voters at the next primary or general election in the county occurring not less than 75 days after the resolution is certified to the board of elections. The ballot may set forth any specific purposes for which the tax will be used.

Any food and beverage tax levied under the act is to remain in effect for the period of time specified in the resolution levying the tax. The tax, however, may not remain in effect for a period longer than 40 years.

The county food and beverage tax authorized by the act is independent of state sales and use taxes. Accordingly, the county is charged with the responsibility of administering the tax. To that end, the act requires that the county establish all regulations necessary to provide for the administration and allocation of the tax. The regulations may prescribe the time for paying the tax and may prescribe penalties, interest charges, or both for late payments. However, a penalty may not exceed 10% of the amount of tax due and interest charges may not exceed the "federal short-term rate" (i.e., the average rate of interest accruing on federal obligations maturing within three years) plus an additional 3%.

Like the additional lodging tax authority created by the act, the proceeds of the food and beverage tax must be used for convention centers and for paying the administrative costs associated with the tax, unless the county and the mayor of the most populous municipality in the county enter into an agreement, before the resolution authorizing the tax is adopted, to use some of the proceeds for capital improvements and this agreement is approved by a majority of the mayors of the other municipalities located in the county (see **Authority to levy an additional hotel lodging tax and to use proceeds from existing hotel lodging taxes to pay costs associated with convention centers,**" above). In addition, the act provides



that, immediately following the execution of the agreement, the county must do one of the following:

(1) Publish the agreement at least once in a newspaper of general circulation in the county; or

(2) Post the agreement in at least five public places in the county for not less than 15 days. (The legislative authority determines the public places in which the agreement is to be posted.)

**Convention facilities authorities**

(R.C. 307.676(E)(1))

The new food and beverage tax authorized by the act is subject to the same restrictions regarding contributions to convention facilities authorities and other entities that construct and operate convention centers as those set forth above with respect to the lodging tax (see "**Contributions to convention facilities authorities prohibited**," above). As with the lodging tax, tax proceeds may be contributed to an entity established after July 1, 2003, to construct, improve, expand, equip, finance, or operate a convention center if the mayor of the municipal corporation in which the convention center is to be operated has consented to the creation of that entity. If a county levies the additional taxes authorized by the act for a convention center, the county may determine the manner of selection, qualifications, number, and terms of office of the members of the board of directors of the convention facilities authority, corporation, or other entity established to construct, improve, expand, equip, finance, or operate the convention center.

**Yearly audits required**

(R.C. 307.676(F))

The act requires that the Auditor of State conduct a yearly audit to determine how counties are using proceeds attributable to a food and beverage tax levied pursuant to the act. The Auditor of State is required to prepare a report of the findings and submit it to the legislative authority of the county, the Speaker of the House of Representatives, the President of the Senate, and the leaders of the minority parties of the House of Representatives and Senate.

**Increased lodging tax for port authority military-use facilities**

(R.C. 5739.09(A)(5))

The act authorizes the board of county commissioners of a county that created, participated in the creation of, or joined a port authority that operates a port authority military-use facility to do either or both of the following:

(1) Amend a previously adopted resolution levying a county lodging tax to designate some or all the revenue from the tax to be used for the purpose of contributing revenue to pay operating expenses of the port authority.

(2) Amend a previously adopted resolution levying a county lodging tax to increase the rate of the tax by not more than an additional 2% to be used for that purpose. A board of county commissioners that amends a resolution as described in this paragraph also may amend the resolution to specify that the increased rate does not apply to hotels having fewer rooms used for the accommodation of guests than a number of rooms specified by the board.

A "port authority military-use facility" is port authority facilities on which or adjacent to which is located an installation of the United States armed forces, a reserve component thereof, or the National Guard and at which at least part of which is made available for use, for consideration, by the United States armed forces, a reserve component thereof, or the National Guard.

**Pollution control and other special-purpose tax-exempt facilities**

(R.C. 123.01, 3745.11, 5709.20 to 5709.27, 6111.06, and various repealed sections)

Under continuing law, property tax exemptions and other tax benefits are available for facilities used to control or reduce industrial air and water pollutants, convert energy from one form to another, reduce industrial noise, or recover waste heat. The other tax benefits are exemptions from sales and use taxation of any property incorporated into such a facility, and exclusion of such property from the taxable Ohio franchise tax base. Eligibility for exemptions and tax benefits is evidenced by an "exemption certificate."

**Changes in general administration**

(R.C. 5709.20, 5709.211, 5709.22, and 5709.24)

The act consolidates the various laws governing special-purpose tax-exempt facilities of the kinds described above into a single body of law. (Collectively, the facilities are to be known as "exempt facilities.") The

procedures for application, approval, and appeals are made uniform for all of the various kinds of facilities. The Tax Commissioner administers the application and approval process for all facilities, but provides copies of applications to the Director of Environmental Protection and the Director of Development to obtain their opinions and recommendations with respect to the kinds of facilities each director oversaw under prior law. Under prior law, the Director of Environmental Protection administered the procedures for water pollution control facilities and cooperated with the Tax Commissioner in the procedures for certain other kinds of pollution control facilities. The Director of Development oversaw the procedures for energy conversion and thermal efficiency facilities. The act allows either director to request additional information from an applicant and to conduct inspections. Applicants are entitled to inspect copies of the opinion issued by either director with respect to the applicant's property. But an opinion by either director does not constitute a final action that may be appealed.

**Eliminate exclusion from franchise tax base**

(R.C. 5709.25)

Under prior law, real and tangible personal property comprising a pollution control facility was exempted from property taxation and was not considered an asset of a corporation for purposes of computing the corporation franchise tax.

The act eliminates the exclusion of exempt facilities from the Ohio corporation franchise tax base.

**Application fee**

(R.C. 5709.212 and 5709.25(E))

The act imposes an application fee equal to ½% of the exempt facility's cost, but not more than \$2,000. Previously, no fee was imposed, except for industrial water pollution control applications, for which a \$500 fee was imposed. The fee must be paid when the application is filed, and is nonrefundable under any circumstance. The Tax Commissioner may allow an applicant to file a single application for multiple facilities as long as all of the facilities are in the same county. If an exemption certificate has been issued for a facility, a new application must be filed for additional property added to the facility if the cost of the additional property added in any calendar year (minus the cost of any retired property) is more than \$500,000, but the application fee is only \$500. If the cost is below that threshold, a new application need not be filed.

One-half of the fee is to be credited to the Exempt Facility Administrative Fund for use by the Department of Taxation to defray the costs of administering

the exempt facility law. The fund to which the other one-half is credited depends on the kind of facility that is the subject of the application. If it is the kind that requires the opinion and recommendation of the Director of Environmental Protection (other than an industrial water pollution control facility), the other half is credited to the Clean Air Fund for use by the Director in carrying out the Director's responsibilities with respect to issuing opinions and recommendations to the Tax Commissioner and inspecting facilities. If the fee is paid in connection with an application for an industrial water control pollution facility, the other half of the fee is credited to the Surface Water Protection Fund for use by the Director in carrying out the Director's responsibilities with respect to industrial water pollution control facilities. If the fee is paid in connection with an energy conversion or thermal efficiency facility, the other half of the fee is credited to the Exempt Facility Inspection Fund for use by the Director of Development in performing the Director's duties with respect to energy conversion and thermal efficiency facilities.

### **Partial exemption**

(R.C. 5709.21)

To be exempted from taxation under prior law, property must not have been used solely for the benefit of the business or solely for the benefit or protection of employees. Under the act, property may not be exempted in whole, as an "exempt facility," if it is used primarily for one or both of those purposes. If property does not qualify as an exempt facility, but is necessary for the operation of exempt property, part of the property's cost may be eligible for exemption. If the property is used in support of the exempt facility for discrete periods of time, the exempt cost is proportional to the time it is so used. Otherwise, the applicant must prove the part of the facility's cost that is exempt. Regardless of how the exempt portion is determined, the act appears to exempt any property necessary for the operation of the exempt facility, but also used for other business operations, if the portion of the property's cost used for exempt purposes is at least 85% of the total cost. In no case is any cost exempted if the cost is related to an expansion of a site that is not related to operating the exempt facility.

### **Revaluation**

(R.C. 5709.25)

The act prescribes a reduction in the exempt value of property if its book value is reduced for any reason, including its sale or its being affected by bankruptcy proceedings, as compared to the book value when the exemption certificate was issued. The percentage of the facility's cost that is exempted is reduced to the percentage that the exempt facility's "historical" cost is of the

historical cost of all real and tangible personal property at the site of the exempt facility (as long as that percentage does not result in an exempt cost greater than the original exempt cost).

### **Effective date of exemption**

(R.C. 5709.25)

Under prior law, property comprising an exempt facility remained taxable until an exemption certificate was issued, but the exemption, if ultimately granted, related back to when the application was filed.

The act authorizes the Tax Commissioner to permit exemptions to take effect when an application is filed, and also provides procedures for collecting the taxes due by assessment if the application eventually is denied in whole or in part. The assessment must be made within 180 days after the Tax Commissioner issues the notice of denial unless a longer statute of limitations applies under another applicable law. Assessments must be issued in accordance with the law governing the applicable tax. If an assessment is issued in connection with an application that was denied in part only, then the only appealable matter is the denied part of the application. If a decision has not been rendered within two years, an applicant has the right to request a decision from the Tax Commissioner.

### **Appeals**

(R.C. 5709.22 and 5709.25)

An applicant or a county auditor may appeal an exemption application decision to the Tax Commissioner within 60 days after the Tax Commissioner issues written notice of the decision to them. The Commissioner must hold a hearing on the appeal, and the Director of Environmental Protection or Director of Development must participate if either the Tax Commissioner, the applicant, or the county auditor requests their participation. A decision on an application is a final determination that is appealable to the Board of Tax Appeals as are other final determinations of the Tax Commissioner, but an appeal to the Board is not available unless an administrative appeal is made first through the Tax Commissioner.

### **Revocation**

(R.C. 5709.22)

The Tax Commissioner may revoke or modify an exempt facility certificate for one of four causes, one of which is added by the act. Under continuing law, an exemption certificate may be revoked or modified if it was obtained by fraud or

misrepresentation, if the applicant did not follow through with the facility, or the facility is no longer used for an exempt purpose. A fourth cause is added: that the exemption was made erroneously. This fourth cause encompasses not only clerical mistakes, but also if the Tax Commissioner agrees with the Director of Environmental Protection or Director of Development that an exemption certificate should not have been issued, or if the Tax Commissioner determines that an exemption certificate was issued improperly as a result of a final decision of the Board of Tax Appeals (or a higher judicial authority) "that is adverse to the original exempt status of the facility." Revocation and modification decisions may be appealed to the Board of Tax Appeals, and if the decision ultimately is overturned, a refund of any tax paid must be issued within 180 days.

### **Transitional provisions**

(R.C. 5709.201)

Exemption certificates that are valid on the act's effective date continue in effect after that date according to the terms of prior law. Also, if a certificate was issued before July 1, 2003, the Tax Commissioner cannot revoke it after the act's effective date on the grounds that the Tax Commissioner agrees with the Director of Environmental Protection or Director of Development that the certificate was issued in error. Any pending applications must be transferred to the Tax Commissioner, and they will be governed by the new law, except the new application fee does not apply.

### **Notice to local taxing authorities**

(R.C. 5709.23)

The act retains provisions enacted in late 2002 providing for notification to local taxing authorities of pollution control facility exemption applications, which, when approved, often result in these authorities having to refund taxes collected from the facility while the application was pending, because the tax exemption relates back to when the exemption certificate was filed (Am. Sub. S.B. 180 of the 124th General Assembly). However, because the act authorizes the Tax Commissioner to allow the tax exemption to take effect before a certificate is issued, the frequency and amounts of refunds may be diminished to the extent the Tax Commissioner uses that authority.

### **Abating late penalties**

(R.C. 323.13, 4503.06, 5711.33, and 5715.39)

Under ongoing law, penalties and interest are charged for late property tax payments. Property owners may seek to have penalties remitted (i.e., forgiven or

abated) if they can show that one of four conditions caused or contributed to the late payment:

- (1) An error or omission on the part of the county auditor or county treasurer.
- (2) Failure to receive a tax bill on time (as long as the property owner attempted to obtain the bill with 30 days after the payment due date).
- (3) Death, disability, or illness of the property owner (as long as the tax was paid within 60 days after the due date).
- (4) The tax payment was mailed before the due date.

The act adds a fifth, general condition: That there was reasonable cause for the late payment, and it was not because of willful neglect.

Under prior law, the Tax Commissioner made the initial decision on remission of penalties with respect to real property taxes and manufactured or mobile home taxes; the Commissioner's decision was appealable to the Board of Tax Appeals. Under continuing law, county auditors and county treasurers make the initial decision with respect to tangible personal property tax penalties, with the decision appealable to the Tax Commissioner, and then to the Board.

The act makes real property and manufactured or mobile home tax penalty remission procedures similar to those for remission of tangible personal property tax penalties: consequently, county auditors and county treasurers will make the initial remission decisions if the reason for the late payment is any of those shown in (1) through (4), above. If, however, the late payment is due to "reasonable cause" and not willful neglect, then county boards of revision are required to make the initial remission decision. Initial decisions are appealable to the Tax Commissioner, and then to the Board of Tax Appeals.

The act also specifies a 60-day deadline for filing appeals with the Tax Commissioner, for both tangible personal property tax penalties and real property and manufactured or mobile home tax penalties. The deadline is measured from the day the county auditor mails notice of the initial decision to the property owner.

### **Preneed funeral trusts exempted from income tax**

(R.C. 5747.02(E))

Under ongoing law, many trusts that are considered to "reside" in Ohio are subject to a temporary tax on all or part of their income. The tax is scheduled to



expire after 2004. Some trusts are exempted from the tax, such as charitable remainder trusts, qualified settlement trusts, federally tax-exempt trusts, and qualified funeral trusts.

The act exempts "preneed funeral trusts" from the income tax. Preneed funeral trusts are used to prearrange payment for funeral-related goods and services. They are governed by Ohio law, generally to guard against fraud and to ensure that the trust funds are available when needed. (See R.C. 1111.19.)

Some preneed funeral trusts are already exempted from the trust income tax. So-called "qualified funeral trusts" are preneed funeral trusts satisfying certain criteria in federal income tax law, including that the trust must be used only to pay for funeral services and related property, that it must arise from a preneed funeral contract with a provider of funeral services and property, and that the only beneficiaries of the trust are those for whom the funeral services are to be provided (i.e., the decedent). Qualified funeral trusts are not treated as grantor trusts under federal law, meaning that the trust's income is not treated as the trust owner's personal income; instead, the trust is liable for the tax. 26 U.S.C. 685. In order to be considered a qualified funeral trust under federal law, the owner of the trust must elect that status. Thus, the act exempts preneed funeral trusts that are not already exempted as qualified funeral trusts.

### **"Decoupling" from new federal bonus depreciation**

(R.C. 5733.04(H)(17)(a)(ii) and 5747.01(A)(20) and (21))

The act offsets the Ohio tax effects of enhanced or "bonus" depreciation deductions recently enacted by Congress. The federal legislation increases the enhanced first-year depreciation deduction businesses may claim for federal tax purposes from 30% to 50%, and also increases the maximum federal "expensing" deduction for certain new equipment from \$25,000 to \$100,000 per year. Without the act's offset provision, the federal legislation would have reduced some businesses' Ohio taxable incomes and, therefore, their Ohio tax liabilities, during the biennium.

Under the offset provision, corporations and owners of pass-through entities (e.g., partnerships, limited liability companies, S corporations) must add back 5/6 of the bonus depreciation or expensing increase claimed in any year when computing Ohio taxable income under the franchise tax or income tax. Then, in each of the five ensuing years, the taxpayer must deduct 1/5 of the addback. In effect, the act spreads the Ohio tax effect of the bonus depreciation and expensing increase allowance over a six-year period.

The act also clarifies how the addback affects loss carrybacks or carryforwards. Any loss carryback or carryforward must be reduced by 5/6 of the bonus depreciation or expensing claimed under federal law. But if a loss carryback or carryforward for any year is affected by the bonus depreciation or expensing increase, and this 5/6 reduction does not apply to that year, the 1/5 deduction is not allowed for that year.

**Corporation franchise tax: increased minimum tax**

(R.C. 5733.06(E); Section 170)

Under prior law, every corporation subject to the corporation franchise tax had to pay a minimum tax of \$50 if its tax computed on the basis of net income or net worth yielded a tax of less than \$50.

The act increases the minimum tax to \$1,000 for some larger corporations. The increased minimum tax applies to corporations having either (1) \$5 million or more in worldwide gross receipts for its taxable year, or (2) 300 or more employees worldwide at any time during its taxable year. The minimum tax remains at \$50 for other corporations. The increased minimum tax applies to tax years 2004 and thereafter.

**Corporation franchise tax: allocation and apportionment**

(R.C. 5733.04(Q) and (R), 5733.05, 5733.051, and 5733.057; Section 183)

If a corporation does business in Ohio and elsewhere, its corporation franchise tax liability is based on the portion of its net income or net worth that is allocated or apportioned to Ohio. Income from some sources generally is allocated entirely to Ohio or entirely outside Ohio, and all other income is apportioned on the basis of three factors meant to measure the extent of a corporation's business activity in Ohio: sales, employment (measured by payroll), and property (measured by value).

The act modifies the allocation and apportionment provisions by adopting the distinction between business and nonbusiness income used by many states. Generally, business income is to be apportioned according to the three-factor formula, and nonbusiness income generally is to be allocated either to Ohio or outside Ohio. The act also changes how the property factor is computed, and how certain sources of nonbusiness income are allocated, as described below.

**Change in property apportionment**

The property factor is computed in largely the same manner as under prior law, but the act specifies that the factor is to include any property the corporation

rents, leases, subrents, or subleases to others if the net income arising from the rental or leasing is business income.

### Allocation

**Dividends; gains and losses from stock sales.** Under continuing law, income arising from dividends or other distributions that a corporation receives from another company, and capital gains (or losses) from selling or disposing of stock of another company (or similar intangible property), are allocated to Ohio in proportion to the value of underlying physical assets of the other company located in Ohio as compared to everywhere. (For example, if 30% of the value of the other company's physical assets are located in Ohio, then 30% of the dividend, gain, or loss is allocated to Ohio.)

Under the act, such income is allocated to Ohio on the same basis, unless the other company is a member of a larger group of commonly owned or controlled companies. If the company is a member of such a group, the allocation is made on the basis of the proportion of the value of the entire group's Ohio-based physical assets.<sup>214</sup> If any combination of companies in the group own a majority equity stake in a pass-through entity (e.g., partnership, limited liability company), then the entity's physical assets are included in the allocation proportion to the extent of the combination's ownership in the entity. In the case of dividends and distributions, the group includes all companies owned directly or indirectly by the corporation paying the dividend or distribution; in the case of capital gains or losses on stock sales, the group includes the corporation that issued the stock and all companies owned directly or indirectly by that corporation.

Also included are the physical assets of any other ("lower level") pass-through entity owned by the ("upper level") entity that is owned by the combination, unless the upper level entity owns a minority equity stake in the lower level entity, and information about the lower level entity's physical assets is not available to the upper level entity.<sup>215</sup> In the case of gains or losses from the taxpayer-corporation disposing of a company's stock, if the location of the company's physical assets is not available, then the gain or loss is apportioned in the same manner as business income (i.e., the three-factor formula).

---

<sup>214</sup> *The determination of whether the other company is a member of the group is made on the last day of the company's fiscal year ending before the dividend is paid or the stock in the company is sold by the taxpayer-corporation.*

<sup>215</sup> *In this context, information is "available" if the taxpayer is able to learn of the information before the tax report filing deadline.*

One effect of the act is to prevent a corporation from avoiding allocation to Ohio of a dividend paid by a company (such as a holding company) having little or no physical assets in Ohio, but owning a majority stake in one or more other companies that do have physical assets in Ohio.

The act also expressly specifies that, for the purpose of allocating and apportioning dividends and distributions received by a corporation, dividends or distributions include those from any entity that, although not organized as a corporation, is taxed as a corporation under federal law (e.g., some limited liability companies).

**Tangible personal property.** Under prior law, capital gains (or losses) from selling or disposing of tangible personal property were allocated to Ohio if the property was located in Ohio when the sale or disposition occurred and if the corporation was subject to the franchise tax. Rents and royalties from tangible personal property were allocable to Ohio to the extent the property was utilized in Ohio and the corporation was otherwise subject to the franchise tax.

Under the act, such gains or losses are allocated to Ohio "to the extent [the] property was utilized" in Ohio before the sale or disposition. Such rents and royalties are allocable to Ohio to the extent the property is utilized in Ohio regardless of whether the corporation is otherwise subject to the franchise tax.

**Intangible property.** Currently, royalties from patents and copyrights, as well as "technical assistance fees," are allocable to Ohio to the extent that the activity of the person paying the royalties or fees and giving rise to the payment occurs in Ohio (unless the royalties or fees represent the principal source of gross receipts of the taxpayer).

The act applies this activity-location allocation rule to all net rents, net royalties, and net technical assistance fees from any form of intangible property, and applies it regardless of whether the rents, royalties, or fees are the principal source of the taxpayer's gross receipts.

**Lottery proceeds under the corporate franchise tax**

(R.C. 5733.051 and 5747.20 (not in the act))

Prior law specified how income associated with lotteries was to be allocated to Ohio for purposes of the corporate franchise tax by simply referring to a provision in the personal income tax law. The act eliminates the incorporation-by-reference and instead spells it out expressly in the corporate franchise tax law. In addition, the act clarifies, by expressing a negative implication of the spelled-

out allocation rules, that lottery prize awards and related gain with respect to lotteries sponsored outside Ohio are allocable outside Ohio.

**Tax Commissioner's authority to apply income tax refunds toward the payment of unpaid workers' compensation premiums or unemployment compensation contributions or payments in lieu of contributions**

(R.C. 5733.121 and 5747.12)

Under continuing law, the Ohio Tax Commissioner has the authority to apply the tax refund of a business entity or an individual toward any unpaid tax or fee administered by the Tax Commissioner that is paid to the state or to the clerk of courts, or toward any charge, penalty, or interest arising from the tax or fee.

The act expands this authority to allow the Tax Commissioner also to apply the tax refund of a business entity or an individual toward any unpaid workers' compensation premium, unemployment compensation contribution, or unemployment compensation contribution in lieu of contribution. The act also removes the limitation on applying a tax refund only to taxes or fees administered by the Tax Commissioner; instead, a tax refund may be applied toward any tax or fee that is paid to the state or to the clerk of courts.

**Department of Taxation Enforcement Fund--for property or cash forfeited under the Corrupt Activity Forfeiture Law, Felony Drug Abuse Offense Forfeiture Law, or Contraband Forfeiture Law or under federal law**

Continuing law provides a series of mechanisms pursuant to which certain types of property or money that is derived from, used in, or related to the commission of a specified type of criminal offense (e.g., engaging in a pattern of corrupt activity, a felony drug abuse offense, etc.), or a criminal offense in general, is forfeited to the state. Among the forfeiture mechanisms are the Corrupt Activity Forfeiture Law (R.C. 2923.31 to 2923.36), the Felony Drug Abuse Offense Forfeiture Law (R.C. 2925.41 to 2925.45), the Contraband Forfeiture Law (R.C. 2902.01(A)(13), 2933.42, and 2933.43), the Medicaid Offense Forfeiture Law (R.C. 2933.71 to 2933.77), and the Criminal Gang Activity Forfeiture Law (R.C. 2923.41 to 2923.47). Each of the mechanisms sets forth procedures that govern the actual forfeiture of property or cash under the mechanism, and each also specifies what is to be done with property or cash that is forfeited under it. The act modifies the forfeited property and money disposition mechanism under the Corrupt Activity Forfeiture Law, Felony Drug Abuse Offense Forfeiture Law, and Contraband Forfeiture Law.

### **Corrupt Activity Forfeiture Law**

**Continuing law.** Continuing law provides that 10% of the proceeds of all property ordered forfeited by a juvenile court pursuant to the Corrupt Activity Forfeiture Law must be applied to one or more certified alcohol and drug addiction treatment programs specified by the court and that the remaining 90% of those proceeds, all proceeds of property ordered forfeited by a court other than a juvenile court pursuant to that Law, and fines and civil penalties imposed pursuant to that Law must be deposited into the state treasury to the credit of the Corrupt Activity Investigation and Prosecution Fund (R.C. 2923.35(D)(1)). The moneys credited to the Fund must be disposed of in the following order (R.C. 2923.35(D)(2) and (3)):

(1) First, to a civil plaintiff in an action brought under the Corrupt Activity Law;

(2) Second, to the payment of the fees and costs of the forfeiture and sale;

(3) Except as otherwise described in this paragraph, the remainder is paid to the law enforcement trust fund of the prosecuting attorney (unless the prosecuting attorney declines) and to the law enforcement trust fund of the county sheriff, of a municipality, of a township, or of a park district if the investigation was substantially conducted by the sheriff, the municipal police department, township police department or constable, or the park district police force or law enforcement department. The Law provides for the establishment of the law enforcement trust funds. If the State Highway Patrol, the State Board of Pharmacy, or a state law enforcement agency, other than the Patrol or the Board, substantially conducted the investigation, the remainder must be transferred for deposit into the State Highway Patrol Contraband, Forfeiture, and Other Fund; the Board of Pharmacy Drug Law Enforcement Fund; or the Peace Officer Training Commission Fund, respectively. The moneys paid to or deposited into any of the funds must be allocated, used, and expended only in accordance with the Contraband Forfeiture Law described below, a written internal control policy adopted under provisions of that Law, and, if applicable, specified provisions under the State Board of Pharmacy Law.

If more than one law enforcement agency substantially conducted the investigation, the court ordering the forfeiture must equitably divide the remaining proceeds, fines, and penalties among the law enforcement agencies that substantially conducted the investigation.

**Operation of the act.** The act expands the provisions of the Corrupt Activity Law that govern the distribution of proceeds, fines, and penalties credited to the Corrupt Activity Investigation and Prosecution Fund relative to a forfeiture

under that Law, for cases in which the Department of Taxation substantially conducted the investigation. It expands the continuing provisions that provide for the distribution of "the remainder" of the proceeds, fines, and penalties to the prosecuting attorney and the specified local and state law enforcement agencies that "substantially conducted the investigation" to also provide for distribution in cases in which the Department of Taxation substantially conducted the investigation. Under the act, if the Department of Taxation substantially conducted the investigation, the remaining proceeds, fines, and penalties must be transferred to the Department for deposit into the Department of Taxation Enforcement Fund created by the act in the Contraband Forfeiture Law, as described below. The moneys deposited into the Fund must be allocated, used, and expended only in accordance with provisions of the Contraband Forfeiture Law described below, and only in accordance with the Department's written internal control policy adopted under provisions of that Law. The continuing provisions regarding equitable division of the remaining proceeds, fines, and penalties when more than one law enforcement agency substantially conducted the investigation apply regarding the act's expansion. (R.C. 2923.35(D)(2) and (3).)

### **Felony Drug Abuse Offense Forfeiture Law**

**Continuing law--forfeiture under federal law.** Continuing law provides several options to law enforcement agencies that seize property under the Felony Drug Abuse Offense Forfeiture Law, prior to its disposition under that Law. Among the options is to seek forfeiture of the property under federal law. If the agency seeks forfeiture pursuant to federal law, the agency must deposit, use, and account for proceeds from a sale of the property upon its forfeiture, proceeds from another disposition of the property upon its forfeiture, or forfeited moneys it receives, in accordance with the applicable federal law and otherwise must comply with that law. If the State Highway Patrol or the investigative unit of the Department of Public Safety seized the property and seeks its forfeiture pursuant to federal law, the appropriate governmental officials must deposit into the State Highway Patrol Contraband, Forfeiture, and Other Fund or the Department of Public Safety Investigative Unit Contraband, Forfeiture, and Other Fund, as appropriate, all interest or other earnings derived from the investment of such proceeds or the forfeited moneys, to be used and accounted for in accordance with the applicable federal law. The provisions of the Felony Drug Abuse Offense Forfeiture Law described below in "**Continuing law--disposition of property forfeited under state law**" do not apply to proceeds, moneys, interest, and earnings described in this paragraph relative to federal forfeitures involving the State Highway Patrol. (R.C. 2925.44(A).)

**Operation of the act--forfeiture under federal law.** The act expands the provisions of the Felony Drug Abuse Offense Forfeiture Law that pertain to

forfeitures under federal law, for cases in which the Department of Taxation's Enforcement Division seized the property in question. The act contains a separate provision to provide for distribution of proceeds from forfeitures under federal law in cases in which the Department of Taxation seized the property and obtained the forfeiture. Under the act, if the Department of Taxation's Enforcement Division seized the property and if the Tax Commissioner seeks its forfeiture pursuant to federal law, the appropriate governmental officials must deposit into the Department of Taxation Enforcement Fund, created by the act in the Contraband Forfeiture Law, as described below, all interest or other earnings derived from the investment of the proceeds from a sale of the property upon its forfeiture, the proceeds from another disposition of the property upon its forfeiture, or the forfeited moneys, and the Department must use and account for that interest or other earnings in accordance with the applicable federal law. The provisions of the Felony Drug Abuse Offense Forfeiture Law described below in "Continuing law--disposition of property forfeited under state law" do not apply to proceeds, moneys, interest, and earnings described in this paragraph. (R.C. 2925.44(A)(4).)

**Continuing law--disposition of property forfeited under state law.**

Continuing law specifies the manner of disposition of property forfeited under the Felony Drug Abuse Offense Forfeiture Law. It prescribes distinct manners of disposition of certain types of property (e.g., vehicles, drug paraphernalia, firearms, computers, obscene materials, alcohol, etc.) and specifies that all other types of property must be sold in a specified manner (R.C. 2925.44(B)). The proceeds of the sale, and forfeited moneys, must be applied in the following order (R.C. 2925.44(B)(8)):

(1) First, to the payment of the costs incurred in connection with the seizure, storage, and maintenance of, and provision of security for, the property, the forfeiture proceeding or civil action, and the sale;

(2) Second, to the payment of the value of any legal right, title, or interest in the property possessed by a person who established the validity of and preserved that legal right, title, or interest.

(3) Third, the remaining proceeds or moneys, as follows: (a) if the forfeiture was ordered in a juvenile court, 10% to one or more certified alcohol and drug addiction treatment programs the court specifies in the forfeiture order, and (b) if the forfeiture was ordered in a juvenile court, 90%, and if the forfeiture was ordered in a court other than a juvenile court, 100% to appropriate funds in accordance with the proceeds disposition mechanism of the Contraband Forfeiture Law, as described below, to be used only for the purposes authorized by that Law.

**Operation of the act--disposition of property forfeited under state law.**

The act does not change the existing provisions of the Felony Drug Abuse Offense



Forfeiture Law that govern the manner of disposition of property forfeited under that Law (R.C. 2925.44(B)(8)). However, because those provisions specify that certain proceeds of a sale of the forfeited property are to be applied to appropriate funds in accordance with proceeds disposition mechanism of the Contraband Forfeiture Law, as described below, and because the proceeds disposition mechanism of that Law is changed by the act as described below, the act's changes to that mechanism affect the disposition of property forfeited under the Felony Drug Abuse Offense Forfeiture Law.

### **Contraband Forfeiture Law**

**Continuing law--forfeiture under federal law.** The continuing Contraband Forfeiture Law addresses the disposition by a law enforcement agency of the proceeds of forfeited contraband it receives under federal law. It specifies that a law enforcement agency that receives pursuant to federal law proceeds from a sale of forfeited contraband, proceeds from another disposition of forfeited contraband, or forfeited contraband moneys, must deposit, use, and account for the proceeds or moneys in accordance with, and otherwise comply with, the applicable federal law. If the State Highway Patrol or the investigative unit of the Department of Public Safety receives pursuant to federal law any such proceeds or forfeited contraband moneys, the appropriate governmental officials must deposit into the State Highway Patrol Contraband, Forfeiture, and Other Fund or the Department of Public Safety Investigative Unit Contraband, Forfeiture, and Other Fund, as appropriate, all interest or other earnings derived from the investment of the proceeds or the forfeited moneys, to be used and accounted for in accordance with the applicable federal law. The provisions of the Contraband Forfeiture Law described below in "**Continuing law--disposition of property forfeited under state law**" do not apply to proceeds, moneys, interest, and earnings described in this paragraph relative to federal forfeitures involving the State Highway Patrol. (R.C. 2933.43(D)(4).)

**Operation of the act--forfeiture under federal law.** The act expands the provisions of the Contraband Forfeiture Law that address forfeitures under federal law, for cases in which the Department of Taxation's Enforcement Division seized the property in question. The act contains a separate provision to provide for distribution of proceeds from forfeitures under federal law in cases in which the Department of Taxation is involved. Under the act, if the Department of Taxation's Enforcement Division receives pursuant to federal law any such proceeds or forfeited contraband moneys, the appropriate governmental officials must deposit into the Department of Taxation Enforcement Fund, created by the act as described below, all interest or other earnings derived from the investment of the proceeds or the forfeited moneys. The Department must use and account for that interest or other earnings in accordance with the applicable federal law.

The provisions of the Contraband Forfeiture Law described below in "Continuing law--disposition of property forfeited under state law" do not apply to proceeds, moneys, interest, and earnings described in this paragraph. (R.C. 2933.43(D)(4)).

Continuing law--disposition of property forfeited under state law.

Continuing law specifies the manner of disposition of property forfeited under the Contraband Forfeiture Law. Generally, forfeited contraband must be disposed of in accordance with provisions of the existing Abandoned and Unclaimed Property Law, contained in R.C. 2933.41 (not in the act), that identify distinct manners of disposition for specified types of property, or may be used in accordance with that Law. In the case of contraband not described in, and not disposed of pursuant to, those provisions, the contraband must be sold as described below or, in the case of forfeited moneys, disposed of as described below. The proceeds of a sale and forfeited moneys must be applied in the following order:

(1) First, to the payment of the costs incurred in connection with the seizure, storage, and maintenance of, and provision of security for, the contraband, forfeiture proceeding, and sale;

(2) Second, to the payment of the balance due on any preserved security interest;

(3) Third, the remaining proceeds or forfeited moneys, as follows: (a) if the forfeiture was ordered in a juvenile court, 10% to one or more certified alcohol and drug addiction treatment programs, and (b) if the forfeiture was ordered in a juvenile court, 90%, and if the forfeiture was ordered in a court other than a juvenile court, 100% to the appropriate law enforcement trust fund of the prosecuting attorney, the county sheriff, a municipal police department, a township police department or constable, a park district police force or law enforcement department, the State Highway Patrol, the Department of Public Safety Investigative Unit, the Board of Pharmacy, or the State Treasurer based upon which entity made the seizure.

The proceeds or forfeited moneys distributed to any local government's law enforcement trust fund may be allocated from the fund by the appropriate legislative authority only to the municipal police department, the township police or constable, or park district police force or law enforcement department. Additionally, no proceeds or forfeited moneys may be allocated to or used by any of the authorized local or state agencies or officials unless the agency or official has adopted a written internal control policy that complies with criteria contained in the Law and that addresses the use of moneys received from the particular fund.

Regarding the use of the funds, the Board of Pharmacy Drug Law Enforcement Fund may be expended only in accordance with the Board's written



internal control policy and only in accordance with a specified provision of the Pharmacy Law, except that it also may be expended to pay the costs of emergency action taken relative to the operation of an illegal methamphetamine laboratory if the property or money involved was that of a person responsible for operating the laboratory. Proceeds and forfeited moneys deposited into the Peace Officer Training Commission Fund may be used by the commission only to pay the costs of peace officer training. The other funds may be expended only in accordance with the recipient's written internal control policy, and, generally, only to pay the costs of protracted or complex investigations or prosecutions, to provide reasonable technical training or expertise, to provide matching funds to obtain federal grants to aid law enforcement, in the support of DARE programs or other programs designed to educate adults or children with respect to the dangers associated with the use of drugs of abuse, to pay the costs of emergency action taken relative to the operation of an illegal methamphetamine laboratory if the property or money involved was that of a person responsible for operating the laboratory, or for other law enforcement purposes that the Superintendent of the State Highway Patrol, Department of Public Safety, prosecuting attorney, county sheriff, legislative authority, board of township trustees, or board of park commissioners determines to be appropriate. The funds may not be used to meet the operating costs of the State Highway Patrol, the investigative unit of the Department of Public Safety, of the State Board of Pharmacy, any political subdivision, or any office of a prosecuting attorney or county sheriff that are unrelated to law enforcement.

Any official or agency that receives proceeds or forfeited moneys must file an annual report, verifying that the proceeds and moneys were expended only for authorized purposes, with a specified official. For local officials and agencies, the report must be filed with a specified official of their governing subdivision, and for state officials and agencies, with the Attorney General.

If the court determines that more than one law enforcement agency was substantially involved in the seizure of contraband forfeited under the Contraband Forfeiture Law, the court ordering the forfeiture must equitably divide the proceeds or forfeited moneys, after calculating any distribution to the law enforcement trust fund of the prosecuting attorney, among any county sheriff whose office was substantially involved, any legislative authority of a municipality whose police department was substantially involved, any board of township trustees whose law enforcement agency was substantially involved, any board of park commissioners of a park district whose police force or law enforcement department was substantially involved, the State Board of Pharmacy if it was substantially involved, the investigative unit of the Department of Public Safety if it was substantially involved, and the State Highway Patrol if it was substantially involved. The proceeds or forfeited moneys must be deposited in the



respective appropriate funds. If a state law enforcement agency, other than the State Highway Patrol, the investigative unit of the Department of Public Safety, or the State Board of Pharmacy, was substantially involved in the seizure, the agency's equitable share of the proceeds and moneys must be paid to the State Treasurer for deposit into the Peace Officer Training Commission Fund.

All written internal control policies adopted under the Law, and all financial records of the receipts of the proceeds and forfeited moneys, the general types of expenditures made out of the proceeds and moneys, the specific amount of each general type of expenditure by an agency or official, and the amounts, portions, and programs for which they are used are public records under the existing Public Records Law. Each agency or official that uses proceeds or forfeited moneys in any calendar year must prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency or official and must send a copy of the report, by a specified date, to the Attorney General. Not later than April 15 in the calendar year in which the reports are received, the Attorney General must send to the President of the Senate and the Speaker of the House of Representatives a written notification regarding the cumulative reports so received. (R.C. 2933.43(D).)

**Operation of the act--disposition of property forfeited under state law.**

The act expands the provisions of the Contraband Forfeiture Law that govern the distribution of proceeds of the sale of forfeited contraband and of forfeited contraband moneys under that Law for cases in which the Department of Taxation seized the contraband. The act provides for distribution of proceeds of contraband sales and for forfeited contraband moneys when the Department of Taxation is involved. Under the act, if the Department of Taxation made the seizure, the "remaining proceeds or forfeited moneys" are to be applied to the Department of Taxation Enforcement Fund that it creates.

No proceeds or forfeited moneys may be allocated to or used by the Department of Taxation unless it has adopted a written internal control policy that complies with criteria contained in the Law and that addresses the use of moneys received from the Department of Taxation Enforcement Fund. The Fund may be expended only in accordance with the Department's written internal control policy and, generally, only to pay the costs of protracted or complex investigations or prosecutions, to provide reasonable technical training or expertise, to provide matching funds to obtain federal grants to aid law enforcement, in the support of DARE programs or other programs designed to educate adults or children with respect to the dangers associated with the use of drugs of abuse, to pay the costs of emergency action taken relative to the operation of an illegal methamphetamine laboratory if the property or money involved was that of a person responsible for the operation of the laboratory, or for other law enforcement purposes that the

Department determines to be appropriate. The Fund may not be used to meet the operating costs of the Department that are unrelated to law enforcement. The existing provisions regarding equitable division of the proceeds or forfeited moneys when more than one law enforcement agency was substantially involved in the seizure of contraband that is forfeited apply regarding the act's expansion, and specifically include a reference to distribution to the Enforcement Unit of the Department of Taxation in circumstances in which the Unit was substantially involved in the seizure.

The Tax Commissioner must file a report with the Attorney General, no later than January 31 of each calendar year, verifying that proceeds and forfeited moneys paid into the Department of Taxation Enforcement Fund as described in the preceding paragraph during the prior calendar year were used by the Department during the prior calendar year only for the purposes of enforcing the tax laws and specifying the amounts expended for that purpose.

The Department of Taxation's written internal control policy adopted under the act, and all financial records of the receipts of the proceeds and forfeited moneys, the general types of expenditures made out of the proceeds and moneys, the specific amount of each general type of expenditure by the Department, and the amounts, portions, and programs for which they are used, are public records under the existing Public Records Law. The Department must prepare a report covering each fiscal year in which it uses any proceeds or forfeited moneys in the Department of Taxation Enforcement Fund that cumulates all of the information contained in all of the public financial records kept by the Department and must send a copy of the report, no later than March 1 of the calendar year following the calendar year covered by the report, to the Attorney General. These reports are within the scope of the existing provision, unchanged by the act, that requires the Attorney General to send the President of the Senate and the Speaker of the House of Representatives written notification regarding the cumulative reports received. (R.C. 2933.43(D).)

Under the act, the Controlling Board would have been required to approve any deposit into the Department of Taxation Enforcement Fund. And moneys not approved for deposit into that fund would have been deposited into the Peace Officer Training Commission Fund. The Governor vetoed both these provisions.

As noted above in "*Felony Drug Abuse Offense Forfeiture Law*," the portion of the Contraband Forfeiture Law proceeds distribution mechanism that is discussed in this part of the analysis is incorporated by reference in the Felony Drug Abuse Offense Forfeiture Law, so the changes described in this part of the analysis also affect the Felony Drug Abuse Offense Forfeiture Law. Similarly, the Criminal Gang Activity Forfeiture Law also incorporates by reference the portion of the Contraband Forfeiture Law proceeds distribution mechanism that is

discussed in this part of the analysis, so the changes described in this part of the analysis also affect the Criminal Gang Activity Forfeiture Law (R.C. 2923.46(B)(7)(c)--not in the act).

---

## DEPARTMENT OF TRANSPORTATION

- Changes the Auditor of State's procedure for auditing force account projects.
- Changes the penalty for counties, townships, and municipal corporations that violate their force account limits a third or subsequent time.
- Permits the Department of Transportation to sell commercial advertising space within or on the outside surfaces of any building located within any of its roadside rest areas in exchange for cash payment, and requires the money to be used to improve roadside rest areas.
- Increases the general aviation annual license tax to \$100 per aircraft, and requires all such license tax revenues to be used to fund county airport maintenance.

### *Audits of force accounts and penalties for violations*

(R.C. 117.16 and 164.14)

Am. Sub. H.B. 87 of the 125th General Assembly (the "Transportation Budget Bill") required the Auditor of State to audit force account costs of counties, townships, municipal corporations, and the Ohio Department of Transportation. To accomplish this, the Auditor of State must create a Force Account Project Assessment Form that public offices must use to estimate or report the cost of force account projects they undertake. When an audit of any of those public offices is conducted, the Transportation Budget Bill required the Auditor of State to examine a sampling of the forms and related records of any force account project undertaken by that office since an audit was last conducted to determine if the office violated the force account cost limits established for it in the Transportation Budget Bill. If the Auditor of State found a violation, the Transportation Budget Bill required the Auditor to conduct a full audit of each of those force account projects. (R.C. 117.16(A).)

Under law generally retained by the act, if the Auditor of State determines force account costs for counties, townships, and municipal corporations were greater than the statutorily prescribed limits for the political subdivision, the limits generally must be lowered for the political subdivision to a specified amount for a period of one year. However, if the Auditor of State finds a second or subsequent violation in an audit, the force account limits for the political subdivision must be lowered to the specified amount for a two-year period. And, under the Transportation Budget Bill, if a third or subsequent violation was found in an audit, the political subdivision also was required to make penalty payments to the Auditor of State in the amount of 20% of the total cost of the force account project in which the violation occurred. (R.C. 117.16(C).)

The act changes this procedure by requiring the Auditor of State to instead examine *all* the forms and records of a *sampling* of force account projects conducted since the last audit of the public office involved, to determine compliance with applicable force account limits. The requirement that the Auditor of State conduct an audit of *each* force account project so conducted, if a violation is found upon that examination, is eliminated by the act. (R.C. 117.16(A)(3).) The act retains the penalty for counties, townships, and municipal corporations that are found in an audit to have violated their force account limits the first time or a second time, but changes the penalty for a third or subsequent time, as follows (R.C. 117.16(C)(3)):

(1) If the Auditor of State finds such a violation, the Auditor of State must calculate the penalty (the same amount as under the Transportation Budget Bill) and certify it to the Tax Commissioner.

(2) Upon receiving this certification, the Tax Commissioner must withhold the penalty from any funds under his or her control that are due or payable to the violating political subdivision.

(3) If the Tax Commissioner cannot withhold any or enough funds to cover the penalty, the Tax Commissioner must certify the amount remaining unpaid to the appropriate county auditor to be withheld from any amounts he or she may control that are due or payable to the violating political subdivision and that can be lawfully withheld, and to pay the withheld amount to the Tax Commissioner.

(4) The Tax Commissioner must deposit all penalty moneys withheld as described in (2) and (3) above into the ongoing Transportation Improvement Program Fund for distribution as provided in continuing law.

### *Sale of advertising at roadside rest areas*

(R.C. 5515.07 and 5515.08)

The act permits the Department of Transportation (ODOT) to contract to sell commercial advertising space within or on the outside surfaces of any building located within any of its roadside rest areas in exchange for cash payment. ODOT must deposit these payments in the state treasury to the credit of the Roadside Rest Area Improvement Fund (which the act creates) and use the money only to improve its roadside rest areas.

The advertising must comply with all of the following:

(1) It cannot be libelous or obscene and cannot promote any illegal product or service.

(2) It cannot promote illegal discrimination on the basis of the race, religion, national origin, handicap, age, or ancestry of any person.

(3) It cannot support or oppose any candidate for political office or any political cause, issue, or organization.

(4) It must comply with any controlling federal or state regulations or restrictions.

(5) To the extent physically and technically practical, it must state that the advertisement is a paid commercial advertisement and that the state does not endorse the product or service it promotes or make any representation about the accuracy of the advertisement or the quality or performance of the promoted product or service.

(6) It must conform to all ODOT rules applicable to such advertising, which the act requires the Director of Transportation to adopt.

Advertising contracts must be awarded only to the qualified bidder who submits the highest responsive bid or according to uniformly applied rate classes.

Under the act, no person, except an advertiser alleging a breach of contract or the improper awarding of a contract, has a cause of action against the state with respect to any such contract or advertising, and under no circumstances is the state liable for consequential or noneconomic damages with respect to any such contract or advertising.

The act requires the Director, in accordance with the Administrative Procedure Act, to adopt rules to implement the advertising program. The rules



must be consistent with the policy of protecting the safety of the traveling public and the national policy governing the use and control of roadside rest areas. The rules must regulate the awarding of contracts and may regulate the content, display, and other aspects of the commercial advertising.

**General aviation license tax**

(R.C. 4561.18 and 4561.21)

Under prior law, owners of general aviation aircraft paid an annual license tax according to the following schedule: for aircraft with a rated maximum seating capacity of one or two persons, \$6; three persons, \$8; four persons, \$12; five persons, \$15; and over five persons, \$15 plus \$5 per person of rated maximum seating capacity in excess of five persons. The annual tax for gliders was \$3. All these license taxes were deposited into the General Revenue Fund.

The act increases the general aviation annual license tax to \$100 for all aircraft save gliders for which the tax remains at \$3. The Director of Transportation must deposit all license taxes in the state treasury to the credit of the new County Airport Maintenance Assistance Fund. Money in this fund must be used to assist counties in maintaining the airports they own, and the Director must distribute the money to counties in accordance with any procedures, guidelines, and criteria the Director establishes.

---

**OHIO VETERANS HOME AGENCY**

- Exempts reimbursements paid to the U.S. Department of Veterans Affairs for pharmaceutical and patient supply purchases made on behalf of the Ohio Veterans' Home Agency from the requirement that state agency purchases be made through competitive selection or with Controlling Board approval.

**Pharmaceutical and supply purchases**

(R.C. 127.16)

Ongoing law generally prohibits a state agency from making purchases from a particular supplier of \$50,000 or more unless the purchase is made by competitive selection or with Controlling Board approval. The act exempts reimbursements paid to the U.S. Department of Veterans Affairs for

pharmaceutical and patient supply purchases made on behalf of the Ohio Veterans' Home Agency from this requirement.

---

## **BUREAU OF WORKERS' COMPENSATION**

- Permits the legislative body of a county, taxing district, district activity, or certain public institutions to base its proportionate share of payment to the Public Insurance Fund of the workers' compensation State Insurance Fund on specified factors; requires a legislative body to give 60 days advance notice of a change in calculation method to affected local officials; and specifies that transfers from any fund of these public entities to make these payments are not subject to the law prescribing fund transfer procedures of taxing authorities.

### **Fund transfers for payment of workers' compensation payments**

(R.C. 4123.41)

For purposes of making workers' compensation payments, the act permits the legislative body of a county, taxing district, district activity, or specified public institution to base its proportionate share of payment to the Public Insurance Fund on payroll, relative exposure, relative loss experience, or any combination of these factors. Before it may do so, however, the act requires the legislative body, within 60 days before changing the method used for calculating its proportionate share of payment, to notify, consult with, and give information supporting the change to any elected official affected by the change.

Additionally, the act specifies that a transfer from any fund of a county, taxing district, district activity, or specified public institution to the Public Insurance Fund to pay the proportionate share of contributions chargeable to the Public Insurance Fund is not subject to the law that prescribes the procedures a taxing authority must follow to make fund transfers.

---

## **DEPARTMENT OF YOUTH SERVICES**

- Requires the Department of Youth Services (DYS) to set guidelines for minimum occupancy rates for community corrections facilities.



- Allows DYS to place any child committed to DYS directly into a community corrections facility if the facility is not meeting the minimum occupancy threshold.
- Grants the committing court the authority to approve or disapprove the placement of a child into a community corrections facility.
- Allows counties not associated with a community corrections facility to refer children to such a facility with the consent of the facility.
- Designates DYS to serve as the state agent for the administration of all federal juvenile justice grants awarded to Ohio, and specifies that all rules, orders, and determinations of the Office of Criminal Justice Services regarding the administration of federal juvenile justice grants that are in effect on the effective date of the act continue in effect as rules, orders, and determinations of DYS.
- Revises the formula by which the appropriation made to DYS for the care and custody of felony delinquents (the RECLAIM formula) must be expended.
- Eliminates DYS's duty to prepare a specified annual statistical report and the duty to submit a specified report to the Joint Legislative Committee on Juvenile Corrections Overcrowding.
- Revises the definition of "public safety beds."
- Repeals DYS's duty to train or provide for training of probation and youth correction workers.
- Renames DYS's "foster care facilities" to be "placement facilities."
- Permits DYS to grant financial assistance for the provision of care and services for children in a placement facility if the facility has been certified, licensed, or approved by a national agency with certification, licensure, or approval authority, including, but not limited to, the American Correctional Association.

## Community corrections facilities

(R.C. 5139.36)

### Background

Under prior law, the Department of Youth Services (DYS) was permitted to place in a community corrections facility that has received a grant under continuing law (R.C. 5139.36) any felony delinquent who has been committed to DYS if the committing court and the facility consent to the placement. Under continuing law, during the period in which the felony delinquent is in that facility, the felony delinquent remains in the legal custody of DYS.

Under continuing law, DYS is required to make grants for the operation of community corrections facilities for felony delinquents. A community corrections facility seeking a grant must file an application with DYS and include a plan for (1) reducing the number of felony delinquents committed to DYS from the county or counties associated with the community corrections facility, and (2) ensuring equal access for minority felony delinquents to the programs and services for which a potential grant would be used. DYS must review each application submitted to determine whether the plan described, the community corrections facility, and the application comply with R.C. 5139.36 and any rules adopted under that section.

Under continuing law, a community corrections facility also must satisfy at least all of the following requirements:

(1) Be constructed, reconstructed, improved, or financed by the Ohio Building Authority for the use of DYS and be designated as a community corrections facility;

(2) Have written standardized criteria governing the types of felony delinquents that are eligible for the programs and services provided by the facility;

(3) Have a written standardized intake screening process and an intake committee that at least screens all eligible felony delinquents who are being considered for admission to the facility in lieu of commitment to DYS and notifies, within ten days after the date of the referral of a felony delinquent to the facility, the committing court whether the felony delinquent will be admitted to the facility;

(4) Comply with all applicable fiscal and program rules that DYS adopts and demonstrate that felony delinquents served by the facility have been or will be diverted from a commitment to DYS.

### **Operation of the act**

Under the act, DYS is required to adopt rules in accordance with the Administrative Procedure Act to establish the minimum occupancy threshold of community corrections facilities. If a community corrections facility is not meeting the minimum occupancy threshold, DYS is permitted to make referrals for the placement of children in its custody to a community corrections facility. The act eliminates the requirement that DYS make the commitment only after receiving the consent of the court and the facility.

At least 45 days prior to the referral of a child, DYS must notify the committing court of its intent to place the child in a community corrections facility. The court has 30 days after the receipt of the notice to approve or disapprove the placement. If the court does not respond to the notice within that 30-day period, DYS must proceed with the placement and debit the county in accordance with its felony delinquent care and custody program.

Counties that are not associated with a community corrections facility may refer children to a community corrections facility with the consent of the facility. DYS must debit the county in accordance with its felony delinquent care and custody program that makes the referral.

### **Federal juvenile justice programs funds**

(R.C. 5139.87)

Ongoing law creates in the state treasury the federal juvenile justice programs funds. A separate fund is established each federal fiscal year. All federal grants and other moneys received for federal juvenile programs are deposited into the funds, and all receipts deposited into the funds are required to be used for federal juvenile programs. In addition, all investment earnings on the cash balance in a federal juvenile program fund must be credited to that fund for the appropriate federal fiscal year.

The act designates the Department of Youth Services to serve as the state agent for the administration of all federal juvenile justice grants awarded to Ohio. All rules, orders, and determinations of the Office of Criminal Justice Services regarding the administration of federal juvenile justice grants that are in effect on the effective date of the act continue in effect as rules, orders, and determinations of the Department of Youth Services.

## RECLAIM formula

(R.C. 2152.19, 5139.01, 5139.33, 5139.34, 5139.41, 5139.42, 5139.43, 5139.44, and 5139.45)

### Operation of the act--RECLAIM formula

The act replaces the method by which the appropriation made to DYS for care and custody of felony delinquents must be expended (the RECLAIM formula). Under the act, it must be expended in accordance with the following procedure that DYS must use for each year of a biennium. The procedure must be consistent with the other provisions described in this portion of the analysis and must be developed in accordance with the following guidelines:

(1) The line item appropriation for the care and custody of felony delinquents must provide funding for operational costs for the following: (a) institutions and the diagnosis, care, or treatment of felony delinquents at facilities pursuant to certain contracts, (b) certain community corrections facilities constructed, reconstructed, improved, or financed for the purpose of providing alternative placement and services for felony delinquents who have been diverted from care and custody in institutions, (c) county juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation services and programs that are provided for alleged or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children, and (d) administrative expenses DYS incurs in connection with the felony delinquent care and custody programs.

(2) From the appropriated line item for the care and custody of felony delinquents, DYS, with the advice of the RECLAIM Advisory Committee (see "Operation of the act--RECLAIM advisory committee," below) must allocate annual operational funds for county juvenile programs, institutional care and custody, community corrections facilities care and custody, and administrative expenses incurred by DYS associated with felony delinquent care and custody programs. DYS, with the advice of the RECLAIM Advisory Committee, must adjust these allocations, when modifications to this line item are made by legislative or executive action.

(3) DYS must divide county juvenile program allocations among county juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation that are provided for alleged or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children. DYS must base funding on the county's previous year's ratio of DYS's institutional and community correctional facilities commitments to that county's four-year average of felony adjudications, divided



by statewide ratios of commitments to felony adjudications, as specified in the following formula:

(a) DYS must give to each county a proportional allocation of commitment credits. DYS determines the proportional allocation of commitment credits as follows. DYS must determine for each county and for the state a four-year average of felony adjudications. DYS then must determine for each county and for the state the number of charged bed days, for both DYS and community correctional facilities, from the previous year. DYS then must divide the statewide total number of charged bed days by the statewide total number of felony adjudications, which quotient must then be multiplied by a factor determined by DYS.<sup>216</sup> Finally, DYS must calculate the county's allocation of credits by multiplying the number of adjudications for each court by the result determined pursuant to the preceding sentence.

(b) DYS must subtract from the allocation determined pursuant to paragraph (3)(a) a credit for every chargeable bed day a youth stays in a DYS institution and two-thirds of credit for every chargeable bed day a youth stays in a community correctional facility. At the end of the year, DYS must divide the amount of remaining credits of that county's allocation by the total number of remaining credits to all counties, to determine the county's percentage, which then must be applied to the total county allocation to determine the county's payment for the fiscal year.

(c) DYS must pay counties three times during the fiscal year to allow for credit reporting and audit adjustments, and modifications to the appropriated line item for the care and custody of felony delinquents. DYS must pay 50% of the payment by July 15 of each fiscal year, 25% by January 15 of that fiscal year, and 25% by June 15 of that fiscal year.

(4) In fiscal year 2004, the payment of county juvenile programs must be based on the following procedure. DYS must divide the funding earned by each court in fiscal year 2003 by the aggregate funding of all courts, resulting in a percentage. DYS must apply the percentage to the total county juvenile program allocation for fiscal year 2004 to determine each court's total payment. DYS must make payments in accordance with the schedule established in paragraph (3)(c).

The act also provides that a juvenile court is not precluded by its allocation amount for the care and custody of felony delinquents from committing a felony delinquent to DYS for care and custody in an institution or a community

---

<sup>216</sup> *It is unclear how this factor is determined.*

corrections facility when the juvenile court determines that the commitment is appropriate.

**Operation of the act--RECLAIM advisory committee**

The act creates the RECLAIM Advisory Committee that will be composed of the following ten members: (1) two members will be juvenile court judges appointed by the Ohio Association of Juvenile and Family Court Judges, (2) one member will be the Director of DYS or the Director's designee, (3) one member will be the Director of Budget and Management or the Director's designee, (4) one member will be a member of a Senate committee dealing with finance or criminal justice issues appointed by the President of the Senate, (5) one member will be a member of a committee of the House of Representatives dealing with finance or criminal justice issues appointed by the Speaker of the House of Representatives, (6) one member will be a member of a board of county commissioners appointed by the County Commissioners Association of Ohio, and (7) two members will be juvenile court administrators appointed by the Ohio Association of Juvenile and Family Court Judges. The members of the Committee must be appointed or designated within 30 days after the effective date of the section, and the Director of DYS must be notified of the names of the members.

Members described in clauses (1), (6), and (7) of the preceding paragraph serve for terms of two years and hold office from the date of the member's appointment until the end of the term for which the member was appointed. Members described in clauses (2) and (3) serve as long as they hold that office. Members described in clauses (4) and (5) serve for the duration of the session of the General Assembly during which they were appointed, provided they continue to hold that office. The members described in clauses (1), (4), (5), (6), and (7) may be reappointed. Vacancies are to be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed holds office as a member for the remainder of that term. A member continues in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first.

Membership on the Committee does not constitute the holding of an incompatible public office or employment in violation of any statutory or common law prohibition pertaining to the simultaneous holding of more than one public office or employment. Members of the Committee are not disqualified from holding by reason of that membership and do not forfeit because of that membership their public office or employment that qualifies them for membership on the Committee notwithstanding any contrary disqualification or forfeiture requirement under existing Revised Code sections.



The Director of DYS will serve as an interim chair of the Committee until the first meeting of the Committee. Upon receipt of the names of the members of the Committee, the Director must schedule the initial meeting of the Committee, which must take place at an appropriate location in Columbus and occur not later than 60 days after the effective date of this section. The Director must notify the Committee members of the time, date, and place of the meeting. At the initial meeting, the Committee must organize itself by selecting from among its members a chair, vice-chair, and secretary. The Committee must meet at least once each quarter of the calendar year but may meet more frequently at the call of the chair.

In addition to its functions with respect to the RECLAIM program described above under "Operation of the act--RECLAIM formula," the Committee periodically must do all of the following:

(1) Evaluate the operation of the RECLAIM program by DYS, evaluate the implementation of the RECLAIM program by the counties, and evaluate the efficiency of the RECLAIM formula. In conducting these evaluations, the Committee must consider the public policy that RECLAIM funds are to be expended to provide the most appropriate programs and services for felony delinquents and other youthful offenders.

(2) Advise DYS, the Office of Budget and Management, and the General Assembly on the following changes that the Committee believes should be made: (a) changes to sections of the Revised Code that pertain to the RECLAIM program, specifically the RECLAIM formula and (b) changes in the funding level for the RECLAIM program, specifically the amounts distributed under the formula for county allocations, community correctional facilities, and juvenile correctional facility budgets.

**Operation of the act--DYS felony care and custody program**

The act repeals the previously existing provisions of the DYS felony care and custody program, replacing these provisions with the new provisions described above. The repeal of these provisions also results in a related change to the use of moneys in the county felony delinquent care and custody fund. A prior provision permitted a county to use the moneys disbursed to it by DYS for felony delinquent care and custody also for prevention, early intervention, diversion, treatment, and rehabilitation programs that were provided for alleged or adjudicated unruly children, delinquent children, or juvenile traffic offenders or for children who were at risk of becoming unruly children, delinquent children, or juvenile traffic offenders *if the county did not exceed in any month its monthly allocation in connection with felony delinquents*. The act repeals this limitation.

### **Operation of the act--contingency program**

The act repeals the contingency program related to the RECLAIM formula that was contained in R.C. 5139.45.

### **DYS reports to Governor and the legislature**

(R.C. 5139.04 and 5139.43)

#### **Prior law**

Prior law required a juvenile court, by August 31 of each year, to file with DYS a report that contains all of the statistical and other information for each month of the prior state fiscal year that would permit DYS to prepare the report described below to the Joint Legislative Committee on Juvenile Corrections Overcrowding and the annual report to the Governor and to the General Assembly.

Prior law also required DYS to receive these reports and prepare an annual report of state juvenile court statistics and information based on those reports. DYS was required to make available a copy of the annual report to the Governor and members of the General Assembly upon request.

Finally, on or prior to December 1 of each year, DYS was required to submit to the Joint Legislative Committee on Juvenile Corrections Overcrowding a report during the immediately preceding state fiscal year that pertained to the RECLAIM program and that included, but was not limited to, the following:

(1) A description of the programs, care, and services that were financed under the RECLAIM program in each county;

(2) The number of felony delinquents, other delinquent children, unruly children, and juvenile traffic offenders served by the programs, care, and services in each county;

(3) The total number of children adjudicated in each juvenile court as felony delinquents;

(4) The total number of felony delinquents who were committed by the juvenile court of each county to DYS and who were in the care and custody of an institution or a community corrections facility;

(5) A breakdown of the felony delinquents described in the preceding paragraph on the basis of the types and degrees of felonies committed, the ages of the felony delinquents at the time they committed the felonies, and the sex and race of the felony delinquents.



### **Operation of the act**

The act repeals DYS's duty to prepare its annual statistical report and its duty to submit a report to the Joint Legislative Committee on Juvenile Corrections Overcrowding.

### **Definition of "public safety beds"**

(R.C. 5139.01)

### **Prior law**

Under prior law, as used in the Department of Youth Services Law, "public safety beds" included all of the following:

(1) Felony delinquents who, while committed to DYS and in the care and custody of an institution or a community corrections facility, were adjudicated delinquent children for having committed in that institution or community corrections facility an act that if committed by an adult would be a felony.

(2) Children who were: (a) at least 12 years of age but less than 18 years of age, (b) adjudicated delinquent children for having committed acts that if committed by an adult would be a felony, (c) were committed to DYS by the juvenile court of a county that had had 0.1% or less of the statewide adjudications for felony delinquents as averaged for the past four fiscal years, and (d) were in the care and custody of an institution or a community corrections facility.

(3) Felony delinquents who, while committed to DYS and in the care and custody of an institution, committed in that institution an act that if committed by an adult would be a felony, who were serving disciplinary time for having committed that act, and who had been institutionalized or institutionalized in a secure facility for the minimum period of time specified in the Juvenile Delinquency Law.

### **Operation of the act**

The act expands these portions of the definition of "public safety beds" in the following ways:

(1) The act expands the portion of the definition contained in paragraph (1) of "**Prior law**" to include felony delinquents who, while so committed, are adjudicated delinquent children for having committed in that institution or community corrections facility an act that if committed by an adult would be a misdemeanor.

(2) The act broadens the scope of the portion of the definition contained in paragraph (2) of "**Prior law**" to include children of that nature who are at least ten years of age but less than 18 years of age.

(3) The act expands the portion of the definition contained in paragraph (3) of "**Prior law**" to include any felony delinquent of that nature who is serving disciplinary time for any reason disciplinary time may be imposed.

### **Miscellaneous**

(R.C. 5139.04, 5139.34, and 5139.43)

The act also makes several other changes in the Department of Youth Services Law.

(1) The act repeals DYS's duty to train or provide for training of probation and youth correction workers.

(2) The act renames DYS's "foster care facilities" to be "placement facilities."

(3) Under prior law, DYS was prohibited from granting financial assistance for the provision of care and services for children in a *foster care* facility unless the facility had been certified, licensed, or approved by a state agency with certification, licensure, or approval authority. Under the act, DYS is prohibited from granting financial assistance for the provision of care and services for children in a *placement* facility unless the facility has been certified, licensed, or approved by a state *or national* agency with certification, licensure, or approval authority, including, but not limited to, the *American Correctional Association*.

(4) Under prior law, if an audit determined that a county had used moneys on the county's felony delinquent care and custody fund for unauthorized expenses, the county was required to repay the amount of the unauthorized expenditures to the state's general revenue fund. The act specifies that this repayment must come from the county's general fund.

### **Technical changes**

(R.C. 5139.34)

The act also makes changes of a technical nature.

---

## LOCAL GOVERNMENT

- Permits a regional transit authority to adopt certain bylaws and rules and establishes a penalty for a violation.
- Increases from \$15,000 to \$25,000 the threshold above which county contracts must be awarded by competitive bidding.
- Exempts from county competitive bidding requirements contracts for the purchase of services related to information technology, including programming, that are proprietary or limited to a single source.
- Permits the notice of competitive bidding to be placed on a county's web site, and permits a county to eliminate the second newspaper notice of competitive bidding if the notice is posted on the county's web site and meets certain conditions.
- Permits profits from a local correctional facility's commissary to be used for the salary and benefits of employees of the facility, or for any other persons, who work in or are employed for the sole purpose of providing service to the commissary.
- Permits profits from a county jail's commissary to be used for the salary and benefits of employees of the sheriff who work in or are employed for the purpose of providing service to the commissary.
- Prohibits fees received for medical treatment or services that are deposited into a commissary fund of a local detention facility from being used to pay any salary or benefits of any person who works in or is employed for the sole purpose of providing service to the commissary.
- Increases the fees charged by a sheriff for specified actions in relation to civil and criminal actions and proceedings in the court of common pleas.
- Specifies that the fee for receiving, discharging, or surrendering a prisoner does not apply to prisoners in certain work-release programs.
- Until January 1, 2004, allows counties with larger populations to combine the boards that were established in 1989 as separate boards: one with responsibility for mental health services and one with responsibility for alcohol and drug addiction services.



- Eliminates the ability for a limited home rule township to convert from a three-member board of township trustees to a five-member board.
- Increases salaries for township clerks for calendar year 2004 and thereafter in townships with a budget of more than \$6 million.
- Permits certain township park districts to be converted to township park land.
- Increases from \$15,000 to \$25,000 the competitive bidding threshold for certain contracts awarded by various political subdivisions.
- Increases from \$10,000 to \$25,000 the competitive bidding threshold that applies to the award of certain contracts by fire and ambulance districts and boards of township trustees.
- Allows the board of directors of a county agricultural society or independent agricultural society to authorize an officer or employee of the society to use a credit card held by the board to pay for expenses related to the purposes of the society.
- Authorizes a county agricultural society to enter into agreements to obtain loans and credit in an amount up to 25% of its annual revenues.
- Authorizes a county agricultural society or an independent agricultural society to purchase or lease, for a term of not less than 20 years, real estate on which to hold fairs and to erect buildings on it and otherwise improve it.
- Changes the penalty for certain actions that constitute the offense of misconduct involving a public transportation system from a fourth degree misdemeanor to a minor misdemeanor on a first offense and a fourth degree misdemeanor on subsequent offenses.
- Authorizes a prosecuting attorney to require, as a condition of an accused's participation in a pre-trial diversion program, the accused to pay a reasonable fee for supervision services.
- Provides that for a metropolitan housing authority in a county with specified population criteria, the board of county commissioners makes two appointments instead of one and the chief executive officer of the most populous city makes one appointment instead of two.



- Requires the appointment of two additional members, one of whom resides in assisted housing, to metropolitan housing authorities in districts that have no members who reside in assisted housing and that have 300 or more assisted units.
- Establishes qualifications, appointment procedures, terms of office, conditions for replacement, and conditions of reappointment for the additional members the act requires be appointed to metropolitan housing authorities.
- Permits official signs to be erected that restrict the use of a particular traffic lane only to buses during certain hours or during all hours.
- Eliminates the prohibition against certain purchase orders by political subdivisions or taxing units extending beyond three months and specifies that purchase orders may be up to an amount set by the legislative authority of the subdivision or taxing unit (instead of \$5,000).
- Specifies that the additional members of a veterans service commission appointed in certain counties must be honorably discharged or honorably separated veterans.
- Requires those additional members to file a Form DD214 with the Governor's Office of Veteran's Affairs within 60 days after appointment.
- Increases from 400,000 to 500,000 the county population necessary for adding members to county veterans service commissions submitting budget requests that exceed specified amounts.
- Authorizes a board of county commissioners to fix rates and charges for the use of county drainage facilities in order to pay the costs of complying with certain federal storm water requirements and, provided that specified conditions are met, authorizes those rates and fees to be paid annually or semiannually with real property taxes.
- Increases from \$15,000 to \$25,000 the maximum value of a contract that may be entered into by a regional water and sewer district without initiating competitive bidding.



### **Powers of a regional transit authority**

(R.C. 306.35 and 306.99)

A regional transit authority has a number of enumerated powers, among them the power to adopt bylaws for the administration of its affairs and operation of transit facilities. The act permits a regional transit authority also to adopt bylaws and rules for the following purposes:

- (1) To prohibit selling, giving away, or using any beer or intoxicating liquor on transit vehicles or transit property;
- (2) For the preservation of good order on transit vehicles or property;
- (3) To provide for the protection and preservation of all property and life on transit vehicles or property;
- (4) To regulate and enforce the collection of fares.

Before such a bylaw or rule takes effect, the regional transit authority is required to provide for a notice of its adoption to be published once a week for two consecutive weeks in a newspaper of general circulation within its territorial boundaries.

The act prohibits any person from violating any such bylaw or rule. A first offense results in a fine of up to \$100 and each subsequent offense results in a fine of not more than \$500. Fines levied and collected must be paid into the treasury of the regional transit authority, which may use the money for any purpose not inconsistent with the state provisions governing regional transit authorities.

### **County competitive bidding requirements**

(R.C. 307.86 and 307.87)

Ohio law generally unchanged by the act requires counties to award contracts for goods or services by competitive bidding when the cost of those goods or services exceeds a specified amount. Certain contracts, however, such as contracts for replacement or supplemental parts for equipment owned by the county where those parts are limited to a single supplier, are exempt from the competitive bidding requirement.

The act increases from \$15,000 to \$25,000 the threshold above which counties generally must award contracts by competitive bidding. The act also adds to the types of contracts exempt from county competitive bidding contracts

for the purchase of services related to information technology, such as programming services, that are proprietary or limited to a single source.

Whenever competitive bidding is required for county purchasing, continuing law requires notice of the bidding to be published once a week for not less than two consecutive weeks preceding the day of the opening of bids in a newspaper of general circulation within the county. The contracting authority may also cause notice to be inserted in trade papers or other designated publications. Certain information, such as a general description of the subject of the contract and the time and place for filing bids, must be included in the notice.

The act does not change the required content of the notice, but permits the notice of competitive bidding to be distributed by electronic means, including posting the notice on the contracting authority's Internet site on the World Wide Web. If the notice is posted on such a website, the contracting authority is permitted to eliminate the second notice that would otherwise have to be published in a newspaper of general circulation in the county, provided that the first newspaper notice meets all of the following requirements:

- (1) The notice is published at least two weeks before the opening of bids;
- (2) It includes a statement that the notice is posted on the contracting authority's Internet site on the World Wide Web;
- (3) It includes the Internet address of the contracting authority's Internet site on the World Wide Web;
- (4) It includes instructions describing how the notice may be accessed on the contracting authority's Internet site on the World Wide Web.

**Profits from local correctional facility commissaries**

(R.C. 307.93, 341.05, 341.25, 753.22, 2301.58, and 2929.38)

**Local correctional facilities**

Under Ohio law largely unchanged by the act, the person or entity in charge of a workhouse, multicounty correctional center, municipal-county correctional center, multicounty-municipal correctional center, community-based correctional facility, or district-based correctional facility may establish a commissary for the facility. If a commissary is established for the facility, the person or entity must establish a commissary fund for the facility. Commissary fund revenue over and above operating costs and reserve are considered profits. All profits from the commissary fund must be used to purchase supplies and equipment for the benefit of persons incarcerated in the facility.

The act expands the purposes for which the commissary fund profits may be used to also permit the profits to be used to pay salary and benefits for employees of the facility, or for any other persons, who work in or are employed for the sole purpose of providing service to the commissary.

### **Jails**

Ohio law generally unchanged by the act, authorizes the sheriff to establish a commissary for the jail. If the sheriff establishes a commissary, the sheriff also is required to establish a commissary fund for the jail. Commissary fund revenue over and above operating costs and reserve are considered profits. All profits from the commissary fund must be used to purchase supplies and equipment, and to provide life skills training and education or treatment services, or both, for the benefit of persons incarcerated in the jail. Also, the compensation of jail staff is payable from the general fund of the county.

The act expands the purposes for which the commissary fund profits may be used to also permit the profits to be used to pay salary and benefits for employees of the sheriff who work in or are employed for the purpose of providing service to the commissary.

### **Medical treatment**

Under continuing law, any public or private entity that operates a local detention facility of a specified type (including the types described above under "**Local correctional facilities**" and "**Jails**") may establish a policy that requires any prisoner who is confined in the facility as a result of pleading guilty to or having been convicted of an offense to pay a reasonable fee for any medical or dental treatment or service requested by and provided to that prisoner. The fee may not exceed the actual cost of the treatment or service provided. These fees must be paid to the commissary fund, if one exists for the facility, or if no commissary fund exists, to the general fund of the treasury of the political subdivision that incurred the expenses, in the same proportion as those expenses were borne by the political subdivision.

The act specifies that fees received for medical treatment or services that are placed in the commissary fund must be used for the same purposes as profits from the commissary fund, except that they may not be used to pay any salary or benefits of any person who works in or is employed for the sole purpose of providing service to the commissary.

**Increased sheriff's fees**

(R.C. 311.17)

**Service and return of writs and orders fees**

Under continuing law, a sheriff is required to charge specified fees in relation to civil and criminal actions and proceedings in the court of common pleas. The court or the clerk of the court is required to tax those fees in the bill of costs against the judgment debtor or those persons legally liable for the judgment. The act increases those mandatory fees as follows:

<b>Fee purpose</b>	<b>Existing fee</b>	<b>Proposed fee</b>
For the service and return of an execution when money is paid without levy or when no property is found (division (A)(1)(a)).	\$5.00	\$20.00
For the service and return of an execution when levy is made on real property (division (A)(1)(b)).	\$20.00 for the first tract and \$5.00 for each additional tract	\$25.00 for the first tract and \$10.00 for each additional tract
For the service and return of an execution when levy is made on goods and chattels, including inventory (division (A)(1)(c)).	\$25.00	\$50.00
For the service and return of a writ of attachment of property, except for purpose of garnishment (division (A)(2)).	\$20.00	\$40.00
For the service and return of a writ of attachment for the purpose of garnishment (division (A)(3)).	\$5.00	\$10.00
For the service and return of a writ of replevin (division (A)(4)).	\$20.00	\$40.00
For the service and return of a warrant to arrest, for each person named in the writ (division (A)(5)).	\$5.00	\$10.00
For the service and return of an attachment for contempt, for each person named in the writ (division (A)(6)).	\$3.00	\$6.00
For the service and return of a writ of possession or restitution (division (A)(7)).	\$20.00	\$60.00



<b>Fee purpose</b>	<b>Existing fee</b>	<b>Proposed fee</b>
For the service and return of a subpoena, for each person named in the writ, if in a civil case (division (A)(8)).	\$3.00	\$6.00
For the service and return of a subpoena, for each person named in the writ, if in a criminal case (division (A)(8)).	\$1.00	\$6.00
For the service and return of a venire, for each person named in the writ, if in a civil case (division (A)(9)).	\$3.00	\$6.00
For the service and return of a venire, for each person named in the writ, if in a criminal case (division (A)(9)).	\$1.00	\$6.00
For the service and return of summoning each juror, other than on venire, if in a civil case (division (A)(10)).	\$3.00	\$6.00
For the service and return of summoning each juror, other than on venire, if in a criminal case (division (A)(10)).	\$1.00	\$6.00
For the service and return of a writ of partition (division (A)(11)).	\$15.00	\$25.00
For the service and return of an order of sale on partition (division (A)(12)).	\$25.00 for the first tract and \$5.00 for each additional tract	\$50.00 for the first tract and \$25.00 for each additional tract
For the service and return of another order of sale of real property (division (A)(13)).	\$20.00 for the first tract and \$5.00 for each additional tract	\$50.00 for the first tract and \$25.00 for each additional tract
For the service and return for administering an oath to appraisers (division (A)(14)).	\$1.50	\$3.00
For the service and return for furnishing copies for advertisements (division (A)(15)).	\$.50 for each 100 words	\$1.00 for each 100 words
For the service and return of a copy of an indictment, for each defendant (division (A)(16)).	\$2.00	\$5.00
For the service and return of all summons, writs, orders, or notices (division (A)(17)).	\$3.00 for the first name and \$.50 for each additional name	\$6.00 for the first name and \$1.00 for each additional name



**Other fees**

In addition to the fees a sheriff must charge for the service and return of writs and orders, prior law permitted, but did not require, a sheriff to charge fees for specified other duties. The act makes each of those fees mandatory and increases them as follows:

<b>Fee purpose</b>	<b>Existing fee</b>	<b>Proposed fee</b>
For each summons, writ, order, or notice (division (B)(1)).	\$.50 per mile for the first mile, and \$.20 per mile for each additional mile, going and returning, with actual mileage charged on each additional name	\$1.00 per mile for the first mile, and \$.50 per mile for each additional mile, going and returning, with actual mileage charged on each additional name
For taking bail bond (division (B)(2)).	\$1.00	\$3.00
Jail fees for receiving a prisoner, and for discharging or surrendering a prisoner (division (B)(3)(a)).	\$4.00	\$5.00. The fee is not to be charged for the departure or return of a prisoner from or to a jail in connection with certain work-release programs.
Jail fees for taking a prisoner before a judge or court (division (B)(3)(b)).	\$3.00 per day	\$5.00 per day
Jail fees for calling action (division (B)(3)(c)).	\$.50	\$1.00
Jail fees for calling jury (division (B)(3)(d)).	\$1.00	\$3.00
Jail fees for calling each witness (division (B)(3)(e)).	\$1.00	\$3.00
Jail fees for bringing a prisoner before a court on habeas corpus (division (B)(3)(f)).	\$4.00	\$6.00

Fee purpose	Existing fee	Proposed fee
Poundage on all moneys actually made and paid to the sheriff on execution, decree, or sale of real estate (division (B)(4)).	1%	1.5%
For making and executing a deed of land sold on execution, decree, or order of the court, to be paid by the purchaser (division (B)(5)).	\$25.00	\$50.00

**Miscellaneous**

Continuing law provides that, when any of the services described in the above two tables are rendered by an officer or employee whose salary or daily compensation is paid by the county, the applicable legal fees for the service must be taxed in the costs of the case and paid, when collected, into the county general fund. In addition to these legal fees, the act allows any *other extraordinary expenses, including overtime* (apparently of the officer or employee in relation to the service), to be taxed in the costs of the case and paid, when collected, into the county general fund.

**Boards of alcohol, drug addiction, and mental health services in counties with separate boards**

(R.C. 340.021)

Revised Code provisions enacted in 1989 required a board of county commissioners in a county with a population of 250,000 or more to establish within 30 days of October 10, 1989, an alcohol and drug addiction services board as the entity responsible for providing alcohol and drug addiction services in the county unless, prior to October 10, 1989, the board adopted a resolution providing that the entity responsible for providing the services is a board of alcohol, drug addiction, and mental health services (ADAMH board). If the board of county commissioners established an alcohol and drug addiction services board, the existing community mental health board continued to be the entity responsible for providing mental health services in that county.

The act allows a board of county commissioners that did not exercise its authority to adopt a resolution prior to October 10, 1989 providing for an ADAMH board to adopt a resolution establishing one if both of the following apply:

- (1) The resolution is adopted no later than January 1, 2004;

(2) Before adopting the resolution, the board of county commissioners provides notice of the proposed resolution to the alcohol and drug addiction services board and to the community mental health board and provides both boards an opportunity to comment on the proposed resolution.

**Board of township trustees of limited home rule townships**

(R.C. 504.03, 504.04, and 504.21 (outright repealed))

Under prior law, a township that had adopted a limited home rule form of government (available only to townships with a population of at least 5,000 inhabitants), could, with the approval of the electors, convert its three-member board of township trustees to a five-member board. The act removes this choice, thus requiring limited home rule townships to have a three-member board unless the township converted to a five-member board before the act's effective date.

**Increase in township clerk salaries**

(R.C. 507.09)

The act increases salaries for township clerks in townships with a budget of more than \$6 million starting in 2004--the beginning of a new term of office for township clerks elected in 2003. If the township has a budget of more than \$6 million, but not more than \$10 million, in 2004 the clerk's salary is \$22,087, and, in townships having a budget of more than \$10 million, in 2004 the clerk's salary is \$25,553. In calendar years 2005 through 2008, the clerk's salary will increase annually, as provided by continuing law, either by 3% or a percentage based on the increase in the Consumer Price Index, whichever is lower.

**Conversion of township park district to township park land**

(R.C. 511.181)

The act permits a board of township trustees to convert a township park district so that parks owned and operated by the park district become parks owned and operated by the township, but only if the following criteria are met:

- (1) The township park district was created before 1955;
- (2) The board of park commissioners of the township park district are appointed by the board of township trustees;
- (3) The township has a population of less than 35,000 and a geographical area of less than 15 square miles;



(4) The board of township trustees adopts a resolution approving the conversion.

The park district will cease to exist upon the adoption of the board's resolution. The clerk of the board has 15 days to file a certified copy of that resolution with the county auditor.

All real and personal property of the district must be transferred to the township and the township will assume liability with respect to all contracts and debts of the district. The township will continue to collect any taxes levied within the former township park district and deposit them into the township treasury as funds to be used for the park purposes for which they were levied. District employees must become township employees. The board of township trustees may retain the former park commissioners upon terms they consider appropriate.

**Increase from \$15,000 to \$25,000 in the competitive bidding threshold for certain political subdivisions**

(R.C. 511.12, 515.01, 515.07, 731.14, 731.141, 735.05, 737.03, 3375.41, and 5549.21)

The act raises from \$15,000 to \$25,000 the competitive bidding threshold that applies to the award of various contracts by village legislative authorities and administrators and city directors of public service and public safety; of contracts for the construction and repair of library buildings by boards of library trustees; and of contracts for the construction of memorial buildings or monuments, for the procurement of artificial lighting for roads, public places, or buildings under its supervision or control, and for the purchase or lease of machinery and tools for the maintenance and repair of township roads, by a board of township trustees.

**Increase from \$10,000 to \$25,000 in the competitive bidding threshold for certain political subdivisions**

(R.C. 505.376 and 521.05)

The act increases from \$10,000 to \$25,000 the competitive bidding threshold that applies to the award of contracts by fire and ambulance districts for any expenditure other than for employee compensation and by boards of township trustees for maintenance or repair of private sewage collection tiles located within a township road right-of-way.

## *Agricultural societies*

### *Use of credit cards*

(R.C. 1711.131)

Continuing law creates county agricultural societies and independent agricultural societies, the main purpose of which is to hold fairs. The act authorizes the board of directors of a county agricultural society or an independent agricultural society to authorize by resolution an officer or employee of the agricultural society to use a credit card held by the board to pay for expenses related to the purposes of the society. If a board elects to authorize such a use of a credit card held by the board, the board first must adopt a policy specifying the purposes for which the credit card may be used.

Under the act, an officer or employee of an agricultural society who makes unauthorized use of a credit card held by the society's board of directors is personally liable for the unauthorized use. The prosecuting attorney of the appropriate county must recover the amount of any unauthorized expenses incurred by the officer or employee through the misuse of the credit card in a civil action in any court of competent jurisdiction. The act specifies that these provisions do not limit any other liability of the officer or employee for the unauthorized use of a credit card held by the board of directors. Further, the act specifies that an officer or employee of an agricultural society who misuses a credit card held by the society's board of directors is guilty of the criminal offense of misuse of credit cards.

Under the act, an officer or employee who is authorized to use a credit card held by the board of directors of an agricultural society and who suspects the loss, theft, or possibility of unauthorized use of the credit card immediately must notify the board in writing of the suspected loss, theft, or possible unauthorized use. The officer or employee may be held personally liable for not more than \$50 in unauthorized debt incurred before the board receives the notification.

### *Agreements to obtain loans and credit*

(R.C. 1711.13)

The act authorizes a county agricultural society to enter into agreements to obtain loans and credit for expenses related to the purposes of the society, provided that the agreements are in writing and are first approved by the society's board of directors. The total net indebtedness incurred by a county agricultural society pursuant to this provision cannot exceed an amount equal to 25% of the society's annual revenues.



**Purchase or lease of real estate**

(R.C. 1711.15 and 1711.17)

The act expressly authorizes a county agricultural society or an independent agricultural society to purchase or lease, for a term of not less than 20 years, real estate on which to hold fairs and to erect suitable buildings on it and otherwise improve it.

**Offense of misconduct involving a public transportation system**

(R.C. 2917.41)

Among other prohibitions, ongoing law prohibits any person from doing any of the following while in any facility or on any vehicle of a public transportation system:

- (1) Playing sound equipment without the proper use of a private earphone;
- (2) Smoking, eating, or drinking in any area where the activity is clearly marked as being prohibited;
- (3) Expectorating upon a person, facility, or vehicle.

Under prior law, a violation of any of these prohibitions was a fourth degree misdemeanor, punishable by a jail term of not more than 30 days, a fine of not more than \$250, or both.

Under the act, a violation of any of these prohibitions is a minor misdemeanor on a first offense (punishable by a fine of not more than \$100; no jail time). If a person previously has been convicted of or pleaded guilty to any violation of a state offense involving a public transportation system or a substantially similar municipal ordinance, a violation of any of these prohibitions is a fourth degree misdemeanor.

**Pre-trial diversion programs**

(R.C. 2935.36)

Continuing law authorizes a prosecuting attorney to establish pre-trial diversion programs for adults who are accused of committing criminal offenses and who meet certain criteria. An accused who enters a diversion program is required to agree, in writing, to the conditions of the diversion program established by the prosecuting attorney. The accused also must agree, in writing, to the tolling while in the program of all periods of limitation that apply to the offense with

which the accused is charged and must waive, in writing, certain rights. If the accused satisfactorily completes the diversion program, the court is required to dismiss the charges against the accused. If the accused chooses not to enter the diversion program, or if the accused violates the conditions of the agreement, the accused may be brought to trial upon the charges.

The act authorizes the prosecuting attorney to require the accused, as a condition of participation in a pre-trial diversion program, to pay a reasonable fee for supervision services that include, but are not limited to, monitoring and drug testing. The act also requires the accused to agree, in writing, to pay that fee when entering a diversion program.

### **Metropolitan housing authorities**

(R.C. 3735.27; Section 163)

Under Ohio law generally unchanged by the act, all metropolitan housing authorities must have five members who are residents of the district in which they serve. Members are appointed by local officials as specified in the Revised Code. Membership requirements and methods of appointment differ for districts with a population of at least one million persons and districts with populations of less than one million persons.

### **Change in appointment method in specified counties**

The act changes the method of appointing members of metropolitan housing authorities located in counties that had, as of the 2000 federal census, a population of at least 400,000 persons and no city with a population greater than 30% of the total population of the county. Under the act, in affected districts, a board of county commissioners appoints two members (instead of one as under prior law) and the chief executive officer of the most populous city appoints one member (instead of two as under prior law). The probate court and the court of common pleas continue to appoint one member each. The act specifies the terms of office and procedures for transition in appointments.

### **Resident members**

Ohio law requires that in districts with a population of at least one million persons (based on the 1990 census), at least one member of the housing authority be a resident of a dwelling unit owned or managed by the housing authority. A recent federal law (effective October, 1999) requires that to participate in federal programs, at least one member of the governing body of a housing authority be a direct recipient of assistance from that housing authority (except for agencies with less than 300 housing units, which generally are exempt from this requirement).



The act requires that an additional two members be appointed in any metropolitan housing district that has 300 or more assisted units and that does not have at least one member who resides in an assisted unit. Under the act, an "assisted unit" is a unit that is owned or operated by the housing authority or a unit in which the occupants receive tenant-based housing assistance through the federal section 8 housing program. The act directs the chief executive officer of the most populous city in the district to appoint one of the additional members, who must reside in assisted housing, and the board of county commissioners to appoint the other additional member, who need not reside in assisted housing.

The act specifies the appointment procedures, terms of office, and procedures for filling vacancies. A resident member who no longer qualifies as a resident is deemed unable to serve and a new resident member must be appointed for the remainder of that member's term.

**Restricting the use of a street or highway lane to buses only**

(R.C. 4511.33, present and future versions)

Ongoing law provides that official signs may be erected directing specified traffic to use a designated lane, or designating lanes that are to be used by traffic moving in a particular direction, and vehicle drivers must obey these directions. The act permits official signs to be erected that restrict the use of a particular lane to only buses during certain hours or during all hours.

**Purchase orders by political subdivisions or taxing units**

(R.C. 5705.41)

Prior law permitted political subdivisions and taxing units to issue purchase orders of \$5,000 or less when sufficient money had been appropriated for the purposes for which the funds were to be spent. Purchase orders could not extend over a period exceeding three months or beyond the end of a fiscal year. The act removes the \$5,000 limit and instead specifies that purchase orders may be issued up to an amount established by resolution or ordinance of the legislative authority of the subdivision or taxing unit. Also, the act eliminates the requirement that purchase orders not extend beyond three months. However, it retains the requirement that such expenditure authority not extend past the end of a fiscal year.

## *Additional veterans service commission appointments*

(R.C. 5901.021)

### *Overview*

Ongoing law creates a five-person veterans service commission in each county. The members of the commission must be honorably discharged or honorably separated veterans, be residents of the county, and be appointed to five-year terms by a judge of the court of common pleas.

Appointments to the commission must be made from lists of recommended persons, in the following manner: one person must be a representative recommended by the American Legion; one person must be a representative recommended by the Veterans of Foreign Wars; one person must be a representative recommended by the Disabled American Veterans; one person must be a representative recommended by the AMVETS; and one person must be a representative recommended by the Korean War Veterans Association, the Military Order of the Purple Heart of the U.S.A., or the Vietnam Veterans of America. (R.C. 5901.02, not in the act.)

### *Additional memberships in certain counties*

*Continuing law.* Ohio law largely unchanged by the act allows the board of county commissioners, by resolution, to create up to six *additional* memberships on the veterans service commission if: (1) the county has a population, according to the most recent decennial census, of more than 400,000 and (2) the veterans service commission submits a budget request to the board of county commissioners for the ensuing fiscal year that exceeds either .025% of the assessed value of property in the county, or the amount appropriated to the commission from the county general fund in the current fiscal year by more than 10% of that appropriation.

The board is required to prescribe the number of years the additional memberships will exist, not to exceed five years. Once the board creates such memberships, it may not create additional memberships if the total number of the additional memberships would exceed six. The board must appoint residents of the county to each of the additional memberships for terms prescribed by and commencing on a date fixed by the board.

If the board appoints additional members, it may permit the commission to submit an original or revised budget request for the ensuing fiscal year later than the last Monday in May.



The board may remove, for cause, any of the additional members; must provide for whether the additional members may be reappointed upon the expiration of their terms; and must fill any vacancy in such a membership for the unexpired term in the manner provided for the original appointment.

**Changes made by the act.** Under the act, the additional members appointed to serve on a veterans service commission are required to be honorably discharged or honorably separated veterans. Each person appointed to an additional membership must file, within 60 days after the date of the appointment, the person's form DD214 with the Governor's Office of Veteran's Affairs.

The act also increases from 400,000 to 500,000 the county population necessary for the appointment of additional members.

**County drainage facilities rates and charges**

(R.C. 6117.02)

Continuing law authorizes a board of county commissioners to fix reasonable rates and charges to be paid by any person or public agency owning or having possession or control of any properties that are connected with, capable of being served by, or otherwise served directly or indirectly by drainage facilities owned or operated by or under the jurisdiction of the county. The act allows a board also to fix the rates and charges in order to pay the costs of complying with the requirements of phase II of the storm water program of the national pollutant discharge elimination system established under federal law. In addition, it states that those rates and charges may be paid annually or semiannually with real property taxes, provided that the board certifies to the county auditor information that is sufficient for the auditor to identify each parcel of property for which a rate or charge is levied and the amount of the rate or charge.

**Regional water and sewer district contracts**

(R.C. 6119.10)

The act increases from \$15,000 to \$25,000 the maximum value of a contract that may be entered into by a regional water and sewer district without initiating competitive bidding.

---

**MISCELLANEOUS**

- Would have required any state agency seeking to create or join a multiple-state prescription drug purchasing program, and intending to



contract with a person to administer the program, to do so through competitive bidding (VETOED).

- Would have authorized the creation of Facilities Closure Commissions regarding the possible closing of state institutional facilities for the purpose of expenditure reductions or budget cuts (VETOED).
- Requires that contracts for the provision of publicly funded home care to adults dependent on the care by reason of age, physical disability, or mental impairment include terms under which the provider of services must have in place a system of monitoring whether its employees are providing the services at the proper place and time.
- Requires that the monitoring system provisions be included in contracts entered into by the Departments of Mental Retardation and Developmental Disabilities, Aging, Job and Family Services, and Health and the public and private entities that receive funding from or through the Departments.
- Raises from \$50 to \$100 the per-sale, statutory cap on a documentary service charge payable under certain retail installment contracts.
- Eliminates the six-year statute of limitations during which the state, or an agency or political subdivision of the state, must enforce a lien.
- Eliminates the requirement that the state, or an agency or political subdivision of the state, must file a notice of continuation of lien in order to renew statutory liens every six years.
- Eliminates the requirement that the state must renew judgment liens every ten years.
- Eliminates the Governmental Television/Telecommunications Operating Fund when the fund balance reaches zero.
- Shortens to 30 days (from 60) the time certain long-term care facilities are permitted to employ without the results of a criminal background check an individual to provide direct care to an older adult.
- Requires a person to stop and not proceed across a railroad crossing if there is insufficient undercarriage clearance to safely negotiate the crossing.

- Revises the requirement for certain vehicles to stop before crossing a railroad grade crossing.
- Creates the Task Force to Eliminate Health Services Duplication to evaluate the feasibility of combining the Commission on Minority Affairs and the Departments of Aging, Alcohol and Drug Addiction Services, Health, Mental Health, and Mental Retardation and Developmental Disabilities and creating a centralized services procurement point.
- Requires the Directors of Agriculture, Rehabilitation and Correction, and Youth Services to develop a plan to optimize the quantity and use of food grown and harvested in state correctional institutions or in secure facilities operated by the Department of Youth Services in the most cost-effective manner and to submit the plan to designated government officials.

**Multiple-state prescription drug purchasing program**

(R.C. 9.75)

The Governor vetoed a provision that would have required any state agency seeking to enter into or administer an agreement or cooperative arrangement to create or join a multiple-state prescription drug purchasing program to negotiate discounts for dangerous drugs, and intending to contract with a person to administer the program, to do so through a competitive bidding process.<sup>217</sup> The vetoed provision also would have prohibited a state agency from entering into such a contract without Controlling Board approval.

---

<sup>217</sup> *A dangerous drug is (1) any drug that, under the Federal Food, Drug, and Cosmetic Act, is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription, (2) any drug that, under state law, may be dispensed only upon a prescription, (3) any drug that contains a schedule V controlled substance and that is exempt from the state's controlled substance law or to which that law does not apply, and (4) any drug intended for administration by injection into the human body other than through a natural orifice of the human body.*

## Facilities Closure Commissions

(R.C. 107.32 and 107.33; Section 159)

### Procedure for closing a state institutional facility for the purpose of expenditure reductions or budget cuts

The Governor vetoed provisions of the act that, notwithstanding any other provision of law, would have prohibited the Governor from ordering the closure of any state institutional facility,<sup>218</sup> for the purpose of expenditure reductions or budget cuts, other than in accordance with the following procedure. Those vetoed provisions of the act provided that if the Governor determined that necessary expenditure reductions and budget cuts could not be made without closing one or more state institutional facilities, all of the following would have applied:

(1) The Governor would have had to determine which state agency's institutional facility or facilities the Governor believed should be closed, notify the General Assembly and that agency of that determination, and specify in the notice the number of facilities of that agency that the Governor believed should be closed and the anticipated savings to be obtained through that closure or those closures. (This agency is the "target state agency.")

(2) Upon the Governor's provision of this notice, a State Facilities Closure Commission would have been required to be created regarding the target state agency. Not later than seven days after the Governor provided the notice, the officials with the duties to appoint members of the Commission for the target state agency (see "Constitution and duties of Facilities Closure Commissions," below) would have been required to appoint the members of the Commission, and, as soon as possible after the appointments, the Commission would have been required to meet for the purposes described below. Not later than 30 days after the Governor provided the notice, the Commission would have been required to provide to the General Assembly, the Governor, and the target state agency a report that contained the Commission's recommendation as to the state institutional facility or facilities of the target state agency subject to closure by the Governor. The anticipated savings to be obtained by the Commission's recommendation would have had to have been approximately the same as the

---

<sup>218</sup> "State institutional facility" means any institution or other facility for the housing of any person that is under the control of the Department of Rehabilitation and Correction, the Department of Youth Services, the Department of Mental Retardation and Developmental Disabilities, the Department of Mental Health, or any other agency or department of state government (R.C. 107.32(A)(1)).

anticipated savings the Governor specified in the Governor's notice, and, if the recommendation identified more than one facility, it would have had to have listed them in order of the Commission's preference for closure. A State Facilities Closure Commission created for a particular target state agency would have made a report only regarding that target state agency and would have been prohibited from including recommendations regarding any other state agency or department in its report.

(3) Upon receipt of the State Facilities Closure Commission's report, if the Governor still believed that necessary expenditure reductions and budget cuts could not have been made without closing one or more state institutional facilities, the Governor could have closed state institutional facilities of the target state agency that were identified in the report recommendation. Generally, the Governor would have been prohibited from closing any state institutional facility of the target state agency that was not listed in the recommendation, and from closing multiple institutions in any order other than the order of the preference as specified in the recommendation. But, the Governor would not have been required to follow the Commission's recommendation in closing an institutional facility if the Governor had determined that a significant change in circumstances made the recommendation unworkable.

#### **Composition and duties of Facilities Closure Commissions**

If more than one state agency or department was a target state agency, the act would have required that a separate State Facilities Closure Commission be created for each target state agency. Each Commission would have consisted of 11 members. Three members would have had to have been members of the House of Representatives appointed by the Speaker of the House of Representatives, none of the members so appointed could have had a state institutional facility of the target state agency in the member's district, two of the members so appointed would have had to be members of the majority political party in the House of Representatives, and one of the members so appointed could not be a member of the majority political party in the House of Representatives. Three members would have had to have been members of the Senate appointed by the President of the Senate, none of the members so appointed could have had a state institutional facility of the target state agency in the member's district, two of the members so appointed would have had to be members of the majority political party in the Senate, and one of the members so appointed could not be a member of the majority political party in the Senate. One member would have been the Director of Budget and Management. One member would have been the director, or other agency head, of the target state agency. Two members would have been private executives with expertise in facility utilization, with one of these members appointed by the Speaker of the House of Representatives and the other appointed

by the President of the Senate, and neither of the members so appointed could have had a state institutional facility of the target state agency in the county in which the member resides. One member would have been a representative of the Ohio Civil Service Employees' Association or other representative association of the employees of the target state agency, appointed by the Speaker of the House of Representatives. The officials with the duties to appoint members of the Commission would have had to make the appointments, and the Commission would have had to meet, within the time periods specified in paragraph (2) of "Procedure for closing a state institutional facility for the purpose of expenditure reductions or budget cuts," above. The members of the Commission would have served without compensation. At the Commission's first meeting, the members would have been required to organize and appoint a chairperson and vice-chairperson.

The Commission would have been required to determine which state institutional facility or facilities under the control of the target state agency for which the Commission was created should be closed. In making this determination, the Commission, at a minimum, would have been required to consider the following factors:

- (1) Whether there would have been a need to reduce the number of facilities;
- (2) The availability of alternate facilities;
- (3) The cost effectiveness of the facilities;
- (4) The geographic factors associated with each facility and its proximity to other similar facilities;
- (5) The impact of collective bargaining on facility operations;
- (6) The utilization and maximization of resources;
- (7) Continuity of the staff and ability to serve the facility population;
- (8) Continuing costs following closure of a facility;
- (9) The impact of the closure on the local economy;
- (10) Alternatives and opportunities for consolidation with other facilities.

The Commission would have been required to prepare and provide a report containing its recommendations as described in paragraph (2) of "Procedure for closing a state institutional facility for the purpose of expenditure reductions or



*budget cuts*," above. Upon providing the report regarding the target state agency, the Commission would have ceased to exist.

### **Privately operated and managed correctional facilities**

Notwithstanding any other provision of law, if the closure of the particular facility were authorized under the act's State Facilities Closure Commission provisions, the Governor could have terminated any contract entered into under R.C. 9.06 for the private operation and management of any correctional facility under the control of the Department of Rehabilitation and Correction (including, but not limited to, the initial intensive program prison established pursuant to R.C. 5120.033 as it existed prior to the effective date of the act), and could have terminated the operation of, and closed that facility. If the Governor took an action of this nature, inmates in the facility would have had to have been transferred to another correctional facility under the control of the Department. If the initial intensive program prison were closed, R.C. 2929.13(G)(2)(a) and (b) (which apply to the intensive program prison) would have had no effect while the facility was closed.

### **Applicability**

The act's State Facilities Closure Commission provisions would have applied to all state institutional facilities that were in operation on or after January 1, 2003.

### **Monitoring of home care services provided to dependent adults**

(R.C. 121.36)

Under the act, certain contracts for the provision of publicly funded home care services to elderly or disabled adults must include terms requiring the service provider to have a system in place that effectively monitors the delivery of the services by its employees. The monitoring system provisions must be included in contracts beginning one year after the effective date of this provision of the act.

The act specifies that the monitoring system requirement applies when services are provided to "home care dependent adults." Under the act, a service recipient is considered a home care dependent adult if the individual resides in a private home or other noninstitutional and unlicensed living arrangement, without the presence of a parent or guardian, but has health and safety needs that require the provision of regularly scheduled home care services to remain in the home or other living arrangement because one of the following is the case: (1) the individual is at least age 21 but less than 60 and has a physical disability or mental impairment or (2) the individual is age 60 or older, regardless of whether the

individual has a physical disability or mental impairment. The act does not otherwise specify the meaning of "home care services."

The Departments of Mental Retardation and Developmental Disabilities, Aging, Job and Family Services, and Health must each implement the monitoring system requirement with respect to all contracts the Department enters into for the provision of home care services to home care dependent adults that are paid for in whole or in part with federal, state, or local funds. Each Department must also require all public and private entities that receive money from or through the Department to implement the requirement when entering into such contracts, including such entities as county boards of mental retardation and developmental disabilities, area agencies on aging, county departments of job and family services, and boards of health.

To be considered an effective monitoring system, the act specifies that the system established by a provider must include at least the following components:

(1) When providing home care services to home care dependent adults who have a mental impairment or life-threatening health condition, a mechanism to verify whether the provider's employees are present at the location where the services are to be provided and at the time they are to be provided;

(2) When providing home care services to all other home care dependent adults, a system to verify at the end of each working day whether the provider's employees have provided the services at the proper location and time;

(3) A protocol to be followed in scheduling a substitute employee when the system identifies that an employee has failed to provide services at the proper location and time, including standards for determining the length of time that may elapse without jeopardizing the health and safety of the home care dependent adult;

(4) Procedures for maintaining records of the information obtained through the system;

(5) Procedures for compiling annual reports of the information obtained, including statistics on the rate at which home care services were provided at the proper location and time;

(6) Procedures for conducting random checks of the accuracy of the system. A random check, for this purpose, is considered to be a check of not more than 5% of the home care visits the provider's employees make to different clients within a particular work shift.

In implementing the monitoring system requirement, the Departments must exempt providers who are self-employed with no other employees or are otherwise considered by the Departments not to be agency providers. The act requires the Departments to conduct a study on how the exempted providers may be made subject to the requirement. Not later than two years after the effective date of this provision of the act, the Departments must prepare a report of their findings and recommendations and submit it to the President of the Senate and the Speaker of the House of Representatives.

The act requires each Department to adopt rules as necessary to implement its provisions regarding home care monitoring systems. The rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

### **Retail installment contract charges**

(R.C. 1317.07)

The retail installment law permits a retail installment contract to include agreements for payment of delinquent charges, taxes, and filing, recording, or release fees, as well as payment of a capped "documentary service charge customarily and presently being paid on May 9, 1949, in a particular business and area." The act raises to \$100 the current \$50 cap on a documentary service charge.

### **State enforcement of statutory lien**

(R.C. 2305.26, repealed)

The act eliminates the six-year statute of limitations during which the state, or an agency or political subdivision of the state, must enforce a lien upon real property or personal property. The act also eliminates the requirement that the state, or an agency or political subdivision of the state, must file a notice of continuation of lien in order to renew statutory liens every six years. Therefore, a lien upon real property or personal property held by the state or an agency or political subdivision of the state will continue to be valid without the state or an agency or political subdivision of the state filing an action to enforce the lien or filing a notice of continuation of lien.

### **Judgment liens in favor of the state**

(R.C. 2329.07)

Under prior law, if a judgment against a judgment debtor rendered by any court of general jurisdiction, including district courts of the United States, within Ohio, was in favor of the state, the judgment became dormant and ceased to operate as a lien against the estate of the judgment debtor if an execution on the



judgment or a certificate of judgment was not issued within ten years from the date of the judgment or within ten years from the date of the issuance of the last execution or the issuance and filing of the last certificate, whichever was later.

If, in any county other than that in which a judgment was rendered, the judgment became a lien by reason of the filing in the office of the clerk of the common pleas court of that county of a certificate of the judgment, and if the judgment was in favor of the state, the judgment ceased to operate as a lien upon lands and tenements of the judgment debtor within that county if no execution was issued for the enforcement of the judgment within that county, or no further certificate of the judgment was filed in that county within ten years from the date of issuance of the last execution for enforcement of the judgment within that county or the date of filing of the last certificate in that county, whichever was later.

The act eliminates the requirement that the state must renew judgment liens against a judgment debtor every ten years. Therefore, judgment liens held by the state against a judgment debtor will continue to operate as a lien against the estate of the judgment debtor without the state executing the judgment or filing a certificate of judgment every ten years.

### **Governmental Television/Telecommunications Operating Fund**

(R.C. 3353.11)

The Governmental Television/Telecommunications Operating Fund consists of revenue generated from contract productions undertaken by the Ohio Government Telecommunications (OGT) studio. This money is required to be used to operate the studio and repair broken equipment. The act eliminates the Fund when its balance reaches zero.

### **Conditional employment in long-term care facility**

(R.C. 3721.121 and 3722.151)

An individual who has been convicted of or pleaded guilty to certain offenses<sup>219</sup> may not be employed in a job that involves providing direct care to a

---

<sup>219</sup> *The offenses include, for example, murder, manslaughter, assault, failure to provide for a functionally impaired person, aggravated menacing, patient abuse/neglect, kidnapping, abduction, extortion, coercion, rape, sexual imposition, importuning, voyeurism, public indecency, robbery, aggravated burglary, breaking and entering, theft offenses, Medicaid fraud, insurance fraud, domestic violence, weapons offenses, and drug-related offenses.*

person age 60 or older in a nursing home, residential care facility, home for the aging, the Ohio Veteran's Home, adult care facility, skilled nursing facility, or nursing facility unless the individual meets personal character standards.<sup>220</sup> Under prior law, an individual could be employed conditionally for up to 60 days pending the results of a criminal background check. The act shortens the conditional employment period to 30 days.

### **Railroad crossing traffic laws**

(R.C. 4511.62 (and future version) and 4511.63 (and future version))

Generally, continuing law requires a person to stop before entering a railroad grade crossing if a device or flagperson is signaling the approach of a train, if a train is giving an audible signal, or if there is insufficient space to accommodate the vehicle on the other side of the crossing. The act requires a person also to stop and not proceed across a railroad crossing if there is insufficient undercarriage clearance to safely negotiate the crossing and classifies a violation of this prohibition as a fourth degree misdemeanor.

The act also revises the current requirement for certain vehicles to stop before crossing a railroad grade crossing, regardless of whether signals or devices indicate an approaching train. Under the act, the following vehicles must stop before crossing a railroad crossing: (1) any bus designed to carry 16 or more passengers, (2) any vehicle used to transport pupils to school or a school function if the vehicle is owned or operated by a public or nonpublic school or is operated under contract with a school, and (3) any vehicle placarded for hazardous material. Violation of this generally is a minor misdemeanor, but the penalty may be escalated based on the person's prior moving violations.

---

<sup>220</sup> *Personal character standards are specified in rules of the Department of Health that set forth standards an individual with a criminal history must meet to be employed by any of the health-care facilities described above. The rules provide that an individual is automatically disqualified from employment for certain offenses but that an employer may hire the individual if the employer determines that the individual is unlikely to harm an older adult. A number of factors the employer is to consider in making that determination are specified in the rule. Ohio Administrative Code § 3701-13-06.*

## **Task Force to Eliminate Health Services Duplication**

(Section 153)

### **Membership**

The act creates the Task Force to Eliminate Health Services Duplication consisting of the following members or their designees:

- (1) The Director of Administrative Services;
- (2) The Director of Aging;
- (3) The Director of Alcohol and Drug Addiction Services;
- (4) The Director of Health;
- (5) The Director of Mental Health;
- (6) The Director of Mental Retardation and Developmental Disabilities;
- (7) The Director of Budget and Management;
- (8) The Executive Director of the Commission on Minority Health.

The Director of Administrative Services is to serve as the Task Force's chairperson. The Commission on Dispute Resolution and Conflict Management is required to provide technical and support services for the Task Force. Except to the extent that service on the Task Force is part of their employment, Task Force members are not to be reimbursed for expenses they incur in carrying out their duties.

### **Duties**

The Task Force is required to do all of the following:

- (1) Evaluate the feasibility of combining all or parts of the Departments of Aging, Alcohol and Drug Addiction Services, Health, Mental Health, Mental Retardation and Developmental Disabilities, and the Commission on Minority Health to eliminate duplication of services;
- (2) Evaluate the feasibility of establishing a central procurement point for basic operational services associated with each department, including human resources, training, research, legislative information, fiscal management, and public information;



(3) Submit a report of its findings and recommendations to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate by March 31, 2004.

The Task Force is to cease to exist on submission of its report.

**Optimize use of food grown at state correctional institutions and Department of Youth Services facilities**

(Section 161)

The act requires, within 120 days after the effective date of the section, the Director of Agriculture, the Director of Rehabilitation and Correction, and the Director of Youth Services to develop a plan to optimize the quantity and use of food grown and harvested in state correctional institutions or secure facilities operated by the Department of Youth Services (DYS) in the most cost-effective manner.<sup>221</sup> The plan must include methods to increase production at farms operated by either department and must include methods to ensure that the highest possible percentage of food consumed at state correctional institutions and DYS operated secure facilities is food grown and harvested at a state correctional institution or DYS-operated secure facility. The plan must consider possible amendments to the Revised Code, amendments to the Administrative Code, administrative changes, financial strategies, strategies to obtain a reliable workforce, and any other means to optimize the quantity and use of food of that nature in state correctional institutions and DYS operated secure facilities. The act requires the plan and its findings, conclusions, and any recommendations and proposed legislation to be submitted to the Speaker of the House of Representatives, the President of the Senate, the Governor, the Director of Rehabilitation and Correction, and the Director of Youth Services.

---

**NOTE ON EFFECTIVE DATES**

(Sections 179 to 209)

Section 1d of Article II of the Ohio Constitution states that "laws providing for tax levies [and] appropriations for the current expenses of the state government

---

<sup>221</sup> "State correctional institution" includes any institution or facility that is operated by the Department of Rehabilitation and Correction and that is used for the custody, care, or treatment of criminal, delinquent, or psychologically or psychiatrically disturbed offenders (R.C. 2967.01(A)).

and state institutions \*\*\* shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with regard to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation of current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly is to determine which sections go into immediate effect.

The act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a *codified* section in the act is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The act also includes many exceptions to the default provision which provide that specified codified provisions are not subject to the referendum and go into immediate effect. For example, many of the act's provisions that provide for or are essential to the implementation of a tax levy go into immediate effect.

The act provides that its *uncodified* sections are not subject to the referendum and take effect immediately, except as otherwise specifically provided. The uncodified sections that are subject to the referendum are identified with an asterisk in the act, and take effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition).

---

## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-27-03	pp. 184-187
Reported, H. Finance & Appropriations	04-08-03	pp. 336-337
Passed House (53-46)	04-09-03	pp. 343-429
Reported, S. Finance & Financial Institutions	06-04-03	p. 406
Passed Senate (24-9)	06-05-03	pp. 415-435
House refused to concur in Senate amendments (2-95)	06-10-03	pp. 564-569
Senate requested conference committee	06-10-03	pp. 438-439
House acceded to request for conference committee	06-10-03	p. 571

House agreed to conference committee report (53-46)	06-19-03	pp.	626-938
Senate agreed to conference committee report (22-10)	06-19-03	pp.	517-855

03-hb95-125.doc/kl:jc

