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## **Department of Administrative Services**

### **State contracts for goods and services**

- Prohibits a state contract for goods or services from including certain provisions the state generally does not include in its contracts, such as indemnification clauses or binding arbitration clauses, and voids such terms by operation of law.

### **Ohio preference scoring in state purchases**

- Expands the types of purchases under state purchasing law that are eligible for an Ohio preference in scoring.

### **Bulk purchasing program**

- Allows the Department of Administrative Services (DAS) to permit a political subdivision or special district of another state to participate in DAS contracts for the purchase of supplies and services.
- Allows a board of elections to participate in DAS purchase contracts if DAS has authorized the county to participate in those contracts, instead of requiring the board to apply to DAS separately.
- Clarifies that a board of elections may choose to purchase election supplies through DAS, through the Secretary of State's bulk purchasing program, or by other means.

### **Cooperative purchasing agreements**

- Clarifies that DAS can join existing procurement contracts of other state agencies with their own purchasing authority, other states, and the U.S. government.

### **Parental and caregiver leave**

- Allows certain state employees to be eligible, on the delivery of a stillborn child, for paid parental leave of absence and parental leave benefits established in continuing law.
- Includes, for paid parental leave eligibility purposes, persons employed in state positions for which the authority to determine compensation is given by law to another individual or entity.
- Increases, from \$2,000 to \$5,000, the adoption expenses benefit an employee may choose to receive in lieu of paid parental leave.
- Makes certain state employees who are foster caregivers and kinship caregivers eligible for up to five days of caregiver leave with full pay in a calendar year on placement of a child with the caregiver.

### **Fleet management**

- Modifies the definition of "operating cost," which is a factor in calculating the minimum number of business miles per year an employee of a state agency must drive in order to qualify for approval by the DAS to receive a motor vehicle for business use.

- Allows proceeds from the disposition of state vehicles to be transferred from the Investment Recovery Fund to the Fleet Management Fund.

### **Prescription drug advisory council**

- Specifies that the DAS Director is the chairperson of the existing Prescription Drug Transparency and Affordability Advisory Council, and modifies the frequency at which the Advisory Council must meet (from quarterly to at the call of the chairperson).

### **DAS insurance program**

- Declares the administration of the state's Risk Management Program to be a public duty for purposes of the Sovereign Immunity/Court of Claims Law.
- Authorizes the Office of Risk Management to administer a judicial liability program.
- Replaces the requirement that the state purchase fidelity bonds for state agents and employees with authority to self-insure itself and third parties against loss due to dishonest acts of state officers, employees, and agents.
- Requires public official bonds to be purchased when statutorily required.
- Expands the authority of the state and political subdivisions to insure against liability, from the losses attributable to the operation of specified vehicles during the course of official duties to any loss that occurs in the course of employment or official responsibilities.
- Specifies that recoveries against the state are to be reduced by other recoveries the claimant is entitled to, as opposed to just those other recoveries the claimant has received.
- Prohibits a claim against the state from being filed in the Court of Claims until the claimant has attempted to have the claim compromised by the Office of Risk Management or satisfied by the state's liability insurance.
- Specifies that the authority to commence an action against an officer or employee of the state does not affect the immunity provided to state officers or employees in law.
- Requires an instrumentality of the state to notify the Office of Risk Management of any settlement or compromise made in a claim against the instrumentality for the purpose of reserving funds.
- Requires a copy of a settlement instrument to be forwarded to the Office of Risk Management for payment from the Risk Management Reserve Fund.
- Specifies that DAS's authority to compromise claims does not extend to compromising claims on behalf of agency programs with direct settlement authority.
- Specifies that all compromises made by the Office of Risk Management are to be paid from the Risk Management Reserve Fund and the conditions of such payment.

- Specifies that information related to claims against the state is to be held in confidence, is not to be released, and is not subject to discovery or introduction in evidence in any federal or state civil action.
- Requires a copy of a judgement against the state to be forwarded to the Office of Risk Management for the judgement to be paid from the Risk Management Reserve Fund.

### **Public office employee database**

- Eliminates the requirement that a public office include birth dates on the required public office employee database.

### **Real estate and planning**

- Transfers from the Auditor of State to the DAS Director the responsibility to prepare deeds for the conveyance of state land.
- Transfers from the Auditor of State to the DAS Director the responsibility to keep documents showing the state's interest in real estate, other than public lands and highway rights-of-way, and to maintain a recording system open for public inspection.
- Authorizes DAS to:
  - Grant perpetual easements to public utilities regulated by the Public Utilities Commission of Ohio;
  - Dispose of state-owned real estate worth less than \$1 million, with Controlling Board approval; and
  - Correct legal descriptions or title defects, or release fractional interests in real property, as necessary to cure clouds on title that are reflected in public records.

### **Office of Information Technology**

- Modifies the responsibility of the Office of Information Technology with respect to the acquisition of common information technology.

### **Transferring central warehouse employees from ODH to DAS**

- Requires, on or after July 1, 2021, any Department of Health (ODH) employees identified as necessary to the operation of a central warehouse to be transferred to the DAS.

## State contracts for goods and services

(R.C. 9.27)

The bill prohibits a contract entered into by the state<sup>1</sup> for the procurement of goods or services from including any of the following, unless otherwise required or permitted by state or federal law:

- A provision that requires the state to indemnify or hold harmless another person.
- A provision by which the state agrees to binding arbitration or any other binding extra-judicial dispute resolution process.
- A provision that names a venue for any action or dispute against the state other than a court of proper jurisdiction in Franklin County.
- A provision that requires the state to agree to limit the liability for any direct loss to the state for bodily injury, death, or damage to property of the state caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of a person or a person's employees or agents, or a provision that would otherwise impose an indemnification obligation on the state.
- A provision that requires the state to be bound by a term or condition that is unknown to the state at the time of signing a contract, that is not specifically negotiated with the state, that may be unilaterally changed by the other party, or that is electronically accepted by a state employee.
- A provision that provides for a person other than the Attorney General to serve as legal counsel for the state or for any state agency, except in cases where the Attorney General may appoint special counsel.<sup>2</sup>
- A provision that is inconsistent with the state's obligations under the Public Records Act.
- A provision for automatic renewal that would obligate state funds in subsequent fiscal years.
- A provision that limits the state's ability to recover the cost of cover for a replacement contractor.

If a contract contains one of these terms or conditions, the term or condition is void *ab initio* (invalid from the outset), and the contract otherwise is enforceable as if it did not contain the invalid term or condition. The bill specifies that a contract containing an invalid term or condition is governed by and must be construed in accordance with Ohio law notwithstanding any term or condition to the contrary in the contract. Finally, this provision does not apply to a

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<sup>1</sup> Includes the General Assembly, Supreme Court, offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state.

<sup>2</sup> R.C. 109.07, not in the bill.

contract in effect before the section's effective date, or to the renewal or extension of a contract in effect before that date.

## **Ohio preference scoring in state purchases**

(R.C. 125.09)

The bill expands the types of purchases under state purchasing law that are eligible for an Ohio preference in scoring. Under current law, Ohio preference scoring is applied to purchases through the competitive sealed bid process. Under the bill, the scoring also must be applied to purchases through the competitive sealed proposal and reverse auction processes. Reverse auction is a purchasing process in which offers submit bids in competing to sell services or supplies in an open environment via the internet.<sup>3</sup>

Generally, Ohio law requires the Director of Administrative Services to adopt rules to prescribe criteria and procedures for use by all state agencies in giving preference to Ohio products. These rules allow for granting waivers of the Buy Ohio requirements on a contract-by-contract basis when compliance would result in paying an excessive price or acquiring a disproportionately inferior product. If the Director determines that selection of the lowest Ohio bid will not result in an excessive price or a disproportionately inferior product or service, the Director must propose a contract award to the lowest responsive and responsible Ohio bid at the bid price quoted.<sup>4</sup>

## **Bulk purchasing program**

(R.C. 125.04 and 3501.302)

The bill makes changes to the law concerning which entities may participate in the Department of Administrative Services (DAS) bulk purchasing program for supplies and services.

First, the bill allows a political subdivision or special district in another state to participate in purchasing contracts in the same manner as an Ohio political subdivision or special district may do. Continuing law already allows federal agencies, other states, other purchasing consortia, and entities established under interstate compacts to participate, along with certain other entities in Ohio. DAS is permitted to charge each participating entity a reasonable fee to cover the costs DAS incurs in allowing the entity to participate.

Second, the bill allows a board of elections to participate in DAS purchasing contracts if the county in which the board is located is authorized to participate in those contracts. The board may participate under the same terms and conditions that apply to the county. Currently, a board of elections may participate but must separately apply to DAS and pay a fee for its own membership, instead of participating through the county's membership.

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<sup>3</sup> R.C. 125.071 and 125.072, not in the bill.

<sup>4</sup> R.C. 125.11, not in the bill.

Finally, the bill clarifies that a board of elections may choose to purchase election supplies through DAS, through an existing bulk purchasing program administered by the Secretary of State, or by other means.

## **Cooperative purchasing agreements**

(R.C. 125.02)

The bill allows DAS to participate in cooperative purchasing by joining existing procurement contracts of other state agencies with their own purchasing authority, other states, and the U.S. government. Current law suggests that DAS must be an original party of a contract and cannot join after a contract is procured.

Continuing law grants DAS the authority to establish contracts for supplies and services, including telephone, other telecommunication, and computer services for use by state agencies. Under the bill, the Director of DAS may participate in cooperative purchasing with several entities enumerated in continuing law.<sup>5</sup> The bill expands this list of entities to include the Capitol Square Review and Advisory Board.

## **Parental and caregiver leave**

(R.C. 124.136 and 124.1312)

### **Parental leave**

Continuing law allows certain state employees who work at least 30 hours per week to take up to six continuous weeks of paid parental leave on a child's birth or adoption. Under the bill, an employee is eligible for parental leave on a child's stillbirth beginning on the day of the stillborn child's delivery. To be eligible, the employee must be listed as a parent on the stillborn child's fetal death certificate. "Stillborn" means that an infant of at least 20 weeks of gestation suffered a fetal death. "Fetal death" means death before the complete extraction from its mother of a product of human conception, irrespective of the pregnancy duration, which after extraction does not breathe or show any other evidence of life.<sup>6</sup>

The bill increases, from \$2,000 to \$5,000, the continuing law adoption expenses benefit an employee may choose to receive in lieu of paid parental leave.

The bill also includes, for parental leave eligibility purposes, persons employed in a position for which the authority to determine compensation is given by law to another individual or entity (who is not the Director, who establishes the job classifications and pay ranges for most state employees under continuing law). Under continuing law, the following employees are

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<sup>5</sup> The Adjutant General for military supplies and services, the General Assembly, the judicial branch, state institutions of higher education, some state elected officials (R.C. 125.02 and 125.041, not in the bill); one or more other states, groups of states, the U.S. or any department, agency, or division of the U.S., other purchasing consortia, the Department of Transportation, or a political subdivision of Ohio (R.C. 125.02 and 125.04).

<sup>6</sup> R.C. 3705.01, not in the bill.

eligible for parental leave: full- and part-time employees paid in accordance with the exempt employee salary schedule; legislative employees and Legislative Service Commission employees; employees in the Governor's office; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General; Supreme Court employees; and Bureau of Worker's Compensation employees whose compensation the Administrator of Workers' Compensation establishes.<sup>7</sup>

### **Caregiver leave**

Under the bill, a state employee listed under "**Parental leave**," above, who works at least 30 hours per week and who is a foster caregiver or kinship caregiver is eligible for up to five days of caregiver leave with full pay in a calendar year on a child's placement with the employee. Caregiver leave begins on the day on which the child is placed with the employee. Continuing law defines a foster caregiver as a person holding a valid foster home certificate. A kinship caregiver is an adult caring for a related or unrelated child in place of the child's parents.<sup>8</sup>

For part-time employees, the average number of regular hours worked, including all hours of holiday pay and other types of paid leave, during the three-month period immediately before the day caregiver leave begins is used to determine caregiver leave eligibility. If an employee has not worked for three months, the number of hours for which the employee has been scheduled to work per week during the employee's employment period is used to determine caregiver leave eligibility.

Use of caregiver leave does not affect an employee's eligibility for other forms of paid leave granted under Ohio's Department of Administrative Services – Personnel Law. It also does not prohibit an employee from taking leave under the federal Family and Medical Leave Act of 1993, except that caregiver leave is included in any leave time provided under that act.

The Director may adopt rules under the Administrative Procedure Act governing caregiver leave.

### **Fleet management**

(R.C. 125.14 and 125.832)

The Office of Fleet Management within DAS is responsible for the acquisition, maintenance, management, analysis, and disposal of the state's vehicle fleet. The bill makes two modifications related to fleet management.

First, it modifies the definition of "operating cost," which is a factor in calculating the minimum number of business miles per year an employee of a state agency must drive in order to qualify for approval by DAS to receive a motor vehicle for business use. Instead of dividing annual maintenance cost by *vehicle lifetime* miles driven, as under current law, the bill divides

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<sup>7</sup> R.C. 124.152, not in the bill.

<sup>8</sup> R.C. 5103.02; also R.C. 5101.85, not in the bill.

annual maintenance cost by *annual* miles driven. This modification better calculates an annual operating cost.

Second, the bill allows proceeds from the disposition of state vehicles to be transferred from the Investment Recovery Fund to the Fleet Management Fund. Currently, when DAS disposes of a motor vehicle originally purchased with GRF dollars, DAS is required to deposit the proceeds into either the Investment Recovery Fund or the Fleet Management Fund.<sup>9</sup> The bill allows funds originally deposited into the Investment Recovery Fund to be transferred to the Fleet Management Fund.

## **Prescription drug advisory council**

(R.C. 125.95)

The bill specifies that the Prescription Drug Transparency and Affordability Advisory Council's chairperson is the DAS Director. It also modifies the frequency at which the Council must meet after the initial report is submitted from quarterly to at the call of the chairperson.

The Council was established in 2019 by the main appropriations act of the 133<sup>rd</sup> General Assembly (H.B. 166), within DAS. H.B. 166 required the Council to have 14 members: five cabinet heads and nine individuals representing various constituencies. Not later than six months after initial appointments were made, the Council was to submit a report to the Governor, General Assembly, and the Joint Medicaid Oversight Commission's chairperson with various pieces of information, including on how Ohio could best achieve prescription drug price transparency. A copy of that report, and additional information on the Council, is available on the Council's website.

## **DAS insurance program**

(R.C. 9.821, 9.822, 9.83, 2743.01, 2743.02, 2743.15, 2743.16, and 2743.19)

The bill makes several changes in relation to state liability and the risk management program operated by the Department of Administrative Services (DAS).

### **Sovereign immunity**

The bill declares the administration of the state's Risk Management Program to be a public duty for purposes of the Sovereign Immunity/Court of Claims Law. State law specifies that the state is immune from civil liability in the performance of a public duty. Thus, under the bill, the state cannot be sued for losses incurred in relation to any action of the Risk Management Program.

The bill also amends the law related to immunity provided to state officers or employees. In several instances, state law provides immunity to certain state officers or employees in the carrying out their duties. The bill specifies that the authority to sue such an officer or employee

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<sup>9</sup> If a vehicle was purchased with non-GRF funds, the proceeds are deposited into the fund used for the purchase.



in a specific circumstance does not affect the general immunity provided to that officer or employee under the law.

### **Judicial liability program**

The bill authorizes the Office of Risk Management to administer a judicial liability program. This is an already existing self-insurance program operated by DAS that provides insurance coverage to judges and courts for liabilities. Thus, the bill would be providing explicit authority to provide an already existing program.

### **Bond requirements**

The bill amends the law related to fidelity bonds purchased in relation to state agents and employees. Fidelity bonds insure against loss due to dishonest acts of state officers, agents, or employees. The bill removes the requirement that the state purchase bonds for state agents and instead allows the state to self-insure against any such claims. However, the bill requires public official bonds to be purchased when statutorily required.

### **Liability insurance program**

The bill amends the law related to the liability insurance programs administered by DAS and political subdivisions. Under current law, DAS and political subdivisions are authorized to insure against liability in relation to the operation of certain specified vehicles. Under the bill, this authority is expanded to general liability that occurs during the course of employment or official responsibilities.

### **Claims against the state**

The bill amends the law related to the settlement of claims against the state. Continuing law, unchanged by the bill, requires a person making a claim of liability against the state, to attempt to have that claim compromised by the state or satisfied by the state's insurance. The bill specifies that these actions must be taken prior to such a claim being filed with a court. Requires an instrumentality of the state to notify the Office of Risk Management of any settlement or compromise made in a claim against the instrumentality for the purpose of reserving funds.

The bill specifies that information related to claims against the state is to be held in confidence, is not to be released, and is not subject to discovery or introduction in evidence in any federal or state civil action.

Also, the bill specifies that recoveries against the state are to be reduced by other recoveries the claimant is entitled to, such as insurance proceeds, as opposed to just those other recoveries the claimant has received.

### **Compromising of claims**

The bill makes several miscellaneous changes in the law related to the compromising, or settling, of claims made against the state. These changes are as follows:

- Specifies that all settlements made by the Office of Risk Management are to be paid from the Risk Management Reserve Fund and the conditions of such payment;

- When a claim is settled, requires a copy of the settlement instrument to be forwarded to the Office of Risk Management for payment from the Risk Management Reserve Fund;
- Specifies that the authority of DAS to settle claims does not extend to settling claims on behalf of agency programs with direct settlement authority;
- Requires a copy of a judgement against the state to be forwarded to the Office of Risk Management for the judgement to be paid from the Risk Management Reserve Fund;
- Establishes that the compromising of claims is a public duty for the purposes of the Sovereign Immunity/Court of Claims Law.

## **Public office employee database**

(R.C. 149.434)

The bill eliminates the requirement that a public office include the date of birth of all public officials and employees on the database or list that is maintained by the public office. Under current law, each public office must maintain a database or list that includes the name and date of birth of all public officials and employees elected to or employed by that public office. The information in the database is a public record under the Public Records Law.

## **Real estate and planning**

### **Land conveyance documents**

(R.C. 123.02 and 5301.13; repealed R.C. 117.49 and 117.50; conforming changes in numerous other R.C. sections)

The bill transfers responsibility to prepare deeds for the conveyance of state land from the Auditor of State to the DAS Director. The bill also transfers from the Auditor to the DAS Director the related responsibility to keep records showing the state's interest in real estate (aside from public lands and highway rights-of-way), and to maintain a recording system for those records that is open for public inspection.

### **Land conveyance authority**

(R.C. 123.01)

The bill expands the DAS Director's authority to convey state-owned land in three ways.

First, it authorizes the DAS Director to grant perpetual easements over state-owned land to utilities regulated by the Public Utilities Commission of Ohio. Under existing law, the DAS Director is generally limited to granting easements for 15 years, though easements over university land can run to 25 years if approved by the university board of trustees.

Second, the bill allows the DAS Director to correct legal descriptions or title defects, or to release fractional interests in real property, as necessary to cure title clouds reflected in public records. The title clouds the bill allows the DAS Director to address include those arising from boundary disputes, ingress or egress issues, title transfers precipitated through retirement of bond requirements, and the retention of fractional interests in real estate otherwise disposed of in previous transfers.

Third, the bill authorizes the DAS Director to dispose of state-owned land that has a fair market value less than \$1 million, with Controlling Board approval. Fair market value is to be determined using best management or other relevant practices through a method considered reasonable, applicable, and appropriate by the DAS Director. Funds from a sale under the bill's new provision are to be credited, at the direction of the OBM Director, to a fund or funds in the State Treasury, or to accounts held by a state college or university.

## **Office of Information Technology**

(R.C. 125.18)

The bill eliminates the authority, in current law, for the State Chief Information Officer to establish policies and standards for the acquisition of common information technology by state agencies. Instead, the bill requires the State Chief Information Officer to coordinate with the Office of Procurement Services to establish policies and standards for state agency acquisition of information technology supplies and services.

The bill also clarifies that policies that the State Chief Information Officer must establish, for the reduction of printing, are to promote the increased use of electronic records by state agencies.

Under continuing law, the State Chief Information Officer supervises the Office of Information Technology, which is within the DAS.

## **Transferring central warehouse employees from ODH to DAS**

(Section 518.40)

The bill requires, on or after July 1, 2021, any Department of Health (ODH) employees identified as necessary to the operation of a central warehouse be transferred to DAS. The bill specifies that the employees must retain their positions and benefits.

The bill authorizes the DAS Director to establish, change, and abolish positions of ODH and assign, reassign, classify, reclassify, transfer, reduce, promote, or demote all ODH employees who are not subject to Ohio's public employees' collective bargaining law. This authority includes assigning or reassigning an exempt employee to a bargaining unit classification, but includes provisions if the new position is in a lower classification. The employee cannot receive any increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation.

Under the bill, notwithstanding any provision of law to the contrary, the Director of Budget and Management (OBM) may make necessary budget changes, including cancelling encumbrances of ODH and reestablishing them as encumbrances of DAS.

Additionally, the bill specifies that this transfer of employees is subject to Ohio's statutory layoff procedures and any action taken by the ODH Director or the DAS Director is not subject to appeal to the State Personnel Board of Review.