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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

S.B. 310*
133rd General Assembly

Bill Analysis

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Version: As Reported by House Finance

Primary Sponsor: Sen. Dolan

Sam Benham, Division Chief

SUMMARY

Federal CARES act funds distribution

- Appropriates \$350 million of funding allocated to the state from the federal “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) to counties, municipalities, and townships to fund their necessary COVID-19 pandemic-related expenses and small business grant programs (see [below](#)).
- Excludes local governments that receive direct federal funding under the CARES Act from receiving this distribution.
- Distributes funds based on the proportion of Local Government Fund revenue allocated to subdivisions in 2019.
- Requires a subdivision, before receiving a payment, to adopt a resolution affirming that the subdivision will spend it only on pandemic-related expenses as required under the CARES Act.
- Requires local funds unspent as of October 15, 2020, to be redistributed to local governments that have spent their full allocation.
- Requires subdivisions to return unspent CARES Act funds to the state by December 28, 2020.

* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

Local CARES Act-funded small business grant programs

- Authorizes counties, municipalities, and townships to use funds distributed under the bill and CARES Act funds received directly from the federal government to award grants to Ohio-based small businesses.
- Requires grant proceeds to be used on or before December 28, 2020, for business expenses resulting from the business's or consumer reaction to the COVID-19 pandemic or state pandemic orders.
- Prohibits the use of proceeds for expenses covered by business interruption insurance or reimbursed through federal aid received in response to the pandemic.
- Limits the total amount of grants that a business may receive to \$10,000.
- Requires a business receiving grants to comply with reporting requirements established by the subdivision that awarded the grant and to return unspent or improperly spent proceeds.
- Requires the OBM Director to submit a report to the General Assembly identifying each business that received a grant and itemizing the costs for which it was used.

Capital reappropriations

- Makes capital reappropriations for the biennium ending June 30, 2022 (that is, for FYs 2021 and 2022).

State employee pay freeze

- Allows the OBM Director to request the DAS Director to order a freeze on certain state employee salary increases and pay supplements during the pay periods that include July 1, 2020, through June 30, 2021.
- Permits the Secretary of State, the Auditor of State, the Treasurer of State, and the Attorney General to give notice to the DAS Director and apply the pay freeze to the office's employees.
- Exempts special hazard salary adjustments related to COVID-19 submitted to the DAS Director in accordance with continuing law.
- Permits, under continuing law, the Governor to issue any necessary orders to the DAS Director to implement personnel actions.

Medicaid rates for nursing facility services

- Eliminates the market basket index and budget reduction adjustment factor used in determining a nursing facility's per Medicaid day payment rates.
- Repeals existing law stating it is the General Assembly's intent to specify the budget reduction adjustment factor for each state fiscal year and that the budget reduction adjustment factor is zero for a state fiscal year if the General Assembly fails to do so.

- Increases appropriation item, Medicaid Health Care Services, by \$3.2 million (\$1.2 million state share) in FY 2021.

Nursing facility quality incentive payments

- Specifies that FY 2021 is the last year that nursing facilities will receive a quality incentive payment.
- Eliminates references to calculating the quality incentive payment for the second half of FY 2020.
- Specifies that a nursing facility's quality incentive payment for FY 2021 is based in part on its points under CMS's five-star quality rating system for certain quality metrics, based on the most recent four-quarter average data available in Nursing Home Compare in May of 2020.
- Revises the method by which a nursing facility's licensed occupancy percentage is determined for the purpose of determining whether it qualifies for a quality incentive payment.
- Clarifies that, for FY 2021, a nursing facility is not disqualified from earning a quality incentive payment for either of the following reasons:
 - Because its licensed occupancy percentage is below 80% if the facility was initially certified for Medicaid participation on or after January 1, 2019.
 - Based on occupancy percentage, if one or more beds were unable to be used during calendar year 2019 due to causes beyond the reasonable control of a facility operator, or the facility underwent renovations that meet specified requirements.
- Prohibits a nursing facility from receiving a quality incentive payment for state FY 2021 if it obtains its initial Medicaid provider agreement or undergoes a change of operator during calendar year 2019 or state FY 2021.
- For FY 2021, increases the amount to be spent on quality incentive payments by adjusting one factor used to determine the total amount to be spent on quality incentive payments to 5.2% (from 2.4%) of the nursing facilities' base rate for nursing facility services.

Other provisions

- Requires a transportation improvement district to comply with the state Prevailing Wage Law, unless the amount of state and local funds the district receives on the contract or project is less than statutory thresholds.
- Exempts paycheck protection loan amounts forgiven under the CARES Act from the commercial activity tax.
- Declares an emergency.

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DETAILED ANALYSIS

Federal CARES Act funds distribution

The bill appropriates \$350 million of the money allocated to the state under the federal “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) to counties, townships, and municipalities to fund necessary COVID-19 pandemic-related expenses.

Congress recently enacted the CARES Act to address the effects of the nationwide COVID-19 pandemic. Among other provisions, the CARES Act directs federal money to states and more populous local governments to be used to fund “necessary expenditures incurred due to the public health emergency” connected with the COVID-19 pandemic, provided those

expenses are incurred between March 1 and December 30, 2020, and are not accounted for in the state's or subdivision's current budget.¹

The state has or is scheduled to receive approximately \$4.53 billion in CARES Act funding.² Under the CARES Act, local governments with a population of 500,000 or more may receive a direct payment from the federal government out of their state's allocation. Ohio has six of these subdivisions – the City of Columbus, and Cuyahoga, Franklin, Hamilton, Montgomery, and Summit counties – that in total will receive directly \$778 million or 17% of Ohio's total allocated share.³ Thus, the state treasury will receive approximately \$3.75 billion of the state's total allocation.

Distribution to local governments

The bill appropriates \$350 million of this state-share to be distributed to the counties, municipalities, and townships that did not receive direct federal CARES Act payments.⁴ The money is first distributed to the 88 county treasuries from the state fund that receives CARES Act revenue – the Coronavirus Relief Fund – by the Director of Budget and Management (OBM) in consultation with the Tax Commissioner. This distribution is made on the basis of the proportion of money each county treasury received from the Local Government Fund (LGF) in 2019, excluding any amount that was ultimately allocated to Columbus or any of the five direct-payment counties, which the bill refers to as “ineligible subdivisions.”⁵ (Even if a county is an ineligible subdivision, municipalities and townships in that county will still receive an allocation, as described below.) Currently, LGF funding is allocated either (1) to each county's undivided local government fund, or CULGF, and further distributed to local subdivisions in the county or (2) directly to certain municipal corporations.⁶ The appropriated funds may also be used to provide grants to local businesses (see “[Local grant programs for small businesses](#)” below).⁷

The CARES Act revenue is distributed based on the proportion of LGF allocated to each county's CULGF in 2019. In addition to adjusting to exclude amounts paid to the six ineligible subdivisions, a county's CULGF proportion is adjusted to exclude any adjustments attributable to either (1) CULGF revenue being denied under continuing law to a subdivision that maintains a red light camera program or (2) supplemental CULGF amounts earmarked for townships and

¹ Section 5001 of the “Coronavirus Aid, Relief, and Economic Security Act,” 42 United States Code (U.S.C.) 601.

² Grant A. Driessen, *The Coronavirus Relief Fund (CARES Act, Title V): Background and State and Local Allocations*, Congressional Research Service, p. 4 (April 14, 2020), *available at* <https://crsreports.congress.gov/product/pdf/R/R46298> (hereafter “CRS CARES Act Report”).

³ CRS CARES Act Report, p. 7.

⁴ Section 12.

⁵ Section 6(B).

⁶ R.C. 5747.50, not in the bill.

⁷ Section 9.

small villages.⁸ (\$12 million in LGF is set aside each year specifically for villages with a population of no more than 1,000 and townships.⁹)

Once the CARES Act revenue is paid to the county, the money is further divided between the county and townships and municipalities in the county, except ineligible subdivisions. Before a subdivision may receive that payment, however, its legislative authority must adopt a resolution affirming that the revenue will only be used for the purposes prescribed in the CARES Act (see “**Federal CARES Act funds distribution**,” above) and certify it to the Director of OBM and the county auditor.¹⁰ The revenue is then distributed to such subdivisions in the same proportion as CULGF revenue was distributed to the county, municipality, or township in 2019. So, if, for example, in a county that was allocated \$30 million in CARES Act revenue, a township received 5% of the CULGF revenue in 2019 out of the total CULGF revenue paid to subdivisions eligible to receive the CARES Act payment, the township would receive \$1.5 million.

There is an exception to this allocation method for a subdivision that, in 2019, voluntarily declined to receive its share of CULGF, e.g., Belmont County. In such a case, the revenue is distributed as though that subdivision had not declined its share of CULGF revenue. Although park districts are eligible to receive CULGF distributions in some counties, they are not eligible for distributions of the CARES Act money.

Once a subdivision receives its share of the CARES Act revenue it must deposit the money in a newly created, dedicated fund called the local coronavirus relief fund and must use the revenue solely for the purposes prescribed in the CARES Act. The Auditor of State is required to audit this fund during the subdivision’s next regular audit to ensure the revenue was used properly.¹¹

Redistribution of unused funds

Subdivisions are required to return to the county treasury any CARES Act funding that remains unencumbered as of October 15, 2020. Returned revenue is then redistributed to the county and townships and municipalities in the county, except that no amount may be paid to an ineligible subdivision, a subdivision that also returned its funds, or a subdivision that still has not adopted a resolution affirming its use of the revenue in conformity with the CARES Act. One-quarter of the returned revenue is paid to the county, if eligible, and the remainder is paid to the other eligible municipalities and townships based on each subdivision’s population

⁸ Section 6(B). According to the Department of Taxation, in 2019 no LGF money was denied on the basis of maintaining a red light camera program.

⁹ R.C. 5747.503, not in the bill.

¹⁰ Section 6(D).

¹¹ Section 6(E).

relative to the population of all such subdivisions, with a township's population being based on its unincorporated area only.¹²

Reporting to OBM

Whenever a county auditor distributes or redistributes the CARES Act payments under the bill to local subdivisions, the auditor is required report the amount that is being paid to each subdivision to the Director of OBM. In addition, any subdivision that receives CARES Act revenue under this bill is required to comply with any request from the Director for information on how those funds were spent.¹³

Return of unused funds

A subdivision must return any unspent balance of its local coronavirus relief fund to the state treasury by December 28, 2020, in the manner prescribed by the OBM Director.¹⁴ As discussed above, the CARES Act requires this money to be spent only for COVID-19 pandemic-related costs incurred no later than December 30, 2020.

Local grant programs for small businesses

The bill authorizes a county, municipality, or a township to award grants to certain small businesses using CARES Act funds – including funds received under the bill and those received through direct payments from the federal government (see “**Federal CARES Act funds distribution**,” above). Guidelines issued by the U.S. Treasury Department identify the “provision of grants to small businesses to reimburse the costs of business interruption caused by required closures” as a permissible use of state and local government CARES Act funds.¹⁵ Other CARES Act Treasury guidance indicates that grants may also be awarded to businesses that voluntarily close to promote social distancing measures or that are affected by decreased customer demand as a result of the COVID-19 pandemic.¹⁶

The legislative authority of a subdivision that determines to use all or part of its CARES Act funds in this manner must first adopt and certify to the OBM Director a resolution establishing the grant program in accordance with certain minimum standards prescribed by the bill.¹⁷

¹² Section 6(F).

¹³ Section 6(C), (F), and (H).

¹⁴ Section 6(G).

¹⁵ U.S. Department of the Treasury, Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments, p. 3 (April 22, 2020), available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

¹⁶ U.S. Department of the Treasury, Coronavirus Relief Fund Frequently Asked Questions, p. 5 (May 28, 2020) available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>.

¹⁷ Section 9(B).

Qualifying businesses

The bill limits grant eligibility to Ohio-based businesses that have 50 or fewer employees. These businesses are referred to as “qualifying businesses.” A qualifying business may receive a grant only from a subdivision in which the business is located. A business with multiple locations may apply for grants in more than one subdivision, but the total funds received by any business cannot exceed \$10,000. Furthermore, a business may not receive more than one grant on the basis of the same expense.

Affiliates of a qualifying business are included in determining the business’s number of employees and the amount of grant funds received. The bill defines “affiliate” as a business that controls, is controlled by, or is under common control with the qualifying business. One business “controls” another if it holds the majority voting or ownership interest or has control over the day-to-day operations.¹⁸

Eligible costs

Grant recipients must use grant proceeds for eligible costs approved by the subdivision that awarded the grant. An “eligible cost” is any trade or business expense that directly results from a business interruption or arises from a decrease in revenue due to a business interruption. A “business interruption” is a closure mandated by a state COVID-19 order, including an order of the Governor, the Director of Health, or any other state official or agency, a voluntary closure to promote social distancing, or decreased customer demand attributable to the pandemic.

Eligible costs exclude costs that have been paid or reimbursed through a COVID-19-related business interruption insurance claim or federal aid received in connection with the pandemic such as a paycheck protection program loan or economic injury disaster loan. However, use by the business owner of an economic impact payment – the up to \$1,200 stimulus paid under the CARES Act to most taxpayers – on an eligible cost does not disqualify the business from receiving a grant for that cost.¹⁹

Application and review process

The resolution establishing the grant program must prescribe the form and manner in which a business may apply for a grant. The application must include:

- The business’s name and address and the address of its place of business within the subdivision;
- The number of individuals employed by the business and its affiliates;
- A detailed accounting of the business’s eligible costs; and
- A description of the eligible costs for which the grant proceeds would be used.

¹⁸ Section 9(A)(1), (A)(3), and (C)(1).

¹⁹ Section 9(A)(2) through (6).

A subdivision may require additional information to be included in a grant application.²⁰

Applications are evaluated and prioritized according to standards enumerated in the establishing resolution, which may account for:

- The order in which the applications are received;
- The qualifying business's need for the grant relative to other applicants;
- The likelihood that the grant will allow the business to retain Ohio jobs; and
- The overall economic impact of the grant on the business and the surrounding community.²¹

Repayment of unspent or improperly spent proceeds

The resolution establishing the grant program must also prescribe reporting requirements for grant recipients that are sufficient for the subdivision to verify that the proceeds are spent properly and in a timely fashion.

A qualifying business that uses grant proceeds for purposes other than the eligible costs approved through the application process must repay the improper expenditure to the subdivision that awarded the grant. Generally, the subdivision may use repaid amounts to award additional grants or for other permissible expenditures. However, amounts repaid on or after December 28, 2020, must be transferred immediately by the subdivision to the state treasury.

No later than December 28, 2020, grant recipients must return any unspent proceeds to the subdivision, which must immediately transfer the unspent proceeds to the state treasury.

If a qualifying business fails to repay unspent or improperly spent grant proceeds, the subdivision must certify the unpaid amount to the Attorney General for collection.²²

Reporting

The OBM Director must issue a report to the General Assembly by January 15, 2021, identifying each qualifying business that received a grant and itemizing the eligible costs for which the grant proceeds were used. Upon request, subdivisions establishing grant programs must furnish to OBM any information necessary to compile the report.²³

Statement of compliance with CARES Act

The bill states that the General Assembly has determined that grants awarded by subdivisions to qualifying businesses are "necessary expenditures incurred due to the public

²⁰ Section 9(B)(1).

²¹ Section 9(B)(2).

²² Section 9(B)(3), (B)(4), and (C)(3) through (6).

²³ Section 9(E).

health emergency” as contemplated under the CARES Act and, therefore, are compliant with the Act’s requirements.²⁴

Capital reappropriations

The bill makes capital reappropriations for the biennium ending June 30, 2022, (that is, for FYs 2021 and 2022).²⁵ For more details, consult the Legislative Budget Office’s [Fiscal Note & Analysis](#) for S.B. 310.

Expiration clause – prior capital budget act

The bill amends the expiration clause contained in H.B. 529 of the 132nd General Assembly, the capital appropriations and reappropriations act for FYs 2019 and 2020. As written in H.B. 529, all of the act’s provisions with section numbers in the 200s were to expire June 30, 2020.

The bill modifies H.B. 529 to make clear that H.B. 529 provisions related to the issuance and repayment of debt do not expire, as well as other provisions standard to capital appropriations acts. The expiration clause continues to apply to all other sections of H.B. 529 numbered in the 200s, the vast majority of which appropriated or reappropriated capital funds for the biennium ending June 30, 2020.²⁶

State employee pay freeze

Under the bill, if the OBM Director determines it necessary due to anticipated revenue shortfalls, the OBM Director may request the Director of Administrative Services (DAS Director) to order a freeze on state employee salary increases and pay supplements during the pay periods that include July 1, 2020, through June 30, 2021. If an order is issued, the rate of pay is frozen at the rate in effect on the bill’s effective date. If a state employee is hired or changes positions, or if a state employee’s position is reclassified on or after the bill’s effective date, that state employee is paid at the rate that applies to the position’s classification during the pay period that includes June 7, 2020, and the employee cannot receive any increases in the employee’s pay rate, including any step increases or pay supplements, during the freeze.

The freeze continues from the date the DAS Director issues the order until the end of the pay period specified by the DAS Director or the end of the pay period that includes July 1, 2021, whichever is earlier.²⁷

The pay freeze provision does not apply to employees subject to a collective bargaining agreement entered into under the Public Employee’s Collective Bargaining Law.²⁸ The freeze

²⁴ Section 9(F).

²⁵ Sections in Titles 200, 500, and 600.

²⁶ Sections 601.10 and 601.11, amending Section 812.10 of H.B. 529.

²⁷ Section 8(B).

²⁸ R.C. Chapter 4117.

also does not apply to special hazard salary adjustments related to COVID-19 submitted to the DAS Director in accordance with continuing law.²⁹ Finally the pay freeze provision does not apply to employees of any of the following:

- The General Assembly and its agencies;
- The Supreme Court;
- The Secretary of State;
- The Auditor of State;
- The Treasurer of State; and
- The Attorney General.³⁰

However, the Secretary of State, the Auditor of State, the Treasurer of State, and the Attorney General may elect to apply the pay freeze to the office's employees. An office that elects to apply the freeze must notify the DAS Director in writing.³¹

Under continuing law, if the Governor determines that available revenue receipts and balances in any fund or across funds will likely be less than the appropriations for the year, the Governor may declare a "fiscal emergency" and, among other things, order the DAS Director to implement personnel actions consistent with the emergency.³² The bill does not limit the Governor's authority to declare a fiscal emergency and issue additional, necessary orders to the DAS Director.³³

Medicaid rates for nursing facility services

The bill eliminates the market basket index and budget reduction adjustment factor as part of the process to determine the total per Medicaid day payment rate. This rate is composed of payment rates for ancillary and support costs, capital costs, and direct care costs.³⁴ Under existing law, one of the steps in determining a nursing facility's per Medicaid day payment rates for those costs includes an adjustment equal to the difference between the Medicare skilled nursing facility market basket index and an amount known as the budget reduction adjustment factor.³⁵ The Medicare skilled nursing facility market basket index is a

²⁹ Section 8(C)(1).

³⁰ Section 8(C)(3).

³¹ Section 8(D).

³² R.C. 126.05, not in the bill.

³³ Section 8(C)(2).

³⁴ R.C. 5165.15.

³⁵ In the case of direct care costs, the adjustment is made when determining a nursing facility's cost per case-mix unit, which is a factor used in determining its per Medicaid day payment rate for direct care costs. (R.C. 5165.16, 5165.17, and 5165.19.)

factor that the federal government uses in determining Medicare rates for skilled nursing facility services. Its purpose is to reflect price inflation.³⁶

Existing state law also provides that it is the General Assembly's intent to specify in statute the amount of the budget reduction adjustment factor for individual state fiscal years. The budget reduction adjustment factor for a state fiscal year is not to exceed the Medicare skilled nursing facility market basket index determined for the federal fiscal year preceding the state fiscal year for which the budget reduction adjustment factor is being used. If the General Assembly fails to specify the budget reduction adjustment factor for a state fiscal year, the budget reduction adjustment factor for that year is zero.³⁷ H.B. 166 of the 133rd General Assembly provided that the budget adjustment reduction factor (1) for the second half of state FY 2020 equals 2.4% and (2) for all of state FY 2021, equals the Medicare skilled nursing facility market basket index determined for federal fiscal year 2020.³⁸

The bill eliminates the market basket index and budget reduction adjustment factor. This includes repealing (1) the law stating the General Assembly's intent to annually specify the amount of the adjustment factor and (2) the law specifying what that factor is for the second half of state FY 2020 and all of state FY 2021.³⁹ This means that this adjustment will not be used as part of the process of determining the per Medicaid day payment rates for ancillary and support costs, capital costs, and direct care costs.

The changes apply to services provided on or after the bill's effective date and not to services provided before that date.⁴⁰

Finally, the bill increases appropriation item, Medicaid Health Care Services, by \$3.2 million (\$1.2 million state share) in FY 2021 (starting July 1, 2020, and ending June 30, 2021).⁴¹

Nursing facility quality incentive payments

End of payments

Existing law provides for nursing facilities' total per Medicaid day payment rate to include a quality incentive payment, beginning with the second half of state FY 2020. The bill eliminates references to calculating a quality incentive payment for the second half of state

³⁶ U.S. Centers for Medicare and Medicaid Services, *Market Basket Definitions and General Information*, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/downloads/info.pdf>.

³⁷ R.C. 5165.361.

³⁸ Section 333.270 of H.B. 166 of the 133rd General Assembly.

³⁹ R.C. 5165.01(E) and (DD), 5165.16(C)(1)(d), 5165.17(C), 5165.19(C)(1)(e), 5165.361, repealed, and 5166.01; Section 4 (Section 333.270 of H.B. 166 of the 133rd General Assembly, repealed).

⁴⁰ Section 5.

⁴¹ Sections 10 and 11.

FY 2020, and provides that state FY 2021 is the last year nursing facilities will receive quality incentive payments.⁴²

Points earned for quality metrics

The amount of a nursing facility's quality incentive payment is based in part on the number of points that the U.S. Centers for Medicare and Medicaid Services (CMS) assigns to the facility under its five-star quality rating system for certain quality metrics. The bill specifies that a nursing facility's quality incentive payment for state FY 2021 is based in part on the number of points that CMS assigns to the facility under the five-star quality rating system based on the most recent four-quarter average data available in the Nursing Home Compare database maintained by CMS, as of May 2020.⁴³

The quality metrics used are:

- The percentage of the nursing facility's long-stay residents (residents who have resided in the nursing facility for at least 102 days) at high risk for pressure ulcers who had pressure ulcers;
- The percentage of long-stay residents who had a urinary tract infection;
- The percentage of long-stay residents whose ability to move independently worsened;
- The percentage of long-stay residents who had a catheter inserted and left in their bladder.⁴⁴

80% licensed occupancy requirement

With certain exceptions, the bill prohibits a nursing facility from receiving a quality incentive payment for state FY 2021 if its licensed occupancy percentage is less than 80%. Existing law provides that the 80% licensed occupancy requirement does not apply if (1) the nursing facility has a quality score of at least 15 points or (2) the facility was initially certified for participation in the Medicaid program. The bill clarifies the second exception by providing that it applies if the facility was initially certified on or after January 1, 2019. Additionally, the bill adds two new exceptions.

Under the bill, the 80% licensed occupancy requirement does not apply if one or more licensed beds could not be used for patient care during calendar year 2019 due to causes beyond the facility's reasonable control. The requirement also does not apply if the facility underwent a renovation between January 1, 2018, and January 1, 2020, that (1) involved a capital expenditure of at least \$50,000, excluding expenditures for equipment, staffing, or operational costs and (2) directly impacted the area where the licensed beds are located. A nursing facility using either of these two new exceptions must provide the Department of

⁴² R.C. 5165.15(E) and 5165.26.

⁴³ R.C. 5165.26(C).

⁴⁴ R.C. 5165.26(C)(1).

Medicaid written documentation of the number of days the beds were unusable and the specific reason or written documentation confirming the renovation and expenditures, as applicable.⁴⁵

The bill revises the method by which a nursing facility's licensed occupancy percentage is determined for the purpose of the 80% licensed occupancy requirement. Under existing law, a nursing facility's licensed occupancy percentage is determined in two steps. The first step is to multiply the facility's licensed capacity *on* the last day of the measurement period by the number of days in that measurement period. The second step is to divide the number of the facility's inpatient days *for* the measurement period by the product determined under the first step.

Under the bill, the first step is to multiply the facility's licensed capacity *as of* (instead of *on*) December 31, 2019, *as identified on its Medicaid cost report*, by 365. The second step is to divide the *total* number of the facility's inpatients for 2019 (instead of *for* that period) *as identified on its Medicaid cost report*, by the product determined under the first step. The bill also adds a third step: divide the quotient determined under the second step by 100.⁴⁶

No payment for new facilities and facilities that change operator

The bill provides that a nursing facility is not eligible to receive a quality incentive payment for state FY 2021 if it obtains its initial Medicaid provider agreement or underwent a change of operator during calendar year 2019 or state FY 2021.⁴⁷

Total amount to be spent on payments

The bill increases the total amount to be spent on quality incentive payments for state FY 2021 by adjusting one factor used in determining the amount. Under existing law, that factor is 2.4% of nursing facilities' base rate for nursing facility services provided on the first day of the state fiscal year. The bill increases this to 5.2% of the base rate. The base rate is the amount of a nursing facility's Medicaid rate that is comprised of its rates for ancillary and support costs, capital costs, direct care costs, and tax costs, its critical access payment, and a \$16.44 add-on.⁴⁸

Transportation improvement districts

The bill requires a transportation improvement district to comply with the state Prevailing Wage Law unless the amount of state and local funds the district receives on the contract or project is less than the statutory thresholds specified in the Law. Currently, transportation improvement districts are exempt from the Law, regardless of the amount of state or local funds the district receives for a contract or project.⁴⁹

⁴⁵ R.C. 5165.26(D)(2), (4), and (5).

⁴⁶ R.C. 5165.26(D)(3).

⁴⁷ R.C. 5165.26(E).

⁴⁸ R.C. 5165.26(E) and (F).

⁴⁹ R.C. 5540.03.

Generally speaking, under the Prevailing Wage Law, a public authority wishing to engage in construction of a public improvement must ensure that the workers employed on the project are paid the “prevailing rate of wages.” The prevailing wage is the sum of the basic hourly rate of pay, contributions by a contractor or subcontractor to a fund, plan, or program, and the costs to the contractor or subcontractor in providing various fringe benefits (unless the benefits are required under federal, state, or local law). A “public authority” is any Ohio officer, board, or commission, or any Ohio political subdivision, authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor.⁵⁰ A transportation improvement district is created by a board of county commissioners for the purpose of financing, construction, maintenance, repair, and operation of transportation-related projects.⁵¹

For construction and reconstruction related to roads and bridges (“horizontal” improvements), the thresholds are adjusted biennially by the Director of Commerce.⁵² The current thresholds for horizontal projects are \$93,292 for new construction and \$27,950 for other construction. Currently, the threshold for all other new construction (“vertical” improvements) is \$250,000 and the threshold for reconstruction is \$75,000.⁵³ Therefore, under the bill, a transportation improvement district must pay workers employed on the project the prevailing wage only if the amount of state or local funds received for the construction exceeds these thresholds. In most other cases, the Prevailing Wage Law applies when the total cost of the project exceeds the thresholds.

CAT exclusion for debt forgiven under CARES Act

The bill exempts loan amounts forgiven under the CARES Act from the commercial activity tax (CAT).

The CARES Act allows businesses affected by the coronavirus pandemic to apply for “paycheck protection program” (PPP) loans. The debt will be forgiven if the loan is used for payroll costs or mortgage, rent, or utility payments during the eight-week period beginning with the loan’s origination. Such canceled debt is not taxable for federal income tax purposes, whereas most forgiven debt is considered taxable income.⁵⁴

The bill provides that debt forgiven under the CARES Act is not also taxable under the CAT, which is assessed on the basis of a business’s gross receipts from Ohio sales. Under

⁵⁰ R.C. 4115.03(A), not in the bill

⁵¹ R.C. 5540.01 and 5540.02, not in the bill.

⁵² R.C. 4115.03(B), not in the bill.

⁵³ R.C. 4115.03(B) and 4115.034, not in the bill; and Department of Commerce – Division of Industrial Compliance, Prevailing Wage Threshold Levels, available [here](#).

⁵⁴ Section 1106(i) of the “Coronavirus Aid, Relief, and Economic Security (CARES) Act,” 15 U.S.C. 9005(i).

current law, similar to federal income tax law, forgiven debt is generally considered gross receipts for purposes of the CAT.⁵⁵

Emergency measure

The bill includes an emergency clause to address the financial impact to governments from the COVID-19 pandemic. If passed as an emergency measure, the bill will take immediate effect and not be subject to the referendum.

HISTORY

Action	Date
Introduced	05-05-20
Reported, S. Finance	05-06-20
Passed Senate (33-0)	05-06-20
Reported, H. Finance	---

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⁵⁵ Section 7.