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124th General Assembly

(As Passed by the General Assembly)

(excluding appropriations, fund transfers, and similar provisions)

**Reps. Carey, Calvert, Core, Peterson, Husted, Grendell, Faber, Evans, Metzger, Buehrer, Hoops, Widowfield, Hughes, Clancy, Gilb, Raga, Webster, Womer Benjamin, DeWine, Collier, Setzer, Niehaus, Reidelbach, Flowers, Cates, Fessler, Schmidt, Hagan**

**Sens. White, Jacobson, Spada, Amstutz, Johnson, Carnes, Harris, Mead, Hottinger, Coughlin, Robert Gardner, Blessing, Wachtmann, Mumper**

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## ACT SUMMARY

### EDUCATION

#### PRIMARY-SECONDARY EDUCATION FUNDING

- Repeals the temporary cap on school district state aid increases.
- Changes the methodology for determining the base cost of an adequate education for FY 2002 through FY 2007, resulting in increased per pupil amounts. The per pupil formula amounts for FY 2002 and FY 2003 are \$4,814 and \$4,949, respectively.
- Reduces the number of high school academic units required for graduation from 21 to 20 and specifies that the increased base-cost formula amounts include amounts for the costs associated with the 20-unit minimum.
- Requires the Speaker of the House and the President of the Senate to appoint a committee in July 2005 to reexamine the methodology for calculating the cost of an adequate education.
- Requires the General Assembly to recalculate the base cost of an adequate education every six years, after considering the recommendations of the committee.
- Requires the General Assembly, during its biennial budget deliberations, to project the state share percentage of base cost and parity aid funding for each year of the upcoming biennium, and to take action to restrict the variance in the percentage if it projects that the variance will exceed 2.5 percentage points more or less than the percentage it originally projected for the base update year.
- Specifies the General Assembly's determination that the state share percentage of base cost and parity aid funding is 49.0% in FY 2002 and 49.4% in FY 2003.
- Reduces the variance in the cost-of-doing-business factor to 7.5%.
- Eliminates the "income factor" adjustment from the base-cost formula and instead incorporates a consideration of school district income wealth as part of a new parity aid program.

- Changes the computation of public utility property tax replacement payments to reflect all state education aid payments.
- Beginning in FY 2003, places an "excess cost" limitation of 3 mills on the local share of calculated special education, vocational education, and transportation funding and requires the state to pay the amount by which a district's calculated local share exceeds 3 mills.
- Phases in a new special education funding system comprising six weights for six categories of students.
- Requires each city, local, and exempted village school district to spend annually, on purposes that the Department of Education approves as special education and related services, at least the amount of state and local funds calculated by the base-cost and special education formulas applied to its special education students.
- Extends the state "catastrophic costs" subsidy to cover most special education students, increases the state's share of the subsidy, increases the threshold from \$25,000 to \$30,000 in FY 2002 for the highest-cost disabilities, and increases the FY 2003 thresholds for all students by an inflation factor of 2.8%.
- Maintains the \$30,000 personnel allowance for the speech services subsidy to school districts in FY 2002 and FY 2003.
- Requires the Legislative Office of Education Oversight to survey individualized education programs (IEPs) prepared for handicapped children to determine the types of conditions that school districts identify as "other health handicaps."
- Makes permanent the policy of using the special education weights to calculate payments to county MR/DD boards for providing special education to school-aged children.
- Adjusts the vocational education weights to reflect the act's changes in the application of the cost-of-doing-business factor.
- Beginning in FY 2003, enhances the state's percentage of the transportation funding calculation for lower-wealth school districts.
- Adds transportation funding to the charge-off supplement ("gap aid") calculation.

- Phases in a "parity aid" subsidy as a new supplemental tier of state funding to lower- and medium-wealth school districts.
- Requires school districts that are not "effective" and that receive parity aid to include budgets for the expenditure of parity aid in their continuous improvement plans, and limits the purposes for which parity aid may be used by such districts.
- Extends the phaseout for equity aid.
- Repeals the "power equalization" subsidy.
- Beginning in FY 2004, expands the base upon which school districts' DPIA indexes are calculated to include children whose families participate in one of several health or social service programs.
- Requires, beginning in FY 2003, at least 20% of a district's per pupil DPIA safety and remediation funds to be used to provide statutorily required intervention services.
- Accelerates the time frame in which a district's base-cost payment is recomputed when a significant portion of its revenue is uncollectible because a taxpayer is in bankruptcy reorganization.
- Broadens eligibility for school districts to obtain state solvency assistance funds by qualifying any district declared to be in a fiscal emergency, regardless of the reason for the declaration or the size of the district's operating deficit.
- Requires the Director of Budget and Management to adopt rules governing how the state Superintendent of Public Instruction makes recommendations to the Controlling Board for the award of catastrophic expenditures grants to school districts.
- Allows new students to enter the Cleveland Pilot Project Scholarship Program in kindergarten through eighth grade, rather than kindergarten through third grade only.
- Specifies that an educational service center governing board may acquire property to provide for office and classroom space.



- Permits a board of county commissioners to issue securities to acquire property for an educational service center as long as the service center agrees to pay the annual debt charges on those securities.
- Phases out by 2007 a board of county commissioners' responsibility to provide office space for the educational service center located within its territory.
- Extends to July 1, 2003, the time period during which any educational service center formed by the merger of two or more educational service centers may opt to design its governing board with a unique makeup.
- Permits ESCs that would otherwise be required to merge in order to meet a prescribed ADM count not to merge if such merging would cause the territory of the new ESC to consist of more than 800 square miles.

### **LOTTERY**

- Allows the Director of Budget and Management to transfer any amount of excess funds from the State Lottery Fund to the State Lottery Profits Education Fund.

### **TECHNOLOGY AND BUILDINGS**

- Permits a school district to exceed the 9% debt limitation if additional debt is necessary to raise the district's share of a building project under the state's School Facilities Assistance Program.
- Permits the School Facilities Commission to provide additional assistance for certain school districts already served under the Classroom Facilities Assistance Program in order to correct oversights or deficiencies in the initial assessment or plan of the districts' projects under the program.
- Would have repealed the requirement that school districts generate an amount for maintenance of classroom facilities acquired under a state-assisted program in order to qualify for such assistance. (Vetoed)
- Would have ensured the continued levy and collection of a school district income tax or property tax levy that is dedicated to the payment of securities that are issued by the school district to satisfy its local match requirement under the Classroom Facilities program. (Vetoed)

- Requires the School Facilities Commission to calculate or recalculate a school district's portion of its districtwide project under the Expedited Local Partnership Program in the event of a decrease in a district's tax valuation due to decreased electric company property assessments under electric deregulation.
- Specifies that the Ohio School Facilities Commission must appoint an executive director who then must appoint other employees to carry out the duties of the Commission.
- Makes changes in the organization of data acquisition sites under the Ohio Education Computer Network.
- Specifies that the Ohio SchoolNet Commission must appoint its own officers from among its members.
- Establishes the Ohio Schools Technology Implementation Task Force to make recommendations for technology funding for schools and for the operational costs of the Ohio SchoolNet Commission.
- Provides that when a school district board decides to sell real property it owns it must first offer that property to the governing authority of a start-up community school within its territory.

## **COMMUNITY SCHOOLS**

- Adds vocational education weights to the formula for funding community schools.
- Permits a school district board and a community school governing authority to enter into an agreement under which the community school will accept responsibility to transport the school's students.
- Would have required school districts to provide transportation to community schools in accordance with any schedule adopted by the community school. (Vetoed)
- Provides for a payment of \$450 per pupil to be made to any community school governing authority that accepts responsibility to transport the school's students in FY 2002, which is to be deducted from the district's transportation payment. The payment amount is indexed to the Consumer Price Index for urban transportation in future years.

- Permits a sponsor to suspend immediately the operation of a community school for health and safety violations and to suspend a community school for other reasons after providing a notice of intent to suspend and providing the school's governing authority an opportunity to propose a remedy.
- Reduces the time frame under which a sponsor may terminate or not renew a community school contract to 90 days (from 180 days) and permits such a contract to be terminated prior to the end of a school year.
- Creates a program to provide loan guarantees to community schools for the acquisition of classroom facilities.
- Requires the Department of Education to make prorated reductions from state payments for Internet-based community schools that fail to supply computer hardware and software to students as promised.

#### **OTHER PRIMARY-SECONDARY EDUCATION PROVISIONS**

- Increases the minimum base salary paid to beginning teachers with a bachelor's degree from \$17,000 to \$20,000 and proportionally increases the minimum salaries for teachers with different levels of education and experience.
- Changes the term "vocational education" to "career-technical education."
- Requires the Department of Education to consider relocating staff responsible for gifted education within the Department.
- Directs the Legislative Office of Education Oversight (LOEO) to issue a report by November 30, 2002 summarizing the methods school districts use to identify gifted students and the numbers of gifted students being identified.
- Adds a coordinator of gifted education to the members of a school district's pupil personnel services committee.
- Specifies that a homeless child is entitled to attend school free in either the school the child attended before becoming homeless or the district school that serves the area in which the shelter is located.
- Permits payments to be made to school districts from the Auxiliary Services Mobile Unit Replacement and Repair Fund to be used (on a pro-

rated basis) to offer "incentives for early retirement and severance" to the district personnel that provide auxiliary services to students at chartered nonpublic schools.

- Permits school districts to lease, as well as purchase, computer hardware and software for use by nonpublic school students.
- Makes changes in the organization of the OhioReads Office.
- Requires the State Employment Relations Board to provide to the State Board of Education an annually updated list of starting teachers' salaries derived from school district collective bargaining agreements.
- Permits noncontiguous school districts to consolidate with approval of any district having territory between them.
- Clarifies that, in addition to procuring a policy of insurance to insure officers, employees, and pupils against liability on account of damage or injury to persons and property, a school district may, in accordance with the authority provided under ongoing law, establish and maintain self-insurance programs.
- Specifies that the physical examination of a person seeking employment as a school bus or motor van driver may be performed by a physician, certified nurse practitioner, or clinical nurse specialist.

### **HIGHER EDUCATION**

- Eliminates all tuition and fee caps for state universities beginning in FY 2002.
- Increases enrollment limitations at the central campuses of Bowling Green, Kent State, Miami, Ohio, and Ohio State universities by 1,000 students each and repeals the requirement that the Board of Regents approve construction of new residence hall facilities.
- Increases the Ohio Instructional Grants for private, public, and proprietary institutions in both FY 2002 and FY 2003.
- Increases the award amount of the Ohio Academic Scholarship from \$2,000 to \$2,100 in FY 2002 and to \$2,205 in FY 2003.

- Expands eligibility for Environmental Education Fund scholarships to students who attend private colleges and universities.
- Switches authority to fix compensation for all employees and staff from the Board of Regents to the Chancellor; no longer requires Board approval of the Chancellor's appointment of employees and staff; and provides that the Chancellor's appointees serve at his or her "pleasure," rather than under his or her "direction and control."
- Requires appropriations for transfers to the Ohio Public Facilities Commission to be made directly to the Board of Regents and not to state-supported institutions of higher education and allows vice-chancellors to certify to the Director of Budget and Management the payments contracted to be made to the Public Facilities Commission.
- Would have provided that title to investments made by a state university or college board of trustees is not vested in the state but is held in trust by the board of trustees presumably for the university or college. (Vetoed)
- Permits the formation of a quorum and the taking of votes at Board of Regents meetings conducted by interactive video teleconference, so long as provisions are made for public attendance at any location involved in the teleconference.
- Provides that the percentage of the compensation of a participant in an institution of higher education's alternative retirement program (ARP) that must be paid to the state retirement system to which the participant would otherwise belong cannot exceed the percentage of compensation paid to the retirement system by employers of participants in the retirement system's own ARP.
- Establishes the Instructional Subsidy and Challenge Review Committee to review the allocation formula for the state share of the instructional subsidy and all of the "Challenge" line items in the Board of Regents budget.
- Provides that the retired teacher member on the State Teachers Retirement Board may not be a person who is employed in a position that requires contributions to the retirement system.
- Repeals the scheduled "sunset" of the Ohio Physician Loan Repayment Program on July 30, 2001.

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## CONTENT AND OPERATION

### EDUCATION

#### PRIMARY-SECONDARY EDUCATION FUNDING

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

In *DeRolph I*, in 1997, the Supreme Court of Ohio ordered the General Assembly to create a new school funding system.<sup>1</sup> In that decision, the Court held that the state's then-current school funding system did not provide a "thorough and efficient system of common schools" as required under Article VI, Section 2 of the Ohio Constitution. Responding to that order, in 1997 and 1998, the 122nd General Assembly enacted several bills dealing with the financing and performance management of public schools.<sup>2</sup>

On May 11, 2000, the Court held the new system unconstitutional on essentially the same grounds.<sup>3</sup> In *DeRolph II*, the Court praised the effort made by the legislature but said that more had to be done in order to comply with its order. The General Assembly then had until June 15, 2001, to come up with a new system.<sup>4</sup>

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<sup>1</sup> *DeRolph v. State* (1997), 78 Ohio St.3d 193.

<sup>2</sup> Among these bills were: Am. Sub. H.B. 215, which was the general operating budget for the 1997-1999 biennium; Am. Sub. S.B. 102, which substantially amended the Classroom Facilities Assistance Program and created the Ohio School Facilities Commission; Am. Sub. S.B. 55, which added new academic accountability requirements; Sub. H.B. 412, which changed school district fiscal accountability requirements; and Am. Sub. H.B. 650 and Am. Sub. H.B. 770, which together created a new school funding system. In addition, in 1999, the 123rd General Assembly passed Am. Sub. H.B. 282, which enacted the state's first separate education budget and made some changes to the previous legislation.

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

<sup>4</sup> In 2000, the 123rd General Assembly enacted two other bills also directed at some of the concerns expressed by the Court in its *DeRolph II* order. Am. Sub. S.B. 272 made substantial changes in the school facilities assistance programs. Am. Sub. S.B. 345 amended the school district solvency assistance program and modified requirements of some school district mandates.

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

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

### **Base-cost funding**

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

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

**State and local shares.** The school funding system essentially equalizes 23 mills of property tax for base-cost funding. It does this by providing sufficient state money to each school district to ensure that, if all districts in the state levied exactly 23 effective mills, they all would have the same per pupil amount of base-cost money to spend (adjusted partially to reflect the cost-of-doing-business in the district's county).<sup>5</sup> To accomplish this equalization, the base-cost formula uses five variables to compute the amount of state funding each district receives for its base cost:

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

(2) An adjustment to the formula amount known as the "**cost-of-doing-business factor.**" This variable is a cost factor intended to reflect differences in the cost of doing business across Ohio's 88 counties. Each county is assigned a factor by statute. The formula amount is multiplied by the cost-of-doing-business

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<sup>5</sup> One mill produces \$1 of tax revenue for every \$1,000 of taxable property valuation.

factor for the appropriate county to obtain the specific guaranteed per pupil formula amount for each school district. In FY 2001, the factors ranged from 1.00 (Gallia County) to 1.138 (Hamilton County).

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

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

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

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

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

[the formula amount X cost-of-doing-business factor X (the district's formula ADM)] – (.023 X the district's adjusted total taxable value)<sup>6</sup>

**Sample FY 2001 calculation.** If Hypothetical Local School District were located in a county with a cost-of-doing-business factor of 1.025 (meaning its cost of doing business was assumed to be 2.5% higher than in the lowest cost county), its formula ADM were 1,000 students, and it had an adjusted valuation of \$40 million, its FY 2001 state base-cost funding amount would have been \$3,481,000, calculated as follows:

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<sup>6</sup> R.C. 3317.022(A). *In lieu of formula ADM, the Department of Education must use the district's "three-year average" formula ADM if it is greater than the current-year formula ADM.*



\$4,294	FY 2001 formula amount
x <u>1.025</u>	District's cost-of-doing-business factor
\$4,401	District's adjusted formula amount
x <u>1,000</u>	District's formula ADM (approximate enrollment)
\$4,401,000	District's base-cost amount
- <u>\$920,000</u>	District's charge-off (assumed local share based on 23 mills charged against the district's \$40 million in adjusted property valuation)
<b>\$3,481,000</b>	<b>District's state payment toward base-cost amount</b>
79%	District's state share percentage (per cent of total base cost paid by state)

**How the base-cost amount was established.** The primary difference between the pre- and post-*DeRolph* funding systems in calculating base-cost funding is that the state and local amount guaranteed per pupil (known as the formula amount) before *DeRolph* was stated in statute without any specific method of selecting the amount. After *DeRolph*, the General Assembly adopted for the first time an explicit methodology for determining the base cost of an adequate education. From that methodology is derived the formula amount. The methodology relies on the premise that, all other things being equal, most school districts should be able to achieve satisfactory performance if they have available to them the average amount of funds spent by those districts that have met the standard for satisfactory performance.<sup>7</sup> The standard for that performance adopted by the General Assembly in 1998 was an "effective" rating in FY 1996 measured against the state performance standards.<sup>8</sup> In essence, the General Assembly developed an "expenditure model" by examining the average per pupil expenditures of effective school districts. From the initial group of effective districts, it eliminated "outriders" (the top and bottom 5% in property wealth and

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<sup>7</sup> *The fact that "all other things are not equal" is the rationale behind the "categorical" funding provided for school districts with greater needs for transportation funding, DPIA, special education services, and similar requirements that vary from district to district.*

<sup>8</sup> *R.C. 3302.02 and 3302.03, neither section in the act. See also Ohio Admin. Code 3301-50-01. In order for a school district to achieve an "effective" rating, it must meet at least 94% of the state performance standards. To do so, a prescribed percentage of the district's students must achieve a passing score on certain of the state proficiency tests and the district must achieve a prescribed attendance rate and graduation rate.*

the top and bottom 10% according to personal income) and arrived at 103 districts to include in the model. The base cost derived from averaging that group's FY 1996 expenditures, adjusted for inflation, was \$4,063 per pupil for FY 1999. The General Assembly phased in full funding of the base cost.

**Equity aid phase-out**

The old funding system paid a second tier of state aid to school districts whose property wealth fell beneath an established threshold. This "equity aid" was paid beginning in FY 1993 as an add-on to the state base cost (then called "basic aid") funding. The state has been phasing out equity aid by reducing the number of districts receiving the subsidy and decreasing the number of extra mills equalized under it for each fiscal year. Prior to this act, no more equity aid was scheduled to be paid after FY 2001.

**Six-year funding plan**

The funding system adopted after *DeRolph I* specified base-cost funding parameters for six fiscal years, from FY 1999 through FY 2004. These parameters are illustrated in the following table.

**Base-Cost Funding Plan in Response to *DeRolph I***

Fiscal Year	Base Cost Amount	Actual Formula Amount	% of Base Cost in Formula Amount	Variance in Cost-of-Doing-Business Factors	Number of School Districts Eligible for Equity Aid	Additional Mills Equalized by Equity Aid
<b>FY 1998</b>	-----	\$3,663	-----	9.6%	292	13
<b>FY 1999</b>	\$4,063	\$3,851	94.8%	11.0%	228	12
<b>FY 2000</b>	\$4,177	\$4,052	97.0%	12.4%	197	11
<b>FY 2001</b>	\$4,294	\$4,294	100%	13.8%	162	10
<b>FY 2002</b>	\$4,414	\$4,414	100%	15.2%	117	9
<b>FY 2003</b>	\$4,538	\$4,538	100%	16.6%	0	0
<b>FY 2004</b>	\$4,665	\$4,665	100%	18.0%	0	0

**Categorical funding**

Categorical, or "add-on," funding is a type of funding the state provides school districts in addition to base-cost funding. It can be viewed as money a school district requires because of the special circumstances of some of its students or the special circumstances of the district itself (such as its location in a

higher-cost area of the state). Some categorical funding, namely the cost-of-doing-business factor and some adjustments to local property value, is actually built into the base-cost formula. But most categorical funding is paid separately from the base cost, including:

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

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

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

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

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

**Special education and vocational education weights.** The post-*DeRolph* school funding system pays a per pupil amount for special education and vocational education students on top of the amount generated by the base-cost formula for those students. It does this using an add-on formula assigning weights to those students. Weights are an expression of additional costs attributable to the special circumstances of the students in the weight class, and are expressed as a percentage of the formula amount. For example, a weight of 0.25 would indicate that an additional 25% of the formula amount (or, about \$1,074 more dollars for FY 2001) is necessary to provide additional services to a student in that category.

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

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

**State and local shares of special and vocational education costs.** The funding system equalizes special education and vocational education costs by requiring a state and local share for the additional costs. This is determined for

each district from the percentage of the base-cost amount supplied by each. For instance, if the state pays 55% of a district's base-cost amount and the district supplies the other 45%, the state and local shares of the additional special education and vocational funding likewise are 55% and 45%, respectively.

**Gifted education funding.** The state uses "unit funding" to pay school districts to serve students identified as gifted. A "unit" is a group of students receiving the same education program. In FY 2001, districts and educational service centers received for each approved unit the sum of:

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

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

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

(4) A supplemental unit allowance, the amount of which partially depended on the district's state share percentage of base-cost funding. In FY 2001, for each gifted unit, a district received a supplemental unit allowance of \$2,625.50 plus the district's state share percentage of \$5,550 per unit.

**Disadvantaged Pupil Impact Aid (DPIA).** An additional, nonequalized state subsidy is paid to school districts with threshold percentages of resident children from families receiving public assistance (Ohio Works First). The amount paid for DPIA depends largely on the district's DPIA index, which is its percentage of Ohio Works First children compared to the statewide percentage of Ohio Works First children. Three separate calculations determine the total amount of a district's DPIA funds:

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

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

(3) Districts that have either a DPIA index equal to or greater than 1.00 (having at least the statewide average percentage of public assistance children) or

a three-year average formula ADM exceeding 17,500, and that offer all-day kindergarten receive state funding for the additional half day.

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

**Transportation.** In FY 1998, under the pre-*DeRolph* school funding system, state payments to school districts for transportation averaged 38% of their total transportation costs. Following *DeRolph I* the General Assembly established a new transportation funding formula and commenced a phase-in that, by FY 2003, would have resulted in the state paying districts 60% of the amount calculated by the new formula. These payments were not equalized for district wealth. Every district received that same percentage of the amount calculated for it under the formula.

The formula itself was based on the statistical method of multivariate regression analysis.<sup>9</sup> Under this formula, each district's payment for transportation of students on school buses was based on (1) the number of daily bus miles traveled per day per student in the previous fiscal year and (2) the percentage of its student body that it transported on school buses in the previous fiscal year (whether the buses were owned by the district board or a contractor).<sup>10</sup> The Department of Education updated the values for the formula and calculated the payments each year based on analysis of transportation data from the previous fiscal year. The Department must apply a 2.8% inflation factor to the previous year's cost data.

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

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<sup>9</sup>*Regression analysis is a statistical tool that can explain how much of the variance in one variable (in this case, transportation costs from district to district) can be explained by variance in other variables (here, number of bus miles per student per day and the percentage of students transported on buses).*

<sup>10</sup> *The statute presents the following model of the formula based on an analysis of FY 1998 transportation data:  $51.79027 + (139.62626 \times \text{daily bus miles per student}) + (116.25573 \times \text{transported student percentage})$ . The law directs that the formula be updated each year to reflect new data. (R.C. 3317.022(D)(2).)*

### *Subsidies addressing reliance on property taxes*

*Charge-off supplement ("gap aid revenue")*. Certain school districts are not able to achieve 23 effective mills to cover their assumed local share of the base cost. In other cases, districts' effective tax rates will not cover their assumed local shares of special education and vocational education costs. In such cases, continuing law provides a subsidy to make up the gap between the districts' effective tax rates and their assumed local shares for base-cost funding, special education, and vocational education.

*"Power equalization" subsidy*. Previous law provided another subsidy to school districts that had effective tax rates for operations above the formula charge-off (23 mills) but had below-average property valuations per pupil. The subsidy (referred to as "power equalization") supplemented the amount that such a school district was able to raise from two mills of local property tax, so that the amount it raised locally, combined with the subsidy, equaled the amount that a district having the statewide average property valuation per pupil would raise by levying two mills. If a school district qualified for the subsidy and had an effective operating tax rate of less than 25 mills, the subsidy supplemented the amount that the district was able to raise from whatever millage the district had in excess of 23 mills, rather than a full two mills.

### *State funding guarantee*

The funding system guarantees every school district with a formula ADM over 150 that it will receive a minimum amount of state aid based on its state funds for FY 1998. The state funds guaranteed include the sum of base-cost funding, special education funding, vocational education funding, gifted education funding, DPIA funds, equity aid, state subsidies for teachers with high training and experience, and state "extended service" subsidies for teachers working in summer school.

### *Temporary state funding cap*

Most school districts, though, have experienced increases in their state funding from FY 1998. As part of the phase-in to the post-*DeRolph I* system, the law temporarily limited school districts' increases in state funding, including transportation subsidies, through FY 2001, and proposed to limit increases in FY 2002. In FY 2001, the law limited school districts' state aid increases to 12% over their previous year's aggregate state payment or 10% over their previous year's *per pupil* amount of state funds, whichever was greater. The same limitation was to apply for FY 2002. This "cap" had been scheduled to expire June 30, 2002, but the act rescinds it one year earlier.

## Highlights of the Act's New Funding Plan

Fiscal Year	State Aid Cap	Base Cost Amount	Variance in Cost-of-Doing-Business Factors	Limit on Local Share of Categorical Funding <sup>‡</sup>	Districts Eligible for Parity Aid	Parity Aid Payment %	Districts Eligible for Equity Aid	Equity Aid Payment %
<i>FY 2001</i> <sup>†</sup>	Yes	\$4,294	13.8%	-----	-----	----	117	100%
FY 2002	No	\$4,814	7.5%	None	489	20%	117	100%
FY 2003	No	\$4,949	7.5%	3 mills	489	40%	117	75%
FY 2004	No	\$5,088	7.5%	3 mills	489	60%	117	50%
FY 2005	No	\$5,230	7.5%	3 mills	489	80%	117	25%
FY 2006	No	\$5,376	7.5%	3 mills	489	100%	0	0
FY 2007	No	\$5,527	7.5%	3 mills	489	100%	0	0

<sup>†</sup>Prior law.

<sup>‡</sup>Combination of special education, vocational education, and transportation formula calculations.

### **The act eliminates the state aid cap**

(Sections 174 and 175)

The act repeals the temporary cap on school district aid. Under prior law, the cap would have expired at the end of FY 2002, and for that year it would have limited a school district's increase in state aid to the greater of 12% overall or 10% per pupil.

### **The act recalculates the base-cost amount, yielding higher per pupil amounts for FY 2002 through FY 2007**

(R.C. 3317.012(A)(1) and (B))

The act declares that the General Assembly has analyzed school district expenditures for FY 1999 and has determined that the per pupil base cost of an adequate education for FY 2002 is \$4,814. That amount is increased by an inflation factor of 2.8% for each of the following five fiscal years, through FY 2007. The act does not phase these amounts in, but implements the full amounts immediately.

**Base Cost Formula Amounts – FY 2001 through FY 2007**

<b>Fiscal Year</b>	<b>Prior Law</b>	<b>The Act</b>
FY 2001	\$4,294	-----
FY 2002	\$4,414	\$4,814
FY 2003	\$4,538	\$4,949
FY 2004	\$4,665	\$5,088
FY 2005	Not Specified	\$5,230
FY 2006	Not Specified	\$5,376
FY 2007	Not Specified	\$5,527

**How the base-cost amounts were calculated**

(R.C. 3317.012(A)(2) and (B))

The act explains that the proposed base-cost amounts were derived as follows:

(1) Analyzing the expenditures of school districts that met certain criteria in FY 1999, taking an unweighted average of their base costs per pupil, and adjusting the result for inflation. (Although the criteria for selecting model districts are different from those used previously, this approach is similar to the previous system's premise that, all things being equal, most school districts should be able to perform satisfactorily if they have available the average amount of funds spent by the model districts.)

(2) Adding to that result an additional amount per pupil to account for the added costs to school districts of increasing the number of high school academic units required for graduation beginning September 15, 2001, as a result of legislation enacted in 1997 following *DeRolph I*.

**Selection of model school districts.** The following table compares the criteria used to select the model school districts under the previous system versus the act's system, as those criteria are explained in prior law and the act:



<b>CRITERIA</b>	<b>PRIOR LAW</b>	<b>THE ACT</b>
<b>Academic performance</b>	District met at least <b>17 of 18</b> state performance standards in <b>FY 1996</b> .	District met at least <b>20 of 27</b> state performance standards in <b>FY 1999</b> .
<b>Income wealth screen</b>	The district was not among the top or bottom <b>10%</b> of all school districts in income wealth in <b>FY 1996</b> .	The district was not among the top or bottom <b>5%</b> of all school districts in income wealth in <b>FY 1999</b> .
<b>Property wealth screen</b>	The district was not among the top or bottom <b>5%</b> of all school districts in property valuation per pupil in <b>FY 1996</b> .	The district was not among the top or bottom <b>5%</b> of all school districts in property valuation per pupil in <b>FY 1999</b> .

**Selection of expenditure data to analyze.** Some model school districts had their actual FY 1999 expenditures analyzed under the act's methodology, but others simply had their expenditures from FY 1996 inflated to FY 1999. The act explains that which year's expenditures were incorporated into the model depended on whether the district had met the FY 1996 academic performance standards upon which the General Assembly had calculated base-cost amounts for FY 1998 through FY 2001. The more recent FY 1999 expenditures were analyzed if a school district included in the act's model did *not* also meet the earlier FY 1996 standards. If, however, a school district included in the act's model *did* also meet the earlier standards, its FY 1996 expenditures were simply inflated to FY 1999 amounts using an annual 2.8% inflation rate, unless the inflated per pupil amount exceeded the district's actual FY 1999 per pupil expenditures. In that case, the district's actual FY 1999 expenditures were analyzed.

The act explains that this differentiation is intended to "control" for the potential that, in the case of districts that met both FY 1996 and FY 1999 standards for successful school districts, "increased state funding [since FY 1996] may have driven the districts' [FY 1999] expenditures beyond the expenditures actually needed to maintain their . . . status as model school districts."

**The act's changes regarding minimum academic units for graduation**

(R.C. 3313.603 and 3317.012(A)(2))

In 1997, following the *DeRolph I* decision, the General Assembly raised from 18 to 21 the minimum number of high school units required of students graduating after September 14, 2001.

The act reduces the required minimum from 21 to 20 units by eliminating one elective.<sup>11</sup> Moreover, it specifies that the FY 2002 base cost of \$4,814 per pupil includes \$12 per pupil as the amount determined by the General Assembly to compensate school districts for the cost of implementing the 20-unit requirement, which is still higher than the former minimum of 18 units. (That is, the actual base cost was calculated as \$4,802, with the additional \$12 bringing the total to \$4,814.) The act states the General Assembly's finding that in FY 1999, the model school districts on average required a minimum of 19.8 units to graduate and \$12 per pupil represents the cost in FY 2002 of funding the additional two-tenths of one unit.

***New committee to reexamine the cost of an adequate education***

(R.C. 3317.012(C))

Prior law required the Speaker of the House of Representatives and the President of the Senate each to appoint three members to a committee to reexamine the cost of an adequate education. The law required appointments to be made in July 2000 and again in July every six years thereafter. The committee was required to issue its report within six months of its appointment. Such a committee was organized in July 2000 and issued its report in December 2000.

The act requires the Speaker and the Senate President to appoint a new committee to reexamine the cost of an adequate education in July 2005 and every six years thereafter. It further requires that the committee issue its report within *one year* of its appointment, rather than six months.

***The General Assembly must recalculate the base cost every six years***

(R.C. 3317.012(D)(2))

The act directs the General Assembly to recalculate the per pupil base cost of an adequate education every six years, beginning with FY 2008, after considering the recommendations of the committee. The recalculated base cost would apply to the first fiscal year of the six-year period, and the base cost for the following five years would be the recalculated amount inflated by an annual rate of inflation that the General Assembly determines appropriate at the time of the recalculation.

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<sup>11</sup> *The act retains the requirement of preexisting law that at least one elective unit, or two half-units, be selected from among business/technology, fine arts, or foreign language.*

**The General Assembly must biennially project and, in some circumstances, adjust the state share percentage of base cost and parity aid funding**

(R.C. 3317.012(D)(3) to (5))

The act requires the General Assembly, during its biennial budget deliberations, to estimate the total state share percentage of base cost and parity aid funding for each fiscal year of the upcoming biennium. (See "Parity aid," below, for a discussion of the act's proposed new parity aid subsidy.) This is to be figured as follows:

$$\frac{(\text{statewide base cost} + \text{total parity aid funding} - \text{total school district charge-off})}{(\text{statewide base cost} + \text{total parity aid funding})}$$

This estimate must be based on the latest projections and data provided by the Department of Education prior to the enactment of education appropriations for the upcoming biennium. If the biennium begins with an "update year," which is the first year in which a recalculated base-cost is in effect, the General Assembly must include in the budget act a statement of its projection of the state share percentage of base cost and parity aid funding for the update year.<sup>12</sup>

For the five years following the update year, the General Assembly must continue to monitor the projected state share percentage during its biennial budget deliberations. If, during those deliberations and based on the latest projections and data, the General Assembly estimates that the total state share percentage for either or both fiscal years of the upcoming biennium will vary more than 2.5 percentage points, more or less, than its previously estimated total state share percentage for the preceding update year, it must determine and enact a method that it considers appropriate to restrict the estimated variance for each year to within 2.5 percentage points. The General Assembly's methods may include, but are not required to include and need not be limited to, reexamining the rate of millage charged off as the local share of base-cost funding. But regardless of any changes in charge-off millage rates in years between update years, the charge-off millage rate for each update year must be 23 mills, unless the General Assembly determines that a different millage rate is more appropriate to share the total calculated base cost between the state and school districts.

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<sup>12</sup> The first update year is FY 2002 and, because the act requires recalculations every six years, the next update year is FY 2008.

**Statement of state share percentage for FY 2002 and 2003**

(Section 44.36)

The act states the General Assembly's determination, based on the most recently available data, that the state share percentage of base cost and parity aid funding is 49.0% in FY 2002 and 49.4% in FY 2003. It characterizes the 49.0% for FY 2002, the update year, as the target percentage for fiscal years 2003 through 2007 that the General Assembly must use to fulfill its obligation to monitor the state share percentage biennially until the next scheduled update and to stay within the 2.5% variance.

**The Department of Education must provide data and projections**

(R.C. 3317.012(D)(6))

The Department of Education must report its projections for total base cost, total parity aid funding, and the statewide charge-off amount for each year of the upcoming fiscal biennium, and all data it used to make the projections, whenever requested by (1) the chairperson of the standing committee of the House or Senate having primary jurisdiction over appropriations, (2) the Legislative Budget Officer, or (3) the Director of Budget and Management.

**The act returns the cost-of-doing-business factor variance to 7.5%**

(R.C. 3317.02(N))

The act terminates the prior law's phase-in to an 18% variance between the highest and lowest cost-of-doing-business factor counties. It reduces the maximum variance to 7.5% between the base county (Gallia County) and the highest-cost county (Hamilton County). Under prior law, the variance was scheduled to increase to 15.2% in FY 2002, 16.6% in FY 2003, and 18% thereafter.

In addition, the act adjusts the factors for the individual counties to reflect the Department of Education's latest determination of the relative costs among the counties.

**The act eliminates the "income factor" adjustment to property valuation for base-cost calculations**

(R.C. 3317.02(T) to (W), 3317.022(A), 3317.0216(A)(2), 3317.16(A)(4) and (B), 5727.84(A)(6), and 5727.85(A)(1))

Under prior law, school districts with median resident incomes below the statewide median income had their property wealth adjusted downward, which in

turn increased the state share and reduced the local share of their calculated base-cost, special education, and vocational education funding. Districts with median incomes above the statewide median received no adjustment.

The act eliminates this "income factor" adjustment to school district property wealth for base-cost funding, and instead includes consideration of a school district's income wealth as part of the proposed new "parity aid" program (see "Parity aid," below).

### **Property tax replacement payments**

(R.C. 5727.84)

The state makes property tax replacement payments to school districts to compensate them for the local revenue loss resulting from the recently enacted reductions in the rate at which some electric and natural gas company property is assessed for taxation. But the reductions in the assessment rate also cause state education aid to increase because, for most school districts, there is an inverse relationship between the education aid they receive and the assessed value of property in the district. Accordingly, property tax replacement payments are adjusted to account for this aid increase by offsetting the aid against the local tax revenue loss imputed to the district.

Under the language of prior law, the offset was to be computed only on the basis of the base-cost formula and the special education formula. The act changes the computation of this offset so that it reflects the state education aid payments resulting from the new funding methodology established by the act. (For a description of other changes to the law governing these replacement payments, see the **TAXATION** segment of this analysis.)

### **The act places a 3-mill limit on local share of special education, vocational education, and transportation funding beginning in FY 2003**

(R.C. 3317.022(F) and 3317.0216(A)(3))

The act limits the amount of local resources (that is, the total "local share") that must be spent on the calculated amount of a school district's special education and related services, student transportation, and vocational education services, beginning in FY 2003. Starting that year, the annual amount of any school district's aggregate calculated local share for these three categories may not exceed the product of three mills times the district's "recognized valuation."<sup>13</sup> (The three

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<sup>13</sup> "Recognized valuation" is a constructed valuation that phases in the assessed valuation increases resulting from a triennial reappraisal or update by a county auditor.

mills worth of resources devoted to these categories is above the 23 mills of local revenue assumed to be applied toward base-cost funding.)

After the state and local share percentages have been calculated for a district in these categories, any amount of attributed local share that exceeds the three-mill cap (which the act labels "excess costs") must be paid by the state.

**The act phases in a new special education system of six weights**

(Substantive changes: R.C. 3317.013 and 3317.02(T) to (V))

(Conforming changes: R.C. 3314.08, 3317.01, 3317.02(C) and (F), 3317.022(B)(1), 3317.023, 3317.0212, 3317.03, 3317.16, and 3317.20)

The act replaces the current system of two special education weights for three special education categories with a system comprising six special education weights for six categories, as follows:

<b>Funding Category</b>	<b>Disabilities Covered</b>	<b>Prior Weight</b>	<b>The Act's Weight</b>
1	Speech and language only	None	0.2892
2	Specific learning disabled	0.22	0.3691
	Developmentally handicapped Other health handicapped-minor		
3	Severe behavior handicapped	3.01	1.7695
	Hearing handicapped		
	Vision impaired		
4	Orthopedically handicapped	3.01	2.3646
	Other health handicapped-major	0.22	
5	Multihandicapped	3.01	3.1129
6	Both visually and hearing disabled	3.01	4.7342
	Autism		
	Traumatic brain injury		

**Phase-in**

(R.C. 3317.013)

The six new weights are to be incorporated into the special education formulas at 82.5% of their value in FY 2002 and 87.5% in FY 2003. The act does not specify phase-in percentages for fiscal years after FY 2003.

**The act "earmarks" funds generated by special education students**

(R.C. 3317.022(C)(2) and (5) and 3317.16(G))

The act requires that each school district annually spend, on purposes that the Department of Education approves as "special education and related services expenses," at least the amount of state and local funds calculated through the base-cost and special education (weight) formulas for its special education students. The purposes approved by the Department must include, but cannot be limited to, "identification of handicapped children, compliance with state rules governing the education of handicapped children and prescribing the continuum of program options for handicapped children, and the portion of the district's overall administrative and overhead costs that are attributable to the district's special education student population."

The Department must require annual reporting by the districts to allow for monitoring compliance with this requirement. The Department, in turn, must annually report to the Governor and the General Assembly on school district special education spending.

These new requirements replace prior law which required that school districts annually spend on special education related services the lesser of (1) the amount they spent in the previous fiscal year or (2) one-eighth of their calculated state and local shares of special education weighted funding. The act eliminates this requirement.<sup>14</sup>

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<sup>14</sup> *The existing minimum spending requirement for related services applies both to regular school districts and to joint vocational school districts. The act eliminates the existing requirement for both types of districts, but only applies the new requirement to regular (i.e., city, local, and exempted village) districts.*

**The act distinguishes between severity of disabilities identified as "other health handicaps"**

(R.C. 3317.013(B) and (D) and 3317.02(T) to (V))

Prior to the act, students identified by their school districts as having "other health handicaps" were all assigned a funding weight of 0.22. This category comprises a range of disabilities, including those that incur lower special education costs, but also includes others that might incur high costs for school districts. The act distinguishes between severe and less severe disabilities in this category by assigning a higher funding weight (2.3646) to students in the category who can be considered "medically fragile children," and a lower weight (0.3691) to all other students identified as having "other health handicaps."

There is a two-pronged test to qualify a student for the higher weight. First, the student must meet the definition of "other health impaired" as set forth in the State Board of Education's rules prior to the act's effective date:

limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.<sup>15</sup>

Second, the student must either (a) be identified as having a medical condition that is among those listed by the state Superintendent of Public Instruction as conditions where a substantial majority of cases fall within the definition of "medically fragile child," or (b) be individually determined by the state Superintendent to be a "medically fragile child." The state Superintendent's first list of these medical conditions must be issued no later than September 1, 2001. A school district that wishes to have a child's status as a "medically fragile child" individually determined may petition the state Superintendent.

The act defines a "medically fragile child" as a child to whom *all* of the following circumstances apply:

- (1) The child requires the daily services of a registered nurse;
- (2) The child requires the services of a physician at least once each week due to the instability of the child's medical condition; and

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<sup>15</sup> *Ohio Administrative Code §3301-51-01(II)*.



(3) The child is at risk of institutionalization in a hospital, skilled nursing facility, or intermediate care facility for the mentally retarded (ICF/MR).

A student whose disability does not meet the two-pronged test for the higher weight, but whose condition nonetheless meets the State Board's existing definition of "other health impaired," is assigned the lower weight.

**LOEO survey of disabilities identified as "other health handicaps"**

(Section 44.27)

The act directs the Legislative Office of Education Oversight to survey the individualized education programs (IEPs) for students who have been identified as having "other health handicaps." The Office must categorize the specific medical conditions that school districts identify as "other health handicaps" and quantify the number of students identified in each category. It must report its findings to the General Assembly no later than six months after the act's effective date.

**The act continues the speech services subsidy at FY 2001 level**

(R.C. 3317.022(C)(4) and 3317.16(D)(2))

In addition to establishing a new, separate weight for special education students whose only (or primary) identified disability is a speech-language handicap, the act retains the preexisting speech services subsidy. This subsidy pays the state-share percentage for one "personnel allowance" for every 2,000 students in a school district's formula ADM. The act continues the \$30,000 personnel allowance established for FY 2001 and applies it to FY 2002 and FY 2003. In addition, it specifies that the students for whom this subsidy is paid include students who do not have individualized education programs (IEPs) established for them and therefore are not considered special education students to whom a funding weight would apply.

**The act revises and expands the state "catastrophic costs" subsidy for special education students**

(R.C. 3314.08(E), 3317.022(C)(3), and 3317.16(E))

**Prior law**

Under the prior system of special education weights, Category 3 special education students included students with autism, students with both visual and hearing handicaps, and students with traumatic brain injuries. The special education weight assigned to these students was the same as that assigned to special education students under Category 2. But school districts could apply to the state for additional state aid if their costs in serving any Category 3 student

exceeded \$25,000 in one year. The state had to pay the district's state-share percentage of the costs above the \$25,000 threshold.<sup>16</sup>

### **The act expands the subsidy**

The act expands this subsidy in two ways. First, it qualifies all special education students, *except* those whose only (or primary) identified disability is a speech and language handicap. It makes this change for all school districts, including joint vocational school districts, and for community schools, which also were eligible for the subsidy under prior law.

Second, it increases the percentage of costs above the threshold amount that the state will reimburse school districts, including joint vocational school districts. (Community schools, which have no taxing authority, remain eligible for 100% reimbursement.) Instead of paying the district's state-share percentage, the act requires the state to pay the sum of:

- (1) 100% of half the costs above the threshold amount; plus
- (2) The district's state-share percentage of the other half of the costs above the threshold amount.

For example, if a school district spent \$30,000 to serve a special education student and the threshold amount were \$25,000 for that student, the district would be eligible for reimbursement of a portion of the \$5,000 by which its costs for that student exceeded \$25,000. If the district's state-share percentage were 55%, under prior law it would have been reimbursed \$2,750 (55% x \$5,000). Under the act, it would receive \$3,875 (\$2,500 + (55% x \$2,500)).

### **The act designates new threshold amounts**

The threshold amount for newly eligible students (that is, students with Category 2, 3, 4, or 5 disabilities) is \$25,000 in FY 2002 and \$25,700 in FY 2003. The second-year amount reflects an inflation factor of 2.8%.

The threshold amount for students with Category 6 disabilities (autism, traumatic brain injury, or both hearing and visual disabilities), who were the only students for whom the subsidy was available prior to the act, is raised from

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<sup>16</sup> Under continuing law, unchanged by the act, the costs for which districts may receive reimbursement include only the costs of educational expenses and related services provided to the student in accordance with the student's individualized education program (IEP). Legal fees and court costs relating to the student cannot be reimbursed.

\$25,000 to \$30,000 in FY 2002 and to \$30,840 in FY 2003. Again, the FY 2003 threshold reflects an inflation factor of 2.8%.

**The act makes permanent the policy to use weights instead of units to pay county MR/DD boards for special education**

(R.C. 3317.03(B)(14), 3317.052, 3317.20, 3323.09, 5126.05, and 5126.12)

During FY 1999, FY 2000, and FY 2001, county boards of mental retardation and developmental disabilities ("county MR/DD boards") received payment for providing special education to school-age children under a funding system that is similar to the system of weights used to pay school districts. Authorization for this arrangement was to expire at the end of FY 2001, after which the state was to resume paying MR/DD boards using "unit funding," which calculates payments based on groups of students using set amounts for the salary and benefits of the students' teacher and for other supplies.

The act prevents the reversion back to unit funding, making the weighted system permanent for paying county MR/DD boards for serving school-age children.<sup>17</sup> For each school-aged child provided special education and related services, the Department of Education must continue to pay a county MR/DD board the base-cost formula amount, adjusted by the cost-of-doing-business factor of the child's school district, plus the state share in the child's school district of the additional, weighted special education payment. This provides the boards with the state and local share of the base cost of educating the student, plus the state portion of the calculated additional special education cost.

As under prior law, each county MR/DD board is guaranteed to receive each year at least the same amount per pupil that it received per pupil in FY 1998 under state unit funding. If the per pupil amount calculated using the weights is less than the FY 1998 per pupil amount, the Department must pay the board the difference.

Also as under prior law, payments to county MR/DD boards are not deducted from a school district's state aid, unless the district places with a board more school-aged children than it had placed in FY 1998. If that is the case, the Department must deduct from the district's aid the amount paid the MR/DD board for each school-aged child exceeding the number placed that year.

But unlike prior law, the act does not place a cap on total state payments to county MR/DD boards. The cap amounts were \$40 million in FY 1999, \$44

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<sup>17</sup> State payments for all special education to preschool children, whether provided by a school or county MR/DD board, is calculated using unit funding.

million in FY 2000, and \$48.4 million in FY 2001, and appeared to be based on the amount of state unit funding provided to MR/DD boards in FY 1998. If total state payments calculated in a fiscal year exceeded the cap in any of those years, the Department had to reduce proportionately the amount paid to each board that year.<sup>18</sup>

**The act enhances the state share of transportation payments for some districts beginning in FY 2003**

(R.C. 3317.022(B)(1) and (D)(3))

Beginning in FY 2003, the act increases the state's share of transportation funding calculated with the state formula to the *greater of* (1) 60% or (2) the same percentage that the state pays of the district's calculated base-cost, special education, and vocational education funding. (Previous law required the state to pay all districts 60% of their calculated transportation amounts in FY 2003.) This change will result in a higher state payment percentage for districts whose base-cost state share percentages are greater than 60%. These would be districts with lower property wealth.

For FY 2002, the act retains the preexisting requirement that the state to pay all districts 57.5% of their transportation formula calculation.

**The act adds transportation to the charge-off supplement ("gap aid")**

(R.C. 3317.0216)

The act adds transportation funding to the charge-off supplement ("gap aid") paid to districts whose locally levied revenues are insufficient to cover their calculated local shares of base-cost, special education, and vocational education funding. That is, if a district's locally levied tax revenue is insufficient to cover what is attributed as its local share of transportation funding, the state will make up the difference as it currently does with base-cost, special education, and vocational education funding.

**The act adjusts the vocational education weights to reflect other changes**

(R.C. 3317.014)

The act adjusts the weights used to calculate vocational education funding to reflect its changes in the base-cost formula amounts due to its revised application of the cost-of-doing-business factor. The act states that "[t]he

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<sup>18</sup> Section 35 of Am. Sub. H.B. 770 of the 122nd General Assembly.

adjustment maintains the same weighted costs as would exist if no change were made to the application of the cost-of-doing-business factor." The adjusted weights are:

Vocational Education Category	Prior Weight	The Act's Weight
Job-training and workforce development	0.60	0.57
Other vocational education programs	0.30	0.28

**The act phases in a new supplemental tier of state funding called "parity aid"**

The act phases in a new "parity aid" subsidy to provide additional state funding, beyond base-cost and categorical funding, to low- and medium-wealth school districts. The new parity aid replaces the equity aid and power equalization subsidies. Equity aid is phased out as parity aid phases in. Power equalization is terminated immediately, beginning in FY 2002.

**The Phase-In of Supplemental Tiers of State Funding**

Fiscal Year	Number of School Districts Eligible for Parity Aid	Standard Parity Aid Payment % (Phase In)	Alternative Parity Aid Payment % (Phase In)	Number of School Districts Eligible for Equity Aid	Equity Aid Payment % (Phase Out)	Power Equalization Payment %
FY 2001	-----	-----	-----	117	100%	75%
FY 2002	489 +	20%	50%	117	100%	0
FY 2003	489 +	40%	100%	117	75%	0
FY 2004	489 +	60%	100%	117	50%	0
FY 2005	489 +	80%	100%	117	25%	0
FY 2006	489 +	100%	100%	0	0	0
FY 2007	489 +	100%	100%	0	0	0

**NOTE:** 489 districts will qualify for either standard parity aid or alternative parity aid. But it is possible that another district not qualifying for the standard payment might qualify for the alternative payment.

### **Parity aid**

(R.C. 3317.012(C), 3317.021(A)(5) and 3317.0217)

The new parity aid funding program pays additional state funds to school districts based on combined income and property wealth per pupil.

For most eligible school districts, the program essentially pays state funds to make up the difference between what 9.5 mills would raise against the district's income-adjusted property wealth versus what 9.5 mills would raise in the district where the income-adjusted property wealth ranks as the 123rd highest (the 80th percentile). The amount of parity aid, therefore, varies based on how far below the 123rd district a district's income-adjusted valuation falls, with the 123 districts having the highest income-adjusted valuations being ineligible for aid. Districts need not actually levy any of the 9.5 mills to receive a state payment.

But the act provides an alternative calculation for districts experiencing a combination of lower incomes, higher poverty, and higher business costs regardless of whether they are one of 489 districts with lowest income-adjusted property wealth (see "Alternative calculation," below).

### **9.5 mills represent average discretionary millage of high-wealth districts**

(R.C. 3317.012(C) and 3317.0217(C)(2))

The 9.5 mills on which parity aid is based represents the General Assembly's determination of the average number of "effective operating mills" (including school district income tax equivalent mills) that school districts in the 70th to 90th percentiles of property valuations levied in FY 2001 *beyond* the millage needed to finance their calculated local shares of base-cost, special education, vocational education, and transportation funding.

The act requires the General Assembly every six years to redetermine the average number of these additional mills that are collected by districts in the 70th to 90th percentiles of property valuation. The committee that is to be appointed every six years to reexamine the base cost of an adequate education also must reexamine this millage and make recommendations to the General Assembly.

### **Calculation of income-adjusted property valuation**

(R.C. 3317.021(A)(5) and 3317.0217(A); Section 188)

Income-adjusted property valuation for parity aid is calculated as:

- (1) One-third of a district's average income-wealth per pupil; plus

- (2) Two-thirds of its "recognized" property valuation per pupil.

Unlike the income adjustments for base-cost calculations under prior law (which the act eliminates), all districts, whether high-income or low-income, have their property valuation adjusted upward or downward to reflect income for parity aid calculations. Income wealth is measured as the three-year average adjusted gross income of school district residents, based on data from income tax returns reported by the Department of Taxation.

**Alternative calculation**

(R.C. 3317.0217(D) and (E))

For school districts that face combinations of lower incomes, higher poverty, and higher business costs, the act provides an alternative way to calculate parity aid, if it yields a greater amount than the standard calculation. Specifically, this alternative method is available to districts that have a *combination* of:

- (1) An income factor less than or equal to 1.0 (meaning its median income is less than or equal to the statewide median income);

- (2) A DPIA index of 1.0 or greater (meaning its proportion of children living in families that participate in Ohio Works First is equal to or greater than the proportion statewide); *and*

- (3) A cost-of-doing-business factor of 1.0375 or greater (meaning the business costs in the district's county are presumed to be at least 3.75% greater than the lowest-cost county in the state).

A district that meets all three qualifications receives the *greater* of the standard parity aid amount or the alternative calculation. The alternative amount is based on recovering state dollars the district would have received had the consideration of district income wealth not switched from the base-cost formula to parity aid. Essentially, this involves determining how much the district's per pupil 23-mill charge-off amount would have been adjusted downward to reflect the district's income factor (under prior law), and therefore would have been replaced by state dollars in base-cost funding under the former base-cost formula. The state must pay the district this amount, instead of its standard parity aid amount, if it is greater than the standard parity aid amount.

A district need not qualify for the standard parity aid payment to qualify for the alternative. As long as it meets all of the conditions described in (1) to (3), above, it qualifies.<sup>19</sup>

**Phase-in**

(R.C. 3317.0217(C)(1), (D)(2), (E), and (F))

The act calls for parity aid to be phased-in. The standard calculation is phased in over five years, with 20% of the calculated amount to be paid in FY 2002, 40% in FY 2003, 60% in FY 2004, 80% in FY 2005, and 100% after FY 2005. The alternative calculation is phased-in over only two years, with 50% of the calculated amount to be paid in FY 2002 and 100% in FY 2003 and thereafter. In the case of any district eligible for the greater of either calculation, these phase-in percentages are figured into determining which payment is larger. For example, a district qualifying in FY 2002 to be considered under both calculations is eligible for the greater of 20% of the standard calculation or 50% of the alternative calculation. In FY 2003, it would be eligible for the greater of 40% of the standard calculation or 100% of the alternative calculation.

**Budget for expenditure of parity aid in continuous improvement plans**

(R.C. 3302.041)

**Background.** Under preexisting law, the Department of Education issues a performance rating for each school district every three years based upon the percentage of specific state performance standards met by the district. All districts except "effective" districts (this includes districts in need of continuous improvement, under an academic watch, or in a state of academic emergency) must develop a three-year continuous improvement plan (CIP) which explains why the district failed to meet the performance standards it missed and outlines the strategies and resources the district will use to correct the problem. A district's success in improving its performance is measured by a standard unit of

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<sup>19</sup> For parity aid, the act measures income wealth as average income per pupil (total income divided by formula ADM). For base-cost funding, prior law used a district's median income relative to the state as a whole. It is possible that a district could have a low relative median income that previously qualified it for more state base-cost funding, but have a high average income per pupil that disqualifies it from parity aid. In that case, the district (provided it also had a high DPIA index and a high cost-of-doing-business factor) still would qualify for parity aid using the alternative calculation.



improvement, which indicates satisfactory progress toward a performance standard.<sup>20</sup>

***Budget for parity aid in CIP.*** One source of funding that a district may use to help improve its performance, and thus its overall rating, is parity aid. Under the act, only "effective" districts can spend their parity aid for any purposes they choose. The act places restrictions on the use of parity aid by all other districts and requires them to include budgets for the expenditure of their parity aid in their CIPs. With one exception, all parity aid received by a district that is *not* "effective" must be used for one or more of the following purposes:

(1) Upgrading or purchasing additional classroom equipment, materials, textbooks, or technology;

(2) Lowering student/teacher ratios in additional classrooms;

(3) Providing more advanced curriculum opportunities;

(4) Providing additional electives or mandatory courses for graduation;

(5) Increasing professional development;

(6) Serving more students in all-day kindergarten;

(7) Providing preschool to more students;

(8) Providing additional programming and services for special student populations such as gifted, disadvantaged, or disabled students;

(9) Establishing new academic intervention programs or increasing the number of students served in existing ones, including programs such as tutoring or summer school.

The exception in the act allows the state Superintendent of Public Instruction to authorize a school district to spend parity aid payments for another purpose, upon request of the district, if the state Superintendent finds that the proposed alternative use either would contribute to accomplishing other goals of the district's CIP or is necessary to eliminate a threat to student health or safety.

For each expenditure of parity aid in its budget, the district's CIP must describe how the expenditure will enable the district to offer new programs and opportunities or to expand the availability of current ones, rather than simply using

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<sup>20</sup> *R.C. 3302.02, 3302.03(A) and (B), and 3302.04(A) and (B), none in the act.*

the parity aid to supplant other revenues the district receives from the state or other sources to fund existing programs. The CIP must also explain how the expenditure enhances the district's efforts to improve its academic success and to achieve the standard unit of improvement in areas where the district has exhibited deficiencies.

**Schedule.** Because the most recent performance ratings for school districts were announced in 1999, those districts that had to develop a CIP are currently in the middle of the three-year period covered by their plans. Consequently, if any district that is currently not deemed "effective" is projected to receive parity aid in either FY 2002 or FY 2003, that district must submit an amended CIP to the Department by September 1, 2001. The plan must be amended to include a budget for spending parity aid payments in each fiscal year that the district is expected to receive them. Under continuing law, the next performance ratings will be issued in 2002. Any CIP developed after that time must contain a parity aid budget and be submitted to the Department.

**Monitoring and enforcement.** The act charges the Department with monitoring school districts' expenditures of parity aid. The Department must determine whether districts spent their parity aid for the appropriate fiscal year in compliance with the budget contained in their CIPs.

Beginning July 1, 2002, the Department must annually assess a random sampling of the districts that currently have CIPs. Whenever the Department finds that a district did not spend its prior year's parity aid funds in the manner specified in the district's CIP, the Department must (1) inform the State Board of Education of its findings and (2) subtract an amount equal to the misspent funds from any parity aid payments due to the district in the current fiscal year. In each subsequent year, until the district is in compliance with its parity aid budget, the Department must continue to monitor the district's expenditures and make annual deductions in the same amount from the district's parity aid payments.

Finally, the act stipulates that a school district may amend its parity aid budget at any time for good cause and with the approval of the Department. The district, however, may reallocate its parity aid only to other purposes for which parity aid may legitimately be spent.

**The act extends the phase-out of equity aid**

(R.C. 3317.0213)

Prior law designated FY 2002 as the last year for the phase-out of equity aid. (The phase-out began in FY 1999.) In FY 2002, 117 of the lowest-wealth school districts were to have nine mills equalized up to the level of the 118th lowest-wealth district. The act lengthens the phase-out schedule over five years to

coincide with the phase-in of parity aid. It directs that 100% of the equity aid calculation be paid to the 117 districts in FY 2002, 75% in FY 2003, 50% in FY 2004, 25% in FY 2005, and zero after FY 2005.

**The act terminates the "power equalization" subsidy**

(R.C. 3317.021(A)(5) and (E); repealed R.C. 3317.0215)

The act immediately repeals the state "power equalization" subsidy paid to districts that levy up to two additional mills above the 23-mill base-cost charge-off but have below-average property valuations per pupil. Parity aid replaces power equalization.

**New base for calculating DPIA index beginning in FY 2004**

(R.C. 3314.08(A), 3317.029(A), and 3317.10; Sections 189 and 221)

A school district's eligibility for disadvantaged pupil impact aid (DPIA) depends on its "DPIA index," which measures the district's proportion of resident children whose families receive public assistance *relative to* the proportion of those children statewide. For instance, a district with a DPIA index of exactly 1.00 has a proportion of these children that is equal to the statewide proportion. An index of 1.50 would indicate a district proportion of these children that is 150% of the statewide proportion, whereas an index of 0.50 would indicate a district proportion that is 50% of the statewide proportion.

The DPIA index has been based on the number of children ages 5 to 17 who reside in the school district and whose families participate in the Ohio Works First program, as of the month of October preceding the fiscal year. (The Department of Job and Family Services is required to annually report district-by-district numbers to the State Board of Education by March 1.) The Department of Education calculates the five-year average of these children in each district and divides that average by the district's three-year average formula ADM, which yields a percentage that approximates the proportion of the district's enrollment that are considered economically at-risk. A similar percentage is calculated for the state as a whole, and the comparison of the district's percentage versus the statewide percentage produces each district's DPIA index.

The act expands the measurement of at-risk children that serves as the base of the index calculation. Beginning in FY 2004, the index is to be based on the number of children ages 5 to 17 who reside in the school district and whose families (1) have income at or below the federal poverty guidelines and (2) participate in one of the following programs:

- (a) Ohio Works First;

- (b) The food stamp program;
- (c) Medicaid (including Healthy Start);
- (d) Part I of the Children's Health Insurance Program ("CHIP"); or
- (e) The state Disability Assistance program.<sup>21</sup>

As under preexisting law, the index is to be calculated by dividing the five-year average number of these children residing in each district by the district's three-year average formula ADM. The act therefore requires the Department of Job and Family Services to report, by March 1, 2003, the number of these children in each school district for the month of October in 1998, 1999, 2000, 2001, and 2002, and annually thereafter by March 1 for the preceding October.<sup>22</sup> Until FY 2004, the Department of Education must continue to base the DPIA index on Ohio Works First participation only.

**DPIA funding for "third grade guarantee"--average teacher salary**

(R.C. 3317.029(A)(7) and (E))

If a district's DPIA index is greater than 0.60 (meaning its proportion of children receiving public assistance is greater than 60% of the statewide proportion), it also may receive a payment based on the amount of money it would take to hire additional teachers to reduce class sizes in grades K to 3. The amount varies on a sliding scale, increasing as a district's DPIA index increases.

One of the components of the formula for calculating this "third grade guarantee" is the statutorily designated statewide average teacher salary. For FY 2001, this amount was established at \$41,312. The act increases it to \$42,469 for FY 2002 and \$43,658 for FY 2003, thereby increasing the third grade guarantee funds for all eligible districts in each year of the biennium.

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<sup>21</sup> *These new criteria were recommended by the Legislative Office of Education Oversight in its recent report, "A New Poverty Indicator for Disadvantage Pupil Impact Aid (DPIA)." LOEO was required to issue this report by Am. Sub. H.B. 650 of the 122nd General Assembly.*

<sup>22</sup> *The act expresses the General Assembly's intent that the Department of Job and Family Services use the same, or substantially similar, computer programming to generate this information as it used to assist LOEO in making this report.*

### **Funding of intervention services under DPIA**

(R.C. 3317.029(C) and (F))

Part of the DPIA subsidy provided to qualifying districts is required to be used for "measures related to safety and security" and for "remediation." The act requires that, beginning in FY 2003, any district that receives safety and remediation money under DPIA must use 20% of that money to pay for the intervention services that are required under R.C. 3313.608. Thus, the money could be used to fund intervention services for students in grades K to 3 who are reading below grade level, for students who have failed the fourth grade (soon to be third grade) reading proficiency test, or (until July 1, 2003) for students who have failed at least three of either the fourth grade or sixth grade proficiency tests. However, any district receiving safety and remediation money under DPIA that also has an obligation to provide all-day kindergarten must still fully fund its all-day kindergarten percentage before it can use the safety and remediation money to pay for intervention services. In the case of such a district, 20% of any safety and remediation money remaining after funding all-day kindergarten must be used for the required intervention services.

### **Recomputation of base cost aid for uncollectible taxes from a bankrupt taxpayer**

(R.C. 3317.0210)

A school district's base-cost payment is recomputed if at least ½% of its property taxes are uncollectible and 1% of its taxable property valuation is effectively untaxable because a single company is protected from creditors while the company is reorganizing under bankruptcy. The recomputation subtracts the company's "untaxable" property valuation from the computation of the school district's "charge-off" amount, which has the effect of increasing the district's state base-cost payment. (There is an inverse relationship between the district's property valuation and the amount of aid.) In effect, the district is compensated for the equivalent of about 2.3% (23 mills per dollar) of the company's taxable property valuation on which it has not paid taxes. Moreover, a district's payments for special education and vocational education weighted costs could increase, if the reduction in its charge-off amount is large enough to raise its state-share percentage.

Under prior law, the recomputation was performed near the end of the second year after the year in which the taxes were charged, meaning that base-cost payments were not adjusted to reflect the recomputation until up to two years after the taxes would have been collected from the company. Once the base-cost payments were adjusted, they were adjusted to reflect the effect of the untaxable property on the *preceding* fiscal year's base-cost payment.

The act accelerates the recomputation so that a school district's base-cost payment would be recomputed sooner. Under the act, school districts seeking a recomputation must notify the Department of Education between January 1 and February 1 of taxes that were charged for the preceding year that are uncollectible (as long as they represent at least ½% of total taxes charged). The Department's recomputation is to be based on the district's untaxable property valuation for the preceding year, rather than the second preceding year, and the district's base-cost payment for the *current* fiscal year is to be adjusted to reflect the effect of the untaxable property.

Because of the acceleration of the recomputation relative to the time when taxes are discovered to be uncollectible, the act prescribes a special transition rule for taxes that are uncollectible for tax years 1999 and 2000. School districts must notify the Department of Education of any such uncollectible taxes by August 1, 2001, and, if the district qualifies for the recomputation, the Department must recompute the base-cost amount for fiscal year 2001 (for tax year 1999 taxes) and for fiscal year 2002 (for tax year 2000 taxes) and pay the additional base-cost amount so computed before the end of fiscal year 2002.

Finally, the certifications that the Department of Education must request regarding a school district's taxable values are to be requested from the Tax Commissioner, rather than from county auditors as prescribed under prior law.

### **Expansion of eligibility for money from Solvency Assistance Fund**

(R.C. 3316.20)

#### **Background**

The state School District Solvency Fund consists of money appropriated to it by the General Assembly, and provides two forms of emergency assistance to school districts:

(1) **Solvency assistance** to school districts experiencing serious financial difficulties. Under prior law (as amended by S.B. 345 of the 123rd General Assembly, effective April 10, 2001), the only districts eligible for solvency assistance were those declared by the Auditor of State to be in a fiscal emergency because of an operating deficit exceeding 10%. Districts placed under fiscal emergency for other reasons, districts remaining in fiscal emergency although they have since reduced their operating deficit, and districts not under a declaration of fiscal emergency did not qualify. A district must reimburse state solvency assistance within two fiscal years.

(2) **Grants** to school districts facing "unforeseen catastrophic events that severely deplete the districts' financial resources." The grants are recommended



by the state Superintendent of Public Instruction and awarded by the Controlling Board. The grants do not have to be repaid unless the district is reimbursed by a third party, such as an insurer or a federal disaster relief program.

### **The act's changes**

The act broadens eligibility for school districts to obtain solvency assistance funds by qualifying *any* district declared to be in a fiscal emergency, regardless of the reason for the declaration or the size of the district's operating deficit. As under preexisting law, the assistance is to be awarded and administered in accordance with rules adopted by the Director of Budget and Management. Districts *not* under a declared fiscal emergency remain ineligible. Also as under prior law, it must be repaid within two fiscal years.

The act also adds a new rule-making condition for the catastrophic expenditure grants, requiring the Director of Budget and Management to adopt rules governing how the state Superintendent of Public Instruction makes recommendations to the Controlling Board for the award of the grants.

### **Changes regarding educational service centers**

#### **Background**

An educational service center (ESC) is a regional public educational entity with its own superintendent and elected governing board that provides some educational supervision, curriculum development services, and other administrative services to all local school districts within its service area. In addition, ESCs may provide services to area city and exempted village school districts under contract with those districts, known as "client" districts. Each ESC receives per pupil payments from the state and its local and client school districts for service to students. An ESC governing board does not have taxing authority for purposes of operating the ESC.<sup>23</sup>

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<sup>23</sup> *R.C. 3311.05, not in the act. Prior to 1995, ESCs were called county school districts and ESC governing boards were called county boards of education. At one time there were 88 county school districts, but along with the name change provisions enacted in Am. Sub. H.B. 117 of the 121st General Assembly, certain former county school districts (now ESCs) were required to merge to form larger service areas. According to the Legislative Office of Education Oversight, in July of 1999 there were 61 ESCs. (See "ESC mergers" below.)*

**The act maintains the per pupil payment amounts to educational service centers**

(R.C. 3317.11(B) and (C))

The act requires that the same per pupil amounts paid by the state to educational service centers in FY 2001 also be paid in FY 2002 and FY 2003. These amounts are to be paid for each pupil in the formula ADMs of the local school districts that are part of the service center and of the city and exempted village "client" school districts that sign agreements with the service center. The per pupil amount varies depending on the extent to which the center results from a significant merger of previously existing county districts or centers as follows:

(1) For centers that serve fewer than three former county districts or centers, \$37 per pupil; and

(2) For centers that serve three or more former county districts or centers, \$40.52 per pupil.

**Educational service center office space and equipment**

(R.C. 133.07(C)(19), 3313.37(A), and 3319.19; repealed R.C. 307.031)

**ESC governing boards may acquire property.** Under prior law, ESC governing boards were specifically permitted to acquire property for special education programs and for driver's education courses. There was some uncertainty whether or not they could acquire property for other purposes.<sup>24</sup> The act specifically permits an ESC governing board to acquire, lease, purchase, or sell real and personal property and to construct, enlarge, repair, renovate, furnish, or equip facilities, structures, or buildings for the ESC's purposes. To do so, a governing board may also enter into loan agreements, including mortgages. If a governing board does acquire its own facilities for office or classroom space, a board of county commissioners has no obligation to provide offices and associated services.<sup>25</sup> (See "**Phaseout of a board of county commissioner's responsibility to provide ESC office space,**" below.) The act also permits a board of county

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<sup>24</sup> For example, at least one common pleas court held that despite the general provision permitting school districts, which may include ESCs under some circumstances, to acquire property necessary for their educational programs, the specific provision that limited authority for ESCs to property acquisition for special education and driver's education controlled. See Paulding County Bd. of Edn. v. Paulding County Bd. of Commissioners CI-86-049 (1986).

<sup>25</sup> R.C. 3313.37(A)(1) to (2).



commissioners to issue securities under provisions of the Public Securities Law to acquire real and personal property for an ESC, but only if the ESC governing board has contracted to pay to the county an amount equal to the annual debt charges on those securities.<sup>26</sup>

**Phaseout of a board of county commissioner's responsibility to provide ESC office space.** Under prior law, the board of county commissioners of the county in which an ESC is located was required to provide and equip office space and furnish water, light, heat, and janitorial services, for the ESC. If the service area of an ESC comprised territory in more than one county, the ESC governing board was required to designate one board of county commissioners to provide the office space, and the other boards of county commissioners had to share in the costs.<sup>27</sup> (The law also provided for a state subsidy that could have been paid to a board of county commissioners to help defray the cost of providing office space to an ESC. Apparently, since its enactment in 1990, there were no appropriations for this subsidy and it has not been paid. The act repeals this subsidy provision.<sup>28</sup>)

The act provides instead for a four-year phase-out of the responsibility of any board of county commissioners to provide office space for an ESC. In fiscal year 2007 and thereafter, a board of county commissioners may provide office space and other facilities for an ESC by contract, but it is not required to do so.<sup>29</sup>

The act requires, in fiscal years 2003-2006, each board of county commissioners responsible for ESC office space to submit a detailed estimate of its cost to provide that space and the associated water, heat, light, and janitorial services to the ESC superintendent. The superintendent must review the estimate and may submit objections to that estimate to the board of county commissioners. If the superintendent does not reply to the estimate within 20 days of receipt of the

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<sup>26</sup> R.C. 133.07(C)(19) and 3313.37(A)(3).

<sup>27</sup> R.C. 3319.19(A).

<sup>28</sup> R.C. 3319.19(C) and Repealed R.C. 307.031. *The subsidy, if appropriations were made for it, was to be allocated to each board of county commissioners that provided ESC office space based on a formula. Under the formula, a board of county commissioners could have received an amount up to its actual expenses and equal to the greater of: (1) \$15,000, or (2) \$6 X the average daily membership (ADM) of the ESC (if the ratio of ADM to full-time equivalent (FTE) licensed educators employed by the ESC was equal to or greater than 100 to 1) or \$6 X the ESC's ADM plus \$250 X the number of FTE licensed educators employed by the ESC (if the ratio of ADM to FTE licensed educators was less than 100 to 1).*

<sup>29</sup> R.C. 3319.19(D)(2) to (3).

estimate, it is considered to be a final estimate. If the superintendent does file timely objections, the board of county commissioners may revise the estimate and resubmit it to the superintendent. The superintendent then must reply within ten days of receipt of the revised estimate. If the superintendent continues to object to the estimated costs, the probate judge of the county with the greatest number of resident local school district students under supervision of the ESC will determine the final estimate.<sup>30</sup>

During the phaseout, the costs are to be divided between the county and the ESC. The county is responsible to pay the following:

- In fiscal year 2003, 80% of the final estimated cost;
- In fiscal year 2004, 60% of the final estimated cost;
- In fiscal year 2005, 40% of the final estimated cost;
- In fiscal year 2006, 20% of the final estimated cost.

Educational service centers themselves are responsible for the remaining portion of the costs of office space and for any unanticipated or unexpected increase beyond the final estimated costs.

In fiscal year 2007 and thereafter, no board of county commissioners is required to provide office space for an ESC or to pay any cost of providing such space.<sup>31</sup> The act specifically states that no ESC may be charged at any time for any additional amounts for office space not included in the act's provisions, or in a contract superseding the act's provisions.

### **ESC mergers**

**Self-designed governing boards** (R.C. 3311.057). The territory of an educational service center is the territory contained within the local school districts to which the ESC must provide services. It is from that territory that members to the ESC's governing board are elected. That electoral territory does not include the territory of the ESC's "client districts." Ordinarily, an ESC governing board must consist of five members, who are electors of the ESC's territory. The members are generally elected for four-year staggered terms beginning on the first of January after the election.

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<sup>30</sup> R.C. 3319.19(C).

<sup>31</sup> R.C. 3319.19(C) to (D)(1).

Continuing law permits and in some cases requires the merger of ESCs that serve small student populations. Prior law provided that any ESC formed by merging two or more ESCs after July 1, 1995, but before July 1, 1999, could determine the number of members on the governing board of the new district and whether any of the members could be elected at-large or from subdistricts (as long as the new board would have an odd number of members). The act extends (and essentially reopens) the window of time for the creation of these custom designed governing boards for joint ESCs formed by merger. Under the act, any ESC formed by merger between July 1, 1995 and July 1, 2003 may opt to design its governing board.

**Territorial limitations on ESC mergers** (R.C. 3311.058). Uncodified law enacted in 1995 requires certain ESCs that have an average daily membership (ADM) of less than 8,000 students to merge.<sup>32</sup> Although most of the required mergers appear to have taken place, certain joint ESCs that were formed through a required merger of two ESCs that previously each served only one local school district may under current law have to merge again by July 1, 2001, if their ADMs are still less than 8,000 students. The act establishes permanent law permitting ESCs that would otherwise be required to merge in order to meet any prescribed ADM count not to merge if merging would cause the territory of the new ESC to consist of more than 800 square miles.

**Expansion of grade levels in which new students may enter the pilot project scholarship program**

(Section 44.33)

In FY 2001, the Pilot Project Scholarship and Tutorial Assistance Program (commonly called the "voucher" program) operating in Cleveland served students in grades K to 7. In FY 2002 and FY 2003, if the program is allowed to continue, new kindergarten classes will replace the ones that advance to first grade, and the program will serve students in grades K to 8.<sup>33</sup>

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<sup>32</sup> Section 45.32 of Am. Sub. H. B. 117 of the 121st General Assembly.

<sup>33</sup> On December 11, 2000, the U.S. Sixth Circuit Court of Appeals upheld a summary judgment from the U.S. District Court invalidating the program on federal constitutional grounds. The district court had declared that the program impermissibly results in government advancement of religion because most private schools participating in it are parochial schools. (*Simmons-Harris v. Zelman*, Case Number 00-3055.) The state appealed this ruling to the full membership of the Sixth Circuit Court of Appeals; however, the full panel declined to rehear the case on February 28, 2001. The case could be appealed to the U.S. Supreme Court.

The codified law has always stipulated that new students may join the program only in grades K to 3; students in higher grades who withdraw could not be replaced. Since FY 1998, however, biennial appropriations acts have permitted new students to join the program in higher grades, as well.

For FY 2002 and FY 2003, the act continues this trend by allowing first-time scholarships to be awarded to students in all of the covered grades. First-time scholarships may therefore be awarded to students in grades K to 8. But this will not necessarily increase the number of new program participants. That is determined by the Department of Education each year based on the amount of money appropriated for the program.

## **LOTTERY**

### **Transfers from the State Lottery Fund to the Lottery Profits Education Fund**

(R.C. 3770.06(B))

The State Lottery Gross Revenue Fund consists of all gross revenues received from sales of lottery tickets, fines, fees, and related proceeds. Specified money in the State Lottery Gross Revenue Fund must be transferred to the State Lottery Fund. Then, whenever, in the judgment of the Director of Budget and Management, the amount to the credit of the State Lottery Fund is in excess of that needed to meet the maturing obligations of the State Lottery Commission and as working capital for its further operations, the Director must transfer the excess to the Lottery Profits Education Fund. However, the Director may only transfer into the Lottery Profits Education Fund an amount that is *no less than 30% of the total revenue accruing from the sale of lottery tickets*. The act eliminates this limitation.

## **TECHNOLOGY AND BUILDINGS**

### **Ohio Education Computer Network**

(R.C. 3301.075)

Continuing law requires the State Board of Education to adopt rules for the creation of an Ohio Education Computer Network (OECN) to assist all school districts and educational service centers (ESCs) in the purchasing and leasing of data processing services and equipment.<sup>34</sup> With funding from the Department of

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<sup>34</sup> *The assistance provided by OECN is in addition to assistance provided to school districts and ESCs in their implementation of educational technology by the Ohio SchoolNet Commission. SchoolNet and OECN have collaborated on activities regarding their respective duties.*

Education, OECN must also operate a network of up to 27 data acquisition sites (DA sites), which will assist school districts and ESCs in gathering and reporting data electronically for their own use and for compliance with state reporting requirements. Currently there are 23 such sites. Most, but not all, school districts subscribe to the services of OECN.

Under prior law, the service territory of the DA sites must be composed of combinations of school districts and ESCs from contiguous counties. The act eliminates the contiguity requirement; thus, districts and ESCs not sharing boundaries may join a single DA site.

Prior to codification of the authorization to create OECN in 1983, districts joined DA sites under provisions of law permitting subdivisions to form regional councils for the acquisition of joint services.<sup>35</sup> After that date, it appears that the only way districts and ESCs could join a DA site subsidized by the Department of Education was through a provision of law permitting school districts to acquire and use school facilities jointly.<sup>36</sup> Under the act, districts and ESCs may use either method to join and participate in the activities of a DA site.

### **Ohio SchoolNet Commission**

(R.C. 3301.80(B)(1))

The Ohio SchoolNet Commission is an independent state agency charged with allocating financial assistance and providing other technical services to school districts in the implementation of education technology. The Commission is made up of seven voting members: the Superintendent of Public Instruction, Director of Budget and Management, Director of Administrative Services, Chairperson of the Public Utilities Commission, and Director of the Ohio Educational Telecommunications Network Commission, or their respective designees; and two members of the public, one each appointed by the Speaker of the House of Representatives and the President of the Senate. It also consists of four nonvoting legislative members. The Commission employs an executive director who employs other individuals to carry out the duties of the Commission.

Prior law did not specify the presiding officer of the Commission. The act specifies that the Commission must appoint officers from among its members.

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<sup>35</sup> R.C. Chapter 167., not in the act.

<sup>36</sup> R.C. 3313.92, not in the act.

## *Ohio Schools Technology Implementation Task Force*

(Section 103.04)

In 1997, the General Assembly created a temporary task force to study the implementation of educational technology in the state's elementary and secondary schools. That task force issued written recommendations to the General Assembly and the Director of Budget and Management in 1999. Parts of that report recommended that the General Assembly commission an independent review of all the various ways that technology reaches the schools and commission a strategic plan for future implementation of that technology. In the education budget act for the 1999-2001 biennium, the General Assembly commissioned such studies.<sup>37</sup> The reports of those studies are expected to be completed in October 2001.

The act establishes the Ohio Schools Technology Implementation Task Force to examine the reports from the independent review and strategic plan projects and, based on that examination, to make recommendations to the General Assembly and the Director of Budget and Management for a comprehensive framework for coordinating the planning and implementation of technology in Ohio schools. The task force is also required to examine and make long-term recommendations for technology funding for elementary and secondary schools as well as for the operational costs of the Ohio SchoolNet Commission.

The task force must consist of six legislative voting members (two majority members and one minority member from each house) and the following nine nonvoting ex officio members, or designees: the Superintendent of Public Instruction; the Director of Budget and Management; the Director of Administrative Services; the Executive Director of the Ohio SchoolNet Commission; a representative of the Ohio Education Computer Network; a representative of the Public Utilities Commission; a representative of the Ohio Educational Telecommunications Network Commission; a business representative (appointed by the President of the Senate); and a representative of an educational service center (appointed by the Speaker of the House). Upon issuing its report the task force ceases to exist.

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<sup>37</sup> Section 11 of Am. Sub. H.B. 282 of the 123rd General Assembly.

## School facilities programs

### Background

State law authorizes several programs to help school districts construct, repair, or renovate school buildings. The main program is the Classroom Facilities Assistance Program (CFAP), which is intended to eventually permit all districts to receive state money to address all of their facilities needs in a single project.<sup>38</sup> It is a graduated, cost-sharing program where a school district's priority for funding and its portion of the cost of its project is based on the relative wealth of the district. Lower-wealth districts are served first and receive a larger percentage of their total needs than wealthier districts will receive when it is their turn to be served.

There are other programs designed to meet the special needs of certain districts. The Exceptional Needs School Facilities Assistance Program provides money to districts in the 50 lowest-wealth percentiles to construct a new facility needed to protect the health and safety of students on the same cost-sharing basis as under CFAP.<sup>39</sup> Under the Accelerated Urban School Building Assistance Program, the six remaining "Big-Eight" districts that have not yet received assistance under CFAP may begin applying for assistance in July 2002.<sup>40</sup> This program essentially permits those districts to begin their projects earlier than they otherwise would be able to under CFAP. The districts, with Ohio School Facilities Commission (SFC) approval, also may break their projects up into segments, completing each one sequentially and applying school district resources toward each one separately. Finally, under the School Building Assistance Expedited Local Partnership Program, most districts that have not already been served under CFAP may enter into agreements with SFC permitting them to apply the expenditure of school district money on approved parts of the respective districts' needs prior to their eligibility under CFAP toward their respective portions of their CFAP projects when they become eligible for that program.<sup>41</sup>

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<sup>38</sup> *The Classroom Facilities Assistance Program is generally codified in R.C. 3318.01-3318.20, not all sections in the act.*

<sup>39</sup> *R.C. 3318.37.*

<sup>40</sup> *R.C. 3318.38. The six districts to which this program applies are Akron, Cincinnati, Columbus, Cleveland, Dayton, and Toledo.*

<sup>41</sup> *R.C. 3318.021 (not in the act), 3318.36, 3318.361 (not in the act), and 3318.362.*

**Repeal of maintenance tax requirements**

(R.C. 3318.04, 3318.05, 3318.051, 3318.052, 3318.053, 3318.06, 3318.08, 3318.12, 3318.36, 3318.362, 3318.37, and 3318.38; repealed R.C. 3318.055, 3318.061, 3318.081, 3318.13, 3318.14, 3318.17, and 3318.361)

Besides the requirement that each participating district generate money to pay its share, all of the school facilities programs require that a district levy an additional 23-year half-mill tax (or earmark other existing taxes in an amount equal to that tax) to pay for maintenance of the facilities acquired under the district's project. The act would have repealed the requirement that a district generate any specific money for the maintenance of the facilities acquired under a state-assisted project. It also would have permitted any district for which the voters have already approved the maintenance tax to use the proceeds from such tax for the maintenance of *any* district classroom. The Governor vetoed these provisions.

**Exception to school district ceiling for School Facilities Assistance**

(R.C. 133.06(I))

With few exceptions, under the Public Securities Law, a school district is prohibited from incurring debt greater than 9% of its tax valuation. The act permits a school district to exceed that 9% debt limitation if additional debt is necessary to raise the district's share of a building project under a state-assisted facilities construction program. In such case, SFC must notify the Superintendent of Public Instruction whenever a school district exceeds the 9% limit.

**Additional assistance for certain districts to correct oversights or deficiencies in the initial assessment or project plan**

(R.C. 133.06(D)(7), 3318.04(B)(3), and 3318.042)

Generally, once a school district has been served under CFAP, it may not receive additional assistance under the program for 20 years after its original project was begun. Continuing law provides an exception to this rule for school districts that received assistance under the program prior to May 20, 1997 (the effective date of Am. Sub. S.B. 102 of the 122nd General Assembly).<sup>42</sup> Under previous versions of the program, districts were not ranked by wealth, and a district may not have received assistance to address all of its needs (as under the current law). Continuing law permits SFC to provide additional assistance to five

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<sup>42</sup> That act substantially revised the program and established the Ohio School Facilities Commission to administer it.



pre-S.B. 102 districts per year until all eligible districts have received similar service under the program.<sup>43</sup>

The act provides another exception to the 20-year waiting rule. It permits a district whose project is under construction and that meets prescribed conditions related to the discovery of oversights or deficiencies in the initial assessment or plan to receive additional assistance to correct those conditions. If SFC provides the additional assistance, the school district is to pay its portion of the additional cost. If after making a financial evaluation of the district, however, SFC determines that the district is unable without undue hardship to pay its portion of the increase, the state and the school district must enter into an agreement whereby the state will pay the portion of the cost increase attributable to the school district and the district must thereafter reimburse the state (apparently without interest). SFC is responsible for establishing the district's schedule for reimbursing the state, which must not extend beyond five years.<sup>44</sup>

The district's portion of this additional cost is the same percentage of that cost as was the district's portion of the original project cost. Any debt that the district incurs to pay its portion of the additional cost is not counted in the district's net indebtedness for purposes of the Public Securities Law.<sup>45</sup>

**Bidding for classroom facilities projects**

(R.C. 3318.10)

The act provides that bidding of any classroom facilities construction project that a school district undertakes with state assistance (including the expenditure of local resources under the Expedited Local Partnership Program) must be in accordance with the procedures that apply to regular school district bidding for permanent improvements valued over \$25,000.<sup>46</sup> That procedure requires advertised requests for competitive bids and award of contracts to the lowest responsible bidders. A similar procedure was in place for state-assisted classroom facilities projects under prior law, and the act's provisions appear simply to specify more uniformity in procedures used for all school district permanent improvement bidding. Under prior law, however, a district had to advertise a request for bids for a state-assisted classroom facilities project once a

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<sup>43</sup> R.C. 3318.04(B).

<sup>44</sup> R.C. 3318.042.

<sup>45</sup> R.C. 133.06(D)(7) and 3318.042(C).

<sup>46</sup> R.C. 9.312 and 3313.46, neither section in the act.

week for *three* consecutive weeks. Under the act, a district is required to advertise its request once a week for *only two* weeks.

**Contingency reserve requirement**

(R.C. 3318.01(L), 3318.08(R), and 3318.086)

The act codifies SFC policy of requiring a contingency reserve as part of any CFAP project construction budget. The act also specifies that, absent special approval of SFC, the contingency reserve can be used *only* to pay costs resulting from unforeseen job conditions, to comply with rulings regarding building and other codes, to pay costs related to design clarifications or corrections to contract documents, and to pay the costs of settlements or judgments related to the project.

**Dedicating taxes toward local share of project cost**

(R.C. 3318.052)

School districts are permitted to cover their local share of CFAP project costs by pledging revenue from an income tax that the school district already levies or from a property tax it already levies for general, ongoing permanent improvements. The revenue is dedicated to paying debt charges on securities issued by the district to cover its local share of the project costs.

The act would have formalized how these taxes would be dedicated and specified that if such a tax were so dedicated the tax would have to continue to be collected for as long as the securities remained outstanding. The Governor vetoed this provision (the repeal and reenactment of R.C. 3318.052), leaving in place the prior section of law.

**Calculation and recalculation of a school district's portion under the Expedited Local Partnership Program in the event of a decrease in a district's tax valuation due to decreased electric company property assessments**

(R.C. 3318.363)

Under the Expedited Local Partnership Program, SFC generally must determine the cost of the district's total classroom facilities needs and then calculate the school district portion of that cost using a "required level of indebtedness," based on the district's debt, or its "required percentage," based on a district's percentile rank according to *three-year average* adjusted valuation per pupil. The act requires SFC to calculate a district's portion, or recalculate it if SFC has already calculated that portion, by determining the percentile rank in which the district would be located if such ranking were made using the adjusted valuation per pupil applicable to the *current* year in the case of districts that have experienced a 10% or greater decrease in tax valuation due to a decrease in the

assessment rate of taxable property of an electric company (resulting from recent changes in the tax law relating to deregulation of the electric utility industry).<sup>47</sup>

**Miscellaneous and technical changes in the Expedited Local Partnership Program**

(R.C. 3318.36(B)(2) to (5))

To participate in the Expedited Local Partnership Program, a district board must adopt a resolution certifying its intention to do so and submit it to SFC. Under prior law the resolution could not specify an election for voter approval of any necessary bond or tax measures sooner than 12 months after the date of the resolution. The act eliminates the 12-month requirement. The act further specifies that a district board may proceed with a discrete part of its district-wide project as soon as SFC and the Controlling Board approve the cost of the district's needs; however, it also clarifies that only local expenditures for *approved* costs may be applied to the district's required local portion of the district-wide project. In addition, the act provides that if a district has not begun a project under the Expedited Program prior to the time that the district becomes eligible for state assistance under CFAP, all assessment and agreement documents are void and presumably would have to be reexecuted.

**Ohio School Facilities Commission executive director and other employees**

(R.C. 3318.31)

Under prior law, the Ohio School Facilities Commission was authorized to employ and fix the compensation of any employees needed to facilitate the activities and purposes of the Commission. The act specifies instead that the Commission must employ and fix the compensation of an executive director who serves at the pleasure of the Commission. The act then provides that the executive director may employ and fix the compensation of subordinate employees who serve at the pleasure of the executive director.

## COMMUNITY SCHOOLS

**Background**

Community schools (often called "charter schools") are public, nonprofit, nonsectarian schools that operate independently of any school district under

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<sup>47</sup> These tax changes are in R.C. 5727.111, as amended by Am. Sub. S.B. 3 of the 123rd General Assembly. That section is not in this act.

contract with a public sponsor. They are exempt from many education laws and often serve a limited number of grades or a particular purpose. Conversion community schools may be sponsored by any school district in the state. Start-up community schools, on the other hand, are new schools that may be established only in "challenged school districts," which include all "Big-Eight" districts, the 13 other large urban districts, all Lucas County districts, and any district declared to be in a state of academic emergency.<sup>48</sup>

A start-up school may be sponsored by any of the following:

(1) The board of education of the challenged school district in which the school will be located;

(2) The board of education of any other local, exempted village, city, or joint vocational school district with territory in the county in which the majority of territory of the challenged school district is located;

(3) The State Board of Education.

In Lucas County, it also may be sponsored by the Lucas County Educational Service Center and the University of Toledo Board of Trustees or its designee.

**Suspension and termination of community schools that fail to comply with the contract**

(R.C. 3314.07 and 3314.072)

The sponsor of a community school is responsible for monitoring the activities of the school and for ensuring that the school complies with its contract with the sponsor. Under prior law, a sponsor could terminate or decide not to renew a contract for statutorily specified reasons only upon providing 180 days' notice to the school's governing authority.<sup>49</sup> Continuing law provides that the

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<sup>48</sup> The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown. The other 13 large urban districts (that together with the "Big-Eight" districts are sometimes referred to as the "Urban 21" districts) are Cleveland Heights, East Cleveland, Elyria, Euclid, Hamilton, Lima, Lorain, Mansfield, Middletown, Parma, South-Western, Springfield, and Warren.

<sup>49</sup> The statutory reasons for termination or nonrenewal of a community school contract (under continuing law) and for suspension of the operation of a community school with prior notice of intent to suspend (under the act) are the following: (1) failure to meet student performance requirements stated in the contract, (2) failure to meet generally

governing authority may request an informal hearing by the sponsor regarding the termination and may appeal the decision of the sponsor to the State Board of Education. Termination of a contract under prior law could not be effective until the end of a school year.

The act changes the law regarding the termination of a community school contract to require 90 days' notice to a school's governing authority (rather than 180 days), and it provides that contracts may be terminated prior to the end of a school year. In addition, it clarifies that if the State Board is the sponsor of a school, its decision to terminate the contract may not be appealed again to the State Board.

The act also authorizes a sponsor to suspend immediately the operation of a school for health and safety violations and to suspend (rather than terminate) the operation of a school for other reasons, but only after it has issued a notice of intent to suspend operation of the school. The notice must provide the school's governing authority with five days to offer a remedy. The governing authority of a school under suspension must notify the parents of any students enrolled in the school and school employees of the suspension, citing the reasons for the suspension. The contract of a suspended school may still be subject to termination.

### **Vocational weights added to funding formula for community schools**

(R.C. 3314.08)

Each community school receives funding on a per pupil basis, which the Department of Education deducts from the amounts that would otherwise be paid to the school districts where the students enrolled in the community school are entitled to attend school. For each student enrolled, the school receives the "formula amount," which is the recognized minimum base cost that must be spent on each student in a school year, times the cost-of-doing-business factor for the county in which the student's resident school district is located, plus an applicable weight for any special education student. The school also receives some disadvantaged pupil impact aid for each student.

The act adds to this funding system the same weights for vocational education students that school districts receive.

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*accepted standards of fiscal management, (3) violation of any provision of the contract or applicable state or federal law, or (4) other good cause.*



### Community school transportation

(R.C. 3314.09 and 3314.091)

Under continuing law, except as otherwise provided in this act, the school district in which a student who is enrolled in a community school is entitled to attend school generally must provide transportation for that student to the community school. A district generally must provide this transportation on the same basis as it does for students attending the district's schools. However, a board is *not* required to transport nonhandicapped students to and from a community school located in another school district if the transportation would require more than thirty minutes of direct travel time. In addition, where it is impractical to transport a pupil to and from a community school by school conveyance, a district board may, in lieu of providing the transportation, make a payment to the parent of a community school student, based on the statewide average cost of transportation per pupil.

The act permits a school district board and a community school governing authority to enter into an agreement under which the community school will assume the responsibility for transporting its own students. To be valid, the Superintendent of Public Instruction must certify that the agreement was submitted to the Department of Education by a deadline set by the Department and that it contains the qualifications of students to be transported. Under such an agreement, a community school must transport free of any charge at least its enrolled students in grades kindergarten through eight who live more than two miles from the school. It may also choose to transport (and receive the per pupil payment for transporting) any students who live at least one mile from the school. Nevertheless, the governing authority may make a payment to a student's parent in lieu of transporting the student it is required to transport if the drive time for transporting the student from the student's residence to the school is more than thirty minutes.

If a community school assumes transportation responsibility under the agreement, it is entitled to a payment from the state, which is deducted from the state payments for transportation that otherwise would be paid to the students' home districts. The amount of the payment is \$450 per pupil transported in fiscal year 2002. That amount is inflated by the annual increase in the Consumer Price Index for all urban transportation in each subsequent fiscal year.

The act would have required any school district that provides transportation to students enrolled in a community school to provide such transportation in accordance with daily and annual instructional schedules of the community school so that students may be present on time and at all times the school is open for instruction. It also would have provided that these schedules are the "sole responsibility" of a community school's governing authority as long as the



schedules are in conformance with the state community school law (Chapter 3314.) and in conformance with the school's contract with its sponsor. The Governor vetoed these provisions.

**Community School Classroom Facilities Loan Guarantee Program**

(R.C. 3314.08(J)(2), 3318.50, 3318.51, and 3318.52; Section 102.02)

Start-up community schools must arrange for their own buildings in which to operate. The act creates a loan guarantee program to be administered by the Ohio School Facilities Commission (SFC). Under that program, start-up community schools may apply for loan guarantees from SFC for up to 15 years on 85% of the principal and interest on loans to acquire classroom facilities.

A school may acquire the facilities with a loan guaranteed under the program by lease, purchase, remodeling, or any other means except by new construction. In addition, under the act, the facilities must meet specifications adopted by SFC. However, the Governor vetoed the provision requiring SFC to adopt these specifications.<sup>50</sup>

The act also requires that SFC verify that the applicant is creditworthy and that the loan to be guaranteed is obtained from a financial institution regulated by either the United States or the State of Ohio.

The act prohibits the Commission from exceeding, at any one time, an aggregate liability of \$10 million to repay guaranteed loans.

Finally, the act requires SFC in fiscal year 2002 to set aside \$10 million of its capital appropriations for this program and to deposit that amount into a special fund established by the act.

**Right of first refusal on sale of school district real property for community schools**

(R.C. 3313.41(A) and (G); Section 208)

A school district board may dispose of real and personal property owned by the district only in a manner prescribed by law. Generally, when a board decides

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<sup>50</sup> *The specifications were to be adopted by SFC in consultation with the Department of Education Office of School Options within nine months after the effective date of the act (R.C. 3318.51.) Although the Governor vetoed the requirement that SFC adopt specifications in R.C. 3318.51, the Governor did not veto the language in R.C. 3318.50(B) requiring that the facilities meet SFC specifications.*

to dispose of property valued at greater than \$10,000, it must offer the property for sale at public auction. If the property does not sell at auction, it may be sold at a private sale. Property with a value of \$10,000 or less also may be sold at private sale.

The act requires that when a school district board decides to sell real property, it must first offer the property to the governing authorities of start-up community schools within the district's territory at a price not higher than the appraised fair market value of the property. If no community school governing authority accepts the offer within 60 days after the offer is made, the board may dispose of the property in the manner otherwise provided by law.<sup>51</sup>

**Deductions from state payments for Internet community schools that fail to supply computer hardware and software to students**

(R.C. 3314.08(N))

As noted above, community schools often provide a particularized educational service for certain students seeking that service. Some schools offer an Internet-based environment where most or all of the student's academic work is performed by computer connected to the Internet. The act requires that state payments to any such Internet or computer-based school be reduced if the school fails to deliver, install, and activate computer hardware and software or to provide other education materials and services according to its contract with the school's sponsor in a timely manner for all students enrolled in the school. The reductions in payments are to be made in accordance with rules adopted jointly by the Superintendent of Public Instruction and the Auditor of State. One provision of the act would have provided for sponsors of Internet-based community schools also to join in adopting the rules, but the Governor vetoed that provision.

The act also requires the Superintendent of Public Instruction and the Auditor of State to jointly establish a method for auditing Internet or computer-based community schools to ensure compliance with their promises to provide computer equipment and materials. Under the act, sponsors of Internet-based community schools would have been included in the development of these auditing methods; however, the Governor vetoed that provision.

Finally, it requires the Superintendent and the Governor to develop recommendations to the General Assembly for legislative changes to ensure future fiscal and academic accountability for such schools. As in the case of the rules on

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<sup>51</sup> Section 208 of the act provides that these right of first refusal provisions take effect 60 days after the act's effective date.



payment reductions and the methods of auditing schools, the sponsors of Internet-based community schools would have joined in the development of legislative recommendations, but the Governor vetoed that provision.

## **OTHER PRIMARY-SECONDARY EDUCATION PROVISIONS**

### **State minimum teacher salary schedule**

(R.C. 3317.024, 3317.052, 3317.13, and 3317.19; Section 44.10)

Although school district boards of education set the compensation rate for the teachers they employ (most often as a result of collectively bargaining with the organization representing the teachers), state law provides a schedule for *minimum* salaries that must be paid to teachers based on level of education attained and years of experience. The act amends that schedule to increase the minimum base salary paid to beginning teachers with a bachelor's degree from \$17,000 to \$20,000 and to increase proportionally the minimum salaries for teachers with different levels of education and experience.<sup>52</sup> It also permits the Department of Education, with Controlling Board approval, to make a supplemental payment in FY 2002 to those school districts that must increase their teacher salaries in order to comply with the new schedule if the calculated increase in their FY 2002 state aid does not cover the cost of that compliance.<sup>53</sup> The act does not affect the cost of state-funded units for special education, vocational education, and gifted education, which are tied to the state schedule.

### **Change of term "vocational education" to "career-technical education"**

(R.C. 3303.01)

The act provides that whenever the term "vocational education" occurs throughout the Revised Code, that term is deemed to refer to "career-technical education." However, this change specifically does not apply to joint vocational school districts and vocational education districts, which must continue to be referred to by those terms.

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<sup>52</sup> R.C. 3317.13.

<sup>53</sup> Section 44.10 of the act.

**Relocation of gifted education staff within the Department of Education**

(Section 190)

Staff members of the Department of Education who oversee gifted education are currently housed in the Center for Students, Families, and Communities within the Department. The act requires the Department to consider the feasibility and desirability of relocating those staff members to the Center for Curriculum and Assessment.

**LOEO study of gifted education**

(Section 191)

By January 1, 2000, each school district had to adopt a districtwide plan for the identification of gifted students, which specified the assessment techniques, assessment schedule, and parental notification procedures the district would use in determining gifted abilities.

The act requires the Legislative Office of Education Oversight (LOEO) to review and analyze these plans for the identification of gifted students. By November 30, 2002, LOEO must issue a report that summarizes (1) the methods school districts are using to identify gifted students and (2) the numbers of gifted students being identified. Copies of the report must be provided to the President of the Senate and the Speaker of the House of Representatives.

**Inclusion of a coordinator for gifted education on a pupil personnel services committee**

(R.C. 3321.01(D))

Continuing law requires each school district to establish a pupil personnel services committee. The sole responsibility of the committee is to issue a waiver allowing a student to be admitted to first grade without having completed kindergarten if the committee believes the student is socially and academically prepared for first grade. Members of the district's committee include the director of pupil personnel services, an elementary school counselor, an elementary school principal, a school psychologist, and a first-grade classroom teacher.

The act adds a coordinator for gifted education (if one is employed by the district or the educational service center that serves the district) to the list of committee members.

### **School of attendance for homeless children**

(R.C. 3313.64(F)(13))

Under a federal law enacted in 1987, Ohio receives grants for programs to assist homeless persons and families.<sup>54</sup> One of the statutory requirements for receiving the grants is a statewide plan for ensuring homeless children access to a free public education. Under Ohio law, a student is generally assigned to the schools of the district in which the student's parent resides, but the lack of a definite residence makes it less certain where a homeless student must go to school.

The act states that all school districts must comply with the federal law and codifies a provision of the Department of Education's plan relating to which school a homeless student is entitled to attend. Specifically, if a child is staying with his or her parent at a homeless shelter, the parent may choose to send the child to either the school the child was enrolled in prior to becoming homeless or the school that is operated by the local school district and serves the geographic area in which the homeless shelter is located.<sup>55</sup> In either case, the school is obligated to accept the child as a student and cannot charge any tuition for enrollment.

### **Changes in the organization of the OhioReads Office**

(R.C. 3301.85)

The OhioReads Office, which is within the Department of Education, was established in 1999 as an agency to award and oversee grants to school districts and community organizations for providing assistance to students in developing their reading skills. The Office is under the supervision of the OhioReads Council, which consists of five voting members appointed by the Governor, two ex officio voting members (the Director of Budget and Management and the Superintendent of Public Instruction, or their designees), and four nonvoting legislative members. The grants awarded by the Office are generally used to pay administrative costs in securing and directing volunteer tutors and to reimburse the cost of conducting background checks for the volunteers.

Under continuing law largely retained by the act, the Office is under the supervision of an "executive director" appointed by the Superintendent of Public

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<sup>54</sup> *McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq.*

<sup>55</sup> *The act refers to the school which the student attended before becoming homeless as the student's "school of origin." (See 42 U.S.C. 11432(g)(3)(C).)*

Instruction with the advice and consent of the OhioReads Council. The act simply changes the name of this position to "executive administrator."

Continuing law also authorizes the Superintendent to hire additional staff for the Office. The act specifies that these additional staff members serve at the pleasure of the Superintendent and are not subject to any provision of the Collective Bargaining Law. But it also provides that any person employed in the Office prior to the effective date of this act who is in a bargaining unit will continue to be in that unit. When such a person vacates the person's OhioReads Office position for any reason, the position will cease to be subject to the Collective Bargaining Law.

### **State Employment Relations Board teacher salary information**

(R.C. 4117.102)

Copies of all school district collective bargaining agreements must be filed with the State Employment Relations Board (SERB), the state agency that oversees all collective bargaining activity at the state and local levels. The act requires the SERB to maintain a list of all school districts that have collective bargaining agreements with teacher organizations and to update annually, for each district on the list, the starting teacher salary for that district (for teachers with bachelor's degrees and no prior experience). Under the act, the SERB must annually furnish a copy of the updated list to the State Board of Education.

### **Consolidation of noncontiguous school districts**

(R.C. 3311.062)

Continuing law specifies that school district territory is to be contiguous.<sup>56</sup> Generally, this means that only school districts that abut each other may consolidate. The act permits districts that do not share a common border to form a new school district from their respective territories if the board of education of any district with territory between the noncontiguous portions of the districts wishing to consolidate adopts a resolution approving the consolidation.

### **Authority of school districts to self-insure liability risks**

(R.C. 3313.201)

Ongoing law requires the board of education of each school district to procure a policy of insurance insuring officers, employees, and pupils against

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<sup>56</sup> R.C. 3311.06 and 3311.37, not in the act.

liability for damage or injury to persons and property. The insurance must be provided by an insurance company authorized to do business in Ohio. Under the Political Subdivision Sovereign Immunity Law (Chapter 2744.), however, a school district is permitted to establish and maintain a self-insurance program relative to its and its employees' potential liability in damages for injury, death, or loss to persons or property caused by an act or omission of the school district or any of its employees in connection with a governmental or proprietary function.

The act specifies that the statutory requirement to purchase liability insurance cannot be construed to affect the authority of any school district to establish and maintain self-insurance programs under the authority conferred by any other provision of the Revised Code. In addition, it states that such programs may be established and maintained in combination with, or as an alternative to, the purchase of insurance policies.

### **Auxiliary Services**

#### **Mobile Unit Replacement and Repair Fund**

(R.C. 3317.064(C))

Auxiliary services money is paid to school districts to provide specified goods and services for students at chartered nonpublic schools. The services that may be purchased for such students include therapeutic psychological, speech, and hearing services; guidance and counseling services; "remedial services"; and special education services.<sup>57</sup> Money from the Auxiliary Services Mobile Unit Replacement and Repair Fund (which consists of excess money from the Auxiliary Services Personnel Unemployment Compensation Fund) was formerly used exclusively to make payments to school districts to relocate, replace, or repair mobile classroom units used in some cases to provide these services. The act provides that school districts may apply to the Department of Education for money from the "mobile unit" fund to be used by the districts to offer "incentives for early retirement and severance" to the district personnel that provide those auxiliary services.<sup>58</sup> However, the provision limits the percentage of the costs of providing early retirement to an employee that can be paid from this fund to the percentage of the employee's total service credit formed by the employee's service to nonpublic school students.

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<sup>57</sup> R.C. 3317.06.

<sup>58</sup> *The act also requires the Treasurer of State to transfer \$1.5 million from the Auxiliary Services Personnel Unemployment Compensation Fund to the Auxiliary Services Mobile Unit Replacement and Repair Fund in each year of the 2001-2003 biennium (Section 44.18).*

**Leasing of computers and software**

(R.C. 3317.06)

School districts may use auxiliary services funds to purchase instructional equipment (including computer hardware), and secular, neutral, nonideological computer software and other technological instructional materials for use by nonpublic school students. The act permits school districts to "lease" as well as purchase such instructional equipment and materials.

**School bus driver physical examinations**

(R.C. 3327.10)

Continuing law requires the driver of a school bus or motor van to have an annual physical exam that conforms to rules of the State Highway Patrol to assess the driver's physical fitness. The act specifies that the examination may be performed by a physician, certified nurse practitioner, or clinical nurse specialist.

**HIGHER EDUCATION**

**Elimination of fee caps for state universities**

(Section 94.03)

Under uncodified law set to expire at the end of FY 2001, boards of trustees of state universities may not increase combined university main campus in-state undergraduate instructional and general fees for an academic year more than 6% over the amounts charged in the prior academic year. In addition, the boards of trustees may not authorize combined university main campus in-state undergraduate instructional and general fee increases of more than 4% in a single vote.

The act allows this provision to expire, removing all limitations on fee increases for all state universities beginning with FY 2002.

**Increase of state university enrollment limitations**

(R.C. 3345.19)

Continuing law limits enrollment at the central campuses of five state universities. Formerly, Bowling Green University was limited to 16,000 students, Kent State University was limited to 21,000 students, Miami University was limited to 16,000 students, Ohio University was limited to 21,000 students, and the Ohio State University was limited to 41,000 students. The act increases the enrollment limitation of each of these universities by 1,000 students. In addition,

the act removes the requirement that the Board of Regents approve contracts for construction of new residence hall facilities.

**Increase in Ohio Instructional Grant amounts**

(R.C. 3333.12; Section 94.07)

The Board of Regents administers an instructional grant program. This program basically pays instructional grants to full-time, Ohio resident students who attend a public, private, or proprietary institution of higher education in Ohio and are enrolled in a program leading to an associate or bachelor's degree. Grant amounts are for the equivalent of one academic year, and the Board of Regents establishes all rules concerning application for the grants.

The act increases the maximum grant amounts for public, private, and proprietary institutions. In addition, it raises the maximum base amount of gross income a student may have and still qualify for a grant, both in the case of students who are financially dependent and those students who are financially independent.

Grant amounts are generally based on whether an applicant is financially dependent or independent; the combined family income (if dependent) or the student and spouse income (if independent); the number of dependents; and whether the applicant attends a private nonprofit, public, or proprietary school. The amount of the grant cannot exceed the total instructional and general fees charged by the student's school.

Separate tables in each fiscal year set forth the grant amounts, one for each category of student (based on type of institution and financial dependence or independence). Each table has headings for income ranges and the number of dependents (up to five) in the family, with a grant amount for each income range and family size. The maximum and minimum grant amount under the act for each of the types of institutions is as follows:

**For a student enrolled in a private nonprofit institution**

	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>
Minimum Grant	\$396	\$420	\$444
Maximum Grant	\$4,872	\$5,160	\$5,466

**For a student enrolled in a proprietary school**

	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>
Minimum Grant	\$336	\$354	\$372
Maximum Grant	\$4,128	\$4,374	\$4,632

**For a student enrolled in a public school**

	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>
Minimum Grant	\$162	\$168	\$174
Maximum Grant	\$1,956	\$2,070	\$2,190

**Increase in amount of Ohio Academic Scholarship**

(R.C. 3333.21 and 3333.22; Section 94.08)

The Board of Regents annually awards 1,000 scholarships to students who are Ohio residents and enrolled full-time at a state-assisted college or university, nonprofit institution, or proprietary school. Students are chosen on the basis of achievement and ability, as measured by grade point average and performance on a competitive examination. Under prior law, the scholarship amount awarded to each student for an academic year was \$2,000. The act permanently increases this amount to "no less" than \$2,000, and specifically provides \$2,100 for FY 2002 and \$2,205 for FY 2003.

**Environmental Education Fund Scholarship**

(R.C. 3745.22)

The Environmental Education Fund is a fund administered by the Director of the Environmental Protection Agency. The purpose of the Fund is to allow for implementation of programs that enhance public awareness and understanding about issues that affect environmental quality. Toward that end, money from the Fund may specifically be used for programs such as providing educational seminars for the public, providing training on environmental issues for elementary and secondary school teachers, and developing curricula on environmental issues. The Fund also provides scholarships for students studying environmental science



or environmental engineering. Eligibility for these scholarships was previously limited to students who attended state colleges or universities, but the act expands eligibility to include students enrolled in private colleges or universities.

**Chancellor has sole authority to appoint and fix compensation of employees and staff**

(R.C. 3333.03)

Under former law, the Board of Regents fixed the compensation for the Chancellor and all other employees necessary to assist the Board and the Chancellor, and also had to give its approval to appointments of employees and staff made by the Chancellor. The Chancellor's appointees served under his or her "direction and control."

The act instead gives the Chancellor authority not only to appoint, but also to fix the compensation for, all professional, administrative, and clerical employees and staff necessary to assist the Board and the Chancellor. The Chancellor's employee and staff appointments no longer are subject to Board approval, and those appointees will serve "at the Chancellor's pleasure."

**Interactive video teleconferencing at Board of Regents meetings**

(R.C. 3333.02)

The act allows the Board of Regents to form a quorum and take votes at meetings conducted by interactive video teleconference. The Board, however, must make provisions for public attendance at any location involved in the teleconference.

**Transfers to the Ohio Public Facilities Commission**

(R.C. 151.04 and 3333.13)

Under prior law, money could be appropriated to either the Board of Regents or institutions of higher education in order to meet required lease payments to the Ohio Public Facilities Commission. The Public Facilities Commission receives such payments as a result of leases or other agreements entered into between the Commission and the Board or the institution of higher education. The act provides that only the Board of Regents is to receive appropriations for these payments. Concomitantly, it makes the Board alone responsible for estimating the amounts of such payments and submitting those estimates to the Director of Budget and Management.

Formerly, only the Chancellor of the Board could annually certify to the Director the payments contracted to be made to the Commission. The act gives authority to any vice-chancellor to make these certifications as well.

**Investments by state university or college boards of trustees**

(R.C. 3345.05)

The Governor vetoed a provision of the act relating to investments made by the boards of trustees of State universities and colleges. Ordinarily, the title to investments made by a state university or college board of trustees partially or totally with revenues other than donations (such as state money and student tuition and fees) is owned by the state but held in trust by the board. The act would have provided instead that title to any investments made by a board of trustees is not vested in the state but still is held in trust by the board of trustees, presumably on behalf of the college or university.<sup>59</sup> The act also would have required that these investments be made in accordance with the board's investment policy developed in consultation with the Auditor of State. Minimum standards for the investment policy developed in consultation with the Auditor of State. Minimum standards for the investment policy would have included all of the following:

(1) Board review and approval of a cash budget indicating funds available for investment at the beginning of each fiscal year;

(2) The establishment of a reserve fund equal to at least 25% of the total value of the investments made by the board, which would have had to be paid immediately to the college or university if the value of the investments fell to or below 75% of their original value;

(3) A requirement that any securities purchased be "investment-grade securities";

(4) The creation of an investments committee to recommend changes in the board's investment policy and to provide advice to ensure the best and safest return on the investments. The committee would have been required to meet quarterly and retain the services of an experienced investment advisor.

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<sup>59</sup> *The act would have used largely the same language as used in continuing law regarding the title of investments made from donations made to a state university or college and held by its board of trustees for the institution's investment portfolio (R.C. 3345.16, not in the act).*

### **Alternative retirement plan contributions for higher education employees**

(R.C. 3305.061)

Continuing law requires each public institution of higher education to offer an alternative retirement plan (ARP) to certain academic and administrative employees. Continuing law also authorizes the Public Employees Retirement System (PERS), School Employees Retirement System (SERS), and State Teachers Retirement System (STRS) to establish ARPs. The educational institutions and the employers of participants in the state retirement systems' ARPs must contribute a percentage of the participants' compensation to the state retirement system that would otherwise cover the ARP participant to mitigate any negative financial impact of the ARP on the state retirement system. Each state retirement system's actuary determines the percentage of the participant's compensation necessary to mitigate negative financial impact on the state retirement system. The percentage paid by public institutions of higher education is determined by actuarial studies conducted by the Ohio Retirement Study Council and submitted to the Board of Regents. The percentage is currently 6%.

Under the act, the percentage of an ARP participant's compensation contributed by an institution of higher education to a state retirement system under the institution's ARP cannot exceed the percentage of compensation employers of participants in that state retirement system's ARP are required to pay to mitigate negative financial impact on the system for participation in an ARP. Any change in the percentage of compensation contributed by an institution under an ARP, as required by the act, takes effect on the same day a change in the percentage of compensation takes effect for a state retirement system.

### **Instructional Subsidy and Challenge Review Committee**

(Section 192)

The act establishes the Instructional Subsidy and Challenge Review Committee. Members of the committee consist of two senators from the majority party and one senator from the minority party (all appointed by the President of the Senate), two representatives from the majority party and one representative from the minority party (all appointed by the Speaker of the House of Representatives), the Chancellor of the Ohio Board of Regents or the Chancellor's designee, two representatives of two-year colleges, and two representatives of the 13 state universities. The representatives of the state universities and the two-year colleges are appointed jointly by the President of the Senate and the Speaker of the House of Representatives. The committee must review the allocation formula for the state share of the instructional subsidy and all of the "Challenge" line items in the Board of Regents budget. The committee must make recommendations and

issue a report to the General Assembly no later than December 30, 2001, after which time it ceases to exist.

**Retired teacher member on State Teachers Retirement Board**

(R.C. 3307.05)

Under continuing law, the retired teacher member on the State Teachers Retirement Board is required to be a superannuate (a person receiving retirement benefits from the system). The act prohibits the Board's retired member from being a person employed in a position that requires contributions to the retirement system.

**Continuation of the Ohio Physician Loan Repayment Program**

(R.C. 4731.281; Section 173)

The statutory authority for the Ohio Physician Loan Repayment Program was scheduled to be repealed effective July 30, 2001. The act removes the scheduled repeal of this authority, thus permitting the program to continue. The program permits the Ohio Board of Regents, through contracts with primary care physicians and the Department of Health, to repay all or part of the principal and interest of student loans taken by certain primary care physicians who agree to provide primary care services in health resource shortage areas.

Twenty dollars of the renewal fee for a certificate authorizing the practice of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery is credited to the Physician Loan Repayment Fund. This earmark was to expire with the termination of the Ohio Physician Loan Repayment Program. The act provides for the earmark to continue along with the program.

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**ACT SUMMARY**

**GENERAL**

- Requires that, when the Office of Risk Management has designated state agencies to receive any of certain types of insurance coverage, the cost of that coverage be paid from appropriations made to the state agencies.
- Changes from September 1 to March 31 the date by which the Director of Administrative Services must file the annual report on the self-insured fidelity bond program with the Speaker of the House of Representatives and the President of the Senate.

- While retaining the General Assembly Open Meetings Law's requirement that legislative committees establish a reasonable method for persons to determine the time and place of committee meetings, removes the requirement that that method be established by rule.
- Clarifies the persons who qualify to receive a deceased General Assembly member's unpaid salary.
- Modifies the travel expenses payment requirement for General Assembly members to authorize reimbursement rather than an allowance for those expenses, and specifies that the reimbursement is for travel incurred by a member not more than once a week to and from one's residence.
- Would have provided that members of the General Assembly, General Assembly staff, and legislative staff are not liable in a civil action for any legislative act or duty. (Vetoed)
- Would have prevented legislative staff from being compelled to testify or to produce tangible evidence concerning communications with or advice or assistance given to General Assembly members or staff. (Vetoed)
- Would have insulated legislative documents that are not public records from subpoena. (Vetoed)
- Requires the Joint Legislative Ethics Committee to act as an advisory body to the General Assembly and to individual members, candidates, and employees on questions relating to ethics or financial disclosure.
- Imposes a late filing fee of \$12.50 per day (up to \$100 maximum) on legislative agents and their employers who fail to timely file a complete registration statement.
- Exempts persons required to file specified financial disclosure statements from being required to report payments of certain expenses in connection with meetings or conventions of a national or state organization if any state agency, including any legislative agency or state institution of higher education, pays membership dues to the organization and the expenses are incurred in connection with the person's official duties.
- Exempts legislative agents from being required to report certain expenditures made for members of the General Assembly in connection with a meeting or convention of a national organization if any state

agency, including any legislative agency or state institution of higher education, pays membership dues to that organization.

- Exempts executive agency lobbyists from being required to report certain expenditures made for specified state officials or their staff members in connection with a meeting or convention of a national organization if any state agency, including any legislative agency or state institution of higher education, pays membership dues to that organization.
- Would have increased the fee that must accompany an annual or other disclosure statement filed with the Ohio Ethics Commission for a holder of a county office (\$25 to \$45) or a city office (\$10 to \$20), member of the State Board of Education (\$10 to \$20), and member of the board of trustees of a state college or university (\$25 to \$50). (Vetoed)
- Authorizes the House of Representatives, the Senate, or any legislative agency to dispose of its excess or surplus property by sale, lease, donation, or other transfer, including sale by public auction over the Internet.
- Abolishes the Joint Legislative Committee on Federal Funds.
- Abolishes the State and Local Government Commission.
- Would have established a procedure whereby counties or not-for-profit organizations could participate in a federal grant program if a state agency eligible to receive federal funds under the program could not or had decided it would not participate fully in the program. (Vetoed)
- Transfers the operation of the Ohio Government Telecommunications System from the Capitol Square Review and Advisory Board to the Ohio Educational Telecommunications Network Commission.
- Provides that investment earnings of the Governmental Television/Telecommunications Operating Fund are to be credited to the fund.
- Would have required the state to contract with an advertising service provider for the purpose of the provider's leasing to persons media space on state agency Internet sites. (Vetoed)
- Amends or repeals former fee provisions relative to business entity or commercial transaction filings with the Secretary of State's office, and

enacts new fees for certain similar filings with the Secretary of State's office.

- Extends from 60 days to 180 days the period in which a corporation for-profit, nonprofit corporation, limited liability company, or business trust may reserve a name.
- Relocates the Secretary of State fee provisions relating to the filing and indexing of specified secured transactions records and to responses to certain related information requests, contingent upon the enactment of S.B. 74 of the 124th General Assembly and the repeal of R.C. 1309.40 by that act.
- Requires all fees collected by the Secretary of State relative to those filings generally to be deposited into the state treasury to the credit of the Corporate and Uniform Commercial Code Filing (CUCCF) Fund, and eliminates a provision that would have required that most of those fees be deposited into the General Revenue Fund on or after July 1, 2001.
- Requires the OBM Director to transfer \$1 million annually from the CUCCF Fund to the General Revenue Fund.
- Amends the purposes for which the CUCCF Fund money may be utilized.
- Creates the Secretary of State Business Technology Fund that is to be used for the upkeep, improvement, or replacement of equipment, or training employees in use of equipment, used to conduct the Secretary of State's business entity and commercial transaction filing functions.
- Provides that any program the Secretary of State implements to allow payment of fees by credit card must be operated through the state's central credit card payment program overseen by the State Board of Deposit.
- Allows the Secretary of State to implement "alternative payment programs" that allow payment of any covered fee by means other than cash, check, money order, or credit card.
- Broadens the application of the Secretary of State's "expedited filing service" that allows expeditious processing of certain filings with the

Secretary of State, and allows the Secretary of State to set the fees for use of that service by rule.

- Allows the Secretary of State to adopt rules establishing and prescribing guidelines and fees for use of a "bulk filing service" that provides a method for providing large amounts of information, possibly with fees being in reduced amounts.
- Allows the Secretary of State to adopt rules establishing and prescribing guidelines and fees for use of "alternative filing procedures" that allow filing and payment of fees through any electronic, digital, facsimile, or other means of transmission.
- Directs the Secretary of State to prescribe forms for a person to use in complying with the requirements of Title XVII of the Revised Code (the Corporation and Other Business Entity Code).
- Amends various business entity "agent for service of process" provisions.
- Transfers authority to issue notary public commissions from the Governor to the Secretary of State.
- Makes changes to the payment schedule for the services of the financial supervisor under the Local Government Fiscal Emergency Law.
- Changes the name of the Governor's Community Service Council to the Ohio Community Service Council.
- Abolishes the Women's Policy and Research Commission and the associated Women's Policy and Research Center.
- Creates for the Department of Development's Minority Business Development Division the additional duty of providing grant assistance to certain entities if they focus on business, technical, and financial assistance to minority business enterprises to assist the enterprises with fixed asset financing.
- Includes minority contractors business assistance organizations and minority business supplier development councils in the list of entities to which the Director of Development may lend funds for specified purposes and if certain determinations are made.



- Amends the definition of a "minority business enterprise" to exclude nonresidents of Ohio who have a significant presence in this state.
- Allows members of state boards and commissions who are members of the Public Employees Retirement System to be covered by state health policies, contracts, or plans if they pay both the employer and employee amounts of the premiums, costs, or charges for that coverage.
- Adds the Commission on African American Males to the list of boards and commissions to which the Department of Administrative Services provides routine support.
- Requires that the schedules for selling state bonds that the Director of Budget and Management periodically develops must include certain kinds of revenue-bond-type debt, including obligations of the Ohio Housing Finance Agency, the Ohio Turnpike Commission, and the Ohio Water Development Authority.
- Exempts several state issuers of revenue-bond-type debt from the requirement to submit to the Director of Budget and Management copies of their preliminary and final offering documents.
- Authorizes disbursement of lease rental payment appropriations.
- Conforms state government financial reporting requirements to the new financial reporting model for state and local governments adopted by the Governmental Accounting Standards Board.
- Would have required the Director of Budget and Management to select one large agency and one small agency to prepare zero-base budgets for the biennium beginning July 1, 2003 and ending June 30, 2005. (Vetoed)
- Specifies that the unified state and local cap on the volume of tax-exempt private activity bonds that can be issued in the state is the amount determined under the federal Internal Revenue Code.
- Eliminates a requirement that the Joint Select Committee on Volume Cap annually survey the entities that can issue tax-exempt private activity bonds concerning the amount of bonds issued the previous year and the amount requested for Committee approval the current year.
- Authorizes counties and municipal corporations to establish linked deposit programs, involving "eligible governments," to provide financial

assistance to steel companies; and authorizes the Treasurer of State, under the Depressed Economic Area Linked Deposit Program, to provide financial assistance to steel companies directly or through "eligible governments."

- Extends the Rural Industrial Park Loan Program until June 30, 2003.
- Specifies that any credit due a retail customer that is represented by a gift certificate, gift card, merchandise credit, or merchandise credit card, that is redeemable only for merchandise does not constitute unclaimed funds for purposes of the Unclaimed Funds Law.
- Increases the membership of the Ohio Housing Finance Agency from nine to eleven and establishes the terms of office for the additional members.
- Requires that the Ohio Housing Finance Agency include at least one member who represents the interests of nonprofit multifamily housing development organizations and at least one member representing the interests of for-profit multifamily housing development corporations.
- Modifies the Low- and Moderate-Income Housing Trust Fund by changing the definition of rural areas to be consistent with the federal "HOME" program definition and changes the rural setaside from at least 35% of money in the fund to at least 45% of the funds awarded.
- Limits spending from the Housing Trust Fund for supportive services for the homeless to not more than 20% of any current year's appropriation.
- Specifies that no minimum project size may be established for Housing Trust Fund awards to a project that is being developed to serve a special needs population and that has the support of a local social service agency.
- Limits the administrative costs of the Housing Trust Fund to 6% of the money in the fund instead of 5%.
- Clarifies that the Ohio Commission on Dispute Resolution and Conflict Management must consist of 12 specified, appointed members unless a vacancy exists in an appointment at any given time, and provides that a quorum of the Commission for the conduct of its business is a majority of the Commission's membership as it exists at any given time.

- Permits the Ohio Commission on Dispute Resolution and Conflict Management to authorize its executive director to enter into contracts for dispute resolution and conflict management services.
- Requires that money in the Education Technology Trust Fund be used for costs of the Ohio SchoolNet Commission, instead of innovative technology for primary and secondary education and higher education.
- Authorizes the Controlling Board to suspend for fiscal years 2001 and 2002 the 5% limitation on administrative spending of the Tobacco Use Prevention and Control Foundation, Southern Ohio Agricultural and Community Development Foundation, and Biomedical Research and Technology Transfer Commission.
- Extends the reporting deadline for the Tobacco Oversight Accountability Panel by six months, to December 31, 2001.
- Exempts from county competitive bidding requirements criminal justice services, social services programs, family services, or workforce development activities purchased by a board of county commissioners from nonprofit corporations or associations under programs funded by the federal government or by state grants.
- Permits specified mental health agencies and facilities to release medical and psychiatric records to a coroner, deputy coroner, or representative of either in accordance with a specified procedure, without the necessity of a court order, without having to follow another disclosure of records procedure, and without violating an otherwise applicable rule of confidentiality owed to patients or former patients.
- Changes the sheriff's furtherance of justice fund law so that the amount paid into such a fund is only a portion of the sheriff's county-paid salary, not also a portion of the sheriff's state-paid salary.
- Allows a new community authority to issue revenue bonds to finance hospital facilities and to use a community development charge to cover various costs associated with those facilities.
- Permits a board of county hospital trustees to adopt its own bidding procedures and purchasing policies for services that are provided through a joint purchasing arrangement sponsored by a nonprofit organization and that are routinely used in the hospital's operation.

- Permits limited home rule townships to increase the number of members of the board of township trustees from three to five members, and requires those board members to be elected from a slate of candidates for the office of township trustee.
- Increases in specified manners the pay for township trustees and clerks in townships with a budget of more than \$6 million.
- Increases from \$10,000 to \$15,000 the statutory dollar limit above which a director of public safety cannot make an obligation involving an expenditure unless first authorized and directed by municipal ordinance.
- Requires that the Ohio Athletic Commission deposit athlete agent registration fees in the Athlete Agents Registration Fund (which the act creates in the state treasury).
- Makes changes to the Ohio Arts and Sports Facilities Commission Law to cover state historical facilities by the definition of an "arts project," to modify the construction services and general building services provisions of the Commission law, and to modify a state funding requirement to apply to existing Ohio arts facilities.
- Eliminates the requirement that the state have a real property interest in state-financed Ohio arts facilities.
- Allows for cooperative agreements governing the use of Ohio arts facilities.
- Adds two voting members to the Ohio Arts and Sports Facilities Commission--both appointed by the Governor and one of whom must represent the State Architect.
- Creates in codified law the Arts Facilities Building Fund and the Sports Facilities Building Fund and authorizes investment earnings credited to them that exceed the amounts required to meet estimated federal arbitrage rebate requirements to be credited to the Ohio Arts and Sports Facilities Commission Administration Fund.
- Permits the Ohio Ballot Board to prepare arguments for or against a proposed constitutional amendment when the General Assembly adopts a resolution proposing a constitutional amendment and chooses not to

designate a group of its members to prepare either type or both types of those arguments.

- Replaces the "Physical Fitness and Sports Advisory Board" in the Department of Health with the "Governor's Advisory Council on Physical Fitness, Wellness, and Sports."
- Establishes the 1990 federal census as the population measure for a metropolitan housing authority district.
- Increases to \$125 the base fee assessed by the Superintendent of the Division of Industrial Compliance in the Department of Commerce for the reinspection of elevators when a previous attempt to inspect has been unsuccessful through no fault of the elevator inspector or the Division of Industrial Compliance.
- Changes the prevailing wage Penalty Enforcement Fund from a custodial fund of the Treasurer of State to a fund that is in the state treasury.
- Clarifies that the Liquor Control Fund is part of the state treasury.
- Increases from four to eight in any one county, and from eight to 16 in the entire state, the number of liquor agency stores that the same person may own or operate.
- Allows a manufacturer of beer or intoxicating liquor to give financial assistance to the holder of a B permit (wholesale permit for the sale of beer or intoxicating liquor) for the purpose of the holder's purchasing an ownership interest in the business, the existing inventory and equipment, or the property of another B permit holder.
- Generally increases transaction fees charged by a deputy registrar, and by the Registrar of Motor Vehicles for corresponding services performed centrally, to \$2.75 commencing July 1, 2001; and increases transaction fees to \$3.25 commencing January 1, 2003 and \$3.50 commencing January 1, 2004, but only if the deputy registrars achieve a statewide satisfaction rate of 90% on surveys conducted by the Registrar in 2002 and 2003, respectively.
- Allows a board of county commissioners, upon request from a board of township trustees and on an annual basis, to increase the township's allocation of the second additional county motor vehicle license tax

levied under R.C. 4504.16 to a percentage greater than the 30% otherwise required to be distributed to a township.

- Allows a board of county commissioners, on an annual basis, to increase or decrease a township's allocation of the second additional county motor vehicle license tax levied under R.C. 4504.16 to a percentage greater or less than the 30% otherwise required to be distributed to a township, but only if the board of county commissioners first obtains a resolution from the township trustees consenting to the allocation modification.
- Requires the Registrar of Motor Vehicles to consider prescribing certain characteristics to distinguish a driver's license issued to a person under 21 years of age.
- Establishes late fees for holders of certified public accountant certificates or public accountant registrations who fail to timely apply for or renew their Ohio practitioner's permits or nonpractitioner's registrations.
- Increases the maximum fine that the Accountancy Board may levy against a registered firm or a holder of a CPA certificate, a PA registration, an Ohio permit or an Ohio registration to \$5000 for each disciplinary offense.
- Increases to \$21 the fee charged by the State Board of Cosmetology for the reexamination of an applicant who failed to pass the cosmetology examination.
- Requires that five members of the Board of Embalmers and Funeral Directors be licensed embalmers and practicing funeral directors with at least ten consecutive years of Ohio experience and that one of these members be knowledgeable and experienced in operating a crematory.
- Effective December, 2002, changes from annual to biennial the license renewal for embalmers and funeral directors and renewal of a license to operate a funeral home, embalming facility, and crematory facility.
- Permits the Board of Embalmers and Funeral Directors to contract with a third party to assist it in performing functions necessary to administer and enforce the continuing education requirements established for license renewal of embalmers and funeral directors and permits those third parties to charge a fee for their services.

- Gives broader rule-making authority to the Board of Embalmers and Funeral Directors concerning continuing education requirements for license renewal.
- Clarifies that the Ohio Optical Dispensers Board has the authority to contract with a testing service to administer examinations for optical dispensing license applicants.
- Separates the examination process from the newly created license application process for licensed dispensing opticians and makes existing examination application requirements the requirements that an applicant must meet to apply for licensure.
- Increases fees charged by the State Board of Sanitarian Registration.
- Eliminates the residency requirement for sanitarian registration.
- Provides that the practice of occupational therapy includes the administration of prescribed topical drugs.
- Revises the definitions of "motor vehicle collision repair operator" and "motor vehicle collision repair facility" and defines "collision" and "collision repair" for purposes of the Motor Vehicle Collision Repair Operators Law.
- Increases the initial and annual renewal fee from \$100 to \$150 for the registration of all motor vehicle collision repair operators on and after January 1, 2002, and establishes as the fee for a motor vehicle collision repair operator who fails to register the initial fee then in effect plus an additional amount equal to the initial fee then in effect for each calendar year that the operator is not registered.
- Provides that any person or entity that conducts or attempts to conduct business as a motor vehicle collision repair operator in violation of the Motor Vehicle Collision Repair Operators Law performs an unfair and deceptive act or practice.
- Allows the Board of Motor Vehicle Collision Repair Registration to impose an administrative fine under specified circumstances.
- Requires the Consumers' Counsel Governing Board to meet at least every third month and to select a chairperson and vice-chairperson at its first

meeting each year; and allows the Board's chairperson to designate the vice-chairperson to perform the duties of the chairperson.

- Continues the Technology Action Board; requires the Board to adopt rules under the Administrative Procedure Act governing its grant award program, including rules specifying application procedures for and standards for grant awards and rules prescribing the form of the application for a grant award; and requires the Board to adopt rules directing grant awards to be used by only the applicant to whom a grant is awarded and only for the specific purposes stated by the applicant in the approved application for the grant.
- Changes to December 31, 2001 the deadline by which the Civil Service Review Commission must issue a report regarding its review of civil service laws and practices in Ohio.
- Requires the Director of Job and Family Services to present a report to specified members of the General Assembly on or before October 1, 2001, that describes the Director's plan to transfer services from the existing local public employment offices to other types of service centers.
- Would have required the Director of Job and Family Services to continue operations through each of the existing local public employment offices until January 1, 2002, and stated the General Assembly's intention that the Director negotiate with specified local officials regarding the transfer of services from those offices to other types of service centers. (Vetoed)
- Extends from August 1, 2001, to March 1, 2002, the report deadline for the joint legislative committee to study the impact of high technology start-up businesses on economic development and small businesses in Ohio.

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## CONTENT AND OPERATION

### GENERAL

#### *Payment of the cost of insurance coverage by state agencies*

(R.C. 9.821)

Continuing law creates the Office of Risk Management in the Department of Administrative Services (R.C. 9.821(B)). It authorizes the Office to provide all insurance coverage for the state, including automobile liability, casualty, property,





public liability, and, generally, fidelity bond insurance. The act requires that the cost of the insurance coverage be paid from appropriations made to the state agencies that the Office has designated to receive the coverage.

**Self-insured fidelity bond program report**

(R.C. 9.822)

Continuing law requires that the Department of Administrative Services, through its Office of Risk Management, establish insurance plans that can provide for insurance purchases or self-insurance. One type of insurance that must be provided is the fidelity bonding of state officers, employees, and agents who are required by law to provide a fidelity bond. The Director of Administrative Services must annually file a written report on any *self-insured* fidelity bond program established, detailing information relative to the premiums collected, income from recovery, loss experience, and administrative costs. The Director also must submit a separate, specified report on the Risk Management Reserve Fund, a fund consisting of money collected from each state agency to purchase insurance or administer self-insurance programs. That Fund report is accompanied by a written report of a competent property and casualty actuary certifying the adequacy of the rates of contributions, the sufficiency of excess insurance, and whether the amounts reserved conform to the Fund requirements. Portions of the most recent Fund report that pertain to any self-insured fidelity bond program must accompany its annual program report.

Both of the above reports are filed with the President of the Senate and the Speaker of the House of Representatives. The report on the self-insured fidelity bond program formerly had to be filed by September 1; continuing law requires that the report on the Risk Management Reserve Fund be filed by March 31. The act changes the date for submitting the report on the self-insured fidelity bond program to March 31 also.

**Notice of legislative meetings**

(R.C. 101.15)

Former law required committees and subcommittees of either house of the General Assembly and joint committees or subcommittees, including conference committees, to establish *by rule* a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. Continuing law provides that a meeting may not be held unless at least 24 hours' advance notice is given to the news media that request notification. The act continues to require all committees and subcommittees to establish a reasonable method for providing this notice, but no longer requires the method to be established by rule.

**Clarification of persons eligible to receive a deceased General Assembly member's unpaid salary**

(R.C. 101.27(A)(1))

Former law required that, upon the death of a General Assembly member, any unpaid salary due the member for the remainder of the member's term be paid, in monthly installments, to the member's "dependent, surviving spouse, children, mother, or father," in that order. The act removes "dependent" from this provision, thereby (1) eliminating an ambiguity whether (a) it was a noun describing a person who was financially dependent upon the deceased member or (b) it was an adjective modifying a deceased member's "surviving spouse" or modifying a deceased member's "surviving spouse, children, mother and father," and (2) specifying that the deceased member's unpaid salary will be paid in monthly installments to a surviving spouse, children, mother, or father, in that order.

**Travel reimbursement of General Assembly members**

(R.C. 101.27(A)(2))

Former law required that each General Assembly member receive a travel allowance per mile each way, at the same mileage rate allowed for the reimbursement of travel expenses of state agents, for mileage once a week during session from and to the member's place of residence by the most direct highway route to and from Columbus. The act changes the payment requirement from an allowance to a reimbursement and specifies that the reimbursement is to be paid for mileage not more than once a week during session for travel incurred by a member from and to the member's place of residence by such a route to and from Columbus.

**General Assembly; legislative staff; legislative documents**

(R.C. 101.30, 101.302, and 101.303)

This provision, vetoed by the Governor, would have provided (1) that members of the General Assembly, General Assembly staff, and legislative staff are not liable in a civil action for any legislative act or duty and (2) that such persons, in relation to a legislative act or duty, are not subject to subpoena or subpoena duces tecum in a civil action, may not be made party to a civil action, and may not be compelled to testify or to produce tangible evidence in a civil action.

Additionally, the provision would have prevented any member of the legislative staff from being compelled to testify or to produce tangible evidence concerning any communication with or any advice or assistance given to a

member of the General Assembly or General Assembly staff in relation to any legislative act or duty. It also would have provided (1) that legislative documents that are not public records under ongoing law are not subject to subpoena duces tecum and (2) that a member of the General Assembly, General Assembly staff, or legislative staff is not subject to subpoena or subpoena duces tecum, and cannot be compelled to testify, with respect to legislative documents that are not public records.

**Duties of the Joint Legislative Ethics Committee**

(R.C. 101.34(B)(8))

Continuing law requires the Joint Legislative Ethics Committee (JLEC), among other duties, to act as an advisory body to the General Assembly and to individual members, candidates, and employees on questions relating to possible conflicts of interest. The act expands the topics regarding which JLEC must act as an advisory body to the General Assembly and the other specified persons to include questions relating to ethics and questions relating to financial disclosure.

**Late filing fee for legislative agents and their employers who fail to timely file a complete registration statement**

(R.C. 101.34(C) and 101.72(E) and (G))

Continuing law requires that a legislative agent and employer pay a registration fee of \$10 for filing an initial registration statement. The act requires that, when a legislative agent and employer (1) fail to file an initial registration statement or (2) an amended registration statement (because of deficiencies in the content of the information in a filed statement), within 15 days after receiving a specified notice from the Joint Legislative Ethics Committee (JLEC), JLEC must assess a late filing fee of \$12.50 per day, up to a maximum late filing fee of \$100. The act allows JLEC to waive the late filing fee for good cause shown. The act's assessment of the late filing fee replaces a provision of former law that required JLEC to notify the Attorney General, the Governor, and each General Assembly member regarding "the pending investigation" when a person failed to file an initial or amended registration statement within the 15-day period.

The act requires these late filing fees to be deposited into the Joint Legislative Ethics Committee Fund, where registration fees are also deposited.

## **Reporting specified expenditures in connection with meetings or conventions**

(R.C. 101.73, 102.02, 102.03, 102.031, and 121.63)

### **Legislative agents and executive agency lobbyists**

Ohio law generally requires legislative agents and their employers, and executive agency lobbyists and their employers, to file a specified statement of expenditures made by the agent or lobbyist. The statement must be filed in the office of the Joint Legislative Ethics Committee along with an updated registration statement. Under former law, if a legislative agent made an expenditure as payment "for meals and other food and beverages" provided to a member of the General Assembly at a meeting or convention of a national organization to which either house of the General Assembly, a legislative agency, or any other state agency paid membership dues, the legislative agent was not required to report that expenditure. Similarly, an executive agency lobbyist was not required to report expenditures made as payment "for meals and other food and beverages" provided to an elected executive official, a state department director, an executive agency official, or a staff member of any of these public officers or employees at a meeting or convention of a national organization to which either house of the General Assembly, a legislative agency, or any other state agency paid membership dues. (R.C. 101.73(B)(3) and 121.63(B)(3).)

The act changes the list of state entities whose payment of membership dues to a national organization exempts legislative agents and executive agency lobbyists from being required to report expenditures as payment "for meals and other food and beverages" provided to a member of the General Assembly or to any of the previously listed public officers or employees, at a meeting or convention of that organization. The act exempts legislative agents and executive agency lobbyists from the reporting requirements if *any state agency*, including any legislative agency or state institution of higher education, pays membership dues to the national organization. (R.C. 101.73(B)(3) and 121.63(B)(3).)

### **Public officials and employees**

Public officials and specified public employees are generally required to file with the appropriate ethics commission financial disclosure statements identifying sources of income, gifts, and payments for travel expenses they receive. Under former law, they were not required to identify sources of payment for travel expenses to, or for meals and other food and beverages provided at, a meeting or convention of a national or state organization to which either house of the General Assembly, any legislative agency, a state institution of higher education, any other state agency, or any political subdivision or office or agency of a political subdivision paid memberships dues, if the expenses were incurred in connection with official duties. (R.C. 102.02(A)(8) and (9).)



The act changes the list of entities whose payment of membership dues to a national or state organization will exempt the public officials and specified public employees from being required to report the sources of payment for travel expenses to, or for meals and other food and beverages provided at, a meeting or convention of that organization. The act exempts those officials and employees from the reporting requirements if *any state agency*, including any legislative agency or state institution of higher education, pays membership dues to the national or state organization, or (as under continuing law) any political subdivision or agency of a political subdivision pays membership dues, provided the expenses are incurred in connection with official duties. (R.C. 102.02(A)(8) and (9), 102.03(H), and 102.031(C)(2).)

**Ethics Commission disclosure statement filing fees**

(R.C. 102.02(E)(2))

Continuing law requires certain public officials or employees to file an annual or other disclosure statement with the appropriate ethics commission (the Ohio Ethics Commission, the Joint Legislative Ethics Committee, or the Board of Commissioners on Grievances and Discipline of the Supreme Court). A fee must accompany a filed disclosure statement.

The Governor vetoed provisions of the act that would have increased this fee for certain individuals who file with the Ohio Ethics Commission. The following table summarizes the vetoed fee changes. Included is a description of the position of the individual who must pay a fee with the relevant disclosure statement, the fee's amount under now continuing law, and the fee's amount that the act would have established but for the Governor's veto.

<b>Individual's position</b>	<b>Fee under now continuing law</b>	<b>Fee under the act that was vetoed</b>
County office	\$25	\$45
City office	\$10	\$20
State Board of Education member	\$10	\$20
State college or university board of trustees	\$25 <sup>60</sup>	\$50

<sup>60</sup> *Continuing law does not specifically set a fee for the office of member of a board of trustees of a state college or university. However, a general provision of the Ethics Law that applies to all individuals filing statements who are not subject to a specifically set filing fee requires a \$25 filing fee.*

### **Disposal of legislative surplus property**

(R.C. 101.691)

Under current law, the Department of Administrative Services operates a program to dispose of excess or surplus property held by a state agency.<sup>61</sup> Generally, the department must offer the property for sale, lease, or other transfer, or as a donation, to other state agencies, institutions of higher education, school districts, other political subdivisions, private fire or emergency medical services organizations, and nonpublic schools chartered by the State Board of Education, in that order of priority. Any remaining property can be offered to the general public by auction, sealed bid, or negotiation. (R.C. 125.12 to 125.14, not in the act.)

The act authorizes the House of Representatives, the Senate, or any legislative agency to dispose of excess or surplus property it possesses by sale, lease, donation, or other transfer, including sale by public auction over the Internet. Proceeds from such a sale, lease, or transfer must be deposited in the House Reimbursement Fund, the Senate Reimbursement Fund, or a legislative agency special revenue fund identified by the director of the agency. (Under continuing law, the House and Senate Reimbursement funds are used to pay operating expenses of the respective chambers: R.C. 101.272, not in the act.)

The act specifies that the new self-disposal authority does not prohibit the House of Representatives, the Senate, or a legislative agency from having the Department of Administrative Services dispose of its excess or surplus property.

### **Abolition of the Joint Legislative Committee on Federal Funds**

(R.C. 103.31 and 103.32)

The act abolishes the Joint Legislative Committee on Federal Funds. The Joint Committee consisted of members from the Senate and House and performed all of the following functions: (1) conducted public hearings, (2) reviewed block grant plans proposed by state agencies, (3) made recommendations and submitted reports to the General Assembly and state and federal agencies, and (4) took any other actions that were necessary or appropriate to participation by Ohio and its political subdivisions in federal block grant programs.

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<sup>61</sup> "Excess" property refers to equipment, materials, supplies, and other items of personal property that have a remaining useful life, but that are no longer needed by the state agency. "Surplus" property refers to items no longer having any use to the state, including obsolete and scrap items.

### **Abolition of the State and Local Government Commission**

(R.C. 103.143(D), 105.45, 105.46, 503.162, and 3750.02)

The act abolishes the State and Local Government Commission, which was a 13-member commission composed of the Lieutenant Governor, state legislators, and members appointed by the Governor or Lieutenant Governor to represent counties, municipal corporations, townships, and the general public. It provided a forum for the discussion and resolution of problems associated with the relationship between local, state, and federal governments. As a result of abolishing the Commission, (1) the Lieutenant Governor is no longer an ex officio member of the Emergency Response Commission, (2) the Commission's function of annually commenting on a draft report of the Legislative Service Commission compiling local impact statements related to General Assembly enactments is eliminated, although local government organizations continue to receive a copy of that draft report and may comment directly to the Legislative Service Commission on it, and (3) only the Secretary of State needs to be notified if a township votes to change its name.

### **Community organizations access procedure**

(R.C. 103.33)

The Governor vetoed a provision of the act that would have required that whenever a state agency eligible to receive federal funds under a federal grant program could not participate or elected not to participate fully in the program, the agency would have to report promptly to the Joint Legislative Committee on Federal Funds (1) the situation and the reason for it and (2) whether federal law allows counties or not-for-profit organizations (including those that are faith-based) to participate in the program, as by being agents or grantees of the state agency. If such participation is allowable, the act would have required the agency to post on a generally accessible Internet website detailed information about the program and the means by which counties or not-for-profit organizations can participate in the program. The information would have had to be posted with ample time for the counties or not-for-profit organizations to participate fully in the program.

Any county interested in participating in the program would have had to apply to the state agency on its own behalf. Any county willing to be the fiscal agent for a not-for-profit organization interested in participating and qualified to participate in the program, or that arranged with a responsible organization to be the fiscal agent for the program in the county, would have had to advertise or otherwise inform such organizations about the program and apply to the state agency in conjunction with or on behalf of the not-for-profit organization. The agency would have had to accept applications from the counties on a first-come,

first-served basis, would have had to apply to the federal government for the funds, and would have had to pay the federal funds to the counties when available.

**Transfer of the Ohio Government Telecommunications System**

(R.C. 105.41 and 3353.07)

Under continuing law, the Capitol Square Review and Advisory Board operates and maintains, and has sole authority to regulate the uses of, the Capitol Square. This includes coordinating and approving any improvements, additions, and renovations that are made to the Capitol Square and performing repair, construction, contracting, purchasing, maintenance, supervisory, and operating activities relative to the Capitol Square. The Board formerly operated the Ohio Government Telecommunications System.

The act transfers, beginning on its effective date, the operation of the System to the Ohio Educational Telecommunications Network Commission. The act correspondingly removes a provision of former law that prohibited the Commission from charging to or collecting from the Board broadcasting fees relative to the System.

**Crediting interest earnings of the Governmental Television/Telecommunications Operating Fund**

(R.C. 3353.11)

The act creates the Governmental Television/Telecommunications Operating Fund in codified law and provides that the fund is to retain its investment earnings. The fund consists of money received from contract productions of the Ohio Government Telecommunications Studio and is used for operations or equipment breakdowns related to the Studio.

**Leasing of advertisement space on state agency Internet sites**

(R.C. 107.24)

The Governor vetoed a provision of the act that would have required the state, through its authorized officials, to contract with an advertising service provider for the purpose of the provider's leasing to persons media space on state agency Internet sites. The act specified what the contract would have had to require the advertising service provider to do.



**Secretary of State provisions**

**Fees**

(R.C. 111.16, 111.23, 1309.40, 1309.402, 1309.42, 1309.525, 1329.01, 1329.04, 1329.06, 1329.07, 1329.42, 1329.421, 1329.45, 1329.56, 1329.58, 1329.60, 1329.601, 1329.68, 1701.05, 1701.07, 1701.81, 1702.05, 1702.06, 1702.43, 1702.59, 1703.04, 1703.15, 1703.17, 1703.27, 1703.31, 1705.05, 1705.06, 1705.38, 1746.04, 1746.06, 1746.15, 1747.03, 1747.04, 1747.10, 1775.63, 1782.433, and 1785.06; Section 220)

The Revised Code requires the Secretary of State to collect specified fees for a variety of items filed with the Secretary of State's office. The act amends or repeals many former fee provisions insofar as they relate to business entities or commercial transactions. Additionally, several new types of filing fees pertaining to business entities or commercial transactions are enacted. The following table summarizes these changes. Included is a description of the fee (if any) under former law, a description of the fee under the act, the fee amount (if any) under former law, and the fee amount under the act.<sup>62</sup>

<b>Fee description under former law</b>	<b>Fee description under the act</b>	<b>Fee under former law</b>	<b>Fee under the act</b>
For filing and recording articles of incorporation of a domestic corporation, including designation of agent, wherein the corporation is not authorized to issue any shares of capital stock (R.C. 111.16(A)(1))	No change in language	\$25	\$125
For filing and recording articles of incorporation of a domestic corporation, including designation of agent, wherein the corporation is authorized to issue shares of	No change in language	1/4 cent for each excess share, but not less	1/4 cent for each excess share, but not less

<sup>62</sup> For many of its amended sections, the act does not provide a new numerical amount for a fee in the same section. Rather, the act often replaces the old numerical amount with a cross-reference to section 111.16 of the Revised Code, which contains a lengthy, consolidated list of fee descriptions and amounts relative to business and commercial transaction filings with the Secretary of State's office. Please note that the second and fourth columns state what is the law under the act's provisions and may relate to business entities or commercial transactions in addition to those referred to in the first column.

Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
capital stock, with or without par value: for each share authorized in excess of 500,000 shares (R.C. 111.16(A)(2)(f))		than \$85 and no greater than \$100,000	than \$125 and no greater than \$100,000
For filing and recording a certificate of amendment to or amended articles of incorporation of a domestic corporation, or for filing and recording a certificate of reorganization or a certificate of dissolution, if the domestic corporation is not authorized to issue any shares of capital stock (R.C. 111.16(B)(1))	No change in language	\$25	\$50
For filing and recording a certificate of amendment to or amended articles of incorporation of a domestic corporation, or for filing and recording a certificate of reorganization or a certificate of dissolution, if the domestic corporation is authorized to issue shares of capital stock (R.C. 111.16(B)(2))	No change in language	Generally, \$35	Generally, \$50
For filing and recording articles of incorporation of a savings and loan association (R.C. 111.16(C))	No change in language	\$100	\$125
For filing and recording a certificate of amendment to or amended articles of incorporation <i>that do not involve an increase</i> in the authorized capital stock of a savings and loan association (R.C. 111.16(C))	For filing and recording a certificate of amendment to or amended articles of incorporation of a savings and loan association (R.C. 111.16(C))	\$25	\$50
For filing and recording a certificate of amendment to or amended articles of incorporation <i>that do involve an increase</i> in the authorized capital stock of a savings and loan association (R.C. 111.16(C))	For filing and recording a certificate of amendment to or amended articles of incorporation of a savings and loan association (R.C. 111.16(C))	\$35	\$50

Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
111.16(C))			
For filing and recording a certificate of merger or consolidation (including special provisions pertaining to new corporations) (R.C. 111.16(D))	No change in language	\$50	\$125
After a merger or consolidation involving an Ohio corporation for-profit, for the <i>provision by the Secretary of State of a certificate</i> setting forth related, specified information (R.C. 1701.81(E))	No change in certificate description but cross-reference added to fee amount in R.C. 111.16(D)	\$10	\$125
After a merger or consolidation involving an Ohio nonprofit corporation, for the <i>provision by the Secretary of State of a certificate</i> setting forth related, specified information (R.C.1702.43(D))	No change in certificate description but cross-reference added to fee amount in R.C. 111.16(D)	\$10	\$125
After a merger or consolidation involving a domestic limited liability company, for the <i>provision by the Secretary of State of a certificate</i> setting forth related, specified information (R.C. 1705.38(E)(1))	No change in certificate description but cross-reference added to fee amount in R.C. 111.16(D)	\$10	\$125
After a merger or consolidation involving a domestic limited partnership, for the <i>provision by the Secretary of State of a certificate</i> setting forth related, specified information (R.C. 1782.433(E))	No change in certificate description but cross-reference added to fee amount in R.C. 111.16(D)	\$10	\$125
For filing and recording articles of incorporation of a credit union or the American Credit Union Guaranty Association (R.C. 111.16(E))	No change in language	\$35	\$125
For filing and recording a certificate of increase in capital stock or any other amendment of	No change in language	\$25	\$50



Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
the articles of incorporation of a credit union or the American Credit Union Guaranty Association (R.C. 111.16(E))			
For filing and recording articles of organization of a limited liability company or for filing and recording a registration application to become a domestic limited liability partnership or a registered foreign limited liability partnership (R.C. 111.16(F))	Filing and recording articles of organization of a limited liability company, <i>for filing and recording an application to become a registered foreign limited liability company</i> , for filing and recording a registration application to become a domestic limited liability partnership, or for filing and recording an application to become a registered foreign limited liability partnership (R.C. 111.16(F)) <sup>63</sup>	\$85	\$125
For filing and recording a certificate of limited partnership or an application for registration as a foreign limited partnership, if the certificate or application is for a certain type of limited partnership or foreign limited partnership and the partnership has complied with certain filing requirements (R.C. 111.16(G)(1))	For filing and recording a certificate of limited partnership or an application for registration as a foreign limited partnership (R.C. 111.16(G))	No fee	\$125
For filing and recording a certificate of limited partnership or an application for registration as a foreign limited partnership, if the certificate or application is for a limited partnership or foreign limited partnership other than one described above (R.C. 111.16(G)(2))	For filing and recording a certificate of limited partnership or an application for registration as a foreign limited partnership (R.C. 111.16(G))	\$85	\$125

<sup>63</sup> *Italicized language reflects a new type of filing covered by the enhanced fee.*

Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
For filing and recording a license to transact business in Ohio by a foreign corporation for-profit (R.C. 111.16(I)(1) and 1703.04(C))	For filing and recording a license to transact business in Ohio by a foreign corporation for-profit or a <i>foreign nonprofit corporation</i> (see immediately below) (R.C. 111.16(I)(1) and 1703.27)	\$100	\$125
For filing by a foreign nonprofit corporation of a specified statement and a certificate of good standing or subsistence, which filing is for the purpose of obtaining a license to transact business in Ohio (R.C. 1703.27)	For filing and recording a license to transact business in Ohio by a foreign corporation for-profit or a foreign nonprofit corporation (R.C. 111.16(I)(1) and 1703.27)	\$35	\$125
For filing an annual report by a domestic or foreign registered limited liability partnership (R.C. 111.16(I)(2))	For filing such a report biennially or an <i>annual statement of a professional association</i> (R.C. 111.16(I)(2)) <sup>64</sup>	\$10	\$25
For filing and recording <i>any other certificate or paper</i> that is required or permitted by any provision of the Revised Code to be filed and recorded with the Secretary of State (R.C. 111.16(I)(3)). This description is referred to below as the "catch-all fee description."	Except as otherwise provided in R.C. 111.16 or any other section of the Revised Code, any other certificate or paper that is required to be filed and recorded or is permitted to be filed and recorded by any provision of the Revised Code with the Secretary of State (R.C. 111.16(I)(3))	\$10	\$25
N/A	For creating and affixing the seal of the Secretary of State's office to certain certificates pertaining to mergers or consolidations involving an Ohio corporation for-profit, an	N/A	\$25

<sup>64</sup> Although the act refers to an "annual" report by a domestic or foreign registered limited liability partnership, the act otherwise changed the report to a biennial report (R.C. 1775.63).

Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
	Ohio nonprofit corporation, or a domestic limited liability company (R.C. 111.16(K)(2))		
For examining documents to be filed at a later date for the purpose of advising as to the acceptability of the proposed filing (R.C. 111.16(M))	No change in language	\$10	\$50
For expedited filing service for certain filings (R.C. 111.16(N), 1309.402, and 1329.68 (the act outright repeals the last section))	The <i>Secretary of State</i> , by rule, must establish, and prescribe guidelines <i>and fees</i> for the use of, an expedited filing service (R.C. 111.23(A) and 1309.402)	\$10 in addition to the original filing fee	To be set by Secretary of State
Possibly "catch-all fee description" or possibly R.C. 111.16's filing and recording of a <i>certificate of dissolution</i> provision relative to corporations (R.C. 111.16(B)(1) and (2) and (I)(3))	For filing and recording a certificate of dissolution and accompanying documents, or a certificate of cancellation, relative to a voluntarily dissolved Ohio corporation for-profit, voluntarily dissolved Ohio nonprofit corporation, dissolved domestic limited liability company, or canceled limited partnership (R.C. 111.16(N)(1))	\$10 or \$25 or \$35	\$50
For filing by a foreign corporation of a certificate of surrender of its license to transact business in Ohio (R.C. 1703.17(F))	For filing and recording a notice of dissolution of a foreign licensed corporation or a certificate of surrender of license by a foreign licensed corporation (R.C. 111.16(N)(2) and 1703.17(F))	\$25	\$50
Possibly "catch-all fee description"	For filing and recording the withdrawal of registration of a foreign or domestic limited liability partnership or the certificate of cancellation of registration of a foreign	\$10	\$50

Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
	limited liability company (R.C. 111.16(N)(3))		
Possibly "catch-all fee description"	For filing of a cancellation of disclaimer of general partner status under the Limited Partnership Law (R.C. 111.16(N)(4))	\$10	\$50
For filing a statement of continued existence by a nonprofit corporation (R.C. 1702.59)	For filing a statement of continued existence by a nonprofit corporation (R.C. 111.16(O))	\$5	\$25
Possibly "catch-all fee description"	For filing a restatement of articles of organization or a certificate of limited partnership under the Limited Liability Company (LLC) Law or the Limited Partnership (LP) Law, an amendment to a certificate of cancellation under the LP Law, an amendment to articles of organization or a certificate of limited partnership under the LLC Law or LP Law, or a correction to an application for registration as a foreign limited liability company, a registration application to become a domestic limited liability partnership or a registered foreign limited liability partnership, or an application for registration as a foreign limited partnership (R.C. 111.16(P))	\$10	\$50
For filing for reinstatement of the articles of incorporation of an Ohio corporation for-profit (R.C. 1701.07(N))	For filing for reinstatement of an entity canceled by operation of law, by the Secretary of State, by order of the Department of Taxation, or by order of a	\$10	\$25



Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
	court (R.C. 111.16(Q) and 1701.07(N))		
For filing for reinstatement of the articles of incorporation of an Ohio nonprofit corporation after the articles have been canceled for failure to appoint a new agent or to file a statement of change of address of an agent (R.C. 1702.06(M))	For filing for reinstatement of an entity canceled by operation of law, by the Secretary of State, by order of the Department of Taxation, or by order of a court (R.C. 111.16(Q) and 1702.06(M))	\$10	\$25
For filing for reinstatement of the articles of incorporation for an Ohio nonprofit corporation that have been canceled for previous failure to file a statement of continued existence (R.C. 1702.59(F))	For filing for reinstatement of an entity canceled by operation of law, by the Secretary of State, by order of the Department of Taxation, or by order of a court (R.C. 111.16(Q) and 1702.59(F))	\$10	\$25
For filing for reinstatement of a license of a foreign corporation that has been canceled (R.C. 1703.15)	For filing for reinstatement of an entity canceled by operation of law, by the Secretary of State, by order of the Department of Taxation, or by order of a court (R.C. 111.16(Q) and 1703.15)	\$10	\$25
For filing for reinstatement of registration by a domestic limited liability partnership or registered foreign limited liability partnership (R.C. 1775.63(C))	For filing for reinstatement of an entity canceled by operation of law, by the Secretary of State, by order of the Department of Taxation, or by order of a court (R.C. 111.16(Q) and 1775.63(C))	\$10	\$25
For filing for reinstatement of articles by a professional association (R.C. 1785.06)	For filing for reinstatement of an entity canceled by operation of law, by the Secretary of State, by order of the Department of Taxation, or by order of a court (R.C. 111.16(Q) and	\$10	\$25





Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
	1785.06)		
For filing a change of agent or a statement of change of address of an agent--Ohio corporation for-profit (R.C. 1701.07(M))	For filing a change of agent, resignation of agent, or change of agent's address under the Corporation For-Profit Law, Nonprofit Corporation Law, Foreign Corporations Law, Limited Liability Company Law, Business Trust Law, Real Estate Investment Trust Law, or Limited Partnership Law (R.C. 111.16(R) and 1701.07(M))	\$3	\$25
For filing a change of agent or a statement of change of address of an agent--Ohio nonprofit corporation (R.C. 1702.06(L))	For filing a change of agent, resignation of agent, or change of agent's address under the Corporation For-Profit Law, Nonprofit Corporation Law, Foreign Corporations Law, Limited Liability Company Law, Business Trust Law, Real Estate Investment Trust Law, or Limited Partnership Law (R.C. 111.16(R) and 1702.06(L))	\$3	\$25
For filing by a foreign nonprofit corporation of a change of agent or a statement of change of address of an agent (R.C. 1703.27)	For filing a change of agent, resignation of agent, or change of agent's address under the Corporation For-Profit Law, Nonprofit Corporation Law, Foreign Corporations Law, Limited Liability Company Law, Business Trust Law, Real Estate Investment Trust Law, or Limited Partnership Law (R.C. 111.16(R) and 1703.27)	\$50	\$25
For filing a change of agent or a statement of change of address of	For filing a change of agent, resignation of agent, or	\$3	\$25



Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
an agent--domestic limited liability company (R.C. 1705.06(L))	change of agent's address under the Corporation For-Profit Law, Nonprofit Corporation Law, Foreign Corporations Law, Limited Liability Company Law, Business Trust Law, Real Estate Investment Trust Law, or Limited Partnership Law (R.C. 111.16(R))		
For filing a change of the name or address of the designated agent of a business trust (R.C. 1746.04(C))	For filing a change of agent, resignation of agent, or change of agent's address under the Corporation For-Profit Law, Nonprofit Corporation Law, Foreign Corporations Law, Limited Liability Company Law, Business Trust Law, Real Estate Investment Trust Law, or Limited Partnership Law (R.C. 111.16(R) and 1746.04(C))	\$15	\$25
For filing a change of the name or address of the designated agent of a real estate investment trust (R.C. 1747.03(B))	For filing a change of agent, resignation of agent, or change of agent's address under the Corporation For-Profit Law, Nonprofit Corporation Law, Foreign Corporations Law, Limited Liability Company Law, Business Trust Law, Real Estate Investment Trust Law, or Limited Partnership Law (R.C. 111.16(R) and 1747.03(B))	\$10	\$25
For the filing by a foreign corporation of an application registering its corporate name (R.C. 1703.31(A))	For filing an application for the exclusive right to use a name or an application to reserve a name for future use under the Corporation For-Profit Law, Nonprofit Corporation Law, Foreign	\$25	\$50

Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
	Corporations Law, Limited Liability Company Law, or Business Trust Law (R.C. 111.16(S)(1) and 1703.31(A))		
For filing for the exclusive right to use a specified name as a limited liability company or to transfer the exclusive right to use a specified name by a limited liability company (R.C. 1705.05(F))	For filing an application for the exclusive right to use a name or an application to reserve a name for future use under the Corporation For-Profit Law, Nonprofit Corporation Law, Foreign Corporations Law, Limited Liability Company Law, or Business Trust Law (R.C. 111.16(S)(1)) <sup>65</sup>	\$5	\$50
For filing for the exclusive right to use a specified name as a business trust or to transfer the exclusive right to use a specified name by a business trust (R.C. 1746.06(D) and (E))	For filing an application for the exclusive right to use a name or an application to reserve a name for future use under the Corporation For-Profit Law, Nonprofit Corporation Law, Foreign Corporations Law, Limited Liability Company Law, or Business Trust Law (R.C. 111.16(S)(1) and 1746.06(D) and (E))	\$5	\$50
For filing of a trade name registration application (R.C. 1329.01(C))	No changes (R.C. 1329.01(C)). Additionally, the following applies: for filing and recording a trade name or fictitious name registration or report (R.C. 111.16(S)(2))	\$20	\$50

<sup>65</sup> The act extends from 60 days to 180 days the period of time for which an Ohio corporation for-profit, Ohio nonprofit corporation, limited liability company, or business trust acquires exclusive right to use a specified "reserved" name (R.C. 1701.05(E), 1702.05(E), 1705.05(E), and 1746.06(D)).

Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
For filing a report of use of a fictitious name (R.C. 1329.01(E))	No changes (R.C. 1329.01(E)). Additionally, the following applies: for filing and recording a trade name or fictitious name registration or report (R.C. 111.16(S)(2))	\$10	\$50
For filing by a foreign corporation of an application for the renewal of its registered corporate name (R.C. 1703.31(B))	For filing and recording an application to renew the exclusive right to use a name or to reserve a name for future use or an application to renew a trade name or fictitious name registration or report (R.C. 111.16(S)(3) and 1703.31(B))	\$25	\$25
For filing to report assignment of a trade name or fictitious name and its registration or report (R.C. 1329.06)	For filing and recording an assignment of rights for use of a trade name, fictitious name, reserved name, or other exclusive name, the cancellation of a name registration or name reservation, or notice of a change of address of the registrant of a name (R.C. 111.16(S)(4) and 1329.06)	\$10	\$25
For filing by a registrant of a trade name or a person who reports a fictitious name changes in business address (R.C. 1329.07)	For filing and recording an assignment of rights for use of a trade name, fictitious name, reserved name, or other exclusive name, the cancellation of a name registration or name reservation, or notice of a change of address of the registrant of a name (R.C. 111.16(S)(4) and 1329.07)	\$3	\$25
For filing of a transfer of the right to an exclusive reserved name of a business trust (R.C. 1746.06(D))	For filing and recording an assignment of rights for use of a trade name, fictitious name, reserved name, or	\$5	\$25



Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
	other exclusive name, the cancellation of a name registration or name reservation, or notice of a change of address of the registrant of a name (R.C. 111.16(S)(4) and 1746.06(D))		
For filing a report to operate a business trust (R.C. 1746.04(C))	For filing and recording a report to operate a business trust or a real estate business trust, either foreign or domestic (R.C. 111.16(T) and 1746.04(C))	\$75	\$125
For filing of a report to transact a real estate investment trust in Ohio (R.C. 1747.03(B))	For filing and recording a report to operate a business trust or a real estate business trust, either foreign or domestic (R.C. 111.16(T) and 1747.03(B))	\$50	\$125
For filing an amendment to a report to operate a business trust (R.C. 1746.04(C))	For filing and recording an amendment to a report or associated trust instrument, or a surrender of authority, to operate a business trust or real estate business trust (R.C. 111.16(T) and 1746.04(C))	\$15	\$50
For filing by a business trust to withdraw from this state (R.C. 1746.15)	For filing and recording an amendment to a report or associated trust instrument, or a surrender of authority, to operate a business trust or real estate business trust (R.C. 111.16(T) and 1746.15)	\$15	\$50
For filing an amendment to a trust instrument of a real estate investment trust (R.C. 1747.04)	For filing and recording an amendment to a report or associated trust instrument, or a surrender of authority, to operate a business trust or real estate business trust	\$25	\$50

<b>Fee description under former law</b>	<b>Fee description under the act</b>	<b>Fee under former law</b>	<b>Fee under the act</b>
	(R.C. 111.16(T) and 1747.04)		
For filing to surrender authority to operate a real estate investment trust (R.C. 1747.10)	For filing and recording an amendment to a report or associated trust instrument, or a surrender of authority, to operate a business trust or real estate business trust (R.C. 111.16(T) and 1747.10)	\$10	\$50
For filing and recording statement evidencing actual use of a name, mark, or device (R.C. 1329.42)	For filing and recording the registration of a trademark, service mark, or a mark of ownership (R.C. 111.16(U)(1) and 1329.42)	\$20	\$125
For filing of an application for registration of a trademark or service mark (R.C. 1329.56(D))	For filing and recording the registration of a trademark, service mark, or a mark of ownership (R.C. 111.16(U)(1) and 1329.56(D))	\$20	\$125
For filing and recording of a renewal of a statement evidencing actual use of a name, mark, or device (R.C. 1329.42)	For filing and recording the change of address of a registrant, the assignment of rights to a registration, a renewal of a registration, or the cancellation of a registration associated with a trademark, service mark, or mark of ownership (R.C. 111.16(U)(2) and 1329.42)	\$10	\$25
For recording a change in the business address of a registrant of a name, mark, or device used to indicate ownership (R.C. 1329.421)	For filing and recording the change of address of a registrant, the assignment of rights to a registration, a renewal of a registration, or the cancellation of a registration associated with a trademark, service mark, or mark of ownership (R.C. 111.16(U)(2) and 1329.421)	\$3	\$25
For recording an assignment of a name, mark, or device used to	For filing and recording the change of address of a	\$10	\$25

Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
indicate ownership (R.C. 1329.45)	registrant, the assignment of rights to a registration, a renewal of a registration, or the cancellation of a registration associated with a trademark, service mark, or mark of ownership (R.C. 111.16(U)(2) and 1329.45)		
For recording of a renewal of a trademark or service mark (R.C. 1329.58)	For filing and recording the change of address of a registrant, the assignment of rights to a registration, a renewal of a registration, or the cancellation of a registration associated with a trademark, service mark, or mark of ownership (R.C. 111.16(U)(2) and 1329.58)	\$10	\$25
For recording of assignment of a trademark or service mark and its registration (R.C. 1329.60)	For filing and recording the change of address of a registrant, the assignment of rights to a registration, a renewal of a registration, or the cancellation of a registration associated with a trademark, service mark, or mark of ownership (R.C. 111.16(U)(2) and 1329.60)	\$10	\$25
For recording change in the business address of a registrant of a trademark or service mark (R.C. 1329.601)	For filing and recording the change of address of a registrant, the assignment of rights to a registration, a renewal of a registration, or the cancellation of a registration associated with a trademark, service mark, or mark of ownership (R.C. 111.16(U)(2) and 1329.601)	\$3	\$25
N/A	Fee for use of a bulk filing service that provides, at the option of the person making a filing, a method for providing	N/A	To be set by Secretary of State by

Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
	large amounts of information (R.C. 111.23(B))		rule
N/A	Fee for use of alternative filing procedures in making filings with the Secretary of State (R.C. 111.23(C))	N/A	To be set by Secretary of State by rule
Under the Secured Transactions Law, for filing, indexing, and furnishing filing data for an original, amended, or continuation (financing) statement on a form prescribed by the Secretary of State (R.C. 1309.40(E))	No changes in fee language (R.C. 1309.40(E)). But see " <b>Caveat</b> " below.	\$9	\$12 But see " <b>Caveat</b> " below.
Under the Secured Transactions Law, for issuance of a certificate showing whether there is on file any presently effective financing statement naming a particular debtor, owner, or lessee, and any statement of assignment of the financing statement, and, if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party in each such statement (R.C. 1309.40(H))	No substantive changes to language (R.C. 1309.40(H)(1)). But see " <b>Caveat</b> " below.	\$9 plus one dollar for each financing statement and for each statement of assignment reported therein	\$20 total But see " <b>Caveat</b> " below.
Under the Secured Transactions Law, for a copy of any filed financing statement when the request is made in the Secretary of State's office (R.C. 1309.40(H))	Any person may request from the Secretary of State a copy of any financing statement naming a particular debtor, owner, or lessee, and of any statement of assignment of the financing statement, that is on file with the Secretary of State (R.C. 1309.40(H)(3)). But see " <b>Caveat</b> " below.	Not more than \$1 per page	\$5 for each copy But see " <b>Caveat</b> " below.
Under the Secured Transactions Law, for filing, indexing, and furnishing filing data for a	No changes made to language (R.C. 1309.42(A))	\$9	\$12



Fee description under former law	Fee description under the act	Fee under former law	Fee under the act
financing statement indicating an assignment of a security interest in collateral described in the financing statement (assignment on the face or back of the statement) (R.C. 1309.42(A))			
Under the Secured Transactions Law, for filing, indexing, and furnishing filing data about a statement of assignment of all or a part of a secured party's rights under a financing statement (assignment by a separate written statement and on Secretary of State form) (R.C. 1309.42(B))	No changes made to language (R.C. 1309.42(B))	\$9	\$12
For filing by a foreign nonprofit corporation of an amendment to the statement setting forth the name of the corporation, the state under the laws of which it is incorporated, the location of its principal office, the corporate privileges it proposes to exercise in Ohio, the location of its principal office in this state, the appointment of a designated agent and the complete address of the agent, and its irrevocable consent to service of process on the agent (R.C. 111.16(B)(3) or (4) and 1703.27)	For filing and recording an amendment to a foreign license application (R.C. 111.16(B)(3) or (4) and 1703.27)	\$50	\$50

**Caveat:** Contingent upon the enactment of S.B. 74 of the 124th General Assembly (a bill proposing to change the Secured Transactions Law that is a part of the Uniform Commercial Code) and the repeal of R.C. 1309.40 by that act, Am. Sub. H.B. 94 also relocates the Secretary of State fee provisions relating to (1) the filing and indexing of specified secured transactions records and (2) responses to certain related information requests. Under that contingent provision, the fees that Am. Sub. H.B. 94 increases in R.C. 1309.40 for the filing and indexing of secured transactions records and for responding to certain related information requests (discussed in the table above) are relocated to another section of the Revised Code (R.C. 1309.525) at the same increased rate provided for in R.C. 1309.40.



**Deposit of fees into the Corporate and Uniform Commercial Code Filing Fund: in general**

(R.C. 111.18(A); Section 127)

**Continuing and former law.** Continuing law requires the Secretary of State to keep a record of all fees collected. The Secretary of State, with some limitations, formerly was required to pay, through June 30, 2001, 50% of the previously described business entity and commercial transaction fees into the state treasury to the credit of the General Revenue Fund and the remaining 50% of those fees into the state treasury to the credit of the Corporate and Uniform Commercial Code Filing (CUCCF) Fund. On and after July 1, 2001, the Secretary of State, with some limitations, formerly would have been required to pay 100% of those fees into the state treasury to the credit of the General Revenue Fund; the limitations included certain amounts of certain fees that would have had to continue to be paid into the CUCCF Fund. (R.C. 111.18(A).)

**Changes made by the act.** The act repeals the "on and after July 1, 2001, payment of fees" provisions described above, as well as the requirement through June 30, 2001, that 50% of the fees generally be deposited into the General Revenue Fund. Instead, all fees collected by the Secretary of State's office generally must be paid into the state treasury to the credit of the CUCCF Fund. (R.C. 111.18(A).) However, the act also provides in uncodified law that, no later than June 1 in each year of the biennium, the Director of Budget and Management must transfer \$1million from the CUCCF Fund to the General Revenue Fund (Section 127 of the act).

**Other CUCCF Fund provisions**

(R.C. 1309.401(A))

Under former law, the Secretary of State had to deposit through June 30, 2001, \$4.50, and, on and after July 1, 2001, \$4.00, of each fee collected under certain provisions of the Secured Transactions Law (those involving filings of financing statements, amended financing statements, or continuation statements; the provision of certain associated certificates; or filings of assignments of security interests or releases of collateral) as well as all fees collected by the Secretary of State under the Secured Transactions Law for expedited filing service into the CUCCF Fund. The remainder of each fee had to be deposited into the General Revenue Fund. The act instead requires all fees collected by the Secretary of State for filings under Title XIII of the Revised Code (which includes not only the Secured Transaction Law but also the remainder of the Uniform Commercial Code, the Trade Name, Fictitious Name, and Mark of Ownership Law, and the Trademark and Service Mark Law) or Title XVII of the Revised Code (the

Corporation and Other Business Entity Code) to be deposited into the CUCCF Fund. (R.C. 1309.401(A).)

Under former law, all money credited to the CUCCF Fund had to be used only for the purpose of paying for expenses relating to the processing of filings under Title XVII of the Revised Code, the Uniform Commercial Code, the Trade Name, Fictitious Name, and Mark of Ownership Law, and the Trademark or Service Mark Law. Under the act, the CUCCF Fund also generally can be used to pay for the operations of the office of the Secretary of State, other than the Division of Elections. (R.C. 1309.401(A).)

### **Secretary of State Business Technology Fund**

(R.C. 1309.401(B))

The act creates the Secretary of State Business Technology Fund. The Fund is to be used only for the upkeep, improvement, or replacement of equipment, or for the purpose of training employees in the use of equipment, used to conduct the business of the Secretary of State office under Title XIII or XVII of the Revised Code. The Fund must receive 1% of the money credited to the CUCCF Fund. (R.C. 1309.401(B).)

### **Alternative payment programs**

(R.C. 111.16 and 111.18(B))

Under former law, fees could be paid to the Secretary of State by cash, check, or money order, or, if the Secretary of State implemented a credit card program, by a credit card. The credit card program could be operated in-house by the Secretary of State's office, or as part of the state's central credit card payment program overseen by the State Board of Deposit (R.C. 113.40, not in the act).

The act eliminates the Secretary of State's authority to operate an in-house credit card payment program (R.C. 111.18(B)). But, the Secretary of State remains authorized to allow payment of fees by credit card through the State Board of Deposit program. As under prior law, fees also may be paid to the Secretary of State by cash, check, or money order. (R.C. 111.16.)

The act also allows the Secretary of State to implement "alternative payment programs" that permit payment of any fee charged by the Secretary of State by means other than cash, check, money order, or credit card. An alternative payment program may include one that permits a fee to be paid by electronic means of transmission. Fees paid under such a program must be deposited to the credit of the Secretary of State Alternative Payment Program (SOSAPP) Fund, which the act creates as a custodial fund of the Treasurer of State (the fund is not in the state treasury). Within two working days after any deposits to the credit of

the SOSAPP Fund, the Secretary of State, with some limitations, must pay the deposited money into the state treasury to the credit of the CUCCF Fund. The act provides that any investment income of the SOSAPP Fund must be credited to it and be used to operate alternative payment programs. Finally, the act requires the Secretary of State to adopt rules necessary to carry out the alternative payment program provisions. (R.C. 111.18(B).)

### **Expedited filing service**

(R.C. 111.23(A) and 1309.402)

Under former law, the Secretary of State, by rule, had to establish and prescribe *guidelines* for the use of an expedited filing service. This service provided, at the option of the person making a filing, expeditious processing of any filing with the Secretary of State under the Secured Transactions Law, the Trade Name, Fictitious Name, and Mark of Ownership Law, and the Trademark or Service Mark Law and certain filings by corporations, limited liability companies, limited liability partnerships, and limited partnerships. (R.C. 111.23.)

The act makes several changes to the expedited filing service provisions. First, the Secretary of State must establish and prescribe guidelines *and fees* for use of an expedited filing service. Additionally, the service is to cover all filings with the Secretary of State under Title XVII of the Revised Code, not just certain filings relative to the business entities mentioned above. (R.C. 111.23(A) and 1309.402.)

### **Bulk filing service**

(R.C. 111.23(B))

The act allows the Secretary of State to adopt rules establishing and prescribing guidelines and fees for use of a bulk filing service. This service is to provide, at the option of the person making a filing, a method for providing large amounts of information. The Secretary of State may charge and collect fees for filings made in this manner at reduced amounts from those otherwise specified or authorized by statute. (R.C. 111.23(B).)

### **Alternative filing procedures**

(R.C. 111.23(C))

The act allows the Secretary of State to adopt rules establishing and prescribing guidelines and fees for the use of alternative filing procedures. Under these procedures, the Secretary of State may accept any filing and payment of associated fees through any electronic, digital, facsimile, or other means of transmission. The act gives the Secretary of State the power to prescribe the forms

for filings under these procedures, but the filings otherwise must comply fully with applicable statutory requirements. (R.C. 111.23(C).)

**Forms for filings under Title XVII**

(R.C. 111.25(B))

The act directs the Secretary of State to prescribe forms for a person to use in complying with the filing requirements of Title XVII of the Revised Code to the extent that those requirements relate to filings with the Secretary of State's office (R.C. 111.25(B)).

**Designated agent for service of process**

(R.C. 1703.041, 1703.27, 1705.55, 1775.63, 1775.64, 1782.04, 1782.08, and 1782.09)

**In general.** Ohio law contains various provisions relating to the designated agent for service of process upon a business entity. The act makes various changes to several business entity laws in this regard.

**Foreign corporation for-profit.** Under continuing law, every foreign corporation for profit that is licensed to transact business in Ohio must have a designated agent. If the agent dies, removes from the state, or resigns, the foreign corporation must appoint another agent. Formerly, the foreign corporation also had to then file in the Secretary of State's office *an amendment* to the corporation's application for a foreign license indicating the name and address of the new agent. Additionally, if the designated agent changed an address from that appearing upon the record in the Secretary of State's office, the foreign corporation or the designated agent formerly had to file *an amendment* to the corporation's application for a foreign license setting forth the new address, unless the change was reported on the annual report filed with the Department of Taxation. (R.C. 1703.041(A) to (D).)

Under the act, if a designated agent dies, removes from the state, or resigns, the foreign corporation must appoint another agent and file in the Secretary of State's office, on a form prescribed by the Secretary of State, a *written appointment* of the new agent (R.C. 1703.041(C)). If the agent changes addresses, the foreign corporation must file, on a form prescribed by the Secretary of State, a *written statement* setting forth the agent's new address (R.C. 1703.041(D)).

Finally, under former law a foreign corporation could revoke the appointment of a designated agent by filing with the Secretary of State an amendment to its application for a foreign license appointing another agent and including a statement that the appointment of the former agent was revoked. Under the act, a foreign corporation can revoke the appointment of a designated

agent by filing with the Secretary of State, on a form prescribed by the Secretary of State, a *written appointment of another agent* together with the statement that the appointment of the former agent is revoked. (R.C. 1703.041(F).)

**Foreign nonprofit corporation.** Under continuing law, a foreign nonprofit corporation must obtain from the Secretary of State a certificate authorizing it to exercise its corporate privileges in Ohio by filing a certificate of good standing or subsistence as well as a specified statement. The corporation formerly had to file an amendment with the Secretary of State if there was a modification of *any* information required to be included in that statement. (R.C. 1703.27.)

Under the act, amendments to that statement generally must be made in the same manner, the exception being with regard to changes in information pertaining to the appointment of a designated agent or the complete address of the agent. Under the act, any changes concerning this information are corrected not by amending the statement, but in the same manner as an Ohio nonprofit corporation corrects the same information (by filing an appointment of another agent or a written statement setting forth the new address on a form prescribed by the Secretary of State). (R.C. 1703.27.)

**Foreign limited liability company.** Similar provisions are contained in the existing law for foreign limited liability companies. Before transacting business in Ohio, a foreign limited liability company must register with the Secretary of State. The filing must set forth various information, including the name and address of an agent for service of any process, notice, or demand on the company. (R.C. 1705.54(A)--not in the act.)

Formerly, if this information became inaccurate because the designated agent *changed the agent's address*, the foreign limited liability company or the designated agent was required to file promptly with the Secretary of State a certificate of correction setting forth the new address. The act amends this provision by requiring the filing of a certificate of correction in response not only to a change in the agent's address but also if the agent *resigns*. (R.C. 1705.55(B).)

The act also gives a foreign limited liability company the power to *revoke* the appointment of its designated agent. To achieve this, the company must file with the Secretary of State, on a form prescribed by the Secretary of State, a written appointment of another agent and an acceptance of appointment in the manner described for a domestic limited liability company, and a statement indicating that the appointment of the former agent is revoked. (R.C. 1705.55(C).)

**Limited liability partnerships.** Under former law, a domestic limited liability partnership or foreign registered limited liability partnership was required *annually*, during the month of July, to file a report with the Secretary of State verifying and, if necessary, updating certain information (including the name and

address of a statutory agent for service of process within Ohio). The act instead requires a *biennial* filing of the report during the month of July in *odd-numbered* years. (R.C. 1775.63(A).)

On a related issue, continuing law requires a foreign limited liability partnership to file a registration application with the Secretary of State before transacting business in Ohio. Formerly, a registration ceased if (1) the registration was voluntarily withdrawn by filing with the Secretary of State, on a form prescribed by the Secretary of State, a specified written withdrawal notice or (2) the registration was canceled by the Secretary of State for failure to file an annual report as described above. The act removes the provision specifying that a registration ceases upon such a cancellation. (R.C. 1775.64(E).)

**Limited partnerships.** Under continuing law, to form a limited partnership, a certificate of limited partnership must be executed and filed with the Secretary of State (R.C. 1782.08(A)). Additionally, each limited partnership must maintain in this state an agent for service of process (R.C. 1782.04). A limited partnership formerly had to include in its certificate of limited partnership the name and address, including the street and number or other particular description, of that agent (R.C. 1782.08(A)(2)). If a certificate of limited partnership became inaccurate because the name or identity of the agent changed or the agent changed the agent's address, the limited partnership or the designated agent formerly had to file promptly with the Secretary of State, on a form prescribed by the Secretary of State, an amendment setting forth the new address or apparently the name of a new agent (R.C. 1782.09(B) and (C)).

The act requires the Secretary of State to keep a record of the names of all limited partnerships and the names and addresses of their respective agents (R.C. 1782.04(C)). It no longer requires the certificate of limited partnership to include designated agent information, but instead requires a written appointment of a statutory agent to be filed with the certificate of limited partnership (R.C. 1782.08(A) and (B) and 1782.09(B) and (C).)

Additionally, the act prohibits the Secretary of State from accepting a certificate of limited partnership for filing unless (1) there is filed with the certificate a written appointment of an agent that is signed by the general partners of the limited partnership and a written acceptance of the appointment that is signed by the agent, or unless (2) there is filed with the certificate a written appointment of an agent that is signed by an authorized officer of the limited partnership and a written acceptance of the appointment that is either the original acceptance signed by the agent or a photocopy, facsimile, or similar reproduction of the original acceptance signed by the agent. In the discretion of the Secretary of State, an original appointment of statutory agent may be submitted on the same form as the certificate of limited partnership, but it cannot be considered a part of the certificate. (R.C. 1782.04(B).) The act requires the *written appointment of an*

*agent* to set forth the name and Ohio address, including the street and number or other particular description, of the agent and any other information the Secretary of State prescribes (R.C. 1782.04(C)). Additionally, unless an original appointment of an agent is filed with a certificate of limited partnership, the written appointment of an agent or a written statement filed by a limited partnership with the Secretary of State must be signed by an authorized officer of the limited partnership, or the general partners of the limited partnership, or a majority of them (R.C. 1782.04(H)).

Under the act, if any agent dies, removes from the state, or resigns, the limited partnership must appoint another agent and file with the Secretary of State, on a form prescribed by the Secretary of State, a written appointment of the new agent (R.C. 1782.04(D)). Additionally, if the agent changes the agent's address from that appearing upon the record in the Secretary of State's office, the limited partnership or the agent must file with the Secretary of State, on a form prescribed by the Secretary of State, a written statement setting forth the new address (R.C. 1782.04(E).)

The act also allows an agent to resign by filing with the Secretary of State, on a form prescribed by the Secretary of State, a written notice to that effect. This notice must be signed by the agent, and a copy of it must be sent to the limited partnership at its current or last known address or its principal office on or prior to the date the notice is filed with the Secretary of State. The notice must set forth the name of the limited partnership, the name and current address of the agent, the current or last known address, including the street and number or other particular description, of the limited partnership's office, the resignation of the agent, and a statement that a copy of the notice has been sent to the limited partnership within the required time and in the required manner. Upon the expiration of 30 days after the filing, the authority of the agent will terminate. (R.C. 1782.04(F).)

Finally, the act permits a limited partnership to revoke the appointment of an agent by filing with the Secretary of State, on a form prescribed by the Secretary of State, a written appointment of another agent and a statement that the appointment of the former agent is revoked (R.C. 1782.04(G)).

***Shift of notary public administration to the Secretary of State's office***

(R.C. 107.10, 147.01, 147.02, 147.03, 147.05, 147.06, 147.13, 147.14, 147.37, and 147.371)

Former law provided that the Governor could appoint and commission individuals who met particular qualifications as notaries public. The Governor could revoke a notary commission upon presentation of evidence of official misconduct or incapacity, and perform certain other functions relative to notary



commissions. Finally, the Governor was required to keep a specified record of all Ohio notaries public.

The act changes the law so that the Secretary of State, not the Governor, appoints and commissions individuals as notaries public, revokes under authorized circumstances those commissions, and performs certain other functions relative to notary commissions. It requires the Governor's office to transfer the specified record of notaries that office formerly maintained to the Secretary of State's office, and that record is to be maintained along with the Secretary of State's notary records.

Under continuing law, before an individual may act as a notary public, the individual's commission must be recorded in the office of the clerk of the court of common pleas of the county in which the individual resides, for which there is a \$5 charge. And, when needed, the clerks of courts of common pleas also may provide certified copies of notary commissions, for which there is a \$2 charge.

**Payment for services of financial supervisor under the Local Government Fiscal Emergency Law**

(R.C. 118.08)

**Continuing and former law**

Under the Local Government Fiscal Emergency Law, upon the occurrence of a fiscal emergency in any municipal corporation, county, or township, there is established a financial planning and supervision commission. The Auditor of State serves as the financial supervisor to a commission unless the Auditor of State contracts for that service to be provided. Generally, the commission and the financial supervisor review and make recommendations pertaining to the fiscal matters of the municipal corporation, county, or township in fiscal emergency.

The expenses incurred for the services of the financial supervisor are paid for 24 months by the commission from an appropriation made by the General Assembly. Expenses incurred beyond 24 months generally are borne by the municipal corporation, county, or township in fiscal emergency, unless the Director of Budget and Management waives the costs and allows payment in accordance with generally continuing law permitting payment of specified portions of the compensation due for the continued performance of the financial supervisor (1) for specified time periods up to 37 months and (2) for a period exceeding eight years for a local government declared to be in a fiscal emergency before fiscal year 1996.

Under former law, if the continued performance of the financial supervisor was required for a period of 37 months or more, the local government was

responsible for 100% of the compensation due except, *beginning in fiscal year 2000*, if the continued performance of the financial supervisor had been required longer than eight years for any local government declared to be in a fiscal emergency prior to fiscal year 1996. In that case, the municipal corporation, county, or township was responsible for 50% of the compensation due in fiscal year 2000 and 100% of the compensation due in fiscal year 2001.

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

The act changes the exception beginning in fiscal year 2000 by removing the specification of that fiscal year and providing instead that, if the continued performance of the financial supervisor has been required longer than eight *fiscal* years for any municipal corporation, county, or township declared to be in a fiscal emergency prior to fiscal year 1996, that municipal corporation, county, or township is responsible for 50% of the compensation due in its ninth fiscal year while in fiscal emergency and 100% of the compensation due in its tenth fiscal year and every fiscal year thereafter while in fiscal emergency.

### **Ohio Community Service Council**

(R.C. 121.40, 1501.40, 3301.70, and 3333.043)

Under former law, among its other statutory duties, the "Governor's" Community Service Council was required to assist various state boards and departments, and school districts and institutions of high education, in coordinating community service programs through cooperative efforts between institutions and organizations in the public and private sectors. The act does not change the Council's statutory duties but (1) renames it as the Council as the Ohio Community Service Council and (2) corrects several outdated references to it (they referred to it as the "State Community Service Advisory Committee") by replacing them with references to the Ohio Community Service Council.

### **Women's Policy and Research Commission**

(R.C. 121.51, 121.52, 121.53, and 3701.142; Section 183)

The act abolishes both the Women's Policy and Research Commission and the associated Women's Policy and Research Center. The Director of Budget and Management must transfer any remaining money in the Women's Policy and Research Commission Fund into the General Revenue Fund within 30 days after the act's effective date.

Under former law, the Women's Policy and Research Commission consisted of 15 members who were required to meet at least four times per year. The Commission, which was intended to "promote the advancement of women and remove barriers to women's equality," was permitted to hold hearings to assess

the problems and needs of women in Ohio, create standing or special committees, sell publications issued by the Commission or the Women's Policy and Research Center, and accept gifts, donations, benefits, and other funds.

The Commission supervised the Women's Policy and Research Center, which was required to do all of the following: identify barriers to women's equality, maintain and make available lists of persons qualified for appointment to positions in state government, educate the public on the status of women and the impact of public policy on women, issue reports regarding women's policy issues, analyze current and proposed public policies to determine their impact on women, help the public and private sectors develop programs and services for women, and encourage collaboration between itself and other public agencies and institutions on issues of mutual interest.

### **Minority business enterprises**

(R.C. 122.71(E)(1), (H), and (I), 122.76(A), and 122.92(O))

### **Minority Business Development Division**

The Minority Business Development Division of the Department of Development must provide various services and assistance to minority business enterprises. Its duties include, but are not limited to, the provision of technical, managerial, and counseling services and assistance to those enterprises.

The act creates an additional duty for the Division. It must provide grant assistance to nonprofit entities that promote economic development, development corporations, community improvement corporations, and incubator business entities, if the entities or corporations focus on business, technical, and financial assistance to minority business enterprises to assist the enterprises with fixed asset financing.

### **Lending of funds**

Under continuing law, the Director of Development, with Controlling Board approval, may lend funds for certain purposes and if certain determinations are made to minority business enterprises, community improvement corporations, and Ohio development corporations. Funds so lent to the corporations apparently must be the purpose of their loaning funds to minority business enterprises and for the purpose of procuring or improving real or personal property for the establishment, location, or expansion of industrial, distribution, commercial, or research facilities in Ohio.

The act adds minority contractors business assistance organizations and minority business supplier development councils to the list of entities to which the

Director may lend funds for the latter purposes and if the Director makes certain determinations. A "minority contractors business assistance organization" is defined as an entity engaged in the provision of management and technical business assistance to minority business enterprise entrepreneurs, and a "minority business supplier development council" is defined as a nonprofit organization established as an affiliate of the National Minority Supplier Development Council.

**Minority business enterprise: definitional revision**

The act amends the definition of a "minority business enterprise" that applies to several statutes involving loans, loan guarantees, bonds, or public contracts that these enterprises must or may be granted as well as to statutes pertaining to the Department of Development or other state entities. Under former law, a minority business enterprise was defined as an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are residents of Ohio or *nonresidents of this state who have a significant presence in Ohio*, and are members of one of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, or Orientals. The act removes the reference to the nonresidents of Ohio who have a significant presence in this state and, thus, limits the covered enterprises to those involving Ohio residents who fall into any of the disadvantaged groups.

**State board and commission members participation in state health policies, contracts, or plans**

(R.C. 124.82)

Under continuing law, the Department of Administrative Services may contract with an insurance company or health plan in combination with an insurance company, and with health insuring corporations, for health, medical, hospital, dental, or surgical benefits or services, or a combination of those benefits or services, for state employees, including elected state officials. All or any portion of the premiums, costs, or charges for the health care coverage may be paid in the manner or combination of manners the Department determines.

The act additionally permits members of state boards and commissions who elect to participate in the Public Employees Retirement System to be covered by the policies, contracts, or plans that offer that health care coverage, but only if they pay both the employer and employee amounts of the premiums, costs, or charges for that coverage.

**Central Service Agency support for the Commission on African American Males**

(R.C. 125.22)

Under continuing law, the Department of Administrative Services is required to establish a central service agency to perform routine support for approximately 20 different boards and commissions (occupational and professional licensing agencies and the Commission on Hispanic-Latino Affairs). The act adds the Commission on African American Males to the list of boards and commissions to receive routine support from the Department of Administrative Services.

**Modification of debt coordination requirements**

(R.C. 126.11)

The Director of Budget and Management, in consultation with the Treasurer of State, is required to coordinate the activities of the various state agencies that are authorized to issue debt. Among the Director's duties is to develop and distribute to state issuers periodically an approved sale schedule for general obligation bonds and certain other securities on which the state is the direct obligor (or obligor on any backup securities or related credit enhancements) or for which state appropriations are the intended payment source. The act expands this duty by requiring the Director to include in the approved sale schedule the following revenue-bond-type securities:

- (1) Obligations of the Ohio Finance Housing Agency;
- (2) Obligations issued by the Treasurer of State in connection with higher education student loans;
- (3) Obligations of the Air Quality Development Authority;
- (4) Obligations of the Petroleum Underground Storage Tank Release Compensation Board;
- (5) Obligations of the Ohio Turnpike Commission;
- (6) Obligations of the Ohio Water Development Authority;
- (7) Obligations issued pursuant to an agreement between two or more school districts and the Treasurer of State to finance the districts' School Facilities Commission school buildings through certificates of participation sold by a trustee selected by the Treasurer (authority for which was granted in S.B. 272 of the 123rd General Assembly).

The act provides that the following entities, which also are authorized to issue revenue-bond-type debt, remain exempt from the approved sale schedule requirement and additionally no longer have to submit to the Director copies of their preliminary and final offering documents if issuing securities: the Treasurer of State for development bonds issued under R.C. Chapter 122., the Director of Development for industrial development bonds issued under R.C. Chapter 165., state universities, university housing commissions, and the Ohio Higher Educational Facility Commission.

**Disbursement of lease rental payment appropriations**

(Section 130)

The act authorizes the Office of Budget and Management to initiate and process disbursements from appropriations for lease rental payments pursuant to leases and agreements related to state obligations issued under Chapters 154. and 3318. of the Revised Code.

**Conformity to the new governmental financial reporting model**

(R.C. 126.21, 131.01, 183.09, and 183.17)

In June 1999 the Governmental Accounting Standards Board issued Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*. The statement modifies generally accepted accounting principles by recommending the issuance of "basic financial statements" and "required supplementary information" rather than "general purpose financial statements." Basic financial statements report a government's financial position and operating results without reference to its underlying fund structure. The act conforms state law to Statement No. 34 by requiring the Director of Budget and Management, the Tobacco Use Prevention and Control Foundation, and the Southern Ohio Agricultural and Community Development Foundation to issue basic financial statements and required supplementary information rather than general purpose financial statements.

Except with respect to proprietary funds, endowment funds, and public employee retirement system funds, the old financial reporting model called for a government to have a General Long-Term Debt Account Group in which to record long-term debt and a General Fixed Assets Account Group in which to record its capital assets (property, plant, and equipment). Both are self-balancing groups of accounts, not fiscal entities and hence not funds. Under the new financial reporting model, capital assets are to be recorded as fund assets and reported in a Statement of Net Assets. Since account groups no longer are to exist, they are removed from the definition of "accounting system" and from the prescribed content of the state's comprehensive annual financial report.

### **Preparation of zero-base budgets**

(Section 28.03)

The Governor vetoed a provision of the act that would have required the Director of Budget and Management, prior to January 2002, to select one of 18 administrative departments of the state, and one state agency with fewer full-time equivalent personnel than any of those departments, to prepare full zero-base budgets for the July 1, 2003 - June 30, 2005 biennium.

### **Modification of volume cap for private activity bonds, and elimination of survey requirement**

(R.C. 133.021)

A federal income tax exemption is available to investors who purchase state or local government bonds issued to finance certain nongovernmental activities that are determined to fulfill a public purpose. These bonds are referred to as tax-exempt private activity bonds. But the federal government imposes a limit, or cap, on the volume of private activity bonds that can be issued in each state each year.

In accordance with federal statutes, prior state law provided that the unified state and local volume cap for Ohio was the product of \$50 multiplied by the state's population. The act eliminates the specific formula, and provides instead that the volume cap for Ohio is the amount determined under the federal Internal Revenue Code.

Under continuing law, the Joint Select Committee on Volume Cap provides for the allocation of the amount of bonds available under the cap among the governmental units and authorities that can issue tax-exempt private activity bonds. The Committee consists of eight members--four appointed by the Governor, two members of the House of Representatives appointed by the Speaker, and two members of the Senate appointed by the President.

The act eliminates a requirement that the Committee annually survey the entities that can issue tax-exempt private activity bonds concerning the amount issued the previous year and the amount requested for the current year.

### **Assistance to steel companies by linked deposits of counties and municipal corporations**

(R.C. 135.80, 135.81, and 135.84)

A board of county commissioners, by resolution, may establish a linked deposit program and authorize the investing authority of that county to participate in the program. Similarly, the legislative authority of a municipal corporation, by

ordinance, may establish a linked deposit program and authorize participation by the treasurer or governing board of that municipal corporation. Under previous law, these linked deposit programs could authorize *only* the placement of certificates of deposits with eligible lending institutions at up to 3% below market rates, *provided* that the lending institution agreed to lend the amount of the deposit to eligible borrowers at up to 3% below the borrowing rate applicable to each borrower.

The act adds as a condition of receiving such linked deposits an alternative to lending directly to borrowers at up to 3% below the applicable borrowing rate: that is, an eligible lending institution may enter into an agreement with an *eligible government* to provide that eligible government with a certificate of deposit, investment agreement, or other investment in the value of the linked deposit at an interest rate at up to 3% *above* current market rates, *as determined by the eligible government*.

"Eligible government," as used in the act, means the state or a county, municipal corporation, or other political subdivision that has made or guaranteed a loan to a business that is an *eligible steel company*. The act specifies that the government entity in effect guarantees such a loan if that entity incurs a direct or contingent legal obligation to repay (1) any portion or all of the loan, (2) any interest accrued on the loan, or (3) any amount owed to a person with respect to the loan for providing a letter of credit, guarantee, surety bond, insurance policy, or other form of credit facility or credit enhancement.

An "eligible steel company," under the act, is a corporation or other person engaged in Ohio in the production and manufacture of a basic steel mill product or a company that would be a "qualified steel company" under the "Federal Steel Loan Act," provided that the corporation or other person is an "eligible borrower" under the federal act.

### **Assistance to steel companies under the Ohio Depressed Economic Area Linked Deposit Program**

(R.C. 135.81, 135.82, 135.83, 135.85, 135.86, and 135.87)

#### **State participation; limits of investment**

Previously, the only specified purpose of the Depressed Economic Area Linked Deposit Program was to make "lower cost funds [available to eligible businesses] for lending purposes that will materially contribute to the economic revitalization of depressed economic areas" in Ohio. The act adds that it also is the purpose of the Depressed Economic Area Linked Deposit Program, consistent with the Steel Futures Program established under current Department of Development Law, to assist steel companies operating in Ohio by expanding



forms of assistance available under the Depressed Economic Area Linked Deposit Program as modified by the act. The act expressly adds an *eligible steel company* as an eligible business for purposes of the Depressed Economic Area Linked Deposit Program.

Under the previous program, the Treasurer of State could only place depressed economic area linked certificates of deposit with eligible lending institutions at a rate of up to 3% below market rates, provided that the institution agreed to lend the value of the deposit at up to 3% below the present borrowing rate applicable to each specific business at the time of the deposit. Like the authority it provides to counties and municipal corporations to establish linked deposit programs, the act gives authority to the Treasurer of State, for the Depressed Economic Area Linked Deposit Program, to place such linked certificates of deposit with eligible lending institutions, provided that the lending institution agrees to enter into an agreement with an eligible government to provide that eligible government with an above-market investment in the value of the linked deposit. "Above-market investment" is defined as a certificate of deposit, investment agreement, or other investment bearing an interest rate at up to 3% above current market rates, as determined and calculated by the Treasurer of State.

Under the law, the Treasurer of State may not invest more than 3% of the state's total investment portfolio in depressed economic area linked deposits. The act adds that, in the case of a linked deposit with respect to which an above-market investment is provided to an eligible government or a reduced rate loan is made for the benefit of an eligible steel company, the amount of the linked deposit may not exceed the product of \$15,000 multiplied by the number of employees, at the time of placement of the linked deposit, whose employment was reasonably expected to be created or preserved as a result of the financial assistance provided under the Depressed Economic Area Linked Deposit Program.

In addition, the law limits the amount of depressed economic area linked deposits made in a single county to \$1 million in a two-year period. The act excludes from this limit deposits linked to above-market investments held by eligible governments.

### **Local participation**

The act authorizes a board of county commissioners, and the legislative authority of a municipal corporation, as an eligible government, to participate with the Treasurer of State in the Depressed Economic Area Linked Deposit Program as modified by the act. Participation will be on such terms as may be agreed upon between the eligible government and the Treasurer.

Under the act, an eligible lending institution and eligible government may forward to the Treasurer of State, either separately or in conjunction with a depressed economic area linked deposit package, a proposal for the lending institution to provide the eligible government with an above-market investment on such terms as the lending institution and eligible government agree. The Treasurer must accept or reject the proposal pursuant to the same standards the Treasurer would apply to a depressed economic area linked deposit loan or loan package to an eligible business. The act states that, notwithstanding any other provision of the public depository law to the contrary, an above-market investment entered into by an eligible government with an eligible lending institution in compliance with the provisions of the law that refer expressly to above-market investments is a legal and authorized investment for the interim or inactive money of that government.

The act also specifies duties of lending institutions with respect to above-market investments with eligible governments or eligible lending institutions under the modified linked deposit program. It also provides for the Treasurer of State to monitor the compliance of eligible governments and for additional annual reporting requirements to the General Assembly and to the Governor regarding financial assistance to eligible governments.

#### **Rural Industrial Park Loan Program**

(R.C. 166.03)

The act extends the expiration date of the Department of Development's Rural Industrial Park Loan Program from June 30, 2001, to July 1, 2003, and changes a statutory date with regard to that program accordingly.

#### **Credit due a retail customer not considered unclaimed funds**

(R.C. 169.01)

Generally, the Unclaimed Funds Law (Chapter 169.) defines funds that are to be considered unclaimed; contains investing, reporting, and notice requirements; and provides for reclaiming of the funds by owners. Under ongoing law, items expressly *not* unclaimed funds include (1) money received or collected by public officials under color of office, (2) payments or credits to suppliers or service providers due, in the course of business, to a business association from a business association, and (3) payments or credits for tangible goods sold or services performed due, in the course of business, to a business association from a business association.

The act adds another exclusion from the definition of unclaimed funds for purposes of the Unclaimed Funds Law. Specifically, any credit due a retail

customer that is represented by a gift certificate, gift card, merchandise credit, or merchandise credit card, that is redeemable only for merchandise does *not* constitute unclaimed funds for purposes of the Unclaimed Funds Law.

**Changes membership requirements of Ohio Housing Finance Agency**

(R.C. 175.03)

The act increases the membership of the Ohio Housing Finance Agency from nine to eleven and requires that at least one member of the agency represent the interests of nonprofit multifamily housing development organizations and at least one member represent the interests of for-profit multifamily housing development corporations. The act establishes the terms for the additional members of the agency and specifies that six instead of five members must be present to constitute a quorum and to take action.

**Low- and Moderate-Income Housing Trust Fund**

(R.C. 175.21, 175.22, and 175.24)

The act modifies the Low- and Moderate-Income Housing Trust Fund by (1) changing the definition of rural areas to be consistent with the definition in the federal "HOME" program, (2) changing the restriction on funds awarded for rural areas and small cities from not less than 35% of the money in the fund to not less than 45% of the funds awarded during a fiscal year, (3) changing the restriction on awards to nonprofit organizations from 45% of the money in the fund to 45% of funds awarded during a fiscal year, (4) increasing the limits on administration costs from 5% of the money in the fund to 6% of the money in the fund, (5) specifying that not more than 20% of any current year's appropriation authority may be awarded for supportive services for housing and the homeless, (6) changing the basis of calculating awards in low and very low-income counties from a biennium basis to a fiscal year basis, and (7) requiring the Department of Development and the Ohio Housing Finance Agency to report activities to the legislature on a state fiscal year basis instead of a calendar year basis.

The act prohibits establishing a minimum project size for awards to projects that are being developed to serve special needs populations and that have the support of a local social service agency. A multifamily project generally consists of four or more units, but under the act, smaller projects may be funded for special needs populations.

## **Ohio Commission on Dispute Resolution and Conflict Management**

(R.C. 179.02(A) and (B), 179.03(B)(6), and 179.04(B)(5))

The Ohio Commission on Dispute Resolution and Conflict Management, which provides dispute resolution and conflict management education, training, and research programs in the state, consists of 12 members who are appointed by the Governor, the Chief Justice of the Supreme Court, the President of the Senate, or the Speaker of the House of Representatives. The act clarifies that the Commission must consist of those 12 members unless a *vacancy* exists in an appointment at any given time.

Former law specified that "seven members" constituted a quorum for the conduct of Commission business. The act instead provides that a majority of the members of the Commission, as it exists at any given time, constitutes such a quorum. Continuing law specifies that the votes of a majority of the Commission members present at a Commission meeting are required to validate an action of the Commission.

Finally, under continuing law, the Commission is authorized, among other things, to enter into contracts for dispute resolution and conflict management services. The act additionally permits the Commission to authorize its executive director to enter into those contracts.

## **Changes to the Tobacco Master Settlement Agreement Law**

### **Education Technology Trust Fund dedicated to SchoolNet Commission**

(R.C. 183.28)

Each year, a portion of the revenue the state receives under the Tobacco Master Settlement Agreement is credited to the Education Technology Trust Fund. Under prior law, money in the fund had to be used to pay costs of new and innovative technology for primary and secondary education (including chartered nonpublic schools) and higher education (both public institutions and private nonprofit institutions holding certificates of authorization from the Ohio Board of Regents).

The act provides that money in the Education Technology Trust Fund is to be used instead for costs of the Ohio SchoolNet Commission. The SchoolNet Commission oversees programs that assist school districts and other educational institutions to acquire and utilize educational technology.

### **Temporary suspension of cap on administrative expenses**

(R.C. 183.30)

Continuing law requires the Tobacco Use Prevention and Control Foundation, Southern Ohio Agricultural and Community Development Foundation, and Biomedical Research and Technology Transfer Commission to administer three of the programs to which the state dedicates a portion of the revenue it receives under the Tobacco Master Settlement Agreement. An administrative spending cap is imposed on these entities, in that no more than 5% of the entity's total expenditures in a fiscal year can be for administrative expenses.

The act provides that the 5% limitation on administrative expenses does not apply in fiscal years 2001 and 2002, as long as the entity seeking to spend more than 5% has submitted a spending plan to the Controlling Board and the Board has approved the plan.

### **Reporting date extension for the Tobacco Oversight Accountability Panel**

(Sections 157 and 158)

Am. Sub. S.B. 192 of the 123rd General Assembly established seven trust funds to receive revenue distributed to the state under the Tobacco Master Settlement Agreement, and specified program objectives for each trust fund. S.B. 192 also created a seven-member Tobacco Oversight Accountability Panel to develop appropriate achievement benchmarks for each trust fund. The Panel is required to submit a report describing the achievement benchmarks, and under prior law the report was due by July 1, 2001. The act extends the reporting deadline to December 31, 2001.

### **County competitive bidding requirements**

(R.C. 307.86(E))

Under former law, family services or workforce development activities purchased by a board of county commissioners from nonprofit corporations or associations under programs funded *entirely* by the federal government were waived from county competitive bidding requirements. The act instead waives from those requirements criminal justice services, social services programs, family services, or workforce development activities purchased by a board of county commissioners from nonprofit corporations or associations under programs funded by the federal government (apparently so funded in whole or in part) or by state grants.

**Release of certain medical or psychiatric records to a coroner's office**

(R.C. 313.091)

Continuing law permits a coroner, deputy coroner, or representative of a coroner or deputy coroner, in connection with the performance of duties under the Coroners Law, to submit a written request to inspect and receive a copy of the medical and psychiatric records of a deceased person. The person to whom the request is delivered (e.g., a physician) must make the requested records in that person's custody available during normal business hours. A person who provides copies of such medical or psychiatric records may request reimbursement in a specified amount for the necessary and reasonable costs of their copying. The coroner, deputy coroner, or representative must remit that amount to the person upon receipt of the copies.

The effects of providing medical and psychiatric records to a coroner, deputy coroner, or representative under the latter provisions include: (1) the records are not public records, (2) they are exempt from the provision of the Coroners Law that generally makes "all records in the coroner's office" open to public inspection and copying, and (3) their release does not constitute a willful betrayal of a professional confidence for which the State Medical Board could take disciplinary action under the State Medical Board Law.

The act provides that the Department of Mental Health, hospitals and other institutions or facilities within the Department, boards of alcohol, drug addiction, and mental health services, and community mental health agencies may release medical and psychiatric records to a coroner, deputy coroner, or representative pursuant to the above-described request procedure, without the necessity of a court order, without the necessity of following another statutory disclosure of records procedure, and without violating the otherwise applicable rule of confidentiality associated with that disclosure of records procedure (which confidentiality is owed to patients, former patients, and persons whose hospitalization was sought under the Hospitalization of the Mentally Ill Law).

**Changes in sheriff's furtherance of justice fund law**

(R.C. 325.071)

The act changes the formula for the sheriff's furtherance of justice fund, a fund for "expenses that the sheriff incurs in the performance of . . . official duties and in the furtherance of justice." Under the law prior to December 8, 2000, this fund consisted of an amount equal to 1/2 of the sheriff's salary paid by the county. The law was changed in December 2000 to make the amount equal to 1/2 of the county-paid salary and 1/2 of the amount of state-paid salary the sheriff receives; the state-paid salary is equal to 1/8 of the sheriff's county-paid salary. The act

returns the amount to be paid into the sheriff's furtherance of justice fund to the pre-December 8, 2000 calculation; that is, 1/2 of the county-paid salary of a sheriff.

**Authority for new community authorities to finance hospital facilities**

(R.C. 140.01(B) and (D) and 349.01(I))

Under continuing law, new community districts may be established by developers by petition to the board of county commissioners. If a petition is approved, a new community authority is established, which has among its powers the authority to issue bonds for the construction and maintenance of "community facilities" and to levy a community development charge upon land in the district in order to pay (among other purposes) the debt charges arising from a bond issue.

The act includes a new community authority organized under the New Community Districts (NCD) Law among the entities included in the definition of a "public hospital agency" and includes hospital facilities within the definition of "community facilities" under the NCD Law. Accordingly, the act allows a new community authority to issue revenue bonds to finance hospital facilities and to use the community development charge to cover all or part of the cost of the acquisition, construction, operation, maintenance, and debt service charges of hospital facilities.

**County hospital policies for acquiring certain services**

(R.C. 339.05)

Under continuing law, boards of county hospital trustees may establish bidding procedures and purchasing policies for certain supplies and equipment routinely used in the operation of their hospital that differ from the general county competitive bidding procedures. The act also permits those boards to establish different bidding procedures and purchasing policies for services that are provided through a joint purchasing arrangement sponsored by a nonprofit organization and that are routinely used in the operation of their hospital.

**Increase members of board of township trustees in home rule townships**

(R.C. 504.03(E), 504.04(A)(1) and (C), and 504.21)

Under former law, limited home rule townships were required to be governed like all townships, by a three-member board of township trustees. The act changes this so that a limited home rule township may, after its creation, change its three-member board to a five-member board. By a unanimous vote, the board of township trustees may pass a resolution to put the question on the ballot of whether to increase the number of board members. If a majority of the voters

on the question approve the change to a five-member board, at the next election at which board members are elected, two additional board members will be elected--one for a four-year term and one for a two-year term. After that initial election, all trustee positions will be for four-year terms.

The act also requires that, if a board of township trustees is converted to a five-member board, the board members must be elected by determining which individuals receive the highest number of votes from a slate of candidates running for the office of township trustee.

**Pay increases for trustees and clerks in townships with budgets of more than \$6 million**

(R.C. 505.24 and 507.09)

Under continuing law, the pay schedules for township trustees and township clerks are based upon a township's budget. Formerly, the highest pay category was for townships with budgets of more than \$6 million. Starting in 2002, the act increases the compensation for township trustees and clerks in this highest pay category by dividing it into two sub-categories and setting new pay scales for each. One new category is for townships with a budget of more than \$6 million but not more than \$10 million; the other is for townships with a budget of more than \$10 million.

Under the act, in townships with a budget of more than \$6 million but not more than \$10 million, a township trustee is entitled to \$70 per day for not more than 200 days, and the township clerk is entitled to \$19,810. In townships with a budget of more than \$10 million, a township trustee is entitled to \$90 per day for not more than 200 days, and the township clerk is entitled to \$20,900. In years following 2002, those new base amounts, as under continuing law for all townships, will increase in a specified manner each year until 2009.

**Increase in competitive bid limit for expenditures made by a statutory city's director of public safety**

(R.C. 737.03)

Under continuing law, a statutory city has a department of public safety, administered by a director of public safety. The director of public safety, among other duties, manages and makes contracts pertaining to the police and fire departments and other specified institutions under the director's supervision. Under former law, in so doing, the director of public safety could not create an obligation involving an expenditure of more than \$10,000 unless first authorized and directed by ordinance. An authorized expenditure of more than \$10,000 had



to be competitively bid and awarded to the lowest and best bidder. The act increases the \$10,000 threshold to \$15,000.

### **Creation of Athlete Agents Registration Fund**

(R.C. 3773.56 and 4771.22)

Am. Sub. H.B. 107 of the 123rd General Assembly required athlete agents to register with the Ohio Athletic Commission. The Commission charges the agents a registration fee, in an amount it calculates will raise sufficient funds to cover the costs of administering the Athlete Agent Registration Law.

Under prior law, the Commission was required to deposit the agent registration fees (and renewal fees) in the Occupational Licensing and Regulatory Fund. The act instead requires that the fees be deposited in the Athlete Agents Registration Fund, which it creates in the state treasury. The Commission is required to use the new fund to administer and enforce the Athlete Agent Registration Law.

### **Ohio Arts and Sports Facilities Commission Law**

#### **Definitional changes**

(R.C. 3383.01(C) and 3383.07(D) and (E))

The Ohio Arts and Sports Facilities Commission is required to determine the need for additional Ohio arts facilities and Ohio sports facilities and to provide for the use of those facilities in making the arts and professional sports available to the public in Ohio. Under Commission law, the term "arts project" means all or any portion of an Ohio arts facility for which the General Assembly has authorized spending, or made an appropriation, under a provision of that law identifying three requirements that must be met before state money can be spent on the construction of any arts project. The provision of law with those three requirements does not apply to state historical facilities, but the act adds a reference in the definition of an "arts project" to a similar provision of law with only one requirement that applies to *state historical facilities*, apparently to clarify that an arts project means all or any portion of an Ohio arts facility, including a state historical facility, for which the General Assembly has authorized spending or made an appropriation.

#### **OASFC and DAS duties**

(R.C. 3383.07(A)(2) and (C))

Under continuing law, the Department of Administrative Services (DAS) generally must provide for the construction of an arts project in conformity with

the Public Improvements Law. Under former law, the following were among the exceptions to this requirement:

(1) An arts project that had an estimated construction cost, excluding its acquisition cost, of \$25 million or more and that was financed by the Ohio Building Authority (OBA), in which case construction services could be provided by the OBA (not affected by the act);

(2) An arts project, other than a state historical facility, could have construction services provided for it on behalf of the state by the Arts and Sports Facilities Commission, or by a governmental agency or an arts organization that occupies, will occupy, or is responsible for the Ohio arts facility involved, *as determined by DAS*.

The act changes the second exception by removing DAS' duty to make the determination whether the Commission, or a governmental agency or an arts organization, may provide construction services for an arts project. The Commission replaces DAS as the entity making the determination.

Under former law, DAS also generally provided for general building services for an Ohio arts facility. The act removes this duty from DAS and, instead, generally requires the Commission or, if the Commission so determines, an arts organization that occupies, will occupy, or is responsible for the facility to provide those services. The act retains an exception authorizing the OBA to elect to provide those services for Ohio arts facilities financed with proceeds of state bonds issued by the OBA.

### *Other changes*

(R.C. 3383.07(D)(1))

Under continuing law, for arts facilities other than state historical facilities, state funds cannot be spent on the construction of any arts project unless three requirements were met. One of those requirements formerly was that the Commission determine that there was a need for the project and the arts facility related to the project in the region of the state for which the Ohio arts facility was proposed to be located. The act changes this requirement to apply it to existing and proposed facilities--i.e., there must be a demonstration of need in the region of the state in which the facility is either located or for which it is proposed to be located.

**Commission property interests in facilities; "cooperative" contracts**

(R.C. 3383.01, 3383.02, and 3383.04)

The Ohio Arts and Sports Facilities Commission has statutory authority to, among other things, own, construct, lease, furnish, administer, manage, or provide for the operation and management of Ohio arts facilities. There are three types of Ohio arts facilities: the Riffe Center theaters, state and local historical facilities, and other capital facilities related to arts projects authorized or funded by the General Assembly. Under prior law, the state had to have a real property interest in any facility of the last type, and any such facility had to be managed directly by the Commission or through a management contract with the Commission. The act eliminates the requirement that the state have a real property interest in an Ohio arts facility financed by state obligations (although it does require that state bond proceeds were used to pay costs of the facility), and it allows for "cooperative" contracts as well as "management" contracts between the Commission and arts organizations. A similar change is made with respect to state historical facilities. A cooperative contract must set forth the terms and conditions of the cooperative use of an Ohio arts facility. The act requires that any cooperative or management contract be in effect for not less than the time remaining for the payment or provision for payment of any state obligations issued to finance the arts project.

**Additional members on the Commission**

(R.C. 3383.02)

Under prior law, the Ohio Arts and Sports Facilities Commission consisted of eight members, five of them voting members appointed by the Governor from different geographical regions of the state. The act adds two more voting members to the Commission--both of them appointed by the Governor and one of whom must represent the State Architect. The three nonvoting members continue to be the staff director of the Ohio Arts Council, a member of the Senate appointed by the President of the Senate, and a member of the House of Representatives appointed by the Speaker.

The act specifies that no more than four of the members of the expanded Commission appointed by the Governor can be from the same political party, four voting members constitute a quorum for meetings, and the affirmative vote of four members is necessary for approval of any action. The act continues the requirement that the Governor's appointments must be from different geographical regions of the state.

**Transfer of investment earnings on arts and sports facilities building funds to the Ohio Arts and Sports Facilities Commission Administration Fund**

(R.C. 3383.09)

The act creates the Arts Facilities Building Fund and the Sports Facilities Building Fund in codified law and provides that investment earnings on the two funds are to be credited to those funds. It also authorizes the Director of Budget and Management to transfer investment earnings from the two building funds to the Ohio Arts and Sports Facilities Commission Administration Fund when requested by the Chairperson or Executive Director of the Commission. The administration fund is used to pay expenses of the Commission. The amounts that may be transferred are limited to amounts that exceed estimated federal arbitrage rebate requirements. These requirements are designed to prevent states from making a profit at federal expense by issuing low-interest tax-exempt bonds and then investing the proceeds in securities that yield a higher rate of interest.

**Ballot arguments for or against constitutional amendments**

(R.C. 3505.063)

Former law required the General Assembly, when it adopted a resolution proposing a constitutional amendment, to designate a group of members who voted in support of the proposed amendment to prepare arguments in favor of it and a group of members who voted in opposition to the proposed amendment to prepare arguments against it. If no members vote in opposition to the proposed amendment, continuing law permits the Ohio Ballot Board to prepare arguments against the amendment or to designate a group of persons to do so. Continuing law requires all arguments to be filed with the Secretary of State at least 75 days before the date of the election, and arguments cannot exceed 300 words.

The act permits, rather than requires, the General Assembly to designate a group of members who voted in support of a proposed amendment to prepare arguments in favor of it, and permits the General Assembly to designate a group of members who voted in opposition to a proposed amendment to prepare arguments against it. Under the act, if no members vote in opposition to a proposed amendment, or if the General Assembly chooses not to designate a group to prepare either type of argument or chooses not to designate groups to prepare both types of arguments, the Ohio Ballot Board may prepare the relevant arguments or designate a group of persons to do so.

### **Physical Fitness and Sports Advisory Board changes**

(R.C. 3701.77, 3701.771, and 3701.772; Section 223)

The act replaces the "Physical Fitness and Sports Advisory Board" in the Department of Health with the "Governor's Advisory Council on Physical Fitness, Wellness, and Sports." The composition of the members serving on the Council is substantially the same as the composition of the members who served on the Board; however, the Council has a total of 15 members, rather than the 11 who served on the Board. The four additional members are to be appointed by the Director of Health. Under prior law, the seven members appointed by the Governor were to be representative of physicians, pediatricians, coaches, athletic trainers, athletes, educators, "and such other persons or professions interested in the physical fitness of the citizens of the state as the [G]overnor considers appropriate." The act replaces that general category with "physical therapists, dentists, nutritionists, exercise physiologists, and one worksite wellness person."

Additionally, changes are made to the operation of the Council, including permitting members of the Council who are also members of the General Assembly to designate a substitute to serve on the Council in their absence; establishing a simple majority of the current appointed members of the Council as constituting a quorum at meetings; and permitting council meetings to take place at locations other than Columbus.

All references in the Revised Code to the Physical Fitness and Sports Advisory Board are changed by the act to the Governor's Advisory Council on Physical Fitness, Wellness, and Sports. Uncodified law provides for the transfer of the Board's records and assets to the Council, and transfers the Board's administrative and fiscal authority, duties, powers, obligations, and functions to the Council.

### **Authority of Director of Health with respect to grants and other contributions**

(R.C. 3701.04(A)(5))

Under ongoing law, the Director of Health is required to accept and deposit in the state treasury to the credit of the General Operations Fund, any grant, gift, or contribution made to assist in meeting the cost of carrying out the Director's responsibilities. Prior law mandated that the Director expend the grant, gift, or contribution "for such purpose."

The Director's authority in this regard is expanded by the act to include "soliciting, holding, and administering" such grants, gifts, and contributions, as well as any "devises" or "bequests" made to assist in meeting the cost of carrying out the Director's responsibilities. The act also requires that the grants, gifts,

devises, bequests, and contributions be expended "for the purpose for which made."

**1990 federal census is population measure for metropolitan housing authority district**

(R.C. 3735.27)

Under continuing law, not changed by the act, the specific provisions that govern the appointment of members to a metropolitan housing authority are determined by the population of the district. When a district's population increases to at least one million persons, the district must change its appointment procedures, possibly affecting the membership of its authority. The act stipulates that the 1990 federal census will be the measure of a district's population, meaning that no district will have to change its appointment procedures due to the 2000 census.

**Elevator reinspection fees**

(R.C. 4105.17)

Former law fixed the fee for the reinspection of an elevator by a general inspector in the Division of Industrial Compliance of the Department of Commerce at \$30 plus \$5 for each floor where an elevator stops, if the previous attempt to inspect was unsuccessful through no fault of the general inspector or the Division of Industrial Compliance. The act increases the base fee for such reinspection to \$125. The \$5 additional fee for each floor where an elevator stops is unchanged by the act.

**Penalty Enforcement Fund in state treasury**

(R.C. 4115.10)

The Director of Commerce is required to collect and deposit all money received from penalties paid to the Director due to violations of the Prevailing Wage Law (Chapter 4115.) into the Penalty Enforcement Fund, which is a custodial fund of the Treasurer of State and, hence, not a part of the state treasury. The act moves the fund into the state treasury. As a result of this change, expenditures can be made from the fund only pursuant to an appropriation made by law.

**Clarification of status of Liquor Control Fund as part of the state treasury**

(R.C. 4301.12)

Under former law, when the Director of Budget and Management determined that the amount "in the custody of the Treasurer of State" to the credit of the Liquor Control Fund exceeded the amount needed to meet the maturing obligations of the Division of Liquor Control, as working capital for its further operations, to pay the operating expenses of the Liquor Control Commission, and for the alcohol testing program, the Director had to transfer the excess amount "to the state treasury" to the credit of the General Revenue Fund. The act removes the reference to the amount credited to the Liquor Control Fund in "the custody of the Treasurer of State" and the reference to transferring the excess amount in the Liquor Control Fund "to the state treasury" for credit to the General Revenue Fund in recognition of the fact that the Liquor Control Fund already is in the state treasury.

**Modification of the number of liquor agency stores that may be owned or operated by the same person**

(R.C. 4301.17)

The Division of Liquor Control awards agency store contracts to persons engaged in a mercantile business to sell spirituous liquor on the Division's behalf. Former law prohibited the same person from operating, or having a direct or indirect interest in, more than four liquor agency stores in any one county or more than eight liquor agency stores in the entire state. The act increases the number of agency stores allowed under the restriction from four to eight in any one county and from eight to 16 in the entire state.

**Manufacturer aid or assistance to beer or liquor wholesalers**

(R.C. 4301.24)

The act specifies that the provision of the Liquor Control Law that restricts a manufacturer of beer or intoxicating liquor from aiding or assisting a wholesaler of these beverages does not prevent a manufacturer from giving financial assistance to the holder of a B (wholesale) permit for the purpose of the holder's purchasing an ownership interest in the business, existing inventory and equipment, or property of another B permit holder, including participation in a limited liability partnership, limited liability company, or any other legal entity authorized to do business in Ohio. The act further specifies that that provision of the Liquor Control Law does not permit a manufacturer to give financial assistance to the holder of a B permit to purchase inventory or equipment used in the daily operation of a B permit holder.

### Deputy registrar fees

(R.C. 4503.034, 4503.10, 4503.102, 4503.12, 4503.182, 4505.061, 4506.08, 4507.23, 4507.24, 4507.50, 4507.52, 4519.03, 4519.10, 4519.56, and 4519.69)

Generally, the act increases transaction (or service) fees charged by a deputy registrar to \$2.75 commencing July 1, 2001.<sup>66</sup> Future increases of \$3.25 commencing January 1, 2003 and \$3.50 commencing January 1, 2004, are subject to the deputy registrars' achieving a 90% satisfaction rating on a survey that the act requires the Bureau of Motor Vehicles to develop. Most transaction fees previously were \$2.25. If continuing law specifies that the Registrar of Motor Vehicles may perform the same service and assess a transaction fee, the act increases the fees that the Registrar charges according to the same schedule.

Under the act, the deputy registrar fee increases scheduled to begin on January 1, 2003, and also on January 1, 2004, take effect only if the deputy registrars achieve a statewide satisfaction rate of at least 90% on a survey conducted by the Registrar. The required 90% satisfaction rate must be determined on a statewide, collective basis and not on an individual basis. If the deputy registrars fail to achieve a statewide satisfaction rate of at least 90%, the act specifies that the service fees remain at the rate in effect for the immediately preceding year.

The act requires the Registrar to develop and conduct a survey evaluating public satisfaction with the conduct of services by deputy registrars. In developing the survey, the Registrar must establish standards that enable a deputy registrar to achieve a 90% satisfaction rating. The Registrar is required to conduct the survey in 2002 to determine the satisfaction rating for purposes of the January 1, 2003 increase (generally to \$3.25) and again in 2003 to determine the satisfaction rating for purposes of the January 1, 2004 increase (generally to \$3.50).

Under the act, if the deputy registrars fail to achieve a collective 90% satisfaction rating for 2002, the fee increase scheduled for January 1, 2003 will not take effect and service fees will remain at \$2.75. For 2003, if the deputy registrars achieve a satisfaction rating of 90%, the service fees will be increased on January 1, 2004 to \$3.50, regardless of whether the deputy registrars had a 90% satisfaction rating in 2002. If the deputy registrars fail to achieve a 90%

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<sup>66</sup> *Through an inadvertant error, the fee for a duplicate or replacement Ohio identification card increases to \$3.00 on July 1, 2001, rather than the \$2.75 fee established for other transactions. Am. Sub. H.B. 299 of the 124th General Assembly has corrected this error.*



satisfaction rating for 2003, the fee increase scheduled for January 1, 2004 will not take effect; the service fees will remain at the rate in effect for the previous year (either \$2.75 or \$3.25, depending on whether they had a collective 90% satisfaction rating for 2002) until such time as the General Assembly may revise the fees.

Although the act does not change the fee for lamination of a driver's license and identification cards, it does extend the lamination fee of not more than \$1.50 to include the lamination of a temporary instruction permit identification card.

The following chart describes the deputy registrar transactions and fees under prior law and the act:

<b>R.C. Number</b>	<b>Transaction Description</b>	<b>Current fee</b>	<b>Fee on 7/1/2001</b>	<b>Fee on 1/1/2003, with 90% satisfaction rating</b>	<b>Fee on 1/1/2004, with 90% satisfaction rating</b>
§ 4503.10	Motor vehicle registration and registration renewal	\$2.25	\$2.75	\$3.25	\$3.50
4503.102	Motor vehicle registration renewal by mail	\$2.25	\$2.75	\$3.25	\$3.50
4503.12	Motor vehicle registration upon transfer of ownership	\$2.25	\$2.75	\$3.25	\$3.50
4503.182	Issuance of a temporary license placard or windshield sticker	\$2.25	\$2.75	\$3.25	\$3.50
4505.061	Conducting a physical inspection of a motor vehicle last previously registered in another state ( <i>fee may be charged by a deputy registrar, motor vehicle dealer, or salvage motor vehicle dealer</i> )	\$1.50	\$2.75	\$3.25	\$3.50

<b>R.C. Number</b>	<b>Transaction Description</b>	<b>Current fee</b>	<b>Fee on 7/1/2001</b>	<b>Fee on 1/1/2003, with 90% satisfaction rating</b>	<b>Fee on 1/1/2004, with 90% satisfaction rating</b>
4506.08	Application for and renewal of a commercial driver's license temporary instruction permit, commercial driver's license, and duplicate commercial driver's license	\$2.25	\$2.75	\$3.25	\$3.50
4507.23	Laminating a driver's license, motorized bicycle license, or temporary instruction permit identification card	Not more than \$1.50	No change	No change	No change
4507.24	Application for renewal of a driver's license, with vision screening	\$3.25	\$3.75	\$4.25	\$4.50
	Application for and renewal of a driver's license, without vision screening	\$2.25	\$2.75	\$3.25	\$3.50
4507.50	Issuance of an identification card	\$2.25	\$2.75	\$3.25	\$3.50
	Laminating an identification card or temporary identification card	Not more than \$1.50	No change	No change	No change
4507.52	Issuance of a duplicate or replacement identification card	\$2.25	\$3.00	\$3.25	\$3.50
4519.03	Registration or renewal of an off-highway motorcycle or all-purpose vehicle	\$2.25	\$2.75	\$3.25	\$3.50

R.C. Number	Transaction Description	Current fee	Fee on 7/1/2001	Fee on 1/1/2003, with 90% satisfaction rating	Fee on 1/1/2004, with 90% satisfaction rating
4519.10	Issuance of a temporary license placard for an off-highway motorcycle or all-purpose vehicle	\$2.25	\$2.75	\$3.25	\$3.50
4519.56	Conducting a physical inspection of an off-highway motorcycle or all-purpose vehicle with no certificate of title previously issued by this state ( <i>fee may be charged by a deputy registrar or a motor vehicle dealer</i> )	\$1.50	\$2.75	\$3.25	\$3.50
4519.69	Conducting a physical inspection of an off-highway motorcycle or all-purpose vehicle last previously registered in another state ( <i>fee may be charged by a deputy registrar, motor vehicle dealer, or salvage motor vehicle dealer</i> )	\$1.50	\$2.75	\$3.25	\$3.50

**Second additional county motor vehicle license tax**

(R.C. 4504.05 and 4504.051)

Continuing law generally grants counties, municipal corporations, and townships authority to levy various local motor vehicle license taxes. Counties may levy three different local motor vehicle license taxes. The first such tax is authorized by R.C. 4504.02; the tax rate is \$5 per motor vehicle on all motor vehicles that are located in the county for purposes of registration. R.C. 4504.15 and R.C. 4504.16 authorize a county to levy, respectively, an additional annual license tax and a second additional annual license tax at the rate of \$5 each. R.C. 4504.05 provides for the allocation and distribution of the county tax proceeds.

With respect to the two additional county motor vehicle license taxes, for both taxes, that portion of the taxes arising from motor vehicles that are registered in an unincorporated area of the county, under prior law and generally under the act, is allocated 70% to the county and 30% to the township of the owners' residence. The act affects only the allocation of the second additional county motor vehicle license tax and continues the 30% allocation to townships unless the allocation is modified as described below.

Specifically, the act allows the allocation to be modified in either of two ways. First, each year, a board of township trustees may pass a resolution requesting an increase in the percentage of money from the second additional county motor vehicle license tax allocated to the township. After a township passes a resolution, it must forward it to the board of county commissioners. After the county commissioners receive a township resolution requesting an increase in the percentage of money allocated to it, they must consider and, prior to October 1, may pass a resolution increasing the percentage of money from the second additional county motor vehicle license tax allocated to a township.

The second method for modifying the township allocation allows a board of county commissioners, each year, to propose increasing or decreasing the percentage of money otherwise allocated to a township from the second additional county motor vehicle license tax. However, the act allows the board of county commissioners to make the proposal only if it has first obtained a resolution from the township trustees consenting to the percentage of the increase or decrease. If the board of county commissioners has the township's consent, then, prior to October 1, it may pass a resolution increasing or decreasing the percentage of money allocated to the township, but only by the percentage to which the board of township trustees consented.

The board of county commissioners promptly must forward a copy of any resolution reallocating funds to the board of trustees of the involved township, the county engineer, and the county treasurer. A resolution passed by a board of county commissioners is valid only for the county fiscal year next following the date on which the resolution is passed.

The act requires the county treasurer to make the first distribution under any new allocation established by a resolution in January of the year next following the date on which the resolution is passed. The money allocated to townships must be paid into the treasuries of the townships and may be used only for the purposes described in continuing R.C. 4504.18, including maintenance and repair of township roads, bridges, and culverts, traffic signs and signals, and road machinery.

### **Characteristics of a driver's license issued to a person under 21 years of age**

(Section 199)

The driver's license issued to a person who is under 21 years of age is distinctive in several aspects. It is probationary for ages 16 to 17; it expires on the licensee's 21st birthday; and the cost of the license is adjusted to reflect that it is valid for one to five years. It also has distinguishing characteristics prescribed by the Registrar of Motor Vehicles (R.C. 4507.13, not in the act). Under law unchanged by the act, the prescribed distinguishing characteristics include: (1) the background is red for the licensee's picture (the background is blue for persons 21 and older), (2) the primary picture is located on the left side of the license (it is located on the right for persons 21 and older), and (3) the birthdate specifically states "under 21."

The act requires the Registrar, in prescribing distinguishing characteristics for a driver's license issued to a person who is under 21 years of age, to consider: (1) formatting the license vertically, and (2) conspicuously indicating the month, day, and years on which the licensee becomes 18 and 21 years of age. The act authorizes the Registrar, in accordance with continuing law, to prescribe either or both of these distinguishing driver's license characteristics.

### **Accountancy Board late fees**

(R.C. 4701.10 and 4743.05)

Prior law required holders of certified public accountant (CPA) certificates or public accountant (PA) registrations to apply for an Ohio permit to practice within three years of the expiration of the current permit to practice or within three years of the date the CPA certificate or PA registration was granted. The act requires CPA certificate holders and PA registration holders to apply for either an Ohio practitioner's permit or nonpractitioner's registration within one year from the expiration of the current Ohio permit or Ohio registration or within one year from the date a CPA certificate was granted. (The Board no longer issues new PA registrations.) The act changes the consequence for failure to apply in a timely manner from mandatory indefinite suspension of the CPA certificate or PA registration (except in cases of excusable neglect) to suspension until late fees have been paid.

The act establishes late filing fees of up to \$100 for failure of a CPA certificate holder to apply for an Ohio permit or Ohio registration within 60 days after receiving the certificate, up to \$100 per month or part of a month to a maximum of \$1,200 for failure to renew an Ohio permit to practice on time, and up to \$50 per month or part of a month to a maximum of \$300 for failure of a nonpractitioner to renew an Ohio permit or Ohio registration on time.

The act also makes a number of changes for the purpose of clarifying statutory requirements and organizing the law governing accountant registration more logically.

**Accountancy Board disciplinary fine increased**

(R.C. 4701.16)

Continuing law authorizes the Accountancy Board to discipline a person holding an Ohio permit, an Ohio registration, a firm registration, a CPA certificate, or a PA registration for certain designated offenses. One of the disciplinary policies that the Board may use at its discretion is to levy a fine that cannot exceed \$1,000 for each offense. The act increases the maximum amount of the fine to \$5,000 for each offense. A provision of continuing law provides that the amount of the fine levied must be reasonable and in relation to the severity of the offense.

**Fee increase for reexamination in cosmetology**

(R.C. 4713.10)

Under former law, the State Board of Cosmetology collected a \$14 fee from an applicant who wanted to be reexamined in cosmetology after failing a previous exam. The act increases the amount of this fee to \$21.

**Qualifications of members of the Board of Embalmers and Funeral Directors**

(R.C. 4717.02(A); Section 197)

Former law required that four members of the Board of Embalmers and Funeral Directors be licensed embalmers and practicing funeral directors, each with at least ten consecutive years of experience in Ohio immediately preceding the person's appointment. One Board member formerly had to be knowledgeable and experienced in operating a crematory, and that member could have been, but was not required to be, a licensed embalmer or funeral director.

The act instead requires that five Board members be licensed embalmers and practicing funeral directors with such ten-year experience and that one of these members be knowledgeable and experienced in operating a crematory. The act further provides that, unless five licensed embalmers and practicing funeral directors are already serving on the Board on the act's effective date, the first person appointed to fill a vacancy occurring on the Board on or after that date must be a licensed embalmer and practicing funeral director with at least ten consecutive years of experience in Ohio immediately preceding the date of the person's appointment.

**Biennial license renewal of embalmers, funeral directors, funeral homes, embalming facilities, and crematory facilities**

(R.C. 4717.07 and 4717.08; Section 196)

The act changes from annual to biennial the license renewal for embalmers and funeral directors and renewal of a license to operate a funeral home, an embalming facility, and a crematory facility. The biennial licensing takes effect beginning in December, 2002, and renewal is required each even-numbered year thereafter. The act doubles the former annual cost of renewal for each biennial renewal, so the actual cost remains the same as was required under former law.

**Continuing education requirements for embalmers and funeral directors**

(R.C. 4717.09)

Under continuing law modified by the act, licensed embalmers and funeral directors must attend educational programs determined by rules of the Board of Embalmers and Funeral Directors in the number of hours determined under those rules, provided that they meet the statutory requirement of between 12 and 30 hours of educational programs every two years.

The act modifies the provision described above by specifying that the Board must adopt rules governing the administration and enforcement of the statutory continuing education requirement. The act retains the statutory requirement of between 12 and 30 hours of educational programs.

The act permits the Board to contract with a professional organization or association or other third party to assist it in performing functions necessary to administer and enforce the continuing education requirements established for license renewal of embalmers and funeral directors. The act permits a professional organization or association or other third party with whom the Board so contracts to charge a reasonable fee for performing these functions to licensees or to the persons who provide continuing education programs.

**Licensed dispensing optician examination and license requirements**

(R.C. 4725.44, 4725.48, and 4725.49)

Under prior law, the Ohio Optical Dispensers Board was required to schedule, administer, and supervise the qualifying examination for applicants for licensure as licensed dispensing opticians. In another section of the laws continuing to govern licensed dispensing opticians, the Board has the authority to contract with a testing service to design, prepare, and administer qualifying examinations.

The act reconciles the discrepancy making it clear in both places that the Board may supervise the qualifying examinations for license applicants or contract with a testing service to administer the examination.

Also, under prior law, an applicant for licensure as a licensed dispensing optician was required to qualify to take the licensing examination by demonstrating all of the following:

- (1) The applicant is at least 18 years of age;
- (2) The applicant is of good moral character;
- (3) The applicant is free of contagious or infectious disease;
- (4) The applicant is a graduate of an accredited high school of any state or has received an equivalent education.

To qualify to take the licensing examination, the applicant also was required to demonstrate the successful completion of two years of supervised experience or a two-year college level program in optical dispensing approved by the Board.

Under the act, the applicant may take the examination without demonstrating any of the above qualification; however, the applicant must apply for a license, separate from the examination, by filing a properly completed written application with the Board, and by paying the appropriate license fee. When the applicant applies for the license, the applicant must demonstrate that the applicant meets all of the above qualifications, and has received a passing score on the examination, as determined by the Board.

Prior law allowed a registered apprentice or a student in an approved college-level program in optical dispensing to take the qualifying examination after completion of one year of the apprenticeship or college program, but did not allow the person to become eligible for licensure until the person had completed the second year of the apprenticeship or college program. The act eliminates this provision.

### **State Board of Sanitarian Registration**

(R.C. 4736.12 and 4736.14)

Continuing law requires the State Board of Sanitarian Registration to charge specified fees to be paid by persons who apply to the Board for various purposes. The act increases those fees as follows:



<u>Application</u>	<u>Former law</u>	<u>The act</u>
Sanitarian-in-training	\$55	\$57
Registered sanitarian if applicant is sanitarian-in-training	\$55	\$57
Registered sanitarian if applicant is not sanitarian-in-training	\$110	\$114

In addition, continuing law requires the Board to fix a renewal fee for registered sanitarians and for sanitarians-in-training. Prior law established a cap for that fee of \$58. The act increases the cap to \$61.

Under law retained in part by the act, the Board, upon application and proof of valid registration, may issue a certificate of registration to any resident of Ohio who is or has been registered as a sanitarian by another state. The certificate may be issued as long as the requirements of that state, as determined by the Board at the time of registration, are at least equivalent to the requirements governing sanitarians under Ohio law. The act eliminates the residency requirement for sanitarian registration.

### **Occupational therapists**

(R.C. 4755.01)

The act expands the scope of practice of occupational therapists to include the application of topical drugs that have been prescribed by a licensed health professional authorized to prescribe drugs.

### **Motor vehicle collision repair operators**

#### **Definitions**

(R.C. 4775.01)

Under former law, "motor vehicle collision repair operator" meant a person who owned or managed, in whole or in part, a motor vehicle collision repair facility whether or not mechanical or other repairs also were performed at the facility. The act instead defines "motor vehicle collision repair operator" as any person, sole proprietorship, foreign or domestic partnership, limited liability corporation, or other legal entity that is not an employee or agent of a principal and performs five or more motor vehicle collision repairs in a calendar year.

In addition, former law defined "motor vehicle collision repair facility" as a business location in which five or more separate motor vehicle collision repairs were performed for the general public in a 12-month period, commencing with the day of the month in which the first such repair was made. The act instead defines such a facility as a location from which five or more separate motor vehicle collision repairs are performed on motor vehicles in a 12-month period, commencing as provided in continuing law.

The act also adds the following definitions:

(1) "Collision" means an occurrence in which two or more objects, whether mobile or stationary, contact one another in a manner that causes the alteration of the surface, structure, or appearance, whether separately or collectively, of an object that is party to the occurrence.

(2) "Collision repair" means any and all restorative or replacement procedures that are performed on and affect or potentially affect the structural, life safety, and cosmetic components of a motor vehicle that has been damaged as a result of a collision. It includes any procedure that is employed for the purpose of repairing, restoring, replacing, or refinishing, whether wholly or separately, any structural, life safety, or cosmetic component of a motor vehicle to a condition approximating or replicating the function, use, or appearance of the component prior to a collision.

### **Registration fees**

(R.C. 4775.08; Section 175)

Under continuing law largely retained by the act, motor vehicle collision repair operators must register annually with the Board of Motor Vehicle Collision Repair Registration. Prior law established a \$100 initial and annual renewal fee for a motor vehicle collision repair registration certificate and for a temporary motor vehicle collision repair registration certificate for each business location of a registrant. The act increases the fee on and after January 1, 2002, to \$150. It continues the authority for the Board, with the approval of the Controlling Board, to increase or decrease that fee, provided that the new fee does not exceed or is not less than the statutory fee by more than 50% and that the change does not cause an excessive build-up of surplus funds in the Motor Vehicle Collision Repair Registration Fund.

Additionally, the act provides that if the Board has notified or attempted to notify an operator that the operator is required to be registered, and the operator fails to register, the initial registration fee for such an unregistered operator, for each business location at which the operator conducts business as an operator, is

the initial fee then in effect plus an additional amount equal to the initial fee then in effect for each calendar year that the operator does not register.

### **Enforcement**

(R.C. 4775.02 and 4775.99)

Continuing law prohibits anyone from acting as a motor vehicle collision repair operator unless the person is registered with the Board. A violator must be fined not more than \$1,000 on a first offense and between \$1,000 and \$5,000 on each subsequent offense. The act also provides that any person or entity that conducts or attempts to conduct business as a motor vehicle collision repair operator in violation of the Motor Vehicle Repair Operators Law performs an unfair and deceptive act or practice. Additionally, the act authorizes the Board, after conducting an investigation and upon establishing that an operator has failed to register or that the operator has performed an unfair and deceptive act or practice, to impose an administrative fine on the person or entity that committed the violation in an amount of not more than \$1,000 on a first offense. On each subsequent offense, the Board may impose an administrative fine of not less than \$1,000 nor more than \$5,000. If the administrative fine is not paid, the Attorney General, upon the Board's request, must commence a civil action to collect the fine.

### **Consumers' Counsel Governing Board**

(R.C. 4911.17)

The act makes several changes to provisions pertaining to the Consumers' Counsel Governing Board. Former law required the Board to meet at least every "other" month; under the act, the Board must meet at least every third month of the year. Under former law, the Board was required to select a chairperson and vice-chairperson at its "initial" meeting, which was required to occur 30 days following the appointment of all of its "initial" members; the act instead requires the Board to select a chairperson and vice-chairperson at its first meeting each year. Finally, the act allows the Board's chairperson to designate the vice-chairperson to perform the duties of the chairperson.

## **Technology Action Board**

(Section 41.06)

The act continues the Technology Action Board.<sup>67</sup> The Board consists of 14 members, ten of whom are appointed by the Governor. The members appointed by the Governor include: six members that are recognized technology and business leaders from the Northeast, Southeast, Northwest, Central, Southwest, and Miami Valley Area sections of the state; one member from the Wright Patterson Air Force Laboratory; one member from the NASA Glenn Research Center; one member from the Inter-University Council; and one member who is the current Director of the Edison Centers Technology Council. The Board also includes the Governor's Science and Technology Advisor, who is also the Board's chairperson, and three ex-officio members: the Director of Development, the Director of Transportation, and the Chancellor of the Board of Regents, or their designees. Staff and other support for the Board comes from the Department of Development's Technology Division and from the Board of Regents' Academic and Access Division.

The Board formerly was charged with administering a technology grant award program. Pursuant to that duty, the Board had to adopt program rules and develop guidelines for the release of funds under the Administrative Procedure Act (APA). The act instead requires the Board to adopt rules under the APA governing its grant award program, including (1) rules specifying application procedures for and standards for grant awards and (2) rules prescribing the form of the application for a grant award. Those rules must require grant awards to be used (a) by only the applicant to whom a grant is awarded and (b) only for the specific purposes stated by the applicant in the approved application for the grant.

The Governor vetoed two other provisions that (1) permitted a grant award to be made to a technology capital fund headquartered in any of the Governor's economic development regions and not yet a recipient of venture capital funding and (2) required not less than 30% of the Board's total grant awards each fiscal year to be given to job creation or retention efforts by for-profit organizations and businesses.

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<sup>67</sup> Enacted in section 37.06 of Am. Sub. H.B. 283 of the 123rd General Assembly, as amended by Am. Sub. H.B. 640 of the 123rd General Assembly.

### **Civil Service Review Commission**

(Section 159)

Under continuing law (Section 4 of Am. S.B. 210 of the 123rd G.A.), the Civil Service Review Commission is required to review civil service laws and practice under those laws in Ohio. Under former law, upon completion of its review, but not later than nine months after all appointments were made to it, the Commission was required to issue a report to the President of the Senate and the Speaker of the House of Representatives that identified current civil service statutes, rules, practices, and procedures and made recommendations for changes to them considered to be necessary. The Commission was to cease to exist once that report was issued.

The act continues to require the Commission to issue a report to the House Speaker and Senate President, and changes to December 31, 2001 the deadline by which the Commission must complete its review and issue the report.

### **Transfer of services from local public employment offices**

(Section 63.33)

The act requires the Director of Job and Family Services to present a report to the members of the House Finance and Appropriations Committee and of the Senate Finance and Financial Institutions Committee on or before October 1, 2001, that describes the Director's plan to replace the existing local public employment offices with telephone registration centers, mail claims centers, or one-stop employment centers. The report must contain specified information concerning plans for staffing, cost projections, and a description of funding sources broken down by federal, state, and local funding expectations. The Governor vetoed a provision in the act that would have required the Director to continue operations through each of the local public employment offices that exist on the act's effective date until January 1, 2002. Additionally, the Governor vetoed a provision that stated that it was the General Assembly's intention that the Director negotiate with specified local officials regarding the transfer of services.

### **Joint legislative committee to study the impact of high technology start-up businesses**

(Sections 167 and 168)

Continuing uncodified law (Section 1 of Sub. H.B. 574 of the 123rd G.A.) establishes a joint legislative committee to study the impact of high technology start-up businesses on economic development and small businesses in Ohio. The committee is required to submit a report along with its recommendations based on the study to the General Assembly. Formerly, the report was to be submitted by



August 1, 2001. The act extends the committee's report deadline to March 1, 2002.

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## **ACT SUMMARY**

### **HEALTH AND HUMAN SERVICES**

#### **Ohio Family and Children First Cabinet Council strategic plan**

- Requires the Ohio Family and Children First Cabinet Council to conduct an assessment of early childhood programs and develop a strategic plan for integrating early childhood care and education programs.

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

- Abolishes the Family Services Stabilization Fund.

#### **County credit card use by public children services agencies**

- Allows a public children services agency to use a credit card to make purchases for children in the agency's custody or care.

#### **The Ohio Long-term Care Consumer Guide**

- Changes to March 1, 2002, the date by which the Department of Aging must make available over the Internet the Ohio Long-term Care Consumer Guide.
- Regarding the customer satisfaction component of the Guide, changes the requirement that the Department of Aging contract with an entity experienced in surveying nursing home residents and their families to a requirement that the Department contract with such an entity to the extent possible.

#### **Fee for Children's Trust Fund**

- Increases to \$3 (from \$2) the additional fee charged and credited to the Children's Trust Fund for copies of certain vital records provided on or after October 1, 2001.
- Increases to \$11 (from \$10) the additional fee charged and credited to the Children's Trust Fund for filing for a divorce decree or decree of dissolution on or after October 1, 2001.



### **Child support calculation worksheet**

- Changes the child support calculation worksheet applicable to sole custody and shared parenting situations to permit the adjustment based on child care and health insurance costs to reduce each parent's child support obligation.

### **Authority of Director of Health**

- Expands the authority of the Director of Health by requiring the Director to solicit, hold, and administer certain grants, gifts, devises, bequests, and other contributions on behalf of the state.

### **Home health agencies**

- Repeals the requirement that Medicare-certified home health agencies register with and make reports to the Ohio Department of Health.
- Eliminates the Home Health Agency Advisory Council.
- Eliminates the requirement that the Director of Health make an annual home health agency report.

### **Ohio Hepatitis C Advisory Commission**

- Creates within the Department of Health the Ohio Hepatitis C Advisory Commission.

### **Moratorium on long-term care beds**

- Continues until July 1, 2003 the moratorium on accepting certificate of need applications for certain long-term care beds.

### **Moratorium on new MR/DD residential facility beds**

- Modifies and continues until October 15, 2003 the moratorium on new residential facility beds for individuals with mental retardation and developmental disabilities.

### **Involuntary transfer or discharge from a nursing home**

- Modifies the Ohio Department of Health's procedure for residents to appeal a proposed transfer or discharge from a nursing home and specifies when a transfer or discharge is appropriate.

### **Coverage of return to long-term care facility**

- Extends, until October 16, 2003, a requirement that if certain conditions exist each health insuring corporation policy that provides benefits for skilled nursing care through a closed panel plan provide reimbursement for medically necessary covered skilled nursing care services an enrollee receives in a skilled nursing facility, continuing care facility, or home for the aging, even if the facility or home does not participate in the closed panel plan.

### **The Health Care Workforce Shortage Task Force**

- Creates the Health Care Workforce Shortage Task Force.
- Requires the Task Force to submit a report of its findings and recommendations to the President and Minority Leader of the Senate and to the Speaker and Minority Leader of the House of Representatives.

### **Ohio Health Care Data Center**

- Repeals the provisions of law that require the Director of Health to establish, in consultation with the Health Data Advisory Committee, the Ohio Health Care Data Center in the Department of Health.

### **Funds for designation of pediatric trauma centers**

- Corrects cross-references in the statutes authorizing the Department of Health to use part of the Child Highway Safety Fund for a temporary program of state designation of hospitals as Level II pediatric trauma centers.

### **State Dental Board**

- Requires the State Dental Board to develop a quality intervention program as an alternative or addition to disciplinary proceedings to remedy clinical and communication problems of Board licensees.



- Increases State Dental Board fees.

### **Board of Nursing**

- Authorizes the Board of Nursing to solicit and accept grants and services to develop and maintain a program that addresses patient safety and health care issues related to the supply of and demand for nurses and other health care workers.
- Increases the fee for biennial renewal of a nursing license and establishes two new Board of Nursing fees.
- Clarifies that a nursing student in a program for certification in an advanced nursing specialty must practice under the supervision of the program and its instructors.

### **State Medical Board**

- Eliminates a provision under which the amount charged for a certificate to practice medicine or osteopathic medicine is reduced by the amount paid for a training certificate if the training certificate was issued not longer than four months before application for the certificate to practice.
- Requires an individual applying for a certificate to practice podiatry to present to the State Medical Board proof of completion of one year of postgraduate training in a podiatric internship, residency, or clinical fellowship program accredited by the Council on Podiatric Medical Education or the American Podiatric Medical Association.
- Requires an individual seeking to pursue an internship, residency, or clinical fellowship program in podiatric medicine to apply to the State Medical Board for a training certificate, unless the individual holds a certificate to practice podiatry.

### **Chiropractic license examination requirements**

- Extends to January 1, 2002, the effective date of the requirement that an applicant for licensure as a chiropractor have passed part IV of the examination of the National Board of Chiropractic Examiners.

### **Duration of respiratory care limited permits**

- Eliminates a conflict in the circumstances under which a limited permit to practice respiratory care expires.

### **Practice of orthotics, prosthetics, and pedorthics**

- Changes certain licensing requirements for the practices of orthotics, prosthetics, and pedorthics.

### **County child welfare allocation**

- Changes the way a reduction in a county's child welfare allocation is calculated by eliminating consideration of the county's expenditure of federal social services (Title XX) funds in determining whether a county spent less on services to children than in the preceding year.
- Repeals a provision that generally prohibited consideration of a reduction in funds due to sanction in determining whether the county spent less on services to children than in the preceding year.

### **Child welfare services report**

- Eliminates the requirement that ODJFS prepare an annual report detailing on a county-by-county basis child welfare services provided.

### **Administrative funds for foster care and adoption assistance programs**

- Increases to 3% (from 2%) the amount that ODJFS may withhold from federal funds for administrative and training costs incurred in the operation of foster care maintenance and adoption assistance programs and provides that the amount withheld may be used, in addition to funding the Ohio Child Welfare Training Program, to fund the university partnership program.

### **Child Welfare Training Fund**

- Eliminates a provision of law allowing a government entity, private child placing agency (PCPA), or private noncustodial agency (PNA) to request that ODJFS determine what portion of an amount the agency or entity charged for foster care maintenance for a child who qualified for reimbursement under Title IV-E of the Social Security Act.

- Eliminates the requirement that ODJFS levy a special assessment on each PCPA, PNA, or government entity seeking a foster care maintenance rate determination and that ODJFS deposit money collected from the assessments into the Child Welfare Training Fund.
- Eliminates the Child Welfare Training Fund which ODJFS was required to use to secure federal matching funds under Title IV-E to help defray allowable and reasonable costs that PCPAs, PNAs, and government entities incurred in training staff and foster caregivers.
- Eliminates a provision allowing ODJFS to require a PCPA, PNA, or government entity that received payment from the Child Welfare Training Fund for training costs to pay or help pay the cost of an adverse audit finding that the agency or entity caused or contributed to.
- Eliminates a provision allowing ODJFS to require all PCPAs, PNAs, and government entities that receive payments from the Child Welfare Training Fund for training costs to share in the cost of an adverse audit finding that a PCPA, PNA, or government entity no longer in existence caused or contributed to.

**Child care agency financial rules and training reimbursement**

- Requires that procedures to monitor reports of costs reimbursable under Title IV-E for foster care and adoption assistance and costs reimbursable under Medicaid be implemented by ODJFS by October 1, 2003 and requires that the costs be distinguished in cost reports.

**County children services board executive director**

- Authorizes a county children services board to enter into an employment contract with the board's executive director and provides that the executive director is not to be in the classified civil service.

**Consolidated grant of state aid for county children services**

- Permits ODJFS, with the consent of a county, to combine into a single and consolidated grant, state funds provided to the county for child welfare services and kinship care.

**Waiver request to provide health assistance to certain uninsured parents**

- Permits the Director of ODJFS to seek a federal waiver to provide health assistance to certain uninsured, residential parents with a family income not exceeding 100% of the federal poverty guidelines using federal funds allotted under the Children's Health Insurance Program.

**Kinship care navigator program**

- Eliminates the requirement that ODJFS establish a program providing support services to kinship caregivers and replaces it with a kinship care navigator program that provides kinship caregivers information and referral services and assistance in obtaining the support services that were required to be provided under the eliminated support service program.
- Provides for payments, within available funds, to public children services agencies for providing services under the kinship care navigator program.
- Permits ODJFS to provide training and technical assistance concerning needs of kinship caregivers to employees of public children services agencies and other persons and entities that serve kinship caregivers or perform the duties of a kinship care navigator and are under contract with an agency.
- Permits ODJFS to adopt rules to implement the kinship care navigator program.

**Format for issuing food stamp benefits**

- Eliminates the requirement that a system for mail issuance of food stamp benefits be maintained and statutorily recognizes the statewide practice of issuing food stamp benefits in electronic form.

**Identification cards issued to assistance recipients**

- Permits a county department of job and family services to issue, at the county department's expense, identification cards to recipients of benefits or services under any assistance program the county department administers.

### **Family Violence Prevention and Services Act**

- Transfers from ODJFS to the Office of Criminal Justice Services the administration of funds received under the federal Family Violence Prevention and Services Act.

### **Burial expenses**

- Eliminates law under which persons entitled to receive payment for funeral, cremation, cemetery, and burial expenses of deceased public assistance recipients may receive state funds to defray those expenses.

### **Ohio Child Welfare Training Program**

- Permits the Ohio Department of Job and Family Services (ODJFS) to provide, as part of the Ohio Child Welfare Training Program, preplacement and continuing training that foster caregivers must obtain for issuance or renewal of a foster home certificate.
- Requires the training program steering committee, which is charged with the duty of monitoring the Ohio Child Welfare Training Program, to ensure that the preplacement and continuing training meets the requirements of ODJFS for the training.
- Requires that a public children services agency, PCPA, or PNA acting as a recommending agency for a foster caregiver, rather than ODJFS, pay the foster caregiver a stipend as reimbursement for attending training courses.
- Revises the law governing payment of providers of publicly funded child day-care for days a child is absent.

### **Fees for publicly funded day-care**

- Effective January 1, 2002, requires county departments of job and family services to redetermine every six months the fee charged for publicly funded child day-care.
- Requires that ODJFS act as the single state agency to administer and supervise the administration of Title IV-A programs and provides that the Title IV-A state plan and amendments to the plan are binding on county family services agencies and state agencies that administer a Title IV-A program.

- Prohibits a county family services agency or state agency administering a Title IV-A program from establishing a policy governing the Title IV-A program that is inconsistent with a Title IV-A program policy established by the Director of ODJFS.
- Requires ODJFS to administer certain Title IV-A programs and components, supervise a county family services agency's administration of the programs and components, or enter into an interagency agreement with a state agency for the state agency to administer programs and components under ODJFS's supervision.
- Permits ODJFS to terminate certain Title IV-A programs and components or reduce funding for them if ODJFS determines that federal or state funds are insufficient to fund them and the Director of Budget and Management approves the termination or reduction.

#### **TANF Federal Fund**

- Creates the Temporary Assistance for Needy Families (TANF) Federal Fund to receive federal funds for Ohio Works First; the Prevention, Retention, and Contingency program; and other purposes consistent with state and federal laws.

#### **Ohio Works First**

- Provides that a minor who is at least six months pregnant and a member of an assistance group that does not include an adult is a minor head of household under Ohio Works First (OWF) and therefore subject to the minor head of household requirements, including entering into a self-sufficiency contract and satisfying work responsibilities.
- Provides that the OWF time limit applies to an assistance group that includes an individual who has participated in the program for 36 months as an adult or minor head of household or spouse of an adult or minor head of household.
- Permits a county department of job and family services to exempt not more than 20% of the average monthly number of OWF assistance groups, rather than participants, from the time limits on the basis of hardship and requires ODJFS to monitor the percentage of assistance groups exempted on a county-by-county basis.

- Changes requirements governing reports by ODJFS about participation in the OWF Program.

### **Prevention, Retention, and Contingency Program**

- Requires that ODJFS's model design for the Prevention, Retention, and Contingency (PRC) program establish or specify eligibility requirements, the help to be provided under the program, administrative requirements, and other matters determined necessary.
- Eliminates a restriction that the PRC program serve only assistance groups that include at least one minor or a pregnant woman.
- Provides that benefits and services provided under the PRC program must be an allowable use of federal TANF funds, except that they may not be "assistance" as defined in a federal TANF regulation.
- Provides that the ODJFS model design and the policies of a county department of job and family services for the PRC program may establish eligibility requirements for, and specify benefits and services to be provided to, types of groups, such as students in the same class, that share a common need for the benefits and services.
- Provides that the ODJFS model design and the policies of a county department of job and family services for the PRC program may specify benefits and services that the county department may provide for the general public.
- Provides that benefits and services provided under the PRC program are inalienable whether by way of assignment, charge, or otherwise and are exempt from execution, attachment, garnishment, and other like process.

### **Medicaid single state agency**

- Requires ODJFS, as the Medicaid single state agency, to comply with a federal regulation governing Medicaid single state agencies.
- Provides that ODJFS's rules governing Medicaid are binding on other agencies that administer Medicaid components and prohibits any other agency from establishing a policy governing Medicaid that is inconsistent with an ODJFS-established Medicaid policy.

### **Medicaid coverage of treatment for breast or cervical cancer**

- Requires the Director of ODJFS to submit a state Medicaid plan amendment to the federal government to implement the Breast and Cervical Cancer Prevention and Treatment Act of 2000 under which certain uninsured women under age 65 receive Medicaid during the period treatment for breast or cervical cancer is needed.

### **Prescription Drug Rebates Fund**

- Establishes the Prescription Drug Rebates Fund in the state treasury for the deposit of manufacturer rebates for covered Medicaid outpatient drugs.

### **Medicaid managed care**

- Eliminates a requirement that ODJFS establish in specified counties a managed care system for qualified Medicaid recipients to obtain health care services from providers designated by ODJFS, but continues to permit the Department to establish such a program in any county.
- Eliminates a provision allowing ODJFS to issue requests for proposals from managed care organizations and specifies that ODJFS may enter into contracts with managed care organizations to provide health care services to qualified Medicaid recipients.
- Eliminates a provision allowing a health insuring corporation under a contract with ODJFS to enter into an agreement with any community based clinic for the provision of medical services to Medicaid recipients participating in a managed care system.

### **Health Care Compliance Fund**

- Permits ODJFS to provide financial incentive awards to managed care organizations that provide Medicaid services for meeting or exceeding specified performance standards.
- Allows ODJFS to specify in a contract with a managed care organization the amounts of financial incentive awards, methodology for distributing awards, types of awards, and standards for administration by the Department.



- Creates the Health Care Compliance Fund to collect fines imposed on managed care organizations that provide Medicaid services for failure to meet performance standards or other requirements.
- Permits money credited to the Health Care Compliance Fund to be used to reimburse managed care organizations that have paid fines and come into compliance with ODJFS requirements, and to provide financial incentive awards to managed care organizations that meet or exceed performance standards.

**Medicaid reimbursement of long-term care services**

- For FY 2002 and 2003, establishes a maximum mean total per diem rate applicable to nursing facilities under the Medicaid program.
- For FY 2002 and 2003, increases the franchise permit fee to \$3.30 (from \$1) per bed per day imposed on long-term care beds and requires that ODJFS use the additional money generated from the increase to make payments to nursing facilities (1) under the law governing Medicaid payments to nursing facilities and (2) to reimburse nursing facilities a portion of the franchise permit fee.
- Changes the imputed occupancy percentage used in calculating the per diem for indirect care costs for FY 2002 and 2003 and for capital costs for FY 2002.
- Increases nursing facilities' Medicaid reimbursement rates for direct care costs by providing that costs reported in a nursing facility's cost report for purchased nursing services are to be allowable costs up to 20% (rather than 10%).
- Reduces the maximum return on equity payment paid to proprietary nursing facilities to \$.50 (from \$1) per patient day.
- Provides that a change of operator that results from bankruptcy, foreclosure, or findings of violations of Medicaid certification requirements is no longer an extreme circumstance that warrants reconsideration of a nursing facility's Medicaid reimbursement rates.
- Revises the law governing escrow accounts for nursing facilities and ICFs/MR that are sold or voluntarily terminate participation in the Medicaid program.

- Increases the maximum penalty ODJFS may impose on the owner of a nursing home or ICF/MR who fails to notify ODJFS of the sale of the facility or voluntary termination of participation in Medicaid within the required time.
- Eliminates the requirement that ODJFS report annually any necessary refinements to the case-mix system for reimbursing direct care costs under the Medicaid program.
- Abolishes the Medicaid Long-Term Care Reimbursement Study Council and creates the Nursing Facility Reimbursement Study Council.
- Would have required higher rates of reimbursement to a pharmacy that achieves a savings in its average monthly cost of providing services to Medicaid nursing home residents. (Vetoed)
- Eliminates a requirement that the Medicaid provider agreement of a nursing facility or ICF/MR contain provisions regarding the time by which ODJFS must make Medicaid payments.

**Medicaid waiver programs**

- Authorizes the Director of ODJFS to adopt rules governing components of the Medicaid program authorized by federal waivers, including rules that establish eligibility requirements for the waiver components and the type, amount, duration, and scope of services the waiver components may provide.
- Authorizes the Director of ODJFS to conduct reviews of Medicaid waiver components, including physical inspections of records and sites where services are provided under a waiver component and interviews of providers and recipients of the services.

**Interagency agreements for the administration of Medicaid components**

- Provides that ODJFS may enter into interagency agreements with one or more other state agencies to have the state agency administer one or more Medicaid components under ODJFS's supervision.
- Requires a state agency that enters into an interagency agreement with ODJFS to administer a Medicaid component to reimburse ODJFS for the nonfederal share of the cost to ODJFS of a fiscal audit if rules governing the component require that a fiscal audit be conducted.

### **Medicaid home and community-based services for medically fragile individuals**

- Authorizes the Director of ODJFS to seek federal approval for a new or modified home and community-based services waiver program for medically fragile individuals who (1) need a skilled level of care, (2) are enrolled in the Ohio Home Care Waiver Program on June 30, 2001, or, in the case of a number of individuals approved by the Director of Budget and Management, after that date, and (3) are transferred from the Ohio Home Care Waiver Program to the new or modified waiver program.
- Provides that the Director of ODJFS may reduce the maximum number of individuals the Ohio Home Care Waiver Program may serve by the number of individuals transferred from that program to the new or modified home and community-based services waiver program for medically fragile individuals.

### **Ohio Access Success Project**

- Authorizes the Director of ODJFS to establish the Ohio Access Success Project to help Medicaid recipients make the transition from residing in a nursing facility to residing in a community setting.
- Specifies the eligibility requirements for, and the benefits to be provided under, the Ohio Access Success Project.

### **Medicaid waiver for community mental health services**

- Requires that an application be made for a waiver of federal Medicaid requirements to allow community mental health services to be covered by Medicaid according to the priorities set by the Department of Mental Health and boards of alcohol, drug addiction, and mental health services.

### **Program of All-Inclusive Care for the Elderly**

- Requires that the Director of ODJFS seek federal approval to continue operation of the Program of All-Inclusive Care for the Elderly (PACE).
- Authorizes the Director of ODJFS to enter into an interagency agreement with the Director of Aging, subject to the approval of the Director of Budget and Management, to transfer responsibility for the administration of PACE from ODJFS to the Department of Aging.

- Would have required the Director of ODJFS to give preference, in the absence of just cause for refusal, to Concordia Care and TriHealth Senior Link when determining the entities for which the first two PACE applications are to be submitted. (Vetoed)

**Medicaid coverage of obesity treatment drugs**

- Would have revoked the authority of the Director of ODJFS to adopt a rule excluding drugs for the treatment of obesity from Medicaid coverage. (Vetoed)

**Preferred Option evaluation**

- Requires that the Director of ODJFS evaluate the Preferred Option component of Medicaid's managed care system and submit a report on the evaluation to the Governor and legislative majority leaders no later than June 30, 2003.
- Would have prohibited the Governor from expanding Preferred Option to additional counties before the report is submitted. (Vetoed)

**Hospital Care Assurance Program**

- Delays HCAP's termination date from July 1, 2001 to October 16, 2003.

**Disability Assistance grant levels**

- Maintains the grant levels for the Disability Assistance program.

**Release of mental health information**

- Permits a community mental health agency or board of alcohol, drug addiction, and mental health services (ADAMH board) to release a client's medical information to third-party payors for payment purposes.
- Permits a community mental health agency that ceases to operate to transfer its treatment records to another agency that assumes its caseload or to the local ADAMH board.

### **ADAMH board interaction with public children services agencies**

- Requires the adoption of rules for prior notification and service coordination between public children services agencies and ADAMH boards.
- Requires formulation of a plan that delineates the funding responsibilities that apply to Medicaid-covered community mental health services provided to children in the custody of public children services agencies.

### **Allocation of funds for alcohol and drug addiction services**

- Would have required that the portion of funds for alcohol and drug addiction services allocated on the basis of population be at least equal to the average amount allocated on that basis for the previous three years. (Vetoed)
- Requires the Department of Alcohol, Drug Addiction, and Mental Health Services to establish a plan to evaluate the current per capita allocation formula for alcohol and drug addiction funds.

### **Certification of mental health facilities**

- Revises and reorganizes the law governing the Director of Mental Health's certification of community mental health services.
- Prohibits an ADAMH board from contracting with a community mental health agency to provide community mental health services included in the ADAMH board's community mental health plan unless the services are certified by the Director of Mental Health.

### **Appropriate service utilization**

- Requires that rules governing Medicaid payment of community mental health facilities, and criteria by which an ADAMH board reviews and evaluates the quality, effectiveness, and efficiency of services provided through its community mental health plan, include requirements ensuring appropriate service utilization.

### **Certification of mental health facilities**

- Provides for the Director of Mental Health to cease certifying community mental health facilities for participation in health care plans of health

insuring corporations and sickness and accident insurance policies two years after the provision's effective date.

**Oversight of Department of Rehabilitation and Correction mental health programs**

- Eliminates Department of Mental Health oversight and audit duties regarding Department of Rehabilitation and Correction mental health programs.

**Contract disputes between ODMR/DD and protective service providers**

- Requires the Joint Council on Mental Retardation and Developmental Disabilities to conduct reviews and make recommendations to the Director of the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) on disputes between ODMR/DD and entities that contract with ODMR/DD for the provision of protective services.

**MR/DD board services**

- Modifies the statutes under which certain services are provided to individuals with mental retardation and developmental disabilities (MR/DD), including such services as adult habilitation, family support services, and supported living.
- Requires county boards of mental retardation and developmental disabilities (county MR/DD boards) to provide service and support administration, rather than case management, to each individual eligible for the board's other services and authorizes a board to provide such services to an individual ineligible for the other services.
- Specifies the duties of service and support administrators.

**Medicaid-funded MR/DD services**

- Requires ODJFS to adopt rules governing Medicaid coverage of habilitation center services provided by habilitation centers certified by ODMR/DD.
- Requires ODMR/DD to accept and process Medicaid reimbursement claims from habilitation centers providing habilitation center services to

Medicaid recipients and pay the Medicaid claims pursuant to an interagency agreement with ODJFS.

- Provides that the Medicaid program is to cover habilitation center services as permitted by the availability of funds.
- Authorizes the Director of ODJFS to seek federal approval to create a new, or modify an existing, Medicaid home and community-based services waiver program to serve individuals with MR/DD who (1) need the level of care provided by intermediate care facilities for the mentally retarded, (2) need habilitation services, (3) are enrolled in the Ohio Home Care Waiver Program on June 30, 2001, and (4) are transferred from the Ohio Home Care Waiver program to the new or modified waiver program.
- Provides that the Director of ODJFS may reduce the maximum number of individuals the Ohio Home Care Waiver program may serve by the number of individuals transferred from that program to the new or modified home and community-based services waiver program.
- Permits ODJFS to administer the new or modified home and community-based services waiver program for persons with mental retardation or a developmental disability or, subject to the approval of the Director of Budget and Management, enter into an interagency agreement with ODMR/DD for ODMR/DD to administer the waiver program under ODJFS's supervision.
- Permits ODJFS to seek federal approval for one or more Medicaid waivers under which home and community-based services are provided to individuals with mental retardation or other developmental disability as an alternative to placement in an intermediate care facility for the mentally retarded.
- Requires a county MR/DD board to give certain individuals with MR/DD who are eligible for Medicaid-funded home and community-based services that ODMR/DD administers priority over others on waiting lists created for county board services.
- For the purpose of obtaining local administrative authority for Medicaid-funded home and community-based services that ODMR/DD administers, habilitation center services, and case management services,

provides for county MR/DD boards to seek approval of a plan from ODMR/DD.

- Requires that ODMR/DD, in consultation with ODJFS and the Office of Budget and Management, approve county MR/DD board plans that include all the required information and conditions.
- Authorizes ODMR/DD to withhold all or part of any funds it would otherwise allocate to a county MR/DD board if the county MR/DD board fails to timely submit all the components of the plan or ODMR/DD disapproves the plan.
- Specifies when ODMR/DD or a county MR/DD board is required to pay the nonfederal share of Medicaid expenditures for home and community-based services that ODMR/DD administers, habilitation center services, and case management services.
- Requires ODMR/DD to charge county MR/DD boards an annual fee for the purpose of generating funds to be used by ODMR/DD and ODJFS for (1) the administration and oversight of Medicaid-funded home and community-based services, habilitation center services, and case management services that a county MR/DD board develops and monitors and (2) the provision of technical support to county MR/DD boards for their local administrative authority for the services.
- Requires ODMR/DD, in consultation with ODJFS, the office of Budget and Management, and county MR/DD boards, to adopt rules establishing a method of paying for extraordinary costs and ensuring the availability of adequate funds in the event a county property tax levy for services for individuals with mental retardation or other developmental disability fails.
- Requires ODMR/DD to adopt rules governing the authorization and payment of home and community-based services that ODMR/DD administers, habilitation center services, and case management services.
- Provides for ODMR/DD to certify providers of home and community-based services that ODMR/DD administers.
- Provides for ODMR/DD to certify habilitation centers that meet certification requirements established by ODJFS, rather than certification standards established by ODMR/DD.



- Eliminates law that required ODJFS to enter into an interagency agreement with ODMR/DD with regard to a Medicaid component under which home and community-based services were provided to an individual with MR/DD as an alternative to placement in a nursing facility.
- Provides that an individual with MR/DD who is eligible for habilitation, vocational, community employment, residential, or supported living services has the right to choose the provider of the services.
- Provides for an individual with MR/DD who moves to a different county to receive ODMR/DD-administered, Medicaid-funded home and community-based services that are comparable in scope to the services the individual receives before moving.
- Requires that ODMR/DD arrange for a study of the implications of the Health Insurance Portability and Accountability Act of 1996 on payment systems for Medicaid-funded services to individuals with MR/DD.
- Creates the Executive Branch Committee on Medicaid Redesign and Expansion of MR/DD Services.

#### **Tax equity payments**

- Requires, rather than permits, ODMR/DD to pay a county MR/DD board a tax equity payment if its hypothetical local revenue per enrollee is less than the hypothetical statewide average revenue per enrollee.
- Requires that a county MR/DD board use its tax equity payments solely to pay the nonfederal share of Medicaid expenditures that the act requires the board to pay.

#### **Arranging residential services and supported living**

- Requires, rather than permits, a county MR/DD board to provide or arrange, subject to available resources, residential services and supported living for individuals with MR/DD.

#### **Certification of supported living providers**

- Eliminates a requirement that ODMR/DD adopt rules establishing standards and procedures for certification of government entities that provide supported living under a contract with a county MR/DD board.

- Requires that ODMR/DD rules governing the certification of supported living providers allow a private entity that holds an MR/DD residential facility license to automatically satisfy a standard for certification that the entity had to meet to obtain the residential facility license.

**Requirements for service contract with county MR/DD boards**

- Requires that each service contract that a county MR/DD board enters into with a provider of services to individuals with MR/DD comply with ODMR/DD rules, include a general operating agreement component and an individual service needs addendum, and, if the provider is to provide Medicaid-funded home and community-based services administered by ODMR/DD, case management services, or habilitation center services, comply with all applicable statewide Medicaid requirements.

**Mediation and arbitration component of service contract**

- Requires that each contract between a county MR/DD board and a provider of services to individuals with MR/DD include provisions for mediation and arbitration of conflicts.

**Investigative agent**

- Requires each county MR/DD board to employ at least one investigative agent or contract with a private or government entity for the services of an investigative agent to conduct investigations of suspected abuse or neglect of individuals with MR/DD.

**CONTENT AND OPERATION**

**HEALTH AND HUMAN SERVICES**

**Ohio Family and Children First Cabinet Council strategic plan**

(Section 184)

The act requires the Ohio Family and Children First Cabinet Council to conduct an assessment of the need for and resources available for services and programs that serve children under age six. The assessment must identify supports available to those services and programs and gaps in services across Ohio, as well as review existing state laws and administrative procedures relevant to those services and programs. Based on the assessment, the Cabinet Council must develop a strategic plan that identifies goals for developing an integrated system of early care and education and recommends specific steps to be taken to accomplish

those goals. The recommendations are to maximize opportunities for existing programs and services to blend funding sources and work together and to establish linkages between schools and early childhood programs to ensure successful transitions for children and their families.

The strategic plan must be developed in consultation with early childhood, business, and community organizations. The Cabinet Council must provide copies of the strategic plan to the Governor, Speaker and Minority Leader of the House of Representatives and President and Minority Leader of the Senate not later than June 30, 2002.

### **Family Services Stabilization Fund**

(repealed R.C. 131.41)

The act repeals law establishing the Family Services Stabilization Fund--a "rainy day fund" for family services purposes. The Director of Budget and Management was authorized to transfer money in the fund to the General Revenue Fund (GRF) to cover identified shortfalls in programs administered by the Department of Job and Family Services that were brought on by such things as higher caseloads and federal funding changes. A transfer could be made only after the Director had exhausted the possibilities for using other money within the Department's budget.

### **County credit card use by public children services agencies**

(R.C. 301.27)

Continuing law establishes procedures for monitoring a county employee's use of a credit card held by the office of a county appointing authority. The law specifies the work-related expenses for which a credit card may be used.

The act allows an employee of a public children services agency to use the agency's credit card to make purchases for children for whom the agency is providing temporary emergency care, children in the agency's custody, and children in planned permanent living arrangements.

### **The Ohio Long-term Care Consumer Guide**

(R.C. 173.46 and 173.47)

Continuing law requires the Department of Aging to publish the Ohio Long-term Care Consumer Guide, a guide to Ohio nursing facilities for individuals considering nursing facility placement and their friends, families, and advisors. The act changes the date by which the Guide must be made available over the Internet from September 1, 2001, to March 1, 2002.

Continuing law (R.C. 173.54) requires the Department to include customer satisfaction surveys in the Guide, and stipulates (R.C. 173.47) that the Department must contract to have the surveys conducted. Whereas prior law required that the person or government entity contracted with to conduct the surveys be experienced in surveying the customer satisfaction of nursing facility residents and their families, the act provides that this requirement applies only to the extent possible.

**Fees for Children's Trust Fund**

(R.C. 3109.14)

The Children's Trust Fund finances child abuse and child neglect prevention programs through fees collected for copies of certain vital records or for filing for a divorce decree or a decree of dissolution. These fees are in addition to those charged by state and local officials for administration of the vital statistics law and operation of the courts.

The additional fee for a certified copy of a birth record, certification of birth, or copy of a death record is \$2. The act increases the additional fee to \$3 effective October 1, 2001.

The additional fee for filing for a divorce decree or a decree of dissolution is \$10. The act increases the additional fee to \$11 effective October 1, 2001.

**Changes to sole and shared parenting child support calculation worksheet**

(R.C. 3119.022)

Under Ohio's child support enforcement laws, child support is calculated using the child support guidelines and one of two worksheets. One worksheet is used for *sole custody* (one parent has primarily been allocated the parental rights and responsibilities for the children who are subject of the order) and *shared parenting* (both parents share the parental rights and responsibilities for the children). The other is used in *split custody* situations (the parents have two or more children and each parent has sole custody of at least one child). Under both worksheets amounts expended by the parents to pay for (1) child care expenses for the children that are related to work, employment training, or education and (2) marginal out-of-pocket costs necessary to provide for health insurance for the children, are calculated as an adjustment to each parent's child support obligation.

The act changes the worksheet applicable to sole and shared parenting situations by permitting the adjustment for the child and health care expenses regardless of whether either parent's child support obligation is increased or decreased by it. Under prior law, the adjustment was allowed only if it increased a

parent's child support obligation. This change is not made to the split custody worksheet.

### **Authority of the Director of Health**

(R.C. 3701.04)

The Director of Health has authority to accept, deposit in the state treasury, and expend, certain grants, gifts, and contributions on behalf of the state. The Director's authority in this regard is expanded by the act to permit the Director to also solicit, hold, and administer grants, gifts, and contributions, as well as other devises and bequests.

### **Home health agencies**

(repealed R.C. 3701.88)

The act repeals law (Revised Code 3701.88) that required each Medicare-certified home health agency to register with and report to the Department of Health annually. The act also eliminates the five-member Home Health Agency Advisory Council that was required to advise the Director in adopting rules concerning the registration and reporting requirements for home health agencies. The Director of Health is no longer required to make an annual home health agency report to the Governor, Speaker of the House of Representatives, and President of the Senate.

### **Ohio Hepatitis C Advisory Commission**

(R.C. 3701.92)

The act creates the Ohio Hepatitis C Advisory Commission in the Department of Health. The Commission is to be composed of 15 members--11 appointed by the Director of Health, two by the Speaker of the House of Representatives, and two by the President of the Senate. The members appointed by the House Speaker and Senate President are to be members of the General Assembly, one from each political party. Members are to serve without compensation for a term of one year.

### **Moratorium on long-term care beds**

(R.C. 3702.68; Sections 145 and 146)

Ohio law prohibits building or expanding the capacity of a long-term care facility without a certificate of need (CON) issued by the Director of Health. The act continues, until July 1, 2003, a provision that was scheduled to expire July 1,

2001, prohibiting the Director of Health from accepting for review any application for a CON for any of the following purposes:

(1) Approval of beds in a new health care facility or an increase in beds in an existing health care facility, if the beds are proposed to be licensed as nursing home beds;

(2) Approval of beds in a new county home or county nursing home, or an increase of beds in an existing county home or county nursing home, if the beds are proposed to be certified as skilled nursing facility beds under Medicare or nursing facility beds under Medicaid;

(3) An increase of hospital beds registered as long-term care beds or skilled nursing facility beds or recategorization of hospital beds that would result in an increase of beds registered as long-term care beds or skilled nursing facility beds.

The Director continues to be required to accept for review a CON application for nursing home beds in a health care facility, or skilled nursing facility beds or nursing facility beds in a county home or county nursing home, if the application concerns replacing or relocating existing beds within the same county. The Director also must accept for review an application seeking CON approval for existing beds located in an infirmary that is operated exclusively by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and was providing care exclusively to members of the religious order on January 1, 1994.

A prohibition against the Director accepting an application for a CON to recategorize hospital beds as skilled nursing beds continues indefinitely beyond July 1, 2003.

### **Moratorium on new MR/DD residential facility beds**

(Sections 165 and 166)

The act modifies and continues, until October 15, 2003, a prohibition on the issuance of development approval for or licensure of any new residential facility beds for persons with mental retardation or developmental disabilities.

### **Background**

Law effective for state fiscal years 2000-2001 prohibits the Department of Mental Retardation and Developmental Disabilities (DMR/DD) from issuing development approval for or licensure of any new residential facility beds, except in an emergency as specified in rules. Under the 2000-2001 law, neither of the

following are considered new beds for purposes of the moratorium: (1) beds relocated from one facility to another and (2) beds that replace ones that no longer comply with Medicaid standards.

### **The act**

Under the act, during the period beginning on July 1, 2001, and ending on October 15, 2003, the Director of MR/DD must refuse to approve a proposal for the development of residential facility beds or to issue a license to a new residential facility if the approval or issuance will result in an increase in the number of residential facility beds above the statewide total number of beds on October 28, 1993, which is the date certain administrative rules governing the development and modification of residential services took effect after the moratorium was initially implemented. For purposes of identifying the number of beds that existed on that date, the Director must include the number of ICF/MR beds that were being operated by nursing homes without a residential facility license.

The act no longer permits the Department to approve a development proposal or issue a license in an emergency; however, the act specifies that a modification, replacement, or relocation of existing beds in a residential facility is not a bed increase. The Director must adopt rules under the Administrative Procedure Act specifying what constitutes a modification, replacement, or relocation of existing beds.

### **Involuntary transfer or discharge from a nursing home**

(R.C. 3721.10, 3721.12, 3721.13, 3721.15, 3721.16, 3721.161, 3721.162, 3721.17, and 5111.63)

### **Grounds for transfer or discharge and notice**

Residents of nursing homes have several rights, including the right not to be transferred or discharged except under certain circumstances. The act revises this right so that a resident has the right not to be transferred or discharged from a nursing home unless the transfer is necessary because of one of the following:

- (1) The welfare and needs of the resident cannot be met in the home;
- (2) The resident's health has improved sufficiently so that the resident no longer needs the services provided by the home;
- (3) The safety of individuals in the home is endangered;
- (4) The health of individuals in the home would otherwise be endangered;

(5) The resident has failed, after reasonable and appropriate notice, to pay or to have Medicare or Medicaid pay on the resident's behalf, for the care provided by the home;<sup>68</sup>

(6) The home's license has been revoked, the home is being closed by court order, or the home otherwise ceases to operate;

(7) The resident is a Medicaid recipient or Medicare beneficiary and the home's participation in Medicaid or Medicare, as appropriate, is involuntarily terminated or denied.

A nursing home administrator is required to notify a resident and resident's sponsor at least 30 days in advance of any proposed transfer or discharge from the home. The act requires in addition that the administrator send a copy of the notice to the Department of Health. Prior law provided that the requirement of 30-days' notice before transfer or discharge did not apply in an emergency or when otherwise authorized by statute or rules. Continuing law provides that the notice may be given less than 30 days prior to transfer or discharge if the resident's health has improved sufficiently to allow a more immediate discharge or transfer to a less skilled level of care or the resident has resided in the home for less than 30 days. The act provides that the following are also circumstances under which notice may be given less than 30 days prior to transfer or discharge:

- An emergency arises in which the safety of individuals in the home is endangered;
- An emergency arises in which the health of individuals in the home would otherwise be endangered;
- An emergency arises in which the resident's urgent medical needs necessitate a more immediate transfer or discharge.

In addition to information required under continuing law, the notice must include (1) the proposed date the resident is to be transferred or discharged, (2) the proposed location to which the resident is to be transferred or discharged, and (3) a statement that the resident will not be transferred or discharged before the date specified in the notice unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date. The act prohibits a home from transferring or discharging a resident

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<sup>68</sup> *A resident is not to be considered to have failed to have the resident's care paid for if the resident has applied for Medicaid, unless (1) the resident's application, or a substantially similar previous application, has been denied and (2) the Director of Job and Family Services has upheld a denial of the application, if the resident appealed.*



before the date specified in the notice unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.

With certain exceptions, a resident or resident's sponsor is permitted to challenge a transfer or discharge by requesting an impartial hearing. The act revises the exceptions. An emergency is no longer a reason a challenge is prohibited. The prohibitions against a Medicaid recipient challenging a transfer if the nursing home's participation in Medicaid is terminated or denied and a Medicare beneficiary challenging a transfer if the home's Medicare certification is terminated or denied apply only if the termination or denial is involuntary and done by the federal government. A resident is prohibited from challenging a transfer or discharge if the nursing home is being closed by court order sought by the Director of Health because the home does not have a license or because a real and present danger exists at the home.

### **Request for hearing**

Under prior law, a request for a hearing to challenge a transfer or discharge had to be sent in writing to the Legal Services Office of the Department of Health no later than ten days after the resident and resident's sponsor received the notice of the proposed transfer or discharge. The act requires that the request for a hearing be submitted to the Department of Health no later than 30 days after the date the resident and resident's sponsor receive the notice. The act does not specify that the request go to the Legal Services Office.

With certain exceptions, a nursing home is prohibited from transferring or discharging a resident if the resident or resident's sponsor submits a written request challenging the proposed transfer or discharge no later than ten days after receiving the notice of the proposed transfer or discharge. The exceptions are that the prohibition does not apply if the nursing home is not required to provide at least 30 days' advance notice of the proposed transfer or discharge, the Department of Health determines after a hearing that the transfer or discharge does not violate the resident's rights, or the Department's determination to the contrary is reversed on appeal.

If a resident or resident's sponsor does not request a hearing within the required time, the home may transfer or discharge the resident on the date specified in the notice or thereafter, unless the home and the resident, or if the resident is not competent, the home and the resident's sponsor, agree to an earlier date. If the resident or resident's sponsor requests a hearing and the home transfers or discharges the resident before the Department issues a hearing decision, the home must readmit the resident in the first available bed if the Department determines that the discharge violated the resident's rights or the Department's decision to the contrary is reversed on appeal.

### Hearing procedure

Under prior law, the Department of Health was required to hold a hearing within ten days. A representative of the Department was required to preside over the hearing, and within five days, issue a recommendation as to any advisable action to the nursing home administrator, resident, and any interested sponsor.

The act requires the Department to employ or contract with an attorney to serve as hearing officer and requires that the hearing officer conduct a hearing in the home not later than ten days after the date the Department receives a hearing request, unless the resident and the home or, if the resident is not competent to make a decision, the resident's sponsor and the home, agree otherwise. The hearing must be recorded on audiotape, but neither the recording nor a transcript of the recording is to be part of the official record of the hearing. As under prior law, Ohio's Sunshine Law does not apply to these hearings. The hearing must be conducted in accordance with federal regulations to determine whether the proposed transfer or discharge complies with the resident's rights.<sup>69</sup> Unless the parties otherwise agree, the hearing officer must issue a decision within five days of the date the hearing concludes. In all cases, a decision must be issued not later than 30 days after the Department receives a timely request for the hearing. The hearing officer's decision must be served on the resident or resident's sponsor and the home by certified mail. The hearing officer's decision is to be considered the final decision of the Department.

### Appeal

The act permits a resident, resident's sponsor, or nursing home to appeal the Department of Health's decision to the court of common pleas. In general, the appeal is governed by the Administrative Procedure Act, with the following exceptions:

- (1) The resident, resident's sponsor, or home must file the appeal in the court of common pleas of the county in which the home is located;
- (2) The resident or resident's sponsor may apply to the court for designation as an indigent and, if the court grants the application, the resident or resident's sponsor shall not be required to furnish the costs of the appeal;
- (3) The appeal must be filed with the Department and the court within 30 days after the hearing officer's decision is served. The appealing party is required to serve the opposing party a copy of the notice of appeal by hand-delivery or

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<sup>69</sup> (42 C.F.R. 431, subpart E.)

certified mail, return receipt requested. If the home is the appealing party, it must provide a copy of the notice of appeal to both the resident and the resident's sponsor or attorney, if known.

(4) The Department is prohibited from filing a transcript of the hearing with the court unless the court orders it to do so. The court must issue such an order only if it finds that the parties are unable to stipulate to the facts of the case and that the transcript is essential to the determination of the appeal. If the court orders the Department to file the transcript, the Department must do so within 30 days.

The court is prohibited from requiring an appellant to pay a bond as a condition of issuing a stay pending its decision.

### **Enforcement**

The resident, resident's sponsor, home, or Department may initiate a civil action in the court of common pleas of the county in which the home is located to enforce the decision of the Department of Health or the court. If the court finds that the resident or home has not complied with the decision, it is required to enjoin the violation and order other appropriate relief, including attorney's fees.

### **Department of Health to act as designee**

The act requires that the Department of Health be the designee of the Department of Job and Family Services for the purpose of conducting a hearing requested by a resident whose care is being paid for by Medicare or Medicaid or by the resident's sponsor challenging a proposed transfer or discharge from a nursing home that is certified as a skilled nursing facility under the Medicare program or nursing facility under the Medicaid program.

### **Health insuring corporation policy to cover return to long-term care facility**

(Sections 151 and 152)

The act extends, until October 16, 2003, a requirement that, if certain conditions exist, each health insuring corporation policy, contract, certificate, or agreement delivered, issued for delivery, or renewed in Ohio that provides benefits for skilled nursing care through a closed panel plan provide reimbursement for medically necessary covered skilled nursing care services an enrollee receives in a skilled nursing facility, continuing care facility, or home for the aging even though the facility or home does not participate in the closed panel plan. This requirement was to expire July 1, 2001.

The following are the conditions that must exist:



(1) The enrollee or the enrollee's spouse, on or before September 1, 1997, resided in or had a contract to reside in the facility or home.

(2) The enrollee or the enrollee's spouse, immediately prior to the enrollee being hospitalized, resided in the facility or home or had a contract to reside in the facility or home and, following the hospitalization, the enrollee resides in a part of the facility or home that is a skilled nursing facility, regardless of whether the enrollee or spouse resided in or had a contract to reside in a different part of the facility or home prior to the enrollee's hospitalization.

(3) The facility or home provides the enrollee the level of skilled nursing care that the enrollee requires.

(4) The facility or home is willing to accept from the health insuring corporation all of the same terms and conditions that apply to a facility or home that provides skilled nursing care and is participating in the corporation's closed panel plan. (R.C. 1751.68.)

### **Creation of the Health Care Workforce Shortage Task Force**

(Section 56.02)

The act creates the Health Care Workforce Shortage Task Force and requires it to do all of the following:

- (1) Review the licensing standards for all health care professionals;
- (2) Identify strategies to increase recruitment, retention, and development of qualified health care professionals and health care workers in health care settings;
- (3) Develop recommendations for improving scopes of practice to remove unnecessary barriers to high quality provision of health care;
- (4) Develop possible demonstration projects to present technology's potential to increase the efficiency of health care personnel;
- (5) Recommend education strategies to meet health care workforce needs.

Not later than July 1, 2002, the Task Force must submit a report of its findings and recommendations to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

### **Appointments to the Task Force**

The act requires the Director of Health to appoint 15 health care professionals and health care workers from the following organizations to serve on the Task Force:

- (1) Ohio Hospital Association;
- (2) Ohio Association of Children's Hospitals;
- (3) Ohio Council for Home Care;
- (4) Ohio Health Care Association;
- (5) Ohio Hospice and Palliative Care Organization;
- (6) Ohio Association of Philanthropic Homes;
- (7) Ohio Commission on Minority Health;
- (8) Ohio Nurses Association;
- (9) Ohio Pharmacists Association;
- (10) Ohio State Medical Association;
- (11) Families for Improved Care;
- (12) Ohio Association of Health Care Quality;
- (13) Ohio Academy of Family Physicians;
- (14) Ohio Association of Adult Day Services;
- (15) Ohio Provider Resource Association.

The Speaker of the House and the President of the Senate are each to appoint a member of the House and Senate, respectively, to serve on the Task Force. The member of the House and the member of the Senate must be from different political parties. The act also requires the Director of Aging to serve on the Task Force. No more than 21 individuals, all of whom serve without compensation, may serve on the Task Force.

### **Administration of the Task Force**

The act requires the Department of Health to provide the Task Force with office space, staff, supplies, services and other support. The Director of Health is

to serve as chair of the Task Force. On the issuance of its report, the Task Force ceases to exist.

**Ohio Health Care Data Center**

(R.C. 125.22, 2317.02, 2317.022, 3902.23, and 4121.44; repealed R.C. 3702.17 and Chapter 3729.)

The act repeals a requirement that the Director of Health establish the Ohio Health Care Data Center in the Department of Health. The center was required to perform a number of duties relating to the collection and dissemination of health care data. The act eliminates all references to the center from the Revised Code.

**Funds for designation of pediatric trauma centers**

(R.C. 4511.81)

The Child Highway Safety Fund, which consists of money from fines paid by motor vehicle operators who do not properly use child restraint systems, currently may be used by the Department of Health to administer a child highway safety program and to defray the cost of operating a temporary program for state designation of hospitals as Level II pediatric trauma centers.

The act makes technical corrections in cross-references pertaining to the Department's authority to use part of the fund for designating hospitals as pediatric trauma centers.

**Dental Board quality intervention program**

(R.C. 4715.03 and 4715.031)

The act requires the State Dental Board to develop and implement a quality intervention program for licensees who the Board determines would benefit from educational or clinical services in lieu of disciplinary proceedings.<sup>70</sup> If the Board determines pursuant to an investigation that there are reasonable grounds to believe that a licensee has violated the licensing law due to a clinical or communication problem that could be remedied by participation in the program, it may propose that the licensee participate in the program. If the licensee agrees to participate, the Board is to select and refer the licensee to an educational and assessment service provider. The educational and assessment service provider is to recommend services designed to remedy the licensee's clinical or communication problem. Providers may include quality intervention program

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<sup>70</sup> *The Board licenses dentists, dental hygienists, and dental x-ray machine operators.*

panels of case reviewers. If the Board approves the recommendation, the licensee may begin receiving the services at the licensee's expense.

The act also requires the Board to monitor a licensee's progress in the program. If the Board determines that the licensee has successfully completed the program, the Board may continue to monitor the licensee, take other action it considers appropriate, or both. The Board must commence disciplinary action if it determines the licensee has not successfully completed the program. The Board may adopt rules to implement the quality assurance program. The rules must be adopted in accordance with provisions of the Administrative Procedure Act (R.C. Chapter 119.) that require public hearings.

**Dental Board fees**

(R.C. 4715.13, 4715.14, 4715.16, 4715.21, 4715.24, and 4715.27)

The act increases by approximately 35% the following State Dental Board fees:

<b>Reason for fee</b>	<b>Fee in current law</b>	<b>Fee under the act</b>
License by examination to practice dentistry issued in odd-numbered year	\$141	\$190
License by examination to practice dentistry issued in even-numbered year	\$235	\$317
License by endorsement to practice dentistry issued in odd-numbered year	\$141	\$190
License by endorsement to practice dentistry issued in even-numbered year	\$235	\$317
Duplicate of lost license to practice dentistry	\$15	\$20
General anesthesia permit	\$94	\$127
Conscious intravenous sedation permit	\$94	\$127
Biennial registration to practice dentistry	\$163	\$220
Reinstatement of suspended license to practice dentistry	\$60	\$81
Limited resident's license to practice dentistry as a resident at a dental college or hospital	\$7.50	\$10
Limited teaching license to practice		

<b>Reason for fee</b>	<b>Fee in current law</b>	<b>Fee under the act</b>
dentistry in connection with an endorsing dental college	\$75	\$101
Temporary limited continuing education license to practice dentistry as part of a continuing dental education practicum	\$75	\$101
License to practice as a dental hygienist issued in odd-numbered year	\$71	\$96
License to practice as a dental hygienist issued in even-numbered year	\$109	\$147
Biennial registration to practice as a dental hygienist	\$75	\$101
Reinstatement of suspended license to practice as a dental hygienist	\$23	\$31
Dental hygienist teacher's certificate	\$43	\$58

**Board of Nursing program to address supply of nurses and other workers**

(R.C. 4723.062)

The act authorizes the Board of Nursing to solicit and accept grants and services to develop and maintain a program that addresses patient safety and health care issues related to the supply of and demand for nurses and other health care workers. The Board is prohibited from soliciting or accepting a grant or service that interferes with its independence or objectivity.

The Board is required by the act to deposit money it receives for the program into the Nursing Special Issue Fund, which the act creates in the state treasury. The Board is to use money in the Fund to pay the costs it incurs in implementing the program.

**Board of Nursing fees**

(R.C. 4723.08 and 4723.79)

The act increases the amount the Board of Nursing charges for biennial renewal of a nursing license to \$45 (from \$35). This 28.57% increase applies to nursing licenses that expire on or after September 1, 2003.



The act creates a \$100 fee for reinstatement of a dialysis technician certificate. The act also creates a \$25 fee for processing checks returned to the Board for nonpayment.

**Ohio Board of Nursing supervision of nursing students**

(R.C. 4723.32)

A student pursuing certification in an advanced nursing specialty may practice nursing in the specialty if the student is enrolled in a program that either (1) qualifies the student to sit for the examination of certain national certifying organizations or (2) prepares the student to receive a master's degree. The act adds an additional condition: the student may practice only under the supervision of a registered nurse serving for the program as a faculty member, teaching assistant, or preceptor.

**No reduction in fee for certificate to practice medicine**

(R.C. 4731.14)

The State Medical Board has authority to issue a training certificate to an individual pursuing an internship, residency, or clinical fellowship. The act eliminates law providing that the fee for a certificate to practice is reduced by the amount paid for a training certificate if the individual applied for the certificate to practice medicine or osteopathic medicine not later than four months after receiving the training certificate.

**Podiatric internship, residency, or clinical fellowship program**

(R.C. 4731.53 and 4731.573)

Prior law did not require an individual seeking a certificate to practice podiatry to have completed an internship, residency, or fellowship program. The act establishes such a requirement.

An individual applying for a certificate to practice podiatry is required by the act to present to the secretary of the State Medical Board proof of completion of one year of postgraduate training in a podiatric internship, residency, or clinical fellowship program accredited by the Council on Podiatric Medical Education or the American Podiatric Medical Association.

Under the act, an individual seeking to pursue an internship, residency, or clinical fellowship program in podiatric medicine and surgery must apply to the State Medical Board for a training certificate, unless the individual holds a certificate to practice podiatric medicine and surgery. Unless grounds established by continuing law for denying a certificate apply, the Board is required to issue the

training certificate if the individual applies using an application form the Board is to furnish, pays a \$75 application fee, and furnishes the Board all of the following:

- (1) Evidence satisfactory to the Board that the individual is at least age 18 and of good moral character;
- (2) Evidence satisfactory to the Board that the individual has been accepted or appointed to participate in this state in an internship or residency program accredited by either the Council on Podiatric Medical Education or the American Podiatric Medical Association or a clinical fellowship program at an institution with a residency program accredited by either the Council on Podiatric Medical Education or the American Podiatric Medical Association that is in a clinical field the same as or related to the clinical field of the fellowship program;
- (3) The beginning and ending dates of the internship, residency, or fellowship program;
- (4) Any other information that the Board requires.

The Board may not require an examination as a condition of receiving a training certificate.

A training certificate is valid only for one year. The Board may renew a certificate annually for a maximum of five years. Renewal is subject to the Board's discretion, submission of a renewal application, and payment of a \$35 renewal fee. The Board is required to maintain a register of all individuals who hold training certificates.

An individual holding a valid training certificate is entitled to perform such acts as may be prescribed by or incidental to his or her internship, residency, or clinical fellowship program. The certificate holder is not entitled otherwise to engage in the practice of podiatric medicine and surgery. The certificate holder must limit activities under the certificate to the programs of the hospitals or facilities for which the certificate is issued. The certificate holder must train only under the supervision of the podiatrists responsible for his or her supervision. The Board is authorized to revoke the certificate on proof, satisfactory to the Board, that (1) the certificate holder has engaged in practice in this state outside the scope of the internship, residency, or fellowship program, (2) the certificate holder has engaged in unethical conduct, or (3) there are grounds under continuing law for action against the certificate holder.

The act authorizes the Board to adopt rules as the Board finds necessary to effect the purpose of this provision of the act.

### **Examination requirements for chiropractic licensure**

(R.C. 4734.20; Section 30.01)

Am. Sub. H.B. 506 of the 123rd General Assembly, which took effect April 10, 2001, revised the examination requirements for licensure of chiropractors. Prior to that act, an applicant was required to pass an exam consisting of subjects specified in the Revised Code. H.B. 506 requires instead that the applicant pass, or have passed, the physiotherapy section of the examination of the National Board of Chiropractic Examiners and additional parts of that exam. Which parts an applicant must pass depends on the year the applicant graduated from a school or college of chiropractic approved by the State Chiropractic Board. An applicant who graduated during the period from 1970 through 1988, must have passed parts I and II of the national board's exam. An applicant who graduated on or after January 1, 1989 must have passed part III, as well as parts I and II, of the exam.

The act extends the period during which an applicant can be granted a chiropractic license without having also passed part IV of the examination of the National Board of Chiropractic Examiners. Prior to the act, the requirement to pass part IV of the examination, in addition to parts I, II, and III, was to apply beginning with applicants who graduated from an approved school or college of chiropractic on or after January 1, 2000. Under the act, an applicant who graduates on or after January 1, 2002, must also pass part IV of the examination.

Under the act, if the State Chiropractic Board has refused to issue a chiropractic license to an applicant solely because the applicant has not passed part IV of the examination of the National Board of Chiropractic Examiners, the state board must reconsider the application. The state board's determination of whether to issue the license must be based on the examination requirements specified in the act.

### **Duration of respiratory care limited permits**

(R.C. 4761.05)

A person who seeks a license to practice respiratory care but has not successfully completed the requirements of a respiratory care education program approved by the Ohio Respiratory Care Board may obtain a limited permit if the person is (1) enrolled in and in good standing in such a program or (2) employed as a provider of respiratory care in this state and was so employed prior to March 14, 1989. A limited permit authorizes the holder to provide respiratory care under the supervision of a respiratory care professional for a period of time not to exceed three years.

The act eliminates a conflict in the circumstances under which a limited permit expires. Under prior law, a limited permit expired at the earlier of (1) one year following the date of receipt of a certificate of completion from a board-approved respiratory care education program or (2) until the person completed or discontinued participation in the educational program. The first circumstance conflicted with the second circumstance because the first circumstance provided for a limited permit to continue to be valid until the one year following the completion of a program whereas the second circumstance provided for the limited permit to expire when the person completed the program. The act eliminates the conflict by providing for a limited permit to expire at the earlier of (1) one year after completion of the program or (2) when the person discontinues to participate in the program. The three-year limit continues.

**Practice of orthotics, prosthetics, and pedorthics**

(R.C. 4779.01, 4779.02, 4779.16, 4779.19, 4779.20, and 4779.26)

Continuing law prohibits the practices of orthotics, prosthetics, or pedorthics without a valid license. The act exempts those practicing under the direct supervision of a physician from the licensing requirement. The act also exempts certain activities from licensure by providing that the practice of orthotics does not include wrist splints. Whereas prior law exempted elastic abdominal supports without metal or plastic reinforcing stays from the licensure requirement, the act exempts prefabricated elastic or fabric abdominal supports with or without metal or plastic reinforcing stays and other prefabricated soft goods requiring minimal fitting.

Under prior law a license to practice orthotics, prosthetics, or pedorthics was valid for not less than three years and not more than four years. The act provides that a license expires on the 31st day of January immediately succeeding the date of issuance. The State Board of Orthotics, Prosthetics, and Pedorthics is authorized by the act to waive part of the license renewal fee for the first renewal of an initial license that expires 100 days or less after it is issued.

**Calculation of reduction in county child welfare allocation**

(R.C. 5101.14)

Under prior law ODJFS was required to reduce a county's child welfare allocation if the amount the county spent on child welfare services in the preceding year from local funds and Title XX funds was less than the amount the

county spent from those funds the year before.<sup>71</sup> The act eliminates consideration of a county's Title XX expenditures, so that a reduction in a county's child welfare allocation is based solely on the amount of local funds expended.

In determining whether a county spent less on child welfare services, a decrease in spending because the county received a reduced allocation in funds as a sanction from ODJFS did not count under prior law to the extent that the decrease in spending on child welfare services resulted from the reduced allocation. The act repeals that restriction so that a reduction in spending that results from an ODJFS sanction may be considered in determining whether a county spent less on child welfare services than in the previous year.

### **Child welfare services report**

(R.C. 5101.14)

The act repeals a requirement that ODJFS prepare an annual report to the General Assembly detailing on a county-by-county basis the child welfare services provided with funds distributed by ODJFS.

### **Administrative funds for foster care and adoption assistance programs**

(R.C. 5101.141 and 5153.78)

ODJFS receives federal funds (federal financial participation) to pay part of the administrative and training costs incurred in the operation of foster care and adoption assistance programs. The act increases to 3% (from 2%) the amount of federal financial participation ODJFS may withhold from counties. Prior law provided that the amount withheld could be used only for the Ohio Child Welfare Training Program. The act provides that the amount withheld may also be used to fund the university partnership program for college and university students majoring in social work who have committed to work for a public children services agency upon graduation.

In addition to the amount of federal financial participation withheld from counties, prior law required that ODJFS use federal funds available for training costs under Title XX, Title IV-B, and Title IV-E of the Social Security Act and other available state or federal funds for the Ohio Child Welfare Training Program. The act specifies that ODJFS is permitted, rather than required, to use any of these types of funds to fund the Program.

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<sup>71</sup> *Title XX of the Social Security Act authorizes the federal Social Services Block Grant Program. Funds from the block grant are used by counties for a variety of social services.*

## Child Welfare Training Fund

(repealed R.C. 5101.143)

The act repeals a law that did all of the following:

- Allowed a government entity, private child placing agency (PCPA), or private noncustodial agency (PNA) to request that ODJFS determine what portion of an amount the government entity, PCPA, or PNA charged for foster care maintenance for an eligible child qualified for reimbursement under Title IV-E of the Social Security Act.
- Required that, subject to approval by the United States Department of Health and Human Services, ODJFS levy a special assessment on each PCPA, PNA, or government entity, other than a public children services agency (PCSA), seeking a rate determination for foster care maintenance payments.<sup>72</sup>
- Created the Child Welfare Training Fund in the state treasury to receive money collected from the special assessments on each PCPA, PNA, and government entity seeking a rate determination for foster care maintenance payments and required ODJFS to use money in the fund to secure federal matching funds under Title IV-E to help defray allowable costs PCPAs, PNAs, and government entities incurred in training staff and foster caregivers and to make payments to agencies and entities with those costs.
- Permitted ODJFS to require a PCPA, PNA, or government entity that receives payment for training costs from the fund to pay or help pay the cost of an adverse audit finding that the agency or entity caused or contributed to.
- Permitted ODJFS to require all PCPAs, PNAs, and government entities that received payment for training costs from the fund to share in the cost of an adverse audit finding that a PCPA, PNA, or government entity no longer in existence caused or contributed to.

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<sup>72</sup> *The amount of the special assessment was \$300 or 15 cents times the number of days the PCPA, PNA, or government entity provided foster care in the preceding calendar year for each child the agency or entity arranged or provided foster care, whichever was greater.*

### **Child care agency financial rules**

(R.C. 5101.145)

Continuing law provides that ODJFS is the single state agency of Ohio to administer federal payments for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act and must adopt rules to implement that authority. ODJFS is specifically required to adopt internal management rules governing financial and administrative requirements applicable to PCSAs, PCPAs, and PNAs. The rules adopted by ODJFS must establish a single form for PCSAs, PCPAs, and PNAs to report costs reimbursable under Title IV-E and costs reimbursable under Medicaid and procedures to monitor those cost reports. The act requires that the procedures to monitor cost reports both determine which costs are reimbursable under Title IV-E and ensure that costs reimbursable under Medicaid are excluded from that determination. It also requires that those procedures be implemented by October 1, 2003.

### **County children services board executive director**

(R.C. 5153.06)

The act authorizes a county children services board to enter into a written contract with the board's executive director specifying the terms and conditions of the executive director's employment and provides that the executive director is not to be in the classified civil service. The contract cannot exceed three years in duration. The act specifies that the contract may not abridge the right of the board to terminate the employment of the executive director as an unclassified employee at will, but may specify terms and conditions for any such termination.

### **Consolidated grant of state aid for county children services**

(Section 63.17)

The act permits ODJFS, with the consent of a county, to combine into a single and consolidated grant, state funds provided to the county for child welfare services and kinship care. A county retains in fiscal year 2003 the amount of unspent fiscal year 2002 funds.

The act provides that funds contained in a consolidated grant are not subject to either statutory or administrative rules that would otherwise govern allowable uses of the funds consolidated into the grant. They must, however, be used to meet the expenses of a county's child welfare program.

Funds contained in a consolidated grant must be paid to each county within 30 days after the beginning of each calendar quarter. The funds must be deposited into the county children services fund. Each county is required to return to

ODJFS, within 90 days after the end of fiscal year 2003, any unspent balance in the consolidated grant, unless this provision of the act is renewed for a subsequent period of time.

**Waiver request to provide health assistance to certain uninsured parents**

(R.C. 5101.50 and 5101.5110)

The act provides that the Director of ODJFS may submit a waiver request to the U.S. Secretary of Health and Human Services to provide health assistance to any individual who meets all of the following requirements:

- Is the parent of a child under 19 years old who resides with the parent and is eligible for health assistance under the Children's Health Insurance Program (CHIP) or Medicaid;
- Is uninsured;
- Has a family income that does not exceed 100% of the federal poverty guidelines.

A waiver request the Director submits pursuant to the act may seek federal funds allocated to the state for CHIP that are not already used to fund CHIP. If the waiver request is granted, the Director may adopt rules in accordance with the Administrative Procedure Act (Revised Code Chapter 119.) as necessary for the efficient administration of the program authorization by the waiver.

**Kinship care navigator program**

(R.C. 5101.85, 5101.852 (new), and 5101.853; repealed R.C. 5101.851 and 5101.852)

The act repeals law that created the Kinship Care Services Planning Council in ODJFS. The Council was required to make recommendations to the Director of ODJFS that specified the types of services that should be included as part of a program providing support services to kinship caregivers.<sup>73</sup> The

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<sup>73</sup> *The following individuals are kinship caregivers if they are at least 18 years of age and caring for a child in place of the child's parents: (1) grandparents, including grandparents with the prefix "great," "great-great," and "great-great-great," (2) siblings, (3) aunts, uncles, nephews, and nieces, including such relatives with the prefix "great," "great-great," "grand," or "great-grand," (4) first cousins and first cousins once removed, (5) stepparents and stepsiblings, (6) spouses and former spouses of any of the preceding relatives, and (7) legal guardians and custodians.*



recommendations were required to be based on the report of the Grandparents Raising Grandchildren Task Force. In accordance with the law that created the Council, the Council ceased to exist when it issued its recommendations on December 31, 1999.

Prior law required that ODJFS establish, no later than March 31, 2000, a program providing support services to kinship caregivers to address the needs of those caregivers. ODJFS was to base the program on the recommendations of the Kinship Care Services Planning Council and use state maintenance of effort funds under the federal Temporary Assistance for Needy Families Program. Instead of this program, the act permits ODJFS to establish a statewide program of kinship care navigators to assist kinship caregivers who are seeking information regarding, or assistance obtaining, services and benefits available at the state and local level that address the needs of those caregivers residing in each county. The program must provide to kinship caregivers information and referral services and assistance obtaining support services including (1) publicly funded child day-care, (2) respite care, (3) training related to caring for special needs children, (4) a toll-free telephone number that may be called to obtain basic information about the rights of, and services available to, kinship caregivers, and (5) legal services the eliminated program was to have provided.

The act also provides that ODJFS must, within available funds, make payments to PCSAs for the purpose of permitting the PCSA to provide kinship care navigator information and referral services and assistance obtaining support services to kinship caregivers pursuant to the kinship care navigator program. ODJFS may provide training and technical assistance concerning the needs of kinship caregivers to employees of PCSAs and to persons or entities that serve kinship caregivers or perform the duties of a kinship care navigator and are under contract with a PCSA.

ODJFS is permitted to adopt rules to implement the kinship care navigator program. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.), except that rules governing fiscal and administrative matters related to implementation of the program are internal management rules and must be adopted in accordance with Ohio law governing adoption of internal management rules.<sup>74</sup>

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<sup>74</sup> *"Internal management rule" means any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency. Public hearings are not required for adoption of these rules.*

### **Format for issuing food stamp benefits**

(R.C. 329.042, 5101.184, 5101.54, 5739.02, and 5747.122; repealed R.C. 5101.541, 5101.542, and 5101.543)

The act eliminates a requirement that ODJFS have a system of mail issuance of food stamp allotments utilizing direct coupon mailing. Under the prior law, county departments of job and family services were responsible for administering the mailing of coupons. An alternative system could be used in a county where there was little demand for mail issuance, the loss rate of mailed coupons was excessive, or benefits were issued through electronic benefit transfer. According to an ODJFS spokesperson, all counties use electronic benefit transfer. In recognition of the use of electronic cards in the food stamp program, the act changes references to food stamp *coupons* to food stamp *benefits*.

### **Identification cards issued to assistance recipients**

(R.C. 329.19, 5101.19, 5107.10, and 5107.14; repealed R.C. 5101.541)

The act eliminates law requiring that an identification card be issued when an individual is determined eligible for Ohio Works First or Disability Assistance.<sup>75</sup> It also eliminates law authorizing a county department that, on July 7, 1972, furnished identification cards to Aid to Dependent Children recipients to issue such cards to Ohio Works First and Disability Assistance recipients under procedures the county developed in lieu of ODJFS's procedures.

Prior law eliminated by the act also required that an individual present his or her identification card as a condition of acceptance and payment of Ohio Works First or Disability Assistance payments. All expenses incurred in the issuance of the cards had to be paid from funds appropriated to ODJFS.

Instead of a mandatory identification card system for Ohio Works First and Disability Assistance, the act provides that a county department may issue an identification card to a person determined eligible for benefits or services under any assistance program the county department administers. The county department must determine the card's material, design, and informational content, which may include the content prior law required ODJFS to include. In issuing identification cards, the county department must comply with any state or federal laws governing the issuance of the cards. All expenses incurred in issuing the cards must be paid from funds available to the county department for administrative expenses.

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<sup>75</sup> *The act also eliminates law that required county departments to issue an identification card for food stamp recipients.*

## **Transfer of administration of Family Violence Prevention and Services Act**

(R.C. 181.52, 5101.251, and 5103.07; Section 182)

Prior law required ODJFS to administer funds it received under the federal Family Violence Prevention and Services Act and authorized it to establish a family violence prevention program. The statute provided that ODJFS had all the powers necessary to administer the funds, including authority to adopt rules and issue appropriate orders. The act transfers the duty to administer the funds to the Office of Criminal Justice Services and provides that the Office has all powers necessary for the adequate administration of the funds, including authority to establish a family violence prevention and services program.<sup>76</sup>

ODJFS and the Office are required to enter into an interagency agreement regarding the transfer of duties, records, assets, and liabilities concerning the administration of funds received under the Family Violence Prevention and Services Act.

### **Indigent burial expenses**

(R.C. 5101.521; repealed R.C. 5101.52)

The act eliminates the requirement that, under certain circumstances, ODJFS pay funeral, cremation, cemetery, and burial expenses of deceased recipients of public assistance, including recipients of Ohio Works First, Disability Assistance, and Supplemental Security Income (SSI); persons who would have been eligible for SSI had they not resided in a county home; and persons who in December, 1973, received assistance under a former program for the aged, disabled, or needy blind.<sup>77</sup> The deceased person must not have had, at the time of death, funds available for the expenses. The total cost of the expenses could not exceed the amount ODJFS was authorized to pay: \$750, if the deceased person was age 11 or older or \$500 if under age 11.

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<sup>76</sup> *Continuing law requires that the Director of Job and Family Services provide a training program to assist caseworkers in county departments of job and family services and public children services agencies in understanding the dynamics of domestic violence and the relationship domestic violence has to child abuse. The act eliminates a requirement that the program be coordinated with other ODJFS programs regarding family violence.*

<sup>77</sup> *A recipient of Ohio Works First or Disability Assistance must have resided in an unincorporated area.*

**Ohio Child Welfare Training Program training for foster caregivers**

(R.C. 5103.031, 5103.033, 5103.036, 5103.0312, 5103.0313, 5103.0314, 5103.0316, 5153.60, and 5153.69)

Continuing law requires ODJFS to establish a statewide program to provide training that PCSA caseworkers and supervisors are required to complete as part of their jobs. The program is called the Ohio Child Welfare Training Program and is operated by a training coordinator under contract with ODJFS. The training coordinator's actions in developing, implementing, and managing the program are overseen by ODJFS. Monitoring and evaluation of the operation of the program to ensure that it is satisfying the caseworker and supervisor training requirements is the duty of the training program steering committee established by ODJFS.

A foster caregiver must meet certain preplacement training requirements to qualify for a certificate to operate a foster home and to have a child placed with the foster caregiver. Continuing training is also required before a foster home certificate can be renewed for a foster caregiver. Training is provided pursuant to preplacement or continuing training programs approved by ODJFS. To be approved, programs must meet requirements established by ODJFS that include requirements addressing the courses that must be provided and the budget and administration of the program.

The act permits ODJFS to provide, as part of the Ohio Child Welfare Training Program, preplacement and continuing training that foster caregivers must obtain for issuance or renewal of a foster home certificate. The act requires the training program steering committee to ensure that if preplacement and continuing training is provided by the Ohio Child Welfare Training Program, it meets the same requirements that preplacement training programs and continuing training programs must meet to obtain ODJFS approval. However, the Ohio Child Welfare Training Program is not required to obtain ODJFS approval.

The act also provides for reimbursement on a per diem basis of the Ohio Child Welfare Training Program. The reimbursement amount is limited to the cost associated with providing the training, obtaining a training site, and the administration of the training. Continuing law prohibits ODJFS from reimbursing training if it is in addition to the training required by law. The act reiterates that ODJFS may not reimburse training that exceeds the *minimum* training required by law. Reimbursement rates are required to be the same regardless of whether the Ohio Child Welfare Training Program or a PCSA, PCPA, or PNA is providing the training.

Under prior law, ODJFS was required to make payments to foster caregivers who had been issued a foster home certificate and had at least one foster child placed in their home for attending training courses pursuant to ODJFS-

approved preplacement or continuing training programs. The payments were to be based on a per diem rate ODJFS established. ODJFS had to pay a foster caregiver for attending preplacement training courses during the first month a foster child was placed in the foster caregiver's home. The act requires instead that a PCSA, PCPA, or PNA acting as a recommending agency for the foster caregiver pay a stipend to reimburse the foster caregiver for attending training courses provided by the Ohio Child Welfare Training Program or an ODJFS-approved preplacement or continuing training program.<sup>78</sup> A stipend does not have to be paid during the first month a foster child is placed in the home. The payment is to be based on a stipend rate established by ODJFS. ODJFS is required to adopt rules that establish how it will reimburse recommending agencies for making the payments.

### **Publicly funded child day-care when child is absent**

(R.C. 5104.32; Section 216)

Continuing law requires a county department of job and family services to give individuals eligible for publicly funded child day-care the option of obtaining certificates for payment that the individual may use to purchase services from a qualified provider of publicly funded child day-care.<sup>79</sup> For each six-month period a child day-care provider provides child day-care to the child of an individual given certificates of payment, the individual must provide the provider certificates for days the provider would have provided child day-care had the child been present. County departments are required to specify the maximum number of days a provider may be paid under this circumstance. Prior law specified that the maximum number of days had to be at least ten. The act provides that the maximum number is not to exceed ten in a six-month period during which child day-care is provided to the child regardless of the number of providers that provide child day-care to the child during that period.

The act eliminates a requirement that each contract for publicly funded child day-care specify that, for each six-month period a child day-care provider provides child day-care to a child, the provider will be paid for up to ten days, or, at the option of a county department of job and family services, a greater number of days, the provider would have provided the child day-care had the child been present.

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<sup>78</sup> *A recommending agency is a PCSA, PCPA, or PNA that recommends that ODJFS take any of the following actions regarding a foster home certificate: (1) issue a certificate, (2) deny a certificate, or (3) renew a certificate.*

<sup>79</sup> *This requirement does not apply if specifically prohibited by federal law.*

These provisions of the act take effect January 1, 2002.

**Fees for publicly funded child day-care**

(R.C. 5104.341; Section 217)

Continuing law authorizes a county department of job and family services, to the extent permitted by federal law, to require a caretaker parent eligible for publicly funded child day-care to pay a fee. Prior law provided that the fee could not be changed for a one-year period.<sup>80</sup> Effective January 1, 2002, a county department must redetermine the appropriate level of a fee every six months.

**Title IV-A programs**

(R.C. 329.04, 3125.18, 5101.35, 5101.80, 5101.801, and 5153.16)

Continuing law requires that ODJFS prepare and submit to the United States Secretary of Health and Human Services a Title IV-A state plan and amendments to the state plan that ODJFS determines necessary. Title IV-A refers to the part of the Social Security Act governing the Temporary Assistance for Needy Families (TANF) block grant. Prior law provided that the state plan and amendments concerned the Ohio Works First (OWF) and Prevention, Retention, and Contingency (PRC) programs. The act provides that the state plan and amendments concern "Title IV-A programs." In addition to the OWF and PRC programs, Title IV-A programs include (1) programs established by the General Assembly or an executive order issued by the Governor that is administered or supervised by ODJFS pursuant to the act and (2) a component of any Title IV-A program that the Title IV-A state plan identifies as a component.

The act requires that ODJFS act as the single state agency to administer and supervise the administration of Title IV-A programs and provides that the Title IV-A state plan and amendments to the plan are binding on county family services agencies and state agencies that administer a Title IV-A program.<sup>81</sup> No county family services agency or state agency administering a Title IV-A program is permitted to establish, by rule or otherwise, a policy governing the Title IV-A program that is inconsistent with a Title IV-A program policy established, in rule or otherwise, by the Director of ODJFS.

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<sup>80</sup> *A fee may be changed before the end of the one-year period if the caretaker parent requests that the fee be reduced due to changes in income, family size, or both and a county department approves the reduction.*

<sup>81</sup> *County departments of job and family services, child support enforcement agencies, and public children services agencies are county family services agencies.*

Continuing law imposes various duties on ODJFS and county departments of job and family services regarding the OWF and PRC programs. The act provides that the duties apply to all county family services agencies and state agencies administering a Title IV-A program and all Title IV-A programs. For example, whereas prior law required that ODJFS prescribe forms for applications, certificates, reports, records, and accounts of county departments of job and family services and other matters related to the OWF and PRC programs, the act requires that ODJFS prescribe such forms for family services agencies and state agencies administering any Title IV-A program.

ODJFS is required to conduct investigations as are necessary regarding the OWF and PRC programs. The act requires that ODJFS also conduct audits and provides that the investigation and audit requirement applies to all Title IV-A programs.

The act provides for the administration of Title IV-A programs, other than the OWF and PRC programs, established by the General Assembly or an executive order issued by the Governor and administered or supervised by ODJFS pursuant to the act and components of Title IV-A programs that the Title IV-A state plan identifies as components. The act provides that these provisions apply except as otherwise provided by law enacted by the General Assembly or executive order issued by the Governor establishing the Title IV-A program or component.

First, the act provides that the Title IV-A program or component is required to provide benefits and services that are not "assistance" as defined in federal TANF regulations and instead are benefits and services that the regulations exclude from that definition. The federal regulations define "assistance" as including cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for such things as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. It includes such benefits even when they are provided in the form of payments to individual recipients and conditioned on participation in work experience, community service, or other work activities provided by federal TANF law. Unless specifically excluded, "assistance" also includes supportive services such as transportation and child care provided to unemployed families. All of the following are excluded from the definition of "assistance":

(1) Nonrecurrent, short-term benefits that are designed to deal with a specific crisis situation or episode of need, are not intended to meet recurrent or ongoing needs, and will not extend beyond four months;

(2) Work subsidies such as payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;

(3) Supportive services such as child care and transportation provided to employed families;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support;

(7) Transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.

Second, ODJFS is required to administer such a Title IV-A program or component, supervise a county family services agency's administration of the program or component, or enter into an interagency agreement with a state agency for the state agency to administer the program or component under ODJFS's supervision. If ODJFS administers or supervises a county family services agency's administration of a program or component, ODJFS is permitted to adopt rules governing the program or component. Rules governing financial and operational matters of ODJFS or between ODJFS and a county family services agency must be adopted as internal management rules. All other rules must be adopted in accordance with the Administrative Procedure Act. If ODJFS enters into an interagency agreement with a state agency for the state agency to administer a program or component, the agreement must include at least all of the following:

(1) A requirement that the state agency comply with the requirements of the program or component, including federal and state requirements concerning eligibility, reports, benefits and services, use of funds, appeals, and audits;

(2) A complete description of the benefits and services the program or component is to provide, the methods of administration, the appeals process, and other program and administrative requirements that ODJFS requires be included;

(3) Procedures for ODJFS to approve a policy, established by rule or otherwise, that the state agency establishes for the program or component before the policy is established;



(4) Provisions regarding how ODJFS is to reimburse the state agency for allowable expenditures under the program or component that ODJFS approves;<sup>82</sup>

(5) If the state agency arranges by contract, grant, or other agreement for another entity to perform a function the state agency would otherwise perform regarding the program or component, the state agency's responsibilities for ensuring that the entity complies with the interagency agreement between the state agency and ODJFS and requirements governing the use of funds and auditing the entity in accordance with federal requirements;

(6) The state agency's responsibilities regarding the prompt payment, including any interest assessed, of any adverse audit finding, final disallowance of federal funds, or other sanction or penalty imposed by the federal government, Auditor of State, ODJFS, a court, or other entity regarding funds for the program or component;

(7) Provisions for ODJFS to terminate the interagency agreement or withhold reimbursement from the state agency if the federal government disapproves the program or component or reduces federal funds or the state agency fails to comply with the interagency agreement's terms.

Third, ODJFS is permitted, subject to the Director of Budget and Management's approval, to terminate such a Title IV-A program or component or reduce funding for it if the Director of ODJFS determines that federal or state funds are insufficient to fund the program or component. If the Director of Budget and Management approves the termination or reduction in funding, the Director of ODJFS must issue instructions for the termination or funding reduction. If a county family services agency or state agency is administering the program or component, the county family services agency or state agency is bound by the termination or funding reduction and must comply with the Director's instructions.

The Director of ODJFS is authorized to adopt internal management rules as necessary to implement these provisions of the act. The rules are binding on each county family services agency and state agency administering a Title IV-A program or component.

ODJFS is also authorized to adopt rules establishing an appeals process for an individual who appeals a decision or order regarding a Title IV-A program or

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<sup>82</sup> *The provisions are to include (1) limitations on administrative costs and (2) ODJFS, at its discretion, withholding no more than 5% of the funds that ODJFS would otherwise provide to the state agency or charging the state agency for the costs to ODJFS of performing, or contracting for the performance of, audits and other administrative functions.*

component that is different from the appeals process established by continuing law for the OWF and PRC programs. The different appeals process may include having a state agency that administers the program or component administer the appeals process. The rules are to be adopted in accordance with the Administrative Procedure Act.

The act provides that a county department of job and family services is required to perform any duties that ODJFS assigns to the county department regarding services authorized by any Title IV-A program, not just the OWF and PRC programs. The act also requires a child support enforcement agency or public children services agency to administer a Title IV-A program that ODJFS provides for the agency to administer under ODJFS's supervision. This requirement applies to Title IV-A programs, other than the OWF and PRC programs, established by the General Assembly or an executive order issued by the Governor and administered or supervised by ODJFS pursuant to the act and components of Title IV-A programs that the Title IV-A state plan identifies as components. A public children services agency is to implement this requirement on behalf of children in the county whom the agency considers to be in need of public care or protective services.

#### **Temporary Assistance for Needy Families (TANF) Federal Fund**

(R.C. 5101.821)

The act creates in the state treasury the Temporary Assistance for Needy Families (TANF) Federal Fund. It requires ODJFS to deposit into the fund federal funds received under Title IV-A of the Social Security Act, except as otherwise approved by the Director of Budget and Management. ODJFS is to use money in the TANF Federal Fund for Ohio Works First; the Prevention, Retention, and Contingency program; and other purposes consistent with state and federal laws. Formerly, federal funds received under Title IV-A were deposited in the General Revenue Fund to the credit of the TANF Federal Block Grant Fund.

#### **Ohio Works First**

(R.C. 5101.80, 5107.02, and 5107.18)

The Ohio Works First (OWF) program is a Title IV-A income maintenance program for families with or expecting a child. In return for monthly cash assistance, adults and minor heads of household participating in the program must satisfy requirements designed to lead to self-sufficiency and personal responsibility. The requirements include entering into a written self-sufficiency contract with the county department of job and family services (CDJFS) that sets forth the rights and responsibilities of the group as applicants for and participants of the program, including work responsibilities.

### Minor heads of households

(R.C. 5107.02)

A minor head of household is a minor child who is a parent of a child included in the same assistance group that does not include an adult. The act expands the definition of "minor head of household" to include a minor who is at least six months pregnant and a member of an assistance group that does not include an adult. Therefore, under the act, such a minor becomes subject to the OWF program requirements applicable to minor heads of household, such as entering into a self-sufficiency contract with the CDJFS and participation in work activities.

### Time limits

(R.C. 5107.18)

An assistance group subject to the OWF program's time limit is ineligible to participate in OWF once it has participated in the program for 36 months, regardless of whether the 36 months are consecutive. An assistance group that ceases to participate in OWF because of the 36-month time limit for at least 24 months is permitted to reapply to participate in the program if good cause exists as determined by the CDJFS. If the CDJFS is satisfied that good cause exists for the assistance group to reapply, the group is permitted to reapply to participate, with certain exceptions, for up to 24 additional months, regardless of whether the 24 months are consecutive.

The act provides that the time limit provisions apply to assistance groups that include an individual who participated in OWF as an adult head of household, minor head of household, or spouse of an adult or minor head of household rather than only to adults. Additionally, the act clarifies that the 24 months that the group cannot participate in OWF because of time limits do not have to be consecutive.<sup>83</sup>

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<sup>83</sup> *In practice, the 24 months will usually be consecutive. It is possible, however, that an assistance group could be prohibited from participation due to time limits, could then be exempted from time limits due to hardship and permitted to resume participation, and then when the hardship ceases, be prohibited from participation again until the 24-month period has expired.*

### **Time limit exemptions**

(R.C. 5107.18)

A CDJFS is allowed to grant exemptions from the initial 36- and additional 24-month time limits on the grounds that the CDJFS determines that the time limit is a hardship. ODJFS is required to monitor continually the percentage of the average monthly number of exemptions. Prior law authorized a CDJFS to exempt not more than 20% of the average monthly number of OWF participants from the time limits. The act permits the CDJFS to exempt not more than 20% of the average monthly number of OWF *assistance groups*, rather than participants. Similarly, ODJFS must monitor the number of assistance groups exempted, rather than participants.

### **ODJFS report on participation in Ohio Works First**

(R.C. 5101.80)

ODJFS is required by continuing law to make periodic reports on OWF participation. The act eliminates a requirement that ODJFS complete a report of the county by county participation in OWF by September 1, 2001, that contains the reasons individuals ceased to participate. The act also provides that the reports ODJFS must prepare each January and July need deal only with individuals who exhaust or are exempt from the time limits for participation in OWF, not with individuals who cease to participate for other reasons. The act eliminates the requirement that the reports provide a county by county breakdown.

### **Prevention, Retention, and Contingency program**

(R.C. 2329.66, 2715.041, 2715.045, 2716.13, 2921.13, 4123.27, 5101.36, 5101.80, 5101.83, 5108.01, 5108.03, 5108.05, 5108.06, 5108.07, 5108.08, 5108.09, 5108.10, and 5153.165)

### **Background**

The Prevention, Retention, and Contingency (PRC) program is a Title IV-A program that helps persons overcome immediate barriers to achieving and maintaining self-sufficiency and personal responsibility. ODJFS is required to administer the program in accordance with the federal TANF block grant, federal TANF regulations, state law, and the state TANF plan submitted to the United States Secretary of Health and Human Services. ODJFS must develop a model design for the PRC program. A county department of job and family services (CDJFS) may adopt the model design or develop its own policies for the program.

### **Provisions of ODJFS model design**

Continuing law requires that a CDJFS's policies on the PRC program establish or specify eligibility requirements, the help to be provided under the program, administrative requirements, and other matters determined necessary. The act requires that the ODJFS model design also establish or specify these matters.

### **Limitation on eligibility**

The act eliminates a restriction that the PRC program serve only assistance groups that include at least one minor or a pregnant woman.

### **Types of benefits and services**

The act provides that help provided under the PRC program must be, with one restriction, an allowable use of federal TANF funds. This means that it must be reasonably calculated to (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives, (2) end the dependency of needy parents on government benefits by promoting job preparation, work, and marriage, (3) prevent and reduce the incidence of out-of-wedlock pregnancies, or (4) encourage the formation and maintenance of two-parent families. PRC help is also an allowable use of federal TANF funds if the state could have used federal funds under the former Aid to Families with Dependent Children Program or Job Opportunities and Basic Skills Training Program, as those programs existed on September 30, 1995, or, at the state's option, August 21, 1996, to provide the help.

The restriction is that PRC help may not be "assistance" as defined in a federal TANF regulation but must be help excluded from that definition. (See "**Title IV-A programs**" above for a discussion of this federal TANF regulation.) Consistent with this requirement, the act provides that the PRC program is to provide help in the form of *benefits* and services rather than *assistance* and services.

In addition to providing benefits and services for assistance groups that apply to participate in the program, the act provides that the ODJFS model design and a CDJFS's policies may establish eligibility requirements for, and specify benefits and services to be provided to, types of groups, such as students in the same class, that share a common need for the benefits and services.<sup>84</sup> If the model

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<sup>84</sup> *The act provides that a group that shares a common need for specific PRC benefits and services is ineligible for them if the group has received fraudulent benefits and services. The ineligibility continues until a member of the group repays the cost of the fraudulent*

design or a CDJFS's policies include such a provision, the model design or policies must require that each individual who is to receive the benefits and services meet the eligibility requirements established for the type of group of which the individual is a member. The model design or CDJFS's policies also must require that the CDJFS providing benefits and services certify the group's eligibility, specify the duration that the group is to receive the benefits and services, and maintain the eligibility information for each member of the group receiving the benefits and services.

The act also provides that the ODJFS model design and a CDJFS's policies may specify benefits and services that a CDJFS may provide for the general public, including billboards that promote the prevention, and reduction in the incidence, of out-of-wedlock pregnancies or encourage the formation and maintenance of two-parent families.

### **Benefits and services are inalienable**

The act provides that benefits and services provided under the PRC program are inalienable whether by way of assignment, charge, or otherwise. They are also exempt from execution, attachment, garnishment, and other like process.

### **Medicaid**

Medicaid is a health care program for low-income persons. The program is funded with federal, state, and county funds and was established by Congress in 1965 as Title XIX of the Social Security Act.

### **Medicaid single state agency**

(R.C. 5111.01)

Federal Medicaid law requires a state Medicaid plan to establish or designate a single state agency to administer or supervise the administration of the plan. The act makes explicit in statute the current practice: ODJFS acts as the single state agency to supervise the administration of the Medicaid program. The act requires that ODJFS, as the single state agency, comply with a federal regulation governing single state agencies. The federal regulation provides that, for an agency to qualify as the single state agency, all of the following must be the case:

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*benefits and services. This applies under continuing law to an assistance group that applies to participate in the program.*

(1) The agency must not delegate, to other than its own officials, authority to exercise administrative discretion in the administration or supervision of the plan or issue policies, rules, and regulations on program matters;

(2) The authority of the agency must not be impaired if any of its rules, regulations, or decisions are subject to review, clearance, or similar action by other offices or agencies of the State.

(3) If other agencies perform services for the single state agency, they must not have the authority to change or disapprove any administrative decision made by the single state agency or otherwise substitute their judgment for that of the single state agency with respect to the application of policies, rules, and regulations issued by the single state agency.

The act provides that ODJFS's rules governing Medicaid are binding on other agencies that administer components of the program and prohibits other agencies from establishing, by rule or otherwise, a policy governing Medicaid that is inconsistent with a Medicaid policy established, in rule or otherwise, by the Director of ODJFS.

**Medicaid coverage of treatment for breast or cervical cancer**

(R.C. 5111.0110)

The act requires the Director of ODJFS to submit to the United States Secretary of Health and Human Services an amendment to the state Medicaid plan to implement the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000. Under the state plan amendment, certain women would qualify for Medicaid during the period treatment for breast or cervical cancer is needed. To qualify, a woman must (1) be under age 65, (2) not otherwise be eligible for Medicaid, (3) have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program, (4) need treatment for breast or cervical cancer, and (5) not otherwise be covered under creditable coverage.<sup>85</sup>

The Director is required to implement the state plan amendment if it is approved.

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<sup>85</sup> *All of the following are creditable coverage: (1) a group health plan, (2) health insurance, (3) Part A or B of Medicare, (4) Medicaid, other than for pediatric vaccines, (5) United States armed forces medical and dental care, (6) a medical care program of the Indian Health Service or a tribal organization, (7) a state health benefits risk pool, (8) a health plan offered under federal law to federal government employees, (9) a public health plan, and (10) a health benefit plan under the Peace Corps Act.*

### **Prescription Drug Rebates Fund**

(R.C. 5111.081)

Under federal law, to be eligible for Medicaid payments for covered outpatient drugs, the manufacturer must have in effect a rebate agreement that the Secretary of the U.S. Department of Health and Human Services has made on behalf of the states.<sup>86</sup> Under the agreement, the manufacturer must give rebates for the covered outpatient drugs dispensed and paid for under a state's Medicaid plan.

The act creates the Prescription Drug Rebates Fund in the state treasury and requires all rebates paid by drug manufacturers to ODJFS in accordance with a rebate agreement required under federal law to be credited to the fund. ODJFS must use money credited to the fund for Medicaid services and contracts.

### **Medicaid managed care**

(R.C. 5111.17)

The act eliminates law that required ODJFS to establish in Franklin, Hamilton, and Lucas counties a managed care system under which qualified Medicaid recipients were required to obtain medical services from providers designated by ODJFS. ODJFS was also permitted to require recipients in other counties to receive all or some of their care through managed care organizations. The act provides that ODJFS may establish a managed care system in some or all counties under which designated Medicaid recipients are required to obtain health care from providers designated by ODJFS.

ODJFS was permitted by prior law to issue requests for proposals from managed care organizations interested in contracting with ODJFS to provide managed care to participating Medicaid recipients. The act provides that ODJFS may enter into contracts with managed care organizations to authorize the organizations to provide, or arrange for the provision of, health care services to Medicaid recipients participating in a managed care system.

The act also eliminates a provision allowing a health insuring corporation under contract with ODJFS to enter into an agreement with a community based clinic for the purpose of providing medical services to Medicaid recipients participating in a managed care system. "Community based clinic" was defined as

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<sup>86</sup> "Covered outpatient drugs" are prescription drugs that meet requirements imposed under federal law governing Medicaid. 42 U.S.C. § 1396r-8(k)(2).



a clinic that provides prenatal, family planning, well child, or primary care services and is funded in whole or part by the state or federal government.

### **Health Care Compliance Fund**

(R.C. 5111.171; Section 63.27)

The act allows ODJFS to provide financial incentive awards to managed care organizations under contract with ODJFS that meet or exceed performance standards specified by ODJFS in provider agreements or rules. The act also allows ODJFS to specify in contracts with managed care organizations the amounts of financial incentive awards, methodology for distributing awards, types of awards, and standards for administration by ODJFS.

The act creates in the state treasury the Health Care Compliance Fund. Fines imposed by ODJFS on managed care organizations that contract with ODJFS to provide Medicaid services to qualified recipients and that fail to meet performance standards or other requirements are to be deposited into the fund. Money in the fund may be used only to reimburse managed care organizations that have been fined and that have come into compliance with ODJFS requirements, and to provide financial incentive awards to managed care organizations that meet or exceed performance standards or other requirements. The act states that the Health Care Compliance Fund is the same fund created by the Controlling Board in October 1998.

### **Medicaid reimbursement of long-term care services**

**Background.** ODJFS is required to pay the reasonable costs of services that a nursing facility or intermediate care facility for the mentally retarded (ICF/MR) with a Medicaid provider agreement provides to Medicaid recipients.<sup>87</sup> The amount ODJFS pays a nursing facility or ICF/MR is determined by formulas established by state law.

Nursing facility and ICF/MR services are divided into four different categories, referred to in state law as cost centers. Each cost center has its own Medicaid reimbursement formula. The four cost centers are capital, indirect care, direct care, and other protected costs.

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<sup>87</sup> *A cost is reasonable if it is an actual cost that is appropriate and helpful to develop and maintain the operation of patient care facilities and activities and does not exceed what a prudent buyer pays for a given item or services. Reasonable costs may vary from provider to provider and from time to time for the same provider.*

Capital costs are the costs of ownership and nonextensive renovation. Cost of ownership covers the actual expense incurred for (1) depreciation and interest on capital assets that cost \$500 or more per item, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) with certain exceptions, lease and rent of land, buildings, and equipment. Costs of nonextensive renovation covers the actual expense incurred for depreciation or amortization and interest on renovations that are not extensive.

Indirect care costs are all reasonable costs other than the three other cost centers. This includes costs of habilitation supplies, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, dietary supplies and personnel, housekeeping, security, administration, liability and property insurance, travel, dues, license fees, subscriptions, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, and consumer satisfaction survey fees.

Direct care costs include a nursing facility or ICF/MR's costs for (1) certain staff, including nurses, nurse aides, medical directors, and respiratory therapists, (2) purchased nursing services, (3) quality assurance, (4) training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or costs for self-insurance claims, (5) consulting and management fees related to direct care, and (6) allocated direct care home office costs.

Other protected costs are costs for medical supplies; real estate, franchise, and property taxes; natural gas, fuel oil, water, electricity, sewage, and refuse and hazardous medical waste collection; allocated other protected home office costs; and any additional costs included in ODJFS rules.

**Maximum mean total per diem rate for nursing facilities** (Section 63.35).

The act establishes a maximum mean total per diem rate applicable to nursing facilities in FY 2002 and 2003. For FY 2002, the mean total per diem rate for all nursing facilities in the state, weighted by Medicaid days and calculated as of July 1, 2001, is not to exceed \$143.92.<sup>88</sup> For FY 2003, the mean total per diem rate for all nursing facilities in the state, weighted by Medicaid days and calculated as of July 1, 2002, is not to exceed \$152.66, plus any difference between \$143.92 and

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<sup>88</sup> *The act defines Medicaid days as all days during which a resident who is a Medicaid recipient occupies a bed in a nursing facility that is included in the facility's Medicaid certified capacity. Therapeutic or hospital leave days for which a Medicaid payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days. Other than defining "Medicaid days," the act does not provide guidance as to what is meant by "weighted by Medicaid days."*

the mean total per diem rate for all nursing facilities in the state for FY 2002, weighted by Medicaid days and calculated as of July 1, 2001, under the law governing the calculation of Medicaid reimbursement rates. If the mean total per diem rate for all nursing facilities in the state for FY 2002 or 2003, weighted by Medicaid days and calculated as of the first day of July of the calendar year in which the fiscal year begins, exceeds the maximum amount established by the act, ODJFS is required to reduce the total per diem for each nursing facility in the state by a percentage that is equal to the percentage by which the mean total per diem rate exceeds the maximum amount established by the act for that fiscal year. Adjustments to a nursing facility's Medicaid reimbursement rate required by the law governing the calculation of Medicaid reimbursement rates are to be made during the remainder of the fiscal year in which a reduction required by this provision of the act is made.

**Additional funding from increase in franchise permit fee** (R.C. 3721.51 and 3721.56; Section 63.37). ODJFS is required to assess an annual franchise permit fee on each long-term care bed in a nursing home or hospital.<sup>89</sup> The fee is applied to each nursing home bed, Medicare-certified skilled nursing facility bed, and Medicaid-certified nursing facility bed, and each bed in a hospital that is registered as a skilled nursing facility bed or long-term care bed or licensed as a nursing home bed. Except for fiscal years 2002 and 2003, the amount of the fee is \$1 for each such bed a nursing home or hospital has multiplied by the number of days in the fiscal year for which the fee is assessed.<sup>90</sup> Money generated by the \$1 per bed per day fee and penalties associated with the fee are used for (1) the Medicaid program, (2) the PASSPORT program, and (3) the Residential State Supplement program. The franchise permit fee is a reimbursable expense under the Medicaid program for nursing home and hospital beds that are nursing facility beds participating in Medicaid.

For FY 2002 and 2003, the act raises the franchise permit fee to \$3.30; a \$2.30 per bed per day increase. The additional money generated from the increase, and 69.7% of the penalties related to the franchise permit fee, are to be deposited into the Nursing Facility Stabilization Fund which the act creates in the state treasury. ODJFS is to use the money in the fund to do all of the following:

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<sup>89</sup> *ODJFS is required to cease implementation of the franchise permit fee if the United States Health Care Financing Administration determines that it would be an impermissible health care related tax under federal Medicaid law.*

<sup>90</sup> *A nursing home with 100 beds subject to the franchise permit fee would be assessed \$36,500. (\$1 x 100 beds x 365 days.)*

(1) Make payments to nursing facilities under the law governing Medicaid payments to nursing facilities;

(2) Beginning with payments made to nursing facilities in August 2001, make payments to each nursing facility for each Medicaid day in FY 2002 and 2003 in an amount equal to 69.7% of the franchise permit fee the nursing facility pays for the fiscal year ODJFS makes the payment divided by the nursing facility's inpatient days for the calendar year preceding the calendar year in which that fiscal year begins.

(3) The Governor vetoed a third use of the Nursing Facility Stabilization Fund: to make payments to each nursing facility that pays the franchise permit fee for FY 2002 and 2003 in an amount equal to \$1.50 per Medicaid day to assist the nursing facilities in paying reasonable Medicaid-related costs that are not adequately reimbursed under the law governing Medicaid payments to nursing facilities.

Any money remaining in the fund after these payments are made for FY 2002 and 2003 is to be retained in the fund. Any interest or other investment proceeds earned on money in the fund is to be credited to the fund and used to make the required payments.

The act provides that ODJFS, in making payments to a nursing facility, must exclude from a nursing facility's other protected costs the cost of 69.7% of the franchise permit fee that the nursing facility pays for FY 2002 and 2003 if the facility receives payments from the Nursing Facility Stabilization Fund for 69.7% of those franchise permit fees.

**Imputed occupancy** (Section 63.36). The act changes the imputed occupancy percentage used in calculating a nursing facility's or ICFs/MR's per diem for capital and indirect care costs. Regarding indirect care costs, changes are made for both FY 2002 and 2003. A change is made for capital costs for FY 2002 only. Indirect care per diems are to be determined by dividing the facility's actual, allowable costs in a cost reporting period by the greater of the facility's inpatient days (days that a resident occupies or is considered to occupy a bed, as when the person has therapeutic or hospital leave days) for that period or the number of inpatient days the facility would have had during that period if its occupancy rate had been 82% (for FY 2002) or 87% (for FY 2003) rather than 85%.<sup>91</sup> Capital cost per diems are to be determined for FY 2002 by dividing the facility's actual, allowable costs in a cost reporting period by the greater of the facility's inpatient days for that period or the number of inpatient days the facility would have had

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<sup>91</sup> For FY 2001, the imputed occupancy percentage used is 75%.

during that period if its occupancy rate had been 88% rather than 95%.<sup>92</sup> The Governor vetoed a provision under which the imputed occupancy rate for capital costs for FY 2003 would have been 91%.

ODJFS is required to implement the imputed occupancy percentage change as soon as practicable for the purpose of calculating nursing facility and ICF/MR Medicaid reimbursement rates for capital and indirect care costs for FY 2002 and 2003. If ODJFS is unable to calculate the rates before it makes payments for services provided during those fiscal years, it must pay a facility the difference between the amount it pays the facility and the amount that would have been paid had ODJFS made the calculation in time.

**Purchased nurses services** (R.C. 5111.262). The act increases nursing facilities' Medicaid reimbursement rates for direct care costs by providing that costs reported in a nursing facility's cost report for purchased nursing services are to be allowable costs up to 20% (rather than 10%) of the nursing facility's cost specified in a cost report for services provided by registered nurses, licensed practical nurses, and nurse aides who are employees of the nursing facility, plus one-half of the amount by which the reported costs for purchased nursing services exceed that percentage.<sup>93</sup> This change is applicable for fiscal years 2002 and thereafter.

**Return on equity factor in nursing facility's capital cost rate determination** (R.C. 5111.25(H)). As part of capital costs, ODJFS is required to pay each eligible proprietary nursing facility a return on equity computed at the rate of one and one-half times the average interest rate on special issues of public debt obligations issued to the federal Hospital Insurance Trust Fund for a cost reporting period.

The act reduces the maximum return on equity payment from \$1 to \$.50 per patient day.

**Reconsideration of nursing facility's rates due to extreme circumstances** (R.C. 5111.29). The Director of ODJFS is required to adopt rules establishing a process under which a nursing facility may seek reconsideration of its Medicaid payment rates if it demonstrates that its actual, allowable costs have increased because of extreme circumstances. A nursing facility may qualify for a rate increase only if its per diem, actual, allowable costs have increased to a level that exceeds its total rate. The rules must specify the circumstances that would justify

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<sup>92</sup> For FY 2001, the imputed occupancy percentage used is 85%.

<sup>93</sup> For FY 2001, the percentage used is 17%.

a rate increase. The act provides that a change of ownership that results from bankruptcy, foreclosure, or findings of violations of Medicaid certification requirements is no longer to be considered an extreme circumstance that warrants reconsideration of a nursing facility's Medicaid reimbursement rates.

**Payments held in escrow and penalties** (R.C. 5111.25(G), 5111.251(H), and 5111.28). The owner of a nursing facility or ICF/MR is required to provide ODJFS written notice at least 45 days prior to entering into any contract of sale for the facility or voluntarily terminating participation in Medicaid. For the purpose of securing funds the owner may owe the Medicaid program, ODJFS is required to hold in escrow the amount of the last two monthly payments to a nursing facility or ICF/MR owner before the facility is sold or voluntarily terminates its participation in Medicaid. However, if the amount the owner will be required to refund to ODJFS is likely to be less than the amount of the last two monthly Medicaid payments, ODJFS is required to withhold the amount of the owner's last monthly payment or, if the owner owns other nursing facilities or ICFs/MR that participate in Medicaid, obtain a promissory note in an amount sufficient to cover the amount likely to be refunded.

The act provides that if the owner fails to timely notify ODJFS before entering into a contract of sale for the facility, ODJFS is to hold in escrow the amount of the first two monthly payments made to the facility after ODJFS learns of the contract. If the amount the owner will be required to refund is likely to be less than the amount of two monthly payments and the owner owns other facilities that participate in Medicaid, ODJFS is to obtain a promissory note in an amount sufficient to cover the amount likely to be refunded. If the owner does not own other facilities that participate in Medicaid, ODJFS must withhold the amount of the first monthly payment made to the facility after ODJFS learns of the contract. ODJFS is to withhold the payment or payments regardless of whether the new owner is in possession of the facility.

ODJFS is authorized to penalize the owner of a nursing facility or ICF/MR who fails to notify ODJFS of the sale of the facility or voluntary termination of participation in Medicaid within the required time. Under prior law, the penalty could be no more than 2% of the facility's last two monthly payments. The act increases the maximum penalty to the current average bank prime rate plus 4% of the last two monthly payments.

**Annual report on refinements to case-mix system** (repealed R.C. 5111.341). The act eliminates a requirement that ODJFS, no later than July 1 of each year, report to the Speaker of the House of Representatives and Senate President on any necessary refinements to the case-mix system for reimbursing direct care costs under the Medicaid program.

**Medicaid Long-Term Care Reimbursement Study Council** (R.C. 5111.231 and 5111.34; Section 63.38). The act abolishes the Medicaid Long-Term Care Reimbursement Study Council, which was required to review, on an ongoing basis, the Medicaid payment system for nursing facilities and ICFs/MR and recommend any changes it determined were necessary.

The act creates the Nursing Facility Reimbursement Study Council. The Council is to consist of the following members: (1) the Directors of ODJFS, Health, and Aging, (2) the Deputy Director of ODJFS's Office of Health Plans, (3) an employee of the Governor's office, (4) two members of the House of Representatives, appointed by the House Speaker, (5) two members of the Senate, appointed by the Senate President, and (6) two representatives each of the Ohio Academy of Nursing Homes, the Association of Ohio Philanthropic Homes and Housing for the Aging, and the Ohio Health Care Association.<sup>94</sup> The House Speaker and Senate President are to appoint jointly the Study Council's chairperson. Members are to serve without compensation.

The Council is required to review, on an ongoing basis, the Medicaid payment system for nursing facilities and recommend any changes it determines are necessary. It must periodically report its activities, findings, and recommendations to the Governor, Speaker of the House of Representatives, and Senate President. The act also specifies that the Council report on the following during fiscal years 2002 and 2003:

(1) The use of imputed occupancy factors in calculating reimbursement rates;

(2) The identification and quantification of costs that vary with occupancy and costs that do not vary with occupancy;

(3) Specific elements of the reimbursement formula that contribute to or detract from facility efficiency, including appropriate methods of defining and measuring efficiency;

(4) The inclusion or exclusion of direct-care costs and case-mix scores for classes of facility residents the Council identifies from case-mix calculations and the effect of those inclusions or exclusions on direct care of residents;

(5) Whether the return on equity provision in the reimbursement formula should remain;

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<sup>94</sup> *The governing bodies of the nursing facility associations are to appoint their representatives to the Study Council.*

(6) The use of depreciation recapture in the case of transfers of nursing facilities;

(7) The amount of time that elapses between when a facility incurs costs for wage increases or other expenditure and when those costs are included in the reimbursement rate;

(8) The percentage of capital costs that are not included in the reimbursement rate;

(9) The percentage of purchased nursing costs that are not included in the reimbursement rate.

The Medicaid Long-Term Care Reimbursement Study Council abolished by the act played a part in ODJFS's determination of case-mix scores for the purpose of Medicaid direct care payments to nursing facilities and ICFs/MR. As part of the process of determining case-mix scores, ODJFS must use a grouper methodology. ODJFS was permitted to make changes to the grouper methodology that the Council approved. The act substitutes the Nursing Facility Reimbursement Study Council for the abolished study committee for the purpose of approving changes to the grouper methodology used for a nursing facility's Medicaid reimbursements. The act does not provide for approval of changes to the grouper methodology used for ICFs/MR's Medicaid reimbursements.

**Medicaid pharmacy services for nursing home residents** (Section 63.13).

The Governor vetoed a provision that would have provided that, from July 1, 2001 to September 30, 2001, a pharmacy provider would have been reimbursed for pharmacy services provided to a Medicaid recipient who resides in a nursing home at a rate of the wholesale acquisition cost, plus 9%, plus any applicable dispensing fee.<sup>95</sup> During the remainder of the biennium, the pharmacy provider would have been reimbursed at a rate determined by comparing the provider's average monthly cost of providing pharmacy services to Medicaid recipients who reside in nursing homes for the immediately preceding quarter to the statewide average monthly cost of providing such services on March 31, 2001. If the provider's average monthly cost of the services in the quarter being examined was equal to or greater than the statewide average monthly cost of the services on March 31, 2001, the provider would have been reimbursed at a rate of the wholesale acquisition cost, plus 9%, plus any applicable dispensing fee. Otherwise, the provider would have been reimbursed at a rate of the wholesale acquisition cost, plus 11%, plus any

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<sup>95</sup> "Wholesale acquisition cost" was defined as the cost of a particular drug estimated by ODJFS by periodic review of pricing information from drug wholesalers in Ohio, pharmaceutical manufacturers, and one or more pharmacy pricing update services.



applicable dispensing fee, plus 50% of the difference between the provider's average monthly cost of the services and the statewide average monthly cost of the services on March 31, 2001.

**Due date of Medicaid payments to long-term care facilities** (R.C. 5111.22). The act eliminates a requirement that a Medicaid provider agreement between ODJFS and a nursing facility or ICF/MR contain a requirement that ODJFS make Medicaid payments to the facility no later than the fifteenth day of the month following a month in which care and services are provided to Medicaid recipients. The payments had to be retroactive to the first day of the month in which a Medicaid application is made or the day a Medicaid recipient is admitted to the facility. In the case of a newly admitted Medicaid recipient, the first payment had to be made no later than 60 days following authorized admission.

**ODJFS Medicaid rules** (Section 63.35). The act provides, with two exceptions, that ODJFS is required to continue to implement its rules regarding Medicaid payments to nursing facilities that are in effect on the act's effective date. The first exception is that ODJFS may not continue to implement a rule that is inconsistent with the act, but must instead implement the act. The second exception is that ODJFS is permitted to adopt, amend, or rescind a rule as provided by the law governing Medicaid payments to nursing facilities.

**Medicaid waiver components**

(R.C. 5111.85; Section 63.26)

Federal law authorizes the United States Secretary of Health and Human Services to grant states waivers of federal Medicaid law for various purposes, including instituting pilot programs that are likely to assist in promoting the objectives of the Medicaid program and providing Medicaid recipients home and community-based services. ODJFS has sought and received a number of these federal waivers.

The act authorizes the Director of ODJFS to adopt rules in accordance with the Administrative Procedure Act governing components of the Medicaid program authorized by federal waivers, other than a waiver component providing for a managed care system.<sup>96</sup> The rules may establish all of the following:

- (1) Eligibility requirements for the waiver components;

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<sup>96</sup> *Separate law requires the Director of ODJFS to adopt rules to implement the managed care waiver component. (See "Medicaid managed care," above.)*

- (2) The type, amount, duration, and scope of services the waiver components provide;
- (3) The conditions under which the waiver components cover services;
- (4) The amount the waiver components pay for services or the method by which the amount is determined;
- (5) The manner in which the waiver components pay for services;
- (6) Safeguards for the health and welfare of Medicaid recipients receiving services under a waiver component;
- (7) Procedures for enforcing the rules, including establishing corrective action plans for, and imposing financial and administrative sanctions on, persons and government entities that violate the rules;<sup>97</sup>
- (8) Other policies necessary for the efficient administration of the waiver components.

The Director is permitted to adopt different rules for the different Medicaid waiver components. A waiver component's rules must be consistent with the terms of the federal waiver authorizing the component. A rule that is in effect on the effective date of this provision of the act is to remain in effect until amended or rescinded as part of the adoption of rules under this provision.

The act authorizes the Director of ODJFS to conduct reviews of the Medicaid waiver components. The reviews may include physical inspections of records and sites where services are provided and interviews of providers and recipients of the services. If the Director determines pursuant to a review that a person or government entity has violated a rule governing a waiver component, the Director is permitted to establish a corrective action plan for the violator and impose fiscal, administrative, or both types of sanctions in accordance with rules.

**Interagency agreements for the administration of Medicaid components**

(R.C. 173.40, 5111.86, and 5111.871)

The act authorizes ODJFS to enter into interagency agreements with one or more other state agencies to have any such other state agency administer one or

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<sup>97</sup> *The act provides that the rules establishing enforcement provisions must include due process protections and that the sanctions include terminating Medicaid provider agreements.*

more components of the Medicaid program, or one or more aspects of a component, under ODJFS's supervision.<sup>98</sup> A state agency that enters into such an interagency agreement must do both of the following:

(1) Comply with any rules the Director of ODJFS has adopted governing the component, or aspect of the component, that the state agency is to administer, including any rules establishing review, audit, and corrective action plan requirements;

(2) Reimburse ODJFS for the nonfederal share of the cost to ODJFS of performing, or contracting for the performance of, a fiscal audit of the Medicaid component, or aspect of the component, the state agency administers if rules governing the component or aspect of the component require that a fiscal audit be conducted.

The act creates in the state treasury the Medicaid Administrative Reimbursement Fund. ODJFS is required to use money in the fund to pay the nonfederal share of a fiscal audit for which a state agency is required to reimburse ODJFS. ODJFS is required to deposit the reimbursements in the fund.

**Medicaid home and community-based services for medically fragile individuals**

(Section 62.23)

The Director of ODJFS is authorized by the act to submit a request to the United States Secretary of Health and Human Services to create a Medicaid home and community-based services waiver program, or modify a current Medicaid waiver program, to serve certain medically fragile individuals. To be eligible for the new or modified waiver program, a medically fragile individual must need a skilled level of care as defined in ODJFS rules and be transferred from the Ohio

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<sup>98</sup> *Continuing law provides for ODJFS to enter into an interagency agreement with the Ohio Department of Aging (ODA) for ODA to administer the PASSPORT Program, a Medicaid component under which aged and disabled Medicaid recipients receive home and community-based services as an alternative to nursing facility placement. ODJFS is also required to enter into an interagency agreement with the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) for ODMR/DD to administer the Individual Options program, which is operated under waivers of federal regulations. Under this waiver program, Medicaid recipients with mental retardation or a developmental disability receive home or community-based services as an alternative to placement in an intermediate care facility for the mentally retarded.*

Home Care Waiver Program to the new or modified waiver program.<sup>99</sup> In addition, the individual must be enrolled in the Ohio Home Care Waiver Program on June 30, 2001, or, in the case of a number of individuals approved by the Director of Budget and Management, after that date.

If the waiver request is approved and the Director of ODJFS creates a new, or modifies an existing, waiver program, the waiver program is to specify the maximum amount that it may spend per individual enrolled in it. ODJFS is required to administer the new or modified waiver program. ODJFS is permitted to reduce the maximum number of individuals the Ohio Home Care Waiver Program may serve by the number of individuals transferred from that waiver program to the new or modified waiver program.

### **Ohio Access Success Project**

(Section 62.18)

The act authorizes the Director of ODJFS to establish the Ohio Access Success Project to help Medicaid recipients make the transition from residing in a nursing facility to residing in a community setting. The Director's authority to establish the project is limited to the extent the act makes funds available. If the Director establishes the project, the Director must provide one-time benefits to not more than 75 Medicaid recipients in fiscal year 2002 and not more than 125 Medicaid recipients in fiscal year 2003.

To be eligible for benefits under the Ohio Access Success Project, a Medicaid recipient must satisfy all of the following requirements:

- (1) At the time of applying for the benefits, be a recipient of Medicaid-funded nursing facility care;
- (2) Have resided continuously in a nursing facility since at least January 1, 2000;
- (3) Need the level of care provided by nursing facilities;

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<sup>99</sup> *Under the ODJFS rules, an individual needs a skilled level of care if the individual receives at least one skilled nursing service at least seven days per week, a skilled rehabilitation service at least five days per week, or both. The services must be ordered by a physician because of (1) the instability of the individual's condition and the complexity of the prescribed service or (2) the instability of the individual's condition and the presence of special medical complications.*

(4) Need benefits whose projected cost does not exceed 80% of the average monthly Medicaid cost of individual Medicaid recipients' nursing facility care.

Benefits provided under the Ohio Access Success Project, if established, must include payment of (1) the first month's rent in a community setting, (2) rental deposits, (3) utility deposits, (4) moving expenses, and (5) other expenses not covered by Medicaid that facilitate a Medicaid recipient's move from a nursing facility to a community setting. No person is to receive more than \$2,000 worth of benefits under the project.

**Medicaid waiver for community mental health services**

(Section 63.24)

The Medicaid program must include coverage of community mental health services provided by accredited or certified facilities. Each board of alcohol, drug addiction, and mental health services must set priorities in its plan for mental health services. The Department of Mental Health is required to allocate funds for community programs after taking into account the boards' recommendations and the priorities of the state mental health plan.

The act requires ODJFS, with the assistance of the Department of Mental Health, to develop and submit an application to the federal government for a Medicaid waiver with respect to coverage of community mental health services. Before developing and submitting the waiver application, the Department of Job and Family Services must consult with community mental health agencies that provide Medicaid-covered mental health services, as well as the chairpersons and ranking minority members of the House Health and Family Services Committee and the Senate Health, Human Services, and Aging Committee.

The act provides that the purpose of the waiver is to override Medicaid statutes and regulations that can be waived to ensure both of the following:

(1) That Medicaid coverage and payment methods for community mental health services are consistent with the service priorities established by the Department of Mental Health and the boards of alcohol, drug addiction, and mental health services;

(2) That Medicaid-covered community mental health services can be provided in a manner that maximizes the effectiveness of resources available to the Department and the boards.

The act requires the departments to act in a manner that allows the provisions of the waiver to be implemented not later than July 1, 2002.

### **Program of All-Inclusive Care for the Elderly**

(Section 63.28)

The Program of All-Inclusive Care for the Elderly (PACE) is a Medicaid component that provides acute and long-term care services to frail, older adults who need the level of care provided by nursing facilities but wish to remain at home. PACE is operated in Cuyahoga and Hamilton counties and parts of Butler, Clermont, and Warren counties.

The act requires that the Director of ODJFS submit to the United States Secretary of Health and Human Services a state Medicaid plan amendment to provide for the continued operation of PACE. The Director must submit the amendment no later than February 28, 2002. The Director is permitted to submit to the Secretary application for program agreements to operate PACE. The Director may also seek federal approval to transfer the day-to-day administration of PACE to the Department of Aging. If the amendment is approved, the Directors of ODJFS and Aging are permitted, with the approval of the Director of Budget and Management, to enter into an interagency agreement to transfer responsibility for the administration of PACE. The interagency agreement must include an estimated cost of services to be provided under PACE and an estimated cost for the administrative duties assigned by the agreement to the Department of Aging.

The Governor vetoed a provision that would have required the Director of ODJFS to consider and, in the absence of just cause for refusal, give preference to Concordia Care and TriHealth Senior Link when determining the entities for which the first two PACE applications are to be submitted.

### **Medicaid coverage of obesity treatment drugs**

(Section 63.29)

The Director of ODJFS is authorized to adopt rules establishing the scope of medical services to be included in the Medicaid program. The Governor vetoed a provision that would have revoked the Director's authority to adopt a rule excluding drugs for the treatment of obesity from coverage under the Medicaid program.

### **Preferred Option Evaluation**

(Section 63.32)

The Medicaid program includes a managed care component. In Butler, Franklin, Hamilton, and Montgomery counties, the Preferred Option program is operated as part of the managed care component. Under Preferred Option, a

Medicaid recipient subject to managed care requirements is automatically enrolled in managed care if the recipient fails to select the Medicaid fee-for-service component. However, unlike other Medicaid recipients subject to managed care, a Medicaid recipient enrolled in Preferred Option may choose to transfer to the fee-for-service component at any time.

The act requires the Director of ODJFS to evaluate Preferred Option. As part of the evaluation, the Director must examine whether Preferred Option should be expanded to additional counties. The Director is required to submit the report to the Governor, Speaker of the House of Representatives, and President of the Senate not later than June 30, 2003. The Director must include in the report any findings made pursuant to the evaluation. The Governor vetoed a provision that would have prohibited the Director from expanding Preferred Option to additional counties before the report is submitted.

**Hospital Care Assurance Program**

(Sections 147 and 148)

Under the Hospital Care Assurance Program (HCAP), hospitals are annually assessed an amount based on their total facility costs. ODJFS distributes the money generated by the assessment and federal matching funds generated by the assessment, to hospitals. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to individuals who are residents of this state and are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty guidelines.

The funding mechanism for HCAP was to terminate on July 1, 2001. The act delays the termination until October 16, 2003.

**Disability Assistance grant levels**

(Section 63.03)

The Disability Assistance (DA) program is a state- and county-funded program that provides cash assistance, limited medical assistance, or both to certain low-income individuals and families that meet categorical requirements (R.C. Chapter 5115., not in the act). The act maintains the maximum grant levels for the Disability Assistance program that have existed since the program was created in 1991. The maximum grant levels are the following:

Persons in assistance group	Maximum monthly DA grant
1	\$115
2	\$159

Persons in assistance group	Maximum monthly DA grant
3	\$193
4	\$225
5	\$251
6	\$281
7	\$312
8	\$361
9	\$394
10	\$426
11	\$458
12	\$490
13	\$522
14	\$554

For each additional person, \$40 is added to the maximum monthly DA grant for an assistance group with 14 members.

**Release of client mental health information**

(R.C. 5122.31)

All certificates, applications, records, and reports made for purposes of Ohio law governing the hospitalization of the mentally ill and criminal trials of persons alleged insane that identify a patient or former patient, or person whose hospitalization for mental illness has been sought under the law governing hospitalization of the mentally ill, must be kept confidential and not be disclosed by any person. A number of exceptions to this confidentiality requirement exist, however, including one that permits mental hospitals to release necessary medical information to insurers to obtain payment for goods and services furnished to the patient.

The act expands the exception to permit boards of alcohol, drug addiction, and mental health services (ADAMH boards) and community mental health agencies to release the medical information. The act also includes, in addition to insurers, other third-party payors, including government entities responsible for processing and authorizing payment, as entities that may receive the medical information.



The act also permits a community mental health agency that ceases to operate to transfer to either a community mental health agency that assumes its caseload or to the ADAMH board of the service district in which the patient resided at the time services were most recently provided any treatment records that have not been transferred elsewhere at the patient's request.

**ADAMH board interaction with public children services agencies**

(R.C. 340.16)

The act requires the Department of Mental Health and ODJFS to adopt rules that establish requirements and procedures for prior notification and service coordination between public children services agencies and ADAMH boards. The rules are to apply when a public children services agency refers a child in its custody to receive services funded by the ADAMH board. The rules must be adopted not later than 90 days after the act's effective date and must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

The act requires the departments to collaborate in formulating a plan that delineates the funding responsibilities of public children services agencies and ADAMH boards for community mental health services covered by Medicaid and provided to children in the custody of public children services agencies. The departments have 90 days to complete the plan.

**Allocation of funds for alcohol and drug addiction services**

(R.C. 3793.04; Section 19)

The Ohio Department of Alcohol and Drug Addiction Services (ODADAS) is required to develop a comprehensive statewide alcohol and drug addiction services plan. The plan must provide for the allocation and distribution of state and federal funds for services provided by alcohol and drug addiction programs. A portion of the funds must be allocated on the basis of the ratio of the population of each alcohol, drug addiction, and mental health service district to the total state population. The ratio is determined from either the most recent federal census or the most recent official United States Census Bureau estimate.

The Governor vetoed a provision that would have required that the portion of funds allocated on the basis of the population ratio be at least equal to the average amount allocated on that basis for the previous three years.

The act requires ODADAS to establish a plan by June 30, 2002 to evaluate the current per capita formula used in determining how state and federal funds for alcohol and drug addiction services are allocated. The plan must evaluate (1) whether population statistics alone should be used to quantify the need for funding

in a county, (2) whether other social and economic demographic indicators should be used, and (3) whether the current formula is appropriate.

**Certification of community mental health services**

(R.C. 9.03, 173.35, 340.02, 340.03, 340.08, 340.091, 2919.271, 3722.01, 3722.15, 3722.16, 5111.022, 5119.01, 5119.22, 5119.61, 5119.611, and 5119.612; Section 74.04)

The act revises and reorganizes the law governing the Director of Mental Health's certification of community mental health services. The Director is no longer required, but is instead permitted, to visit an applicant for certification. The Director is not restricted to establishing *minimum* standards for community mental health services but is required to include as certification standards only requirements that improve the quality of services or the health and safety of clients of the services. The rules the Director is to adopt establishing certification standards are to include standards that address reporting major unusual incidents to the Director and procedures for applicants for and clients of the services to file grievances and complaints.

The act prohibits an ADAMH board from contracting with a community mental health agency to provide community mental health services included in the ADAMH board's community mental health plan unless the services are certified by the Director.

**Appropriate service utilization**

(R.C. 5119.61)

The Director of Mental Health is authorized to adopt rules governing the method of paying a community mental health facility for providing Medicaid-funded mental health services. The act requires that the rules include requirements ensuring appropriate service utilization.

The Director must establish criteria by which an ADAMH board reviews and evaluates the quality, effectiveness, and efficiency of services provided through its community mental health plan. The act requires that the criteria include requirements ensuring appropriate service utilization.

**Certification of mental health facilities**

(R.C. 3923.28, 3923.29, 3923.30, and 5119.01)

Mental health services covered under a policy of group sickness and accident insurance or included in a private or government employer's health care benefits to its employees may be provided in a hospital or community mental

health facility that has certain approval or is certified by the Department of Mental Health. The option that the hospital or facility have Department of Mental Health certification is terminated by the act in two years. The act also provides that approval may come from any of the following: the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation for Children and Family Services, or the Rehabilitation Accreditation Commission.

**Oversight of Department of Rehabilitation and Correction mental health programs**

(R.C. 5119.06)

The act eliminates requirements that the Department of Mental Health (1) provide oversight to the Department of Rehabilitation and Correction for the delivery of mental health services in state correctional institutions and (2) audit mental health programs in state correctional institutions operated by the Department of Rehabilitation and Correction for compliance with standards that have been jointly developed and promulgated by the departments.

**Contract disputes between ODMR/DD and protective service providers**

(R.C. 101.37)

The Joint Council on Mental Retardation and Developmental Disabilities (MR/DD) has a number of duties concerning issues affecting ODMR/DD, county MR/DD boards, persons with MR/DD, and providers of services to persons with MR/DD. The act requires that the Joint Council also conduct reviews and make recommendations to the Director of ODMR/DD regarding disputes between ODMR/DD and entities that have contracted with ODMR/DD to provide protective services to individuals with MR/DD.

**MR/DD board services**

County MR/DD boards must operate facilities, programs, and services for individuals with MR/DD. Some of the services are specifically identified in statute. The act modifies certain of these statutes and establishes statutory descriptions of other services the boards provide.

**Adult services**

(R.C. 5126.01(A) and (C))

Under prior law, adult services included a range of habilitation services, including sheltered employment providing a structured work environment, job training, job placement, supported employment, competitive employment, and planned therapeutic and work activities providing meaningful tasks designed to

improve the effectiveness or degree with which an individual met the standards of personal independence and social responsibility expected of the individual's age and cultural group.

The act defines "adult services" as services provided to an adult outside the home (except when they are provided within the home according to an individual's assessed needs and identified in an individual service plan) that support learning and assistance in the area of self-care, sensory and motor development, socialization, daily living skills, communication, community living, social skills, or vocational skills. Adult services expressly include adult day habilitation services, adult day care, prevocational services, sheltered employment, and educational experiences and training obtained through entities and activities that are not expressly intended for individuals with MR/DD, including trade schools, vocational or technical schools, adult education, job exploration and sampling, unpaid work experience in the community, volunteer activities, and spectator sports.

Expressly excluded from adult services are community and supported employment services, which are services related to employment outside a sheltered workshop. Community or supported employment services include all of the following:

- (1) Job training resulting in the attainment of competitive work, supported work in a typical work environment, or self-employment;
- (2) Supervised work experience through an employer paid to provide the supervised work experience;
- (3) Ongoing work in a competitive work environment at a wage commensurate with that of workers without disabilities;
- (4) Ongoing supervision by an employer paid to provide the supervision.

**Adult day habilitation services**

(R.C. 5126.01(B))

As noted above, the act specifies that adult services include adult day habilitation services. Adult day habilitation services are services that do the following:

--Provide access to and participation in typical activities and functions of community life that are desired and chosen by the general population, including such activities and functions as opportunities to experience and participate in community exploration, companionship with friends and peers, leisure activities,

hobbies, maintaining family contacts, community events, and activities where individuals without disabilities are involved;

--Provide supports or a combination of training and supports that afford an individual a wide variety of opportunities to facilitate and build relationships and social supports in the community.

Adult day habilitation services expressly include all of the following:

(1) Personal care services needed to ensure an individual's ability to experience and participate in vocational services, educational services, community activities, and any other adult day habilitation services;

(2) Skilled services provided while receiving adult day habilitation services, including such skilled services as behavior management intervention, occupational therapy, speech and language therapy, physical therapy, and nursing services;

(3) Training and education in self-determination designed to help the individual do one or more of the following: develop self-advocacy skills, exercise the individual's civil rights, acquire skills that enable the individual to exercise control and responsibility over the services received, and acquire skills that enable the individual to become more independent, integrated, or productive in the community;

(4) Recreational and leisure activities identified in the individual's service plan as therapeutic in nature or assistive in developing or maintaining social supports;

(5) Counseling and assistance provided to obtain housing, including such counseling as identifying financial resources, assessing needs for environmental modifications, locating housing, and planning for ongoing management and maintenance of the housing selected;

(6) Transportation necessary to access adult day habilitation services;

(7) Habilitation management.

The act specifies that adult day habilitation services do not include activities that are components of the provision of residential services, family support services, or supported living services.

**Residential services**

(R.C. 5126.01(N))

Under continuing law, residential services include housing, food, clothing, habilitation, staff support, and related support services. The act provides that residential services include program management.

**Supported living**

(R.C. 5126.01(S))

Supported living services are services that enhance an individual with MR/DD's reputation in community life and advance the individual's quality of life by providing the support necessary to enable the individual to live in a residence of the individual's choice. Supported living services include housing, food, clothing, habilitation, staff support, professional services, and any related support services necessary for the health, safety, and welfare of the individual receiving the services.

The act specifies that supported living services are provided for as long as 24 hours a day. The act removes a reference to the individual's choice to live alone, but remaining statutes appear to maintain that choice. It specifies that one of the purposes of supported living is to assist the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in the individual's residence.

The act expressly includes the following as supported living services:

- (1) A combination of lifelong or extended-duration supervision, training, and other services essential to daily living, including assessment and evaluation and assistance with the cost of training materials, transportation, fees, and supplies;
- (2) Personal care services and homemaker services;
- (3) Household maintenance that does not include modifications to the physical structure of the residence;
- (4) Respite care services;
- (5) Program management.

### **Habilitation and program management**

(R.C. 5126.01(B)(2)(g), (N), and (S)(2)(f) and 5126.14)

The act specifies that "habilitation management" is included in the provision of adult day habilitation services and that "program management" is included in the provision of residential services and supported living. The entity responsible for the habilitation or program management is required by the act to provide administrative oversight by doing all of the following:

(1) Having available supervisory personnel to monitor and ensure implementation of all interventions in accordance with every individual service plan implemented by the staff who work with the individuals receiving the services;

(2) Providing appropriate training and technical assistance for all staff who work with the individuals receiving services;

(3) Communicating with service and support administration staff for the purpose of coordinating activities to ensure that services are provided to individuals in accordance with individual service plans and intended outcomes;

(4) Monitoring for major unusual incidents and cases of abuse, neglect, or exploitation involving the individual under the care of staff who are providing the services; taking immediate actions as necessary to maintain the health, safety, and welfare of the individuals receiving the services; and providing notice of major unusual incidents and suspected cases of abuse, neglect, or exploitation to the investigative agent for the county MR/DD board;

(5) Performing other administrative duties as required by state or federal law or by the county MR/DD board through contracts with providers.

### **Environmental modifications**

(R.C. 5126.01(F) and 5126.08)

The act requires the Director of ODMR/DD to adopt rules establishing standards for the provision of environmental modifications, including standards that require adherence to all applicable state and local building codes. The act defines "environmental modifications" as the physical adaptations to an individual's home, specified in the individual's service plan, that are necessary to ensure the individual's health, safety, and welfare or that enable the individual to function with greater independence in the home, and without which the individual would require institutionalization.

Included are such adaptations as installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, and installation of specialized electric and plumbing systems necessary to accommodate the individual's medical equipment and supplies. Excluded are physical adaptations or improvements to the home that are of general utility or not of direct medical or remedial benefit to the individual, including such adaptations or improvements as carpeting, roof repair, and central air conditioning.

**Equipment, supplies, and supports**

(R.C. 5126.01(Q) and 5126.08)

The act requires the Director of ODMR/DD to adopt rules establishing standards for the provision of specialized medical, adaptive, and assistive equipment, supplies, and supports that enable an individual to increase the ability to perform activities of daily living or to perceive, control, or communicate within the environment. All of the following are included:

(1) Eating utensils, adaptive feeding dishes, plate guards, mylatex straps, hand splints, reaches, feeder seats, adjustable pointer sticks, interpreter services, telecommunication devices for the deaf, computerized communications boards, other communication devices, support animals, veterinary care for support animals, adaptive beds, supine boards, prone boards, wedges, sand bags, sidelayers, bolsters, adaptive electrical switches, hand-held shower heads, air conditioners, humidifiers, emergency response systems, folding shopping carts, vehicle lifts, vehicle hand controls, other adaptations of vehicles for accessibility, and repair of the equipment received;

(2) Nondisposable items not covered by Medicaid that are intended to assist an individual in activities of daily living or instrumental activities of daily living.

**Family support services program**

(R.C. 5126.01(G) and 5126.11)

A county MR/DD board is required, subject to ODMR/DD rules and the availability of money from state and federal sources, to establish a family support services program. Under such a program, payments are made to an individual with MR/DD or the individual's family to assist with the cost of services that promote self-sufficiency and normalization, prevent or reduce inappropriate institutional care, and further the unity of the family. The act specifies that the program is for individuals with MR/DD who desire to remain and be supported in the family home. The family's unity can be furthered by the program by enabling it to live as much like other families as possible.



The act expands and modifies the purposes for which payments may be made under the program. In addition to counseling, training, and education for members of the individual's family that aid the family in providing proper care for the individual and provide for the special needs of the family, the act provides that payment may be made for supervision. The counseling, supervision, training, and education may also be for the individual and assist in all aspects of the individual's daily living. Payments may be made under the act for providing support necessary for the individual's continued skill development, including such services as development of interventions to cope with unique problems that may occur within the complexity of the family, enrollment of the individual in special summer programs, provision of appropriate leisure activities, and other social skills development activities. Whereas prior law allowed payments to be made under the program for other services consistent with the purposes of the program, the act provides that the other services also be specified in the individual's service plan.

**Service and support administration (case management)**

(R.C. 5126.01, 5126.041, 5126.05, 5126.051, 5126.053, 5126.071, 5126.08, 5126.12, 5126.15, 5126.16, 5126.19, 5126.20, 5126.22, and 5126.31; Section 75.04)

Prior law required a county MR/DD board to provide case management to individuals eligible for the board's other programs and services. Case management services were a mechanism to improve the quality and appropriateness of services rendered to individuals. A county MR/DD board was permitted to provide case management services directly or by contracting with other public or private agencies for the provision of the services. A county MR/DD board, or the agency with which the board contracted, was required to establish a separate service unit for case management, responsible directly to the board's superintendent and independent of all other programs of the board or agency. Persons employed as county MR/DD board case managers could not be assigned program duties by the board.

The act requires that a county MR/DD board provide service and support administration to each individual eligible for the board's other services and authorizes a board to provide such services to an individual ineligible for the other services. A board may provide service and support administration by directly employing service and support administrators or by contracting with entities for the performance of such services.

Individuals employed or under contract as service and support administrators may not be in the same collective bargaining unit as employees who perform duties that are not administrative. Service and support administrators employed by a board may not be assigned responsibilities for implementing services for individuals nor be employed by or serve in a decision-making or

policy-making capacity for any other entity that provides programs or services to individuals with MR/DD. An individual employed as a conditional status service and support administrator must perform his or her duties under the supervision of a management employee who is a service and support administration supervisor or a professional employee who is a service and support administrator.

The act provides that a person employed by a county MR/DD board as a service and support administrator or conditional status service and support administrator is a professional employee. Despite a requirement in continuing law that professional employees have either a bachelor's degree from an accredited college or university or a license or certificate from a state licensing board, the act provides that the minimum requirements for a conditional status service and support administrator is an appropriate associate degree.

The individuals employed by or under contract with a board to provide service and support administration must do all of the following:

- (1) Establish an individual's eligibility for the board's services;
- (2) Assess individual needs for services;
- (3) Develop individual service plans with the active participation of the individual to be served, other persons selected by the individual, and, when applicable, the provider selected by the individual, and recommend the plans for approval by ODMR/DD when services included in the plans are funded through Medicaid;
- (4) Establish budgets for services based on the individual's assessed needs and preferred ways of meeting those needs;
- (5) Assist individuals in making selections from among the providers they have chosen;
- (6) Ensure that services are effectively coordinated and provided by appropriate providers;
- (7) Establish and implement an ongoing system of monitoring the implementation of individual service plans to achieve consistent implementation and the desired outcomes for the individual;
- (8) Perform quality assurance reviews as a distinct function of service and support administration;
- (9) Incorporate the results of quality assurance reviews and identified trends and patterns of unusual incidents and major unusual incidents into

amendments of an individual's service plan for the purpose of improving and enhancing the quality and appropriateness of services rendered to the individual;

(10) Ensure that each individual receiving services has a designated person who is responsible on a continuing basis for providing the individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services in accordance with the individual's service plan. The service and support administrator must give the individual receiving services an opportunity to designate the person to provide daily representation. If the individual declines to make a designation, the administrator must make the designation. In either case, the individual receiving services may change at any time the person designated to provide daily representation.

Under prior law, ODMR/DD was required, subject to available funds, to pay a county MR/DD board an annual subsidy for case management services if the ratio of the board's certified average daily membership to the number of case managers employed by the board was at least equal to the minimum ratio specified in ODMR/DD rules. The act requires that ODMR/DD, subject to available funds, pay a county MR/DD board an annual subsidy for service and support administration. The requirement is not conditioned on the ratio of the board's certified average daily membership to service and support administrators.

### **Medicaid-funded mental retardation and developmental disability services**

#### **Medicaid coverage of habilitation center services**

(R.C. 5111.041, 5123.01, 5123.041, and 5126.01)

The act requires the Director of ODJFS to adopt rules in accordance with the Administrative Procedure Act governing the Medicaid program's coverage of habilitation center services provided by ODMR/DD-certified habilitation centers. The rules must establish or provide for all of the following:

(1) The requirements a habilitation center must meet to obtain ODMR/DD certification;

(2) Making habilitation center services provided by ODMR/DD-certified habilitation centers available to Medicaid recipients with a medical need for the services;

(3) The amount, duration, and scope of the Medicaid program's coverage of the habilitation center services, including (a) the conditions under which Medicaid covers habilitation center services, (b) the amount Medicaid pays for the habilitation center services or the method by which the amount is determined, and (c) the manner in which Medicaid pays for the habilitation center services.

ODMR/DD is required to do the following pursuant to an interagency agreement with ODJFS:

- (1) Accept and process Medicaid reimbursement claims from habilitation centers providing habilitation center services to Medicaid recipients;
- (2) Pay the Medicaid claims using Medicaid funds that ODJFS provides to ODMR/DD;
- (3) Perform the other duties included in the interagency agreement.

The act eliminates a requirement that a habilitation center verify the availability of matching Medicaid funds for reimbursement of habilitation services but provides that the Medicaid program is to cover habilitation center services as permitted by the availability of funds.

**Medicaid home and community-based services for individuals with MR/DD**

(Section 63.22)

The Director of ODJFS is authorized by the act to submit a request to the United States Secretary of Health and Human Services to create a Medicaid home and community-based services waiver program, or modify a current Medicaid waiver program, to serve certain individuals with MR/DD. To be eligible for the new or modified waiver program, an individual with MR/DD must (1) need the level of care provided by ICFs/MR, (2) need habilitation services, (3) be enrolled in the Ohio Home Care Waiver Program on June 30, 2001, and (4) be transferred from the Ohio Home Care Waiver program to the new or modified waiver program.

If the waiver request is approved and the Director of ODJFS creates a new, or modifies an existing, waiver program, the waiver program is to specify the maximum amount that it may spend per individual enrolled in it. The Director of ODJFS is permitted to reduce the maximum number of individuals the Ohio Home Care Waiver program may serve by the number of individuals transferred from that program to the new or modified home and community-based services waiver program.

ODJFS is permitted to administer the new or modified waiver program or enter into an interagency agreement with ODMR/DD for ODMR/DD to administer the waiver program under ODJFS's supervision. If entered into, the interagency agreement must specify the maximum number of individuals who may be transferred from the Ohio Home Care Waiver Program to the new or modified waiver program and the estimated cost of services to the transferred individuals.

The departments may not enter into the interagency agreement without the approval of the Director of Budget and Management.

**Home and community-based services waiver request**

(R.C. 5111.87, 5111.871, 5111.872, 5111.873, 5123.01, 5126.01, and 5126.357; Section 63.39)

The act authorizes the Director of ODJFS to apply to the United States Secretary of Health and Human Services for one or more Medicaid waivers under which home and community-based services are provided to individuals with MR/DD as an alternative to placement in an intermediate care facility for the mentally retarded (ICF/MR). Before the Director applies for a waiver, the Director must seek, accept, and consider public comments.

Continuing law provides for ODJFS to enter into an interagency agreement with ODMR/DD for ODMR/DD to administer these kinds of home and community-based services. When ODMR/DD allocates enrollment numbers to a county MR/DD board for these home and community-based services, it is required by the act to consider (1) the number of individuals with MR/DD who are on a waiting list the county MR/DD board establishes for those services and are given priority on the waiting list, (2) the implementation component of a plan the county MR/DD board is required by the act to develop, and (3) anything else ODMR/DD considers necessary to enable county MR/DD boards to provide those services to individuals with priority for the services.

The Director of ODJFS is required to adopt rules establishing statewide fee schedules for these home and community-based services. The rules must provide for all of the following:

(1) ODMR/DD arranging for the initial and ongoing collection of cost information from a comprehensive, statistically valid sample of private and public entities providing the services at the time the information is obtained;

(2) The collection of consumer-specific information through an assessment instrument ODMR/DD is required to provide to ODJFS;<sup>100</sup>

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<sup>100</sup> *For the purpose of collecting data necessary for constructing the assessment instrument that ODMR/DD must provide to ODJFS, ODMR/DD is required to contract with a private entity to administer an individual assessment instrument to a representative sample of individuals receiving or eligible to receive these home and community-based services. The assessment instrument must be identical or similar in design to the New York Developmental Disabilities Profile.*

(3) With the above information, an analysis of that information, and other information the Director determines relevant, methods and standards for calculating the fee schedules that (a) assure that the fees are consistent with efficiency, economy, and quality of care, (b) consider the intensity of consumer resource need, (c) recognize variations in different geographic areas regarding the resources necessary to assure the health and welfare of consumers, and (d) recognize variations in environmental supports available to consumers.

The Director is required, as part of the process of adopting the rules, to consult with the Director of ODMR/DD, representatives of county MR/DD boards, persons who provide the home and community-based services, and other persons and government entities the Director identifies. The Directors of ODJFS and ODMR/DD must review the rules at times they determine to ensure that the methods and standards established by the rules for calculating the fee schedules continue to do everything the act requires.

### **Individual Options**

(Section 63.31)

Individual Options is an existing Medicaid component under which home and community-based services are provided to individuals with MR/DD as an alternative to placement in an ICF/MR. The act authorizes the Director of ODJFS to apply to the United States Secretary of Health and Human Services for approval to increase the number of slots for Individual Options. The Director may seek to increase the number of slots by 1,000 for the biennium: 500 in fiscal year 2002 and 500 in fiscal year 2003.

### **County board waiting list priorities**

(R.C. 5126.042)

A county MR/DD board that determines that available resources are insufficient to meet the needs of all eligible individuals who request services is required by continuing law to establish waiting lists for the services. The act requires a board to notify an individual of the individual's placement and position on each waiting list on which the individual is placed.

A board is permitted to establish priorities for making placements on its waiting lists according to an individual's emergency status. Prior law provided that a board could also establish priorities according to an individual's priority status which was defined as any situation that would constitute an emergency except that action to resolve the situation could be taken in more than 30 but less

than 90 days without creating a risk of substantial harm. The act requires a county MR/DD board to establish specific priorities for waiting lists.<sup>101</sup>

First, for the purpose of obtaining additional federal Medicaid funds for home and community-based services, case management services, and habilitation center services, a board must do both of the following:

(1) Give an individual who is eligible for home and community-based services priority for home and community-based services that include supported living, residential services, or family support services if the individual is 22 or older and receives supported living or family support services;

(2) Give an individual who is eligible for home and community-based services priority for home and community-based services that include adult services if the individual (a) resides in the individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in home and community-based services and (b) receives adult services from the board.<sup>102</sup>

As federal Medicaid funds become available because of the above priorities, a county MR/DD board is required to give an individual who is eligible for home and community-based services and meets any of the following groups of requirements priority for those services:

(1) Is not receiving residential services or supported living, either needs services in the individual's current living arrangement or will need services in a new living arrangement in the future, and has a primary caregiver who is 60 or older;

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<sup>101</sup> A county MR/DD board must establish the priorities in accordance with its ODMR/DD-approved plan providing the board local administrative authority for Medicaid-funded home and community-based services that ODMR/DD administers, habilitation center services, and case management services. (See "**County MR/DD boards to seek approval of local authority plan**" below.)

<sup>102</sup> The home and community-based services referred to in the part of the final analysis concerning Medicaid-funded mental retardation and developmental disability services refers to such services administered by ODMR/DD.

(2) Is less than 22, not receiving residential services or supported living, resides in the home of the individual's family, and has at least one of certain service needs that are unusual in scope or intensity;<sup>103</sup>

(3) Is 22 or older and determined by the board to have intensive needs for residential services on an in-home or out-of-home basis.

In fiscal years 2002 and 2003, a county MR/DD board is required to give no more than 75 individuals priority for home and community-based services on the basis of meeting all of the following requirements: eligibility for home and community-based services, residence in an ICF/MR or nursing facility, choice to move to another setting with the help of home and community-based services, and having been determined by ODMR/DD to be capable of residing in the other setting. ODMR/DD is required to identify the individuals to receive priority pursuant to this provision of the act, assess their needs, and notify county MR/DD boards that are to provide the individuals priority.

The act provides that no individual is to receive priority for services pursuant to the act over an individual placed on a waiting list on an emergency status.

**County MR/DD boards to seek approval of local authority plan**

(R.C. 127.16, 5123.046, 5126.054, and 5126.055)

**Plan with three components.** The act requires each county MR/DD board to develop, by resolution, a three-calendar year plan that includes an assessment component, staff component, and services component. A board is to seek approval of its plan from ODMR/DD for the purpose of obtaining local administrative authority for Medicaid-funded home and community-based services, habilitation center services, and case management services.

The assessment component must specify all of the following:

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<sup>103</sup> *The service needs are (1) severe behavior problems for which a behavior support plan is needed, (2) an emotional disorder for which antipsychotic medication is needed, (3) a medical condition that leaves the individual dependent on life-support medical technology, (4) a condition affecting multiple body systems for which a combination of specialized medical, psychological, educational, or habilitation services are needed, or (5) a condition the board determines to be comparable in severity to any of the preceding conditions and places the individual at significant risk of institutionalization. No more than 200 individuals in the state may receive priority for services during state fiscal years 2002 and 2003 pursuant to this provision of the act.*



(1) The number of individuals with MR/DD residing in the county who need an ICF/MR-level of care, may seek home and community-based services, and are given priority for the services by the act;

(2) The service needs of the individuals identified above and the projected annualized cost for the services;

(3) The source of funds available to the board to pay the nonfederal share of Medicaid expenditures that the board is required by the act to pay;<sup>104</sup>

(4) Any other applicable information or conditions that ODMR/DD requires as a condition of approval of the plan.

The staff component of the plan must provide for the recruitment, training, and retention of existing and new direct care staff necessary to implement services included in individualized service plans, including behavior management services and health management services, such as delegated nursing and other habilitation center services, and protect the health and welfare of individuals receiving services included in the individual's individualized service plan by complying with safeguards for unusual and major unusual incidents, day-to-day program management, and other requirements ODMR/DD identifies. A board is required to develop the staff component in collaboration with providers of Medicaid-funded services with which the board contracts. All of the following must be included in the staff component:

(1) The source and amount of funds available for the component;

(2) A plan and timeline for implementing the component with the Medicaid providers under contract with the board;

(3) The mechanisms the board is to use to ensure the financial and program accountability of the Medicaid provider's implementation of the component.

The services component must provide for the implementation of habilitation center services, case management services, and home and community-based services for individuals who begin to receive the services on or after the date ODMR/DD approves the plan. All of the following must be included in the component:

(1) If ODMR/DD or ODJFS requires, an agreement to pay the nonfederal share of Medicaid expenditures that the board is required by the act to pay;

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<sup>104</sup> See "Payment of nonfederal share of Medicaid services" below.

(2) A description of how the services are to be phased in over the period the plan covers, including how the board will serve individuals with priority status on the board's waiting list for the services;

(3) Any agreement or commitment regarding the board's funding of home and community-based services that the board has with ODMR/DD at the time the board develops the services component;

(4) Assurances adequate to ODMR/DD that the board will (a) use any additional funds the board receives for the services to improve the board's resource capabilities for supporting such services available in the county at the time the services component is developed and expand the services to accommodate the unmet need for those services in the county, (b) employ a business manager who is either a new employee who has earned at least a bachelor's degree in business administration or a current employee who has the equivalent experience of a bachelor's degree in business administration, (c) employ or contract with a Medicaid services manager who is either a new employee who has earned at least a bachelor's degree or a current employee who has the equivalent experience of a bachelor's degree;<sup>105</sup>

(5) An agreement to comply with the method, established by ODMR/DD rules, of paying for extraordinary costs, including extraordinary costs for services to individuals with MR/DD, and ensuring the availability of adequate funds in the event a county property tax levy for services for individuals with MR/DD fails;<sup>106</sup>

(6) Programmatic and financial accountability measures and projected outcomes expected from the implementation of the plan;

(7) Any other applicable information or conditions that ODMR/DD requires as a condition of approving the plan.

**Approval of plan.** To obtain ODMR/DD approval of its plan, a county MR/DD board must submit the assessment and staff components to ODMR/DD

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<sup>105</sup> *If a county MR/DD board will employ a new employee to act as the business manager or Medicaid services manager, the board is required to include in the services component a timeline for employing the employee. Two or three county MR/DD boards that have a combined total enrollment in county board services not exceeding 1,000 individuals are permitted to satisfy the requirement to have a Medicaid services manager by sharing the services of such a manager or using the services of such a manager employed by or under contract with a regional council that the county boards establish.*

<sup>106</sup> *See "Rules for paying for extraordinary costs and ensuring availability of funds" below.*

not later than August 1, 2001. The services component is due no later than November 1, 2001.

ODMR/DD is required to review each plan it receives and, in consultation with ODJFS and the Office of Budget and Management, approve each plan that includes all the information and conditions the act requires. A plan must be approved or disapproved not later than 45 days after the last of the plan's components are submitted. In approving a plan, ODMR/DD must ensure that the aggregate of all plans provide for the increased enrollment into home and community-based services during each state fiscal year of at least 500 individuals who did not receive residential services, supported living, or home and community-based services the prior state fiscal year if ODMR/DD has enough additional enrollment available for this purpose.

The act provides that if a county MR/DD board fails to submit all the components of its plan within the required time or ODMR/DD disapproves a plan, ODMR/DD may withhold all or part of any funds ODMR/DD would otherwise allocate to the board. ODMR/DD is not allowed to withhold any funds ODMR/DD allocates to the board prior to the date the last of the plan's components are due or ODMR/DD disapproves the plan.

A county MR/DD board with an approved plan is required to update and renew the plan in accordance with a schedule ODMR/DD must develop.

**Medicaid local administrative authority.** A county MR/DD board with an approved plan has Medicaid local administrative authority. A board with this authority is required to perform certain duties for an individual with MR/DD who resides in the county that the board serves and seeks or receives home and community-based services, case management services, or habilitation center services, other than habilitation center services for which a school district is required by the act to pay the nonfederal share.<sup>107</sup>

In the case of an individual seeking or receiving home and community-based services, the county MR/DD board must do all of the following:

(1) Perform assessments and evaluations of the individual. As part of the assessment and evaluation process, the board must make a recommendation to ODMR/DD and ODJFS on whether they should approve or deny the individual's application for the services, including on the basis of whether the individual needs an ICF/MR-level of care. If the individual's application is denied, the board must also present the reasons for its recommendation for denial at an appeals hearing

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<sup>107</sup> See "**Payment of nonfederal share of Medicaid services**" below.

requested by the individual. If the application is approved, the board must recommend to ODMR/DD and ODJFS the services that should be included in the individual's individualized service plan and, if either department approves, reduces, denies, or terminates a service included in the individual's individualized service plan because of the board's recommendation, present the reasons for the recommendation at an appeals hearing the individual requests.

(2) Assist ODMR/DD in expediting the transfer, from an ICF/MR or nursing facility to home and community-based services, of an individual who has priority for home and community-based services on a county board waiting list because the individual resides in an ICF/MR or nursing facility, chooses to move to another setting with the help of home and community-based services, and has been determined by ODMR/DD to be capable of residing in the other setting.

(3) Perform duties, in accordance with ODMR/DD rules, regarding the individual's right to choose a qualified and willing provider of the services and, at an appeals hearing, present evidence of the process for appropriate assistance in choosing providers.

(4) Develop, with the individual and the provider of the individual's services, an effective individualized service plan that includes coordination of services, recommend that ODMR/DD and ODJFS approve the plan, and implement the plan unless either department disapproves it.

In the case of an individual seeking or receiving case management services or habilitation center services, the county MR/DD board must do all of the following:

(1) Perform assessments and evaluations of the individual for the purpose of recommending to ODMR/DD and ODJFS the services that should be included in the individual's individualized service plan.

(2) If ODMR/DD or ODJFS approves, reduces, denies, or terminates a service included in the individual's individualized service plan because of the board's recommendation, present the reasons for the recommendation at an appeals hearing and inform the individual that the individual may file a complaint with the board at the same time the individual pursues an ODJFS appeal.

(3) In accordance with rules ODMR/DD and ODJFS adopt governing the process for individuals to choose providers of case management services and

habilitation center services, assist the individual in choosing the provider of the services.<sup>108</sup>

(4) Develop with the individual and the provider of the individual's services and, with the approval of ODMR/DD and ODJFS, implement an effective plan for coordinating the services in accordance with the individual's approved individualized service plan.

In addition to the preceding duties, a county MR/DD board with Medicaid local administrative authority must also do all of the following for an individual seeking or receiving any of the three services:

(1) If the board is certified to provide the services and agrees to provide the services to the individual and the individual chooses for the board to provide the services, furnish the services the individual requires.<sup>109</sup>

(2) Unless the board provides the services, contract with the private or government entity the individual chooses to provide the services if the entity is qualified and willing to provide the services. The contract must contain all the provisions the act requires for contracts between a county MR/DD board and provider of services to individuals with MR/DD and require the provider to agree to furnish the services the individual requires.<sup>110</sup>

(3) Monitor the services provided to the individual and, if the individual seeks or receives home and community-based services, ensure the individual's health, safety, and welfare. The monitoring must include quality assurance activities.<sup>111</sup>

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<sup>108</sup> *The act requires that the rules provide for (1) a county MR/DD board providing the individual up-to-date information about qualified providers that ODMR/DD must make available to the board, (2) the individual receiving, if the individual chooses a provider who is qualified and willing to provide the services but is denied that provider, timely notice that the individual may request an appeals hearing, and (3) the board presenting evidence at the appeals hearing of the process for appropriate assistance in choosing providers.*

<sup>109</sup> *The county MR/DD board must furnish the services in accordance with its Medicaid provider agreement and for the authorized rate.*

<sup>110</sup> *See "**Contracts with providers of services to individuals with MR/DD**" below. The provider must furnish the services in accordance with the provider's Medicaid provider agreement and for the authorized reimbursement rate.*

<sup>111</sup> *If the board provides the services, ODMR/DD must also monitor the services.*

(4) Have an investigative agent conduct investigations that concern the individual.

(5) Have a service and support administrator incorporate the results of quality assurance reviews and identified trends and patterns of unusual incidents and major unusual incidents into amendments of the individual's service plan for the purpose of improving and enhancing the quality and appropriateness of services rendered to the individual.

The act requires a county MR/DD board to use its Medicaid local administrative authority in accordance with (1) the board's ODMR/DD-approved plan, (2) all applicable federal and state laws, (3) all applicable policies of ODMR/DD, ODJFS, and the United States Department of Health and Human Services, (4) ODJFS's supervision under its authority to act as the single state Medicaid agency, and (5) ODMR/DD's oversight.

ODMR/DD and ODJFS are required to communicate with and provide training to county MR/DD boards regarding Medicaid local administrative authority. The communication and training must include issues regarding audit protocols and other standards established by the United States Department of Health and Human Services that ODMR/DD and ODJFS determine appropriate for communication and training. The boards are required to participate in the training. ODMR/DD and ODJFS must assess the boards' compliance against uniform standards that the departments are to establish.

A county MR/DD board that has Medicaid local administrative authority is required, through ODMR/DD and ODJFS, to reply to, and cooperate in arranging compliance with, a program or fiscal audit or program violation exception that a state or federal audit or review discovers. ODJFS must timely notify ODMR/DD and the board of any adverse findings. After receiving the notice, the board, in conjunction with ODMR/DD, must cooperate fully with ODJFS and timely prepare and send to ODJFS a written plan of correction or response to the adverse findings. The board is liable for any adverse findings that result from an action it takes or fails to take in its implementation of Medicaid local administrative authority.

**Deficiencies.** If ODMR/DD or ODJFS determines that a county MR/DD board's implementation of its Medicaid local administrative authority is deficient, the department that makes the determination must require the board to correct the deficiency. If the deficiency affects the health, safety, or welfare of an individual with MR/DD, the deficiency must be corrected within 24 hours. If the deficiency does not affect the health, safety, or welfare of an individual with MR/DD, the board is to receive technical assistance from the department that determines the board is deficient or submit an acceptable plan of correction to the appropriate

department within 60 days and correct the deficiency within the time required by the plan of correction.

If the board fails to correct the deficiency within the required time to the satisfaction of the department that determines the board is deficient, or submit an acceptable plan of correction within the required time, the department must issue an order terminating the board's Medicaid local administrative authority over all or part of the home and community-based services, case management services, habilitation center services, all or part of two of those services, or all or part of all three of those services. The department must provide a copy of the order to the board of county commissioners, probate judge, county auditor, and president and superintendent of the county MR/DD board. The department is to specify in the order the Medicaid local administrative authority that the department is terminating, the reason for the termination, and the county MR/DD board's option and responsibilities.

A county MR/DD board whose Medicaid local administrative authority is terminated is permitted, no later than 30 days after the department issues the termination order, to recommend to the department that another county MR/DD board that has not had any of its Medicaid local administrative authority terminated or another entity the department approves administer the services for which the board's Medicaid local administrative authority is terminated. The department may contract with the other board or entity to administer the services. If the department enters into such a contract, the board is required to adopt a resolution giving the other board or entity (the "contracting authority") full Medicaid local administrative authority over the services that the other board or entity is to administer.

If the county MR/DD board does not submit a recommendation to the department regarding a contracting authority within the required time or the department rejects the board's recommendation, the department must appoint an administrative receiver to administer the services. To the extent necessary for the department to appoint an administrative authority, the department has authority to utilize employees of the department, management personnel from another county MR/DD board, or other individuals who are not employed by or affiliated in any manner with a private or government entity that provides home and community-based services, case management services, or habilitation center services pursuant to a contract with any county MR/DD board. The administrative receiver is required to assume full administrative responsibility for the board's services for which the board's Medicaid local administrative authority is terminated.

The act requires the contracting authority or administrative receiver to develop and submit to the department a plan of correction to remediate the problems that caused the department to issue the termination order. If, after

reviewing the plan, the department approves it, the contracting authority or administrative receiver must implement the plan.<sup>112</sup>

The county MR/DD board that lost Medicaid local administrative authority must transfer control of state and federal funds it is otherwise eligible to receive for the services for which the board's Medicaid local administrative authority is terminated and funds the board is permitted to use to pay the nonfederal share of the services that the act requires the board to pay.<sup>113</sup> The board must transfer control of the fund to the contracting authority or administrative receiver. The amount the board is to transfer must be the amount necessary for the contracting authority or administrative receiver to fulfill its duties in administering the services, including its duties to pay its personnel for time worked, travel, and related matters. If the board fails to make the transfer, the department is permitted to withhold the state and federal funds from the board and bring a mandamus action against the board in the court of common pleas of the county the board serves or the Franklin county court of common pleas. The mandamus action may not require that the board transfer any funds other than the funds the board is required by the act to transfer.

The contracting authority or administrative receiver has the right to authorize the payment of bills in the same manner that the county MR/DD board may authorize the payment of bills.

ODMR/DD is required to establish protocols that it is to use to determine whether a county MR/DD board is not complying with the programmatic and financial accountability mechanisms and achieving outcomes specified in its approved plan. If ODMR/DD determines that a board is not in compliance with the mechanisms or achieving the specified outcomes, ODMR/DD is authorized to take the actions ODMR/DD may take when a board's implementation of its Medicaid local administrative authority is deficient.

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<sup>112</sup> *Continuing law provides, with certain exceptions, that no state agency using money that has been appropriated to it directly may make any purchase from a particular supplier that would amount to a specific amount or more when combined with both the amount of all disbursements to the supplier during the fiscal year for purchases made by the agency and the amount of all outstanding encumbrances for purchases made by the agency from the supplier, unless the purchase is made by competitive selection or with the approval of the Controlling Board. For ODJFS, the amount is \$50,000. For ODMR/DD, the amount is \$75,000. The act provides that contracts with a contracting authority or administrative receiver are exempt from this law.*

<sup>113</sup> See "*Payment of nonfederal share of Medicaid services*" below.



**Payment of nonfederal share of Medicaid services**

(R.C. 5111.041, 5123.047, 5123.048, 5123.0411, 5126.056, 5705.41, and 5705.44)

The act specifies when ODMR/DD or a county MR/DD board is required to pay the nonfederal share of Medicaid expenditures for home and community-based services, habilitation center services, and case management services. The act also specifies when a school district must pay the nonfederal share of Medicaid expenditures for habilitation center services.

ODMR/DD is responsible for the nonfederal share of Medicaid expenditures for habilitation center services provided to an individual with MR/DD unless a county MR/DD board or school district is responsible for it. ODMR/DD must pay the nonfederal share for case management services if the services are provided to an individual with MR/DD (1) who a county MR/DD board has determined is not eligible for county board services or (2) by a public or private agency with which ODMR/DD has contracted to provide protective services to the individual. ODMR/DD is responsible for the nonfederal share of Medicaid expenditures for home and community-based services when they are provided to an individual with MR/DD who (1) a county MR/DD board has determined is not eligible for county board services or (2) is given priority for the services due to the individual's status as a resident of an ICF/MR or nursing facility.<sup>114</sup>

A county MR/DD board that has Medicaid local administrative authority for home and community-based services or case management services must pay the nonfederal share for the services when they are provided to an individual with MR/DD who the board determines is eligible for county board services unless ODMR/DD is required to pay the nonfederal share.

A county MR/DD board that has Medicaid local administrative authority for habilitation center services is responsible for the nonfederal share of the services if all of the following apply:

(1) The habilitation center services are provided to a Medicaid recipient who is a current resident of the county that the board serves;

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<sup>114</sup> *ODMR/DD's responsibility for paying the nonfederal share of Medicaid expenditures for home and community-based services provided to an individual given priority for the services due to the individual's status as an ICF/MR or nursing facility resident continues for as long as the individual continues to be eligible for and receive the services, regardless of whether the services are provided after June 30, 2003.*

(2) The board has determined that the Medicaid recipient is eligible for county board services;

(3) The habilitation center services are provided by a habilitation center with a Medicaid provider agreement;

(4) No school district is required to pay the nonfederal share.

A school district is required to pay the nonfederal share if all of the following apply:

(1) The services are provided to a Medicaid recipient who is a student enrolled in a school of the district;

(2) The services are included in the student's individualized education program;

(3) The school district has a Medicaid provider agreement to provide habilitation center services;

(4) The services are provided by a habilitation center with a Medicaid provider agreement.

For state FY 2002, ODMR/DD is required to assign to a county MR/DD board the nonfederal share of Medicaid expenditures for habilitation center services that a private habilitation center provides if (1) the individuals who receive the services also received the services from the center pursuant to a contract the center had with ODMR/DD in state FY 2001, (2) the board determined that the individuals who receive the services are eligible for county board services, and (3) the board contracts with the center to provide the services after the center's contract with ODMR/DD ends. ODMR/DD must also make this assignment for each successive state fiscal year that the board contracts with the habilitation center to provide habilitation center services to the individuals who received the services pursuant to the state FY 2001 contract with ODMR/DD. The amount that ODMR/DD must assign to the board must be adequate to ensure that the services the individuals receive are comparable in scope to the habilitation center services they received when the center was under contract with ODMR/DD. The assignment amount may not be less than the amount ODMR/DD paid the habilitation center for the individuals under the state FY 2001 contract. A board is required to use the assignment to pay the nonfederal share of the Medicaid expenditures for the habilitation center services the board is required by the act to pay.

The act authorizes a county MR/DD board to use the following funds to pay the nonfederal share of the services the act requires the board to pay:



(1) To the extent consistent with the levy, taxes raised by a levy for county board services;

(2) Funds that ODMR/DD distributes to the board for tax equity purposes and certain county board services, including family support, case management, residential, and supported living;

(3) Funds that ODMR/DD allocates to the board for habilitation center services;

(4) Earned federal revenue funds the board receives for Medicaid services the board provides pursuant to the board's valid Medicaid provider agreement.

If by December 31, 2001, the United States Secretary of Health and Human Services approves at least 500 more slots for home and community-based services for calendar year 2002 than were available for calendar year 2001, a county MR/DD board must provide, by the last day of calendar year 2001, assurances to ODMR/DD that the board will have for calendar year 2002 at least one-third of the value of one-half effective mill levied in the county the preceding year available to pay the nonfederal share of the services the act requires the board to pay. If by the end of calendar year 2002, the United States Secretary approves at least 500 more such slots for calendar year 2003, the board is required to provide, by the last day of calendar year 2002, assurances that the board will have for calendar year 2003 at least two-thirds of the value of one-half effective mill for those payments. If by the end of calendar year 2003, the United States Secretary approves at least 500 more such slots for calendar year 2004, the board is required to provide, by the last day of calendar year 2003 and each calendar year thereafter, assurances that the board will have for calendar year 2004 and each calendar year thereafter at least the value of one-half effective mill for those payments.

Each year, a county MR/DD board must adopt a resolution specifying the amount of funds it will use in the next year to pay the nonfederal share of the services the act requires the board to pay. The amount specified must be adequate to assure that the services will be available in the county in a manner that conforms to all applicable state and federal laws. The board is to state in its resolution that the payment of the nonfederal share represents an ongoing financial commitment of the board. The board must adopt the resolution in time for the county auditor to determine whether the amount of funds the board specifies in the resolution will be available in the following year for the board to pay the nonfederal share. The county auditor is required to make the determination not later than the last day of the year before the year in which the funds are to be used.

ODMR/DD is permitted to bring mandamus action against a county MR/DD board that fails to pay the nonfederal share of Medicaid expenditures the board is required by the act to pay. ODMR/DD may bring the mandamus action in

the court of common pleas of the county the board serves or in the Franklin County Court of Common Pleas.

Continuing law provides, with certain exceptions, that no county may make a contract or give an order involving the expenditure of money unless there is attached to it a certificate of the county fiscal officer that the amount required to meet the obligation (or in the case of a continuing contract to be performed in whole or part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made) has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. The act provides that the certificate is not required if requiring the certificate makes it impossible for a county MR/DD board to pay the nonfederal share of Medicaid expenditures that the act requires the board to pay.

**ODMR/DD to charge county MR/DD boards a fee**

(R.C. 5123.0412)

The act requires that ODMR/DD charge county MR/DD boards an annual fee equal to 1% of the total value of all Medicaid paid claims for case management services and home and community-based services for which a board contracts or provides itself. County boards are prohibited from passing the cost of the fee on to a private or government entity with which the board contracts to provide the services.

The fees are to be deposited into the ODMR/DD Administration and Oversight Fund and the ODJFS Administration and Oversight Fund, which the act creates in the state treasury. The portion of the fees to be deposited into the two funds is to be the portion specified in an interagency agreement between the departments. The departments are to use the money in the funds to pay the administrative and oversight costs of habilitation center services, case management services, and home and community-based services that a county MR/DD board develops and monitors and the board or a private or government entity under contract with the board provides. The costs must include costs for staff, systems, and other resources the departments need and dedicate solely to eligibility determinations, training, fiscal management, claims processing, quality assurance oversight, and other duties the departments identify. The fees are also to be used to provide technical support for a county MR/DD board's Medicaid local administrative authority.

ODMR/DD and ODJFS are required by the act to enter into an interagency agreement. In addition to specifying which portion of the fees are to be deposited into which fund, the agreement must provide for the departments to coordinate the staff whose costs are paid for with money in the funds. The departments must

submit an annual report to the Director of Budget and Management certifying how they spent the money in the funds.

**Rules for paying for extraordinary costs and ensuring availability of funds**

(R.C. 5123.0413 and 5705.091)

Under the act, ODMR/DD, in consultation with ODJFS, the Office of Budget and Management, and county MR/DD boards, must adopt rules establishing a method of paying for extraordinary costs, including extraordinary costs for services to individuals with MR/DD, and ensuring the availability of adequate funds in the event a county property tax levy for services for individuals with MR/DD fails. The rules must be adopted no later than January 1, 2002. The rules may provide for using and managing one or more of the following:

- (1) County MR/DD Medicaid reserve funds;
- (2) A State MR/DD Risk Fund;
- (3) A State Insurance Against MR/DD Risk Fund.<sup>115</sup>

ODJFS is prohibited, beginning January 1, 2002, from requesting approval from the United States Secretary of Health and Human Services to increase the number of slots for home and community-based services until these rules are in effect.

The act requires that a county MR/DD board request, by resolution, that the board of county commissioners establish a county MR/DD Medicaid reserve fund. On receipt of the resolution, the commissioners must establish such a fund. The portion of federal revenue funds that the county MR/DD board earns for providing habilitation center services, case management services, and home and community-based services that is needed for the board to pay for extraordinary costs and ensure the availability of funds in the event a county property tax levy for services for individuals with MR/DD fails must be deposited into the fund. The board must use money in the fund for those purposes in accordance with the rules ODMR/DD is required to adopt.

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<sup>115</sup> *The act creates the State MR/DD Risk Fund and the State Insurance Against MR/DD Risk Fund in the state treasury.*

**Rules governing the authorization and payment of Medicaid services**

(R.C. 5123.049)

ODMR/DD is required to adopt rules in accordance with the Administrative Procedure Act governing the authorization and payment of home and community-based services, habilitation center services, and case management services. The rules must provide for private providers of the services to receive 100% of the Medicaid allowable payment amount and for government providers to receive the federal share of the Medicaid allowable payment, less the amount withheld as a fee and any amount that may be required by ODMR/DD rules to be deposited into the State MR/DD Risk Fund.<sup>116</sup> The rules must establish the process by which county MR/DD boards are to certify and provide the nonfederal share of Medicaid expenditures that the boards are required to pay.<sup>117</sup> The process must require a board to certify that the board has funding available at one time for two months' costs for those expenditures. The process may permit a board to certify that the board has funding available at one time for more than two months' costs for those expenditures.

**Certification of home and community-based services**

(R.C. 5123.045)

The act prohibits any private or government entity from receiving payment for providing home and community-based services unless the entity is certified to provide such services, certified as a supported living provider, or licensed as an MR/DD residential facility. The Director of ODMR/DD is required by the act to adopt rules establishing certification requirements and procedures for private and government entities that seek to provide home and community-based services and are not certified as supported living providers or licensed as MR/DD residential facilities. The rules must specify the program areas for which certification is required and include procedures for all of the following:

(1) Ensuring that providers comply with criminal record checks requirements for staff;

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<sup>116</sup> See "ODMR/DD to charge county MR/DD boards a fee" and "Rules for paying for extraordinary costs and ensuring availability of funds" above.

<sup>117</sup> See "Payment of nonfederal share of Medicaid services" above.

(2) Evaluating the services to ensure that they are provided in a quality manner advantageous to the individual receiving the services;<sup>118</sup>

(3) Determining when to revoke a certificate.<sup>119</sup>

ODMR/DD is to certify a private or government entity to provide home and community-based services if the entity satisfies the certificate requirements and to revoke a certificate when required to do so by the rules. ODMR/DD must also hold hearings when there is a dispute between ODMR/DD and an entity concerning actions ODMR/DD does or does not take. All of these actions must be taken in accordance with the Administrative Procedure Act.

### **Certification of habilitation centers**

(R.C. 5111.041 and 5123.041)

Under prior law eliminated by the act, the Director of ODMR/DD was required to certify habilitation centers that met standards specified in rules the Director is required to adopt. The Director was also required to adopt rules defining habilitation services and programs, other than services provided by the Ohio Department of Education.

Under the act, ODMR/DD is to certify habilitation centers that meet certification requirements established by ODJFS rules. ODMR/DD is required to perform the certifications pursuant to an interagency agreement with ODJFS.

ODMR/DD continues to be required to establish by rule a fee that it may assess against a habilitation center for performance of ODMR/DD's habilitation center services duties.

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<sup>118</sup> *The procedures must require that all of the following be considered as part of the evaluation: (1) the provider's experience and financial responsibility, (2) the provider's ability to comply with standards for the home and community-based services that the provider provides, (3) the provider's ability to meet the needs of the individuals served, and (4) any other factor the Director of ODMR/DD considers relevant. The records of an evaluation are public records and must be made available on request of any person or entity, including individuals being served, individuals seeking home and community-based services, and county MR/DD boards.*

<sup>119</sup> *The reasons for which a certificate may be revoked are to include good cause (including misfeasance, malfeasance, or nonfeasance), confirmed abuse or neglect, financial responsibility; or other conduct the Director determines is injurious to individuals being served.*

**Approval, reduction, denial, and termination of services**

(R.C. 5111.041, 5111.042, and 5111.871)

ODMR/DD and ODJFS are authorized to approve, reduce, deny, or terminate a service included in the individualized service plan developed for a Medicaid recipient with MR/DD who is eligible for habilitation center, case management, or home and community-based services. They are required to consider the recommendations a county MR/DD board makes. If either department approves, reduces, denies, or terminates a service, that department must timely notify the Medicaid recipient that the recipient may request a hearing.

**Elimination of obsolete home and community-based services law**

(repealed R.C. 5111.88)

The act eliminates law that required ODJFS to enter into an interagency agreement with ODMR/DD with regard to a Medicaid component under which home and community-based services were provided to an individual with MR/DD as an alternative to placement in a nursing facility. According to officials at ODJFS and ODMR/DD, this law concerned the defunct OBRA Medicaid waiver program.

**Freedom to choose provider**

(R.C. 5123.044 and 5126.046)

The act requires each county MR/DD board that has Medicaid local administrative authority for habilitation, vocational, or community employment services provided as part of home and community-based services to create a list of all private and government entities eligible to provide those services. If a board chooses and is eligible to provide the services, the board must include itself on the list. The board is required to make the list available to each individual with MR/DD who resides in the county and is eligible for the services. The board must also make the list available to the individuals' families.

An individual with MR/DD who is eligible for habilitation, vocational, or community employment services is permitted to choose the provider of the services.<sup>120</sup>

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<sup>120</sup> *It is not clear whether the freedom to choose a provider of habilitation, vocational, or community employment services applies only when the services are provided as part of home and community-based services.*



ODMR/DD must, each month, create a list of all private and government entities eligible to provide residential services and supported living. All licensed MR/DD residential facilities and all certified supported living providers are to be included on the list. ODMR/DD must distribute the lists to county MR/DD boards that have Medicaid local administrative authority for residential services and supported living provided as part of home and community-based services. A board that receives a list must make it available to each individual with MR/DD who resides in the county and is eligible for such residential services or supported living. The board must also make the list available to the individuals' families.

An individual who is eligible for residential services or supported living is permitted to choose the provider of the services.<sup>121</sup>

If a county MR/DD board violates an individual's right to choose a provider, the individual is to receive timely notice that the individual may request a hearing.<sup>122</sup>

ODMR/DD and ODJFS are required to adopt rules governing the implementation of these provisions of the act. The rules must include procedures for individuals to choose their service providers. The rules may not be limited by a provider selection system established by a county MR/DD board, including any pool of providers created pursuant to a provider selection system.<sup>123</sup>

The act requires that ODMR/DD determine whether county MR/DD boards are in compliance with the freedom to choose a provider provisions of the act. ODMR/DD must provide assistance to an individual with MR/DD who requests assistance with the individual's right to choose a provider of habilitation, vocational, community employment, residential, or supported living services if ODMR/DD is notified of a board's alleged violation of the individual's right to choose a provider.

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<sup>121</sup> *It is not clear whether the freedom to choose a provider of residential services or supported living applies only when the services are provided as part of home and community-based services.*

<sup>122</sup> *The act does not specify who is responsible for providing the notice to the individual.*

<sup>123</sup> *Continuing law requires each county MR/DD board to develop and implement a provider selection system that enables an individual to choose to continue receiving supported living from the same providers, to select additional providers, or to choose alternative providers.*

**Comparable services for individuals who move to a new county**

(R.C. 5123.0410)

The act provides that an individual with MR/DD who moves from one county in this state to another county in this state is to receive home and community-based services that are comparable in scope to the services the individual receives before moving. If the county MR/DD board serving the county to which the individual moves determines that the individual is eligible for county board services, it must ensure that the individual receives the comparable services. If the county MR/DD board determines that the individual is not eligible for county board services, ODMR/DD is required to ensure that the individual receives the comparable services.

If the services that the individual receives at the time the individual moves include supported living or residential services, ODMR/DD is required to reduce the amount it allocates to the county MR/DD board serving the county the individual left for those supported living or residential services by an amount that equals the payment ODMR/DD authorizes or projects, or both, for those supported living or residential services from the last day the individual resides in the county to the last day of the state fiscal year in which the individual moves. ODMR/DD must increase the amount ODMR/DD allocates to the board serving the county the individual moves to by the same amount. ODMR/DD is required to make the reduction and increase effective the day ODMR/DD determines the individual has residence in the new county. ODMR/DD must determine the amount that is to be reduced and increased in accordance with its rules for authorizing payments for home and community-based services.<sup>124</sup> The reduction and increase must be annualized for the subsequent state fiscal year as necessary.

**Study on Health Insurance Portability and Accountability Act**

(Section 63.39)

The act requires that ODMR/DD arrange for a study of the implications of the Health Insurance Portability and Accountability Act of 1996 on payment systems for Medicaid-funded services to individuals with MR/DD, including Multi-Agency Community Services Information System and similar payment systems. The study must be completed no later than January 1, 2003. It must include consideration of the feasibility of a payment system under which a county MR/DD board pays claims directly to providers under contract with the county MR/DD board.

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<sup>124</sup> See "Rules governing the authorization and payment of Medicaid services" above.

**Committee On Medicaid Redesign and Expansion of MR/DD Services**

(Section 75.06)

The act creates the Executive Branch Committee on Medicaid Redesign and Expansion of MR/DD Services. The committee is to (1) review the effect that the provisions of the act regarding Medicaid funding for services to individuals with MR/DD have on the funding and provision of services to such individuals, (2) identify issues related to, and barriers to, the effective implementation of those provisions of the act with the goal of meeting the needs of individuals with MR/DD, and (3) establish effective means for resolving the issues and barriers, including advocating changes to state law, rules, or both.

The Committee must finish a preliminary report on its actions no later than one year after the effective date of this provision of the act and a final report on its actions no later than three years after that date. The Committee must submit the reports to the Governor and Directors of ODMR/DD and ODJFS. The Committee ceases to exist on submission of the final report unless the Governor issues an executive order providing for the Committee to continue.

The Committee is to consist of all of the following:

- (1) One representative of the Governor appointed by the Governor;
- (2) Two representatives of ODMR/DD appointed by the Director of ODMR/DD;
- (3) Two representatives of ODJFS appointed by the Director of ODJFS;
- (4) One representative of the Office of Budget and Management appointed by the Director of Budget and Management;
- (5) One representative of "The Arc of Ohio" appointed by the organization's board of trustees;
- (6) One representative of the Ohio Association of County Boards of Mental Retardation and Developmental Disabilities appointed by the Association's board of trustees;
- (7) One representative of the Ohio Superintendents of County Boards of Mental Retardation and Developmental Disabilities appointed by the organization's board of trustees;
- (8) One representative of the Ohio Provider Resource Association appointed by the Association's board of trustees;

(9) One representative of the Ohio Health Care Association appointed by the Association's board of trustees;

(10) One representative of individuals with MR/DD appointed by the Director of ODMR/DD.

The Governor is to appoint the chairperson of the Committee. Members are to serve without compensation or reimbursement, except to the extent that serving on the Committee is considered a part of their regular employment duties.

**Tax equity payments**

(R.C. 5126.18)

The act requires, rather than permits as under prior law, ODMR/DD to pay a county MR/DD board a tax equity payment if its hypothetical local revenue per enrollee is less than the hypothetical statewide average revenue per enrollee.<sup>125</sup>

Whereas prior law required that tax equity payments be used solely for the development and implementation of early intervention services for individuals included in a county MR/DD board's adult enrollment, the act requires that a board use the payments solely to pay the nonfederal share of Medicaid expenditures that the act requires the board to pay.<sup>126</sup>

**Arranging residential services and supported living**

(R.C. 5126.051)

The act requires, rather than permits as under prior law, that a county MR/DD board, to the extent that resources are available, provide for or arrange residential services and supported living for individuals with MR/DD.

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<sup>125</sup> A county MR/DD board's hypothetical local revenue per enrollee is the quotient obtained by dividing the county MR/DD board's local revenue factor by its average daily membership of programs and services, excluding individuals served solely through case management or family support services. The local revenue factor concerns funds for services to individuals with MR/DD raised by county property tax levies. The hypothetical statewide average per enrollee is the quotient obtained by dividing the sum of all county MR/DD board's local revenue factors by the total enrollment of all county MR/DD boards.

<sup>126</sup> See "**Payment of nonfederal share of Medicaid services**" above.

### **Certification of supported living providers**

(R.C. 5126.431)

ODMR/DD is required to adopt rules establishing standards and procedures for certification of private and government entities that provide supported living for individuals with MR/DD. The act eliminates the requirement that the rules establish standards and procedures for the certification of government providers of supported living. Therefore, the rules are only to apply to private providers.

The act requires that the rules allow a private entity that holds an MR/DD residential facility license to satisfy automatically a standard for supported living certification that the entity had to meet to obtain the residential facility license. The act eliminates a requirement that, when a provider's services are evaluated to determine if they were provided in a quality manner advantageous to the individual receiving the services, the evaluator consider the provider's ability to work cooperatively with ODMR/DD, county MR/DD boards, and other providers. ODMR/DD is required to follow the Administrative Procedure Act when revoking a supported living certificate.

### **Requirements for service contract with county MR/DD boards**

(R.C. 5126.035)

The act requires that each service contract that a county MR/DD board enters into with a private or government entity that provides services to individuals with MR/DD comply with ODMR/DD rules and include a general operating agreement component and an individual service needs addendum. If the provider is to provide Medicaid-funded home and community-based services administered by ODMR/DD, case management services, or habilitation center services, the contract must also comply with all applicable statewide Medicaid requirements.<sup>127</sup>

The general operating agreement component must include all of the following:

(1) The roles and responsibilities of the board regarding services for individuals with MR/DD who reside in the county the board serves;

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<sup>127</sup> *The act provides that a service contract between a county MR/DD board and a provider of Medicaid-funded home and community-based services administered by ODMR/DD, case management services, or habilitation center services does not negate the requirement that the provider have a Medicaid provider agreement with ODJFS.*

(2) The roles and responsibilities of the provider as specified in the individual service needs addendum;

(3) Procedures for the board to monitor the provider's services;

(4) Procedures for the board to evaluate the quality of care and cost effectiveness of the provider's services;

(5) Procedures for payment of eligible claims;

(6) If the provider is to provide Medicaid-funded home and community-based services administered by ODMR/DD, case management services, or habilitation center services, procedures (a) for reimbursement that conform to the statewide reimbursement process and the board's plan that is needed to obtain Medicaid local administrative authority and (b) that ensure that the board pays the nonfederal share of the Medicaid expenditures that the act requires the board to pay;<sup>128</sup>

(7) Procedures for the board to perform service utilization reviews and the implementation of required corrective actions;

(8) Procedures for the provider to submit claims for payment for a service no later than 330 days after the date the service is provided;

(9) Procedures for rejecting claims for payment that are submitted after the required time;

(10) Procedures for developing, modifying, and executing initial and subsequent service plans;<sup>129</sup>

(11) Procedures for affording individuals due process protections;

(12) General staffing, training, and certification requirements that are consistent with state requirements and compensation arrangements that are necessary to attract, train, and retain competent personnel to deliver the services pursuant to the individual service needs addendum;

(13) Methods to be used to document services provided and procedures for submitting reports the board requires;

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<sup>128</sup> See "County MR/DD boards to seek approval of local authority plan" and "Payment of nonfederal share of Medicaid services" above.

<sup>129</sup> The procedures must provide for the provider's participation.

(14) Methods for authorizing and documenting within 72 hours changes to the individual service needs addendum that allow for changes to be initially authorized "verbally" and subsequently in writing;

(15) Procedures for modifying the individual service needs addendum in accordance with changes to the recipient's individualized service plan;

(16) Procedures for terminating the individual service needs addendum within 30 days of a request made by the recipient;

(17) A requirement that all parties to the contract accept the contract's terms and conditions;

(18) A designated contact person and the method of contacting that person to respond to medical or behavioral problems and allegations of major unusual incidents or unusual incidents;

(19) Procedures for ensuring the health and welfare of the recipient;

(20) Procedures for ensuring fiscal accountability and the collection and reporting of programmatic data;

(21) Procedures for implementing the act's mediation and arbitration process;<sup>130</sup>

(22) Procedures for amending or terminating the contract, including as necessary to make the general operating agreement component consistent with any changes made to the individual service needs addendum;

(23) Anything else allowable under federal and state law that the board and provider agree to.

The act requires that the individual service needs addendum be consistent with the general operating agreement component and include all of the following:

(1) The name of the individual with MR/DD who is to receive the services and any information about the recipient that the provider needs to be able to provide the services;

(2) A clear and complete description of the services that the recipient is to receive as determined using statewide assessment tools;

(3) A copy of the recipient's assessment and individualized service plan;

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<sup>130</sup> See "**Mediation and arbitration component of service contract**" below.

(4) A clear and complete description of the provider's responsibilities to the recipient and board in providing appropriate services in a coordinated manner with other providers and in a manner that contributes to and ensures the recipient's health, safety, and welfare.

**Mediation and arbitration component of service contract**

(R.C. 5123.043, 5126.036, and 5126.06)

The act requires that each service contract between a county MR/DD board and a private or government provider of services to an individual with MR/DD provide for the parties to follow mediation and arbitration procedures the act creates if a party takes or does not take an action under the contract that causes the aggrieved party to be aggrieved or if the provider is aggrieved by the board's termination of the contract. The act provides that the mediation and arbitration procedures also apply if a provider is aggrieved by a board's refusal to enter into a service contract.

Under the mediation and arbitration procedures, the parties are to do the following:

(1) No later than 30 days after first notifying the other party that the aggrieved party is aggrieved, the aggrieved party must file a written notice of mediation and arbitration with ODMR/DD and provide a copy of the written notice to the other party.<sup>131</sup> The written notice must include an explanation of why the aggrieved party is aggrieved. ODMR/DD is required to provide ODJFS with a copy of the notice.

(2) In the case of parties that have a current contract and unless otherwise agreed to by both parties, the parties must continue to operate under the contract in the manner they have been operating until the mediation and arbitration process, including an appeal, if any, is completed.

(3) During the 30 days following the date the aggrieved party files the written notice of mediation and arbitration, the parties are permitted to attempt to resolve the conflict informally. If the parties are able to resolve the conflict informally within this time, the aggrieved party must rescind the written notice of mediation and arbitration.

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<sup>131</sup> *The act provides that if ODMR/DD is aware of a conflict between a county MR/DD board and a provider to which the mediation and arbitration procedures may be applied and that the aggrieved party has not filed a written notice of mediation and arbitration within the required time, ODMR/DD is permitted to require that the parties implement the mediation and arbitration procedures.*



(4) No later than 30 days after the date the aggrieved party files the written notice of mediation and arbitration, the parties must mutually select an attorney to conduct the mediation and arbitration and schedule the first meeting of the mediation unless the parties informally resolve the conflict. If the parties fail to select an attorney to conduct the mediation and arbitration within the required time, the parties must request that the Chief Justice of the Ohio Supreme Court provide the parties a list of five retired judges who are willing to perform the mediation and arbitration duties. The Chief Justice must create such a list and provide it to the parties. To select a retired judge, the parties are to take turns, beginning with the aggrieved party, striking retired judges from the list. The retired judge remaining on the list after both parties have each stricken two retired judges from the list is to perform the mediation and arbitration duties, including scheduling the first meeting of mediation if the parties are unable to agree on a date for the first meeting.

(5) A stenographic record or tape recording and transcript of each mediation and arbitration meeting must be maintained as part of the mediation and arbitration's official records. The parties must share the cost, including the cost of the mediator/arbitrator's services but excluding the cost of representation.

(6) The first mediation meeting is to be held no later than 60 days after the date the aggrieved party files the written notice of mediation and arbitration unless the parties informally resolve the conflict during the first 30-day period or agree to hold the first meeting at a later time. The mediation must be conducted in the manner the parties mutually agree. If the parties are unable to agree on how the mediation is to be conducted, the mediator/arbitrator is to determine how it is to be conducted. The rules of evidence may be used. The mediator/arbitrator must attempt to resolve the conflict through the mediation process. The mediator/arbitrator's resolution of the conflict may be applied retroactively.

(7) If the conflict is not resolved through the mediation process, the mediator/arbitrator is required to arbitrate the conflict. The parties must present evidence to the mediator/arbitrator in the manner the mediator/arbitrator requires. The mediator/arbitrator is to render a written recommendation within 30 days of the conclusion of the last arbitration meeting. The recommendation must be based on the contract, applicable law, and the preponderance of the evidence presented during the arbitration. The recommendation may be applied retroactively. If the parties agree, the mediator/arbitrator may continue to attempt to resolve the conflict through mediation while arbitrating the conflict.

(8) No later than 30 days after the mediator/arbitrator renders a recommendation in an arbitration, the mediator/arbitrator is required to provide the parties with a written recommendation and forward a copy of the recommendation, transcripts from each arbitration meeting, and a copy of all evidence presented to the mediator/arbitrator during the arbitration to ODMR/DD and ODJFS.

(9) No later than 30 days after ODMR/DD receives the mediator/arbitrator's recommendation, ODMR/DD must adopt, reject, or modify the recommendation consistent with the mediator/arbitrator's findings of fact and conclusions of law or remand any portion of the recommendation to the mediator/arbitrator for further findings on a specific factual or legal issue. The mediator/arbitrator is required to complete the further findings and provide the parties and ODMR/DD with a written response to the remand within 60 days of the date the mediator/arbitrator receives the remand. On receipt of the response, ODMR/DD, within 30 days, unless the parties agree otherwise, must adopt, reject, or modify the response. ODMR/DD's actions regarding the recommendation and response are a final adjudication order subject to appeal to the Franklin County Court of Common Pleas under the Administrative Procedure Act, except that the court is to consider only whether the conclusions of law that ODMR/DD adopts are in accordance with the law.

(10) If ODJFS, in consultation with ODMR/DD, determines no later than 30 days following the date ODMR/DD receives the mediator/arbitrator's recommendation, or, if the recommendation is remanded, 30 days following the date ODMR/DD receives the mediator/arbitrator's response, that any aspect of the conflict affects the Medicaid program, ODMR/DD is required to consult with ODJFS when adopting, rejecting, or modifying the mediator/arbitrator's recommendation and response.

### **Investigative agent**

(R.C. 5123.082, 5126.20, 5126.22, 5126.221, 5126.25, 5126.311, 5126.313, and 5126.32)

A county MR/DD board is required by continuing law to review reports made to the board, a law enforcement agency, ODMR/DD, or a county department of job and family services regarding suspected abuse or neglect of an individual with MR/DD.<sup>132</sup> Under the act, a county MR/DD board, after reviewing a report that gives the county MR/DD board reason to believe that the subject of the report may be the victim of abuse or neglect, is required to conduct an investigation if

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<sup>132</sup> *Prior law provided that a county MR/DD board was not to conduct the review if ODMR/DD or the board determined that it would be inappropriate. Instead, another government entity requested by ODMR/DD or the county MR/DD board was to conduct the review. The act requires that ODMR/DD adopt rules specifying circumstances under which it was inappropriate for a county MR/DD board to conduct the review and provides for ODMR/DD or a county MR/DD board to request that another government entity conduct the review if the circumstances specified in the rules exist.*

circumstances specified in rules ODMR/DD is to adopt exist. The county MR/DD board must conduct the investigation in accordance with ODMR/DD's rules.

Each county MR/DD board is required by the act to employ at least one investigative agent or contract with a private or government entity, including another county MR/DD board or a regional council established by two or more county MR/DD boards, for the services of an investigative agent. An investigative agent is to conduct the investigations of suspected abuse or neglect of individuals with MR/DD. Neither a county MR/DD board nor a private or government entity with which the county MR/DD board contracts for the services of an investigative agent is to assign any duties to the investigative agent other than conducting the investigations.

The act provides for investigative agents employed by a county MR/DD board to be management employees. ODMR/DD is required to specify in its rules governing certification of county MR/DD board employees that the position of an investigative agent requires certification. The certification rules must require an investigative agent to have or obtain no less than an associate degree from an accredited college or university or have or obtain comparable experience or training. The rules also must establish continuing education and professional training requirements for renewal of an investigative agent certificate.

ODMR/DD's rules governing certification of employment positions with entities that contract with a county MR/DD board to operate programs or provide services to individuals with mental retardation or other developmental disability must designate the position of investigative agent as a position for which certification is required. The certification and renewal requirements must be the same as the requirements for certification and renewal for investigative agents who are employed by a county MR/DD board.

The act also requires that investigative agents be trained in civil and criminal investigatory practices and report directly to a county MR/DD board's superintendent. Investigative agents are prohibited from doing anything that interferes with the agent's objectivity in conducting investigations.

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## **ACT SUMMARY**

### **AGRICULTURE, ENERGY, ENVIRONMENT, AND NATURAL RESOURCES**

- Extends the Family Farm Loan Program until July 1, 2003.

- Requires financial institutions to forward applications for loans under that program directly to the Department of Agriculture for review and analysis instead of to the Department of Development for those purposes.
- Expands the uses of the money in the Animal Industry Laboratory Fund by requiring the Director of Agriculture to use that money to pay the operating expenses of the animal industry laboratory rather than just to purchase supplies and equipment for the laboratory.
- Eliminates the Dairy Fund and requires all money collected under the Dairies Law to be deposited into the Dairy Industry Fund.
- As a result of the transfer of ownership of the Burr Oak water system, eliminates the state's statutory responsibility for the operation of that system.
- Authorizes the Director of Natural Resources to designate volunteers assisting the Department of Natural Resources as state employees for the purpose of civil immunity.
- Eliminates a requirement under which the Chief Engineer of the Department of Natural Resources was to coordinate the Department's emergency response activities with the state's Emergency Management Agency.
- Eliminates the Forestry Development Trust Fund and the Forestry Development Fund.
- Removes the requirement that the Controlling Board approve certain oil or gas well restoration, plugging, or injection projects for which the Chief of the Division of Mineral Resources Management expends money from the Oil and Gas Well Fund.
- Eliminates overlapping requirements concerning certain information regarding hazardous substances that owners of oil and gas wells formerly were required to submit both to the Chief of the Division of Mineral Resources Management in the Department of Natural Resources and to the Emergency Response Commission by requiring well owners to submit the information only to the Chief, who must adopt rules under which the Chief creates an electronic database containing the information that may be accessed by the Emergency Response Commission and certain other emergency response personnel and planners.

- Increases certain fees and makes changes regarding other fees that must be paid under the Emergency Planning Law.
- Modifies the membership of the Emergency Response Commission.
- Requires excess permit fees paid by an operator of a coal mining operation to be refunded to the operator, and creates the Reclamation Fee Fund for that purpose.
- Authorizes the Chief of the Division of Mineral Resources Management in the Department of Natural Resources to assess a fee for safety and first-aid classes that are provided to miners through the Division.
- Authorizes the Department of Natural Resources to allow the relocation of an existing easement, license, or right of way within the boundaries of a nature preserve when the Director determines that the terms and conditions of the relocation will not destroy the natural or aesthetic conditions of a preserve; provides that such a relocation does not constitute the taking of land for another use; provides that such a relocation does not require a finding of the existence of an imperative and unavoidable public necessity or require the approval of the Governor; provides that such a relocation does not require a public hearing; and provides that this authority to relocate an existing easement, license, or right of way is effective for only two years after the act's effective date.
- Creates the Ohio Water Resources Council for the purpose of providing a forum for policy development, collaboration, and coordination among state agencies and strategic direction with respect to state water resource programs.
- Establishes a state agency coordinating group and an advisory group to assist and advise the Council.
- Creates the Ohio Water Resources Council Fund.
- Revises the purposes for which the Wildlife Boater Angler Fund is to be used.
- Eliminates the self-insured blanket fidelity bond program for the Division of Wildlife.
- Increases from \$30,000 to \$35,000 the amount in a calendar year that the Division of Watercraft may grant to a political subdivision, conservancy

district, or state department for enforcement and emergency response purposes, and excludes the Department of Natural Resources from that cap.

- Abolishes the Mine Examining Board, transfers its authority to hear appeals on mine safety issues to the Reclamation Commission, and transfers the remainder of its authority to the Chief of the Division of Mineral Resources Management.
- Alters the membership of the Reclamation Commission solely for the purposes of hearing appeals involving mine safety issues.
- Alters requirements concerning practical experience that must be possessed by an applicant for the position of deputy mine inspector of underground mines.
- Creates the E-Check New Car Exemption Working Group to determine the costs associated with expanding the motor vehicle inspection and maintenance program's new car exemption from two years to five years.
- Prohibits the renewal of all existing contracts for the motor vehicle inspection and maintenance program, and prohibits the entrance of the state into any new contracts for automobile emissions inspection programs upon the expiration of the existing contracts for that program.
- Authorizes the Environmental Protection Agency to use money in the Hazardous Waste Clean-up Fund, through June 30, 2003, to pay costs incurred in dealing with unauthorized spills that require emergency action and to conduct remedial actions under specified conditions, and to extend authority to use money in the Fund for the voluntary action program through June 30, 2003.
- Extends through June 30, 2004, the 75¢ per-ton fee on the disposal of solid wastes that is used to fund the solid and infectious waste and construction and demolition debris management programs.
- Establishes a fee on tire sales of 50¢ per tire in addition to the continuing 50¢ fee that is used to fund the scrap tire management program, and requires money from the additional fee to be used for scrap tire cleanups with 65% of the amount collected earmarked to clean up the Kirby Tire site.

- Provides that certain amounts of money in the Scrap Tire Management Fund must be used to conduct scrap tire removal actions and to make grants to boards of health for the purpose of addressing accumulations of scrap tires, and eliminates certain required uses of money in the Fund established in prior law.
- Eliminates the Scrap Tire Loans and Grants Fund, which was administered by the Department of Development, and replaces it with the Scrap Tire Grant Fund, to be administered by the Chief of the Division of Recycling and Litter Prevention in the Department of Natural Resources.
- Allows the Director of Environmental Protection to assess any operating funds from which the EPA receives appropriations (not just funds within the General Services Fund Group and the State Special Revenue Fund Group) for a share of the administrative costs of the EPA.
- Requires the rate of assessments to be determined by the EPA Director with the approval of the Director of Budget and Management (rather than by the EPA Director at a rate that does not exceed 12% unless the Controlling Board approves a higher rate).
- Increases from \$40 to \$60 the filing fee for appeals to the Environmental Review Appeals Commission.
- Would have required the Director of Environmental Protection, not later than ten business days after receipt of an application for a permit to install under the Air Pollution Control Law or for the approval of sewage treatment and disposal plans under the Water Pollution Control Law, to provide written notice to the applicant either that the application contained all of the necessary information to perform a technical review or that the application was incomplete; and would have provided that if the Director failed to do so, the application would be deemed complete as of the 11th business day after receipt of the application. (Vetoed)
- Would have required the Director of Environmental Protection to either issue or deny a permit to install under the Air Pollution Control Law, or modification of such a permit, and approve or disapprove sewage treatment and disposal plans under the Water Pollution Control Law within 150 days after receipt of a complete application for the permit, modification, or approval. (Vetoed)

- Applies time limits within which the Director of Environmental Protection must issue permits under the Air Pollution Control Law and procedures governing the review and issuance of those permits only to permits to operate rather than to both permits to install and permits to operate as under prior law, includes permit modifications and renewals for permits to operate in those provisions, and applies these changes only to applications that are submitted on and after the act's effective date.
- Specifies that Title V air contaminant emissions fees for certain electric generating units must be assessed each calendar year, and extends the fee schedule for the discharge of air pollutants from synthetic minor facilities through June 30, 2004.
- Extends the higher plan approval fees for wastewater treatment works through June 30, 2004; extends the annual discharge fees for public and industrial dischargers holding an NPDES permit to January 30, 2003; extends a \$7,500 annual surcharge for major industrial dischargers to January 30, 2003; establishes a \$100 per square mile discharge fee, with a maximum fee of \$10,000, for persons obtaining a general or individual NPDES permit for municipal storm water payable on or before January 30, 2004 and January 30 of each year thereafter; retains at their previously established levels through June 30, 2004, the fee for a public water system license, license renewal, and plan approval, the fee for certification as an operator of a water supply or wastewater system, the fee for an industrial water pollution control certificate, and other miscellaneous fees; establishes a \$20 per acre application fee for NPDES general storm water construction permits with a maximum fee of \$300; and establishes a \$150 application fee for persons applying for an NPDES general storm water industrial permit.
- With respect to public notice of a permit action related to a general NPDES permit, requires the publishing of a summary of the permit action and instructions on how to obtain a copy of the full text of the permit action in lieu of publishing the full text of the permit action.
- Renames the Public Utilities Commission's Biofuels/Municipal Waste Technology Fund the Biomass Energy Program Fund, and provides that subject to available funding, the Commission is to maintain a program to promote the development and use of biomass energy.
- Transfers the licensing and regulation of auctioneers from the Department of Commerce to the Department of Agriculture.



- Would have provided that a backflow prevention device was not required for a connection between a public water system and a private, auxiliary, or emergency water system when a physical separation existed between the two systems. (Vetoed)

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## CONTENT AND OPERATION

### AGRICULTURE, ENERGY, ENVIRONMENT, AND NATURAL RESOURCES

#### Family Farm Loan Program

(R.C. 122.011, 166.03, 901.63, 901.81, and 901.82; Sections 153 and 154)

Under former law, the Family Farm Loan Program was scheduled to expire on July 1, 2001. The act extends the expiration date to July 1, 2003, and changes all statutory dates with regard to that program accordingly.

Formerly, a financial institution that wished to participate in the program had to accept and review applications for loans from eligible applicants. The institution was required to forward all completed applications and specified information to the Department of Development, which was authorized to review, analyze, and summarize the applications and information and forward the applications, information, analyses, and summaries to the Director of Agriculture. The act instead requires participating financial institutions to forward applications and information directly to the Department of Agriculture and requires the Director of Agriculture to review, analyze, and summarize the applications.

#### Animal industry laboratory

(R.C. 901.43)

Under continuing law, all money collected by the Director of Agriculture from fees generated for laboratory services performed by the Department of Agriculture and related to the diseases of animals and for the inspection and accreditation of laboratories and laboratory services related to the diseases of animals must be deposited in the Animal Industry Laboratory Fund. Formerly, the Director was required to use money in the Fund to purchase supplies and equipment for the animal industry laboratory. The act expands the uses of the money in the Fund by requiring the Director to use the money to pay the expenses necessary to operate the laboratory, including the purchase of supplies and equipment.

### **Dairy Industry Fund and Dairy Fund**

(R.C. 917.07 and 917.99)

Former law established both the Dairy Industry Fund and the Dairy Fund. All inspection and license fees collected under the Dairies Law were required to be deposited into the Dairy Industry Fund. All fine money and any other money collected under the Dairies Law, except the inspection fees and license fees, were required to be deposited into the Dairy Fund. Money from both funds was used to operate and pay the expenses of the Division of Dairy in the Department of Agriculture. The act eliminates the Dairy Fund and requires all money collected under the Dairies Law, including fine money, to be deposited into the Dairy Industry Fund and used to operate and pay the expenses of the Division of Dairy.

### **Elimination of state's responsibility for the Burr Oak water system**

(R.C. 1501.01, 1507.01, and 1521.04; repealed R.C. 1507.12)

Former law required the Chief Engineer of the Department of Natural Resources, as long as the state retained ownership of the Burr Oak water system, to administer, operate, and maintain the Burr Oak water system and, with the approval of the Director of Natural Resources, act as contracting agent in matters concerning that system. In addition, the Chief Engineer was required to adopt rules specifying requirements and procedures for the provision of water service to water users and establishing a rate schedule, including related water service fees and late payment penalties, for the sale of water from the Burr Oak water system sufficient to meet the capital improvement and operating expenses of the system. The "Burr Oak water system" included the Burr Oak water treatment plant and its transmission lines, storage tanks, and other appurtenances.

Former law required the revenue that was derived from the sale of water to be deposited into the Burr Oak Water System Fund. All investment earnings of the Fund were credited to it. Money in the Fund had to be used to pay the capital improvement and operating expenses of the Burr Oak water system. The Chief Engineer could enter into contracts with the Ohio Water Development Authority to meet the capital improvement expenses of the Burr Oak water system.

The provisions above applied only as long as the state retained ownership of the Burr Oak water system and ceased to apply if ownership of the Burr Oak water system was transferred from the state. Am. Sub. H.B. 283 of the 123rd General Assembly required the Department of Natural Resources, upon the creation of a regional water district, to transfer ownership of the system to the district, which was required to serve portions of Athens, Morgan, Hocking, and Perry counties or surrounding areas. On October 15, 2000, ownership of the system was transferred to the new Burr Oak Water District. Thus, because the

state no longer owns the system, the act eliminates all of the provisions that are discussed above together with all other statutory references to the Burr Oak water system.

**Immunity for Department of Natural Resources volunteers**

(R.C. 1501.23)

The act provides that the Director of Natural Resources may designate volunteers in a Department of Natural Resources volunteer program as state employees for the purpose of immunity under R.C. 9.86. R.C. 9.86 states that, except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no state officer or employee may be liable in any civil action that arises under the law of Ohio for damage or injury caused in the performance of the officer's or employee's duties unless the officer's or employee's actions were manifestly outside the scope of the officer's or employee's employment or official responsibilities or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

**Elimination of Chief Engineer's duty to coordinate emergency response activities**

(R.C. 1507.01)

Under former law, the Chief Engineer of the Department of Natural Resources had to coordinate the Department's emergency response activities with the state's Emergency Management Agency. The act eliminates this requirement.

**Elimination of Forestry Development Trust Fund and Forestry Development Fund**

(R.C. 1503.011, 1503.35, and 1503.351)

Prior law created the Forestry Development Trust Fund, which was in the custody of the Treasurer of State, but was not a part of the state treasury. The Fund was administered by the Division of Forestry in the Department of Natural Resources. The purpose of the Fund was to facilitate the development, management, and maintenance of rural and urban forests and trees in the state. The Fund consisted of money contributed to the Division for those purposes. All investment earnings of the Fund had to be credited to it until the investment earnings were transferred to the Forestry Development Fund.

Prior law also created in the state treasury the Forestry Development Fund, which consisted of the investment earnings of the Forestry Development Trust Fund and of money received from gifts, grants, and other contributions made to

the Department of Natural Resources for the purposes of the Fund. All investment earnings of the Fund were credited to it. The Chief of the Division of Forestry, with the approval of the Director of Natural Resources, had to use the Fund to make grants for urban and rural forest resource improvement and development projects. The Chief was required to adopt rules in accordance with the Administrative Procedure Act establishing guidelines and procedures for making the grants.

The act eliminates the Forestry Development Trust Fund and the Forestry Development Fund together with all statutory provisions and references concerning them.

**Expenditure of forfeiture money from oil and gas well surety bonds**

(R.C. 1509.071)

When the Chief of the Division of Mineral Resources Management in the Department of Natural Resources finds that an owner of an oil or gas well has failed to comply with restoration requirements, plugging requirements, or permit provisions, or rules and orders relating to them, the Chief must make a finding of that fact and declare any surety bond filed to ensure compliance with those requirements forfeited. Continuing law requires that all money collected because of forfeitures of bonds be deposited to the credit of the Oil and Gas Well Fund. The Chief must expend the money in the Fund for specific purposes. Three of the purposes are the plugging of the wells or restoration of the land surface properly for which the bonds have been forfeited, the plugging of abandoned wells for which no funds are available, and the injection of oil or gas production wastes in abandoned wells. Former law required the Chief to submit periodically project proposals for those activities to the Controlling Board together with benefit and cost data and other pertinent data. In addition, expenditures from the Fund for those purposes could be made only for restoration, plugging, or injection projects that were approved by the Controlling Board, and expenditures for a particular project could not exceed any limits set by the Board.

The act removes the requirements that the Chief submit project proposals to the Controlling Board and that expenditures from the Fund for restoration, plugging, or injection projects as described above be approved by the Controlling Board.

## **Emergency planning**

(R.C. 1509.11, 1509.23, 3750.02, 3750.081, and 3750.13; Section 194)

### **Submittal of information concerning hazardous substances for emergency planning purposes**

**Background.** Federal law establishes requirements governing emergency planning and requires each state to create an emergency response commission.<sup>133</sup> In order to facilitate emergency planning, continuing state law, in accordance with federal law, requires certain facilities to submit specified information regarding hazardous substances to the Emergency Response Commission in this state.<sup>134</sup> Included in this information is an emergency and hazardous chemical inventory form concerning amounts of hazardous chemicals that were present at the facility during the preceding calendar year.<sup>135</sup>

Under former law, an owner of any well producing or capable of producing oil or gas annually was required to submit such hazardous chemical inventory information for the preceding year to the Emergency Response Commission and also annually was required to file with the Chief of the Division of Mineral Resources Management in the Department of Natural Resources a statement of the production of oil, gas, and brine for the preceding calendar year in the form that the Chief prescribed. The information that was required to be provided to the Emergency Response Commission and the Chief apparently was somewhat duplicative and overlapped.

**Elimination of overlapping requirements.** The act seeks to eliminate overlapping requirements concerning the information regarding hazardous substances that owners of oil and gas wells formerly were required to submit both to the Chief and to the Emergency Response Commission. Under the act, the form that the Chief prescribes for an oil or gas well owner's statement of the production of oil, gas, and brine for the preceding calendar year must include, at a minimum, a request for the submittal of the information concerning hazardous substances that a person who is regulated under the Oil and Gas Law must submit under the

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<sup>133</sup> *Emergency Planning and Community Right-to-Know Act of 1986, 100 Stat. 1728, 42 U.S.C.A. 11001.*

<sup>134</sup> *"Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with such person (R.C. 3750.01(D), not in the act).*

<sup>135</sup> *R.C. 3750.08, not in the act.*

federal emergency planning law and regulations adopted under it and that the Division of Mineral Resources Management does not obtain through other reporting mechanisms. In addition, the act changes the annual deadline by which the information must be submitted to the Chief from April 15 to March 1.

Thus, the act requires the owner of an oil or gas well to provide the required information concerning hazardous substances to the Chief of the Division of Mineral Resources Management and no longer requires the owner also to provide the information directly to the Emergency Response Commission. The act specifies that notwithstanding any provision in the Emergency Planning Law to the contrary, an owner or operator of a facility that is regulated under the Oil and Gas Law who has filed a log and a production statement with the Chief in accordance with that Law is deemed to have satisfied all the inventory, notification, listing, and other submission and filing requirements established under the Emergency Planning Law, except for certain reporting requirements regarding the release of a hazardous substance.

**Database.** Although the act requires an owner of an oil or gas well to submit the information concerning hazardous substances only to the Chief, it provides a mechanism by which the information can be obtained by the Emergency Response Commission. The Chief must adopt rules under which the Chief creates an electronic database containing the information that then may be accessed by the Emergency Response Commission and certain other emergency response personnel and planners.

Specifically, under the act, the Chief, in consultation with the Emergency Response Commission, must adopt rules in accordance with the Administrative Procedure Act that specify the information to be included in an electronic database that the Chief must create and host. The information must be that which the Chief considers to be appropriate for the purpose of responding to emergency situations that pose a threat to public health or safety or the environment. At the minimum, the information must include the information regarding hazardous substances that a person who is regulated under the Oil and Gas Law is required to submit under the federal emergency planning law and regulations adopted under it.

In addition, the rules must specify whether and to what extent the database and the information that it contains will be made accessible to the public. The rules must ensure that the database will be made available via the Internet or a system of computer disks to the Emergency Response Commission and to every local emergency planning committee and fire department in Ohio.

The act requires the Emergency Response Commission and every local emergency planning committee and fire department to establish a means by which to access, view, and retrieve information, through the use of the Internet or a computer disk, from the electronic database. With respect to facilities regulated

under the Oil and Gas Law, the database is to be the means by which the Chief provides and the Emergency Response Commission receives the information regarding hazardous substances that a person who is regulated under the Oil and Gas Law is required to submit to the Chief.

### *Fees*

The act increases certain fees in the Emergency Planning Law. Under former law, the owner or operator of a facility who was required annually to file an emergency and hazardous chemical inventory form with the Emergency Response Commission was required to submit a filing fee of \$100. The act retains the requirement that an inventory form be submitted, but increases the fee to \$150. Under former law, the owner or operator was required to submit, with certain exceptions, an additional fee of \$10 per hazardous chemical enumerated on the inventory form in excess of five. The act increases this to an additional fee of \$20 per hazardous chemical enumerated on the inventory form and applies the fee to every hazardous chemical enumerated on the form. Former law required the payment of an additional fee of \$50 per extremely hazardous substance enumerated on the inventory form. The act increases the fee to \$150.

An owner or operator who fails to submit an inventory form by a certain date must submit a late filing fee in addition to the other fees that are due. Under former law, the late filing fee was 15% of the total fees due. The act changes the amount of the fee to 10% per year of the total fees due. The act eliminates a former law provision that required the late filing fee to be compounded every three months until the total fees due were submitted to the Emergency Response Commission.

Under former law, an owner or operator of a facility who submitted inventory forms for not more than 35 facilities that met certain conditions generally concerning oil and gas was required to submit with the forms a flat fee of \$25. The act changes this requirement and applies it only to an owner or operator of a facility who is regulated under the Oil and Gas Law. Under the act, such an owner or operator who submits to the Chief of the Division of Mineral Resources Management information for not more than 25 facilities concerning hazardous substances that is required under the federal emergency planning law and regulations adopted under it must submit to the Emergency Response Commission on or before March 1 a flat fee of \$50 if the facilities meet the continuing conditions concerning oil and gas.

Under former law, an owner or operator of a facility who submitted inventory forms for more than 35 facilities that met all of those conditions was required to submit to the Emergency Response Commission a base fee of \$25 in addition to a filing fee of \$10 for each facility reported in excess of 35, but not exceeding a total fee of \$700. The act changes this requirement and applies it only

to an owner or operator of a facility who is regulated under the Oil and Gas Law. Under the act, such an owner or operator who submits to the Chief information regarding hazardous substances for more than 25 facilities that meet all of the specified conditions must submit to the Emergency Response Commission a base fee of \$50 and an additional filing fee of \$10 for each facility reported in excess of 25, but not exceeding a total fee of \$900. The act eliminates former law requiring an owner or operator of such facilities to submit the forms for all facilities owned or operated by him in this state to the Emergency Response Commission at the same time together with the applicable fee.

The act specifies that an owner or operator of a facility that is regulated under the Oil and Gas Law who submits the filing fees that the owner or operator is required to submit under the act's provisions described above by March 1 of the year following the act's effective date must be deemed to have satisfied all filing, listing, and notification requirements and all late fees, penalties, and interest and to have satisfied all other monetary obligations that were imposed on the person under the Emergency Planning Law prior to that date.

#### **Membership of Emergency Response Commission**

The act eliminates from the membership of the Emergency Response Commission the chairpersons of the Industrial Commission and the State and Local Government Commission and the Director of Job and Family Services and adds to its membership the Director of Transportation, the Director of Natural Resources, and the Superintendent of the Highway Patrol.

#### **Refunds of excess permit fees paid by a coal mine operator**

(R.C. 1513.10)

The act provides that if, at the end of a coal mining operation's permit or renewal period, the number of acres of land affected by the operation proves to be smaller than the number of acres of land for which the operator paid a permit fee for the operation, the operator is entitled to a refund of the excess permit fee. The refund must be in an amount equal to the amount paid per acre as a permit fee multiplied by the difference between the number of acres in the area of land affected as verified by the Division of Mineral Resources Management and the number of acres of land for which the operator paid a permit fee.

The act requires refunds to be paid out of the Reclamation Fee Fund, which the act creates. The Treasurer of State must place in the Fund \$40,000 from the fees collected for coal mining and reclamation permits under continuing law. As money is spent from the Fund, the Treasurer of State must credit to it the amount that is needed to keep the balance of the Fund at \$40,000. The remainder of the fees collected for coal mining and reclamation permits must be deposited with the



Treasurer of State to the credit of the continuing Coal Mining Administration and Reclamation Reserve Fund.

**Fees for safety and first-aid classes for miners**

(R.C. 1514.11 and 1561.26)

Continuing law requires certain employees of the Division of Mineral Resources Management in the Department of Natural Resources to provide for and conduct safety, first-aid, and rescue classes at any mine or for any group of miners who apply for the classes. The act authorizes the Chief of the Division of Mineral Resources Management to assess a fee for safety and first-aid classes for the purpose of covering the costs associated with providing those classes. The Chief must establish a fee schedule for the classes by rules adopted under the Administrative Procedure Act. The act requires fees collected for the classes to be deposited into the Surface Mining Fund created under continuing law and specifies that money in the Fund may be used for the classes. In addition, the act requires the Chief, with the approval of the Director of Natural Resources, to determine annually the amounts to be expended for the classes.

**Relocation of an existing easement or other encumbrance within the boundaries of a nature preserve**

(R.C. 1517.05, 1517.06, and 1517.07; Sections 3, 3a, 3b, and 213)

Continuing law requires the Department of Natural Resources to acquire a system of nature preserves for and on behalf of the state. One of the uses and purposes of a preserve identified in statute is the preservation and protection of nature preserves against modification or encroachment resulting from occupation, development, or other use that would destroy their natural or aesthetic conditions. A nature preserve is established when articles of dedication have been filed by or at the direction of the owner of land, or a governmental agency having ownership or control of the land, in the office of the appropriate county recorder. Articles of dedication may contain provisions for the management, custody, and transfer of land, provisions defining the rights of the owner or operating agency and the Department, and other provisions that are necessary or advisable to carry out the uses and purposes for which the land is dedicated. In addition, continuing law modified in part by the act authorizes the Department to make or accept amendments of any articles of dedication upon terms and conditions that will not destroy the natural or aesthetic conditions of a preserve. If the fee simple interest in the area is not held by the state, amendments cannot be made without the written consent of the owner.

The act modifies the provisions relating to amendments of articles of dedication. It authorizes the Department to make or accept amendments of any

articles of dedication upon terms and conditions that the Director of Natural Resources determines will not destroy the natural or aesthetic conditions of a preserve, including amendments that are in regard to a dedicated preserve not owned in fee simple by the Department and that provide for the relocation of an existing easement, license, or right of way within the boundaries of the preserve if the relocation best serves to protect the natural or aesthetic condition of the preserve. In addition, the act adds to the requirement for written consent of the owner if the fee simple interest in the area is not held by the state by including fee simple interest in a preserve.

Continuing law provides that nature preserves are to be held in trust for the benefit of the people of the state of present and future generations and cannot be taken for any other use except another public use after a finding by the Department of the existence of an imperative and unavoidable public necessity for that other public use and with the approval of the Governor. The act states that the relocation of an existing easement, license, or right of way within the boundaries of a preserve does not constitute the taking of land for another use. In addition, the relocation does not require a finding of the existence of an imperative and unavoidable public necessity by the Department and does not require the approval of the Governor.

Continuing law changed in part by the act requires the Department to give notice and an opportunity for any person to be heard at a public hearing in the county in which the preserve is located when the Department makes any finding of the existence of an imperative and unavoidable public necessity; grants any estate, interest, or right in a nature preserve; or disposes of a nature preserve or of any estate, interest, or right in it. However, the act provides that a public hearing is not required for the relocation of an existing easement, license, or right of way within the boundaries of a preserve.

Finally, the act specifies that its changes relating to the relocation of an existing easement, license, or right of way take immediate effect and are effective for only two years after the act's effective date.

### **Ohio Water Resources Council**

(R.C. 1521.19)

The act creates the Ohio Water Resources Council consisting of the Directors of Agriculture, Development, Environmental Protection, Health, Natural Resources, Transportation, and the Ohio Public Works Commission, the Chairperson of the Public Utilities Commission of Ohio, the Executive Directors of the State and Local Government Commission of Ohio and the Ohio Water

Development Authority, and an executive assistant in the office of the Governor appointed by the Governor.<sup>136</sup> The Council is charged with providing a forum for policy development, collaboration and coordination among state agencies, and strategic direction with respect to state water resource programs.

The Governor is required to appoint one of the members of the Council to serve as its chairperson. The Council may adopt bylaws that are necessary for the implementation of the act's provisions related to the Council. The Council is to be assisted in its functions by a state agency coordinating group and an advisory group.

Under the act, a state agency coordinating group is to provide assistance to and perform duties on behalf of the Ohio Water Resources Council. The state agency coordinating group consists of the Executive Director of the Ohio Lake Erie Commission and a member or members from each state agency, commission, and authority represented on the Council, to be appointed by the applicable Director, Chairperson, or Executive Director. However, the act provides that the Environmental Protection Agency must be represented on the group by the chiefs of the divisions within that agency having responsibility for surface water programs and drinking and ground water programs. Further, the Department of Natural Resources must be represented on the group by the Chief of the Division of Water and the Chief of the Division of Soil and Water Conservation. The chairperson of the Ohio Water Resources Council must appoint a leader of the state agency coordinating group.

Additionally, the act creates an advisory group to advise the Council on water resources issues. The advisory group consists of not more than 20 members, each representing an organization or entity with an interest in water resource issues. The Council must appoint the members of the advisory group to staggered two-year terms in accordance with standard appointment procedures and must appoint a chairperson of the advisory group. The Council may remove a member of the advisory group for misfeasance, nonfeasance, or malfeasance in office.

The act creates the Ohio Water Resources Council Fund and requires the Department of Natural Resources to serve as its fiscal agent. Money in the Fund is required to be contributed in equal amounts via interstate transfer voucher by the Departments of Agriculture, Development, Environmental Protection, Health, Natural Resources, and Transportation. In addition, the Public Utilities Commission of Ohio, Ohio Public Works Commission, State and Local Government Commission of Ohio, and Ohio Water Development Authority may

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<sup>136</sup> *The State and Local Government Commission of Ohio was eliminated by another provision of this act.*

transfer money to the Fund. If a voluntary transfer of money is made to the Fund, the portion that is required to be transferred by the above departments may be equally reduced. Money in the Fund must be used to pay the operating expenses of the Ohio Water Resources Council.

The Council may hire staff to support its activities and may enter into contracts and agreements with state agencies, political subdivisions, and private entities to assist in accomplishing its objectives. The act requires advisory group members to be reimbursed for expenses necessarily incurred in the performance of their duties pursuant to continuing law and any applicable rules pertaining to travel reimbursement adopted by the Office of Budget and Management.

**Wildlife Boater Angler Fund**

(R.C. 1531.35)

Continuing law creates the Wildlife Boater Angler Fund consisting of a percentage of revenues collected from motor fuel taxes that are attributable to the operation of motor vehicles on waters within this state together with other money contributed to the Division of Wildlife in the Department of Natural Resources for the purposes of the Fund. Formerly, the Fund could be used for boating, capital improvements, grant programs for boating and fishing access, maintenance, and development. The act revises the purposes for which the Fund is to be used by requiring it to be used for boating access construction, improvements, and maintenance on lakes on which the operation of gasoline-powered watercraft is permissible.

**Elimination of the self-insured blanket fidelity bond program for the Division of Wildlife**

(R.C. 9.821, 9.822, and 1533.13; repealed R.C. 9.832)

The act eliminates the authority of the Department of Administrative Services to establish a self-insured blanket fidelity bond program on behalf of the Division of Wildlife in the Department of Natural Resources in the amount and manner provided by the Chief of the Division of Wildlife.

**Enforcement and emergency response grants from the Division of Watercraft**

(R.C. 1547.67)

Continuing law largely retained by the act authorizes the Division of Watercraft, with the approval of the Director of Natural Resources, to make grants to political subdivisions, conservancy districts, and state departments for the purpose of operating a marine patrol to enforce the laws governing watercraft and to provide emergency response to boating accidents on the water. Previously, a

grant to a political subdivision, conservancy district, or state department could not total more than \$30,000 in a calendar year. The act increases that cap to \$35,000 in a calendar year and excludes the Department of Natural Resources from the cap.

### **Elimination of Mine Examining Board**

(R.C. 124.24, 1509.06, 1509.08, 1513.05, 1513.13, 1513.14, 1561.05, 1561.07, 1561.11 to 1561.23, 1561.35, 1561.351, 1561.46, 1561.51, 1561.52, 1563.13, 1565.04, 1565.06, 1565.07, 1565.08, 1565.25, and 6111.044; repealed R.C. 1561.10, 1561.53, 1561.54, and 1561.55; Section 185)

Former law created the Mine Examining Board in the Division of Mineral Resources Management of the Department of Natural Resources. The Board consisted of five members appointed by the Governor, four of whom were connected with the mining industry and one of whom was a representative of the public. The act abolishes the Board and transfers its authority to the Chief of the Division of Mineral Resources Management and the Reclamation Commission. To effectuate the transfer, the act includes standard language for that purpose concerning such things as rules, orders, employees, assets, liabilities, equipment, actions, and proceedings.

### **Examinations**

Under former law, the Board was required to provide for, conduct, and administer examinations of applicants for the positions of deputy mine inspector, superintendent of rescue stations, assistant superintendent of rescue stations, electrical inspectors, gas storage well inspectors, and mine chemists in the Division of Mineral Resources Management. It then was required to compile a list of the persons eligible for those positions, and the Chief of the Division made appointments to those positions from the list. In addition, the Board was required to provide for, conduct, and administer examinations for persons seeking certificates of competency as mine forepersons, forepersons, fire bosses, mine electricians, surface mine blasters, and shot firers and was required to issue the certificates to applicants who passed the examinations. The examinations were required to be conducted under rules and conditions prescribed by the Board. The act transfers the authority to conduct the examinations and to issue certificates to the Chief of the Division of Mineral Resources Management.

In addition, the act requires the Chief to adopt all necessary rules, in accordance with the Administrative Procedure Act, for conducting examinations and for governing all other matters requisite to the exercise of the Chief's powers and the performance of the Chief's duties under the law governing mines and mining. These rules are to replace rules that were adopted by the Mine Examining Board for those purposes.

## Appeals

**Transfer of authority to Reclamation Commission.** Under former law, the Board also had authority to hear certain appeals that involved mine safety issues. Such appeals included the appeal of an order by the Chief for the immediate suspension of the drilling or the reopening of an oil or gas well in a coal bearing township, a decision by the Chief concerning the location of an oil or gas well in a coal bearing township, a finding by the Chief with respect to a deputy mine inspector's determination regarding a mining safety issue or a charge of neglect of duty, incompetence, or malfeasance that was filed against a deputy mine inspector, and a rejection by the Chief of an application for a permit to drill or convert a well or for the injection into a well that was or was to be located within a certain distance of a mine. The act transfers the authority to hear such appeals to the Reclamation Commission.

**Membership of Reclamation Commission for purposes of hearing appeals concerning mining safety issues.** The Reclamation Commission is created under continuing law and consists of seven members appointed by the Governor. The act specifies that for the purposes of hearing appeals that involve mine safety issues, the Commission must consist of two additional members appointed specifically for that function by the Governor. The two additional members must be individuals who, because of previous vocation, employment, or affiliation, can be classified as representatives of employees currently engaged in mining operations. One must be a representative of coal miners, and one must be a representative of aggregates miners. Prior to making the appointment, the Governor must request the highest ranking officer in the major employee organization representing coal miners in Ohio to submit the names and qualifications of three nominees and must request the highest ranking officer in the major employee organization representing aggregates miners in Ohio to do the same. The Governor must appoint one person nominated by each organization to the Commission. The nominees must have not less than five years of practical experience in dealing with mine health and safety issues and at the time of the nomination must be employed in positions that involve the protection of the health and safety of miners. The major employee organization representing coal miners and the major employee organization representing aggregates miners must represent a membership consisting of the largest number of coal miners and aggregates miners, respectively, in this state compared to other employee organizations in the year prior to the year in which the appointments are made.

Under continuing law, the Commission includes two members, among others, who must own and operate a farm or be retired farmers. Under the act, when the Commission hears an appeal that involves a coal mining safety issue, one of the farmer members must be replaced by the additional member who is a representative of coal miners. Similarly, when the Commission hears an appeal

that involves an aggregates mining safety issue, one of the farmer members must be replaced by the additional member who is a representative of aggregates miners. Neither of the additional members who are appointed specifically to hear appeals that involve mine safety issues can be considered to be members of the Commission for any other purpose, and they cannot participate in any other matters that come before the Commission.

### **Qualifications of deputy mine inspectors**

(R.C. 1561.12(A))

Under continuing law, an applicant for the position of deputy mine inspector of underground mines must have had actual practical experience of not less than six years. Formerly, at least two of those years had to have been in the underground workings of coal mines in this state. The act instead requires that those two years must have been in the underground workings of mines in this state. It then states that in the case of an applicant who would inspect underground coal mines, the two years must consist of actual practical experience in underground coal mines. In the case of an applicant who would inspect noncoal mines, the two years must consist of actual practical experience in noncoal mines.

### **E-Check New Car Exemption Working Group**

(Section 51)

The act creates the E-Check New Car Exemption Working Group consisting of a representative of the Governor's office appointed by the Governor, the Director of Environmental Protection or the Director's designee, a member of the House of Representatives appointed by the Speaker of the House of Representatives, and a member of the Senate appointed by the President of the Senate. The member from the House and the member from the Senate must be from different political parties. Appointments must be made not later than five days after the effective date of these provisions, and the Working Group is required to begin meeting not later than two weeks after that date.

The act requires the Working Group to enter into communications with the contractor hired to conduct emissions inspections under the motor vehicle inspection and maintenance program. The purpose of the communications is to determine all implementing and contract-related costs associated with expanding the program's new car exemption from two years to five years through a three-year phase-in process. The act also requires the Working Group to submit a report of its findings to the Speaker and the President not later than four weeks after the provisions' effective date. The Working Group ceases to exist after submittal of the report.

**Prohibition against renewing existing E-Check contracts and entering into new contracts**

(R.C. 3704.143)

The act prohibits the Director of Administrative Services or the Director of Environmental Protection, as applicable, from renewing any contract for the motor vehicle inspection and maintenance program (E-Check) that is in existence on the effective date of the act. Further, it prohibits the Director of Administrative Services or the Director of Environmental Protection from entering into a new contract upon the expiration or termination of any contract for the program that is in existence on that date.

The act also provides that notwithstanding provisions of law that require motor vehicle emissions inspections to be conducted and proof of the inspections to be provided prior to registration, upon the expiration or termination of all contracts for the program that are in existence on the effective date of the act, the Director of Environmental Protection must terminate all emissions inspections programs in this state and cannot implement a new program unless the act's applicable provisions are repealed and such a program is authorized by the General Assembly.

**Hazardous Waste Clean-up Fund**

(R.C. 3734.28)

The act authorizes the Environmental Protection Agency to use money in the Hazardous Waste Clean-up Fund, in addition to other uses specified in continuing law, to pay costs that the Agency incurs in dealing with unauthorized spills that require emergency action to protect the public health or safety or the environment and to conduct remedial actions to address conditions involving hazardous chemicals at certain facilities if the conditions constitute an imminent and substantial threat to public health or safety or the environment, including any related enforcement expenses. The authority to use money in the Fund for those purposes exists through June 30, 2003. Additionally, the act extends authority to use money in the Fund for the voluntary action program from June 30, 2001, through June 30, 2003.

**Solid waste disposal fee**

(R.C. 3734.57)

Law generally unchanged by the act levies a fee on the disposal of solid wastes to fund the Environmental Protection Agency's solid and infectious waste and construction and demolition debris management programs. The fee is set at



75¢ per ton and, under prior law, was levied from July 1, 1999, through June 30, 2001. The act continues the fee through June 30, 2004.

**Scrap tire management program**

**Additional fee on tire sales**

(R.C. 3734.821 and 3734.901)

Continuing law establishes a 50¢ per tire fee on the sale of tires. The fee provides revenue to defray the cost of administering and enforcing the law governing scrap tires, rules adopted under that law, and terms and conditions of orders, variances, and licenses issued under that law; to abate accumulations of scrap tires; to make grants to promote research regarding alternative methods of recycling scrap tires and loans to promote the recycling or recovery of energy from scrap tires; and to defray the costs of administering the collection of the fee. Of the money generated from that collection, 96% must be deposited into the Scrap Tire Management Fund (see below). The remaining 4% is generally used for administrative purposes and deposited in the Tire Fee Administrative Fund.

The act adds an additional 50¢ fee per tire. The fee is scheduled to sunset on June 30, 2011. The proceeds from the fee must be used solely for scrap tire clean-up and removal actions and grants to boards of health for certain nuisance issues related to accumulations of scrap tires. The act also specifies that beginning on the effective date of these provisions and ending on June 30, 2011, at least 65% of the money collected from the additional fee must be used for clean-up and removal actions at the Kirby Tire site in Wyandot County.

**Use of Scrap Tire Management Fund**

(R.C. 3734.82(G))

Law changed in part by the act outlines the purposes for which money in the Scrap Tire Management Fund is required to be spent and how much money may be spent for each stated purpose. Those purposes include or have included in the past:

(1) Expending not more than \$750,000 during each fiscal year to implement, administer, and enforce the law governing scrap tires;

(2) Providing grants of not more than \$150,000 to the Polymer Institute at the University of Akron in each of fiscal years 1998 and 1999;

(3) Transferring \$1,000,000 per fiscal year to the Scrap Tire Loans and Grants Fund; and

(4) Transferring money equal to not more than 12% of each fiscal year's appropriation to the Scrap Tire Management Fund to the Environmental Protection Agency's Central Support Indirect Fund, which is used to pay certain administrative expenses of the Agency.<sup>137</sup>

The act eliminates the requirements that money in the Scrap Tire Management Fund be used to provide grants to the Polymer Institute at the University of Akron and to provide money to the Central Support Indirect Fund.<sup>138</sup> Instead, the act requires the Director of Environmental Protection to expend not more than \$3,000,000 per year during fiscal years 2002 and 2003 to conduct scrap tire removal actions and to make grants to boards of health for the purpose of addressing accumulations of scrap tires. However, more than \$3,000,000 may be expended in fiscal years 2002 and 2003 for those purposes if more money is collected from the additional 50¢ fee on the sale of scrap tires levied under the act (see above). During each subsequent fiscal year, the Director must expend not more than \$4,500,000 to conduct scrap tire removal actions and to make grants to boards of health. Again, more than that amount may be expended in each fiscal year for those purposes if more money is collected from the additional 50¢ fee on the sale of scrap tires levied under the act (see above).

The Director must request the approval of the Controlling Board prior to the use of money to conduct removal actions. The request must be accompanied by a plan describing the removal actions to be conducted during the fiscal year and an estimate of the costs of conducting them. The Controlling Board must approve the plan only if it finds that the proposed removal actions comply with priorities for removal actions established in continuing law and that the costs of conducting them are reasonable. Controlling Board approval is not required for grants made to boards of health.

#### **Excess money in Scrap Tire Management Fund**

(R.C. 3734.82(H) and (I))

Prior law specified that if more than \$3,500,000 were credited to the Scrap Tire Management Fund during a fiscal year, at the conclusion of the fiscal year, the Director of Environmental Protection had to request the Director of Budget and Management to transfer to the Scrap Tire Loans and Grants Fund one-half of the money credited to the Scrap Tire Management Fund in excess of \$3,500,000

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<sup>137</sup> The act replaces the Scrap Tire Loans and Grants Fund with the Scrap Tire Recycling Fund (see below).

<sup>138</sup> The funding authorization for the Polymer Institute expired after fiscal year 1999.

(see below). In addition, prior law provided that in each fiscal year, if more than \$3,500,000 were credited to the Scrap Tire Management Fund during the preceding fiscal year, the Director of Environmental Protection had to expend during the current fiscal year one-half of that excess amount to conduct removal operations.

The act clarifies and amends the requirements related to excess money in the Scrap Tire Management Fund. The act provides that if, during a fiscal year, more than \$7,000,000 is credited to the Scrap Tire Management Fund, the Director of Environmental Protection, at the conclusion of the fiscal year, must request the Director of Budget and Management to transfer one-half of the excess money to the Scrap Tire Loans and Grants Fund (see below). The Director of Environmental Protection is required to expend the remaining excess money in the Scrap Tire Management Fund to conduct removal actions. Such removal actions must comply with procedures pertaining to Controlling Board approval established in continuing law.

Additionally, prior law provided that all other excess money in the Scrap Tire Management Fund could be expended to conduct removal actions after the money in the Fund was expended as discussed above during each fiscal year. The act clarifies that all other excess money may be expended after the money in the Fund is expended during each prior fiscal year.

### **Replacement of Scrap Tire Loans and Grants Fund with Scrap Tire Recycling Fund**

(R.C. 166.032, 1502.12, and 3734.82(G))

Former law established the Scrap Tire Loans and Grants Fund and required it to be used, generally, to provide grants and loans for eligible projects that recovered, used, or recycled energy from scrap tires. Money was generated for the Fund from license fees collected from scrap tire monocell or monofill facilities. The Director of Development was required to adopt rules governing the administration of the Fund.

The act eliminates the Scrap Tire Loans and Grants Fund and establishes instead the Scrap Tire Grant Fund to be funded in the same manner as the Scrap Tire Loans and Grants Fund from scrap tire monocell or monofill facility license fees. The Chief of the Division of Recycling and Litter Prevention, with the approval of the Director of Natural Resources, is authorized to make grants from the Fund for the purpose of supporting market development activities for recycled scrap tires. The grants may be awarded to individuals and businesses as well as to state agencies, municipal corporations with a population of more than 50,000, counties, solid waste management districts, and other political subdivisions that are certified for grants from the continuing Recycling and Litter Prevention Fund.

Projects and activities that are eligible for grants from the Scrap Tire Grant Fund must be evaluated for funding using, at a minimum, the following criteria: (1) the degree to which a proposed project contributes to the increased use of scrap tires generated in Ohio, (2) the degree of local financial support for a proposed project, and (3) the technical merit and quality of a proposed project.

**Assessments for the EPA Central Support Indirect Fund**

(R.C. 3745.014)

Formerly, the Central Support Indirect Fund was used by the Director of Environmental Protection to pay administrative costs of the Environmental Protection Agency that were related to expenditures from funds included within the General Services Fund Group and the State Special Revenue Fund Group. Money for the Central Support Indirect Fund came from assessments of any funds of the agency (except the Central Support Indirect Fund) within those two funds groups. The act allows the Director to assess any operating funds from which the EPA receives appropriations (except the Central Support Indirect Fund) for a share of the administrative costs of the agency. These include not only the fund groups formerly assessed, but also the General Revenue Fund and funds included within the Federal Special Revenue Fund Group.

The Director determines the rate of assessments, which formerly were prohibited from exceeding 12% of the fiscal year appropriation from the fund assessed unless the Controlling Board approved a request from the Director for a higher rate. The act removes this restriction, requiring instead that the EPA Director determine the rate with the approval of the Director of Budget and Management.

**Fees for appeals to the Environmental Review Appeals Commission**

(R.C. 3745.04)

Under continuing law, any person who is a party to a proceeding before the Director of Environmental Protection may appeal the Director's action or an action of a local board of health to the Environmental Review Appeals Commission for an order vacating or modifying the action or ordering the Director or board to perform an act. Previously, the appeal had to be accompanied by a filing fee of \$40. The act increases the filing fee to \$60.

**Written acknowledgement by the Director of Environmental Protection of receipt of specified permit applications and plan approvals**

(R.C. 3745.10; Section 195)

The Governor vetoed a provision of the act that would have required the Director of Environmental Protection, not later than ten business days after receipt of an application for a permit to install or a modification of such a permit under the Air Pollution Control Law or for the approval of sewage treatment and disposal plans under the Water Pollution Control Law, to send to the applicant written acknowledgement of receipt of the application. The written acknowledgement would have been required to contain a completeness determination indicating either that the application contained all of the necessary information to perform a technical review or the application was incomplete. If the application was incomplete, the written acknowledgement also would have been required to provide a description of the information that was missing from the application. If the Director failed to comply with these requirements, the application would have been deemed to be complete in all material respects as of the 11th business day after receipt of the application by the Director or the Director's agent or authorized representative. The act applies these provisions only to applications for permits, including modifications and renewals, and for plan approvals that are submitted to the Director on and after the act's effective date.<sup>139</sup>

**Time period for issuance of specified permits and approvals**

(R.C. 3745.15; Section 195)

The Air Pollution Control Law and the Water Pollution Control Law establish various time periods within which the Director of Environmental Protection must make determinations on applications for permits and plan approvals. The Governor vetoed provisions of the act that would have revised two of those time periods by requiring the Director to issue or deny a permit to install or a modification of such a permit under the Air Pollution Control Law and approve or disapprove sewage treatment and disposal plans within 150 days after receipt of a complete application. The Director would have been required to send written notification to the applicant of the issuance or denial or the approval or disapproval, whichever was applicable. If the Director failed to issue or deny the permit or modification or approve or disapprove the plans, whichever was applicable, by the end of the 150-day period, the Director and the Director's authorized representative would not have been able to collect the applicable permit

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<sup>139</sup> *This provision was not vetoed.*

to install fee or the applicable plan approval fee established under continuing law, whichever would have been applicable. In addition, the applicant could have brought a mandamus action to obtain a judgment that ordered the Director to take final action on an application for a permit to install or a modification of such a permit under the Air Pollution Control Law. For purposes of the time periods for issuance of the permits and plan approvals under the act, a complete application would have been an application determined or deemed to be complete under the act (see "Written acknowledgement by the Director of Environmental Protection of receipt of specified permit applications and plan approvals," above).

Under the act, the Director, upon the written request of the applicant, could have extended the time for issuing or denying a permit to install or modification of such a permit for the additional time specified in the applicant's request. If the time was so extended, the act's preclusion against the collection of the applicable fee would not have applied unless the preclusion was included in a written agreement providing for the extension of time.

Additionally, upon the written request of the person who was responsible for a facility, the Director could have consolidated or grouped applications for the issuance of permits to install, or modifications or renewals of those permits, for individual air contaminant sources located at the facility in order to reduce the unnecessary paperwork and administrative burden to the applicant and the Director in connection with the issuance of those permits, modifications, and renewals. The act would have prohibited the reduction of applicable fees that were payable to the Director under continuing law by reason of any consolidation or grouping of applications for permits, modifications, or renewals.

The act would have required the Director, within 150 days after the receipt of an application for a permit under the Air Pollution Control Law, the Solid, Infectious, and Hazardous Wastes Law, the Voluntary Action Program Law, or the Water Pollution Control Law, other than a permit discussed above, to issue or deny the permit notwithstanding any provision of any of those laws. The Director would have been required to send written notification to the applicant of the issuance or denial. If the Director failed to issue or deny the permit within the specified time, the application would have been deemed approved, and the Director would have been required to issue the permit and send written notification to the applicant of the issuance.

The act would have applied all of the provisions above to applications that are submitted to the Director on and after the act's effective date.<sup>140</sup>

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<sup>140</sup> *This provision was not vetoed.*

**Revisions to procedures for the issuance of air pollution control permits**

(R.C. 3704.034; Section 195)

Prior law required the Director of Environmental Protection to make a completeness determination of all applications for the issuance of permits to install and permits to operate under the Air Pollution Control Law within 60 days of their receipt. The act applies the 60-day completeness determination requirement only to applications for the issuance of an initial permit to operate or for the modification or renewal of such a permit. In addition, prior law required the Director to issue or deny or propose to issue or deny a permit to install, a modification of such a permit, or an initial permit to operate within 180 days after the date on which the application for the permit or modification was determined to be complete. The act applies the 180-day requirement for the issuance or denial or proposal to issue or deny only to an initial permit to operate or a modification or renewal of such a permit. Finally, it applies continuing procedures governing time extensions and consolidation of applications, which are similar to those discussed above that were vetoed, only to permits to operate and modifications and renewals of those permits. As a result, no similar statutory procedures remain governing the issuance of permits to install and modification of such permits under the Air Pollution Control Law.

The act provides that these changes in the Air Pollution Control Law apply only to applications that are submitted to the Director on and after the act's effective date.

**Title V air contaminant source fees and synthetic minor facility fees**

(R.C. 3745.11(C) and (D))

Under continuing law, each person who owns or operates an air contaminant source and who is required to apply for and obtain a Title V air pollution control permit must pay certain fees based on the total actual emissions of each regulated pollutant emitted. Those fees apply in part to emissions from any electric generating unit designated as a Phase I unit under Title IV of the Clean Air Act commencing in calendar year 2001 based on emissions during calendar year 2000. The act specifies that the fees on those electric generating units must continue to be assessed each subsequent calendar year based on the total actual emissions from the generating unit during the preceding calendar year.

Under continuing law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic

compounds, and lead in accordance with a fee schedule.<sup>141</sup> Prior law required the fee to be paid through June 30, 2001. The act extends the fee through June 30, 2004.

**Water pollution control fees and safe drinking water fees**

(R.C. 3745.11(L), (M), (N), (O), (P), and (S) and 6109.21)

Under law retained in part by the act, a person applying for a plan approval for a wastewater treatment works was required to pay a fee of \$100 plus .65 of 1% of the estimated project cost, up to a maximum of \$15,000, when submitting an application through June 30, 2002, and a fee of \$100 plus .2 of 1% of the estimated project cost, up to a maximum of \$5,000, on and after July 1, 2002. Under the act, the first tier fee is extended through June 30, 2004, and the second tier applies to applications submitted on or after July 1, 2004.

Continuing law establishes two schedules of annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Prior law established fee schedules for fees that were due by January 30, 2000, and higher fee schedules for fees that were due by January 30, 2001. The act eliminates the fee schedules for fees due January 30, 2000, and extends the fee schedules for fees due January 30, 2001, to January 30, 2002, and January 30, 2003.

In addition to the fee schedules described above, former law imposed a \$6,750 surcharge to the annual discharge fee applicable to industrial dischargers that was required to be paid by January 30, 2000, and a \$7,500 surcharge that was required to be paid by January 30, 2001. The act eliminates the \$6,750 surcharge and extends the \$7,500 surcharge to be paid annually not later than January 30, 2002, and January 30, 2003.

Under continuing law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180. Under prior

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<sup>141</sup> Under continuing law, "synthetic minor facility" means a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under continuing law.



law, the fee was due annually not later than January 30, 2000, and January 30, 2001. The act continues the fee and requires it to be paid annually by January 30, 2002, and January 30, 2003.

The act also provides that each person obtaining an NPDES general or individual permit for municipal storm water discharge must pay a nonrefundable storm water discharge fee of \$100 per square mile of area permitted. The fee cannot exceed \$10,000, and is payable on or before January 30, 2004, and January 30 of each year thereafter. Any person who fails to pay the fee by those dates must pay an additional amount per year equal to 10% of the annual fee that is unpaid.

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in continuing law. Formerly, the license and license renewal fee was required in statute through June 30, 2002. The fee for initial licenses and license renewals had to be paid annually prior to January 31, 2002. The act extends the initial license and license renewal fee through June 30, 2004, and requires the fees to be paid annually prior to January 31, 2004.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water system to obtain approval of the plans from the Director. Continuing law establishes a fee for such plan approval of \$100 plus .2 of 1% of the estimated project cost. Under prior law, the fee could not exceed \$15,000 through June 30, 2002, and \$5,000 on and after July 1, 2002. The act specifies that the \$15,000 limit applies to persons applying for plan approval through June 30, 2004, and the \$5,000 limit applies to persons applying for plan approval on and after July 1, 2004.

Continuing law establishes two schedules of fees that the Environmental Protection Agency charges for evaluating laboratories for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. Under former law, a schedule with higher fees was applicable through June 30, 2002, and a schedule with lower fees was applicable on and after July 1, 2002. The act continues the higher fee schedule through June 30, 2004, and applies the lower fee schedule to evaluations conducted after that date. The act also continues through June 30, 2004, a provision that an individual laboratory cannot be assessed a fee more than once during a three-year period.

Law retained in part by the act establishes a \$25 application fee to take the examination for certification as an operator of a water supply system or wastewater system through June 30, 2002, and a \$10 application fee on and after



July 1, 2002. The act requires the \$25 fee to be paid through June 30, 2004, and the \$10 fee to be paid on and after July 1, 2004. Upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a schedule established in continuing law. A higher schedule was established through June 30, 2002, and a lower schedule applied on and after July 1, 2002. The act extends the higher fee schedule through June 30, 2004.

Under continuing law, any person submitting an application for an industrial water pollution control certificate must pay a nonrefundable fee of \$500 at the time the application is submitted. Formerly, the fee was applicable through June 30, 2002. The act extends the fee through June 30, 2004.

Under law unchanged in part by the act, any person applying for a permit other than an NPDES permit, variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law had to pay a nonrefundable fee of \$100 at the time the application was submitted through June 30, 2002, and a nonrefundable \$15 fee if the application was submitted on or after July 1, 2002. The act extends the \$100 fee through June 30, 2004, and applies the \$15 fee on and after July 1, 2004.

Similarly, under law unchanged in part by the act, a person applying for an NPDES permit through June 30, 2002 had to pay a nonrefundable fee of \$200 at the time of application. On and after July 1, 2002, the nonrefundable application fee was \$15. The act extends the \$200 fee through June 30, 2004 and applies the \$15 fee on and after July 1, 2004.

The act provides that in addition to the application fees for permits, variances, and plan approvals discussed above, any person applying for an NPDES general storm water construction permit must pay a nonrefundable fee of \$20 per acre for each acre that is permitted above five acres at the time the application is submitted. However, the per acreage fee cannot exceed \$300. In addition, any person applying for an NPDES general storm water industrial permit must pay a nonrefundable fee of \$150 at the time the application is submitted.

**Public notice of general national pollutant discharge elimination system permits**

(R.C. 6111.035)

Continuing law requires the Director of Environmental Protection to provide public notice of the issuance, modification, revocation, or termination of a general national pollutant discharge elimination system permit. The notice must be published in the newspapers of general circulation determined by the Director to provide reasonable notice to persons affected by the permit action in the applicable geographic area. Under prior law, the notice was required to include the full text of the permit action. The act requires, instead, that the public notice

include a summary of the permit action and instructions on how to obtain a copy of the full text of the permit action.

**Modifications to the Biofuels and Municipal Waste Technology Program**

(R.C. 4905.87; Section 91)

Formerly, the Public Utilities Commission operated the Biofuels and Municipal Waste Technology Program to promote the use of biofuels and municipal waste for energy development and as substitutes for fossil fuels. The program was funded through grants received from the Council of Great Lake Governors under a program the Council administered for the U.S. Department of Energy. The grants were deposited into the Biofuels/Municipal Waste Technology Fund, which was created by the Controlling Board in 1988.

The act codifies the creation of the fund in the state treasury and renames it the Biomass Energy Program Fund. To the extent funding remains available, the Commission is to use the fund to maintain a program to promote the development and use of biomass energy.

**Transfer of the licensing and regulation of auctioneers from the Department of Commerce to the Department of Agriculture**

(R.C. 1345.21, 4707.01, 4707.011, 4707.02, 4707.03, 4707.04, 4707.05, 4707.06, 4707.07, 4707.071, 4707.072, 4707.08, 4707.09, 4707.10, 4707.11, 4707.111, 4707.12, 4707.13, 4707.15, 4707.152, 4707.16, 4707.19, 4707.20, 4707.21, 4707.23, and 4707.99)

Former law provided for the licensing and regulation of auctioneers by the Division of Real Estate and Professional Licensing and the Superintendent of Real Estate and Professional Licensing in the Department of Commerce. Former law also provided for the establishment of a State Auctioneers Commission in the Department of Commerce to act in an advisory capacity to the Department of Commerce for the purpose of carrying out the Auctioneers Licensing Law (Chapter 4707. of the Revised Code).

The act transfers the functions of licensing and regulating auctioneers, and transfers the State Auctioneers Commission, to the Department of Agriculture. The act does not make any other substantive changes in the Auctioneers Licensing Law. The functions transferred to the Department of Agriculture include, but are not limited to, the following responsibilities:

- (1) Granting, revoking, and suspending the licenses of auctioneers, apprentice auctioneers, and special auctioneers;

(2) Issuing a reprimand to a licensee in lieu of license suspension or revocation;

(3) Conducting written and oral license examinations;

(4) Collecting fees and charges pursuant to the Auctioneers Licensing Law;

(5) Maintaining a record of the names of all licensed auctioneers, apprentice auctioneers, and special auctioneers, including a list of all persons whose licenses have been suspended or revoked, or any other relevant information deemed necessary by the department;

(6) Investigating, upon a written complaint, the actions of any auctioneer, apprentice auctioneer, or special auctioneer, or any applicant for a license under the Auctioneers Licensing Law;

(7) Making reasonable administrative rules necessary for the implementation of the Auctioneers Licensing Law.

**Temporary law provisions for the transfer of functions relating to the Auctioneers Licensing Law to the Department of Agriculture**

(Section 222)

The act provides that the transfer of functions takes effect on October 1, 2001, or the earliest date thereafter that is permitted by law. On the effective date, the Department of Agriculture assumes all licensing functions under the Auctioneers Licensing Law. Any business commenced but not completed by the Department of Commerce on that date must be completed by the Department of Agriculture. The transfer does not impair any validation, cure, right, privilege, remedy, obligation, or liability. All of the Department of Commerce's rules, orders, and determinations continue in effect as rules, orders, and determinations of the Department of Agriculture, until modified or rescinded. The Department of Agriculture is substituted for the Department of Commerce as a party in any court actions pending on the date of transfer.

No employees are to be transferred from the Department of Commerce to the Department of Agriculture. The Department of Agriculture may create up to three full-time positions to administer the Auctioneers Licensing Law.

The act also provides procedures for the transfer to the Department of Agriculture of unexpended balances in Department of Commerce appropriation accounts that pertain to auctioneers.

## *Connections to a public water system*

(R.C. 6109.13)

The Governor vetoed a provision of the act under which a backflow prevention device would not have been required when a physical separation existed between a public water system and a private, auxiliary, or emergency water system. A backflow prevention device is any device, method, or type of construction intended to prevent backflow into a potable water system.

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## **ACT SUMMARY**

### **COURTS AND CORRECTIONS**

- Authorizes employee organizations that represent employees at state correctional institutions to bid on state prison privatization contracts.
- Updates references to the Supreme Court Rule of Superintendence pertaining to the appointment of counsel for indigent defendants in capital cases.
- Exempts from the requirement that purchases that exceed specified amounts generally be made by competitive selection or with the approval of the Controlling Board payments by the Attorney General from the Reparations Fund to hospitals and other emergency medical facilities for performing a medical examination of a victim of specified sex offenses for the purpose of gathering physical evidence for a possible prosecution.
- Requires the Law Enforcement Improvements Trust Fund to be used by the Attorney General to modernize not only law enforcement training, but also laboratory equipment, rather than laboratory facilities, and law enforcement technology.
- Continues after December 31, 2002, the current additional filing fee in civil cases that is used for legal aid societies and eliminates the reduction in those filing fees scheduled for that date.
- Repeals the Department of Youth Service's authority to provide financial assistance for the cost of operating and maintaining county schools, forestry camps, or other facilities for delinquent or unruly children.

- Transfers most of the Office of Criminal Justice Service's duties regarding the juvenile justice system to the Department of Youth Services (DYS).
- Imposes on the Department of Youth Services additional duties regarding oversight and coordination of juvenile justice services that parallel existing duties of the Office of Criminal Justice Services.
- Authorizes the Office of Criminal Justice Services to gather and provide information and provide assistance regarding the juvenile justice system upon the request of the Governor.
- Requires the Office of Criminal Justice Services to maintain responsibility for closing out all the federal grants it receives prior to July 1, 2001, and to make any required reports related to those grants, and allows the Office of Criminal Justice Services to expend and take other appropriate actions related to those grants.
- Requires a metropolitan county criminal justice services agency to administer federal juvenile justice acts that DYS administers within Ohio.
- Limits the duty of the Office of Criminal Justice Services to discharge the Office's duties by limiting the duty to duties that the Governor requires it to administer by establishing administrative planning districts for criminal justice programs.
- Requires the Department of Youth Services, in counties in which a metropolitan county criminal justice services agency does not exist, to discharge the Department's duties by establishing administrative planning districts for juvenile justice programs.
- Authorizes any county or any combination of contiguous counties within an administrative planning district to form a juvenile justice coordinating council, if the county or the group of counties has a total population in excess of 250,000.
- Allows the Governor to appoint any advisory committees to assist the Department of Youth Services that the Governor considers appropriate or that are required under any state or federal law.

- Authorizes the Department of Youth Services to provide funds to metropolitan county criminal justice service agencies for certain specified purposes.
- Revises the definition of "comprehensive plan" as used in the Office of Criminal Justice Services Laws.
- Creates the Federal Juvenile Justice Programs Funds.
- Assigns the Division of Parole and Community Service, or other division designated by the Director of DRC, with responsibility for reviewing plans submitted to DRC for approval.
- Requires the approval of the Legal Rights Service Commission, by an affirmative vote of at least four members, before the Legal Rights Service may use specified subpoena power.
- Prohibits the Administrator of the Legal Rights Service from pursuing a class action lawsuit without the affirmative vote of at least four members of the Commission made in the presence of at least five members of the Commission.
- Authorizes an ethics commission, at the commission's discretion, to share information gathered in the course of any investigation with, or disclose the information to, the Inspector General, any appropriate prosecuting authority, any law enforcement agency, or any other appropriate ethics commission.
- Allows the Sergeant at Arms and assistant sergeants at arms of the House of Representatives, if they have been awarded by the Ohio Peace Officer Training Commission a certificate of completion of a peace officer basic training program, to retain their status as a peace officer for peace officer certification purposes.
- Provides that the sergeant at arms for the Ohio House of Representatives and assistant house sergeants at arms are law enforcement officers for the purpose of the Public Employees Retirement System.

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## CONTENT AND OPERATION

### COURTS AND CORRECTIONS

#### *Prison privatization contracts*

(R.C. 9.06)

Continuing law (1) requires the Department of Rehabilitation and Correction to contract for the private operation and management of the initial intensive program prison (a prison for prisoners sentenced to a mandatory prison term for a third or fourth degree felony OMVI offense) and (2) authorizes the Department to contract for the private operation and management of any other state correctional institution. These contracts must be for an initial term of not more than two years, with an option to renew for additional periods of two years, and no out-of-state prisoners may be housed in an institution subject to these contracts. Before the Department enters into any of these contracts, the contractor involved must convincingly demonstrate that it can operate the correctional institution involved with the inmate capacity required and can provide the services required and *realize at least a 5% savings* over the projected cost to the Department of providing the same services to operate the correctional institution. Any contractor who applies to operate and manage a correctional institution generally must be accredited by the American Correctional Association, must retain that accreditation throughout the contract term, and, at the time of application, must operate and manage one or more facilities accredited by the Association. The contractor also must seek, obtain, and maintain accreditation from the Association during the contract term for the correctional institution involved. (R.C. 9.06(A)(1), (3), and (4) and (B)(1) and (2).)

The act specifically designates employee organizations that represent employees at state correctional institutions as "persons or entities" that may bid on privatization contracts to operate and manage those institutions and that may become "contractors" with respect to that operation and management (R.C. 9.06(J)(4) and (6)).

#### *Updated reference to Rule of Superintendence for the courts of Ohio*

(R.C. 120.06(F), 120.16(G), 120.26(G), 120.33(C), 2953.21(I)(2))

Under continuing statutory law, if a court appoints the State Public Defender, the county public defender, the joint county public defender, or a private attorney to represent a petitioner in a postconviction relief proceeding under R.C. 2953.21, the petitioner has received a sentence of death, and the proceeding relates to that sentence, all of the attorneys who represent the petitioner in the proceeding pursuant to the appointment must be certified under Rule 65 of



the Rules of Superintendence for Courts of Common Pleas to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed.

The act changes the reference to Rule 65 of the Rules of Superintendence for Courts of Common Pleas in the above-described requirements to a reference to Rule 20 of the Rules of Superintendence for the Courts of Ohio. Rule 20 of the Rules of Superintendence is identical to former Rule 65.

**Certain payments by the Attorney General from the Reparations Fund exempt from Controlling Board approval**

(R.C. 127.16(D)(32) and, by reference, R.C. 2907.28(A))

**Continuing law**

Generally, no state agency, using money that has been appropriated to it directly, may make any purchase from a particular supplier, that would amount to \$50,000 or more when combined with both the amount of all disbursements to the supplier during the fiscal year for purchases made by the agency and the amount of all outstanding encumbrances for purchases made by the agency from the supplier, unless the purchase is made by competitive selection or with the approval of the Controlling Board. Continuing law expressly provides that this requirement must not be construed as applying to or limiting certain types of purchases, contracts, and payments. (R.C. 127.16(B)(1) and (D).)

**Operation of the act**

The act provides that this requirement must not be construed as applying to payments by the Attorney General from the Reparations Fund to hospitals and other emergency medical facilities for performing a medical examination of a victim of specified sex offenses for the purpose of gathering physical evidence for a possible prosecution, including the cost of any antibiotics administered as part of the examination, subject to the certain conditions.

**Uses of the Law Enforcement Improvements Trust Fund**

(R.C. 183.10)

The Law Enforcement Improvements Trust Fund, to which a portion of the state's tobacco settlement receipts has been transferred, was to be used to maintain, upgrade, and modernize the law enforcement training and laboratory facilities of the Office of the Attorney General. The act requires the fund to be used instead to maintain, upgrade, and modernize (in addition to law enforcement training) laboratory equipment, rather than laboratory facilities, and law enforcement technology.

**Maintenance of filing fee amount for legal aid societies**

(R.C. 1901.26(C), 1907.24(C), and 2303.201(C))

Under continuing law, municipal courts, county courts, and courts of common pleas are required to collect an additional filing fee in each new civil action or proceeding for the purpose of providing financial assistance to legal aid societies. Currently, the additional filing fee is \$15 for all courts other than small claims divisions and \$7 for small claims division of municipal and county courts. Prior law provided that on and after January 1, 2003, the fee will be \$4.

The act eliminates the reduction to \$4 in the additional filing fee that is scheduled on January 1, 2003. Therefore, under the act, municipal courts, county courts, and courts of common pleas will continue on and after January 1, 2003, to be required to collect \$15 in all divisions except the small claims division and \$7 in small claims divisions as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies.

**Department of Youth Services financial assistance to county schools, forestry camps, or other facilities for delinquent or unruly children**

(R.C. 5139.29 and 5139.31; repealed R.C. 2151.652 and 5139.28)

**Operation of the act**

The act repeals the authority of the Department of Youth Services (DYS) to provide financial assistance for the cost of operating and maintaining county schools, forestry camps, or other facilities for delinquent or unruly children.

**Prior law**

Prior law authorized the board of county commissioners of a county or the board of trustees of a district maintaining a school, forestry camp, or other facility, used exclusively for the rehabilitation of adjudicated delinquent or unruly children between the ages of 12 to 18 years, other than psychotic or mentally retarded children, to apply to DYS for financial assistance in defraying the cost of operating and maintaining the school, forestry camp, or other facility (R.C. 2151.652).

DYS was required to adopt rules prescribing the standards of operation, programs of education, and training and qualifications of personnel of such a school, forestry camp, or other facility. If the appropriate board applied for DYS assistance and if DYS found that the application was in proper form and the standards had been met, DYS was authorized to grant financial assistance for the operation and maintenance of the school, forestry camp, or other facility in an

amount not to exceed 50% of the cost of operating and maintaining the school, forestry camp, or other facility. DYS was prohibited from granting the financial assistance unless it was used solely for the purpose of rehabilitating children of the type described in the preceding paragraph. DYS also was required to adopt regulations prescribing the method of calculating the amount of and the time and manner for the payment of this financial assistance. (R.C. 5139.28 and 5139.29.)

Prior law also permitted DYS to inspect such a school, forestry camp, or other facility that had applied for this financial assistance or to which this financial assistance had been granted (R.C. 5139.31).

### **Duties of the Department of Youth Services and the Office of Criminal Justice Services**

#### **Transfer of duties from the Office of Criminal Justice Services to the Department of Youth Services**

The act transfers from the Office of Criminal Justice Services to the Department of Youth Services (DYS) certain duties, and specifies that DYS must coordinate and assist juvenile justice systems by doing the specified things. The duties so transferred are all of the following (R.C. 181.52(B)(1) to (5), (9), and (10) and 5139.11(K)(1)(a) to (e), (h), and (i)):<sup>142</sup>

(1) Perform juvenile justice system planning in Ohio, including any planning that is required by any federal law;

(2) Collect, analyze, and correlate information and data concerning the juvenile justice system in Ohio;

(3) Cooperate with and provide technical assistance to state departments, administrative planning districts, metropolitan county criminal justice services agencies, criminal justice coordinating councils, and agencies, offices, and departments of the juvenile justice system in Ohio, and other appropriate organizations and persons;

(4) Encourage and assist agencies, offices, and departments of the juvenile justice system in Ohio and other appropriate organizations and persons to solve problems that relate to its duties;

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<sup>142</sup> "Juvenile justice system" includes all of the functions of the juvenile courts, the Department of Youth Services, any public or private agency whose purposes include the prevention of delinquency or the diversion, adjudication, detention, or rehabilitation of delinquent children, and any of the functions of the criminal justice system that are applicable to children (R.C. 181.51(C) and 5139.01(A)(29)).

(5) Administer within the state any federal juvenile justice acts "and programs" (the reference to programs is added by the act) that the Governor requires it to administer;

(6) Monitor or evaluate the performance of juvenile justice system projects and programs in Ohio that are financed in whole or in part by funds granted through it;

(7) Apply for, allocate, disburse, and account for grants that are made available pursuant to federal juvenile justice acts, or made available from other federal, state, or private sources, to improve the criminal and juvenile justice system in Ohio. Under the act, all money from such federal grants must, if the terms under which the money is received require that the money be deposited into an interest-bearing fund or account, be deposited in the state treasury to the credit of the Federal Juvenile Justice Program Purposes Fund, which the act creates. All investment earnings must be credited to the Fund.

### **Additional duties of DYS**

Under the act, DYS additionally must coordinate and assist juvenile justice systems by doing all of the following, which parallel existing duties of the Office of Criminal Justice Services (R.C. 5139.11(K)(1)(f), (g), and (j) to (o) and 181.52(B)(7), (8), and (11) to (16)):

(1) Implement the state comprehensive plans;<sup>143</sup>

(2) Audit grant activities of agencies, offices, organizations, and persons that are financed in whole or in part by funds granted through DYS;

(3) Contract with federal, state, and local agencies, foundations, corporations, businesses, and persons when necessary to carry out DYS's duties;

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<sup>143</sup> "Comprehensive plan" means a document that coordinates, evaluates, and otherwise assists, on an annual or multi-year basis, any of the functions of the juvenile justice systems of Ohio or a specified area of Ohio, that conforms to the priorities of the state with respect to juvenile justice systems, and that conforms with the requirements of all federal criminal justice acts. Those functions include delinquency prevention; identification, detection, apprehension, and detention of persons charged with delinquent acts; assistance to crime victims or witnesses; adjudication or diversion of persons charged with delinquent acts; custodial treatment of delinquent children; and institutional and noninstitutional rehabilitation of delinquent children. (R.C. 5139.01(A)(33).)

(4) Oversee the activities of metropolitan county criminal justice services agencies, administrative planning districts, and juvenile justice coordinating councils in Ohio;

(5) Advise the General Assembly and Governor on legislation and other significant matters that pertain to the improvement and reform of the juvenile justice system in Ohio;

(6) Prepare and recommend legislation to the General Assembly and Governor for the improvement of the juvenile justice system in Ohio;

(7) Assist, advise, and make any reports that are required by the Governor, Attorney General, or General Assembly;

(8) Adopt rules pursuant to the Administrative Procedure Act.

### **Deference to the Attorney General**

Similar to continuing law relating to the duties of the Office of Criminal Justice Services regarding the criminal and juvenile justice systems, the act provides that the duties described above do not limit the discretion or authority of the Attorney General with respect to crime victim assistance and criminal and juvenile justice programs and that nothing in these duties is intended to diminish or alter the status of the office of the Attorney General as a criminal justice services agency (R.C. 5139.11(K)(2) and (3)).

### **Appointment of advisory committees**

The act allows the Governor to appoint any advisory committees to assist the Department that the Governor considers appropriate or that are required under any state or federal law (R.C. 5139.11(K)(4)).

### **Additional duties of the Office of Criminal Justice Services**

The act additionally authorizes the Office of Criminal Justice Services to do any of the following upon the request of the Governor (R.C. 181.52(C)):

(1) Collect, analyze, or correlate information and data concerning the juvenile justice system in Ohio;

(2) Cooperate with and provide technical assistance to state departments, administrative planning districts, metropolitan county criminal justice service agencies, criminal justice coordinating councils, agency offices, and the departments of the juvenile justice system in Ohio and other appropriate organizations and persons;

(3) Encourage and assist agencies, offices, and departments of the juvenile justice systems in Ohio and other appropriate organizations and persons to solve problems that relate to the duties of the Office.

**Closing out of federal grants**

In the uncodified law relative to the transfer of the administration of federal juvenile justice funding from the Office of Criminal Justice Services to the Department of Youth Services, the act specifies that the Office of Criminal Justice Services maintains all responsibility for closing out all the federal grants it receives prior to July 1, 2001, may expend and take other appropriate actions related to those grants, and must make any required reports related to those grants (Section 117).

**Metropolitan county criminal justice services agencies, administrative planning districts, and juvenile justice coordinating councils**

**Metropolitan county criminal justice services agencies.** Under continuing law, a county may enter into an agreement with the largest city within the county to establish a metropolitan county criminal justice services agency, if the population of the county exceeds 500,000 or the population of the city exceeds 250,000. Among other things, a metropolitan county criminal justice services agency must administer within its services area any federal criminal justice acts or juvenile justice acts that the Office of Criminal Justice Services administers within Ohio.

The act expands this provision to also require the agency to administer within its services area any federal criminal justice acts or juvenile justice acts that DYS administers within Ohio. (R.C. 181.54(A) and (B)(5).)

**Administrative planning districts.** In counties in which a metropolitan county criminal justice services agency does not exist, prior law required the Office of Criminal Justice Services to discharge the Office's duties by establishing administrative planning districts.

The act limits this provision by requiring the Office of Criminal Justice Services to discharge the Office's duties *that the Governor requires it to administer* by establishing administrative planning districts *for criminal justice programs*. The act then requires DYS, in counties in which a metropolitan county criminal justice services agency does not exist, to discharge DYS's duties by establishing administrative planning districts for juvenile justice programs. As under continuing law, all administrative planning districts must contain a group of contiguous counties in which no county has a metropolitan county criminal justice services agency. The definition of "administrative planning district" is expanded

to include districts established by DYS under the act. (R.C. 181.51(F), 181.56(A) to (C), and 5139.01(A)(31).)

**Juvenile justice coordinating councils.** Prior law authorized any county or any combination of contiguous counties within an administrative planning district to form a criminal justice coordinating council, if the county or the group of counties has a total population in excess of 250,000. The council must comply with specified conditions and exercise within its jurisdiction the powers and duties set forth for a metropolitan county criminal justice services agency. (R.C. 181.56(B).)

The act expands this authority to permit that county or those counties to also form a juvenile justice coordinating council. The juvenile justice coordinating council must comply with specified conditions and exercise within its jurisdiction the powers and duties set forth for a metropolitan county criminal justice services agency. (R.C. 181.51(I), 181.56(D), and 5139.01(A)(30).)

### **Funding**

**Prior law.** Under prior law, when funds were available for this purpose, the Office of Criminal Justice Services was required to provide funds to metropolitan county criminal justice services agencies for the purpose of developing, coordinating, evaluating, and implementing comprehensive plans within their respective counties. The Office of Criminal Justice Services was required to provide funds to an agency only if it complied with the conditions of R.C. 181.55(B). (R.C. 181.55(A).)

**Operation of the act.** The act limits the above provision to when funds are available for specified criminal justice purposes. It also provides that when funds are available for juvenile justice purposes pursuant to R.C. 181.54, DYS must provide funds to metropolitan county criminal justice service agencies for the purpose of developing, coordinating, evaluating, and implementing comprehensive plans within their respective counties. DYS must provide funds to an agency only if it complies with the conditions of R.C. 181.55(B). Among these conditions is a requirement that a municipal county criminal justice services agency submit, in a form that is acceptable to the Office of Criminal Justice Services or DYS pursuant to R.C. 5139.01, a comprehensive plan for the county. (R.C. 181.55(A)(1) and (2) and (B)(1).)

### **Definition of "comprehensive plan"**

**Prior law.** Under prior law, "comprehensive plan" meant a document that coordinated, evaluated, and otherwise assisted, on an annual or multiyear basis, *all* of the functions of the criminal and juvenile justice systems of the state or a specified area of the state, that conformed to the priorities of the state with respect

to criminal and juvenile justice systems, and that conformed with the requirements of all federal criminal justice acts. These functions included, but were not limited to, *all* of a list of specified functions. (R.C. 181.51(D).)

**Operation of the act.** Under the act, for the Office of Criminal Justice Services, "comprehensive plan" means a document that coordinates, evaluates, and otherwise assists, on an annual or multiyear basis, *any* of the functions of the criminal and juvenile justice systems of the state or a specified area of the state, that conforms to the priorities of the state with respect to criminal and juvenile justice systems, and that conforms with the requirements of all federal criminal justice acts. These functions *may* include, but are not limited to, *any* of a list of specified functions. (R.C. 181.51(D).)

The act generally uses the former definition of "comprehensive plan" for the Department of Youth Services but removes references to crime, criminal offenses, and criminal offenders. (R.C. 5139.01(A)(33).)

### **The Federal Juvenile Justice Programs Funds**

(R.C. 5139.87)

The act creates the "federal juvenile justice programs funds" in the state treasury to be used for federal juvenile programs. A separate fund is to be established each federal fiscal year. All federal grants and other money received for federal juvenile programs in a specific federal fiscal year must be deposited into the fund created for that federal fiscal year. All receipts deposited into the funds are to be used for federal juvenile programs. All investment earnings on the cash balance in a federal juvenile program fund must be credited to that fund for the appropriate federal fiscal year.

### **Restriction on Administrator of the Legal Rights Service pursuing class action**

(R.C. 5123.60(G)(2) and (3) and (H))

Under continuing law, a Legal Rights Service is established to protect and advocate the rights of mentally ill persons, mentally retarded persons, developmentally disabled persons, and other disabled persons. In addition, the Legal Rights Service Commission has been created to appoint an Administrator of the Legal Rights Service, advise the Administrator, assist the Administrator in developing a budget, and establish general policy guidelines for the Legal Rights Service. The Commission consists of seven members who serve for three-year terms. Each member is required to serve subsequently to the expiration of the member's term until a successor is appointed and qualifies, or until 60 days has elapsed, whichever first occurs.



Under generally continuing law, among the Administrator's other duties, the Administrator is authorized *without any restriction* to pursue legal, administrative, and other appropriate remedies or approaches when administrative resolution of complaints proves unsatisfactory. Also, under generally continuing law, the Legal Rights Service, on the order of the Administrator and *with the Commission's approval*, may compel by subpoena the appearance and sworn testimony of any person the Administrator reasonably believes may be able to provide information or to produce any documents, books, records, papers, or other information necessary to carry out its duties.

The act requires approval of the Commission, by an *affirmative vote of at least four members*, obtained in the presence of *at least five members*, before the Administrator may pursue a "class action lawsuit" when attempts at administrative resolution of a complaint prove unsatisfactory. It also requires approval of the Commission, by an affirmative vote of *at least four members*, before the Legal Rights Service may use the previously mentioned subpoena power.

#### **Sharing of information by ethics commissions**

(R.C. 102.06(B))

The act creates an exception to the confidentiality of information gathered in the course of an investigation of an ethics complaint or charges. Under the act, an appropriate ethics commission (Joint Legislative Ethics Committee, Board of Commissioners on Grievances and Discipline of the Supreme Court, or Ohio Ethics Commission), at its discretion, may share information gathered in the course of any investigation with, or disclose the information to, the Inspector General, any appropriate prosecuting authority, any law enforcement agency, or any other appropriate ethics commission.

#### **Peace officer status of Sergeant at Arms and assistant sergeants at arms of the House of Representatives**

(R.C. 101.311)

#### **Preexisting law**

Preexisting law, unchanged by the act, requires the Speaker of the House of Representatives to appoint a Sergeant at Arms for the House, and to adopt a policy specifying the minimum continuing training required for a person to maintain employment as House Sergeant at Arms or an assistant House sergeant at arms. The House Sergeant at Arms may appoint assistant House sergeants at arms to assist the House Sergeant at Arms in performing his or her duties.

The House Sergeant at Arms cannot appoint a person to be an assistant unless one of the following applies: (1) the person previously has been awarded a



certificate by the Ohio Peace Officer Training Commission attesting to the person's satisfactory completion of an approved peace officer basic training program of a specified nature, the person previously has been employed as a peace officer, the person has successfully completed a firearms requalification program under law, and either (a) the prior employment of the person as a peace officer contains no breaks in service of more than one year or (b) the prior employment of the person as a peace officer contains a break in service of one year or more and not more than four years, and the person has received all updated training required by the House Sergeant at Arms, or (2) the person previously has been employed as a State Highway Patrol trooper, the person has successfully completed a firearms requalification program under law, and either (a) within one year prior to employment as an assistant House sergeant at arms the person had arrest authority as a trooper, or (b) the prior employment as a trooper contains a break in service of one year or more and not more than four years, and the person has received all updated training required by the House Sergeant at Arms.

In order to maintain employment as the House Sergeant at Arms or an assistant House sergeant at arms, a person must successfully complete all continuing training programs required by the House Speaker. If the House Sergeant at Arms or an assistant House sergeant at arms has a peace officer basic training certificate, or comparable certification from another law enforcement agency, the person also may complete whatever additional training is needed to maintain that certification. The Ohio Peace Officer Training Academy, a specified type of training program, or any other program offering continuing training of that nature must admit the House Sergeant at Arms or assistant House sergeant at arms to the continuing training program necessary for that person to retain that certification.

Preexisting law, unchanged by the act, requires the House Sergeant at Arms to perform certain specified duties, grants the assistant House sergeants at arms arrest authority and general law enforcement authority in certain circumstances, and grants the House Sergeant at Arms arrest authority and general law enforcement authority in certain circumstances if he or she satisfies specified criteria. The jurisdiction of the House Sergeant at Arms, if he or she has arrest authority, and of assistant House sergeants at arms is concurrent with that of peace officers of the county, township, or municipal corporation in which the violation occurs and with the State Highway Patrol. Preexisting law, unchanged by the act, provides for commissions and badges for assistant House sergeants at arms, and for the House Sergeant at Arms if he or she has arrest authority.

### **Operation of the act**

The act adds a provision that specifies that any person who has been appointed as the House Sergeant at Arms or as an assistant House sergeant at arms under the above-described provisions on or after March 1, 2000, and who has

received a certificate of completion of peace officer basic training programs under preexisting R.C. 109.75(D) is to be considered a peace officer during the term of the person's appointment as the Sergeant at Arms or as an assistant sergeant at arms for the purposes of maintaining a current and valid basic training certificate pursuant to rules adopted under preexisting R.C. 109.74.

Preexisting R.C. 109.75(D) provides that the Executive Director of the Ohio Peace Officer Training Commission has the power and duty to certify peace officers and sheriffs who have satisfactorily completed basic training programs and to issue appropriate certificates to these peace officers and sheriffs. Preexisting R.C. 109.74 authorizes the Attorney General to adopt rules recommended by the Commission under preexisting R.C. 109.73. The rules that the Commission may recommend under preexisting R.C. 109.73 include the requirements of minimum basic training and categories or classifications of advanced in-service training for peace officers.

### **House sergeant at arms and assistants in PERS-LE**

(R.C. 145.01 and 145.33)

The law governing the Public Employees Retirement System (PERS) includes special provisions for members who are law enforcement officers. These PERS law enforcement provisions apply to such law enforcement officers as sheriffs, township police officers, park district police officers, and others who have completed police officer training. PERS provisions for law enforcement officers differ from those for other PERS members with regard to contribution rates, retirement eligibility, and the formulas used to compute retirement benefits.

The act provides that the sergeant at arms for the Ohio House of Representatives and assistant house sergeants at arms are law enforcement officers for the purpose of PERS. Only credit for service as a PERS law enforcement officer or service credit obtained as a police officer or state highway patrol trooper is to be used in computing PERS law enforcement benefits for a person who is originally employed as the sergeant at arms or an assistant sergeant at arms on or after the effective date of this provision of the act.

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## **ACT SUMMARY**

### **TAXATION**

- Transfers from the Treasurer of State to the Tax Commissioner receipt and processing of sales, use, corporate franchise, and various excise tax returns and payments.



- Removes the \$2.5 million limit on the amount of money that the State Racing Commission Operating Fund may receive in a calendar year from allocations of the horse racing tax.
- Removes the September 19, 1996, deadline for State Racing Commission approval of tax reductions for capital improvement projects that cost at least \$100,000.
- Modifies the length of the tax reduction period for those projects when the State Racing Commission approves the construction of a new race track or capital improvement after the act's effective date--until the total tax reduction equals 100% of the project's approved cost.
- Requires the Tax Commissioner, rather than the Director of Budget and Management, to distribute amounts from the Horse Racing Tax Fund to county agricultural societies.
- Requires any fees assessed for or on behalf of the Ohio Sires Stakes Races to be deposited into the Ohio Standardbred Development Fund, and requires any investment earnings on the cash balance in the Fund to be credited to it.
- Establishes a new horse racing permit holder retention of wagering pool money requirement relative to wagering pools other than win, place, and show.
- Requires 1/2 of the amount retained (1/4 of 1%) under that requirement to be paid to the Tax Commissioner as a tax and to be deposited into the State Racing Commission Operating Fund.
- Repeals existing law's permissive retention of wagering pool money provisions relative to pools that require three or more runner selections.
- Extends the extra 2¢ earmark of wine tax revenue credited to the Ohio Grape Industries Fund until July 1, 2003.
- Replaces the seat tax on motor vehicles used for transporting persons with a flat tax of \$30.
- Creates the positions of tax auditor agent and tax auditor agent manager, and establishes education and experience qualifications for the positions.

- Creates the Municipal Internet Site Fund in the state treasury, and requires the Tax Commissioner to credit to the fund any fees charged municipal corporations to defray costs of the Commissioner's new municipal income tax Internet site.
- Authorizes a county special tax levy for the combined purposes of a 9-1-1 system and a countywide public safety communications system.
- Exempts from taxation certain tangible personal property held by the federally chartered Corporation for the Promotion of Rifle Practice and Firearms Safety.
- Would have permitted businesses to pay outstanding tangible personal property taxes in installments instead of in a lump sum. (Vetoed)
- Makes the option of selling tax certificates through negotiation rather than public auction available to the county treasurer of any county with a population over 200,000 persons.
- Delays for two years the tax credit for job training expenses.
- Makes various changes in the manner in which school districts and other local taxing districts are compensated for the reduction in property tax collections from electric companies and natural gas companies resulting from the reductions in the property tax assessment rate.
- Clarifies aspects of the excise tax on electricity as paid by large electricity users that self-assess the tax.
- Specifies a new beginning date for the excise tax on natural gas ("Mcf" tax).
- Clarifies that all estates exempted from the estate tax need not file an estate tax return.
- Modifies how certain corporations are taxed when all of their assets are transferred to another corporation during 2001.
- Disallows the exclusion of net management fees from an investment pass-through entity's withholding tax base if they exceed 5% of the entity's net income.

- Clarifies that income items received by a nonresident taxpayer are not excluded for the purpose of computing the nonresident income tax credit if they are received indirectly through an investment pass-through entity on account of its ownership of another pass-through entity if that entity's income items do not represent excludable investment pass-through entity income.
- Clarifies the effective date of a provision contained in S.B. 287 of the 123rd General Assembly identifying the investors in a qualifying pass-through entity on behalf of whom the entity must withhold taxes.
- Extends through 2003 the availability of an alternative method of determining the corporation franchise tax base of qualified financial institutions.
- Delays commencement of the corporation franchise tax credit for qualified research expenses until tax year 2004, but allows corporations with taxable years that end prior to July 1, 2001, to claim the credit for tax year 2002.
- Revises the procedures for transferring money into the Recycling and Litter Prevention Fund from certain proceeds of corporate franchise taxes and surcharges.
- Exempts from the sales tax local telephone calls made from coin-operated telephones and paid for with coin.
- Permits counties, townships, and municipal corporations to extend their lodging taxes to establishments having fewer than five rooms.
- Limits the penalty and interest that counties, townships, and municipal corporations may charge for late or unpaid lodging taxes.
- Freezes amounts deposited into and distributed from local government distribution funds at fiscal year 2001 levels.
- Grants an amnesty for certain delinquent state taxes, whereby outstanding tax delinquencies may be paid without payment of associated penalties and without payment of one-half of the accrued interest.
- Creates the Motor Fuel Tax Task Force to study the adequacy and distribution of the motor fuel tax, and requires it to report its findings on December 2, 2002.

- Requires that the Legislative Service Commission study the fiscal impact on state revenues of extending the Ohio coal tax credit for two additional years.

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## CONTENT AND OPERATION

### TAXATION

#### *Transfer of receipt and processing of sales, corporate franchise, and some excise tax returns and payments from Treasurer of State to Tax Commissioner*

(R.C. 3734.904, 4301.422, 4303.33, 4303.331, 5727.25, 5727.26, 5727.81, 5727.811, 5727.82, 5728.08, 5733.02, 5733.021, 5733.12, 5733.18, 5735.06, 5735.061, 5739.032, 5739.07, 5739.102, 5739.12, 5739.121, 5739.13, 5739.18, 5741.10, 5741.12, 5743.62, 5743.63, 5745.03, 5745.04, and 5749.06; repealed R.C. 5741.18; Sections 206 and 218)

Under prior law, the receipt and processing of sales, use, corporate franchise, and various excise taxes were handled by the Treasurer of State. The act transfers these functions to the Tax Commissioner. The excise taxes affected are on tires, alcoholic beverages, natural gas and combined electric and gas companies, electric and natural gas distribution companies (except where payment directly to the Treasurer of State by electronic funds transfer is required), highway use, motor fuel, tobacco, municipal electric light companies, and severed minerals. The act establishes the following future effective dates for the transfers: for sales and use taxes, January 1, 2002; for the corporate franchise tax, July 1, 2002, and for the excise taxes, January 1, 2003. (The sections affecting electric and natural gas distribution companies became effective immediately, but by their terms make the taxes payable to the Tax Commissioner beginning January 1, 2003, except where payments are made directly to the Treasurer of State by electronic funds transfers.)

#### *State Racing Commission Operating Fund*

(R.C. 3769.08(M))

Continuing law requires that 25% of the taxes levied on thoroughbred, harness, and quarter horse racing permit holders be paid into the PASSPORT Fund, a fund that is used to support the PASSPORT program that provides home- and community-based services under the Medicaid program as an alternative to nursing facility placement for aged and disabled persons. The Tax Commissioner then must pay, after the payments into the PASSPORT Fund and after the tax reductions granted to permit holders for undertaking capital improvements at their racing facilities, any money remaining into the Ohio Fairs Fund, Ohio

Thoroughbred Race Fund, Ohio Standardbred Development Fund, Ohio Quarter Horse Fund, and the State Racing Commission Operating (SRCO) Fund in the amounts statutory law requires. If, after the payments into the PASSPORT Fund, sufficient funds are unavailable to pay the amounts required to be paid into the five funds, the Tax Commissioner must prorate on a proportional basis the amount paid to each of the funds. Former law prohibited the SRCO Fund from receiving more than \$2.5 million in any calendar year.

The act removes the \$2.5 million limit on the amount that the SRCO Fund may receive in any calendar year from allocations of the horse racing tax.

**Tax reduction programs for capital improvements at racing facilities**

**Changes in the capital improvements program for improvements costing at least \$100,000**

(R.C. 3769.08(J))

**First set of changes.** Under continuing law, the taxes paid to the state by a horse racing permit holder must be reduced by  $\frac{3}{4}$  of 1% of the total amount wagered for those permit holders who make capital improvements to existing race tracks, or construct new race tracks, that cost at least \$100,000. A tax reduction formerly continued for a period of 25 years for new race tracks and for 15 years for capital improvements if the construction of the new race track or improvement commenced prior to March 29, 1988, and for a period of ten years for new race tracks or capital improvements if the construction of the new race track or improvement commenced on or after that date, or until the total tax reduction reached 70% of the cost of the new race track or capital improvement, whichever occurred first.

Under the act, the "ten-year or 70% of the cost" tax reduction period applies only to the construction of new race tracks or capital improvements that commenced on or after March 29, 1988, *but before the act's effective date*. With respect to the construction of new race tracks or capital improvements *approved* by the State Racing Commission *after* the act's effective date, the tax reduction period will continue under the act until the total tax reduction reaches 100% of the "approved cost" of the new race track or capital improvement, as allocated to each permit holder.

In order to qualify for the tax reduction for any capital improvement that costs at least \$100,000, former law required that the State Racing Commission "certify" the construction cost, but did not define what "certified cost" meant. The act substitutes a requirement that the Commission "approve" the construction cost, defines "approved cost" to include all debt service and interest costs that are associated with a capital improvement or new race track and that the Commission



approves for the tax reduction, and adds one conforming reference to such "approved cost."

**Second change.** Former law provided that the tax reductions described above applied only if they were approved by the State Racing Commission prior to September 19, 1996. The act removes this provision.

**Third set of changes.** Former law also designated the leveling of a *race track* as one of the capital improvements for which a tax reduction could be taken. The act instead allows a tax reduction for the leveling of a *racetrack surface*. It also specifically allows a tax reduction for a roof replacement or restoration, and for construction of buildings located on a permit holder's premises.

### **Changes in the major capital improvement program**

(R.C. 3769.20)

**Background.** Continuing law creates a second tax reduction program for the benefit of horse racing permit holders who undertake a "major capital improvement project" that costs at least \$6 million. Under this tax reduction program, the taxes a permit holder pays to the state, in excess of the amounts required to be paid into the PASSPORT Fund, are reduced by 1% of the total amount wagered. The percentage of the reduction that may be taken each racing day must equal 75% of the horse racing tax levied, divided by (1) the calculated amount that statutory law requires each of the various horse racing funds to receive and (2) a reduction that continuing law provides.

**First change.** Former law provided that the tax reduction granted for a major capital improvement project was in addition to any tax reductions granted for capital improvements and new race tracks under the Capital Improvements Program Law described above for improvements costing at least \$100,000, which were approved by the State Racing Commission *prior to March 29, 1988*. The act removes this March 29, 1988 reference, but it is unclear whether the removal has any substantive effect. At first glance, the removal appears to provide that the tax reduction granted for a major capital improvement project could be in addition to a tax reduction for any so-called minor capital improvement project approved by the State Racing Commission prior to, on, or after March 29, 1988. However, the removal may not have that consequence, because the act does not change the Capital Improvements Program Law's provision that states that a permit holder cannot "receive a tax reduction for a capital improvement approved by the racing commission on or after March 29, 1988, at a race track *until all reductions have ended* for all prior capital improvements approved by the racing commission under . . . section [3769.08] or *section 3769.20* of the Revised Code at that race track."

**Second change.** Former law designated the leveling of a *race track* as one of the major capital improvement projects for which a tax reduction could be taken. The act instead refers to the tax reduction being for the leveling of a *racings surface*.

**Official responsible for distributing amounts in the Horse Racing Tax Fund**

(R.C. 3769.08(K))

Continuing law creates the Horse Racing Tax Fund in the state treasury for the use of the agricultural societies of the several counties in which the taxes that were deposited into the Fund originated. Former law required that on the first day of any month in which there was money in the Fund, the Director of Budget and Management had to provide for payment to the treasurer of each agricultural society of the amount of taxes collected when racing was conducted during any fair or exposition of the society. The act instead requires the *Tax Commissioner* to distribute those payments.

**Ohio Standardbred Development Fund**

(R.C. 3769.08(C), (D), and (M) and 3769.085)

Continuing law requires specified percentages of money wagered on harness or quarter horse racing that are retained by a permit holder to be paid to the Tax Commissioner as a tax, and a certain percentage of those payments to be deposited into the Ohio Standardbred Development Fund (5/8 of 1% of the money wagered on a racing day, from the money paid by harness racing permit holders to the Tax Commissioner). Certain other money also must be paid into the Fund. Money in the Fund must be distributed on order of the State Racing Commission with the approval of the Ohio Standardbred Development Commission. The money is required to be allocated for specified colt and filly races, and up to 5% of the Fund may be allocated yearly by the State Racing Commission to research projects directed toward improving the breeding, raising, racing, and health and soundness of horses in Ohio and toward education or promotion of the industry.

In addition to the specified money required to be deposited into the Fund under continuing law, the act requires any fees assessed for or on behalf of the Ohio Sires Stakes Races to be deposited into the Fund, as well as all investment earnings on the cash balance in the Fund. These fees are *not to be considered* in making a calculation under continuing law of the total amount paid into the Fund during the prior year under certain statutory provisions; that calculation is of 6% of the total amount so paid into the Fund during the prior year, which 6% serves as a "cap" upon the total amount that may be paid into the Fund in the then current year.

**Horse racing wagering pools other than win, place, and show**

(R.C. 3769.08(B), (D), (J), and (M), 3769.087(B), and 3769.20(A))

Former law (1) *authorized* each horse racing permit holder to retain an additional amount equal to not less than 2%, but not more than 3%, of the total of all money wagered on each racing day on wagering pools that required three or more runner selections to complete the wager and (2) required the payment to the Tax Commissioner, as a tax, of an amount equal to 2% of that total and the deposit of that amount by the Tax Commissioner into the PASSPORT Fund, with the permit holder being allowed to retain the amount not so paid to the Tax Commissioner.

The act eliminates these two provisions and instead *requires* each horse racing permit holder to retain an additional amount equal to 1/2 of 1% of the total of all money wagered on each racing day on all wagering pools other than win, place, and show. One-half of the amount retained (that is, 1/4 of 1%) must be paid to the Tax Commissioner by the permit holder, as a tax, for deposit into the State Racing Commission Operating Fund. The permit holder must retain the remaining 1/2 of the amount retained and use 1/2 of it for purse money.

**Extension of extra 2¢ earmark to the Ohio Grape Industries Fund**

(R.C. 4301.43)

Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to \$1.48 per gallon. From the taxes paid, 3¢ per gallon is credited to the Ohio Grape Industries Fund for the encouragement of the state's grape industry, and the remainder is credited to the General Revenue Fund. The amount credited to the Ohio Grape Industries Fund is scheduled to drop to 1¢ per gallon on July 1, 2001. The act extends the 3¢ per gallon earmarking until July 1, 2003.

**Replacing the seat tax on motor vehicles used for transporting persons with a flat tax of \$30**

(R.C. 4921.18 and 4923.11)

The act replaces the \$4-per-seat tax on motor vehicles used by motor transportation companies and private motor carriers to transport persons with a flat tax of \$30.

### **Tax auditor agents and agent managers**

(R.C. 5703.17)

Continuing law grants the Tax Commissioner the authority to appoint and prescribe the duties of tax agents to investigate persons who are subject to the laws administered by the Tax Commissioner. The agent has every power of an inquisitorial nature granted by law to the Commissioner, and the same powers as a notary public regarding depositions.

The act adds the positions of tax auditor agent and tax auditor agent manager to continuing law. These two positions have the same powers as an agent, but no person may be appointed as a tax auditor agent or tax auditor agent manager, unless that person meets one of the following requirements:

(1) The person holds from an accredited college or university a baccalaureate or higher degree in accounting, business, business administration, public administration, or management, a doctoral degree in law, a bachelor of laws degree, or a master of laws degree in taxation;

(2) The person possesses a current certified public accountant, certified managerial accountant, or certified internal auditor certificate; a professional tax designation issued by the Institute for Professionals in Taxation or the International Association of Assessing Officers; or a designation as an enrolled agent of the Internal Revenue Service;

(3) The person has accounting, auditing, or taxation experience that is acceptable to the Department of Taxation;

(4) The person has experience as a Tax Commissioner agent, tax auditor agent, or supervisor of tax agents that is acceptable to the Department.

### **Creation of the Municipal Internet Site Fund**

(R.C. 5703.49)

Continuing law requires that beginning January 1, 2002, each municipal corporation that imposes an income tax must make information about the tax available on the Internet. The information must include the ordinances and rules governing the tax, and blank copies of returns and related documents. Municipal corporations can maintain their own Internet sites, or can post their information to a central site the Tax Commissioner is to establish. If a municipal corporation maintains its own site, it must incorporate a link to the Commissioner's site.

The Commissioner is authorized to charge municipal corporations a fee to defray the costs of creating and maintaining the central site. The act requires the



Commissioner to deposit the fees in the Municipal Internet Site Fund, which the act creates in the state treasury.

**County special tax levy for 9-1-1 and public safety communications systems**

(R.C. 5705.19)

Under prior law, as interpreted by the Attorney General, a county could have a special tax levy for the establishment and operation of a 9-1-1 system and it could have a special levy for a countywide public safety communications system, but it could not have a single levy for both purposes. The act authorizes a levy for both purposes.

**Tax exemption for certain personal property held by the Corporation for the Promotion of Rifle Practice and Firearms Safety**

(R.C. 5709.17(C))

The act exempts from taxation tangible personal property held by the Corporation for the Promotion of Rifle Practice and Firearms Safety, a federally chartered corporation, if the property is surplus property obtained by the Corporation without cost from the Defense Revitalization Marketing Service to carry out the Civilian Marksmanship Program.

**Business personal property taxes--installment payments allowed**

(R.C. 5711.33)

Taxes on tangible personal property used in business are payable at one or two times during the year, depending on whether the business has taxable property in one county or more than one county. If the business has property in only one county, one-half of the annual tax is payable by April 30 and the other half is payable by September 20. If the business has property in more than one county, the entire amount is payable by September 20. These tax payments are based on the property value listed by the taxpayer as set forth in a "preliminary assessment." Later, when the state assesses the taxpayer's property, more or less tax might be owed depending on whether the state's assessment is higher or lower than the taxpayer's. If the state's assessment is higher than the taxpayer's, the state issues a "deficiency" assessment, which is a notice of additional tax liability. If the entire tax deficiency is paid within 60 days after the deficiency assessment is issued, no interest or penalty accrues; if the entire deficiency is not paid within 60 days, interest begins to accrue on the outstanding liability and a 10% penalty is charged.

A provision of the act vetoed by the Governor would have permitted taxpayers who received a deficiency assessment to pay the deficiency in installments over a period of up to five years under a "tax contract" with the

county treasurer. Such a contract would have had to be entered into by the taxpayer within 60 days after the deficiency assessment was issued. The contract would have had to set forth the amount due and the due date of each installment; no limitation would have been placed on the frequency of installments. As long as the taxpayer abided by the tax contract, the 10% penalty that otherwise would have been charged for the delinquent payment would have been forestalled, but interest would have accrued on the outstanding balance for as long as it remained outstanding. Installments would have had to be distributed among taxing authorities and their respective funds in the same manner as any other property tax collections.

### **Sale of tax certificates**

(R.C. 5721.30)

In a county with a population of at least 200,000, the county treasurer has the option to sell real property tax liens through the sale of "tax certificates." These certificates represent an interest in the proceeds from any foreclosure sale, plus interest and other amounts tendered by the certificate holder. The certificates are generally sold at public auction, although under prior law, the treasurer of a county having a population of at least 1.4 million could also conduct a negotiated sale (i.e., a private sale negotiated between the county treasurer and another party). The act eliminates the 1.4 million population threshold for negotiated sales; thus the county treasurer of a county with a population of at least 200,000 may sell tax certificates at public auction or by a negotiated sale.

### **Job training tax credit**

(R.C. 5725.31, 5729.07, 5733.42, and 5747.39)

Under continuing law, corporations, financial institutions, partnerships, S corporations, limited liability companies, other pass-through entities, domestic or foreign insurance companies, and dealers in intangibles may apply to the Director of Job and Family Services for a tax credit certificate under which they may claim a tax credit for training costs paid or incurred for eligible employees. The credit equals one-half of the average of a company's training costs over a three-year period, but cannot exceed \$100,000 per credit period. The tax credit originally could be claimed only by C corporations, including financial institutions, for training costs paid or incurred on or after January 1, 2000, but before December 31, 2003. Beginning in 2001, the tax credit was extended to the other forms of businesses for training costs paid or incurred on or before December 31, 2003.

The act delays the job training tax credit for two years. Generally, the delay means that any credit a company would have been entitled to claim in 2002, 2003, or 2004 cannot be claimed until 2004, 2005, or 2006, respectively.

Specifically, in the case of a dealer in intangibles or an insurance company, the credit claimed in 2004 is to be based on the three-year average of training costs incurred in calendar years 1998, 1999, and 2000; the credit claimed in 2005 is to be based on the average for 2002, 2003, and 2004; and the credit claimed in 2006 is to be based on the average for 2003, 2004, and 2005. In the case of a corporation subject to the franchise tax, the credit for tax year 2004 is to be based on the three-year average for 1999, 2000, and 2001; the credit for tax year 2005 on the average for 2002, 2003, and 2004; and the credit for tax year 2006 on the average for 2003, 2004, and 2005. In the case of owners of a pass-through entity (e.g., sole proprietorship, partnership, S corporation, limited liability company), the credit for the owner's taxable year beginning in 2003 is to be based on the entity's three-year average for 1999, 2000, and 2001; for the taxable year beginning in 2004, on the entity's average for 2002, 2003, and 2004; and for the taxable year beginning in 2005, on the entity's average for 2003, 2004, and 2005.

The act also changes the years for which the Director is required to prepare a job training program report. Rather than submitting the report on or before September 30, 2001, 2002, 2003, and 2004, the act requires that the Director submit the report on or before September 30, 2003, 2004, 2005, and 2006.

### **Property tax replacement payments**

(R.C. 5727.84, 5727.85, 5727.86, and 5727.87)

In 1999 and 2000, legislation reduced the tax assessment rate for much of the personal property of electric companies and natural gas companies. The reductions were made on the premise that some aspects of those industries were then, or soon would be, subject to competitive market forces. The reductions in the assessment rate meant that the property tax base, and thus the future revenue streams, of school districts and other taxing districts were significantly diminished. Thus, the legislation lowering the assessment rate also provided for "property tax replacement payments" to be made by the state to compensate these districts for some or all of the diminished revenue for up to 16 years. The source of the payments are two state excise taxes on electricity and natural gas, which are to be paid by the companies distributing those energy sources to destinations in Ohio--the "kilowatt-hour" or "KWH" tax on electricity and the "Mcf" tax on natural gas. A fixed share of each excise tax is dedicated to covering all or most of the replacement payments.

Generally, property tax replacement payments are based on the tax rates in effect in 1998 (for electric company property replacement payments) or in 1999 (for natural gas company property payments). Payments are computed separately for "fixed-rate" levies (i.e., those that are levied at a fixed millage rate that generates more or less revenue depending on changes in property values) and for "fixed-sum" levies (those that generate a fixed amount of revenue regardless of

changes in property values, such as debt levies and school district emergency levies).

**School district payments**

(R.C. 5727.85(I))

Under prior law, if the shares of the KWH and Mcf taxes dedicated for replacement payments would not be sufficient to cover all replacement payments computed for school districts when those payments are due, replacement payments made on the basis of fixed-rate levies were to be reduced proportionately across all school districts; fixed-sum levies were to be covered first, and so generally would not have been affected by a shortfall in excise tax revenue.

Under the act, replacement payments based on both fixed-rate levies and fixed-sum levies are to be made in full through fiscal year 2006, and the Director of Budget and Management must transfer amounts from the GRF to the School District Property Tax Replacement Fund in sufficient amounts to cover all of those payments.

**Joint vocational school district payments**

(R.C. 5727.84(A) and 5727.85)

Under prior law, joint vocational school districts were entitled to replacement payments as other school districts were, but there was no "offset" to account for the fact that a joint vocational school district's state aid generally increases in response to a decline in its taxable property valuation. Such an offset currently is incorporated into the computation of other school district replacement payments to reflect the reduction in taxable valuation resulting from the reduction in the assessment rate on electric and natural gas company property.

The act establishes such an offset against joint vocational school district replacement payments to preclude those districts from receiving both property tax replacement payments and increases in state aid on account of the reduction in taxable valuation brought about by the reduction in the assessment rates.

**Computation of the state aid "offset"**

(R.C. 5727.85(A))

As indicated under the preceding heading, school district replacement payments are adjusted to offset the increases in state education aid that ensue from a reduction in property tax assessment rates. The act specifies that this offset is to be based on a school district's or joint vocational school district's state aid as computed on July 31 of the fiscal year in which the payments are to be made.



Thus, subsequent recomputations or adjustments in a district's state aid for the fiscal year are to be disregarded for the purpose of computing the payment amount.

**Computation and distribution of replacement payments**

(R.C. 5727.84(B), (C), (D), (E), and (H) and 5727.86(A))

Under prior law, the Director of Budget and Management was responsible for distributing replacement payments to school districts and joint vocational school districts. One-half of the fiscal year's distribution was to be made at each of the semiannual real property tax settlement dates (August 10 and February 15) through the county treasury.

The act transfers the responsibility for distributing replacement payments to the Department of Education. The Department must make the payments directly to school districts and joint vocational school districts between August 21 and 28 each fiscal year and again between February 21 and 28 of the same fiscal year.

Previously, the Director of Budget and Management was responsible for computing replacement payments for all taxing districts. The act shifts this responsibility to the Tax Commissioner.

**Full reimbursement for unvoted debt millage**

(R.C. 5727.84(A)(12), 5727.85(B) and (C)(4), and 5727.86(A)(4))

Under prior law, debt levies not requiring voter approval because they were levied within the ten-mill limitation on unvoted taxes could have been treated as fixed-rate levies for purposes of computing replacement payments. This was because, unlike voted debt levies, the rate of an unvoted debt levy may remain the same each year so as not to exceed the ten-mill limitation. But by being treated as a fixed-rate levy, an unvoted debt levy also was subject to diminished replacement payments under existing provisions that phase out replacement payments for fixed-rate levies. In the case of an unvoted debt levy of a school district or joint vocational school district, under prior law the tax loss from the levy might not have been fully reimbursed between 2006 and 2016 if the increase in the school district's state education aid after FY 2002 exceeded the district's inflation-adjusted property tax loss from fixed-rate levies. In the case of an unvoted debt levy of any other taxing district, the levy might not have been fully reimbursed between 2006 and 2016 because prior law called for a gradual phaseout of replacement payments on account of tax losses from fixed-rate levies.

The act ensures that the tax losses from any unvoted debt levy are to be reimbursed in their entirety through 2016 by excluding them from the phaseout

provisions. The phaseout provisions continue to apply to tax losses from other fixed-rate levies.

**Administrative fee losses**

(R.C. 5727.87)

Under continuing law, certain administrative fees that are computed on the basis of the amount of property tax collections are, like property taxes, reimbursed, but only through 2011. Examples of such fees include the fees for county auditors and treasurers based on the property tax collections processed through their respective offices. Under prior law, 70% of the fee losses were to be deducted from school districts' replacement payments before those payments were disbursed from the county treasury, and 30% were to be deducted from other taxing districts' replacement payments before they were disbursed from the county treasury.

The act dispenses with the fixed 70/30 percentage ratio for apportioning the fee loss reimbursement among the districts, replacing it with a requirement that the fee loss be apportioned ratably among all school districts and other taxing districts on the basis of their respective tax levy losses. Also, since the act requires replacement payments to school districts to be paid directly to school districts rather than going through the county treasury, the reimbursement for administrative fee losses is no longer deducted from the replacement payments; instead, it is to be deducted from each taxing district's regular property tax distributions semiannually.

**Electricity and natural gas excise taxes--clarification**

(R.C. 5727.81 and 5727.811; Sections 163 and 164)

Two new excise taxes recently have been enacted in Ohio to offset the revenue losses from certain property tax reductions for electric companies and natural gas companies. The tax on electricity, or kilowatt-hour tax, is imposed on electricity distributed to a location in this state, and generally is paid by the company distributing the electricity. The tax is paid monthly on the basis of 30-day distribution periods. Some large electricity users are permitted to pay the tax directly to the state. The tax on these large users--called "self-assessing purchasers" or "self-assessors"--is imposed at a lower rate than applies to other users. Electricity users must apply to the state annually in order to be registered as self-assessors.

The act clarifies how the kilowatt-hour tax is computed for self-assessors, but does not change the tax rate. The tax is computed on the basis of two components--the number of kilowatt-hours of electricity distributed to the self-

assessor and the price paid for that electricity. The rate on the number of kilowatt hours is \$.00075 per kilowatt-hour (kWh), but this rate applies only to 504 million kWhs; the rate on the price is 4%. The act clarifies that the per-kWh rate applies only to the *first* 504 million kWhs distributed to the user's location during the registration year. And the act defines a registration year as the 12-month period beginning each May 1. The act also specifies that an electricity user may apply for self-assessor status at any time during the registration year in order to be taxed as a self-assessor for the remainder of the year.

The excise tax on natural gas, or the so-called "Mcf" tax, is imposed on companies that distribute natural gas to a location in Ohio. Enacted in recent legislation (S.B. 287 of the 123rd General Assembly), the tax is scheduled to begin July 1, 2001. It is levied on the basis of the volume of natural gas distributed during one-month-long measurement periods. The act specifies that the tax will apply to all gas distributed during the measurement period that includes July 1, 2001. Thus, the tax will apply to gas distributed before July 1, 2001, if the gas is distributed during a measurement period that includes July 1, 2001.

#### **Correction to estate tax exemption amount**

(R.C. 5731.21)

The act corrects a reference to the minimum value of an estate that is subject to the basic Ohio estate tax. Under continuing law, beginning in 2002 estates having a taxable value of \$338,333 or less are exempted from the estate tax. But a related statute erroneously required any estate having a taxable value above \$338,000 to file an estate tax return, meaning that estates valued between \$338,000 and \$338,333 must file a return even though there is no tax liability. The act conforms the related statute so that only those estates valued above \$338,333 are required to file estate tax returns.

#### **Corporation franchise tax corporate transfers**

(R.C. 5733.053(A)(1) and (F) and 5733.06(H)(7))

Two continuing law provisions ensure that a corporation does not avoid the corporation franchise tax by reorganizing itself as a new corporation by transferring substantially all of its assets to another corporation, or by ceasing to do business in Ohio, before a new tax year begins. To accomplish this, one provision requires that the transferee corporation add to its own income the income on which the transferor corporation would have paid taxes if it were still subject to the tax. The other provision requires that a corporation pay an "exit" tax on net income that it had for any part of its fiscal year that ended before the new tax year begins.

The act modifies the transfer and exit tax provisions by providing that changes made to those provisions by Am. Sub. S.B. 287 of the 123rd General Assembly do not apply to a transfer commenced in and completed during calendar year 2001, pursuant to negotiations that commenced prior to January 1, 2001, unless the transferee or existing corporation makes an election prior to December 31, 2001, to apply either provision. Instead, the taxpayer would pay the corporation franchise tax on the basis of the pre-S.B. 287 law (i.e., the law as it existed prior to December 21, 2000).

The act also specifies that transferring assets to another corporation is a "transfer" under the transfer tax provision only if it qualifies for nonrecognition of gain or loss under the Internal Revenue Code.

**Investment pass-through entity's management fee exclusion**

(R.C. 5733.401)

Continuing corporation franchise tax law imposes a "withholding" tax on pass-through entities that does not apply to most of the income from an "investment pass-through entity" (a mutual fund or finance company organized as a pass-through entity). Currently, net management fees are among the items excluded from an investment pass-through entity's withholding tax base. The act disallows the exclusion of net management fees from an investment pass-through entity's withholding tax base if the fees exceed 5% of its net income.

**Personal income tax--nonresident credit**

(R.C. 5747.221)

Under continuing law, a "withholding" or "qualifying entity" tax is imposed on pass-through entities, such as S corporations, partnerships, some limited liability companies, and certain trusts, to ensure payment of Ohio income taxes by nonresident owners of the entity. The withholding tax does not apply to most of the income (or a deduction item) from an investment pass-through entity. Any income that is not subject to the withholding tax also is not allocable to Ohio for the purposes of computing the nonresident income tax credit, which has the effect of increasing the amount of the nonresident credit.

The act provides that, for the purpose of computing a nonresident owner's tax credit, if a taxpayer has a direct or indirect investment in an investment pass-through entity and that entity, in turn, has such an investment in any other pass-through entity, the existing exclusion of income items (income, gain, deduction, or loss) received by the nonresident taxpayer does not apply to income items received directly or indirectly through (1) a distributive share of income or gain from a pass-through entity that does not qualify as an investment pass-through entity, or

(2) a pass-through entity's income or gain that is not a fee excluded from taxation under existing law. An indirect investment includes any interest that a person constructively owns on account of attribution rules in the Internal Revenue Code.

**Qualifying pass-through entity effective date change**

(Section 163)

The act clarifies the effective date, originally set by Am. Sub. S.B. 287 of the 123rd General Assembly, for changes made by S.B. 287 identifying the investors in a qualifying pass-through entity on behalf of whom the entity must withhold taxes. The changes made by S.B. 287 apply to taxable years beginning in 2001 and thereafter.

**Corporation franchise tax apportionment formula**

(R.C. 5733.056)

The formula to be used by most financial institutions to determine their corporation franchise tax is based on an apportionment of sales, property, and payroll factors. Under prior law, an alternative formula, based on deposits, was available to "qualified institutions" (multistate financial institutions that have at least 10% of their deposits in Ohio and have been involved in certain types of mergers) for tax years 1998-2001. The act makes the alternative formula available through tax year 2003.

**Delay of tax credit for qualified research expenses**

(R.C. 5733.351; Section 176)

Continuing law allows a nonrefundable corporation franchise tax credit for qualified research expenses equal to 7% of the amount by which a corporation's expenses for the taxable year exceed its three-year average qualified research expenses. The credit was to apply to such expenses paid or incurred on or after January 1, 2001. The act delays commencement of the credit until tax year 2004, but allows a taxpayer to claim the credit for tax year 2002 if its taxable year ended before July 1, 2001 (assuming the taxpayer incurred its qualified research expenses between January 1 and July 1, 2001).

**Recycling and Litter Prevention Fund**

(R.C. 5733.122)

Continuing law establishes the Recycling and Litter Prevention Fund, which is used by the Division of Recycling and Litter Prevention in the Department of Natural Resources to implement certain initiatives pertaining to

recycling and litter prevention, including a grant program. Money in the Fund is generated from taxes levied under the Corporation Franchise Tax Law. Those taxes include an additional tax on corporations that manufacture or sell litter stream products. Former law provided that during each of the consecutive six-month periods beginning January 1, 1982, \$5 million received by the Treasurer of State under the Corporation Franchise Tax Law had to be credited to the Recycling and Litter Prevention Fund.

In lieu of transferring \$5 million semiannually as under former law, the act provides that between the 1st and 15th days of July each year, the Tax Commissioner must certify to the Director of Budget and Management the total reported liability in the second preceding year of the taxes levied on companies that manufacture or sell litter stream products and certain other surcharges levied under the Corporation Franchise Tax Law. The total amount certified in each year less an amount to be retained by the Department of Taxation for expenses related to administration of the taxes or surcharges must be credited to the Recycling and Litter Prevention Fund.

**Sales tax exemption for calls made from a coin-operated telephone**

(R.C. 5739.01(B)(3)(f))

Continuing law imposes the sales tax on telecommunications service that originates or terminates in Ohio and is charged in the vendor's records to a consumer's telephone number or account in Ohio, or on telecommunications service that both originates and terminates in Ohio. The act excludes from the sales tax transactions by which local telecommunications service is obtained from a coin-operated telephone and paid for by using coin.

**Extension of lodging tax to smaller lodging establishments**

(R.C. 5739.024(G))

Counties, townships, and municipal corporations may levy taxes on lodging. The tax applies only to lodging at establishments, defined as "hotels," in which there are five or more rooms held out to the public as a place where sleeping accommodations are offered to guests.

The act permits counties, townships, and municipal corporations to extend lodging taxes to lodging establishments having fewer than five rooms. To extend the lodging tax to the smaller establishments, the board of county commissioners, board of township trustees, or legislative authority of a municipal corporation must adopt a resolution or ordinance specifying that "hotel," for purposes of the tax, includes establishments in which fewer than five rooms are used for the accommodation of guests.

A resolution or ordinance may be adopted at any time, so that either a new lodging tax could apply to smaller hotels on enactment of the tax, or an existing tax could be modified to apply to smaller hotels. The act specifies that the resolution or ordinance may apply to a lodging tax imposed prior to adoption of the resolution or ordinance if it so states, but the tax cannot be applied retroactively to transactions whereby lodging is provided to guests prior to adoption of the resolution or ordinance.

**Limit on lodging tax penalty and interest charges**

(R.C. 5739.024)

Counties, townships, and municipal corporations imposing a lodging tax are required to establish regulations to administer and allocate the tax. The specific nature of the regulations is left to the discretion of the subdivision imposing the tax, and, by implication, may include imposing penalties or interest for late or unpaid lodging taxes.

The act expressly permits a subdivision levying the tax to prescribe in its regulations the time for payment of the tax and to impose a penalty or interest (or both) for late payments, as long as the penalty does not exceed 10% of the amount of tax due and the interest rate does not exceed the statutory interest rate charged for late or unpaid state and local property taxes (for 2001, 9%).

**Freeze on tax receipts credited to local government funds**

(Section 140)

The act freezes amounts of state tax receipts that are deposited into and distributed from the Local Government Fund and the Local Government Revenue Assistance Fund at the levels of fiscal year 2001. Although June 2001 deposits and July 2001 distributions will be made under preexisting law (amounts credited one month are distributed the next), the act makes adjustments to the July 2001 deposits and August 2001 distributions so that the freeze effectively begins with the June 2001 deposits and July 2001 distributions.

The same freeze applies to amounts deposited into and distributed from the Library and Local Government Support Fund, except that distributions to each county undivided library and local government support fund will be further reduced by the county's pro-rata share of any transfers made from the Library and Local Government Support Fund to the OPLIN (Ohio Public Library Information Network) Technology Fund.

The freezes affect deposits of receipts from the public utilities excise tax, the corporate franchise tax, the sales tax, the use tax, the personal income tax, and the kilowatt hour tax. Tax receipts that would otherwise have been credited to

local funds will instead be credited to the General Revenue Fund (an adjustment is made to capture for the General Revenue Fund the June 2001 deposit of kilowatt hour taxes). Similarly, amounts that would have been transferred from the Income Tax Reduction Fund to the local government funds will also be transferred to the General Revenue Fund.

**Penalty and interest amnesty for unpaid, unremitted taxes**

(Section 201)

The act grants a temporary amnesty to some individuals, businesses, and utilities that have outstanding, undiscovered tax liabilities. The amnesty allows delinquent taxpayers to pay an outstanding liability without paying any of the associated penalties and without paying one-half of the accrued interest. The amnesty applies to liabilities for the following state taxes: personal income, corporation franchise, pass-through entity, sales and use (state, county, and transit), public utility excise (gross receipts), and business tangible personal property. It includes liabilities for income taxes withheld by employers but never reported or remitted to the state, and for sales or use taxes that have been collected by a vendor but not reported or remitted to the state.

In the case of delinquent personal property taxes, the Tax Commissioner must issue a preliminary assessment certificate to the proper county auditor (i.e., of the county in which the property should be listed for taxation), and the county auditor must compute the amount of tax and interest due. The county treasurer must collect the tax and interest from the taxpayer in the same manner as other personal property taxes are collected. The existing \$10,000 exemption for each taxpayer, for which local taxing districts are reimbursed by the state, will not be reimbursed in the case of tax collections under the amnesty, and the Tax Commissioner is not required to disclose to county auditors any information regarding the exemption for a taxpayer paying personal property taxes under the amnesty.

In order to qualify for the amnesty, a delinquent taxpayer must apply to the Tax Commissioner and pay the entire liability and one-half of the accrued interest between October 15, 2001, and January 15, 2002. Amnesty must be applied for in the manner prescribed by the Tax Commissioner. A delinquent taxpayer may apply for amnesty only for a liability that is outstanding on May 1, 2001. Amnesty may not be granted for any delinquent liability for which the Department of Taxation has issued a notice of assessment, a bill, or an audit notice with respect to that liability, or if an audit has been conducted or is under way. The Tax Commissioner may require a taxpayer applying for amnesty to file any reports or returns that otherwise are required to be filed. Once amnesty is granted for a taxpayer, the state may not proceed with any prosecution or other legal action



against the taxpayer, or issue an assessment, with respect to the delinquent liability for which the amnesty is granted.

Collections arising from the amnesty for state taxes are to be credited to the GRF. Collections arising from county or transit authority sales and use taxes are to be distributed to the county or the transit authority that is owed the taxes, and collections arising from tangible personal property taxes are to be distributed among the taxing districts as are other property tax collections.

### **Motor Fuel Tax Task Force**

(Section 203)

The act creates the Motor Fuel Tax Task Force to study the adequacy and distribution of the motor fuel tax. The Task Force is to consist of three members of the House of Representatives (not more than two from the majority party) appointed by the Speaker; three members of the Senate (not more than two from the majority party) appointed by the President; the Tax Commissioner and the Directors of Public Safety, Transportation, and Budget and Management or their designees; two persons representing the general public, one appointed by the Speaker and one by the President; and eight members jointly appointed by the Speaker and the President from lists provided by the County Commissioners Association of Ohio, the Ohio Municipal League, the Ohio Township Association, the County Engineers Association of Ohio, the Ohio Public Expenditure Council, the State Highway Patrol troopers' collective bargaining unit, the Ohio Contractors Association, and the Ohio Petroleum Council. Staffing is to be provided by the Legislative Service Commission.

The Speaker and the President each must appoint a co-chairperson from their legislative appointees, and the co-chairpersons must call the first meeting of the Task Force within 30 days after the last member is appointed. The Task Force is required to report its findings to the General Assembly and the Governor on December 2, 2002, after which it ceases to exist.

### **Study to extend the Ohio coal tax credit**

(Section 200)

Existing law (R.C. 5733.39) allows a corporation franchise tax credit for an electric company that burns Ohio coal in its electric generating units between April 30, 2001, and January 1, 2005. The act requires that the Legislative Service Commission study the fiscal impact on state revenues of extending the Ohio coal tax credit for an additional two years. Not later than July 1, 2002, the Commission must report its findings to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

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## NOTE ON EFFECTIVE DATES

(Sections 204-207, 209-215, and 224-230)

Section 1d of Article II of the Ohio Constitution states that "laws providing for \*\*\* appropriations for the current expenses of the state government and state institutions \*\*\* shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly shall determine which sections go into immediate effect.

The act includes a default provision stating that except as otherwise specifically provided, the amendment, enactment, or repeal of a codified section in the act is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The act also includes many exceptions to the default provision that provide that specified codified provisions are not subject to the referendum and go into immediate effect.

The act provides that its uncodified sections are not subject to the referendum and take effect immediately, except as otherwise specifically provided. The uncodified sections that are subject to the referendum are identified with an asterisk in the act, and take effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition).

The act also specifies that an item that comprises the whole or part of an uncodified section contained in the act (other than an amending, enacting, or repealing clause) has no effect after June 30, 2003, unless its context clearly indicates otherwise.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-14-01	pp. 157-158
Reported, H. Finance & Appropriations	05-01-01	pp. 327-328
Passed House (59-40) Reported, S. Finance &	05-02-01	pp. 332-393



Financial Institutions	05-23-01	p.	405
Passed Senate (21-12)	05-23-01	pp.	405-452
House refused to concur in Senate amendments (98-0)	05-24-01	pp.	461-464
Senate requested conference committee	05-24-01	P.	455
House acceded to request for conference committee	05-24-01	p.	456
Senate agreed to conference committee report (21-12)	05-30-01	pp.	466-493
House agreed to conference committee report (59-38)	05-30-01	pp.	490-606

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