



## *Final Analysis*

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*Legislative Service Commission*

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**Sens. Spada, Roberts, Schuler**

**Effective date: Emergency, December 21, 2004; Sections 1 through 9 and 11 effective December 30, 2004; certain provisions effective December 31, 2010**

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## **ACT SUMMARY**

### **ENVIRONMENTAL COVENANTS**

- Establishes requirements for an environmental covenant, which is a servitude running with the land and arising under an environmental response project that imposes activity and use limitations with respect to real property.
- Defines an environmental response project as a plan or work performed for environmental remediation of real property or for protection of ecological features associated with real property and conducted in accordance with certain federal or state programs.
- Provides that any person, including a person that owns an interest in the real property that is the subject of an environmental covenant, may be a holder of an environmental covenant, and specifies that a holder's interest is an interest in real property.
- Requires an environmental covenant to contain specified information, including descriptions of the real property involved and the activity and

use limitations, names or identities of every holder, requirements for certain notices, rights of access to the property, required signatures, and an administrative record for the environmental response project, and permits additional information, restrictions, and requirements to be included in the covenant.

- Lists the persons that must be provided a copy of the environmental covenant by the applicable agency.
- Specifies that an agency is bound by any obligation that it expressly assumes in an environmental covenant and that any other person that signs the covenant is bound by the obligation that the person assumes in the covenant.
- Specifies that an otherwise effective environmental covenant is valid and enforceable even if any of specified limitations on enforcement of interests applies.
- Precludes the act's provisions from being construed to restrict, affect, or impair any person's statutory or common law rights to enter into or record a restrictive covenant, institutional control, easement, servitude, or other restriction on the use of property that does not satisfy the act's requirements for the contents of an environmental covenant and does not have the permission, approval, or consent of an agency, political subdivision, regulatory body, or other unit of government.
- Provides that an interest in real property at the time an environmental covenant is created or amended and that has priority under other law is not affected by the covenant unless the owner of the interest agrees to subordinate that interest to the covenant.
- Generally requires an environmental covenant and any amendment or termination of the covenant to be filed in the office of the county recorder in each county in which the real property is located and recorded in the same manner as a deed to the property.
- Provides that an environmental covenant is perpetual unless it is limited by its terms to a specific duration or is terminated by its terms upon a specific occurrence; is terminated by consent, by court action, or by foreclosure of an interest that has priority over the covenant; or is



terminated or modified in an eminent domain proceeding if all of certain conditions exist.

- Generally does not permit the extinguishment, limitation, or impairment of an environmental covenant through the issuance of a tax deed, foreclosure of a tax lien, application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence or a similar doctrine, or application of the Marketable Title Law.
- Permits an environmental covenant to be amended or terminated by consent only if the amendment or termination is signed by all of the persons listed in the act, and generally provides that the assignment of an environmental covenant to a new holder is an amendment of the covenant.
- Authorizes any of specified persons to seek injunctive or other equitable relief for violation of an environmental covenant.
- Provides that the environmental covenant provisions generally modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, but do not modify, limit, or supersede certain provisions of that Act.
- Modifies certain hazardous waste provisions in the Solid, Infectious, and Hazardous Waste Law as follows:
  - (1) Provides that when necessary to protect the public health or safety, the agreement between the Director of Environmental Protection and the owner of land or a facility containing hazardous waste that specifies the clean-up measures to be performed by the Director may require the owner to enter into an environmental covenant with the Director instead of requiring the owner to execute a restrictive covenant to run with the land as in former law;
  - (2) Requires the Director, prior to selling a cleaned-up facility that had contained hazardous waste and when necessary to protect public health or safety, to enter into an environmental covenant instead of requiring the Director to execute a restrictive covenant to run with the land as in former law;



- (3) Provides that when necessary to protect public health or safety, a contract entered into by the Director and a municipal corporation, county, or township that owns a facility that had contained hazardous waste or with an owner of such a facility other than a political subdivision to provide state funding for a portion of the costs of closing the facility or abating pollution at it may require that political subdivision or other owner to enter into an environmental covenant with the Director instead of requiring the execution of a restrictive covenant as in former law; and
  - (4) Expands the powers of the Director to include entering into environmental covenants under the act and granting or accepting easements or selling property pursuant to the applicable hazardous waste provisions of the Solid, Infectious, and Hazardous Waste Law.
- Authorizes the Fire Marshal to enter into environmental covenants to implement the underground storage tank program and corrective action program for releases from underground petroleum storage tanks.
  - Provides that any restrictions on the use of real property for the owner's or operator's achievement of the Fire Marshal's standards for corrective actions for releases of petroleum must be contained in a deed or another instrument signed and acknowledged as a deed as in continuing law or an environmental covenant.
  - Requires that restrictions on the use of real property for the achievement of applicable standards by a person that is not the owner or operator of an underground storage tank system or by a person undertaking a voluntary action of applicable standards be contained in an environmental covenant.
  - Essentially incorporates the use of environmental covenants into the structure of the Voluntary Action Program (VAP) Law and, for purposes of that Law, provides that "environmental covenant" and "activity and use limitations" have the same meanings as in the act's provisions governing environmental covenants.
  - Modifies the rulemaking authority of the Director of Environmental Protection under the VAP Law regarding elimination or mitigation of

exposure to hazardous substances or petroleum and no further action letters subject to audit priorities, modifies the types of remedial activities that may be conducted to attain applicable standards, modifies the requirements pertaining to the time frames by which the Director must issue a covenant not to sue, and modifies the Director's recordkeeping duties, to include references to "activity and use limitations" established under an environmental covenant.

- Modifies the information submitted to a certified professional for the purpose of obtaining a no further action letter under the VAP Law by providing that if the remedy involved relies on activity and use limitations to achieve applicable standards, the information must include a demonstration that the activity and use limitations have been developed in accordance with that Law and rules adopted under it and are contained in a proposed environmental covenant that meets the act's requirements.
- Adds to the general filing for record provision of the VAP Law a requirement that the person to whom a covenant not to sue for a property is issued must file for recording in the office of the county recorder of the county in which the property is located a true and accurate copy of any environmental covenant for the property proposed and executed pursuant to the act, and specifies that a no further action letter, covenant not to sue, and environmental covenant, if any, run with the property.
- Adds environmental covenants and specified property use restrictions that are provided for under the act to the documents that must be kept by county recorders.

#### **IMPLEMENTATION OF SUNSET REVIEW COMMITTEE'S REPORT**

- Implements generally the report of the Sunset Review Committee by abolishing, retaining, and changing the names of various agencies evaluated by the Committee.
- Reestablishes the Sunset Review Committee, but postpones its operation until the 128th General Assembly.
- Terminates the Sunset Review Law on December 31, 2010.

- Adds the Director of Development or the Director's designee to the Development Financing Advisory Council, changes the term of office of the gubernatorial appointees to the Advisory Council from seven to five years, and changes the Advisory Council's quorum requirement from five to four members.
- Removes the Ohio Water Development Authority's designee as an ex officio member of the Technical Advisory Committee to Assist the Director of the Ohio Coal Development Office.

**OHIO AFRICAN-AMERICAN HALL OF FAME**

- Establishes the Ohio African-American Hall of Fame.
- Creates the Ohio African-American Hall of Fame Governing Board to select and induct persons into the Hall of Fame.

**GENERAL ASSEMBLY-RELATED CHANGE**

- Authorizes former presiding officers of either house of the General Assembly to administer oaths of office to General Assembly members, officers, and staff.

**EFFECTIVE DATE**

- Declares an emergency but specifies that its provisions generally take effect on December 30, 2004.

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**CONTENT AND OPERATION**

**ENVIRONMENTAL COVENANTS**

The act establishes requirements for an environmental covenant, which the act defines as a servitude running with the land and arising under an environmental response project that imposes activity and use limitations with respect to real property.

**Contents of environmental covenant**

**Required contents**

The act requires an environmental covenant to contain all of the following (see "**Definitions**," below, for definitions of terms that are in quotation marks):

- (1) A statement that the instrument is an environmental covenant executed pursuant to the act's provisions;
- (2) A legally sufficient description of the real property that is subject to the environmental covenant (subject real property);
- (3) A description of the "activity and use limitations" on the real property;
- (4) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in the use of, applications for building permits for, or proposals for any site work affecting contamination on, the subject real property;



(5) The name or identity of every "holder";

(6) Rights of access to the property granted in connection with the environmental covenant's implementation or enforcement;

(7) The signatures of the applicable "agency," every holder, and, unless waived by the agency, every owner of the fee simple of the subject real property; and

(8) An identification of the name and location of any administrative "record" for the "environmental response project" pursuant to which the environmental covenant is created (R.C. 5301.82(A)).

### **Permissive contents**

In addition to the required information described above, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed the environmental covenant, including any of the following:

(1) Requirements for periodic reporting describing compliance with the environmental covenant;

(2) A brief narrative description of contamination on the property and its remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(3) Limitations on amendment or termination of the environmental covenant in addition to those established in the act as described below in "**Duration of environmental covenant**" and "**Amendment or termination of environmental covenant**"; and

(4) Rights of the holder in addition to the right to enforce the environmental covenant as described in "**Remedies for violation of environmental covenant**," below (R.C. 5301.82(B)).

### **Conditions for agency approval**

The act provides that in addition to other conditions for an agency's approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the subject real property to sign the covenant (R.C. 5301.82(C)).

### **Recipients of copy of environmental covenant**

The act requires a copy of an environmental covenant to be provided to all of the following in a manner required by the applicable agency: each person that signed the covenant, holds a recorded interest in the subject real property, or is in possession of the subject real property, each unit of local government in which the subject real property is located, and any other person that the agency requires. Validity of an environmental covenant is not affected by failure to provide a copy of the covenant as required under the act. (R.C. 5301.83.)

### **Assumption of obligations**

The act specifies that an agency is bound by any obligation that it expressly assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations that the person assumes in the environmental covenant, but signing it does not change obligations, rights, or protections that are granted or imposed under law other than the act's provisions, except as provided in the environmental covenant. (R.C. 5301.84.)

### **Nature and enforceability of environmental covenant**

An environmental covenant that complies with the act's provisions runs with the land. An environmental covenant that is otherwise effective is valid and enforceable even if any of the following limitations on enforcement of interests applies: it is not appurtenant to an interest in real property; it can be or has been assigned to a person other than the original holder; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes an affirmative obligation on a person having an interest in the real property or on the holder; the benefit or burden of the environmental covenant does not touch or concern real property; there is no privity of estate or contract; the holder dies, ceases to exist, resigns, or is replaced; or the owner of an interest that is subject to the environmental covenant and the holder are the same person. (R.C. 5301.85(A) and (B).)

The act provides that an instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the act's effective date is not invalid or unenforceable because of any of the limitations on enforcement of interests described above or because it was identified as an easement, servitude, deed restriction, or other interest. The act's provisions do not apply in any other respect to such an instrument. Those provisions do not invalidate or render unenforceable any interest, whether designated as an environmental covenant or

other interest, that is otherwise enforceable under the laws of Ohio. (R.C. 5301.85(C) and (D).)

The act also specifies that nothing in its provisions governing environmental covenants is to be construed to restrict, affect, or impair the rights of any person under the Revised Code or common law to enter into or record a restrictive covenant, institutional control, easement, servitude, or other restriction on the use of property that does not satisfy the act's requirements regarding the contents of an environmental covenant and does not have the permission, approval, or consent of an agency, political subdivision, regulatory body, or other unit of government. However, a restrictive covenant, institutional control, easement, servitude, or other restriction on the use of property entered into or recorded without such permission, approval, or consent is not an environmental covenant and is not binding on an agency, political subdivision, regulatory body, or other unit of government. (R.C. 5301.85(E).)

**Effect on interests in property; effect on other uses of property**

With respect to interests in real property in existence at the time that an environmental covenant is created or amended, all of the following apply:

(1) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest agrees to subordinate that interest to the environmental covenant;

(2) The act's provisions do not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant;

(3) A subordination agreement may be contained in an environmental covenant or in a separate record. If the environmental covenant covers commonly owned property in a "common interest community" (see "Definitions," below), the record may be signed by any person who is authorized by the common interest community; and

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest, but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant (R.C. 5301.86).

The act further states that its provisions do not authorize a use of real property that is otherwise prohibited by zoning, by law other than the act's provisions regulating use of real property, or by a recorded instrument that has priority over an environmental covenant. An environmental covenant may

prohibit or restrict uses of real property that are authorized by zoning or by law other than the act's provisions. (R.C. 5301.87.)

### **Recording of environmental covenant**

Generally, an environmental covenant and any amendment or termination of the covenant must be filed in the office of the county recorder of each county in which the subject real property is located and must be recorded in the same manner as a deed to the property. For purposes of indexing, a holder is treated as a grantee. Pursuant to the Land Registration Law, an environmental covenant and any amendment or termination of the covenant in connection with registered land must be entered as a memorial on the page of the register where the owner's title is registered. (R.C. 5301.88(A) and (B).) Except as described below in "**Nonextinguishment of environmental covenant**," an environmental covenant is subject to the laws of Ohio governing recording and priority of interest in real property (R.C. 5301.88(C)).

### **Duration of environmental covenant**

The act provides that an environmental covenant is perpetual unless any of the following applies: (1) the environmental covenant is limited by its terms to a specific duration or is terminated by its terms by the occurrence of a specific event, (2) the environmental covenant is terminated by consent as described below in "**Amendment or termination of environmental covenant**," (3) the covenant is terminated as described in "**Court action**," below, (4) the covenant is terminated by foreclosure of an interest that has priority over it, or (5) the covenant is terminated or modified in an eminent domain proceeding, but only if all of the following apply: (a) the agency that signed the environmental covenant is a party to the proceeding, (b) all persons identified as described in "**Amendment or termination of environmental covenant**," below, are given notice of the pendency of the proceeding, and (c) the court determines, after a hearing, that the termination or modification will not adversely affect human health or safety or the environment. (R.C. 5301.89(A).)

### **Court action**

If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified as described in "**Amendment or termination of environmental covenant**," below, have been given notice, may terminate the covenant or reduce its burden on the real property (R.C. 5301.89(B)).

### **Nonextinguishment of environmental covenant**

Except as otherwise described above in "**Duration of environmental covenant**" and "**Court action**" regarding the termination or modification of an environmental covenant, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence or a similar doctrine. An environmental covenant may not be extinguished, limited, or impaired by application of the Marketable Title Law. (R.C. 5301.89(C) and (D).)

### **Amendment or termination of environmental covenant**

The act allows an environmental covenant to be amended or terminated by consent only if the amendment or termination is signed by all of the following: the applicable agency; unless waived by that agency, the current owner of the fee simple of the subject real property; each person that originally signed the covenant unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and each holder unless a holder has been removed and replaced by all of the above parties (R.C. 5301.90(A)). If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents in writing to the amendment or has waived in a signed record the right to consent to amendments (R.C. 5301.90(B)).

Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment of the covenant. Except as otherwise provided in an environmental covenant, a holder may not assign its interest without consent of the other parties to the covenant specified above, and a holder may be removed and replaced by agreement of those other parties. A court of competent jurisdiction may fill a vacancy in the position of holder. (R.C. 5301.90(C), (D), and (E).)

### **Remedies for violation of environmental covenant**

Under the act, a civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by any of the following: (1) a party to the covenant specified in "**Amendment or termination of environmental covenant**," above, that is not otherwise specified in items (2) to (6), below, (2) the Environmental Protection Agency (EPA), (3) the applicable agency if it is other than the EPA, (4) any person to whom the environmental covenant expressly grants the authority to maintain such an action, (5) a person whose interest in the real property or whose collateral or liability may be affected



by the alleged violation of the covenant, or (6) a unit of local government in which the subject real property is located (R.C. 5301.91(A)).

The act's provisions do not limit the regulatory authority of the applicable agency or the EPA if it is not the applicable agency under any law other than those provisions with respect to an environmental response project. A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant. (R.C. 5301.91(B) and (C).)

### **Effect on federal law**

The act provides that its provisions governing environmental covenants modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, as amended, except that they do not modify, limit, or supersede section 101 of that Act, as amended,<sup>1</sup> or authorize electronic delivery of any of the notices described in section 103 of that Act, as amended<sup>2</sup> (R.C. 5301.92).

### **Definitions**

The act defines the following terms as used in its provisions governing environmental covenants:

"Activity and use limitations" means restrictions or obligations created under those provisions with respect to real property.

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<sup>1</sup> *Section 101 of the Act provides that notwithstanding any statute, regulation, or other rule of law, with respect to any transaction in or affecting interstate or foreign commerce, a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form, and a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation (15 U.S.C. 7001(a)).*

<sup>2</sup> *These notices are: (1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings, (2) any notice of the cancellation or termination of utility services (including water, heat, and power); default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or recall of a product, or material failure of a product, that risks endangering health or safety, or (3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials (15 U.S.C. 7003(b)).*

"Agency" means the EPA or any other state or federal agency that determines or approves the environmental response project pursuant to which an environmental covenant is created.

"Common interest community" means a condominium, a cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums or to pay for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.

"Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations and that meets the requirements described above in "Contents of environmental covenant."

"Environmental response project" means a plan or work performed for environmental remediation of real property or for protection of ecological features associated with real property and conducted as follows:

(1) Under a federal or state program governing environmental remediation of real property that is subject to agency review or approval, including, but not limited to, property that is subject to any of the following: (a) a corrective action, closure, or post-closure pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended, or any regulation adopted under that Act, or the Solid, Infectious, and Hazardous Waste Law or any rule adopted under it, (b) a removal or remedial action pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or any regulation adopted under that Act, or the Solid, Infectious, and Hazardous Waste Law or the Water Pollution Control Law or any rule adopted under those Laws, (c) a no further action letter submitted with a request for a covenant not to sue pursuant to the Voluntary Action Program Law, (d) a no further action letter prepared pursuant to the statute governing the Clean Ohio Council and grants for brownfield cleanup or remediation projects, or (e) a corrective action pursuant to the statutes governing the Fire Marshal's corrective action program for underground storage tanks or any rule adopted under those statutes;

(2) Pursuant to a mitigation requirement associated with the section 401 water quality certification program or the isolated wetland program as required by the Water Pollution Control Law;

(3) Pursuant to a grant commitment or loan agreement entered into pursuant to the statute governing the Water Pollution Control Loan Fund or the statute governing the Nonpoint Source Pollution Management Fund; or



(4) Pursuant to a supplemental environmental project embodied in orders issued by the Director of Environmental Protection pursuant to the Water Pollution Control Law.

"Holder" means a grantee of an environmental covenant as described below. Any person, including a person that owns an interest in the subject real property, may be a holder. An environmental covenant may identify more than one holder. (R.C. 5301.81(A).)

The act provides that the interest of a holder is an interest in real property. However, a right of an agency under the act or under an environmental covenant, other than a right as a holder, is not an interest in real property. (R.C. 5301.81(B).)

"Person" includes the state, a political subdivision, another state or local entity, the United States and any agency or instrumentality of it, and any legal entity defined as a person in continuing law.<sup>3</sup>

When used as a noun, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (R.C. 5301.80.)

### **Solid, Infectious, and Hazardous Waste Law**

#### **Agreement with land or facility owner preceding cleanup**

Under the hazardous waste provisions of the Solid, Infectious, and Hazardous Waste Law, before beginning to clean up a facility where hazardous waste is located, the Director of Environmental Protection must endeavor to enter into an agreement with the owner of the land on which the facility is located, or with the owner of the facility, specifying the measures to be performed and authorizing the Director, employees of the EPA, or contractors retained by the Director to enter on the land and perform the specified measures. The agreement may require the owner to execute an easement by which the Director, an authorized employee of the EPA, or a contractor employed by the EPA in accordance with an established bidding procedure may enter on the facility to sample, repair, or reconstruct air and water quality monitoring equipment constructed under the agreement.

Former law provided that when necessary to protect the public health or safety, the agreement could require the owner to execute a restrictive covenant to

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<sup>3</sup> "Person" includes an individual, corporation, business trust, estate, trust, partnership, and association (R.C. 1.59(C), not in the act).

run with the land that specified the uses that could be made of the facility after work performed was completed, specified the period for which the restrictive covenant applied, and provided terms whereby modifications to the restrictive covenant, or other land uses, could be initiated or proposed to the Director by the owner or by subsequent owners of the facility. All such easements or covenants had to be recorded in the office of the county recorder of the county in which the facility was located, and the Director had to pay the recording fees. The act instead provides that when necessary to protect the public health or safety, the agreement may require the owner to enter into an environmental covenant with the Director in accordance with the act's provisions governing environmental covenants. (R.C. 3734.22.)

### **Sale of cleaned-up facility**

Continuing law provides that if the Director determines that any facility that the Director has acquired and cleaned up as discussed above is suitable, because of its condition as cleaned up, for restricted or unrestricted use, the Director may, with the approval of the Attorney General, sell the facility if the sale is advantageous to the state. Under former law, prior to selling the cleaned-up facility, the Director, when necessary to protect public health or safety, had to execute a restrictive covenant to run with the land that specified the uses that could be made of the facility, specified the period for which the restrictive covenant applied, and provided terms whereby modifications to the restrictive covenant, or other land uses, could be initiated or proposed to the Director by subsequent owners of the facility. The act instead requires the Director, prior to selling the cleaned-up facility, when necessary to protect public health or safety, to enter into an environmental covenant in accordance with the act. (R.C. 3734.24.)

### **Grants to political subdivisions to pay portion of costs of closing facility or abating pollution**

Continuing law authorizes the Director to make grants of moneys from the Hazardous Waste Clean-up Fund for payment of up to two-thirds of the reasonable and necessary expenses incurred by a municipal corporation, county, or township for the proper closure of or abatement of air or water pollution or soil contamination from a facility in which significant quantities of hazardous waste were disposed of and that the political subdivision owns and once operated. In making a grant, the Director must enter into a contract with the municipal corporation, county, or township to ensure that the moneys granted are used for the purposes of cleanup under the law and that the measures performed are properly done. The contract must require the municipal corporation, county, or township to execute an easement by which the Director, an authorized employee of the EPA, or a contractor employed by the Director may enter on the facility to

sample, repair, or reconstruct air and water quality monitoring equipment constructed under the contract.

Former law provided that when necessary to protect public health or safety, the contract could require the municipal corporation, county, or township to execute a restrictive covenant to run with the land that specified the uses that could be made of the facility after work performed under the contract was completed, specified the period for which the restrictive covenant applied, and provided terms whereby modifications to the restrictive covenant, or other land uses, could be initiated or proposed to the Director by the political subdivision or by subsequent owners of the facility. Any such easements or covenants had to be recorded in the office of the county recorder of the county in which the facility was located, and the recipient of the grant had to pay the recording fees. The act instead provides that when necessary to protect public health or safety, the contract may require the municipal corporation, county, or township to enter into an environmental covenant with the Director in accordance with the act's provisions governing environmental covenants (R.C. 3734.25).

#### **Grants to facility owners**

Similarly, continuing law authorizes the Director to make grants of moneys from the Hazardous Waste Clean-up Fund to the owner, other than a political subdivision, of a solid waste facility in which significant quantities of hazardous waste were disposed of or a hazardous waste facility for up to 50% of the cost of the reasonable and necessary expenses incurred for the proper closure of or abatement or prevention of air or water pollution or soil contamination from the facility and for developing the land on which it was located for use in industry, commerce, distribution, or research. In making a grant, the Director must enter into a contract for funding with each applicant awarded a grant to ensure that the moneys granted are used for the purposes of cleanup under the law and that the measures performed are properly performed. The contract must require the owner to execute an easement by which the Director, an authorized employee of the EPA, or a contractor employed by the EPA may enter on the facility to sample, repair, or reconstruct air and water quality monitoring equipment constructed under the contract.

Former law provided that when necessary to protect the public health or safety, the contract could require the owner to execute a restrictive covenant to run with the land that specified the uses that could be made of the facility after work performed under the grant was completed, specified the period for which the restrictive covenant applied, and provided terms whereby modifications to the restrictive covenant, or other land uses, could be initiated or proposed to the Director by the owner or by subsequent owners of the facility. All such easements or covenants had to be recorded in the office of the county recorder of the county

in which the facility was located, and the owner had to pay the recording fees. The act instead provides that when necessary to protect the public health or safety, the contract may require the owner to enter into an environmental covenant with the Director in accordance with the act. (R.C. 3734.26.)

### **Powers of Director of Environmental Protection**

The act expands the powers of the Director of Environmental Protection to include entering into environmental covenants in accordance with the act and granting or accepting easements or selling real property pursuant to the provisions discussed above of the Solid, Infectious, and Hazardous Waste Law, as applicable (R.C. 3745.01(G)).

The act also provides that continuing law prescribing the powers of the Department of Administrative Services cannot interfere with the power of the Director of Environmental Protection to enter into environmental covenants, to grant and accept easements, or to sell property as described above (R.C. 123.01(B)(6)).

### **Fire Marshal Law**

#### **Underground storage tank program and corrective action program for releases from underground petroleum storage tanks**

Under continuing law, the Fire Marshal has responsibility for implementation of the underground storage tank program and corrective action program for releases from underground petroleum storage tanks established by the federal Resource Conservation and Recovery Act of 1976, as amended. To implement the program, the Fire Marshal may adopt, amend, and rescind rules, conduct inspections, require annual registration of underground storage tanks, issue citations and orders to enforce those rules, and perform any other duties that are consistent with those programs. The act expands the authority of the Fire Marshal to implement those programs by authorizing the Fire Marshal to enter into environmental covenants, in accordance with the act's provisions governing environmental covenants, that are consistent with those programs. (R.C. 3737.88(A)(1).)

#### **Standards for corrective actions**

Law modified by the act requires the Fire Marshal to adopt, and authorizes the Fire Marshal to amend and rescind, rules that the Fire Marshal considers necessary to establish standards for corrective actions for suspected and confirmed releases of petroleum and standards for the recovery of costs incurred for undertaking corrective or enforcement actions with respect to such releases. Any

restrictions on the use of real property for the purpose of achieving applicable standards pursuant to those rules must be contained in a deed or in another instrument that is signed and acknowledged by the property owner in the same manner as a deed. The deed or other instrument containing the restrictions must be filed and recorded in the office of the county recorder of the county in which the property is located. Pursuant to the Land Registration Law, such use restrictions in connection with registered land must be entered as a memorial on the page of the register where the title of the owner is registered. (R.C. 3737.882(B) and (E).)

The act expands those requirements by providing that any restrictions on the use of real property for the purpose of the achievement by an owner or operator of applicable standards pursuant to the Fire Marshal's rules must be contained in a deed or in another instrument that is signed and acknowledged by the property owner in the same manner as a deed or an environmental covenant that is entered into in accordance with the act. The deed, other instrument containing the restrictions, or environmental covenant must be filed and recorded in the office of the county recorder of the county in which the property is located. Pursuant to the Land Registration Law, if the use restrictions or environmental covenant are connected with registered land, the restrictions or environmental covenant must be entered as a memorial on the page of the register where the title of the owner is registered. (R.C. 3737.882(E).)

The act further provides that any restrictions on the use of real property for the purpose of the achievement by a person that is not a responsible person, that is, the owner or operator of an underground storage tank system, or by a person undertaking a voluntary action of applicable standards pursuant to the Fire Marshal's rules, must be contained in an environmental covenant entered into in accordance with the act. The environmental covenant must be filed and recorded in the office of the county recorder of the county in which the property is located, and if the environmental covenant is connected with registered land, it must be entered as a memorial on the page of the register where the owner's title is registered. (R.C. 3737.882(F).)

### **Voluntary Action Program Law**

The act essentially incorporates the use of environmental covenants into the structure of the Voluntary Action Program (VAP) Law. It modifies certain aspects of the rulemaking authority of the Director of Environmental Protection in the implementation of the VAP Law and the provisions in that Law pertaining to the types of remedial activities, no further action letters, the issuance of covenants not to sue, and the filing for record and recordkeeping requirements involving property covered by the VAP Law.

## **Rules**

With respect to rulemaking, the act alters the requirements pertaining to rules governing property-specific risk assessments. Under law retained by the act, the rules pertaining to such risk assessments must describe a methodology establishing allowable levels of contamination to remain at a property to ensure protection of public health and safety and the environment. The methodology must take into account a number of factors, including the existence of institutional controls that eliminate or mitigate exposure to hazardous substances or petroleum through the restriction of access to them. The act also allows the methodology to take into account the existence of activity and use limitations resulting from an environmental covenant that eliminate or mitigate exposure to hazardous substances or petroleum. (R.C. 3746.04(B)(2)(a)(ii).)

In addition, the act alters the requirements pertaining to rules governing the selection of no further action letters to be audited under the VAP Law. Under law retained in part by the act, the rules must require the Director to establish priorities for auditing no further action letters that meet certain criteria. Those criteria include a requirement that the no further action letter was for a voluntary action that included as remedial activities engineering controls or restrictions on the use of the property to which the no further action letter pertains. The act instead requires that the no further action letter must have been for a voluntary action that included as remedial activities engineering controls, institutional controls, or activity and use limitations derived from an environmental covenant. (R.C. 3746.04(B)(9)(f).)

## **Remedial activities**

Under continuing law, a remedy or remedial activity conducted under the VAP Law may attain applicable standards established under that Law through the use of institutional controls that restrict the access to or use of a property or through the removal of, treatment of, transportation for treatment or disposal of, disposal of, or use of engineering controls that contain or control the release of hazardous substances or petroleum at or from a property. The act also allows for the use of activity and use limitations established through an environmental covenant to attain those applicable standards. (R.C. 3746.05.)

## **Obtaining no further action letters**

Law retained, but expanded by the act establishes certain requirements for obtaining a no further action letter, including a requirement that if a remedy relies on restrictions on the use of property to achieve applicable standards, the person seeking the no further action letter must demonstrate that the use restrictions have been properly recorded in the office of the county recorder of the county in which

the property is located or have been entered in the appropriate register for registered land. The act also requires that any institutional controls also be properly recorded or entered. In addition, the act specifies that if the person undertaking a voluntary action seeks to obtain a covenant not to sue from the EPA and if the remedy relies on activity and use limitations to achieve applicable standards, the person seeking the no further action letter must demonstrate that the activity and use limitations have been developed in accordance with the VAP Law and rules adopted under it and are contained in a proposed environmental covenant. (R.C. 3746.10(C)(3).)

### **Covenants not to sue**

Under continuing law, a person seeking a covenant not to sue must have a certified professional submit the original no further action letter to the Director of Environmental Protection. The act also requires the certified professional to include any proposed environmental covenant or any proposed operation and maintenance agreement<sup>4</sup> with the no further action letter. (R.C. 3746.11(A).)

Law largely unchanged by the act also establishes time frames by which the Director must issue a covenant not to sue after receipt of a no further action letter from a certified professional. For property that does not involve the issuance of a consolidated standards permit and where no engineering or institutional controls are used to comply with applicable standards, the Director must issue the covenant not to sue within 30 days. For property that does involve the issuance of a consolidated standards permit or where engineering or institutional controls are used to comply with applicable standards, the Director must issue the covenant not to sue within 90 days. The act removes the references to engineering and institutional controls and instead refers to remedial activities for which there is a required operation and maintenance agreement or an environmental covenant. (R.C. 3746.13.)

### **Recording of documents and recordkeeping**

Law modified in part by the act requires a no further action letter, a covenant not to sue, and any restrictions on the use of property to be properly filed in the office of the county recorder of the county in which the property that is subject to the voluntary action is located or, if the property is registered land, to be entered as a memorial in the proper register. The act requires that the environmental covenant for a property be recorded or entered instead of any use

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<sup>4</sup> *Operation and maintenance agreements are required in a voluntary action under continuing law when engineering controls are used to contain or control the release of hazardous substances or petroleum (R.C. 3746.12(A)(2), not in the act.)*

restrictions. It also states that the no further letter, covenant not to sue, and environmental covenant, if any, run with the property. (R.C. 3746.14.)

The act also requires the Director to maintain a record of properties for which covenants not to sue have been issued that involve activity and use limitations established under an environmental covenant (R.C. 3746.171).

### **Definitions**

The act incorporates into the VAP Law the definitions of "activity and use limitations" and "environmental covenant" described above (R.C. 3746.01(A) and (H)). For purposes of the VAP Law, it defines "covenant not to sue" as a release from liability that is issued by the Director (R.C. 3746.01(G)).

Law largely retained by the act defines "remedy" or "remedial activities" as actions that are taken at a property to treat, remove, transport for treatment or disposal, dispose of, contain, or control hazardous substances or petroleum, are protective of public health and safety and the environment, and are consistent with a permanent remedy, including, without limitation, excavation, treatment, off-site disposal, the use of engineering or institutional controls or measures, the issuance and implementation of a consolidated standards permit, and the entering into and implementation of an operation and maintenance agreement. The act modifies the definition by replacing "measures" with "activity and use limitations." (R.C. 3746.01(O).)

### **Maintenance of records by county recorders**

Continuing law requires each county recorder to keep six separate sets of records of specified documents. Included in those documents are no further action letters and covenants not to sue issued under the statutes authorizing grants for brownfield cleanups and the VAP Law and restrictions on the use of property contained in a no further action letter issued under the statutes authorizing grants for brownfield cleanups, identified for the purposes of the VAP Law, and contained in a deed or other instrument as provided in the statutes governing the Fire Marshal's underground storage tank and related corrective action programs. The act adds that a county recorder also must keep six separate sets of records of the following documents: restrictions on the use of property contained in a deed or other instrument as provided in the act's requirement that certain restrictions imposed under the Fire Marshal's underground storage tank and related corrective action programs be contained in an environmental covenant; any easement that is executed or granted under the hazardous waste clean-up statutes that the act revises; and any environmental covenant entered into under the act. (R.C. 317.08(A)(1).)

## IMPLEMENTATION OF SUNSET REVIEW COMMITTEE'S REPORT

### *Background and overview*

Sub. H.B. 548 of the 123rd General Assembly created from January 1, 2001, until December 31, 2004, the Sunset Review Committee to carry out a review of those state boards, commissions, councils, committees, and other entities to which the Sunset Review Law applied and to determine whether those entities (or their functions) should be abolished, terminated, transferred, or continued.<sup>5</sup> Under the provisions of that act, the Committee was to consider and evaluate each state "agency" and recommend, in bill form, the amendment, repeal, or continuation of the statutes creating and empowering the agency. Also, under the provisions of that act, if an agency falling under the Committee's review jurisdiction was not renewed, the agency expired on December 31, 2004.

Am. Sub. H.B. 516 of the 125th General Assembly generally implements the report of the Sunset Review Committee by abolishing, retaining, and changing the names of various agencies evaluated by the Committee during 2003 and 2004. It also reestablishes the Sunset Review Committee with functions identical to those it exercised under former law, but postpones its operation until the 128th General Assembly (2009-2010). On December 31, 2010--i.e. following the reestablished Committee's conclusion of its functions--the act repeals the Sunset Review Law (Section 6 of the act).

### *Sunset Review Law*

#### *Agency expiration and renewal*

*Operation of law prior to act.* Prior to the enactment of this act, an "agency" (see "*Definitions*," below) created after January 1, 2001, had to be considered to have been created on the preceding December 31, and expired no later than four years after the date of its considered creation unless it was renewed in accordance with the Sunset Review Law's procedures. One exception was that, if such an agency was actually created on December 31, it was deemed to be created on that date and expired no later than four years from that date unless it was renewed in accordance with the Sunset Review Law's procedures. An agency that was in existence on January 1, 2001, expired on December 31, 2004, or, assuming its renewal before that date, expired on December 31 of the fourth year

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<sup>5</sup> *The Sunset Review Law is sections 101.82 to 101.87 of the Revised Code. It was scheduled to be repealed on December 31, 2004, for the most part, but the act changes the expiration date for the entire law to December 31, 2010. (Sections 5 and 6 of the act.)*

after the year in which it was most recently renewed unless it was renewed in accordance with the Sunset Review Law's procedures. (R.C. 101.83(A).)

If the General Assembly did not renew or transfer (see "Definitions," below) an agency, the agency expired on the expiration date explained above, and the Auditor of State was prohibited from authorizing the expenditure of any moneys for the agency on or after the expiration date. Under the Sunset Review Law's renewal procedures, an agency could be renewed by passage of a bill that continued the statutes creating and empowering the agency, that amended or repealed those statutes, or that enacted new statutes, to improve agency usefulness, performance, or effectiveness. (R.C. 101.83(B) and (D).)

Changes made by act. The act maintains the operative aspects of the provisions of law described above with the exception that, instead of focusing on agencies in existence on or created after January 1, 2001, the act: (1) substitutes references to agencies created after January 1, 2005, and focuses on their four-year lives unless renewed, and (2) specifies that an agency in existence on January 1, 2005, expires on December 31, 2010, unless it is renewed in accordance with the Sunset Review Law's procedures (R.C. 101.83(A)).

#### Sunset Review Committee: structure and future operation

Background law. Under continuing law, the Sunset Review Committee is composed of nine members: three Senate members appointed by the President of the Senate, three House of Representatives members appointed by the Speaker of the House of Representatives, and three individuals appointed by the Governor with the advice and consent of the Senate. No more than two of the three members appointed by each of these officials may be members of the same political party. Formerly, appointments had to be made within 15 days after the commencement of the first regular session of each General Assembly. (R.C. 101.84(A).)

Changes made by act. The act continues the Sunset Review Committee with the membership described above, but specifies that it will function in calendar years 2009 and 2010. Accordingly, the members of the Committee must be appointed within 15 days after the commencement of the first regular session of the 128th General Assembly, and the Committee must meet not later than 30 days after the first day of the first regular session of the 128th General Assembly and throughout that General Assembly to perform its statutorily specified organizational and operational functions. (R.C. 101.84 and 101.85.)

### Agency reviews

**Operation of law prior to act.** Prior to the enactment of this act, the Sunset Review Committee, not later than 12 months prior to the date on which an agency in existence on January 1, 2001, was scheduled to expire, was required to hold hearings to receive the testimony of the public and of the chief executive officer of the agency and otherwise to consider and evaluate the agency's usefulness, performance, and effectiveness (R.C. 101.86). The Committee, not later than 60 days after its first meeting in 2001, also had to schedule the review of each agency in existence on January 1, 2001, and to send a copy of the schedule for each calendar year to each agency to be reviewed that year and to the Director of the Legislative Service Commission (LSC). The LSC Director was required to publish each annual schedule of review in the Ohio Administrative Code and in the Register of Ohio. (R.C. 101.85.)

**Changes made by act.** The act maintains the operative aspects of the provisions of law described above, except that: (1) the Committee is required to schedule for review each agency in existence on January 1, 2009, not later than 60 days after its first meeting in that year, (2) the Committee must send its schedules for review for calendar years 2009 and 2010 to affected agencies and the LSC Director, and (3) instead of not later than 12 months prior to the date on which an agency is scheduled to expire, the Committee must hold hearings on and evaluate an agency in existence on January 1, 2009, not later than six months prior to the date on which it is scheduled to expire. (R.C. 101.85 and 101.86.) The act also continues, without substantive amendment, other provisions of the Sunset Review Law dealing with the Committee's organization, such as its officers, a quorum, etc., with the Committee's preparation of a report of its findings and recommendations for an agency's or its functions abolition, termination, transfer, or continuation, including its presentation to the General Assembly of implementing recommendations "in bill form," and with agency responsibilities in connection with their reviews (R.C. 101.85, 101.86 and 101.87, not in the act).

### Definitions

Continuing law defines the following terms for purposes of the Sunset Review Law (R.C. 101.82, not in the act):

(1) "Agency" generally means any board, commission, committee, or council, or any other similar state public body required to be established pursuant to state statutes for the exercise of any function of state government and to which members are appointed or elected. "Agency" does not include the following: (a) the General Assembly or any commission, committee, or other body composed entirely of members of the General Assembly, (b) any court, (c) any public body created by or directly pursuant to the Ohio Constitution, (d) the board of trustees

of any institution of higher education financially supported in whole or in part by the state, (e) any public body that has the authority to issue bonds or notes or that has issued bonds or notes that have not been fully repaid, (f) the Public Utilities Commission of Ohio, (g) the Consumers' Council Governing Board, (h) the Ohio Board of Regents, (i) any state board or commission that has the authority to issue any final adjudicatory order that may be appealed to a court of common pleas under the Administrative Procedure Act, (j) any board of elections, (k) the Board of Directors of the Ohio Insurance Guaranty Association, (l) the Board of Governors of the Ohio Fair Plan Underwriting Association, (m) the Ohio Public Employees Deferred Compensation Board, (n) the Ohio Retirement Study Council, (o) the Board of Trustees of the Ohio Police and Fire Pension Fund, (p) the Public Employees Retirement Board, (q) the School Employees Retirement Board, (r) the State Highway Patrol Retirement Board, (s) the State Teachers Retirement Board, and (t) the Industrial Commission.

(2) "Abolish" means to repeal the statutes creating and empowering any agency, remove its personnel, and transfer its records to the Department of Administrative Services pursuant to the State Records Program Law.

(3) "Terminate" means to amend or repeal the statutes creating and empowering an agency, remove its personnel, and reassign its functions and records to another agency or officer designated by the General Assembly.

(4) "Transfer" means to amend the statutes creating and empowering an agency so that its functions, records, and personnel are conveyed to another agency or officer.

(5) "Renew" means to continue an agency, and may include amendment of the statutes creating and empowering the agency, or recommendations for changes in agency operation or personnel.

### **Abolition of specific agencies**

In implementing the Sunset Review Committee's report of recommendations, the act abolishes the following agencies:

AGENCY	REVISED CODE SECTIONS OR UNCODIFIED LAW SECTIONS TO BE AMENDED OR REPEALED <sup>6</sup>
Advisory Committee of the State Veterinary Medical Licensing Board	R.C. 4741.03(D)(3)
Appalachian Public Facilities Task Force	Section 3, Am. H.B. 280, 121st General Assembly
Citizen's Advisory Councils (Department of Mental Health)	R.C. 340.02, 5119.81, and 5119.82
Community MR/DD Trust Fund Advisory Council	R.C. 5123.352 and 5123.353
Executive Committee of the Ohio Bicentennial Commission	R.C. 149.32; Section 3, Am. S.B. 208, 120th General Assembly
Health Care Advisory Committee	R.C. 4121.443 and 4755.481
Health Care Quality Advisory Council	R.C. 4121.442
Highway, Bridge, and Overpass Vandal Fence Task Force	Section 6, Am. Sub. S.B. 163, 124th General Assembly
Interagency Recycling Market Development Workgroup	R.C. 1502.04, 1502.05, 1502.10, 1502.11, and 1502.12
Joint Underwriting Association for Medical Malpractice Insurance and its Board of Governors	R.C. 2505.02, 3929.482(A), 3929.682, 3929.71, 3929.72, 3929.721, 3929.73, 3929.75, 3929.76, 3929.77, 3929.78, 3929.79, 3929.80, 3929.81, 3929.82, 3929.83, 3929.84, 3929.85, 3931.01, 3955.05, 3960.06, and 4731.143
Ohio Benefit Systems Data Linkage Committee	R.C. 125.24
Ohio Bicentennial Commission	R.C. 149.32
Ohio Low-Level Radioactive Waste Facility Development Authority and the License Review Board	R.C. 3747.02, 3747.04, 3747.05, 3747.06, 3747.061, 3747.07, 3747.08, 3747.09, 3747.10, 3747.11, 3747.12, 3747.13, 3747.14, 3747.15, 3747.16, 3747.17, 3747.18, 3747.19, 3747.20, 3747.21, 3747.22, 3748.01, 3748.02, 3748.04, 3748.05, 3748.09, 3748.16, and 4117.01

<sup>6</sup> *Outright repealed Revised Code sections and outright repealed uncodified law sections are listed in Sections 2, 7, and 8 of the act.*

AGENCY	REVISED CODE SECTIONS OR UNCODIFIED LAW SECTIONS TO BE AMENDED OR REPEALED <sup>6</sup>
Ohio Natural Areas Council	R.C. 1501.04, 1517.02, 1517.03, 1517.04, 1517.05, 1517.23, 1518.01, and 1518.03
Property Revitalization Board	R.C. 3746.04, 3746.08, 3746.09, and 3746.35
Select Commission on Pyrotechnics	Section 3, Sub. H.B. 508, 119th General Assembly
Set Aside Review Board	R.C. 123.151, 164.07, 3354.161, 3355.121, 3357.161, 3358.10, 4582.12, and 4981.03 <sup>7</sup>
State Board of Library Examiners	R.C. 3375.47
Subcommittee to Protect Public Health Care Workers from Exposure Incidents of the Public Employment Risk Reduction Advisory Commission	R.C. 4167.09, 4167.25, 4167.26, and 4167.27

<sup>7</sup> *In connection with the abolition of the Set Aside Review Board, the act eliminates several provisions of R.C. 123.151 that related to the percentages of state public improvement contracts or subcontracts that generally were required to be set aside for bidding only by, or generally were to be awarded to, minority business enterprises certified by the Equal Employment Opportunity Coordinator of the Department of Administrative Services. The act also removes a criminal penalty in that section associated with misrepresentation of an entity as a minority business enterprise for purposes of obtaining such a contract or subcontract. In Associated Gen. Contrs. of Ohio v. Drabik (6th Cir. 2000), 214 F.3d 730, the United States Court of Appeals for the 6th Circuit held that the percentage requirements of that section were not narrowly tailored to meet a compelling government interest by remedying past racial discrimination and were violative of the Equal Protection Clause of the 14th Amendment to the United States Constitution and, thus, unconstitutional. Various amendments in R.C. 164.07 (local capital improvement projects), 3358.10 (state community college districts), 4582.12 (port authorities), and 4981.03 (Ohio Rail Development Commission), as well as the outright repeals of R.C. 3354.161 (community college districts), 3355.121 (university branch districts), and 3357.161 (technical college districts), by the act relate to the removal of the unconstitutional percentage requirements.*

*The act does not affect, however, the provisions of R.C. 125.081 (not in the act) that relate to the percentage of purchases that generally must be set aside for minority business enterprises in connection with state purchases of supplies or services by competitive selection. The Ohio Supreme Court has found these provisions to be constitutional in Ritchey Produce Co., Inc. v. Ohio Dept. of Adm. Serv. (1999), 85 Ohio St.3d 194. But see criticism in Drabik, supra.*



AGENCY	REVISED CODE SECTIONS OR UNCODIFIED LAW SECTIONS TO BE AMENDED OR REPEALED <sup>6</sup>
Submerged Lands Advisory Council	R.C. 149.56, 1506.30, 1506.34, 1506.35, and 1506.37
Task Force to Advise the General Assembly on the Development and Evaluation of Caseworker Assessment Education and Training Programs, Assessment Standards and Criteria, and Other Programs or Initiatives That May Better Assist Foster and Adoptive Parents in Dealing with Children with Behavioral Problems	Section 6, Sub. S.B. 27, 124th General Assembly
Task Forces of the Interagency Recycling Market Development Workgroup	R.C. 1502.10
Technical and Advisory Councils or Boards (Department of Development)	R.C. 122.011, 122.09, and 122.133
Welfare Oversight Council	R.C. 5101.93
Wright-Dunbar State Heritage Commission	R.C. 149.321 and 149.322

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**Abolition-related changes**

In connection with its abolition of the agencies listed above, the act makes several changes to otherwise continuing law to facilitate the continuation of certain functions by other governmental entities or officials.

**Interagency Recycling Market Development Workgroup**

Under former law, the Interagency Recycling Market Development Workgroup with the assistance of the Recycling and Litter Prevention Advisory Council was required to prepare and approve the initial Ohio recycling market development plan not later than December 31, 1994, and had to prepare and approve a revised plan not later than December 31 every subsequent two years. The act repeals the Interagency Recycling Market Development Workgroup and specifies: (1) that the Chief of Recycling and Litter Prevention in the Department of Natural Resources instead must prepare, with the assistance of the Recycling

<sup>8</sup> Although the Sunset Review Committee's report recommended the abolition of the Midwest Interstate Passenger Rail Compact Commission (Ohio members), the act continues this agency.



and Litter Prevention Advisory Council, a revised plan every two years, and (2) that the Director of Natural Resources has the responsibility of approving that plan. (R.C. 1502.11(A).)

### **Ohio Low-Level Radioactive Waste Facility Development Authority**

Under continuing law, the Governor, with the advice and consent of the Senate, must appoint the Ohio member of the Midwest Interstate Low-Level Radioactive Waste Commission. Formerly, the representative of this state could not cast an affirmative vote on certain specified matters before the Commission without the prior approval of a majority of the members of the board of directors of the Ohio Low-Level Radioactive Waste Facility Development Authority. The act repeals the Authority and specifies that the representative of this state instead cannot cast an affirmative vote on certain specified matters before the Commission without the Governor's prior approval. (R.C. 3747.02(C).)

### **Health Care Quality Advisory Council**

Former law provided that the Health Care Quality Advisory Council had to develop standards for the qualification of health care plans of the Ohio Workers' Compensation Qualified Health Plan System to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies to an employee for an injury or occupational disease that was compensable under the Workers' Compensation Laws, the Public Works Relief Compensation Law, or the Separate Compensation Funds Law. The act repeals the Health Care Quality Advisory Council and specifies that instead the Administrator of Workers' Compensation must develop the standards for qualification. (R.C. 4121.442(A).)

### **Agency name and other related changes**

#### **Name changes**

In implementing the Sunset Review Committee's report of recommendations, the act makes the following name changes with respect to agencies being renewed:

CURRENT AGENCY NAME	NEW NAME	REVISED CODE SECTIONS AMENDED
Martha Kinney Cooper Ohioana Library Association	Ohioana Library Association, Martha Kinney Cooper Memorial	R.C. 3375.61 and 3375.62
Ohio Arts and Sports Facilities Commission	Ohio Cultural Facilities Commission	R.C. 307.674, 3383.01, 3383.02, 3382.03, 3383.04, 3383.05, 3383.06, 3383.07, 3383.08, and 3383.09
State Planning Council	Ohio Developmental Disabilities Council	R.C. 5123.35

**Additional Ohio Cultural Facilities Commission matter**

In addition to changing the name of the Ohio Arts and Sports Facilities Commission to the Ohio Cultural Facilities Commission, the act generally replaces the term "arts" in the Commission's statutes with the term "culture" or "cultural." These replacements do not appear to substantively change the Commission's authority or functions. (R.C. 3383.01 to 3383.09.)

**Development Financing Advisory Council**

Under former law, the Development Financing Advisory Council had nine members: seven appointed by the Governor with the advice and consent of the Senate, one member of the Senate appointed by the President of the Senate, and one member of the House of Representatives appointed by the Speaker of the House of Representatives. The law also specified that the term of office for the seven gubernatorial appointees was seven years. Five members of the Council constituted a quorum. (R.C. 122.40.)

The act renews the Council and provides that it is to consist of ten members: seven appointed by the Governor with the advice and consent of the Senate, one member of the Senate appointed by the President of the Senate, one member of the House of Representatives appointed by the Speaker of the House of Representatives, and the Director of Development or the Director's designee. It also reduces the term of office for the seven gubernatorial appointees to five years and the number of Council members constituting a quorum to four members. The seven members appointed by the Governor who are serving terms of office of seven years on the effective date of these changes will continue to serve those terms, but their successors in office, including the filling of a vacancy occurring prior to the expiration of those terms, must be appointed for terms of five years. (R.C. 122.40.)

**Technical Advisory Committee to Assist the Director of the Ohio Coal Development Office**

Former law provided that one member of the Ohio Water Development Authority designated by the Authority had to serve as an ex officio member of the Technical Advisory Committee to Assist the Director of the Ohio Coal Development Office. The act renews the Technical Advisory Committee, but removes the Authority's designee as an ex officio member of it. (R.C. 1551.35.)

**Renewal of specific agencies**

Agencies falling under the review jurisdiction of the Sunset Review Committee were to expire if not renewed by December 31, 2004, or otherwise within the statutorily prescribed period. In generally implementing the Committee's report of recommendations, the act renews the agencies listed below pursuant to the Sunset Review Law's procedures and specifies that they will expire on December 31, 2010, unless they are again renewed by legislation (Section 4 of the act):

<b>AGENCY NAME</b>	<b>REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY</b>
Administrator, Interstate Compact on Mental Health	R.C. 5119.50
Administrator, Interstate Compact on Placement of Children	R.C. 5103.20
Advisory Board of Governor's Office of Faith-Based and Community Initiatives	R.C. 107.12
Advisory Boards to the EPA for Air Pollution	R.C. 121.13
Advisory Boards to the EPA for Water Pollution	R.C. 121.13
Advisory Committee of the State Veterinary Medical Licensing Board	R.C. 4741.03(D)(3)
Advisory Committee on Livestock Exhibitions	R.C. 901.71
Advisory Council on Amusement Ride Safety	R.C. 1711.51
Advisory Board of Directors for Prison Labor	R.C. 5145.162

AGENCY NAME	REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY
Advisory Council for Each Wild, Scenic, or Recreational River Area	R.C. 1517.18
Advisory Councils or Boards for State Departments	R.C. 107.18 or 121.13
Advisory Group to the Ohio Water Resources Council	R.C. 1521.19(C)
Alzheimer's Disease Task Force	R.C. 173.04(F)
AMBER Alert Advisory Committee	R.C. 5502.521
Apprenticeship Council	R.C. 4139.02
Armory Board of Control	R.C. 5911.09
Automated Title Processing Board	R.C. 4505.09(C)(1)
Banking Commission	R.C. 1123.01
Board of Directors of the Ohio Health Reinsurance Program	R.C. 3924.08
Board of Voting Machine Examiners	R.C. 3506.05(B)
Board of Tax Appeals	R.C. 5703.02
Brain Injury Advisory Committee	R.C. 3304.231
Capitol Square Review and Advisory Board	R.C. 105.41
Child Support Guideline Advisory Council	R.C. 3119.024
Children's Trust Fund Board	R.C. 3109.15
Citizens Advisory Committee (BMV)	R.C. 4501.025
Citizen's Advisory Councils (Department of Mental Retardation and Developmental Disabilities)	R.C. 5123.092
Clean Ohio Trail Advisory Board	R.C. 1519.06
Coastal Resources Advisory Council	R.C. 1506.12
Commission on African-American Males	R.C. 4112.12
Commission on Hispanic-Latino Affairs	R.C. 121.31
Commission on Minority Health	R.C. 3701.78
Committee on Prescriptive Governance	R.C. 4723.49

AGENCY NAME	REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY
Commodity Advisory Commission	R.C. 926.32
Community Mental Retardation and Developmental Disabilities Trust Fund Advisory Council	R.C. 5123.353
Community Oversight Council	R.C. 3311.77
Compassionate Care Task Force	Section 3, Am. Sub. H.B. 474, 124th General Assembly
Consumer Advisory Committee to the Rehabilitation Services Commission	R.C. 3304.24
Continuing Education Committee (for Sheriffs)	R.C. 109.80
Controlling Board	R.C. 127.12
Coordinating Committee, Agricultural Commodity Marketing Programs	R.C. 924.14
Council on Alcohol and Drug Addiction Services	R.C. 3793.09
Council on Unreclaimed Strip Mined Lands	R.C. 1513.29
Council to Advise on the Establishment and Implementation of the Birth Defects Information System	R.C. 3705.34
County Sheriffs' Standard Car-Marking and Uniform Commission	R.C. 311.25
Credit Union Council	R.C. 1733.329
Criminal Sentencing Advisory Committee	R.C. 181.22
Day-Care Advisory Council	R.C. 5104.08
Dentist Loan Repayment Advisory Board	R.C. 3702.92
Development Financing Advisory Council	R.C. 122.40
Education Commission of the States (Interstate Compact for Education)	R.C. 3301.48
Electrical Safety Inspector Advisory Committee	R.C. 3783.08
Emergency Response Commission	R.C. 3750.02



AGENCY NAME	REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY
Engineering Experiment Station Advisory Committee	R.C. 3335.27
Environmental Education Council	R.C. 3745.21
Environmental Review Appeals Commission	R.C. 3745.02
EPA Advisory Boards or Councils	R.C. 121.13
Farmland Preservation Advisory Board	R.C. 901.23
Financial Planning and Supervision Commission for Municipal Corporation, County, or Township	R.C. 118.05
Financial Planning and Supervision Commission for School District	R.C. 3316.05
Forestry Advisory Council	R.C. 1503.40
Governance Authority for a State University or College	R.C. 3345.75
Governor's Advisory Council on Physical Fitness, Wellness, and Sports	R.C. 3701.77
Governor's Council on People with Disabilities	R.C. 3303.41
Governor's Residence Advisory Commission	R.C. 107.40
Great Lakes Commission (Great Lakes Basin Compact)	R.C. 6161.01
Gubernatorial Transition Committee	R.C. 107.29
Head Start Partnership Study Council	Section 41.35, Am. Sub. H.B. 95, 125th General Assembly
Hemophilia Advisory Subcommittee	R.C. 3701.0210
Housing Trust Fund Advisory Committee	R.C. 175.25
Industrial Commission Nominating Council	R.C. 4121.04
Industrial Technology and Enterprise Advisory Council	R.C. 122.29
Infant Hearing Screening Subcommittee	R.C. 3701.507



AGENCY NAME	REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY
Insurance Agent Education Advisory Council	R.C. 3905.483
Interagency Council on Hispanic/Latino Affairs	R.C. 121.32(J)
Interstate Mining Commission (Interstate Mining Compact)	R.C. 1514.30
Interstate Rail Passenger Advisory Council	R.C. 4981.35
Joint Council on MR/DD	R.C. 101.37
Joint Select Committee on Volume Cap	R.C. 133.021
Labor-Management Government Advisory Council	R.C. 4121.70
Legal Rights Service Commission	R.C. 5123.60
Legislative Task Force on Redistricting, Reapportionment, and Demographic Research	R.C. 103.51
Maternal and Child Health Council	R.C. 3701.025
Medically Handicapped Children's Medical Advisory Council	R.C. 3701.025
Midwest Interstate Passenger Rail Compact Commission (Ohio members)	R.C. 4981.361
Military Activation Task Force	R.C. 5902.15
Milk Sanitation Board	R.C. 917.03
Mine Subsidence Insurance Governing Board	R.C. 3929.51
Minority Development Financing Board	R.C. 122.72
Multi-Agency Radio Communications Systems Steering Committee	Section 21, Am. Sub. H.B. 790, 120th General Assembly
Multidisciplinary Council	R.C. 3746.03
Muskingum River Advisory Council	R.C. 1501.25
National Museum of Afro-American History and Culture Planning Committee	R.C. 149.303
Nursing Facility Reimbursement Study Council	R.C. 5111.34



AGENCY NAME	REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY
Ohio Advisory Council for the Aging	R.C. 173.03
Ohio Aerospace and Defense Advisory Council	R.C. 122.98
Ohio Arts Council	R.C. 3379.02
Ohio Business Gateway Steering Committee	R.C. 5703.57
Ohio Cemetery Dispute Resolution Commission	R.C. 4767.05
Ohio Civil Rights Commission Advisory Agencies and Conciliation Councils	R.C. 4112.04(B)
Ohio Commercial Insurance Joint Underwriting Association Board of Governors	R.C. 3930.03
Ohio Commercial Market Assistance Plan Executive Committee	R.C. 3930.02
Ohio Commission on Dispute Resolution and Conflict Management	R.C. 179.02
Ohio Commission to Reform Medicaid	Section 59.29, Am. Sub. H.B. 95, 125th General Assembly
Ohio Community Service Council	R.C. 121.40
Ohio Council for Interstate Adult Offender Supervision	R.C. 5149.22
Ohio Cultural Facilities Commission	R.C. 3383.02
Ohio Developmental Disabilities Council	R.C. 5123.35
Ohio Educational Telecommunications Network Commission	R.C. 3353.02
Ohio Ethics Commission	R.C. 102.05
Ohio Expositions Commission	R.C. 991.02
Ohio Family and Children First Cabinet Council	R.C. 121.37
Ohio Geology Advisory Council	R.C. 1505.11
Ohio Grape Industries Committee	R.C. 924.51
Ohio Hepatitis C Advisory Commission	R.C. 3701.92



AGENCY NAME	REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY
Ohio Historic Site Preservation Advisory Board	R.C. 149.301
Ohio Historical Society Board of Trustees	R.C. 149.30
Ohio Judicial Conference	R.C. 105.91
Ohio Lake Erie Commission	R.C. 1506.21
Ohio Medical Malpractice Commission	Section 4, Am. Sub. S.B. 281, 124th General Assembly, and Section 3, Am. Sub. S.B. 86, 125th General Assembly
Ohio Medical Quality Foundation	R.C. 3701.89
Ohio Parks and Recreation Council	R.C. 1541.40
Ohio Peace Officer Training Commission	R.C. 109.71
Ohio Public Defender Commission	R.C. 120.01
Ohio Public Library Information Network Board	Section 69, Am. Sub. H.B. 117, 121st General Assembly, as amended by Am. H.B. 284, 121st General Assembly
Ohio Public Works Commission	R.C. 164.02
Ohio Quarter Horse Development Commission	R.C. 3769.086
Ohio SchoolNet Commission	R.C. 3301.80
Ohio Small Government Capital Improvements Commission	R.C. 164.02
Ohio Soil and Water Conservation Commission	R.C. 1515.02
Ohio Standardbred Development Commission	R.C. 3769.085
Ohio Steel Industry Advisory Council	R.C. 122.97
Ohio Teacher Education and Licensure Advisory Council	R.C. 3319.28(D)
Ohio Thoroughbred Racing Advisory Committee	R.C. 3769.084
Ohio Tuition Trust Authority	R.C. 3334.03



AGENCY NAME	REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY
Ohio University College of Osteopathic Medicine Advisory Committee	R.C. 3337.10
Ohio Vendors Representative Committee	R.C. 3304.34
Ohio War Orphans Scholarship Board	R.C. 5910.02
Ohio Water Advisory Council	R.C. 1521.031
Ohio Water Resources Council	R.C. 1521.19
Ohioana Library Association, Martha Kinney Cooper Memorial	R.C. 3375.62
Oil and Gas Commission	R.C. 1509.35
Operating Committee, Agricultural Commodity Marketing Programs	R.C. 924.07
Organized Crime Investigations Commission	R.C. 177.01
Parole Board	R.C. 5149.10
Pharmacy and Therapeutics Committee of the Department of Job and Family Services	R.C. 5111.81
Physician Loan Repayment Advisory Board	R.C. 3702.81
Power Siting Board	R.C. 4906.02
Prequalification Review Board	R.C. 5525.07
Private Water Systems Advisory Council	R.C. 3701.346
Public Employment Risk Reduction Advisory Commission	R.C. 4167.02
Public Health Council	R.C. 3701.33
Public Utilities Commission Nominating Council	R.C. 4901.021
Public Utility Property Tax Study Committee	R.C. 5727.85
Radiation Advisory Council	R.C. 3748.20
Reclamation Commission	R.C. 1513.05
Recreation and Resources Commission	R.C. 1501.04



AGENCY NAME	REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY
Recycling and Litter Prevention Advisory Council	R.C. 1502.04
Rehabilitation Services Commission Consumer Advisory Committee	R.C. 3304.24
Release Authority of Department of Youth Services	R.C. 5139.50
Savings and Loans Associations and Savings Banks Board	R.C. 1181.16
Schools and Ministerial Lands Divestiture Committee	R.C. 501.041
Second Chance Trust Fund Advisory Committee	R.C. 2108.17
Self-Insuring Employers Evaluation Board	R.C. 4123.352
Services Committee of the Workers' Compensation System	R.C. 4121.06
Small Business Stationary Source Technical and Environmental Compliance Assistance Council	R.C. 3704.19
Solid Waste Management Advisory Council	R.C. 3734.51
State Agency Coordinating Group	R.C. 1521.19
State Board of Deposit	R.C. 135.02
State Board of Emergency Medical Services Subcommittees	R.C. 4765.04
State Council of Uniform State Laws	R.C. 105.21
State Committee for the Purchase of Products and Services Provided by Persons with Severe Disabilities	R.C. 4115.32
State Criminal Sentencing Commission	R.C. 181.21
State Employment Relations Board	R.C. 4117.32
State Fire Commission	R.C. 3737.81
State Racing Commission	R.C. 3769.02
State Victims Assistance Advisory Committee	R.C. 109.91



AGENCY NAME	REVISED CODE SECTION OR UNCODIFIED LAW SECTION AUTHORITY
Student Tuition Recovery Authority	R.C. 3332.081
Tax Credit Authority	R.C. 122.17
Technical Advisory Committee to Assist the Director of the Ohio Coal Development Office	R.C. 1551.35
Technical Advisory Council on Oil and Gas	R.C. 1509.38
Transportation Review Advisory Council	R.C. 5512.07
Unemployment Compensation Review Commission	R.C. 4141.06
Unemployment Compensation Advisory Council	R.C. 4141.08
Utility Radiological Safety Board	R.C. 4937.02
Vehicle Management Commission	R.C. 125.833
Veterans Advisory Committee	R.C. 5902.02(K)
Volunteer Fire Fighters' Dependents Fund Boards (Private and Public)	R.C. 146.02
Water and Sewer Commission	R.C. 1525.11(C)
Waterways Safety Council	R.C. 1547.73
Wildlife Council	R.C. 1531.03
Workers' Compensation System Oversight Commission	R.C. 4121.12
Workers' Compensation Oversight Commission Nominating Committee	R.C. 4121.123

**Sunset Review Committee statutes repealed**

The act repeals on December 31, 2010, all statutes related to the Sunset Review Committee's structure, functions, and authority. This outright repeal coincides with the time when the Committee is required to have finished its duties during the 128th General Assembly. (R.C. 101.82, 101.83, 101.84, 101.85, 101.86, and 101.87; Sections 5 and 6 of the act.)

### Legislative statements of intent

The act contains a statement that, in enacting the act, it is in part the General Assembly's intent to implement the report of the Sunset Review Committee that was created by Sub. H.B. 548 of the 123rd General Assembly. The report is declared to be implemented in part as follows (Section 9(A) of the act):

(1) By the abolishment in the act, through amendments to relevant codified sections of law and through outright repeals of codified or uncodified sections of law, of several agencies that were subject to the Committee's jurisdiction;

(2) By the continuation, through the amendment or enactment of codified or uncodified sections of law, of the existence of numerous agencies that were subject to the Committee's jurisdiction.

The General Assembly also declares its intent to abolish the Department of Health's Citizen's Advisory Council and the Environmental Protection Agency's Public Response Group. These entities were subject to the Committee's jurisdiction, and the Committee declared that they should be abolished, but the act declares that no express codified or uncodified source of law for them was found to exist by the General Assembly. (Section 9(B) of the act.)

The General Assembly further declares its intention to continue the existence of the five entities listed below if they have not expired by operation of law prior to and are in existence on the act's effective date. These entities were subject to the Committee's jurisdiction, and the Committee declared they should be continued in existence, but the act declares that no express codified or uncodified source of law for them was found to exist by the General Assembly (Section 9(C) of the act):

- Assistance Council;
- Interdepartmental Cluster for Services to Youth;
- Jobs for Ohio's Graduates Board of Trustees;
- Ohio Oil and Gas Energy Education Program;
- Ohio Science and Technology Council.

## OHIO AFRICAN-AMERICAN HALL OF FAME

### Establishment

The act requires the Ohio Historical Society to cooperate with the Ohio African-American Hall of Fame Governing Board, which the act creates, to establish the Ohio African-American Hall of Fame. The purpose of the Hall of Fame is to provide recognition to African-Americans who have made significant contributions to Ohio. The Governing Board must select the persons to be inducted into the Hall of Fame and conduct an annual induction ceremony in Columbus. (R.C. 149.305(A) and (B).)

Initially, portraits of and biographical information regarding persons inducted into the Hall of Fame must be housed and displayed in an appropriate space located within the Ohio Historical Center in Columbus (R.C. 149.305(C)(1)). The act requires the Historical Society and the Governing Board to cooperate in the selection of a permanent Hall of Fame site. Before any real property is acquired or accepted for that purpose, they are to consult on the design, plans, and specifications for the construction or modification of any buildings or other visitation facilities for the Hall of Fame. The Historical Society also must establish an acquisition policy for the Hall of Fame in consultation with the Governing Board.<sup>9</sup> (R.C. 149.305(D).)

After a permanent site is selected for the Hall of Fame, the Historical Society and the Governing Board must establish a private, nonprofit organization that must acquire title to, operate, and maintain it. The Historical Society must operate and maintain the Hall of Fame until it is conveyed to the private, nonprofit organization. (R.C. 149.305(F).)

The Historical Society is authorized to accept donations of historical items and artifacts for placement in the Hall of Fame and is required to house them at the Ohio Historical Center in Columbus. After a permanent Hall of Fame site is selected, the Historical Society must cooperate with the private, nonprofit organization discussed above to loan those items and artifacts for interpretive purposes of the Hall of Fame. Any historical items or artifacts *donated to* the private, nonprofit organization for placement in the Hall of Fame must remain the property of the Hall of Fame as part of its permanent collection. (R.C. 149.305(F).)

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<sup>9</sup> Pursuant to continuing law, any instrument by which real property is acquired under the act must identify the state agency that has the use and benefit of the real property (R.C. 149.305(G)).

Finally, the act provides that Central State University also must serve as a repository of information regarding persons inducted into the Hall of Fame. The University must consult with the Governing Board on the manner and location in which the information is housed and displayed. (R.C. 149.305(C)(2).)

### **Governing Board**

#### **Members and functions**

The act creates the Ohio African-American Hall of Fame Governing Board to raise funds for the Hall of Fame, to commission a business plan for implementation of the Hall of Fame, to advise the Historical Society in the performance of its duties as described above, and to select and induct persons into the Hall of Fame. The Governing Board is to consist of 13 voting members who have demonstrated interest in preserving African-American history. Those members must be appointed as follows (R.C. 149.306(A)):

- Three members appointed by the Governor;
- Two members appointed by the Speaker of the House of Representatives;
- Two members appointed by the President of the Senate;
- Two members appointed by the Chair of the Ohio Legislative Black Caucus;
- One member appointed by the National Museum of Afro-American History and Culture Planning Committee;
- One member appointed by the Board of Directors of the National Underground Railroad Freedom Center;
- One member appointed by the Historical Society's Board of Trustees; and
- One member appointed by the Board of Trustees of the Ohioana Library Association.

The act authorizes the Governing Board to accept donations of historical items and artifacts for placement in the Hall of Fame and requires it to house them at the Ohio Historical Center in Columbus until a permanent Hall of Fame site is selected. At that time, the Governing Board must convey all donated items and artifacts to the private, nonprofit organization established under the act. All historical items and artifacts so conveyed must remain the property of the Hall of

Fame as part of its permanent collection. The Governing Board is required to advise the private, nonprofit organization concerning the operation and maintenance of the Hall of Fame. (R.C. 149.306(F).)

**Appointment; terms of office**

Initial appointments to the Governing Board must be made within 90 days after the act's effective date. Of those initial appointments, the terms of the following members end one year after that date: one member appointed by the Governor, one member appointed by the Speaker of the House of Representatives, one member appointed by the President of the Senate, one member appointed by the Chair of the Ohio Legislative Black Caucus, the member appointed by the Board of Directors of the National Underground Railroad Freedom Center, and the member appointed by the Board of Trustees of the Ohioana Library Association. The initial terms of all other members end two years after the act's effective date. Thereafter, terms for all members are for two years. (R.C. 149.306(B).)

Each member is to hold office from the date of the member's appointment until the end of the term for which the member was appointed. Members may be reappointed. Vacancies must 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 must hold office for the remainder of that term. A member is required to continue 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. (R.C. 149.306(B).)

**Organization, compensation, and expenses**

The act requires the Governing Board to elect a chairperson from its membership. The Governing Board must meet at least four times per year and keep a record of its proceedings, which must be open to the public for inspection. A written notice of the time and place of each meeting must be sent to each member. A majority of the members of the Governing Board constitutes a quorum. (R.C. 149.306(D).)

All members of the Governing Board serve without compensation, but must be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. The expenses of the Governing Board are to be paid out of the African-American Hall of Fame Fund created by the act (see below). The Historical Society may provide any necessary staff or services required by the Governing Board. Compensation for those services also must be paid out of the Fund. (R.C. 149.306(C) and (E).)

**Sunset review status**

The act states that the Governing Board is not subject to the Sunset Review Law discussed above (R.C. 149.306(G)).

**Hall of Fame Fund**

The act creates the African-American Hall of Fame Fund as a custodial fund and specifies that all donations of money, grants, and other assistance received for purposes of the Hall of Fame must be deposited into the Fund. Money in the Fund must be used for the expenses of the Historical Society incurred in the performance of its duties under the act and for the expenses of the Hall of Fame, including the reimbursement of Governing Board members. The act requires the Treasurer of State to disburse money from the Fund on order of the Historical Society and to invest any portion of the Fund not needed for immediate use in the same manner as, and subject to all provisions of law with respect to the investment of, state funds. (R.C. 149.305(E).)

**GENERAL ASSEMBLY-RELATED CHANGE**

**Administering oath of office to General Assembly members and staff**

Under continuing law, a General Assembly member or a person authorized to administer oaths may administer the oath of office to: (1) General Assembly officers and members, (2) the Clerk of the Senate, the Chief Administrative Officer and the Clerk of the House of Representatives, and their assistants, and (3) the Sergeant At Arms and Assistant Sergeant At Arms of each house. The act also authorizes a former presiding officer of either house of the General Assembly to administer these oaths of office. (R.C. 101.23.)

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	06-03-04	p. 2123
Reported, H. Civil & Commercial Law	12-01-04	pp. 2331-2332
Passed House (88-0)	12-01-04	pp. 2338-2339
Reported, S. Energy, Natural Resources & Environment	12-08-04	p. 2434
Passed Senate (32-0)	12-08-04	pp. 2465-2470
House concurred in Senate amendments (94-0)	12-15-04	pp. 2705-2707

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